

**SETTLEMENT AGREEMENT**

Made as of April 1, 2019

Between

SHIRLEY HOULE AND ROLAND HOULE

(the "Plaintiffs")

and

ST. JUDE MEDICAL INC. AND ST. JUDE MEDICAL CANADA INC.

(the "Defendants")

## TABLE OF CONTENTS

	Page
SECTION 1 – DEFINITIONS .....	2
SECTION 2 – CONDITION PRECEDENT: COURT APPROVAL.....	6
SECTION 3 – COURT APPROVAL .....	7
3.1 Best Efforts .....	7
3.2 Motion Approving Certification and Notice.....	7
3.3 Motion for Settlement Approval.....	7
SECTION 4 – SETTLEMENT BENEFITS .....	7
4.1 Payment of Settlement Fund.....	7
4.2 Appointment and Role of Claims Administrator and Referee.....	8
4.3 Claims and Claimants .....	9
SECTION 5 – DISTRIBUTION OF THE SETTLEMENT FUND AND ACCRUED INTEREST.....	11
5.1 Settlement Distribution .....	11
5.2 Order of Distribution of Settlement Fund.....	11
5.3 Cy-près.....	11
5.4 Taxes .....	11
SECTION 6 – OPT OUTS.....	12
6.1 Procedure to Opt Out .....	12
SECTION 7 – RELEASES AND DISMISSALS .....	13
7.1 Release of Releasees .....	13
7.2 Dismissal of the Action.....	13
SECTION 8 – TERMINATION OF SETTLEMENT AGREEMENT .....	14
8.1 Right of Termination.....	14
8.2 If Settlement Agreement is Terminated.....	14
8.3 Survival of Provisions After Termination.....	15
SECTION 9 – LEGAL FEES .....	15
SECTION 10 – ADMINISTRATION AND IMPLEMENTATION.....	15
10.1 Mechanics of Administration.....	15

SECTION 11 – NO ADMISSION OF LIABILITY .....	15
SECTION 12 – MISCELLANEOUS .....	16
12.1 Headings, etc.....	16
12.2 Ongoing Jurisdiction.....	16
12.3 Governing Law .....	16
12.4 Entire Agreement .....	16
12.5 Binding Effect.....	16
12.6 Counterparts.....	17
12.7 Negotiated Agreement .....	17
12.8 Language.....	17
12.9 Dates .....	17
12.10 Confidentiality .....	17
12.11 Recitals.....	18
12.12 Schedules .....	18
12.13 Acknowledgements.....	18
12.14 Authorized Signature .....	18
12.15 Notice.....	19

## SETTLEMENT AGREEMENT

### RECITALS

- A. WHEREAS the Plaintiffs commenced the Action which alleges that the Defibrillators distributed by the Defendants are defective;
- B. AND WHEREAS the Plaintiffs have brought a motion to certify the Action as a class proceeding;
- C. AND WHEREAS the Defendants intend to oppose certification of this Action as a class proceeding;
- D. AND WHEREAS the Defendants deny the allegations in the Action and believe they have good and reasonable defences to the Plaintiffs' claims;
- E. AND WHEREAS the Defendants assert that they would actively pursue these defences through trials and, if necessary, on appeals, if the Plaintiffs continued the Action against them;
- F. AND 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 resolutions of all claims that have been asserted, or which could have been asserted, against the Releasees by the Plaintiffs on their own behalf and on behalf of the Proposed Class, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy;
- G. AND WHEREAS counsel for the Defendants and Class Counsel have engaged in extensive arm's-length settlement discussions and negotiations in respect of this Settlement Agreement;
- H. AND WHEREAS as a result of these settlement discussions and negotiations, the Parties have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Parties, both individually and on behalf of the Class, subject to approval of the Ontario Court;
- I. AND WHEREAS the Plaintiffs have agreed to accept this settlement in part because of the Settlement Fund to be provided by the Defendants under this Settlement Agreement, as well as the attendant risks of litigation in light of the defences that may be asserted by the Defendants;
- J. AND WHEREAS Class Counsel have engaged in extensive consultations with the Provincial Health Insurers, negotiated their entitlement to compensation separately from that for the Class, and the Provincial Health Insurers have authorized Class Counsel to enter into this Settlement Agreement and agree to be bound by this Settlement Agreement;
- K. AND WHEREAS the Parties and their counsel agree that neither this Settlement Agreement nor any statement made in the negotiations leading to this Settlement Agreement shall be deemed or construed as an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiffs' allegations;

L. AND WHEREAS the Plaintiffs and their counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on a thorough analysis of the applicable facts and law, and having regard to the burden and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and their counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Proposed Class;

M. AND WHEREAS the Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims in respect of Defibrillators which have been asserted, or which could have been asserted, against the Releasees by the Plaintiffs and the Provincial Health Insurers in the Action, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

N. AND WHEREAS the Parties therefore wish to, and hereby do, fully and finally resolve on a national basis, without admission of liability, the Action against the Defendants;

O. AND WHEREAS for the purposes of settlement only and contingent on orders by the Court as provided for in this Settlement Agreement, the Plaintiffs have consented to a dismissal of the Action against the Defendants;

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 Action be dismissed against the Defendants on the merits with prejudice, subject to the approval of the Ontario Court, on the following terms and conditions:

## **SECTION 1 – DEFINITIONS**

1. For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:
  - (a) *Account* means an interest bearing trust account under the control of the Claims Administrator at a Schedule 1 chartered Canadian bank. All interest accrued in the Account will be added to, and become part of the Settlement Fund.
  - (b) *Action* means the action issued in the Ontario Superior Court: Shirley Houle and Ronald Houle v. St. Jude Medical Inc. and St. Jude Medical Canada Inc. bearing Court File No. CV-17-572508.
  - (c) *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, the costs of translation of the notices, and the fees and expenses of the Claims Administrator and the Referee, but excluding Class Counsel Fees.
  - (d) *Approval Hearing* means the hearing of the motion before the Ontario Court for the approval of this Settlement Agreement.

- (e) *Claims Administrator* means the entity appointed by the Court to administer the settlement and disseminate the notices pursuant to the terms of this Settlement Agreement.
- (f) *Claims Deadline* means the date that is 150 (one hundred and fifty) days from the date on which the notice of settlement approval is first disseminated.
- (g) *Claims Period* means the 150 (one hundred and fifty) day period from the date that the notice of settlement approval is first disseminated until the Claims Deadline.
- (h) *Class Counsel Fees* means the fees, disbursements, HST, and other applicable taxes or charges of Class Counsel.
- (i) *Class Counsel* means Waddell Phillips Professional Corporation and Howie Sacks and Henry LLP.
- (j) *Class or Class Members* means all members of both the Patient Class and the Derivative Class who do not validly opt out of the Action.
- (k) *Costs* means a payment towards the costs of the Action incurred by the Plaintiffs on behalf of the Class, as described herein.
- (l) *Defendants* means St. Jude Medical, Inc. and St. Jude Medical Canada, Inc.
- (m) *Defibrillator* means the implantable cardioverter defibrillators or cardiac resynchronization therapy defibrillators manufactured by the Defendants between January 2010 and May 23, 2015 listed below:

Trade Name	Model	Trade Name	Model
Fortify Assura™ DR	CD2259-40Q	Quadra Assura MP™	CD3371-40C
Fortify Assura™ DR	CD2259-40	Quadra Assura MP™	CD3371-40QC
Fortify Assura™ DR	CD2359-40C	Quadra Assura™	CD3265-40Q
Fortify Assura™ DR	CD2359-40QC	Quadra Assura™	CD3367-40QC
Fortify Assura™ VR	CD1359-40QC	Quadra Assura™	CD3267-40
Fortify Assura™ VR	CD1259-40	Quadra Assura™	CD3267-40Q
Fortify Assura™ VR	CD1259-40Q	Quadra Assura™	CD3367-40C
Fortify Assura™ VR	CD1359-40C	Unify Assura™	CD3261-40Q
Fortify™ DR	CD2233-40Q	Unify Assura™	CD3361-40QC
Fortify™ DR	CD2233-40	Unify Assura™	CD3261-40
Fortify™ ST DR	CD2235-40	Unify Assura™	CD3361-40C
Fortify™ ST DR	CD2235-40Q	Unify Quadra™	CD3251-40
Fortify™ ST VR	CD1235-40	Unify Quadra™	CD3251-40Q
Fortify™ ST VR	CD1235-40Q	Unify™	CD3231-40
Fortify™ VR	CD1233-40	Unify™	CD3235-40
Fortify™ VR	CD1231-40	Unify™	CD3235-40Q
Fortify™ VR	CD1233-40Q		

- (n) *Derivative Class or Derivative Class Members* means all dependants of Patient Class Members asserting the right to sue the Releasees independently or derivatively by reason of their familial relationship to a Patient Class Member, including pursuant to the *Family Law Act*, RSO 1990 c.F.3 or similar legislation in any other Province or Territory in Canada.
- (o) *Effective Date* means the date on which the Final Order takes effect.
- (p) *Eligible Claimants* means Class Members eligible to receive compensation under this Settlement.
- (q) *Eligible Explant Claimants* means Patient Class Members who either (i) had a Defibrillator replaced due to premature battery depletion where the battery depletion occurred earlier than expected based on the Defibrillator usage and there was no indication that the depletion was related to a cause other than a short circuit that may have been due to the formation of lithium clusters, or (ii) had a Defibrillator replaced between October 10, 2016 and August 8, 2017 on an elective basis in response to the St. Jude advisory issued in Canada on October 10, 2016 provided that the electively replaced Defibrillator had been implanted for less than five years at the time of the replacement.
- (r) *Eligible Extraordinary Injury Fund Claimants* means Eligible Claimants entitled to receive compensation from the Extraordinary Injury Fund as set out in Schedule F.

- (s) *Eligible Non-Explant Claimants* means Patient Class Members who are not Eligible Explant Claimants.
- (t) *Final Order* means the final order entered by the Court in respect of the approval of this Settlement Agreement, once the time to appeal such order has expired without any appeal being taken, if a right of appeal exists, 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.
- (u) *Net Settlement Fund* means the Settlement Fund, less legal fees payable to Class Counsel as approved by the Court, all Administration Expenses, and any honorarium payable to the Plaintiffs as approved by the Court.
- (v) *Notice of Certification, Proposed Settlement and Approval Hearing* means the form of notice, agreed to by the Parties, or such other form as may be approved by the Court, which informs the Class that the Action has been certified, the process for opting out, of the date and location of the Approval Hearing, the principal elements of this Settlement Agreement and the process by which they may object to the Settlement.
- (w) *Notice of Settlement Approval* means the form of notice, agreed to by the Parties, or such other form as may be approved by the Court, which informs the Class of the approval of this Settlement Agreement, and how to make a claim.
- (x) *Ontario Court or Court* means the Ontario Superior Court of Justice.
- (y) *Parties* means the Plaintiffs and the Defendants.
- (z) *Patient Class or Patient Class Members* means (i) all persons who are resident in Canada as at the date of the Certification Order or, if deceased at or before the date of the Certification Order, who were residents in Canada at the date of death, (ii) who were implanted in Canada with one or more of the Defibrillators, and (iii) who do not opt out of the Action.
- (aa) *Plaintiffs* means Shirley Houle and Roland Houle.
- (bb) *Proposed Class or Proposed Class Members* means the proposed Patient Class and Derivative Class, including those who opt out of the Action.
- (cc) *Provincial Health Insurers* means all provincial and territorial Ministries of Health or equivalents, and/or provincial and territorial plans funding medical services throughout Canada, who are entitled to make a claim pursuant to any of the relevant legislation set out in Schedule H.
- (dd) *Recitals* means the recitals to this Settlement Agreement.
- (ee) *Referee* means the person appointed by the Ontario Court to assess the claims for compensation from the Extraordinary Injury Fund as set out in the Distribution

Protocol, and to make a final determination of Eligible Class Members in the event of any dispute of the Claims Administrator's decision with respect to eligibility, and his or her designate.

- (ff) *Released Claims* means: (a) any and all manner of claims, demands, actions, suits, Québec civil law and statutory liabilities, and causes of action which have been asserted or which could have been asserted in the Action, whether direct or indirect, class, individual, or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties, and lawyers' fees that the Releasors (other than the Provincial Health Insurers), or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, could, or may have against the Releasees, whether known or unknown, relating in any way to any conduct by the Releasees prior to the execution of this Settlement Agreement concerning alleged harm or damages from the use, purchase, implantation, replacement, or explantation of a Defibrillator in a Patient Class Member; and (b) as it relates to the Provincial Health Insurers, any and all manner of claims which a Provincial Health Insurer ever had, now has or hereafter can, shall or may have pursuant to provincial or territorial legislation that permits the recovery of healthcare costs or medical expenses from third parties, whether known or unknown, direct or indirect, subrogated or otherwise, relating in any way to any conduct by the Releasees prior to the execution of this Settlement Agreement concerning alleged harm or damages from the use, purchase, replacement, implantation, or explantation of a Defibrillator in a Patient Class Member.
- (gg) *Releasees* means, jointly and severally, the Defendants and their respective present and former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, contractors, suppliers, representatives and the successors, heirs, executors, administrators, trustees, and assigns of each of the foregoing.
- (hh) *Releasors* means, jointly and severally, individually and collectively, the Plaintiffs and the Class Members, and their respective successors, heirs, executors, administrators, trustees, and assigns, and the Provincial Health Insurers.
- (ii) *Schedules* has the meaning set out in Section 12.12.
- (jj) *Settlement Agreement or Settlement* means this agreement, including the Recitals and Schedules.
- (kk) *Settlement Fund* means the total of all amounts paid pursuant to this Settlement Agreement as set out in Section 4.1(2), plus any interest accrued thereon.

## **SECTION 2 – CONDITION PRECEDENT: COURT APPROVAL**

2. Subject to section 8.3 below, this Settlement Agreement shall be null and void and of no force or effect unless the Ontario Court approves this Settlement Agreement.

## **SECTION 3 – COURT APPROVAL**

### **3.1 Best Efforts**

The Parties shall use their best efforts to effect this Settlement and to secure the prompt, complete and final dismissal with prejudice of the Action against the Defendants.

### **3.2 Motion Approving Certification and Notice**

- (a) At a time mutually agreed to by the Parties after this Settlement Agreement is executed, the Plaintiffs shall bring a motion before the Court for an order, substantially in the form attached hereto as **Schedule “A”**, certifying the Action, on consent, for settlement purposes only, and for an order approving the short and long-form Notices of Certification, Proposed Settlement and Approval Hearing in the forms attached at **Schedule “B”**.
- (b) In the event that the Court indicates that an order certifying the Action may not be granted in a form that is conditional on eventual settlement approval, the Parties shall immediately withdraw the motion referred to in section 3.2(a), and the Parties shall instead seek a date to proceed with the hearing of a contested certification motion.
- (c) The Notice of Certification, Proposed Settlement and Approval Hearing shall be disseminated to Proposed Class Members by the means outlined in the Notice Protocol set out in **Schedule “C”** or in such manner as may be ordered by the Court.

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

- (a) As soon as practicable after the Notice of Certification, Proposed Settlement and Approval Hearing has been disseminated, the Plaintiffs shall file a motion in the Ontario Court for an order approving this Settlement Agreement. The order sought shall be substantially in the form attached at **Schedule “D”**.
- (b) The short and long-form Notices of Settlement Approval shall be substantially in the form attached at **Schedule “E”**, and shall be disseminated to Class Members in accordance with the Notice Protocol approved by the Court in the Certification Order.

## **SECTION 4 – SETTLEMENT BENEFITS**

### **4.1 Payment of Settlement Fund**

- (1) Within thirty days of the execution of this Settlement Agreement, the Defendants will pay \$5,000,000 CAD to Waddell Phillips Professional Corporation, in trust, for the benefit of the Class, in full satisfaction of all of the Released Claims against the Releasees, contingent on the issuance of the Final Order, including dismissal of the Action as of the Effective Date.

- (2) Class Counsel shall hold the Settlement Fund in trust in an interest bearing trust account, and shall transfer to the Account of the Claims Administrator the Settlement Fund, less Class Counsel Fees as approved by the Court and any costs incurred by Class Counsel in respect of the Court-approved notices to the Class, within ten business days after the Effective Date. Class Counsel will provide an accounting to the Claims Administrator of the Fees and notice expenses deducted from the Settlement Fund, including supporting documentation.
- (3) Class Counsel shall not otherwise pay out any of the Settlement Fund from the trust account, except in accordance with this Settlement Agreement or in accordance with an order of the Court obtained on notice to the Defendants.
- (4) The Settlement Fund shall, at first instance, be allocated as follows, subject to the Court's determination of the total legal fees and disbursements to be paid to Class Counsel, and the total actual Administration Expenses incurred:
  - (a) \$4,000,000 CAD to the Class Members and Provincial Health Insurers, to be distributed in accordance with the Distribution Protocol attached as **Schedule "G"**;
  - (b) \$250,000 CAD towards the Administration Expenses relating to the Settlement, including the notice programs set out in the Notice Protocol as approved by the Court; and
  - (c) \$750,000 CAD for Costs of the Action, to be applied towards the total legal fees payable to Class Counsel as determined by the Court in accordance with the contingency fee agreement between the Plaintiffs and Class Counsel.
- (5) The Claims Administrator will invest the Settlement Fund in the Account. All interest accrued in the Account will be added to the Settlement Fund.
- (6) The Defendants shall have no obligation to pay any amount in addition to the Settlement Fund.
- (7) The Claims Administrator shall maintain the Account as provided for in this Settlement Agreement and shall not pay out any monies from the Account, except in accordance with the provisions of this Settlement Agreement, without an order of the Court made on notice to or on the consent of the Defendants and Class Counsel.

#### **4.2 Appointment and Role of Claims Administrator and Referee**

- (1) The Ontario Court shall appoint a Claims Administrator for the purpose of administering the Settlement, and a Referee for the purpose of the determination of awards from the Extraordinary Injury Fund, and any appeals from the Claims Administrator's determination of eligibility.
- (2) The Claims Administrator and the Referee shall sign and adhere to a confidentiality agreement, in a form satisfactory to the Parties, by which they agree to keep confidential any information concerning Class Members or the Releasees. Further, the Claims Administrator and Referee shall institute and maintain procedures to ensure that the identity of all Class Members

and all information regarding any claims and submissions will be kept strictly confidential. At the conclusion of the claims administration process, any information obtained by the Claims Administrator and the Referee shall be securely deleted and destroyed.

(3) The Claims Administrator shall disseminate the notices, process all claims, and administer the payment of the Settlement Fund to the Eligible Claimants in accordance with the terms of this Settlement Agreement.

(4) The Claims Administrator and Referee shall offer their services in both French and English.

(5) Class Counsel, together with counsel for the Defendants, may meet with the Claims Administrator and/or Referee to discuss the criteria for eligibility of Patient Class Members to recover from the Settlement Fund.

(6) The Claims Administrator and the Referee shall report to the Court, Class Counsel and to Defendants' counsel on the total number of claims received and the decisions made by them in respect of any claim no later than 60 days after the Claims Deadline. The Claims Administrator and Referee shall update their reports to the Court, Class Counsel and to Defendants' counsel when all of the Eligible Claimants have been paid. The Claims Administrator will deliver a final report upon the distribution of any cy-près payment after the six month stale date has passed for all payments made to Eligible Claimants.

(7) The Releasees shall have no responsibility for and no liability whatsoever with respect to the actions of the Claims Administrator, the Referee, or the administration of the Settlement Agreement.

#### **4.3 Claims and Claimants**

(1) The Defendants have estimated and identified from their records 340 potential Eligible Explant Claimants and 8,597 potential Eligible Non-Explant Claimants. The Defendants will provide to the Claims Administrator and to Class Counsel, to the extent known, a list of the Patient Class Members, including their names, last known addresses, the type of Defibrillator implanted, and the serial numbers of the implanted Defibrillators. The Defendants will also identify for the Claims Administrator and Class Counsel, to the extent known, any Defibrillators that were replaced due to premature battery depletion where the battery depletion occurred earlier than expected based on the Defibrillator usage and there was no indication that the depletion was related to a cause other than a short circuit that may have been due to the formation of lithium clusters. These lists will be used to verify Class Members' eligibility to receive a payment from the Settlement Fund, and may be used by the Claims Administrator to prepopulate claim forms.

(2) The Defendants will provide the information described in 4.3(1) only pursuant to orders from the Ontario Court obtained in accordance with this Settlement Agreement.

(3) The Claims Administrator and Referee shall use the information solely for the purpose permitted by valid Court orders and applicable privacy laws, and not for any other purpose. The Claims Administrator and Referee shall maintain confidentiality over and shall not share the information with any other person, including but not limited to any lawyer (except any lawyers retained by the Claims Administrator or the Referee), unless doing so is necessary for effecting

the Notice Protocol (in the case of the Claims Administrator) and facilitating the claims administration process in accordance with the Settlement Agreement (in the cases of both the Claims Administrator and the Referee).

(4) In order to receive a payment from the Settlement Fund, each Patient Class Member must deliver, mail, email, fax or complete a web-based claim form, which shall be in a form to be prepared by the Claims Administrator in consultation with Class Counsel, and approved by the Court, along with any required supporting documentation, which must be received by the Claims Administrator no later than 11:59 pm EST on the Claims Deadline. Supporting documentation may include doctor's or hospital records or such other documentation satisfactory to the Claims Administrator demonstrating that the Class Member is an Eligible Claimant. Mailed claim forms will be deemed to have been received by the Claims Administrator on a timely basis if they are stamped as received by Canada Post by 11:59 pm EST on the Claims Deadline.

(5) The Claims Administrator shall determine, in its sole discretion, whether a claim form has been properly completed and whether a claim has been validly asserted by a Class Member. The decision of the Claims Administrator as to whether a claim has been validly asserted shall be final and not subject to review. The Claims Administrator shall notify each Class Member who delivers an incomplete claim form of the nature of the deficiencies, and provide the claimant Class Member 30 days to submit a complete claim form before deciding if their claim is invalid. Each claimant Class Member whose claim is deemed invalid shall be notified of that fact in writing by the Claims Administrator.

(6) If the Claims Administrator determines that a Class Member is not an Eligible Claimant, the Class Member may appeal the decision to the Referee. Any such appeal must be made in writing no later than 20 days after the Claims Administrator delivers its decision on the invalidity of the claim, with a copy to Class Counsel, who may also make submissions to the Referee within another 10 days of receipt of the Class Member's submissions. The Referee shall then rule on whether the claim is valid or invalid within 20 business days of receipt of all submissions, and there shall be no further right of appeal therefrom.

(7) In order to qualify as an Eligible Explant Claimant, a Class Member must submit with their claim form supporting documentation demonstrating that they meet the criteria described in section 1(q). If the Claims Administrator determines that a Class Member is not an Eligible Explant Claimant, any appeal therefrom shall be in accordance with the Referee Guidelines attached as **Schedule "F"**.

(8) In order to recover from the Extraordinary Injury Fund, a Class Member must submit with their claim form supporting documentation demonstrating entitlement to additional compensation including, if necessary, medical records, an attending physician's report, death certificate of the Patient Class Member, or such other documentation acceptable to the Referee to demonstrate that the Class Member qualifies as an Eligible Extraordinary Injury Fund Claimant.

(9) If the Claims Administrator determines that a Class Member is an Eligible Extraordinary Injury Fund Claimant, the Claims Administrator shall forward to the Referee the Class Member's claim form and supporting documentation for the determination of the award, if any, to be paid to the Class Member from the Extraordinary Injury Fund. The Referee may request additional

documentation or submissions from the Class Member, if he or she reasonably requires further information in order to fairly assess the claim. The determination of any award from the Extraordinary Injury Fund shall be made in accordance with the Referee Guidelines attached as **Schedule "F"**. Any determination of an award from the Extraordinary Injury Fund by the Referee shall be final and not subject to review. If the Referee decides to deny compensation from the Extraordinary Injury Fund, the Class Member will have ten (10) business days from the delivery of the Referee's decision to seek a review of the decision by the case management judge in the Action by filing written submissions with the Court, not to exceed 3 pages in length without leave of the Court.

## **SECTION 5 – DISTRIBUTION OF THE SETTLEMENT FUND AND ACCRUED INTEREST**

### **5.1 Settlement Distribution**

The Settlement Fund shall be held in trust by Class Counsel, and then the Claims Administrator and shall only be disbursed by them in accordance with the provisions of this Settlement Agreement.

### **5.2 Order of Distribution of Settlement Fund**

The Claims Administrator will pay the funds out of the Settlement Fund in accordance with the Referee Guidelines attached as **Schedule "F"** and the Distribution Protocol attached as **Schedule "G"**.

### **5.3 Cy-près**

(1) If, six months following the conclusion of the distribution of the Settlement Fund to all Eligible Claimants there remain any unallocated amounts, or distributed Settlement Fund cheques have become stale dated without being cashed, then such amounts remaining in the Settlement Fund shall be paid cy-près to the Heart and Stroke Foundation of Canada.

### **5.4 Taxes**

(1) All Settlement Funds held by the Claims Administrator shall remain subject to the jurisdiction of the Ontario Court until they are distributed pursuant to the Final Order.

(2) Subject to section 5.4(4), all taxes payable on any interest that accrues on the Settlement Fund shall be the responsibility of the Class. The Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Fund, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Account.

(3) Subject to section 5.4(4), the Releasees shall have no responsibility to make any tax filings relating to the Settlement Fund and shall have no responsibility to pay tax on any income earned by the Settlement Fund or to pay any taxes on the monies in the Account.

(4) In the event that this Settlement Agreement is terminated, the interest earned on the Settlement Fund while on deposit in Class Counsel's trust account shall be paid to the Defendants as directed in writing by the Defendants, and in such case, each Defendant shall be responsible for the payment of all taxes on its proportionate share of such interest received by it.

## SECTION 6 – OPT OUTS

### 6.1 Procedure to Opt Out

(1) A Proposed Class Member may opt out of the Action by sending a written notice, by email, fax, mail or courier to the Claims Administrator at:

**Epiq Class Action Services**  
Attention: St. Jude ICD Settlement  
Nelson P.O. 20187 – 322 Rideau Street  
Ottawa Ontario  
K1N 5Y5  
Fax: 1-866-262-0816  
Email: [info@stjudeICDclaim.ca](mailto:info@stjudeICDclaim.ca)

(2) An opt out notice must be received by the Claims Administrator by no later than 11:59 p.m. EST on the date that is 60 (sixty) days after the date the Notice of Certification, Proposed Settlement and Approval Hearing is first disseminated in accordance with the Notice Protocol attached as **Schedule “C”**.

(3) The notice of opt out shall contain:

- (a) the full name, mailing address, and telephone number of the Proposed Class Member;
- (b) the Provincial Health Insurance number of the Proposed Class Member;
- (c) the make, model and serial number of the Defibrillator of the Proposed Class Member;
- (d) the date and location where the Proposed Class Member's Defibrillator was implanted;
- (e) a statement indicating whether the Proposed Class Member's Defibrillator was explanted, and if so, the location where it was explanted and the date on which it was explanted; and
- (f) in the case of a Derivative Class Member whose Patient Class Member relative is deceased, the Patient Class Member's information set out in 3(a) to (e) above, along with the Patient Class Member's date of death and a statement of whether they believe the Patient Class Member's death was related to premature battery depletion.

(4) The Claims Administrator shall provide to Class Counsel and counsel for the Defendants the names of the persons who have delivered opt out notices and a copy of the opt out notices, by no later than 11:59 p.m. EST on the date that is 70 (seventy) days after the Notice of Certification, Proposed Settlement and Approval Hearing is first disseminated.

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

### **7.1 Release of Releasees**

(1) Upon the Effective Date, and in consideration of the payment of the Settlement Fund and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release the Releasees from the Released Claims. And for the consideration provided herein, the Releasers 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, including the alleged harm or damages from the use by, purchase, implantation, replacement, or explantation of a Defibrillator in a Patient Class Member against any other person, corporation or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) which might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial or territorial legislation and any amendments thereto, the common law, Québec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees.

(2) An Order will be sought at the hearing for approval of the Settlement Agreement which shall include a term releasing the claims of the Provincial Health Insurers in substantially the following form:

In consideration of the payments made to the Provincial Health Insurers set out in the Settlement Agreement, the Provincial Health Insurers are deemed to forever and absolutely release the Releasees from the Released Claims and the Provincial Health Insurers shall be bound by the Settlement Agreement.

(3) Without limiting any other provisions herein, each Class Member, whether or not he or she submits a claim or otherwise receives an award, and each Provincial Health Insurer, will be deemed by this Settlement Agreement completely and unconditionally to have released and forever discharged the Releasees from any and all Released Claims.

(4) Each Class Member, whether or not he or she submits a claim or otherwise receives an award, and each Provincial Health Insurer, will be forever barred and enjoined from continuing, commencing, instituting or prosecuting 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, asserting against any of the Defendants or Releasees any claims that relate to or constitute any Released Claims.

### **7.2 Dismissal of the Action**

The Final Order shall include a term that the Action is dismissed with prejudice and without costs against the Defendants.

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

### **8.1 Right of Termination**

(1) The Defendants, the Plaintiffs and Class Counsel shall have the right to terminate this Settlement Agreement, in the event that:

- (a) the Ontario Court declines to approve this Settlement Agreement or any material term or part thereof; or
- (b) the form and content of the Final Order approved by the Ontario Court fails to comply in any material respect with the terms of this Settlement Agreement.

(2) The Defendants shall have the right to terminate this Settlement Agreement in the event that there are more than a total of 30 (thirty) valid notices of opt out from:

- (a) Proposed Class Members who stated that their Defibrillator was explanted; and
- (b) Derivative Class Members whose Patient Class Member relatives are deceased.

(3) To exercise a right of termination, a terminating party shall deliver a written notice of termination by no later than 15 (fifteen) days after the triggering event with respect to section 8.1(1), or 15 (fifteen) days from delivery of the opt out report by the Claims Administrator. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in sections 8.2, 8.3, and 11, 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**

(1) If this Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, any order certifying this Action as a class proceeding or approving any aspect of 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) If this Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, Class Counsel shall transfer the Settlement Fund, plus interest accrued, to counsel for the Defendants, less any costs incurred by Class Counsel or Claims Administrator in respect of the Court-approved notices to the Class. Class Counsel will provide an accounting to the Defendants of these costs, including supporting documentation.

(3) If this Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, 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.

(4) The Parties expressly reserve all of their respective rights if the Ontario Court does not approve this Settlement Agreement.

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

If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of this section and sections 4.2(2), 4.3(2), 4.3(3), 8.2, 11 and the Recitals, Schedules and Definitions applicable thereto shall survive the termination and continue in full force and effect.

## **SECTION 9 – LEGAL FEES**

(1) Class Counsel will bring a motion to the Ontario Court for approval of Class Counsel Fees. The Defendants will not take any position with respect to the amount of fees requested by Class Counsel.

(2) Class Counsel Fees may be paid out of the Settlement Fund in their trust account or the Account only after Class Counsel obtain the approval of their fees and disbursements from the Ontario Court.

(3) Class Members who retain lawyers to assist them in making their individual claims in this Settlement shall be responsible for the legal fees and expenses of such lawyers.

## **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 supervised by the Ontario Court. The Claims Administrator, Referee, or the Parties may seek directions from the case management judge, on notice to the other Parties at any time, as may be required.

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

(1) The Parties agree that, whether or not this Settlement Agreement is finally approved 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 statute of law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations made in the Action.

(2) The Parties further agree that, whether or not this Settlement Agreement is finally approved 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 as an admission of any violation of any statute of law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations made in the Action. Nothing in this section shall prevent the Parties from filing the Settlement Agreement or any document related thereto in evidence in order 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 Headings, etc.**

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”, “the Settlement Agreement”, “Settlement”, “hereof”, “hereunder”, “herein”, “hereto”, and similar expressions refer to this Settlement Agreement and not to any particular section or portion of this Settlement Agreement.

### **12.2 Ongoing Jurisdiction**

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

### **12.3 Governing Law**

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

### **12.4 Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes 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 Ontario Court.

### **12.5 Binding Effect**

Once the Settlement Agreement is approved by the Ontario Court and the approval order becomes a Final Order, this Settlement Agreement shall be binding upon, and inure to the benefit of, the Releasors, the Releasees, Class Counsel, the Claims Administrator, and the Referee.

## **12.6 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.

## **12.7 Negotiated Agreement**

This Settlement Agreement has been the subject of negotiations and discussions 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.

## **12.8 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. A French translation of all notices pursuant to this Settlement Agreement shall be paid for as an Administration Expense.

## **12.9 Dates**

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

## **12.10 Confidentiality**

(1) The Parties agree that no public statements shall be made regarding this Action or their Settlement which are in any way inconsistent with the terms of the Settlement Agreement. In particular, the Parties agree that any public statements regarding this Action will indicate clearly that the Settlement has been negotiated, agreed and approved by the Ontario 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 Action, all of which are specifically denied by the Defendants.

(2) Each Party agrees not to disparage the opposite Parties or their counsel with respect to any of the matters in issue in the Action or the manner in which the Action were conducted or settled, or the Defendants' products. The Parties agree that any public statements that are inconsistent with the terms of this Settlement Agreement could cause irreparable harm, including harm to the business and reputation of the Releaseses.

### **12.11 Recitals**

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

### **12.12 Schedules**

The Schedules annexed hereto form part of this Settlement Agreement and are:

- (a) Schedule A – Certification Order;
- (b) Schedule B – Notices of Certification, Proposed Settlement and Approval Hearing (short and long form);
- (c) Schedule C – Notice Protocol;
- (d) Schedule D – Approval Order;
- (e) Schedule E – Notice of Settlement Approval (short and long form);
- (f) Schedule F – Referee Guidelines;
- (g) Schedule G – Distribution Protocol; and
- (h) Schedule H – Table of Provincial and Territorial Health Insurance statutes.

### **12.13 Acknowledgements**

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 understands the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her, or its counsel; and
- (c) 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.

### **12.14 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.

## 12.15 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:

### For Plaintiffs and for Class Counsel:

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### For Defendants:

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Facsimile: 416-868-0673  
Email: [czayid@mccarthy.ca](mailto:czayid@mccarthy.ca) / [eblock@mccarthy.ca](mailto:eblock@mccarthy.ca) / [bdshaw@mccarthy.ca](mailto:bdshaw@mccarthy.ca)

The Parties, by their counsel, have executed this Settlement Agreement as of the date on the cover page.

Dated at Toronto this 16<sup>th</sup> day of April, 2019



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**Waddell Phillips Professional Corporation**  
Margaret L. Waddell  
Lawyer for the Plaintiffs, Shirley Houle and  
Roland Houle

Dated at Toronto this 16<sup>th</sup> day of April, 2019



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**Howie Sacks & Henry LLP**  
Paul Miller  
Lawyers for the Plaintiffs Shirley Houle and  
Roland Houle

Dated at Toronto this 3<sup>rd</sup> day of April, 2019



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**McCarthy Tétrault LLP**  
Caroline Zayid  
Lawyers for the Defendants, St. Jude Medical,  
Inc. and St. Jude Medical Canada, Inc.