

**CANADIAN COOLING COMPRESSORS CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Between:

**1355741 ONTARIO INC. OPERATING AS ZERO ZONE MECHANICAL,
DAMON GREEN and ÉMILIE CHASSÉ**

(the “Plaintiffs”)

and

**TECUMSEH PRODUCTS OF CANADA LIMITED, TECUMSEH PRODUCTS CO., and
TECUMSEH COMPRESSOR COMPANY**

(“the Settling Defendants”)

Executed August 19, 2015

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RECITALS

A. WHEREAS the Proceedings were commenced by the BC Plaintiff in British Columbia, the Quebec Petitioner in Quebec City, Quebec and the Ontario Plaintiff in Ontario, and the Second Quebec Action was commenced by Danielle Decary in Montreal, Quebec and subsequently stayed by order of the Quebec Court;

B. WHEREAS in the Proceedings, the Plaintiffs allege that certain companies, including the Settling Defendants, participated in an unlawful conspiracy to fix, raise, maintain or stabilize the prices of Cooling Compressors in Canada from at least January 1, 2004 until at least December 31, 2008, contrary to Part VI of the *Competition Act* and the common law and/or civil law, and similar allegations are made in the Second Quebec Action;

C. WHEREAS the deadline for Settlement Class Members to opt-out of the Proceedings has passed and there were no opt-outs;

D. WHEREAS the Settling Defendants and Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings, the Second Quebec Action or otherwise;

E. WHEREAS the Plaintiffs, 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 Releasees or evidence of the truth of any of the Plaintiffs' allegations against the Releasees, which allegations are expressly denied by the Settling Defendants;

F. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Settling Defendants by the Plaintiffs and the Settlement Class in the Proceedings and in the Second Quebec Action, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

G. WHEREAS the Settling Defendants have represented that they are experiencing financial difficulties, and have stated in their most recent annual securities filing in the United States that they have incurred losses in seven of the past eight years, expect to continue to incur net losses for the next several years, and may not be able to generate cash from operating activities unless further restructuring activities are implemented or sales or economic conditions improve.

H. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent expressly provided in this Settlement Agreement with respect to the Proceedings and Second Quebec Action;

I. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;

J. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the classes they represent or seek to represent, subject to approval of the Courts;

K. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent;

L. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceedings and the Second Quebec Action as against the Settling Defendants;

M. WHEREAS for the purposes of settlement only, the Parties now consent to certification or authorization of the Proceedings as class proceedings and to the Settlement Classes and a Common Issue in respect of each of the Proceedings solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and

N. WHEREAS the Plaintiffs assert that they are adequate class representatives for the classes they seek to represent and will seek to be appointed representative plaintiffs in their respective Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the Parties that the Proceedings and Second Quebec Action be settled and dismissed with prejudice as to the Settling Defendants only, without costs as to the Plaintiffs, the classes they represent or seek to represent or the Settling Defendants, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of Notices and the costs of claims administration, but excluding Class Counsel Fees.
- (2) **Approval Hearings** mean the hearings to approve the motions brought by Class Counsel for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (3) **BC Action** means the proceeding commenced by the BC Plaintiff before the BC Court that is identified in Schedule "A" to this Settlement Agreement.
- (4) **BC Counsel** means Camp Fiorante Matthews Mogerman.

- (5) **BC Court** means the Supreme Court of British Columbia.
- (6) **BC Plaintiff** means Damon Green.
- (7) **BC Settlement Class** means the settlement class in respect of the BC Action that is defined in Schedule “A” to this Settlement Agreement.
- (8) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (9) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel.
- (10) **Class Counsel Fees** include the fees, disbursements, costs, interest, GST or HST (as the case may be) and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or person as a result of the Settlement Agreement, including the Fonds d’aide aux recours collectif in Quebec.
- (11) **Class Period** means January 1, 2004 to December 31, 2008.
- (12) **Common Issue** means: Did the Settling Defendants conspire to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, Cooling Compressors directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (13) **Cooling Compressors** means hermetically sealed cooling compressors of less than one horsepower, excluding compressors used in air conditioners.
- (14) **Cooling Compressor Products** means Cooling Compressors and products containing Cooling Compressors, excluding air conditioners.
- (15) **Courts** means the Ontario Court, the Quebec Court and the BC Court.
- (16) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule “A” to this Settlement Agreement, and any Persons added as defendants in the

Proceedings in the future. For greater certainty, Defendants includes, without limitation, the Settling Defendants.

(17) ***Distribution Protocol*** means the plan developed by Class Counsel for distributing the Settlement Amount, plus accrued interest and less approved Administration Expenses and Class Counsel Fees, to Settlement Class Members, as approved by the Courts.

(18) ***Effective Date*** means the date when the Final Orders have been received from all Courts approving this Settlement Agreement.

(19) ***Execution Date*** means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and the Settling Defendants.

(20) ***Excluded Person*** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.

(21) ***Final Order*** means the later of a final judgment entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.

(22) ***Non-Settling Defendants*** means any Defendant that is not a Releasee or Settled Defendant, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Execution Date.

(23) ***Notice of Approval Hearings*** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendants, or such other form or forms of notice as may be approved by the Courts, which informs the Settlement Class of: (i) the dates and locations of the Approval Hearings, and (ii) the process by which a Settlement Class Member may object to the settlement.

(24) ***Notice of Certification and Settlement Approval*** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendants, or such other form or forms of notice as may be approved by the Courts, which informs the Settlement Class of: (i) the certification or authorization of the Proceedings as class proceedings for settlement purposes, (ii) the approval of this Settlement Agreement, and (iii) the process by which Settlement Class Members may apply to obtain compensation from the Settlement Amount, if applicable.

(25) ***Ontario Action*** means the proceeding commenced by the Ontario Plaintiff before the Ontario Court as identified in Schedule “A” to this Settlement Agreement.

(26) ***Ontario Counsel*** means Siskinds LLP and Harrison Pensa LLP.

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

(28) ***Ontario Plaintiff*** means 1355741 Ontario Inc. operating as Zero Zone Mechanical.

(29) ***Ontario Settlement Class*** means the settlement class in respect of the Ontario Action that is defined in Schedule “A” to this Settlement Agreement.

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

(31) ***Party and Parties*** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.

(32) ***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.

(33) ***Plaintiffs*** means the Ontario Plaintiff, the Quebec Petitioners and the BC Plaintiff.

(34) ***Proceedings*** means the Ontario Action, the Quebec Action, and the BC Action as defined in Schedule “A” to this Settlement Agreement.

(35) ***Proportionate Liability*** means the proportion of any judgment that, had the Settling Defendants not settled, the Ontario or the BC Court, as applicable, would have apportioned to the Settling Defendants and the other Releasees.

(36) ***Quebec Action*** means the proceeding commenced by the Quebec Petitioner before the Quebec Court identified in Schedule “A” to this Settlement Agreement.

(37) ***Quebec Counsel*** means Bouchard Pagé Tremblay Avocats;

(38) ***Quebec Court*** means the Quebec Superior Court.

(39) ***Quebec Petitioner*** means Émilien Chassé.

(40) ***Quebec Settlement Class*** means the settlement class in respect of the Quebec Action that is defined in Schedule “A” to this Settlement Agreement.

(41) ***Recitals*** means the recitals to this Settlement Agreement;

(42) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers’ fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, relating in any way to any conduct anywhere, during the Class Period, in respect of the purchase, sale, pricing, discounting, marketing, or distributing of or compensation for, Cooling Compressor Products in Canada, relating to any conduct alleged (or which could have been alleged) in the Proceedings or the Second Quebec Action including, without limitation, any such claims which have been asserted or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or any other horizontal or vertical, or unilateral or coordinated, anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) in connection with the purchase, sale, pricing, discounting, marketing or distributing of Cooling Compressor Products in Canada during the

Class Period, including, without limitation, any claims for consequential, subsequent or follow-on harm that arise after the Class Period in respect of any agreement or conduct that occurred during the Class Period. For greater certainty, nothing herein shall be construed to release any claims arising from any alleged product defect, breach of contract, or similar claim between the Releasees and Releasers relating to Cooling Compressor Products. Further, for greater certainty, nothing herein shall impact in any way whatsoever, separate ongoing litigation in Canada against the Releasees in respect of horsepower labelling in lawnmowers.

(43) **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, excluding always the Non-Settling Defendants and their affiliates.

(44) **Releasers** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement 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.

(45) **Schedules** mean the schedules to this Settlement Agreement.

(46) **Second Quebec Action** means the proceeding commenced by Danielle Decary in the Quebec Court, district of Montreal, court file 500-06-000525-101.

(47) **Settled Defendant and Settled Defendants** means, individually or collectively, Appliance Components Companies S.p.A. and ACC USA LLC and/or any other Defendant who has entered into a settlement agreement with the Plaintiffs relating to the allegations asserted in the Actions, whether or not such settlement agreement was in existence at the Execution Date.

(48) **Settlement Agreement** means this agreement, including the Recitals and Schedules.

(49) *Settlement Amount* means the sum of six hundred twenty thousand Canadian dollars (CAD \$620,000), payable in three installments as provided by Section 3.1(2).

(50) *Settlement Class* means all Persons included in the Ontario Settlement Class, the Quebec Settlement Class and the BC Settlement Class.

(51) *Settlement Class Member* means a member of a Settlement Class.

(52) *Settling Defendants* means Tecumseh Products of Canada Limited, Tecumseh Products Co., and Tecumseh Compressor Company.

(53) *Trust Account* means an interest-bearing trust account at a Canadian Schedule 1 bank under the control of Siskinds LLP, for the benefit of the Settlement 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 Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Settling Defendants in the Ontario Action and BC Action, a prompt, complete declaration of settlement out of court of the Quebec Action as against the Settling Defendants in the Quebec Action, and a prompt, complete and final dismissal or stay with prejudice of the Second Quebec Action.

2.2 Motions Seeking Approval of Notice

(1) The Plaintiffs shall bring motions before the Courts, as soon as practicable after the Date of Execution, for orders approving the notices described in Section 8.1(1).

(2) The Ontario order approving the notices described in Section 8.1(1) shall be substantially in the form attached as Schedule B. The form and content of the BC and Quebec orders approving the notices described in Section 8.1(1) shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule B.

(3) At or before the motions described in Section 2.2(1), the Ontario Plaintiffs shall bring a motion for an order to amend the Ontario Second Fresh as Amended Statement of Claim to remove Servicerite Inc. as a plaintiff.

2.3 Motions Seeking Certification or Authorization and Approval of the Settlement

(1) As soon as practicable after the orders referred to in Sections 2.2(2) and (3) have been granted and the Notices of Approval Hearings described in Section 8.1 have been published, the Plaintiffs shall bring motions before the Courts for orders certifying or authorizing the Settlement Class as against the Settling Defendants for settlement purposes and approving this Settlement Agreement.

(2) The Ontario order approving this Settlement Agreement and certifying or authorizing the BC and Quebec Actions for settlement purposes shall be substantially in the form attached as Schedule C. The BC and Quebec orders approving this Settlement Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order.

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

2.4 Pre-Motion Confidentiality

(1) Until the first of the motions 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 consent of counsel for the Settling Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to the terms of this Settlement Agreement, or as otherwise required by law.

2.5 Sequence of Motions

(1) The Plaintiffs in Quebec and British Columbia shall not proceed with a motion to approve the Notices of Approval Hearings in the Quebec Action and BC Action unless and until the Ontario Court approves the Notice of Approval Hearings. The motions to approve the Notices of Approval Hearings may be filed in Quebec and British Columbia, but, if necessary, Quebec and BC Counsel will seek an adjournment of their hearings to permit the Ontario Court

to render its decision on the approval of the Notices of Approval Hearings. The Settling Defendants may elect to waive this provision.

(2) The Plaintiffs in Quebec and British Columbia shall not proceed with a motion to certify or authorize the Settlement Class and approve this Settlement Agreement unless and until the Ontario Court certifies the Settlement Class and approves the Settlement Agreement. The certification/authorization and approval motions may be filed in Quebec and British Columbia, but, if necessary, Quebec and BC Counsel will seek an adjournment of their hearings to permit the Ontario Court to render its decision on the certification of the Settlement Class and the approval of the Settlement Agreement. The Settling Defendants may agree to waive this provision.

(3) Notwithstanding section 2.5(1) of this Settlement Agreement, the Plaintiffs can elect to request that the Courts hold joint Approval Hearings pursuant to the Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions. The Settling Defendants will not oppose any such request.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) The Settling Defendants shall pay the Settlement Amount to Siskinds LLP for deposit into the Trust Account, in full satisfaction of all of the Released Claims against the Releasees. The Settlement Amount shall be held for the benefit of Settlement Class Members.

(2) The Settling Defendants shall pay the Settlement Amount according to the following schedule:

- (a) Ninety two thousand twenty five Canadian dollars (CAD \$92,025) on or before December 31, 2015;
- (b) One hundred fifty three thousand three hundred seventy five Canadian dollars (CAD \$153,375) on or before December 31, 2016; and
- (c) Three hundred seventy four thousand six hundred Canadian dollars (CAD \$374,600) on or before December 31, 2017.

(3) In the event that the Settling Defendants are more than five business days late in making any of the payments provided for in section 3.1(2), the Settling Defendants shall be responsible for paying interest from the date that the payment was due until the date that the payment was made, calculated in accordance with section 129 of the *Courts of Justice Act*, RSO 1990 c C43 and any remaining payments shall become due immediately.

(4) The Settling Defendants shall deposit the Settlement Amount into the Trust Account by wire transfer. Siskinds LLP 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.

(5) Subject to section 3.1(3), the Settlement Amount shall be all-inclusive of all amounts, including interest and costs, and shall be paid in full satisfaction of the Released Claims against the Releasees. The Settlement Class shall have no further or other recourse for damages, interest or costs against the Settling Defendants regarding the Released Claims.

(6) Subject to section 3.1(3), the Releasees 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 or the Proceedings.

(7) Once a Claims Administrator has been appointed, Siskinds LLP shall transfer control of the Trust Account to the Claims Administrator.

(8) Siskinds LLP and the Claims Administrator, respectively, shall maintain the Trust Account as provided for in this Settlement Agreement.

(9) Siskinds LLP and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

3.2 Taxes and Interest

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

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the monies in the Trust Account shall be the responsibility of the Settlement Class. Siskinds LLP or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the monies 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 on the monies in the Trust Account 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 monies in the Trust Account or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect, 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 by Siskinds LLP.

SECTION 4 - RELEASES AND DISMISSALS

4.1 Release of Releasees

(1) Upon the Effective Date, subject to Section 4.2, in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasers forever and absolutely release and forever discharge 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.

4.2 Covenant Not to Sue

(1) Notwithstanding Section 4.1, upon the Effective Date, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees, but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

4.3 No Further Claims

(1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendants or unnamed co-conspirator that is not a Releasee.

(2) Section 4.3(1) shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia* by refraining from participation or involvement in any claim or action in a British Columbia court.

4.4 Dismissal of the Proceedings

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

(2) Upon the Effective Date, the Quebec Action shall be settled, without costs and without reservation as against the Settling Defendants, and the Parties shall sign and file a declaration of settlement out of court in the Quebec Court in respect of the Settling Defendants.

4.5 Dismissal of Other Actions

(1) Upon the Effective Date, each member of the Ontario Settlement Class and BC Settlement 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 British Columbia or Ontario by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.

(3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Releasees.

(4) Each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against the Releasees, without costs and without reservation.

(5) Notwithstanding section 4.5(4), the Second Quebec Action shall be finally dismissed or stayed.

4.6 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 Settlement Class Members against any Person other than the Releasees.

4.7 Material Term

(1) The releases contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 11.1 of the Settlement Agreement.

SECTION 5 - BAR ORDER AND WAIVER OF SOLIDARITY

5.1 Ontario and British Columbia Bar Order

(1) The Plaintiffs and the Settling Defendants agree that the British Columbia and Ontario orders approving this Settlement Agreement must include a bar order in respect of the Ontario Action and the BC Action. The bar order shall be in a form agreed to by the Plaintiffs and the Settling Defendants, but shall include:

- (a) a provision that if the Ontario Court or BC Court, as applicable, ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
- (i) all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Claims, which were or could have been brought in the Proceedings, or otherwise by any Non-Settling Defendants, any named or unnamed co-conspirator that is not a Releasee or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendants or any named or unnamed co-conspirator that is not a Releasee, are barred, prohibited and enjoined in accordance with the terms of this Section;
 - (ii) the Ontario or BC Plaintiffs, as applicable, and the Ontario or BC Settlement Class Members, as applicable, shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
 - (iii) the Ontario or BC Plaintiffs, as applicable, and the Ontario or BC Settlement Class Members, as applicable, shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling

Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Ontario or BC Plaintiffs, as applicable, and the Ontario or BC Settlement Class Members, as applicable, if any, and, for greater certainty, the Ontario or BC Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, to the extent provided by law; and

- (iv) the Ontario Court and the BC Court, as applicable, shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Action or BC Action, as applicable, whether or not the Releasees remain in the relevant Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Action or BC Action, as applicable, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action or BC Action, as applicable, and shall not be binding on the Releasees in any other proceeding.

(b) A provision that if the Ontario Court or BC Court, as applicable, ultimately determines that the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in the British Columbia and Ontario orders approving this Settlement Agreement, as applicable, is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of members of the Ontario or BC Settlement Class, as applicable, in the Ontario or BC Action, as applicable.

(c) A provision that a Non-Settling Defendant may, on motion to the Ontario or BC Court, as applicable, determined as if the Settling Defendants remained party to the Ontario or BC Action, as applicable, and on at least ten (10) days' notice to Counsel for

the Settling Defendants, and not to be brought unless and until the Ontario Action or BC Action, as applicable, against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following:

- (i) documentary discovery and an affidavit of documents (list of documents in British Columbia) from the Settling Defendants in accordance with the relevant rules of civil procedure;
 - (ii) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
 - (iii) leave to serve a request to admit (notice to admit in British Columbia) on the Settling Defendants in respect of factual matters; and/or
 - (iv) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (d) A provision that the Settling Defendants retain all rights to oppose such motion(s) brought pursuant to Section 5.1(1)(c). Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with Section 5.1(1)(c). Notwithstanding any provision in the British Columbia and Ontario orders approving this Settlement Agreement, on any motion brought pursuant to Section 5.1(1)(c), the Ontario or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.
- (e) A provision that a Non-Settling Defendant may serve the motion(s) referred to in Section 5.1(1)(c) on the Settling Defendants by service on counsel for the Settling Defendants in the relevant Proceeding.
- (2) To the extent that such an order is granted pursuant to Section 5.1(1)(c) and discovery is provided to the Non-Settling Defendants, a copy of all discovery provided, whether oral or

documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendants(s).

5.2 Quebec Waiver or Renunciation of Solidarity Order

(1) The Quebec Petitioner and the Settling Defendants agree that the Quebec order approving this Settlement Agreement must include a waiver or renunciation of solidarity in respect of the Quebec Action. The waiver or renunciation of solidarity shall be in a form agreed to by the Quebec Petitioner and the Settling Defendants, but shall include:

- (a) the Quebec Petitioner and the Settlement Class Members in the Quebec Action expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees;
- (b) the Quebec Petitioner and the Settlement Class Members in the Quebec Action shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of its rights to oppose such discovery under the *Code of Civil Procedure*.

5.3 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 Settlement Class Members against any person other than the Releasees.

SECTION 6 - EFFECT OF SETTLEMENT

6.1 No Admission of Liability

(1) The Plaintiffs and Releasees expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Plaintiffs and the Releasees further agree that, 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 any of the Releasees, or of the truth of any of the claims or allegations contained in the Proceedings or the Second Quebec Action, or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

6.2 Agreement Not Evidence

(1) The Plaintiffs and the Releasees agree whether or not it is not 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 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 Plaintiff and 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 which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling

Defendants or unnamed co-conspirator that is not a Releasee. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court in Canada.

(2) For greater certainty, Section 6.3(1) shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia* by refraining from participation or involvement in any claim or action in a British Columbia court.

SECTION 7 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

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

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Ontario Settlement Class, the Quebec Settlement Class and the BC Settlement Class.

(3) The Parties agree that the certification or authorization of the Proceedings as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

SECTION 8 - NOTICE TO SETTLEMENT CLASS

8.1 Notices Required

(1) The proposed Settlement Classes shall be given the following notices: (i) the Notice of Approval Hearings; (ii) the Notice of Certification and Settlement Approval; (iii) notice if this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect; and (iv) such further notice as may be directed by the Courts.

8.2 Form and Distribution of Notices

(1) The form of the Notices referred to in Section 8.1(1) and how and where they are published and distributed shall be as agreed to by the Plaintiffs and the Settling Defendants and, failing agreement, as ordered by the Courts.

SECTION 9 - ADMINISTRATION AND IMPLEMENTATION

9.1 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 Courts on motions brought by Class Counsel.

9.2 Information and Assistance relating to Administration

(1) The Settling Defendants will make reasonable efforts to provide to Class Counsel a list of the names and addresses of Persons in Canada who purchased Cooling Compressor Products directly from the Settling Defendants during the Class Period, as well as the aggregate sales price paid by each of their ten largest customers of Cooling Compressor Products in Canada for each year of the Class Period, less any rebates, delivery charges, shipping charges, taxes, and any other form of discount, to the extent that such information is reasonably available.

(2) The name and address information required by Section 9.2(1) shall be delivered to Class Counsel within thirty (30) days of the Execution Date or at a time mutually agreed upon by the Parties. The sales price information required by Section 9.2(1) shall be delivered to Class Counsel within sixty (60) days of the Execution Date or at a time mutually agreed upon by the Parties.

(3) Class Counsel may use the information provided under Section 9.2:

- (a) to facilitate the dissemination of the notices required in Section 8.1;
- (b) to advise of any subsequent settlement agreement reached in the Proceedings, any related approval hearings, and any other major steps in the Proceedings; and

(c) to facilitate the claims administration process with respect to the Settlement Agreement and any other settlement agreement(s) achieved or court awards issued in the Proceedings.

(4) All information provided by the Settling Defendants pursuant to Section 9.2(1) shall only be used or disclosed for the purposes enunciated in Section 9.2(3) and shall not be used directly or indirectly for any other purpose, except as otherwise required by law and except to the extent such information is publicly available. Notwithstanding the foregoing, Class Counsel may disclose the information provided by the Settling Defendants pursuant to Section 9.2(1) to a Court-appointed notice provider and/or the Claims Administrator, to the extent reasonably necessary for the purposes enumerated in Section 9.2(3). The Court-appointed notice provider and/or the Claims Administrator shall be bound by the same confidentiality obligations set out in this Section 9.2(4), given the competitively sensitive nature of customer information. If this Settlement Agreement is not approved, is terminated or otherwise does not take effect, all information provided by the Settling Defendants pursuant to Section 9.2(1) shall be dealt with in accordance with Section 11.2(1)(d) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

(5) The Settling Defendants, through their counsel, will make themselves reasonably available to respond to questions respecting the information provided pursuant to Section 9.2(1) from the Court-appointed notice provider and/or the Claims Administrator. The Settling Defendant's obligation 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 4 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendant's obligation to cooperate under this Section shall cease when the Proceedings are resolved as against all Defendants and all settlement funds or court awards have been distributed.

(6) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 9.2.

SECTION 10 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

- (1) The Releasees shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.
- (2) Siskinds LLP shall pay the costs of the notices required by Section 8.1 and any costs of translation required by Section 12.12 from the Trust Account, as they become due.
- (3) Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date. No Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.
- (4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.
- (5) Class Counsel reserve the right to bring motions to the Courts for reimbursement out of the Trust Account for any future disbursements.

SECTION 11 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

11.1 Right of Termination

- (1) In the event that:
 - (a) any Court declines to certify or authorize the Settlement Class;
 - (b) any Court declines to dismiss the Proceedings against the Settling Defendants in the relevant Proceeding;
 - (c) the Quebec Court declines to finally dismiss or stay the Second Quebec Action;
 - (d) any Court declines to approve this Settlement Agreement or any material part hereof;
 - (e) any Court approves this Settlement Agreement in a materially modified form;

- (f) the Parties do not reach agreement on the form and content of any order required by this Settlement Agreement, or the agreed order is approved by a Court in a materially modified form; or
- (g) any orders approving this Settlement Agreement made by the Courts do not become Final Orders;

each of the Settling Defendants, Class Counsel, and the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 12.18, within thirty (30) days following the event described above. Except as provided for in Section 11.4, if the Settling Defendants, Class Counsel or the Plaintiffs 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.

- (2) Any order, ruling or determination made by any Court with respect to
 - (a) Class Counsel Fees, or
 - (b) the Distribution 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.

11.2 Effect of Non-Approval or Termination of Settlement Agreement

- (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 certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
 - (b) any order certifying or authorizing a Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set

aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;

- (c) any prior certification or authorization of a Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings or any other litigation; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all Documents or other materials provided by the Settling Defendants under 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 recover and destroy such Documents or information. Class Counsel shall provide counsel to the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this Section 11.2 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.

11.3 Allocation of Settlement Amount Following Termination

- (1) If the Settlement Agreement is terminated, Siskinds LLP 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 incurred with respect to the notices required by Section 8.1, and any costs of translation required by Section 12.12.

11.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(3), 6.1, 6.2, 8.1, 8.2, 9.2(4) 11.2, and 11.3 and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.2(3), 6.1, 6.2, 8.1, 8.2, 9.2(4), 11.2 and 11.3, 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 12 - MISCELLANEOUS

12.1 Motions for Directions

(1) Class Counsel or the Settling Defendants may apply to the Ontario Court and/or such other Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate solely to matters affecting the BC Action or the Quebec Action shall be determined by the Ontario Court.

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

12.2 Releasees Have No Liability for Administration

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

12.3 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.

12.4 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, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

12.5 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the Parties and the Class Counsel Fees in that proceeding.
- (2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding Sections 12.5(1) and (2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Ontario Court for such purposes.

12.6 Governing Law

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

12.7 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.

12.8 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties, and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

12.9 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendants, 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 by the Plaintiffs shall be binding upon all Releasors and every covenant and agreement made by the Settling Defendants shall be binding upon all of the Releasees.

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

12.11 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.

12.12 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 the Courts, 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.

12.13 Transaction

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

12.14 Recitals

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

12.15 Schedules

(1) The Schedules annexed hereto form part of this Settlement Agreement

12.16 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 this 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 this 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.

12.17 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.

12.18 Notice

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

FOR THE PLAINTIFFS AND CLASS COUNSEL:

Linda Visser
Siskinds^{LLP}
680 Waterloo Street
London, ON N6A 3V8

Tel.: (519) 660-7700
Fax: (519) 660-7701
Email: linda.visser@siskinds.com

Reidar Mogerman
Camp Fiorante Matthews Mogerman LLP
4th Floor, Randall Bldg
555 West Georgia St.
Vancouver, BC V6B 1Z6

Tel.: (604) 331-9530
Fax: (604) 689-7554
Email: rmogerman@cfmlawyers.ca

Jonathan Foreman
Harrison Pensa LLP
450 Talbot Street
London, ON N6A 4K3

Tel: 519-679-9660
Fax: 519-667-3362
Email: jforeman@harrisonpensa.com

Brian A. Garneau
Bouchard Pagé Tremblay Avocats
825, boulevard Lebourgneuf, 510
Québec City, QC G2J 0B9

Tel: (418) 622-6699
Fax: (418) 628-1912
Email:
brianagarneau@bptavocats.com

FOR THE SETTLING DEFENDANTS:

William McNamara
Torys LLP
79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, ON M5K 1N2

Tel: (416) 865-7988
Fax: (416) 865-7380
Email: wmcnamara@torys.com

12.19 Date of Execution

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

1355741 ONTARIO INC. operating as **ZERO ZONE MECHANICAL**, on their own behalf and on behalf of the Settlement Class, by their counsel

Name of Authorized Signatory: Linda Visser

Signature of Authorized Signatory: 
Siskinds LLP
Ontario Counsel

Name of Authorized Signatory: Linda Visser

Signature of Authorized Signatory: 
per Harrison Pensa LLP
Ontario Counsel

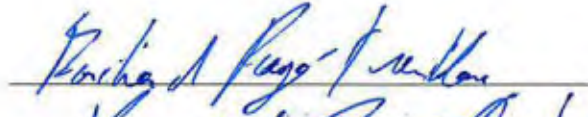
Damon Green, by his counsel

Name of Authorized Signatory: Reidar Mogerman

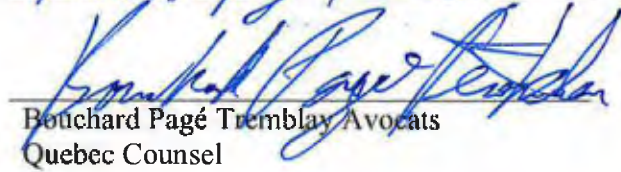
Signature of Authorized Signatory: 
Camp Fiorante Matthews Mogerman LLP
BC Counsel

Émilien Chassé, by his counsel

Name of Authorized Signatory:



Signature of Authorized Signatory:


Bouchard Pagé Tremblay Avocats
Quebec Counsel

TECUMSEH PRODUCTS OF CANADA LIMITED, TECUMSEH PRODUCTS CO., and TECUMSEH COMPRESSOR COMPANY, by its counsel

Name of Authorized Signatory

Signature of Authorized Signatory:

Torys LLP
Canadian Counsel

Émilien Chassé, by his counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____

Bouchard Pagé Tremblay Avocats
Quebec Counsel

TECUMSEH PRODUCTS OF CANADA LIMITED, TECUMSEH PRODUCTS CO., and TECUMSEH COMPRESSOR COMPANY, by its counsel

Name of Authorized Signatory JAMES GOTOWSEK

Signature of Authorized Signatory: 

Torys LLP
Canadian Counsel

**SCHEDULE “A”
PROCEEDINGS**

Proceeding	Plaintiff(s)	Defendants	Settlement Class
Ontario Superior Court of Justice Court File No. 61559 CP (the “Ontario Action”)	1355741 Ontario Inc. operating as Zero Zone Mechanical	Tecumseh Products of Canada Limited, Tecumseh Products Co., Tecumseh Compressor Company, Danfoss A/S, Danfoss, Inc., Danfoss Commercial Compressors Ltd., Danfoss Scroll Technologies, LLC., Danfoss Turbocor Compressors, Inc., Danfoss Compressor, LLC, Appliances Components Companies SpA, ACC USA LLC, Panasonic Corporation, Panasonic Canada Inc., Whirlpool Canada LP, Embraco North America, Inc., and Whirlpool Corporation	All Persons in Canada who purchased Cooling Compressor Products in Canada during the Class Period, except the Excluded Persons and persons who are included in the BC Class or the Quebec Class.
Superior Court of Quebec (District of Quebec), File No. 200-06-000127-103 (the “Quebec Proceeding”)	Émilien Chassé	Tecumseh Products of Canada Limited, Tecumseh Products Co., Tecumseh Compressor Company, Danfoss A/S, Danfoss, Inc., Danfoss Commercial Compressors Ltd., Danfoss Scroll Technologies, LLC., Danfoss Turbocor Compressors, Inc., Danfoss Compressor, LLC, Appliances Components Companies SpA, ACC USA LLC, Panasonic Corporation, Panasonic Canada Inc., Whirlpool Canada LP, Embraco North America, Inc., and Whirlpool Corporation	All individuals in Quebec who purchased Cooling Compressor Products in Canada during the Class Period, as well as any legal person resident in Quebec established for a private interest, partnership or association which, at all times between October 1, 2009 and October 1, 2010, had under its direction or control no more than 50 persons bound to it by a contract of employment who purchased Cooling Compressor Products in Canada during the Class Period, except Excluded Persons.

Proceeding	Plaintiff(s)	Defendants	Settlement Class
British Columbia Supreme Court (Vancouver Registry) Court File No. S106877 (the “BC Proceeding”)	Damon Green	Tecumseh Products of Canada Limited, Tecumseh Products Co., Tecumseh Compressor Company, Danfoss A/S, Danfoss, Inc., Danfoss Commercial Compressors Ltd., Danfoss Turbocor Compressors, Inc., Danfoss Compressor LLC, Danfoss Scroll Technologies, LLC, ACC USA LLC, Panasonic Canada Inc., Panasonic Corporation, Whirlpool Canada LP, Embraco North America, Inc. and Whirlpool Corporation	All Persons in British Columbia who purchased Cooling Compressor Products in Canada during the Class Period, except the Excluded Persons.

SCHEDULE “B”

Court File No. 61559CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM) , THE DAY
JUSTICE LEITCH) OF , 2015

B E T W E E N :

1355741 ONTARIO INC. operating as ZERO ZONE MECHANICAL
and SERVICERITE INC.

Plaintiffs

- and -

TECUMSEH PRODUCTS OF CANADA LIMITED; TECUMSEH PRODUCTS CO.;
TECUMSEH COMPRESSOR COMPANY; DANFOSS A/S; DANFOSS, INC.; DANFOSS
COMMERCIAL COMPRESSORS LTD.; DANFOSS SCROLL TECHNOLOGIES, LLC.;
DANFOSS TURBOCOR COMPRESSORS, INC.; DANFOSS COMPRESSOR, LLC;
APPLIANCES COMPONENTS COMPANIES SPA; ACC USA LLC; PANASONIC
CORPORATION; PANASONIC CANADA INC.; WHIRLPOOL CANADA LP; EMBRACO
NORTH AMERICA; and WHIRLPOOL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiffs for an Order approving the short-form and long-form notices of settlement approval hearings and the method of dissemination of said notices was heard this day at the Court House, 80 Dundas Street, London, Ontario.

ON READING the materials filed, including the settlement agreement dated ●, 2015 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the short-form and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as Schedules “B” and “C”.
3. **THIS COURT ORDERS** that the plan of dissemination for the short-form and long-form notices of settlement approval hearings (the “Plan of Dissemination”) is hereby approved in the form attached hereto as Schedule “D” and that the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that this Order is contingent upon parallel orders being made by the BC Court and the Quebec Court, and the terms of this Order shall not be effective unless and until such orders are made by the BC Court and the Quebec Court.

Date:

The Honourable Justice Leitch

SCHEDULE “C”

Court File No. 61559CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MADAM) , THE DAY
JUSTICE LEITCH) OF , 2015

B E T W E E N :

1355741 ONTARIO INC. operating as ZERO ZONE MECHANICAL

Plaintiff

- and -

TECUMSEH PRODUCTS OF CANADA LIMITED; TECUMSEH PRODUCTS CO.;
TECUMSEH COMPRESSOR COMPANY; DANFOSS A/S; DANFOSS FLENSBURG
GMBH; DANFOSS, INC.; DANFOSS COMMERCIAL COMPRESSORS LTD.; DANFOSS
SCROLL TECHNOLOGIES, LLC.; DANFOSS TURBOCOR COMPRESSORS, INC.;
DANFOSS COMPRESSOR, LLC; PANASONIC CORPORATION; PANASONIC CANADA
INC.; WHIRLPOOL CANADA LP; EMBRACO NORTH AMERICA; and WHIRLPOOL
CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an Order certifying this proceeding as a class proceeding for settlement purposes as against Tecumseh Products of Canada Limited, Tecumseh Products Co., Tecumseh Compressor Company (the “Settling Defendants”) and approving the settlement agreement entered into with the Settling Defendants and dismissing this action as against the Settling Defendants, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

AND ON READING the materials filed, including the settlement agreement dated ●, 2015 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been ● objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting out of the Ontario Action has passed, and there were no opt-outs;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendants consent to this Order:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Action.
4. **THIS COURT ORDERS** that the Ontario Action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
5. **THIS COURT ORDERS** that the “Ontario Settlement Class” is certified as follows:

All Persons in Canada who purchased Cooling Compressor Products in Canada during the Class Period, except the Excluded Persons and persons who are included in the Quebec or BC Class.
6. **THIS COURT ORDERS** that the following issue is common to the Ontario Settlement Class:

Did the Settling Defendants conspire to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, Cooling Compressors directly or indirectly in Canada during the

Class Period? If so, what damages, if any, did Settlement Class Members suffer?

7. **THIS COURT ORDERS** that 1355741 Ontario Inc. operating as Zero Zone Mechanical is appointed as the representative plaintiff for the Ontario Settlement Class.
8. **THIS COURT ORDERS** that paragraphs 4 to 6 of this Order, the certification of this action against the Settling Defendants for settlement purposes and the definitions of the Ontario Settlement Class, Class Period and Common Issue are without prejudice to any position a Non-Settling Defendants may take in this action, including the issue of whether this action should be certified as a class proceeding. No person may rely, cite or refer to the certification of this action against the Settling Defendants or any reasons given by the Court in relation thereto as authority against any of the Non-Settling Defendants in this or any other proceeding. For greater certainty, paragraphs 4 to 6 of this Order, any reasons given by the Court in relation thereto, and the certification of this action against the Settling Defendants for settlement purposes is not binding on and shall have no effect on this Court's ruling in this or any other proceedings as against the Non-Settling Defendants.
9. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
10. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Settlement Class shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
12. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.

13. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 15, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
14. **THIS COURT ORDERS** that, 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 any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendants or unnamed co-conspirator that is not a Releasee.
15. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Ontario Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
16. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
17. **THIS COURT ORDERS** that if this Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
 - (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise by any Non-Settling Defendants, any named or

unnamed co-conspirator that is not a Releasee or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendants or any named or unnamed co-conspirator that is not a Releasee, are barred, prohibited and enjoined in accordance with the terms of this Section;

- (b) the Ontario Plaintiffs and Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (c) the Ontario Plaintiffs and Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Ontario Plaintiffs and Ontario Settlement Class Members, if any, and, for greater certainty, the Ontario Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, to the extent provided by law; and
- (d) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Action, whether or not the Releasees remain in the Ontario Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Action and any determination by this Court in

respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action and shall not be binding on the Releasees in any other proceeding.

18. **THIS COURT ORDERS** that if this Court ultimately determines that the Non-Settling Defendant would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of members of the Ontario Settlement Class in the Ontario Action.
19. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court brought on at least ten (10) days' notice and to be determined as if the Settling Defendant was a party to the Ontario Action, and not to be brought until the Ontario Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
 - (a) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the *Rules of Civil Procedure*;
 - (b) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
 - (c) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
 - (d) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
20. **THIS COURT ORDERS** that the Settling Defendants retains all rights to oppose such motion(s) brought under paragraph 19.

21. **THIS COURT ORDERS** that a Non-Settling Defendants may serve the motion(s) referred to in paragraph 19 above on the Settling Defendants by service on counsel for the Settling Defendants in the Ontario Action.
22. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledges and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
23. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Ontario Settlement Class has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
24. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.
25. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Siskinds LLP for the benefit of Settlement Class Members.
26. **THIS COURT ORDERS** that any funds remaining in the Trust Account after payment of approved Administration Expenses, Class Counsel Fees and Class Counsel Disbursements shall be distributed to Settlement Class Members in accordance with the Distribution Protocol.
27. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the BC Court and the Quebec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the BC Court and the Quebec Court, and the BC Action has been dismissed with prejudice and without costs and the Quebec Action has been declared settled out of court as against the defendants in the relevant proceeding by the Courts. If such orders are not secured in Quebec and British Columbia, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Action and any agreement between

the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.

28. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.
29. **THIS COURT ORDERS** that the Ontario Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.

Date:

The Honourable Justice Leitch