

**CANADA**

Province of Québec  
District of Montréal

No. 500-06-000550-109

**SUPERIOR COURT**  
(Class Action)

BETWEEN

ALAN DICK,

Plaintiff

and

JOHNSON & JOHNSON INC., and DEPUY ORTHOPAEDICS INC.,

Defendants.

**SETTLEMENT AGREEMENT**

**Made as of April 3, 2018**

## DEPUY QUÉBEC ASR CLASS SETTLEMENT

### RECITALS

- A. WHEREAS the Plaintiff commenced Action No. 500-06-000550-109 in Superior Court, Province of Québec, alleging that the Defendants marketed a defective hip implant known as the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System and seeking to represent a class of persons similarly situated, which Québec Class (as defined herein) was authorized by the Court (“Québec Proceeding”);
- B. WHEREAS Defendants deny liability in respect of the claims alleged in the Québec Proceeding, and believe that they have good and reasonable defenses in respect of the merits in the Québec Proceeding;
- C. WHEREAS the Defendants assert that they would actively pursue these defenses in respect of the merits at trial if the Plaintiff continued the Québec Proceeding against them;
- D. WHEREAS the Parties have negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation, and to achieve final resolution of all claims asserted or that could have been asserted against the Defendants by the Plaintiff on his own behalf and on behalf of the members of the Québec ASR Class (as defined herein and in the Québec Proceeding);
- E. WHEREAS counsel for the Defendants and counsel for the Plaintiff have engaged in extensive arm’s-length settlement discussions and negotiations in respect of this Settlement Agreement;
- F. WHEREAS as a result of these settlement discussions and negotiations, the Defendants and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Defendants and the Plaintiffs, subject to the approval of the Québec Court;
- G. WHEREAS the Plaintiff has agreed to accept this Settlement, in part, because of the Settlement Amount to be paid under this Settlement Agreement if the Effective Date is reached, as well as the attendant risks of litigation in light of the potential defenses that may be asserted by the Defendants;
- H. WHEREAS the Defendants do not admit through execution of this Settlement Agreement any of the conduct alleged in the Québec Proceeding or any other proceedings or any liability to Plaintiffs or to anyone;
- I. WHEREAS the Plaintiff, Class Counsel, and 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 Defendants or evidence of the truth of the Plaintiff’s or anyone else’s allegations against the Defendants;

- J. WHEREAS the Plaintiff and his 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 Plaintiff, and having regard to the burdens and expense in prosecuting the Québec Proceeding, including the risks and uncertainties associated with trials and appeals, the Plaintiff and his counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiff and the Québec ASR Class he represents;
- K. WHEREAS the Parties therefore wish to, and hereby do, finally resolve, without admission of liability, the Québec Proceeding against the Defendants; and
- L. WHEREAS for the purposes of settlement only and contingent on orders by the Courts as provided for in this Settlement Agreement, the Plaintiff and Class Counsel have consented to (i) a continuance of the trial of this matter to permit the settlement proceedings to occur, and (ii) if the settlement is approved and reaches the Effective Date (as defined herein), settlement of the Québec Proceeding against the Released Persons, as that term is defined in Section 1 below, and the release of all Released Claims, as that term is defined in Section 1 below, that have been or could have been asserted by the Québec ASR Class against the Released Persons.

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 Québec Proceeding be settled on the merits with prejudice to the Releasing Persons, on the following terms and conditions:

## **SECTION 1 – DEFINITIONS**

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

- (1) Account means an interest-bearing trust account under the control of the Class Counsel at a Schedule 1 Canadian chartered bank in Montreal, Province of Québec. Any interest accrued will be utilized to defray Notice and Administration Costs.
- (2) Appeal Adjudicator means the independent person selected by the Class Counsel to make final and non-appealable decisions with respect to the adjudication of any claim decisions of the Class Counsel that are subject to appeal.
- (3) Approval Hearings means the hearings on the motions before the Québec Court for the approval of the Settlement Agreement and notice approvals.
- (4) Approval Order(s) means the order(s) made by the Court in this Proceeding, approving this Settlement Agreement and the notices required with respect to the settlement.
- (5) Approved Claimant means a member of the Québec Class who is an Eligible Claimant and who has submitted the required documentation and whose claim has been approved for

payment by the Class Counsel, Claims Administrator if one is appointed, or Appeal Adjudicator, if applicable.

(6) ASR Implant System means the ASR™ XL Acetabular Hip System (“ASR XL”), or the ASR™ Hip Resurfacing System (“ASR Resurfacing”), and any and all Component and Ancillary Parts (also collectively referred to as “Qualified Device”).

(7) ASR Index Surgery means the first surgical implantation of the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System in a surgery on that hip.

(8) ASR Revision Surgery means, subject to paragraph 27, a surgery subsequent to the ASR Index Surgery to remove the cup of an ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System that was medically necessary and in which all of the following criteria are met:

(i) the revision surgery must have taken place prior to the Last Eligible Date;

(ii) the revision surgery must have occurred more than 180 days following the ASR Index Surgery, but less than ten (10) years following the ASR Index Surgery;

(iii) the revision surgery is not an “Excluded Trauma-Related Revision”;

(iv) the revision surgery is not an “Excluded ASR Resurfacing and Hemiarthroplasty Revision”; and

(v) for revision surgeries occurring after 1 April 2018, the revision surgery must occur in Canada.

(9) Bilateral Revision means a bilateral ASR Revision Surgery performed on both hips of a member of the Québec Class that was performed in either one or two surgical procedures.

(10) Claim Form means the form and declaration established by Class Counsel for Class Members to make a claim under this settlement.

(11) Claims Administrator, if one is appointed, means the entity selected by Class Counsel to assist in administering this settlement, including but not limited to disseminating the Notices, administering the settlement by receiving, reviewing and evaluating claims, rendering settlement awards or denying claims, facilitating any appeal process and processing the payment of Claim Amounts.

(12) Claim Amount means the total amount to which an Approved Claimant is entitled based on an award schedule and objective criteria to be determined solely by Class Counsel, taking into account (a) Class Members who: (i) are unrevised, (ii) underwent single ASR Revision Surgery, (iii) underwent bilateral ASR Revision Surgery, (iv) incurred certain medical complications due

to an ASR Revision Surgery, (v) incurred extraordinary income loss; (b) the Class Member's age at ASR Index Surgery; (c) the length of time that has passed since a Class Member's ASR Index Surgery.

(13) Claims Period means the period commencing with the first publication of the Notice of the Court's Approval of the Settlement and continuing until 365 days after the Effective Date.

(14) Class Counsel means Kugler Kandestin LLP, which is Class Counsel for the Québec ASR Class.

(15) Class Counsel Fees means all Fees approved by the Court as payable pursuant to Section 9 hereof.

(16) Class or Class Members means all members of the Québec ASR Class who did not opt out of the Québec ASR Class.

(17) Class Member means a member of the Québec ASR Class who did not opt out of the Québec ASR Class.

(18) Component and Ancillary Parts means each and every component or ancillary part implanted contemporaneously with and/or intended to function as part of the prosthetic construct that includes the ASR or ASR XL cup, including but not limited to the femoral stem.

(19) Contemporaneous Medical/Hospital Records means medical/hospital records created contemporaneous with the diagnosis of a condition or complication and/or the occurrence of a surgery or other treatment for which a claim is being made.

(20) Costs of the Notice Program means all third-party costs associated with the publication of the Notice of Approval Hearing and the Notice of Settlement Approval.

(21) Court or Québec Court means the Superior Court, Province of Québec, District of Montréal, handling the Québec Proceeding.

(22) Defendants means Johnson & Johnson Inc., a legal entity operating in Canada, and DePuy Orthopaedics Inc.

(23) Defendants' Counsel means Norton Rose Fulbright Canada, LLP and Drinker Biddle & Reath LLP.

(24) Disbursements means funds paid out by Class Counsel or the *Fonds d'aide aux actions collectives* (hereinafter "Fonds") in connection with the Québec Proceeding.

(25) Effective Date means the latest date on which any of the Final Orders in Québec take effect without the possibility of further appeal.

(26) Eligible Claims means claims meeting the eligibility criteria set out in Section 4.

(27) Eligible Claimant means a member of the Québec Class who (a) was a Québec Patient, (b) underwent an ASR Index Surgery, and (c) either has undergone an ASR Revision Surgery by the Last Eligible Date or has been unable to undergo an ASR Revision Surgery for medical reasons. If the cup is revised in a Resurfacing Claimant, that Claimant may qualify as an Eligible Claimant for a settlement award in connection with said ASR Revision Surgery, but is also subject to all of the other terms, exclusions and reductions in this Settlement Agreement. Eligible Claimants include the duly appointed estate or personal representatives of Eligible Claimants who had ASR Revision Surgery, but who are now deceased or otherwise incompetent to act on their own behalf. For clarity, Class Members who had an ASR Index Surgery, but remain Unrevised for other than medical reasons (as defined below) are not considered by Defendants to be Eligible Claimants. Further, any Class Members who make or have made claims against other ASR class action settlements in Canada or elsewhere, or have otherwise previously released their claim in an individual settlement, will be ineligible to obtain a recovery from this settlement of the Quebec Proceeding. Notwithstanding the foregoing, Plaintiff and Class Counsel, in their sole and absolute discretion, may irrevocably waive one or more of the injury criteria referenced above and/or in paragraphs 8, 12, 28, 29, 33, 53 and section 4.4 and deem a Québec ASR Class Member to be an Eligible Claimant. However, Class Counsel may not waive the requirement that an Approved Claimant be a member of the Quebec ASR Class.

(28) Excluded ASR Resurfacing and Hemiarthroplasty Revision means a surgery on the femoral side without revision of the cup of the ASR XL or ASR Resurfacing and thus does not constitute an ASR Revision Surgery and does not entitle a Claimant to a settlement award in relation to that hip, subject to paragraph 27.

(29) Excluded Trauma-Related Revision Surgery means, subject to paragraph 27, a revision that is not an ASR Revision Surgery because the revision was caused by “Trauma,” which is defined as a change in the alignment or fixation of the Qualified Device caused by the application of an external force in a sudden or unexpected manner. Trauma affecting a Qualified Device will be deemed to have occurred if:

(1) a change in the position of any Component and Ancillary Parts of the Qualified Device, or in its alignment or fixation, is verified by radiological studies, or

(2) such change is described in contemporaneous medical records by the treating physician who attributes the immediate medical cause for revision to be due to that traumatic event.

If Trauma is identified in the contemporaneous medical records as the immediate cause for revision, subject to paragraph 27, then the revision is not an ASR Revision Surgery for purposes of this Agreement and the claimant shall be deemed unable to qualify for benefits under this settlement, unless preoperative medical records show, more likely than not, the claimant would have required revision in the near term regardless of the Trauma. The claimant shall have a right to request a review of this determination by the Appeal Adjudicator, who shall then review the relevant contemporaneous medical records submitted by the

claimant to determine whether the trauma was the sole cause for the revision. The final decision shall be made by the Appeal Adjudicator in accordance with the standards in this paragraph and whose decision will be final and non-appealable.

(30) Execution Date means the first date that the Settlement Agreement has been signed by all of the Parties.

(31) Final Approval Date means the later of (a) 31 days after the Court issues an Approval Order, and (b) the disposition of any and all appeals from the Approval Order.

(32) Final Order(s) means the final orders entered by the Court in respect of the approval of this Settlement Agreement once the time to appeal such orders has expired without any appeal being taken or, if an appeal from a final order is taken, once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.

(33) Last Eligible Date means August 24, 2020, subject to paragraph 27.

(34) Notice Costs means all fees, costs, and taxes, and any other amounts incurred to prepare the Notices and their publication pursuant to the approved Notice Program, including the costs of the translation of the notices.

(35) Notice of Approval Hearing means the form of notice to be agreed to by the Plaintiff and the Defendants within ten (10) days of the Execution Date, or as may be approved by the Québec Court that informs the Class of the date and location of an Approval Hearing, the principal elements of this Settlement Agreement, and the process by which Class Members may object to the Settlement of the Québec ASR Class and this Settlement.

(36) Notice of Settlement Approval means the form of notice to be agreed to by the Plaintiff and the Defendants within ten (10) days of the Execution Date, or as may be approved by the Québec Court that informs the Québec Class of the approval of this Settlement Agreement and the process by which a member of the Québec Class may make a claim under this settlement.

(37) Notices means (i) the Notice of Approval Hearing and (ii) the Notice of Settlement Approval.

(38) Parties means the parties to this Settlement Agreement, including Plaintiff, Class Counsel, and the Defendants.

(39) Physician Declaration means any declaration of an Eligible Claimant's treating physician required by Class Counsel, the Claims Administrator, or the Appeal Adjudicator to be submitted in connection with a claim of (i) an ASR Revision Surgery that was placed in the scheduling queue on or before the Last Eligible Date, (ii) an ASR Revision Surgery that has not occurred due to medical reasons, or (iii) a claim for a medical complication related to an ASR Revision Surgery. All other product and medical requirements are to be demonstrated to Class Counsel, the Claims Administrator, or the Appeal Adjudicator by Contemporaneous Medical/Hospital Records submitted as part of a claim under this settlement.

(40) Plaintiffs means the Plaintiff and the members of the Québec ASR Class who did not timely opt out.

(41) Provincial Health Insurers means the Régie de l'assurance-maladie du Québec ("RAMQ") and any other provincial and territorial Ministries of Health or equivalents, Provincial and Territorial Governments and/or provincial and territorial plans funding medical services to members of the Québec ASR Class with respect to any ASR Revision Surgeries.

(42) Québec ASR Class or Québec Class means:

All natural persons who, between July 2003 and August 24, 2010 (the "Period"), were surgically implanted with an ASR XL Acetabular Hip System or an ASR Hip Resurfacing System ("ASR Implant System" or "ASR Implant Systems"), designed, manufactured, sold or distributed by the Defendants, which system was recalled by the Defendants on August 24, 2010, and who were either: (i) Québec residents at the time of receipt of the ASR Implant System or any revision thereof; or (ii) Québec residents at the time of the Defendants' recall of the ASR Implant System; or (iii) Recipients of the ASR Implant System or any revision thereof in Québec, who were Canadian residents at that time, and who now reside outside of Canada. All individuals who make claims against the Defendants in the context of class actions elsewhere in Canada will be excluded from the Québec ASR Class.

(43) Québec ASR Settlement Program means the claims process and settlement awards available for qualifying Eligible Claimants that are members of the Québec ASR Class, which shall be established exclusively by Plaintiff and Class Counsel, and administered under the supervision of Class Counsel under the terms of this Settlement Agreement, subject to Final Approval and the Effective Date.

(44) Québec Patient means: (i) Québec residents at the time of their ASR Index Surgery or ASR Revision Surgery; (ii) Québec residents on August 24, 2010 who had an ASR Index Surgery in Québec or elsewhere, or (iii) Canadian residents who had their ASR Index Surgery or ASR Revision Surgery in the Province of Québec, but who now reside outside of Canada.

(45) Released Claims means any and all claims, including assigned claims, of the Releasing Persons whether known or unknown, asserted or unasserted, regardless of the legal theory, existing now or arising in the future, relating to or arising out of the ASR Implant System or their design, development, manufacture, formulation, testing, distribution, marketing, labeling, regulatory submissions, advertising, prescription, purchase, sale, implantation, use, removal, or revision and include, without limitation, all claims for damages or remedies of whatever kind or character, known or unknown, that are now recognized by law or that may be created or recognized in the future by statute, code, regulation, judicial decision, administrative adjudication, or in any other manner for:

- (a) personal injury and/or bodily injury, damage, death, fear of disease or injury, mental or physical pain or suffering, emotional or mental harm, or loss of enjoyment of life;

- (b) loss of wages, income, earnings or earning capacity, medical expenses, doctor, hospital surgical, nursing and drug bills (also subject to a separate agreement with the Provincial Health Insurers);
  - (c) loss of support, services, consortium, companionship, society or affection, or damage to familial relations;
  - (d) wrongful death and survival actions;
  - (e) medical screening or monitoring, injunctive, declaratory or equitable relief;
  - (f) consumer fraud, refunds, restitution, unfair business practices, deceptive trade practices, unjust enrichment, waiver of tort, lack of efficacy, money had and received and other similar claims;
  - (g) compensatory damages, punitive or exemplary damages, statutory and other multiple damages or penalties of any kind, including but not limited to any damages pursuant to the Québec Charter of Human Rights and Freedoms, the Consumer Protection Act, or Article 1615 of the Civil Code of Québec;
  - (h) economic or business losses, diminished value or lost benefit-of-the-bargain;
  - (i) liquidation actions pursuant to Articles 595 and following C.C.P.;
  - (j) attorney's fees, costs, court, litigation or other expenses; and/or
  - (k) prejudgment or post-judgment interest.
- (46) Released Persons means:
- (a) The Defendants Johnson & Johnson, Inc. and DePuy Orthopaedics Inc., and each of their respective past, present and future direct or indirect parent companies, subsidiaries, divisions, affiliates, joint ventures, joint venturers, inventors, designers, patent holders, manufacturers, distributors, retailers (including, without limitation, wholesale distributors, private label distributors, retail distributors, pharmacies and pharmacists), physicians, surgeons, hospitals, or other prescribers, clinical researchers, contractors and consultants, and each of their respective present and former officers, directors, employees, stockholders, partners, owners, insurers, attorneys, representatives and agents, and each of their predecessors, successors and assigns;
  - (b) any and all manufacturers, suppliers (including suppliers of materials, machines or equipment used in the manufacture of the ASR Implant System), purchasers, licensors, licensees and sponsors of ASR Implant System or any raw materials used in the ASR Implant System distributed or marketed by any of the persons in subparagraph above; each of their parent companies, subsidiaries, divisions, affiliates, joint ventures, joint venturers, distributors, retailers (including, without limitation, wholesale distributors, private label distributors, retail distributors, pharmacies and pharmacists), clinical researchers, contractors and consultants; each of their present and former officers, directors, employees, stockholders,

partners, owners, insurers, attorneys, representatives, and agents; and each of their predecessors, successors and assigns; and

- (c) any other person or entity involved in the development, design, manufacture, formulation, testing, distribution, marketing, labeling, regulatory submissions, advertising or sale of the ASR Implant System; each of their present and former officers, directors, employees, stockholders, partners, owners, insurers, attorneys, representatives and agents; and each of their predecessors, successors and assigns.

(47) Releasing Persons means (i) all members of the Québec ASR Class who did not timely opt out of the Québec Class and (ii) each of the successors, heirs, estates, administrators, trustees and assigns of those persons identified above.

(48) Settlement Agreement or Settlement means this Agreement, including any Recitals hereto.

(49) Settlement Amount means the aggregate amount payable by the Defendants pursuant to Section 4.3.

(50) Single Revision means a single ASR Revision Surgery on one hip of a Class Member.

(51) Subrogation Agreement means the separate agreement(s) between the Defendants and the RAMQ and other provincial health insurers in which the Defendants have agreed to pay the subrogated claims of the provincial health insurers arising from medical services provided in relation to the ASR Implant System and ASR Revision Surgery to Eligible Claimants of the Québec ASR Class.

(52) Termination Right means the right of Defendants to terminate this Settlement Agreement at its option in the event one or more of the circumstances set forth in this Agreement occurs or fails to occur.

(53) Unrevised means any member of the Québec ASR Class who has not undergone surgery to replace the cup of a Qualified Device, subject to paragraph 27.

## **SECTION 2 – CALCULATION OF DEADLINES AND CONDITION PRECEDENT**

(i) If any deadline identified in the Settlement Agreement falls on a weekend, a Québec provincial holiday, or Canadian national holiday, the deadline shall occur on the following weekday that is not a Québec provincial or Canadian national holiday.

(ii) Subject to Section 8 below, this Settlement Agreement shall be null and void and of no force or effect unless the Québec Court approves this Settlement Agreement, and the orders so made have become Final Orders and the Effective Date has occurred.

## **SECTION 3 – SETTLEMENT APPROVAL**

### **3.1 Best Efforts**

The Parties shall use their best efforts to effect this Settlement and to secure (i) the continuance of the schedule trial sine die to permit the settlement proceedings to occur, and (ii) the prompt, complete and final settlement of the Proceedings with prejudice against the Defendants and the Release in favour of the Released Persons.

### **3.2 Motion Approving Notices**

At times mutually agreed to by the Parties and the Québec Court after the Settlement Agreement is executed, the Plaintiff shall bring an application before the Québec Court for an order approving (i) the Notice of Approval Hearing of an application for an order approving this Settlement Agreement, (ii) a proposed Notice of Settlement Approval, and (iii) an application continuing the trial of this matter sine die in order to permit the settlement approval process to occur.

### **3.3 Motion for Approval of Settlement**

The Plaintiff shall file an application in the Québec Court for an order approving this Settlement Agreement. Plaintiff shall submit the application to Defendants for review and comments for a period of five (5) days prior to filing. As long as the comments are reasonable they will be incorporated into the application that is filed.

### **3.4 Effect of Court's Approval Order**

Subject to the Court's approval, the order or judgment of approval of this Agreement shall:

- (1) Order publication of the Notice of Settlement Approval as well as the form, contents and method of its dissemination;
- (2) Approve this Agreement and order the Parties and all members of the Québec ASR Class to comply with it;
- (3) Declare that this Agreement is reasonable, fair, adequate and in the best interest of the Québec ASR Class;
- (4) Confirm the appointment of Class Counsel, and any appointed Claims Administrator, and any Appeal Adjudicator, to process the claims by Class Members for Claim Amounts from the Settlement Amount;
- (5) Enter such other orders as are needed to effectuate the terms of the Settlement Agreement; and

(6) Enjoin all members of the Québec ASR Class from asserting and/or continuing to prosecute claims against Defendants or any other Released Person, as well as any Released Claim that such Class Member has, had or may have in the future and enjoining members of the Québec ASR Class from obtaining any monies or other remedies in class proceedings in British Columbia, Ontario, or elsewhere or in individual actions elsewhere.

### **3.5 Publication of Notice of Approval Hearing**

Before the Settlement Agreement has been approved by the Québec Court, Class Counsel shall publish the Notice of Approval Hearing. This notice will provide an opportunity for Class Members to object to the terms of the Settlement.

### **3.6 Publication of Notice of Settlement Approval**

After this Settlement Agreement has been approved by the Québec Court, Class Counsel shall publish the Notice of Settlement Approval. This notice will provide an opportunity for members of the Québec ASR Class who are Eligible Claimants to file claims to receive a Claim Amount from this settlement provided they become an Approved Claimant.

## **SECTION 4 – SETTLEMENT PROGRAM BENEFITS AND CLAIMS**

### **4.1 Applicable Currency**

Notwithstanding anything to the contrary, all dollar amounts provided herein, including all amounts due to Approved Claimants, are stated and payable in Canadian dollars.

### **4.2 Applicable to Quebec ASR Class**

A Québec ASR Class Member who did not opt out within the deadlines of the Judgment Authorizing the Class Action may not opt out of the Québec ASR Class Action or this Settlement by any means, and this settlement results in all Quebec ASR Class Members releasing the Defendants and Released Persons.

### **4.3 Payment of the Settlement Amount**

(i) Conditional upon the approval of this Settlement Agreement as provided herein, the continuance of the trial in the Québec Proceeding, compliance with Section 4.2 above, and the settlement of the Québec Proceeding with prejudice and, as applicable, the release of the claims of members of the Québec ASR Class, Defendants agree to pay, or cause to be paid, (i) the Settlement Amount in the amount of twenty million Canadian dollars (CAN \$20,000,000.00) into the Account provided the Effective Date has been reached.

(ii) In valuing these claims and arriving at the Settlement Amount, Defendants have not assigned a value to any one claim where any individual Québec Class Member would receive more under this Settlement than he or she would

receive under any other Canadian ASR class action settlement previously entered into by one or more Defendants.

(iii) The Parties understand and agree that the Defendants or any Released Persons shall not be liable for, nor shall they be a proper party to any dispute related to any alleged harm or injury suffered by any member of the Québec ASR Class by reason of the use or alleged misuse of any part of the Settlement Amount, an erroneous disbursement or other action taken or failure to act with respect to any part of the Settlement Amount, or the administration of the claim process or the making of awards of Claim Amounts pursuant to this settlement.

#### **4.4 Requirements to Receive a Claim Amount**

(i) An individual is eligible for recovery under this Settlement Agreement only if:

(1) he or she is an Eligible Claimant; and

(2) he or she proves entitlement to recovery under this Settlement Agreement pursuant to the terms and documentation requirements as set forth by Class Counsel and the terms of this Settlement Agreement.

(ii) Only members of the Québec Class who have submitted all necessary information and documentation to Class Counsel, the Claims Administrator if one is appointed, or the Appeal Adjudicator, if applicable, within the applicable Claims Period, proving they are an Eligible Claimant entitled to receive compensation under the Settlement Agreement, shall receive compensation under the Settlement Agreement.

(iii) The amount of recovery for any Approved Claimant shall be established according to the patient's status as of the date the Claim Form of the Class Member is initially filed with Class Counsel, unless otherwise determined by Class Counsel.

(iv) Any amount paid to an Approved Claimant under the Settlement Agreement has been paid as damages on account of alleged personal physical injuries or illness of the Approved Claimant, including physical injuries or illness resulting from alleged emotional harm.

(v) The Settlement Amount paid in accordance with this Settlement Agreement is in full satisfaction of all of the Released Claims against the Released Persons, contingent on settlement of the claims of the authorized class in the Québec Proceeding.

(vi) The members of the Québec ASR Class who are Eligible Claimants who become Approved Claimants shall be compensated according to the award schedule and objective criteria set forth by Class Counsel from the Settlement

Amount, net of any notice and administrative costs, Class Counsel fees, Disbursements, and applicable taxes that the Court may approve.

(vii) The Defendants do not agree to pay Quebec Class Members more than they would receive in virtue of any ASR class action settlement previously entered into by one or more Defendants in Canada. If a Quebec Class Member receives more than what he/she would have received in virtue of any settlement of a class action elsewhere in Canada, it will be the decision of Plaintiff and Class Counsel, in their sole and absolute discretion in determining the award schedule, and shall in no way be deemed to be a decision attributable to the Defendants.

(viii) Any payment to a Class Member who is an Eligible Claimant and who becomes an Approved Claimant is subject to any reductions set forth in the award schedule established by Class Counsel.

(ix) Subject to paragraph (xiv), Class Members who underwent a revision surgery for a purpose other than explanting the cup of a Qualified Device are not entitled to a Claim Amount in relation to that surgery.

(x) Class Members who underwent a revision surgery that was not medically necessary are not entitled to a Claim Amount in relation to that surgery.

(xi) Subject to paragraph (xiv), Class Members whose ASR Index Surgery occurred ten (10) years or more prior to the ASR Revision Surgery on that same hip are not entitled to a Claim Amount related to that surgery.

(xii) Once the Class Counsel determines that all amounts owing under this Settlement Agreement have been paid, Class Counsel shall notify the Court, Defendants, and the Fonds.

(xiii) The Class Counsel shall maintain the Account and shall not pay out funds from the Account in a manner inconsistent with the provisions of this Settlement Agreement except by Court order made on notice to, or on the consent of, the Defendants' Counsel.

(xiv) Class Counsel, in its sole and absolute discretion, may irrevocably waive one or more of the eligibility requirements referenced above in this Section 4.4. However, notwithstanding any provision to the contrary, Class Counsel may not waive the requirements that in order to receive a Claim Amount, an Approved Claimant must (1) be a member of the Quebec ASR Class, and (2) the waiver by Class Counsel of the requirements of Section 4.4 (vii) above shall in no way be interpreted as an evaluation made by Defendants of the value of any Class Member's claim.

(xv) Class Counsel shall have sole and absolute discretion to establish an award schedule providing compensation to Class Members, subject to approval of the Québec Court, which schedule shall enable unrevised Class Members to

receive settlement compensation either as an unrevised Class Member or to remain eligible to receive settlement compensation as a revised Class Member for a future medically necessary ASR Revision Surgery occurring before the Last Eligible Date.

#### **4.5 Filing Claims Pursuant to Settlement**

(i) The purpose of the documentation requirements with respect to claimants' entry into the Québec ASR Settlement Program is to obtain information and documentation to establish that a claimant is an Eligible Claimant and qualifies to become an Approved Claimant for a settlement payment.

(ii) In order to file a claim in the Québec ASR Settlement Program for a settlement award, one must be an Eligible Claimant and provide to Class Counsel, or Claims Administrator if one is appointed, the following:

(1) A completed Claims Form and Claimant's Declaration to be established by Class Counsel;

(2) The Product Code/Lot Code, including product label stickers, and Contemporaneous Medical/Hospital Records sufficient to show the implantation for each ASR XL or ASR Resurfacing device surgically implanted in the Eligible Claimant in Canada;

(3) The Contemporaneous Medical/Hospital Records comprising the claimant's Medical History and Physical, Discharge Summaries, and the Operative Reports pertaining to any ASR Index Surgery, ASR Revision Surgery, and any Complication;

(4) Income and tax records if Extraordinary Income Loss is one of the Complications claimed;

(5) A Physician's declaration, if required.

(iii) If the Product Code/Lot Code, including product label stickers, are unavailable to an Eligible Claimant, the Eligible Claimant should submit other Contemporaneous Medical/Hospital Records with evidence of the efforts made to obtain Product Code/Lot Code, including product label stickers.

(iv) If certain Contemporaneous Medical/Hospital Records are unavailable to an Eligible Claimant, the Eligible Claimant may submit a Physician's Declaration by a physician directly involved in the aspect of the Eligible Claimant's treatment for which certain Contemporaneous Medical/Hospital Records are unavailable in support of his or her claim, together with evidence of efforts made to obtain the Contemporaneous Medical/Hospital Records, Class Counsel or the Claims Administrator may decide the claim based upon the Physician's Declaration and the available Contemporaneous Medical/Hospital Records.

(v) The deadline for filing claims in the Québec ASR Settlement Program shall be 5:00 p.m. Montréal time on the last day of the applicable Claims Period to that Claimant, unless another deadline is set by Class Counsel.

(vi) Enrollment in the Québec ASR Settlement Program is irrevocable and only subject to the review and appeal procedures established by Class Counsel as part of the Québec ASR Settlement Program.

(vii) It is the responsibility of each claimant to submit all documentation necessary to support the claim.

#### **4.6 Claims Handling and Settlement Payment Process**

(i) The administration and processing of claims of the Québec ASR Class and the payment of funds into and from the Account shall be conducted by or under the supervision of Class Counsel.

(ii) If Class Counsel approves payment of compensation to a Class Member under this settlement, the Class Member is an Approved Claimant.

(iii) Class Counsel shall determine the process by which a Class Member may appeal an adverse determination by Class Counsel to the Appeal Adjudicator for a final and non-appealable decision of a claim under this settlement.

(iv) If the Class Counsel determines that the materials submitted by a Class Member are deficient, Class Counsel shall notify the Class Member in writing of the deficiency and shall provide the Class Member with reasonable time to rectify the deficiency by delivering further or amended materials.

(v) All appeals will be decided by the Appeal Adjudicator selected by Class Counsel for decisions based only on written submissions from the parties involved. All decisions rendered by the Appeal Adjudicator shall be final and not subject to further review or appeal. The Appeal Adjudicator shall be bound to keep confidential any information concerning Class Members or Defendants.

#### **4.7 Administration of Agreement**

Except to the extent provided for in this Settlement Agreement, any question as to the implementation and administration of this Settlement Agreement shall be determined by the Court on motion brought by the Parties, or any of them.

#### **4.8 Total Amounts Payable by the Released Persons**

The Defendants agree to pay the Settlement Amount as set forth in Section 4.3 and Section 4.10. All Notice and Administrative Costs, Class Counsel fees and Disbursements, reimbursement to the Fonds, applicable taxes and any unclaimed balance owing to the Fonds following the Last Eligible Date shall be paid from the Settlement Amount. Under no

circumstances shall the Defendants' obligations under this Settlement Agreement, including the court approval process and settlement administration, require payment of any amounts in excess of the Settlement Amount agreed upon in this Settlement Agreement.

#### **4.9 Releases**

(i) The Approval Order approving this Settlement Agreement shall provide a release, whereby the Releasing Persons unconditionally and forever release, acquit, remise and forever discharge the Released Persons from the Released Claims and agree not to make any claim or take or continue any action, investigation or other proceedings in any forum arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity including any public authority or statutory body (including, without limitation, any health care professionals, health care providers, health care facilities, pharmacies, any public, provincial, territorial or national authority, or any distributor or supplier of the ASR Implant System) which might claim damages and/or contribution and indemnity and/or other relief under the provisions of the Québec Civil Law or other comparable provincial legislation and any amendments thereto, the common law, equity, or any other statute or code, for any relief whatsoever, including relief of a monetary, exemplary, declaratory or injunctive nature, from one or more of the Released Persons.

(ii) The Québec Class Members shall indemnify and hold harmless Released Persons from any claims or causes of action of any type brought by a person by reason of a familial relationship with such Québec Class Member for losses or damages of any type arising from or in any way related to the claims of such Québec Class Member that are settled pursuant to this Settlement and Approval Order.

(iii) The Approval Order shall also (a) provide that this Settlement is the exclusive remedy and that any Québec Class Members shall not pursue any claim in, or take or receive any amounts in connection with (i) the British Columbia ASR Class Action, (ii) the Ontario ASR Class Action, (iii) any settlements of the British Columbia ASR Class Action or Ontario ASR Class Action, and/or (iv) any individual action, and (b) authorize the Class Counsel to give the personal identifying information of Québec Class Members filing claims with the Québec ASR Settlement Program to Defendants and Defendants' Counsel, exclusively so that they can monitor compliance with this provision and for no other reason. Defendants and their counsel undertake to keep such personal identifying information strictly confidential unless necessary to be filed with a Court to enforce the terms of this Agreement.

#### **4.10 Payment of Settlement Amount, Notice and Administration Costs**

(i) Within 30 days of the Effective Date, the Defendants shall pay or cause to be paid the Settlement Amount into the Account.

(ii) The Class Counsel, and any appointed Claims Administrator, may draw upon the Account to pay, or be reimbursed for, reasonable Notice and

Administration Costs. In addition, the Account shall be used by Class Counsel to (a) receive and hold in trust the Settlement Amount from Defendants, (b) make Claim Amount payments from the Account to or for the benefit of Approved Claimants, (c) pay the reasonable costs of the administration of the settlement; (d) reimburse disbursements made by the Fonds, and (e) pay Class Counsel Fees and Disbursements or other counsel fees and disbursements owing under Section 9, plus applicable taxes.

#### **4.11 Appointment and Role of any Claims Administrator**

(i) Class Counsel may cause a Claims Administrator to be appointed by the Québec Court for the purpose of assisting Class Counsel in administering the Settlement. The Claims Administrator, if any, shall be subject to removal by the Québec Court.

(ii) The reasonable costs of any Claims Administrator appointed shall be the responsibility of the Quebec ASR Class and paid from the Account.

(iii) The Claims Administrator, if any, shall be bound to keep confidential any information concerning Class Members or Defendants.

(iv) Class Counsel will be responsible for defining and supervising the activity of any Claims Administrator that is appointed.

(v) Class Counsel shall retain all records relating to the claim of each Class Member for two years following the expiration of the Claim Period.

### **SECTION 5 – SETTLEMENT AMOUNT AND ACCRUED INTEREST**

#### **5.1 Settlement Distribution**

The Settlement Amount, or any part thereof, held by Class Counsel shall be held in the Account in trust for the benefit of Class Members who are Approved Claimants, and shall only be paid to Approved Claimants in accordance with the provisions of this Settlement Agreement or as otherwise authorized by the Court.

#### **5.2 Monies in the Account**

(i) In no event shall the Defendants have any responsibility, financial obligations, or liability whatsoever with respect to the investment, distribution, use, or administration of monies in the Account, including, but not limited to, the costs and expenses of such investment, distribution, use and administration, and Class Counsel Fees.

(ii) The funds payable under the Settlement Agreement that Defendants are required to pay shall be deposited into the Account. Class Counsel shall distribute payments under the Settlement Agreement from the Account under the supervision of the Québec Court. In the event that there are any funds remaining in the

Account after payment of all Approved Claims, Notice and Administration Costs, Class Counsel Fees and Disbursements, and applicable taxes, such unclaimed balance shall be remitted to a charity in the Province of Québec to be selected by the Defendants, subject to approval by the Québec Court, after paying the Fonds what is owed in accordance with section 1(1) of the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives*.

### **5.3 Taxes and Interest**

(i) All interest earned on funds in the Account shall become and remain part of the Account.

(ii) Plaintiff, the Québec ASR Class and Class Counsel shall bear all risks related to investment of the funds in the Account.

(iii) All funds held by Class Counsel in the Account shall be deemed and considered to be in *custodia legis* of the Québec Court and shall remain subject to the jurisdiction of the Québec Court until such time as such funds are distributed pursuant to the Settlement Agreement and/or further order of the Québec Court.

(iv) All taxes payable on any interest that accrues on the funds in the Account shall be the responsibility of the Quebec ASR Class. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the amounts held in the 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 amounts held in the Account, shall be paid from the Account.

(v) The Defendants shall have no responsibility to make any tax filings relating to the Account, to pay tax on any income earned by the funds in the Account or pay any taxes on the monies in the Account, unless and only to the extent that such funds are returned to Defendants.

## **SECTION 6 – OBJECTIONS**

### **6.1 Procedure to Object**

(i) A Quebec Class Member may object to the approval of the Settlement by sending a written objection by pre-paid mail, courier, fax, or email to Class Counsel. Class Counsel is required to forward all objections to Defendants' Counsel within 48 hours after receiving an objection.

(ii) Objections must be received before 5:00 p.m. Montréal time on a date that is five (5) days before the date of the Approval Hearing.

(iii) A proposed Class Member who wishes to object to the approval of the Settlement shall state in his/her objection:

(1) The full name, current mailing address, fax number, telephone number, and email address of the person who is objecting;

(2) A brief statement of the nature and reasons for the objection;

(3) A declaration that the person believes he or she is a member of the Québec Class and the reason for that belief including, if available, the reference/catalogue and lot numbers of his/her Qualified Device;

(4) Whether the person intends to appear at the Approval Hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number, fax number, and email address of counsel; and

(iv) Class Counsel shall, no later than three (3) days before the date of the Approval Hearing, report to the Court, by affidavit, with a copy to counsel for the Defendants, the names of persons who objected and copies of any objections.

## **SECTION 7 – RELEASES AND DISMISSALS**

### **7.1 Release of Released Claims Against Released Persons**

(i) Upon the Effective Date, and in consideration of the payments of the amounts required under this Settlement Agreement and for other valuable consideration set forth in the Settlement Agreement, the Releasing Persons forever and absolutely release the Released Persons from the Released Claims, including but not limited to all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever that were asserted, or could have been asserted, and that are the subject of this Settlement Agreement. For the consideration provided herein, the Releasing Persons agree not to make any claim, or take or continue any proceedings arising out of or relating to the subject matter of the Released Claims, against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, and hospitals or other health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the civil law of Québec or other comparable provincial legislation and any amendments thereto, the common law, equity, civil law, or any other statute, code or regulation, for any relief whatsoever, including relief of a monetary, exemplary, declaratory, or injunctive nature, from one or more of the Released Persons.

(ii) Without limiting any other provisions herein, each Class Member who did not timely opt out of the Québec Class, whether or not he or she submits a claim or otherwise receives an award, will be deemed by this Settlement Agreement to have completely and unconditionally released and forever discharged the Released Persons from any and all Released Claims, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands

whatsoever that were asserted, or could have been asserted, in the litigation that is the subject of this Settlement Agreement.

(iii) Each Class Member, whether or not he or she submits a claim or otherwise receives a Claim Amount, will be forever barred and enjoined from continuing, commencing, instituting, prosecuting, or seeking to claim or recovering any compensation of any nature or kind in any action, litigation, investigation, or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, directly, representatively or derivatively, or as a class member, asserting against any of the Defendants or Released Persons any claims that relate to or constitute any Released Claims covered by this Settlement Agreement.

## **7.2 No Further Claims**

The Releasing Persons 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, or as part of, any class or any other person, any action, suit, cause of action, claim, or demand against any Released Persons, or against any other person who may claim contribution or indemnity from any Released Person in respect of any Released Claim or any matter related thereto. The Parties agree that no Class Members shall recover, directly or indirectly, any sum from Defendants or Released Persons other than the sum authorized under this Settlement Agreement in connection with the ASR Implant and ASR Revision Surgery.

## **7.3 Settlement of the Proceedings**

The Québec Proceeding shall be settled with prejudice as against the Defendants in capital, interests and costs.

# **SECTION 8 – TERMINATION OF SETTLEMENT AGREEMENT**

## **8.1 Right of Termination**

(i) The Defendants shall have the right, in their sole discretion, to terminate this Settlement Agreement if:

(1) the Québec Court declines to continue *sine die* the trial scheduled in the Québec Proceeding to permit the settlement approval process to occur;

(2) the Québec Court declines to approve material parts of this Settlement Agreement or any term or part thereof;

(3) any order approving the Settlement Agreement does not become a Final Order; or

(4) the form and content of any of the Final Orders approved by the Québec Court do not materially comply with the terms of this Settlement Agreement.

(ii) To exercise a right of termination, the Defendants shall deliver a written notice of termination to Class Counsel. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in Sections 8.2 and 8.3, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

## **8.2 If Settlement Agreement Is Terminated**

If this Settlement Agreement is not approved by the Québec Court, is terminated in accordance with its terms, or otherwise fails to take effect for any reason:

(1) Any order 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;

(2) All negotiations, statements, and proceedings relating to the settlement and the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be restored to their respective positions existing immediately before it was executed; and

(3) All funds in the Account (including accrued interest) shall be returned to Defendants' Counsel within 10 days after the date of termination and no further deposits shall be made into the Account.

## **8.3 Survival of Provisions After Termination**

If this Settlement Agreement is not approved by the Québec Court, is terminated in accordance with its terms, or otherwise fails to take effect for any reason, the provisions of this Section and Sections 8.2, 11 (i) and (ii), and the Recitals and Definitions applicable thereto shall survive the termination and continue in full force and effect.

# **SECTION 9 – LEGAL FEES AND DISBURSEMENTS**

## **9.1 Class Counsel Fees**

(i) Court approved Class Counsel fees, Disbursements, and applicable taxes shall be paid from the Settlement Amount.

(ii) Any additional Class Counsel fees payable by Approved Claimants, which may be determined and approved by the Québec Court, shall be deducted by Class Counsel from the settlement awards to Approved Claimants and paid to Class Counsel.

## **9.2 Procedure**

(i) Class Counsel will bring motions, with notice to Defendants' Counsel, to the Québec Court for determination and approval of Class Counsel Fees and Disbursements payable out of the Settlement Amount. In any such Court application, Class Counsel shall serve and file documentation that supports the amount of Class Counsel fees and disbursements claimed.

(ii) Class Counsel fees and disbursements may be paid out of the Account only after Class Counsel obtains the approval of the Québec Court and such approval is final and no longer appealable. Payment of any Additional Class Counsel Fees in respect of Class Members is subject to approval of the Québec Court.

(iii) Class Members who have retained, or in the process of making a claim do retain, lawyers other than Class Counsel to assist them in making their individual claims in this Settlement shall be responsible for the legal fees and expenses of such lawyers.

(iv) Class Members are responsible for their own costs in completing any required Claim Form and/or Claimant Declaration, retrieving and producing medical and hospital records to Class Counsel, obtaining any required Physician's Declaration, and otherwise filing and perfecting their claims under this Settlement Agreement. Neither Class Counsel nor Defendants are responsible for these costs and expenses.

## **9.3 Payment of Appeal-Related Fees and Costs**

Payment of all reasonable and necessary fees and costs charged by those persons serving as Claims Administrator or Appeal Adjudicator by written agreement with Class Counsel will be paid from the Settlement Amount from the Account as a cost of settlement administration, unless Class Counsel decides otherwise that certain fees and costs pertaining to appeals should be charged to the individual claimants bringing the claim appeals under this Settlement.

## **SECTION 10 – ADMINISTRATION AND IMPLEMENTATION**

### **10.1 Mechanics of Administration**

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by Class Counsel with the approval of the Québec Court.

### **10.2 Notices Required**

(i) The Québec Class shall be given notice of:

(1) The hearing at which the Québec Court will be asked to approve the Settlement Agreement; and

(2) The Court Order approving this Settlement, if applicable.

(ii) Class Counsel and Defendants' Counsel will jointly prepare such respective Notices as may be required. Counsel acknowledge that all Notices and the respective plans for the publication of two Notices must be approved by the Québec Court. No notices shall be published until such time as they are approved by the Québec Court.

## **SECTION 11 – NO ADMISSION OF LIABILITY**

(i) The Parties agree that whether or not this Settlement Agreement is approved by the Québec Court, or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any civil code, statute or law, or of any wrongdoing or liability by the Released Persons, or of the truth of any of the claims or allegations made in the Québec Proceeding or in any other pleading filed by the Plaintiffs.

(ii) The Parties further agree that whether or not this Settlement Agreement is approved by the Québec Court, or is terminated, neither this Settlement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency, or tribunal, except to seek court approval of this Settlement Agreement or to give effect to and enforce the provisions of this Settlement Agreement.

## **SECTION 12 – MISCELLANEOUS**

### **12.1 Motions for Directions**

(i) The Québec Plaintiff, Québec ASR Class, Class Counsel, any Claims Administrator, or the Defendants may apply to the Québec Court for directions in respect of the implementation and administration of this Settlement Agreement.

(ii) All motions contemplated by this Settlement Agreement, including applications to the Québec Court for directions, shall be on notice to the Parties.

### **12.2 Released Persons Have No Liability for Administration**

The Released Persons shall have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

### **12.3 Headings, etc.**

In this Settlement Agreement, 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. A reference or cross-reference to a particular Section is a reference to a section of this Settlement Agreement unless stated otherwise. The terms “this Settlement Agreement,” “the Settlement Agreement,” “hereof,” “hereunder,” “herein,” “hereto,” “below,” and similar expressions refer to this Settlement Agreement and not to any particular section or portion of this Settlement Agreement unless so specifically stated.

### **12.4 Ongoing Jurisdiction**

The Québec Court shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Settlement Agreement.

### **12.5 Governing Law**

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

### **12.6 Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. The Parties agree that they have not received or relied on any agreements, representations, or promises other than as contained in this Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein. 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 Québec Court.

### **12.7 Survival**

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

### **12.8 Counterparts**

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 signature shall be deemed an original signature for purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original, faxed, or other electronic form provided that it is duly executed.

## **12.9 Negotiated Agreement**

This Settlement Agreement has been the subject of negotiations and discussion among the Parties, 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 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.

## **12.10 Language**

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. However, the French translation of this Settlement Agreement is authoritative. The French and English translations of the settlement agreement and all notices pursuant to this Settlement Agreement shall be paid from the Account as a Notice and Administrative cost.

## **12.11 Dates**

Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and with the approval of the Québec Court.

## **12.12 Confidentiality**

The Parties agree that no public statements shall be made regarding these Proceedings or their settlement that are in any way inconsistent with the terms of the Settlement Agreement. In particular, the Parties agree that any public statements regarding these Proceedings will indicate only that the settlement has been negotiated and agreed by the parties and approved by the Québec Court without any admissions or findings of liability or wrongdoing and without any admissions or conclusions as to the truth of any of the facts alleged in the Proceedings, all of which are specifically denied.

## **12.13 Recitals**

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

## **12.14 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

- (i) 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;

(ii) 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;

(iii) He, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and

(iv) No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made, or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

### **12.15 Authorized Signature**

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.

### **12.16 Notice**

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:

(i) For Plaintiff, Québec Class and Class Counsel:

Me Robert Kugler  
**Kugler Kandestin, L.L.P.**  
1 Place Ville Marie, suite 1170  
Montréal (Québec) H3B 2A7  
Canada  
Telephone: 514-878-2861  
Facsimile: 514-875-8424  
Email: rkugler@kklex.com

--and--

Me Olivera Pajani  
**Kugler Kandestin, L.L.P.**  
1 Place Ville Marie, suite 1170  
Montréal (Québec) H3B 2A7  
Canada  
Telephone: 514-878-2861  
Facsimile: 514-875-8424  
Email: opajani@kklex.com

(ii) For Defendants and Defendants' Counsel:

Québec ASR Class Settlement Agreement

Me François-David Paré  
**Norton Rose Fulbright Canada, LLP**  
1 Place Ville Marie, suite 2500  
Montréal (Québec) H3B 1R1  
Canada  
Telephone: 514-847-6071  
Facsimile: 514-286-5474  
Email: francois-david.pare@nortonrosefulbright.com

--and--

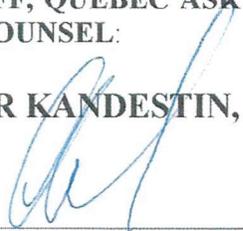
Me Susan M. Sharko  
**Drinker Biddle & Reath LLP**  
600 Campus Drive  
Florham Park, New Jersey, 07932-1047  
USA  
Telephone: 973-549-7350  
Facsimile: 973-360-9831  
Email: Susan.Sharko@dbr.com

WHEREFORE, the Parties have executed this Settlement Agreement on the dates provided below.

**PLAINTIFF, QUÉBEC ASR CLASS and  
CLASS COUNSEL:**

**KUGLER KANDESTIN, L.L.P.**

Date: April 3, 2018

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

Printed: Alan Dick \_\_\_\_\_

[Defendants' Signatures on Next Page]

Québec ASR Class Settlement Agreement

**DEFENDANT:**

**JOHNSON & JOHNSON INC.**

Date: 4/13, 2018

By: 

Printed: Rod Cleas

Title: CFO

**DEFENDANT:**

**JOHNSON & JOHNSON INC.**

Date: 4/13, 2018

By: 

Printed: <sup>re</sup>  
Genero Rolfe Cameron

Title: General Manager

**DEFENDANT:**

**DEPUY ORTHOPAEDICS INC.**

Date: 10 Apr., 2018

By: 

Printed: SCOTT RYAN

Title: SECRETARY