
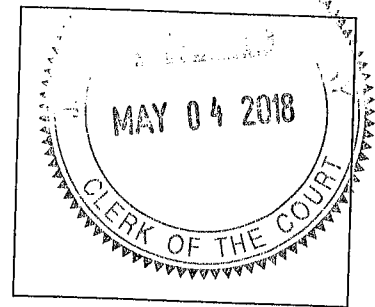


I hereby certify this to be a true copy of
the original order

Dated this 4 day of May 2018


for Clerk of the Court



COURT FILE NUMBERS

1301-04364

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED

AND IN THE MATTER OF POSEIDON
CONCEPTS CORP., POSEIDON CONCEPTS
LTD., POSEIDON CONCEPTS LIMITED
PARTNERSHIP AND POSEIDON CONCEPTS
INC.

APPLICANTS

POSEIDON CONCEPTS CORP., POSEIDON
CONCEPTS LTD., POSEIDON CONCEPTS
LIMITED PARTNERSHIP, AND POSEIDON
CONCEPTS INC.

DOCUMENT

ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

Bennett Jones LLP
4500, 855 – 2nd Street S.W.
Calgary, AB T2P 4K7

Ken Lenz, Q.C.
Phone: (403) 298-3317
Fax: (403) 265-7219
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File No.: 11866-66

DATE ON WHICH ORDER WAS PRONOUNCED: May 4, 2018

LOCATION OF HEARING OR TRIAL: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: Justice K. Horner

UPON THE APPLICATION OF Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership, and Poseidon Concepts Inc. (collectively, the "**Applicants**") and by the Class Representatives, in their own and in a representative capacity, and by the Senior Secured Creditors, in the proceeding in the Court of Queen's Bench of Alberta bearing Court File No. 1301-04364 (the "**CCAA Proceedings**") for an Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") approving and giving effect to: (i) the Amended Plan of Compromise and Arrangement dated April 6, 2018 attached as Schedule "A" hereto, as amended, varied or supplemented from time to time in accordance with its terms (the "**Plan**"); and, (ii) the Settlement Agreement, dated April 6, 2018 attached as Schedule "B" to the Plan (the "**Settlement Agreement**"), was considered this day, at the Court of Queen's Bench of Alberta at the Calgary Court Centre, 601-5th Street SW, City of Calgary, in the Province of Alberta;

UPON READING the Notice of Application; the Forty-Fifth Report of PricewaterhouseCoopers Inc., in its capacity as monitor of the Applicants (the "**Monitor**"), dated April 26, 2018 (the "**Monitor's Report**"); as well as the other materials filed by the parties;

AND UPON HEARING the submissions of counsel for the Applicants, counsel for the Monitor, Class Counsel, and such other counsel as were present;

AND UPON BEING ADVISED that all of the Settling Parties support the Plan and the Settlement Agreement;

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINED TERMS

1. Any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to such terms in the Plan and the Settlement Agreement.

SERVICE, NOTICE, AND MEETING

2. The time for service of the Notice of Application and the Monitor's Report is hereby abridged and validated so that this Application is properly returnable today, and the Court hereby dispenses with further service.

3. There has been good and sufficient notice, service, and delivery of the Meeting and Hearing Order, Plan, and Settlement Agreement to all Persons upon which notice, service, and delivery was required. All applicable parties adhered to, and acted in accordance with, the Meeting and Hearing Order and the Global Settlement Notice Order. All Persons shall be forever barred from raising any further objection to the Plan or the Settlement Agreement.
4. The Meeting was duly convened and held, all in conformity with the CCAA and the orders of this Court, including, without limitation, the Meeting and Hearing Order.

APPROVAL OF THE PLAN AND THE SETTLEMENT AGREEMENT

5. The Plan, the Settlement Agreement, and all the terms and conditions thereof, and matters and transactions contemplated thereby, are fair and reasonable.
6. The Plan is hereby sanctioned and approved pursuant to Section 6 of the CCAA.
7. The Settlement Agreement is hereby approved pursuant to Section 11 of the CCAA.
8. The terms of the Plan and the Settlement Agreement are incorporated by reference into this Order and are hereby approved.

PLAN AND SETTLEMENT AGREEMENT IMPLEMENTATION

9. At the Effective Time on the Plan Implementation Date, the Plan shall be final, binding, and effective in accordance with its terms against, and enure to the benefit of, as the case may be, the Applicants, the Released Parties, the Affected Creditors, the Class Representatives, the Class Members, and all other Persons and parties named or referred to in, affected by, or subject to the Plan, including, without limitation, respective heirs, executors, administrators, legal representatives, successors, and assigns of all of them without any ability to "opt-out" or otherwise not be bound by the Plan.
10. At the Effective Time on the Plan Implementation Date, the Settlement Agreement shall be final, binding, and effective against the Class Representatives and Class Members, as well as any Person who is a plaintiff/applicant, defendant/respondent, third, fourth, or

subsequent party or mis-en-cause in any Claim, including the Class Actions, without any ability to "opt-out" or otherwise not be bound by the Settlement Agreement.

11. Each Person named or referred to in, or subject to, the Plan is hereby deemed to have consented and agreed to all of the provisions of the Plan, in its entirety, and is hereby deemed to have executed and delivered all consents, releases, assignments, and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.
12. Each of the Applicants is authorized and directed, and the Monitor, Senior Secured Creditors, Released Parties, and the Class Representatives are authorized and empowered, to take all steps and actions, and to do all things, necessary or appropriate to implement the Plan and the Settlement Agreement in accordance with their terms, and to enter into, execute, deliver, complete, implement, and consummate all of the steps, transactions, distributions, deliveries, allocations, instruments, and agreements contemplated pursuant to the Plan including but not limited to the Monitor executing the release at Schedule "E" to the Plan, the amending agreement at Schedule "F" to the Plan, and such steps and actions are hereby authorized, ratified and approved.
13. On or after the Plan Implementation Date, the Class Settlement Funds shall be held, allocated, and distributed by Class Counsel in accordance with the further order of this Court.
14. Upon being provided with confirmation satisfactory to it that the conditions precedent set out in article 6.1 of the Plan have been satisfied or waived, as applicable, in accordance with the terms of the Plan, the Monitor is hereby authorized and directed to deliver to the Applicants, the Class Representatives, the Senior Secured Creditors, the Settling Defendants and the other parties to the service list in the CCAA Proceeding, a certificate signed by the Monitor (the "**Monitor's Certificate**") certifying that the Plan Implementation Date has occurred and that the Plan and this Sanction Order are effective in accordance with their respective terms, and, following delivery of the Monitor's Certificate as contemplated above, the Monitor shall file the Monitor's Certificate with this Court and with the United States Bankruptcy Court.

15. Section 36.1 of the CCAA, sections 95 to 101 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, and any other federal or provincial law relating to preferences, fraudulent conveyances, transfers at undervalue or oppressive misconduct, shall not apply to the Plan or to any transactions, distributions, transfers, allocations, transactions, or payments implemented pursuant to the Plan, the Settlement Agreement, or this Order.
16. The steps, compromises, releases, injunctions, discharges, cancellations, transactions, arrangements, and reorganizations to be effected on the Plan Implementation Date are deemed to occur and be effected in the sequential order contemplated in the Plan, without any further act or formality, beginning at the Effective Time.
17. On the Plan Implementation Date, (a) Poseidon shall establish an Administration Charge Reserve in the approximate amount of \$200,000, or such other amount as agreed to by the Monitor and the Senior Secured Creditors, which cash reserve: (i) shall be maintained and administered by the Monitor, in trust, for the purpose of paying any amounts secured by the Administration Charge; and (ii) upon the termination of the Administration Charge pursuant to the Plan, shall be paid to the Senior Secured Creditors in addition to any other amounts payable pursuant to the Plan; and (b) the Directors' Charge and the previously existing Administration Charge shall be vacated and discharged in all respects.

COMPROMISE OF CLAIMS, RELEASE AND DISCHARGE OF CLAIMS

18. On the Plan Implementation Date, any and all Affected Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, and barred, subject only to the right of the applicable Persons to receive the distributions and interests to which they are entitled pursuant to the Plan.
19. Pursuant to Article 5.1 of the Plan, and subject to Article 5.2 of the Plan, the Released Parties are fully, finally, irrevocably, absolutely, and forever released, remised and discharged from all Claims, including those identified in Article 5.1 of the Plan, as of the Effective Time on the Plan Implementation Date pursuant to the Plan and this Order.
20. Pursuant to Articles 5.1 and 5.3 of the Plan, and subject to Articles 5.2, 5.4 and 5.8 of the Plan, as of the Plan Implementation Date, the ability of any Person to proceed

against the Released Parties in respect of any Released Claim shall be forever discharged, barred and restrained, and all proceedings with respect to, in connection with or relating to any such matter shall be permanently barred, estopped, stayed and enjoined.

21. Pursuant to Article 5.3 of the Plan and subject to Articles 5.4 and 5.8 of the Plan, all Persons (regardless of whether or not such Persons are creditors or Claimants), including the Settling Defendants, Class Representatives, Class Members, Poseidon, and the Released Parties shall be permanently and forever barred, estopped, stayed and enjoined, as of the Effective Time on the Plan Implementation Date, from taking any step, or doing any activity or other thing, identified in Article 5.3 of the Plan.
22. Pursuant to section 4(a) of the Settlement Agreement, and subject to section 4(b) of the Settlement Agreement, the Released Parties are fully, finally, irrevocably, absolutely, and forever released, remised and discharged from all Claims, including those identified in section 4(a) of the Settlement Agreement, as of the Effective Time on the Plan Implementation Date pursuant to the Settlement Agreement and this Order.
23. Pursuant to section 4(c) of the Settlement Agreement and subject to section 4(d) of the Settlement Agreement, all Persons (regardless of whether or not such Persons are creditors or Claimants), including the Settling Defendants, Class Representatives, Class Members, Poseidon, and the Released Parties shall be permanently and forever barred, estopped, stayed and enjoined, as of the Effective Time on the Plan Implementation Date, from taking any step, or doing any activity or other thing, identified in section 4(c) of the Settlement Agreement. Nothing in the Settlement Agreement or in this Order shall bar, estop, stay or enjoin any of the steps or activities or other things identified in section 4(d) of the Settlement Agreement.
24. The Class Actions, the Monitor Action, the Senior Secured Creditor Action and any and all claims, counterclaims, crossclaims, and third (or subsequent) party claims related thereto, including the KPMG Claim, are to be dismissed, with prejudice and without costs, pursuant to the Plan and the Settlement Agreement.
25. No further Claims by or against the Released Parties may be commenced.

26. In accordance with Article 4.7 of the Plan and section 3(d) of the Settlement Agreement:
- (a) under no circumstances shall the Released Parties be liable to make any further financial contribution or payment in respect of any Claim including the Class Actions, Monitor Action, KPMG Claim, Underwriter Claim, or Senior Secured Creditor Action, nor shall the Released Parties have any liability whatsoever for or have any exposure whatsoever to anything directly or indirectly, related to, arising out of, based on, or connected with the Class Actions, Monitor Action, KPMG Claim, Underwriter Claim, or Senior Secured Creditor Action, over and above the payment of the Poseidon Settlement Funds and the Class Settlement Funds;
 - (b) costs associated with any notices required in connection with the Plan and the Settlement Agreement shall not be paid for by the Released Parties; and
 - (c) the Poseidon Settlement Funds and the Class Settlement Funds are:
 - (i) the full monetary contribution or payment of any kind to be made by the Released Parties, and is inclusive of all costs, interest, legal fees, taxes (inclusive of any GST, HST, or any other taxes that may be payable in respect of the Plan or the Settlement Agreement), costs associated with any distributions, further litigation, administration or otherwise; and
 - (ii) a tangible and meaningful contribution on behalf of the Released Parties to the resolution of issues on the terms set out in the Plan and the Settlement Agreement.

POWERS OF THE MONITOR

27. In connection with its role holding funds and making or facilitating payments and distributions contemplated by the Plan:
- (a) the Monitor is solely doing so as administrative payment agent for the Applicants and neither the Monitor nor PricewaterhouseCoopers Inc. has agreed to become, and neither is assuming any responsibility as a receiver, assignee, curator, liquidator, administrator, receiver-manager, agent of the creditors or legal

representative of any of the Applicants within the meaning of any relevant tax legislation;

(b) the Monitor shall be provided with and is entitled to have access to all of the non-privileged books and records of the Applicants and to all non-privileged documents and other information required by it from time to time, whether in the possession of the Applicants or a third party, in connection with its role hereunder; and

(c) the Monitor shall not exercise discretion over the funds to be paid or distributed hereunder and shall only make payments as contemplated by the Plan, this Order and any future Order of this Court.

28. Any payments and deliveries made by, or with the consent of, the Monitor in accordance with the Plan or this Order (including without limitation payments made to or for the benefit of the Affected Creditors) shall not constitute a "distribution" for the purposes of any federal, provincial or territorial tax legislation (collectively, the "**Tax Statutes**"), and the Monitor, in making any such payments is merely a disbursing agent under the Plan and is not exercising any discretion in making payments under the Plan and is not "distributing" such funds for the purpose of the Tax Statutes, and the Monitor shall not incur any liability under the Tax Statutes in respect of payments or deliveries made by it, or with its consent, and the Monitor is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of payments made by, or with the consent of the Monitor in accordance with the Plan and this Order and any claims of this nature are hereby forever barred.

29. From and after the Plan Implementation Date, in addition to its prescribed rights and obligations under the CCAA and the powers provided to the Monitor herein and in the Plan, the Monitor shall be empowered and authorized, but not obligated, to:

(a) take such actions and execute such documents, in the name of and on behalf of the Applicants, as the Monitor considers necessary or desirable in order to:

- (i) effect the liquidation, bankruptcy, winding-up or dissolution of the Applicants;
 - (ii) facilitate the completion and administration of the estates of the Applicants in the CCAA Proceeding and any other proceedings commenced in respect of the Applicants or any of them; and,
 - (iii) act, if required, as trustee in bankruptcy, liquidator, receiver or a similar official of such entities;
- (b) exercise any powers which may be properly exercised by any officer, any member of the board of directors or of the board of directors of any of the Applicants except for the waiver of privilege belonging to the Applicants;
 - (c) cause the Applicants to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Applicants in dealing with their operations, restructuring, wind-down, liquidation or other activities except for the waiver of privilege belonging to the Applicants;
 - (d) engage assistants or advisors or cause the Applicants to engage assistants or advisors as the Monitor deems necessary or desirable to carry out the terms of the Orders in the CCAA Proceeding or for purposes of the Plan; and
 - (e) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under any other Order granted by this Court including for advice and directions with respect to any matter,

and in each case where the Monitor takes any such actions or steps it shall not be deemed to be a director or officer of the Applicants, and it shall be exclusively authorized and empowered to take any such actions or steps, to the exclusion of all other Persons, and without interference from any other Person, provided that the Monitor shall comply with all applicable law.

30. Without limiting the provisions of the Initial Order or the provisions of any other Order granted in the CCAA Proceeding, including this Order, the Applicants shall remain in possession and control of the Property (as defined in the Plan) and Business (as defined

in the Initial Order) and the Monitor shall not take possession or be deemed to be in possession and/or control of the Property or Business.

31. Nothing herein shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of any of the Applicants within the meaning of any relevant legislation.
32. The Monitor's Report, and the Monitor's activities and conduct in relation to the Applicants up to the date hereof, including the activities described in the foregoing Report, are hereby approved.
33. That: (i) in carrying out the terms of this Order and the Plan, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, and as an officer of the Court, including the stay of proceedings in its favour; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of and exercising the powers given to it under this Order and the Plan, save and except for any gross negligence or wilful misconduct on its part; (iii) the Monitor shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants without independent investigation; and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

DECLARATIONS RE INSURANCE

34. The Contribution:
 - (a) does not violate the interests of the Class Representatives, the Class, the Monitor, the Senior Secured Creditors, KPMG, the Underwriters, or any other Person who might have a claim against any person or entity potentially covered under the Insurance Policies;
 - (b) constitutes covered Loss (as defined in the Insurance Policies);
 - (c) reduces the Limits of Liability (as defined in the Insurance Policies) under the Insurance Policies for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action, that the Settling Defendants, or any of them, engaged in conduct that triggered or may

have triggered any exclusion, term or condition of the Insurance Policies, or any of them, so as to disentitle them to coverage under the Insurance Policies, or any of them;

- (d) is without prejudice to any coverage positions or reservations of rights taken by the Insurers in relation to any other matter advised to the Insurers or any other Claim (as defined in the Insurance Policies) made or yet to be made against the Insureds, provided that neither coverage nor payment in respect of the settlement of the Class Actions, the Monitor Action or the Senior Secured Creditor Action, nor the settlement of the Class Actions, the Monitor Action or the Senior Secured Creditor Action, will be voided or impacted by any such coverage position or reservation of rights; and
- (e) fully and finally releases the Insurers from any further obligation, and from any and all claims against them under or in relation to the Insurance Policies, in respect of the portion of the Limits of Liability that were expended to fund the Contribution.

- 35. Once the Contribution has been funded, there is no further coverage under the Insurance Policies for Poseidon. For clarity, this declaration is not intended to, and does not, extinguish any remaining coverage under the Insurance Policies for the individual Insureds.
- 36. With the exception of payment in the aggregate amount of CAD \$30,000 by the Insurers towards the settlement of regulatory proceedings by the Chartered Professional Accountants of Alberta against Lyle Michaluk, which shall be treated as Criminal / Regulatory Defence Costs, the determination of what constitutes reasonable Defence Costs paid or payable by any of the Insurers for Criminal/Regulatory Defence Costs and which reduce the amount of the Final Instalment of the Poseidon Settlement Funds and the Final Instalment of the Class Settlement Funds, all such terms as defined in Article 1.1 of the Plan, shall be within the sole purview and discretion of the Insurer paying them in accordance with the applicable litigation guidelines and, except for the individual Insured on whose behalf they are being paid, shall not be subject to review or challenge

by any other Person, including but not limited to the Monitor, the Senior Secured Creditors, Class Members or the Class Representatives.

37. In addition to the reduction of the Limits of Liability under the Policies pursuant to Article 5.8(a)(iii) of the Plan and section 4(h)A.III. of the Settlement Agreement, the Limits of Liability under the following Policies will be deemed to have been further reduced by the following amounts pursuant to an agreement between the Insurers and the Insureds under the Policies:

Policy Issued by:	Policy	Limits of Liability to be Reduced by:
Encon Group Inc.	DO-409880	\$250,000
Chubb Insurance Company of Canada	8224-5964	\$250,000
Travelers Insurance Company of Canada	75237516	\$250,000
Royal & Sun Alliance Insurance Company of Canada	9500854	\$250,000
Chartis Insurance Company of Canada, now known as AIG Insurance Company of Canada	01-340-62-02	\$2,500,000
Lloyd's Underwriters	ODLA052012-10150	\$0

STAY EXTENSION

38. The Stay Period in the Initial Order be and is hereby extended until and including September 7, 2018, or such later date as this Court may order.

EFFECT, RECOGNITION AND ASSISTANCE

39. This Court shall retain an ongoing supervisory role for the purposes of implementing, administering and enforcing the Plan and the Settlement Agreement and matters related to the Class Settlement Funds. Any disputes arising with respect to the performance or effect of, or any other aspect of, the Settlement Agreement shall be determined by this Court, and, except with leave of this Court first obtained, no person or party shall commence or continue any proceeding or enforcement process in any other court or

tribunal, with respect to the performance or effect of, or any other aspect of the Plan or Settlement Agreement.

40. This Order shall have full force and effect in all provinces and territories of Canada and abroad as against all persons and parties against whom it may otherwise be enforced.
41. The Applicants, the Released Parties, Class Representatives, the Senior Secured Creditors, and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order, or any further order as may be contemplated by the Plan or the Settlement Agreement or be otherwise required, and for assistance in carrying out the terms of this Orders, the Plan and the Settlement Agreement.
42. The aid and recognition of any court or any judicial, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Released Parties, the Monitor, the Class Representatives, the Senior Secured Creditors and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, the Monitor, the Class Representatives, and the Senior Secured Creditors, as may be necessary or desirable to give effect to this Order or to assist them in carrying out the terms of this Order, including, without limitation, by granting representative status to the Monitor in any foreign proceeding.
43. Any conflict or inconsistency between the Plan and this Order shall be governed by the terms, conditions and provision of the Plan, which shall take precedence and priority.
44. Any conflict or inconsistency between the Settlement Agreement and this Order shall be governed by the terms, conditions and provision of the Settlement Agreement, which shall take precedence and priority.



J.C.Q.B.A.

SCHEDULE A

SCHEDULE "A"

Court File No. 1301-04364

IN THE MATTER OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD.,
POSEIDON CONCEPTS LIMITED PARTNERSHIP AND POSEIDON CONCEPTS INC.

APPLICANT

AMENDED PLAN OF COMPROMISE AND ARRANGEMENT

pursuant to the *Companies' Creditors Arrangement Act*
concerning, affecting and involving

POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS
LIMITED PARTNERSHIP AND POSEIDON CONCEPTS INC.

April 6, 2018

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PLAN OF COMPROMISE AND ARRANGEMENT

(THE CAPITALIZED TERMS USED IN THIS DOCUMENT HAVE THE MEANING ASCRIBED THERETO IN ARTICLE 1.1 HEREOF)

RECITALS

WHEREAS Poseidon is insolvent;

AND WHEREAS, on the Filing Date, the CCAA Court granted the Initial Order in respect of Poseidon pursuant to the CCAA;

AND WHEREAS, on May 15, 2013, a Recognition Order was granted by the United States Bankruptcy Court under Chapter 15 of the United States Bankruptcy Code, recognizing Canada as the foreign main proceeding for Poseidon;

AND WHEREAS by the Representation Order, the CCAA Court appointed the Class Representatives to formally represent, in the CCAA Proceeding, the interests of the persons comprising the proposed classes in the Class Actions, and authorized the Class Representatives to settle or compromise Claims on behalf of all Class Members, and to take all steps and to do all acts necessary or desirable to carry out the terms of that order;

AND WHEREAS there have been allegations of inadequate financial disclosure and other tortious conduct by Poseidon and its directors, officers, and employees, as well as allegations of wrongful conduct by KPMG and the Underwriters, resulting in the Class Actions both in Canada and the United States of America, the Senior Secured Creditor Action, the Monitor Action, and various related claims;

AND WHEREAS the following actions have been dismissed or discontinued, as set out below:

- (a) *Goldsmith v National Bank of Canada*, Ontario Superior Court of Justice File No. CV-13-474486-00CP, was dismissed by Order reported as 2015 ONSC 2746, aff'd 2016 ONCA 22;
- (b) *Goldsmith v National Bank Financial Inc*, Ontario Superior Court of Justice File No. CV-14-509246-00CP, was discontinued by Order dated July 12, 2016;
- (c) *Kegel v National Bank of Canada*, Quebec Superior Court File No. 500-06-000642-138, was discontinued by Order dated June 29, 2016; and
- (d) *Lewis v National Bank Financial Inc*, Quebec Superior Court File No. 500-06-000702-148, was discontinued by Order dated June 29, 2016;

AND WHEREAS through the concerted efforts of the Monitor, the Senior Secured Creditors, the Class Representatives, and the Settling Defendants and the Insurers, all of the Claims are proposed to be resolved pursuant to the Settlement Agreement and this Plan;

AND WHEREAS the Monitor proposed an initial Plan of Compromise and Arrangement and obtained a Meeting and Hearing Order pursuant to which, among other things, Poseidon was authorized to file a Plan and to convene a meeting of Affected Creditors to consider and vote on the Plan;

AND WHEREAS it is essential to the Released Parties that by virtue of this Plan and the Settlement Agreement, all Claims and possible Claims related in any way to Poseidon be fully and finally resolved so as to bring finality to their potential liability, and without such finality, the financial contributions under this

Plan and the Settlement Agreement would not have been made, and the Parties agree that this Plan and the Settlement Agreement together provide finality to the Released Parties;

AND WHEREAS pursuant to that initial Plan of Compromise and Arrangement, the Insurers paid CDN \$29,000,000 to the Monitor in satisfaction of the amounts owing under the initial Plan of Compromise and Arrangement in respect of the Initial Instalment of the Class Settlement Funds and the Initial Instalment of the Poseidon Settlement Funds, which moneys continue to be held by the Monitor, in trust, and shall be credited towards the new higher aggregate amount payable under Article 4.1 of this Plan in respect of the Initial Instalment of the Class Settlement Funds and the Initial Instalment of the Poseidon Settlement Funds;

AND WHEREAS the Parties engaged in settlement negotiations that have resulted in a global settlement, as set out in this Plan and the Settlement Agreement;

NOW THEREFORE, the Monitor hereby proposes this Plan.

ARTICLE 1 **INTERPRETATION**

1.1 Defined Terms

Additional Proceeds	means the aggregate amount of CAD \$23,000,000.
Administration Charge	has the meaning ascribed thereto in the Initial Order.
Administration Charge Reserve	means the cash reserve to be established by Poseidon on the Plan Implementation Date in the approximate amount of \$200,000 or such other amount as agreed to by the Monitor and the Senior Secured Creditors, which cash reserve: (i) shall be maintained and administered by the Monitor, in trust, for the purpose of paying any amounts secured by the Administration Charge; and (ii) upon the termination of the Administration Charge pursuant to the Plan, shall be paid to the Senior Secured Creditors in addition to any other amounts payable pursuant to the Plan.
Affected Creditors	means the Senior Secured Creditors of Poseidon.
Affected Claims	means the Senior Secured Creditors' secured Claims.
Alberta Class Actions	means, collectively, the following proceedings and any and all claims, counterclaims, crossclaims, and third (or subsequent) party claims related thereto: Alberta Court of Queen's Bench Action Nos. 1301-00935, 1401-07353, and 1301-11455.
Alberta Dismissal Orders	means Orders granted in each of the Alberta Class Actions dismissing the Alberta Class Actions with prejudice and without

costs.

Approval and Settlement Motion means the motion brought before the CCAA Court for the Approval and Settlement Order.

Approval and Settlement Order means an Order, substantially in the form set out in Schedule C hereof granted in the CCAA Proceeding which shall, among other things,

- (a) approve, sanction and/or confirm the Plan;
- (b) provide for the releases and bar order / injunction set forth herein;
- (c) [Intentionally deleted]
- (d) [Intentionally deleted]
- (e) declare that the applicable parties have adhered to and complied with the Meeting and Hearing Order, and that all Persons shall be forever barred from objecting to the Settlement Agreement and the Plan;
- (f) approve the Settlement Agreement;
- (g) confirm that the Settlement Agreement shall be binding and given full effect against parties designated in or part of the Class Actions, whether as a Class Representative, Class Member, named defendant/respondent, third, fourth or subsequent parties, or mis-en-cause and without any ability to "opt-out" or otherwise allow any Person not be bound by such Orders;
- (h) [Intentionally deleted]
- (i) [Intentionally deleted]
- (j) grant the bar order / injunction, releases, and declarations provided for in the Plan and the Settlement Agreement; and,
- (k) be in form and content acceptable to all of the Settling Parties, acting reasonably, incorporating, among other things, the releases, bar order / injunction, declarations and other protections provided for in the Plan and Settlement Agreement.

Approval Orders means the Approval and Settlement Order, the Alberta Dismissal Orders, the U.S. Approval Order, and the Settlement Recognition

	Orders.
Business Day	means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Calgary, Alberta, Canada.
CCAA	means the <i>Companies' Creditors Arrangement Act</i> , R.S.C. 1985, c. C-36, as amended.
CCAA Court	means the Court of Queen's Bench of Alberta, as presiding over the CCAA Proceeding.
CCAA Proceeding	means Alberta Court of Queen's Bench, Action No. 1301-04364.
Claim	means any and all manner of actions, causes of action, counterclaims, cross claims, third (or subsequent) party claims, proceedings, suits, debts, dues, accounts, bonds, covenants, contracts, complaints, rights, obligations, claims, and demands, or other related proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) of any Person that has been, could have been, or may be asserted or made against any other Person, whether personal or subrogated, existing or possible, asserted or made, known or unknown, existing or potential, suspected or unsuspected, actual or contingent, liquidated or unliquidated, in whole or in part, for Damages of any kind, based in any way whatsoever upon, arising in any way whatsoever out of, relating in any way whatsoever to, or in connection in any way whatsoever with, any conduct anywhere, from the beginning of time to the date of the last signed Approval Order, based in any way whatsoever upon, arising in any way whatsoever out of, relating in any way whatsoever to, or in connection in any way whatsoever with, Poseidon or the affairs of Poseidon including as set out in the Class Actions, the Monitor Action, the Senior Secured Creditor Action, the KPMG Claim, the Underwriter Claim or otherwise including by reason of the commission of a tort (whether intentional, wilful, reckless, negligent or unintentional, including for negligence, negligent misrepresentation, fraud, fraudulent misrepresentation, deceit, conspiracy, conversion, breach of trust, or any other tort), by reason of any breach of contract or

other agreement (oral or written or otherwise), by reason of breach of corporate by-laws, corporate policies, corporate directives, or statutory duties or obligations (including any legal, statutory, equitable or fiduciary duty, or otherwise), by reason of any breach of statute (including breach of the *Securities Acts* of every province, the oppression remedy, s. 43 of the *Alberta Business Corporations Act* and the equivalent provisions of other provinces, the *Securities Act* of 1933, the *Securities Exchange Act* of 1934, or otherwise), or by reason of any breach of right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), by reason of any right to contribution and/or indemnity (including pursuant to statute or contract or otherwise), whether by action or inaction, statement, misstatement, or omission, transaction, conduct, misconduct, dealing, misdealing or by reason of inducing any of same,

whether or not any such Damages have been reduced to judgment, are liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, restitutionary, secured, or unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature.

For greater certainty, a Claim includes a D&O Claim.

Claimant

means any Person holding or potentially holding any Claim against Poseidon and/or any of the Released Parties.

Claims Procedure

means the procedure established for the filing of Claims in the CCAA Proceeding pursuant to the Claims Procedure Order.

Claims Procedure Order

means the Order under the CCAA of the Honourable Justice MacLeod dated November 4, 2014, establishing, among other things, a claims procedure in respect of Poseidon, as such Order may be amended, restated or varied from time to time.

Class

means the Class Representatives and the Class Members.

Class Actions

means collectively the following proceedings and any and all claims, counterclaims, crossclaims, and third (or subsequent) party claims related thereto:

the Alberta Class Actions;

Ontario Superior Court Action Nos. CV-12-468736 00CP, CV-14-512823 00CP, CV-13-474553 00CP, CV-14-517015, and CV-14-507785 00CP;

Quebec Court Action Nos. 500-06-000633-129 and 500-06-

000699-146; and

the U.S. Actions.

- Class Counsel** means Jensen Shawa Solomon Duguid Hawkes LLP, Siskinds LLP, Siskinds Demeules LLP, Paliare Roland Rosenberg Rothstein LLP, and The Rosen Law Firm.
- Class Counsel Fees** means the fees, disbursements, costs, HST and other applicable taxes or charges of Class Counsel and a *pro rata* share of all interest earned on the Class Settlement Funds to the date of payment, as approved by the CCAA Court.
- Class Members** has the meaning ascribed to the term "Class Members" in the Representation Order, and includes the U.S. Class Members.
- Class Representatives** means Franz Auer, Mohammed Ramzy, Thomas James, and Marian Lewis, in their capacity as representatives appointed pursuant to the Representation Order, as amended from time to time, and/or such other persons as may be appointed in that capacity by the CCAA Court.
- Class Settlement Funds** means:
- (a) the monetary payment(s) representing damages payable by the Insurers pursuant to the Settlement Agreement in settlement of the claims of Class Members, including the Class Actions, in the all-inclusive amounts of the Initial Instalment of the Class Settlement Funds and the Final Instalment of the Class Settlement Funds; and
 - (b) the Additional Proceeds.
- Competent Court** means the following courts: in respect of proceedings in the Province of Alberta, the Court of Queen's Bench; in respect of proceedings in the Province of Ontario, the Superior Court of Justice; in respect of proceedings brought in the Province of Quebec, the Superior Court; and, in respect of proceedings brought in the State of New York, the United States District Court for the Southern District of New York.
- Contribution** means the Class Settlement Funds (excluding the Additional Proceeds) and the Poseidon Settlement Funds, and the amounts paid by the Insurers for the defence of the Class Actions, the Monitor Action, the Senior Secured Creditor Action, the KPMG Claim, the Underwriter Claim and all related Claims, as well as all related regulatory or other investigations or proceedings.

Damages	means any general, punitive, aggravated, consequential, exemplary, restitutionary, by unjust enrichment, and by disgorgement, monies, losses, setoff, indemnity, injuries, indebtedness, liabilities or obligations of any kind whatsoever and however arising, and any interest, taxes, legal fees, expenses, Class Counsel Fees, administration fees, and costs payable in addition to or in respect thereof, whether incurred or suffered in the past, present or future.
D&Os	means, collectively and individually, all current and former directors and officers of Poseidon and for greater clarity specifically includes the following Persons: Matthew Mackenzie, Clifford Wiebe, Joseph Kostelecky, Lyle Michaluk, Scott Dawson, Dean Jensen, Jim McKee, Neil Richardson, David Belcher, Harley Winger, Kenneth Faircloth, and Wazir (Mike) Seth.
D&O Claim	means any Claim that has been, could have been, or may be asserted or made in whole or in part against one or more D&Os or Employees.
Employee Priority Claim	means any of the following Claims of employees and former employees of Poseidon: <ul style="list-style-type: none">(a) Claims equal to the amounts that such employees and former employees would have been qualified to receive under paragraph 136(1)(d) of the <i>Bankruptcy and Insolvency Act</i>, R. S. C. 1985, c. B-3, as amended, if Poseidon had become bankrupt on the Filing Date; and(b) Claims for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the Plan Implementation Date.
Employees	means collectively and individually, all current and former employees of Poseidon, including but not limited to Sonja Kuehnle and Doug Robinson.
Effective Time	means 12:01 a.m. (Calgary time) on the Plan Implementation Date.
Filing Date	means April 9, 2013.
Final Instalment of the Class Settlement Funds	means an amount equal to 26.32% of the aggregate amount of: CAD \$7.5 million (being CAD \$6.5 million plus a notional gross-up of CAD \$1.0 million) less defence costs incurred by the D&Os, Kuehnle and Robinson, subject to the limits set out in s. 5.9(c), during the Relevant Period that have been paid by, or that are payable by, the Insurers under the Insurance Policies (or any of

them) for the defence of any criminal or regulatory (including enforcement) proceedings actually commenced, on or before April 10, 2019, against one or more of them ("**Criminal / Regulatory Defence Costs**") (i.e. $0.2632 * (\text{CAD } \$7,500,000 - \text{Criminal / Regulatory Defence Costs})$), to a maximum of the difference between CAD \$6.5 million and the Criminal Regulatory Defence Costs. For greater clarity, the amount of the Final Instalment of the Class Settlement Funds shall in no event exceed CAD \$6.5 million or be a negative number. For the purposes of this definition:

- (a) the term "**Relevant Period**" means April 10, 2017 until the later of (i) the date upon which all such criminal and/or regulatory proceedings are completed (i.e. any appeals that could be brought have been completed or the time for bringing such appeals has expired) and (ii) April 10, 2019; and
- (b) payment in the aggregate amount of CAD \$30,000 by the Insurers towards the settlement of regulatory proceedings by the Chartered Professional Accountants of Alberta against Lyle Michaluk shall be treated as Criminal / Regulatory Defence Costs.

Final Instalment of the Poseidon Settlement Funds

means an amount equal to CAD \$6.5 million less the Criminal Regulatory Defence Costs less the amount of the Final Instalment of the Class Settlement Funds. For greater clarity, the Poseidon Settlement Funds shall in no event be a negative number.

Final Order

means any order that is no longer subject to:

- (a) any application to amend, vary, or set aside; and
- (b) any appeals, either because the time to appeal has expired without an appeal being filed, or because it has been affirmed by any and all courts with jurisdiction to consider any appeals therefrom.

Global Settlement Notice Order

means the order of the CCAA Court dated March 13, 2018 in respect of notice of the Settlement Agreement to the Class Members.

Governmental Entity

means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement

panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

Government Priority Claims

means all Claims of a Governmental Entity in respect of amounts that are outstanding as of the Plan Implementation Date and that are of a kind that could be subject to a demand under:

- (a) subsections 224(1.2) of the Canadian Tax Act;
- (b) any provision of the Canada Pension Plan or the *Employment Insurance Act (Canada)* that refers to subsection 224(1.2) of the *Income Tax Act (Canada)* and provides for the collection of a contribution, as defined in the Canada Pension Plan, or employee's premium or employer's premium as defined in the *Employment Insurance Act (Canada)*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act (Canada)* or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
 - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act (Canada)*; or, (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection

Hearing Notice

means the notice advising Class Members as to the terms of the Plan and Settlement Agreement and of the date of the Approval and Settlement Motion, in a form to be approved by the Settling Parties, acting reasonably, and by the CCAA Court.

Initial Order

means the order made by the CCAA Court in respect of

	Poseidon on the Filing Date, as amended from time to time.
Initial Instalment of the Class Settlement Funds	means the aggregate amount of CAD \$11,632,800.
Initial Instalment of the Poseidon Settlement Funds	means the aggregate amount of CAD \$18,367,200.
Insurance Policies	means the insurance policies issued by Encon Group Inc. on behalf of the subscribing insurers of the insurance policies bearing policy numbers DO-409880, DO-394691, and DO-379046, the insurance policies issued by Chubb Insurance Company of Canada bearing policy numbers 8224-5964, 8221-3406 and 8224-6249; the insurance policies issued by Travelers Insurance Company of Canada bearing policy numbers 75237516, 75263156, 75240933 and 75287036; the insurance policy issued by Royal & Sun Alliance Insurance Company of Canada bearing policy number 9500854; the insurance policy issued by Chartis Insurance Company of Canada, now known as AIG Insurance Company of Canada, bearing policy number 01-340-62-02; and the insurance policy issued by Lloyd's Underwriters bearing policy number ODLA052012-10150.
Insureds	means any Person who is insured under the Insurance Policies.
Insurers	means Chubb Insurance Company of Canada, Travelers Insurance Company of Canada, Royal & Sun Alliance Insurance Company of Canada, Chartis Insurance Company of Canada, now known as AIG Insurance Company of Canada, Lloyd's Underwriters, and the subscribing insurers on the Insurance Policies issued by Encon Group Inc. being Continental Casualty Company, Temple Insurance Company, Aviva Insurance Company of Canada and XL Reinsurance America Inc.
KPMG	means KPMG LLP.
KPMG Claim	means all of the Claims commenced by KPMG against one or more of the Released Parties including the Claim commenced in Alberta with court file no. 1401-07353.
Lien Claim	means the single unresolved U.S. lien claim for which the Monitor has set aside the amount of its total claim pending resolution, being U.S. \$495,000.
Meeting	means a meeting of the Affected Creditors to consider and vote on the Plan held pursuant to the Meeting and Hearing Order and includes any meeting or meetings resulting from the adjournment thereof.

- Meeting and Hearing Order** means one or more orders of the CCAA Court, if necessary:
- (a) directing the calling and holding of the Meeting;
 - (b) approving the form and content of the Hearing Notice;
 - (c) appointing Siskinds LLP to receive and report on objections to the Settlement, if any; and
 - (d) scheduling the Approval and Settlement Motion.
- Monitor** means PricewaterhouseCoopers Inc., in its capacity as Monitor of Poseidon in the CCAA Proceeding.
- Monitor Action** means collectively the following proceedings and any and all claims, counterclaims, crossclaims, and third (or subsequent) party claims related thereto:
- Alberta Court of Queen's Bench Action No. 1301-12927; and
- Ontario Superior Court of Justice Action No. CV-14-517017.
- New Open Range** means Open Range Energy Corp. as it existed after the Plan of Arrangement completed on November 1, 2011.
- Old Open Range** means Open Range Energy Corp. as it existed prior to the Plan of Arrangement completed on November 1, 2011.
- Person** means and includes an individual, a natural person or persons, a group of natural persons acting as individuals, a group of natural individuals acting in collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, partnership, limited liability company or limited partnership, a proprietorship, joint venture, trust, legal representative, or any other unincorporated association, business organization or enterprise, any government entity and any successor in interest, heir, executor, administrator, trustee, trustee in bankruptcy, or receiver of any person or entity, wherever resident in the world.
- Plan** means this Amended Plan of Compromise and Arrangement, including the schedules hereto, in the CCAA Proceeding as such plan may be amended from time to time with approval of the Settling Parties, acting reasonably, or by the Monitor alone pursuant to Article 7.5(b).
- Plan Implementation Date** means the Business Day on which the Monitor has filed with the CCAA Court the certificate contemplated in Article 6.2 hereof.

- Poseidon** means Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership and Poseidon Concepts Inc. and Old Open Range.
- Poseidon Settlement Funds** means the following monetary payment(s) representing damages payable by the Insurers in settlement of the Monitor Action and the Senior Secured Creditor Action in the all-inclusive amounts of: (a) the Initial Instalment of the Poseidon Settlement Funds; and (b) the Final Instalment of the Poseidon Settlement Funds.
- Priority Claims** means, in descending order of priority:
- (a) claims secured by the Administration Charge;
 - (b) the Administration Charge Reserve;
 - (c) Government Priority Claims, if any;
 - (d) Employee Priority Claims, if any; and
 - (e) the Senior Secured Creditors' Claim.
- Property** means the present and after acquired real and personal property of Poseidon, including the residual interest in the Administration Charge Reserve and the funds set aside in respect of the Lien Claim, but excluding the Monitor Action, the Insurance Policies, and any rights under or pursuant to the Policies, any rights as against the Settling Defendants, and any rights as against the Released Parties.
- Released Claims** means, collectively, all of the Claims released in accordance with Article 5.1, subject to Article 5.2.
- Released Parties** means the Persons identified in Schedule "A" hereto.
- Representation Order** means the order granted on May 30, 2013 in the CCAA Proceeding by the CCAA Court appointing the Class Representatives, as representatives of the class members designated in the Class Actions, for the purposes of the CCAA Proceeding as amended from time to time.
- Senior Secured Creditor Action** means the action commenced by the Senior Secured Creditors against Poseidon and certain officers and directors of Poseidon in the Court of Queen's Bench of Alberta with court file no. 1401-12410 and any and all claims, counterclaims, crossclaims, and third (or subsequent) party claims related thereto.
- Senior Secured Creditors** means, collectively, The Toronto-Dominion Bank, National Bank of Canada, The Bank of Nova Scotia and HSBC Bank of Canada.

- Settlement** means the settlement provided for in the Settlement Agreement and the Plan.
- Settlement Agreement** means the agreement among the Settling Parties attached to this Plan as Schedule "B", and the schedule thereto.
- Settlement Recognition Motion** means the motions brought before the Competent Courts in Ontario, and Quebec, and, in the United States, the United States Bankruptcy Court and/or the Competent Court, as the case may be, for the Settlement Recognition Orders.
- Settlement Recognition Orders** means the Orders of the Competent Courts in Ontario and Quebec, and in the United States, the Orders of the Competent Courts and/or the United States Bankruptcy Court, as the case may be, in form and content acceptable to all of the Settling Parties, acting reasonably, recognizing and giving effect to the Plan and the Approval and Settlement Order in respect of each applicable Class Action and, among other things:
- (a) confirming that the Plan and Settlement Agreement shall be binding and given full effect against parties designated and part of the Class Actions, whether as a Class Representative, Class Member, named defendant/respondent or mis-en-cause and without any ability to "opt-out" or otherwise allow any Class Member to not be bound by such Orders;
 - (b) [Intentionally deleted]
 - (c) dismissing the Class Actions, with prejudice and without costs; and
 - (d) incorporating the bar orders, releases, injunctions, and other protections granted and/or provided for in the CCAA Proceeding, including, without limitation, those granted and/or provided for in the Claims Procedure Order, the Plan, the Settlement Agreement and the Approval and Settlement Order.
 - (e) [Intentionally deleted]
- Settling Defendants** means KPMG, the Underwriters, Poseidon, New Open Range, Peyto Exploration and Development Corp., Matthew Mackenzie, Clifford Wiebe, Joseph Kostelecky, Lyle Michaluk, Scott Dawson, Dean Jensen, Jim McKee, Neil Richardson, David Belcher, Sonja Kuehnle, Harley Winger, Doug Robinson, Kenneth Faircloth, and Wazir (Mike) Seth.
- Settling Parties** means the Settling Defendants, the Class Representatives, the

Senior Secured Creditors, and Poseidon by the Monitor.

Unaffected Claims

means the following Claims as against Poseidon:

- (a) the Claim secured by the Administration Charge;
- (b) the Government Priority Claim;
- (c) the Employee Priority Claim;
- (d) the Lien Claim;
- (e) any Claim by the Senior Secured Creditors, except to the extent that:
 - (i) they receive any payment or distribution pursuant to this Plan (and then only to that extent);
 - (ii) they are compromised and rearranged pursuant to Article 3.3 hereof; and
 - (iii) the claim is a Released Claim; and
- (f) any unsecured Claim.
- (g) [Intentionally deleted]
- (h) [Intentionally deleted]

Unaffected Creditor

means a person who holds or held an Unaffected Claim, to the extent of that Claim.

Underwriters

means National Bank Financial Inc., BMO Nesbitt Burns Inc., CIBC World Markets Inc., Haywood Securities Inc., Peters & Co. Limited, Canaccord Genuity Corp., Cormark Securities Inc., Dundee Securities Ltd. and First Energy Capital Corp.

Underwriter Claim

means all of the Claims commenced by the Underwriters against one or more of the Released Parties including the Claim commenced in Ontario with court file no. CV-13-474553 CPA1.

Underwriter Releasees

means National Bank Financial Inc., BMO Nesbitt Burns Inc., CIBC World Markets Inc., Haywood Securities Inc., Peters & Co. Limited, Canaccord Genuity Corp., Cormark Securities Inc., Dundee Securities Ltd. and First Energy Capital Corp. and all of their respective present and former affiliates, partners, associates, employees, servants, agents, contractors, directors, officers, insurers and successors, administrators, heirs and

assigns of each.

- United States Bankruptcy Case** means the case styled In Re Poseidon Concepts Corp. commenced in the United States Bankruptcy Court, District of Colorado, Case No. 13-15893HRT.
- United States Bankruptcy Code** means Title 11 of the United States Code.
- United States Bankruptcy Court** means the United States Bankruptcy Court for the District of Colorado, as presiding over the United States Bankruptcy Case.
- U.S. Actions** means United States District Court for the Southern District of New York Action Nos. 1:13-cv-01213-DLC and 1:13-cv-01412-DLC.
- U.S. Approval Order** means an order entered in the United States Bankruptcy Case pursuant to the applicable sections of Chapter 15 of the United States Bankruptcy Code, which order recognizes and enforces the terms of the Approval and Settlement Order.
- U.S. Class Members** means all persons and entities, other than Settling Defendants and their affiliates, wherever they may reside, who acquired the publicly traded common stock of Poseidon on or before February 14, 2013, in domestic U.S. transactions, transactions on a domestic U.S. exchange or on a secondary market in the United States, which includes securities acquired over-the-counter.
- U.S. Class Representative** means Gerald Kolar, in his capacity as Lead Plaintiff appointed pursuant to the Order of the United States District Court for the Southern District of New York in the U.S. Action (ECF No. 24) and/or such other persons as may be appointed in that capacity by the United States District Court for the Southern District of New York.

1.2 Certain Rules of Interpretation

For the purposes of this Plan:

- (a) any reference in the Plan to an order, agreement, contract, instrument, release, exhibit or other document means such order, agreement, contract, instrument, release, exhibit or other document as it may have been or may be validly amended, modified or supplemented;
- (b) the division of the Plan into "articles" and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of "articles" intended as complete or accurate descriptions of the content thereof;

- (c) unless the context otherwise requires, words importing the singular shall include the plural and vice versa, and words importing any gender shall include all genders;
- (d) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (e) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Calgary, Alberta and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Calgary time) on such Business Day;
- (f) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;
- (g) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation; and
- (h) references to a specified "article" or "section" shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article of the Plan or a section of the Settlement Agreement, whereas the terms "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to the Plan and not to any particular article or other portion of the Plan and include any documents supplemental hereto.

ARTICLE 2

PURPOSE AND EFFECT OF THE PLAN

2.1 Purpose

The purpose of the Plan and the related Approval Orders is, among other things:

- (a) to effect a compromise of certain Claims of the Senior Secured Creditors;
- (b) to effect the distribution of the consideration to the Priority Claims as set forth in Article 4 hereof;
- (c) to facilitate and approve the settlement and resolution of outstanding issues between all of the parties involved in litigation concerning the activities of Poseidon, its auditors, underwriters, D&Os and other related parties, including certain insured claims against Poseidon and its D&Os and Employees, so as to maximize recoveries for all stakeholders and provide finality for the Released Parties with respect to any and all exposure to Claims or potential Claims; and

- (d) to give effect to the releases in favour of parties who have made contributions to this Plan.

ARTICLE 3
CLASSIFICATION, VOTING AND RELATED MATTERS

3.1 Class of creditors

There shall be one class of creditors for the purposes of considering and voting on this Plan: the Senior Secured Creditors, who shall be the only Affected Creditors. No other creditors shall vote on or receive consideration under the Plan.

3.2 Claims Procedure

The Claim of the Senior Secured Creditors, is allowed in the aggregate amount of \$43,944,957.49 (as of November 30, 2016).

3.3 Compromise of Senior Secured Creditor Action

Effective upon the Plan Implementation Date, the Senior Secured Creditors recourse to recover their Claim shall be limited to:

- (a) their entitlement to the Poseidon Settlement Funds; and
- (b) the Property,

and, in this regard, the Senior Secured Creditors shall cause the Senior Secured Creditor Action to be dismissed with prejudice and without costs.

3.4 Unaffected Claims

Subject to Articles 3.3, 5.1 and 5.3 hereof, and notwithstanding anything else to the contrary herein, this Plan does not compromise, release, or otherwise affect the Unaffected Claims as against the Property. Unaffected Creditors shall not, in respect of an Unaffected Claim, be entitled to vote on the Plan or attend the Meeting.

3.5 Creditors Meeting

The Meeting will be held in accordance with this Plan, the Meeting and Hearing Order, and any further Order of the Court. Only the Affected Creditors, being the Senior Secured Creditors, shall be entitled to vote and for voting purposes, their claim shall be valued as approved by the Monitor.

3.6 Approval

To be approved, the Plan must be approved by the requisite majority of the Affected Creditors.

ARTICLE 4
DISTRIBUTIONS

4.1 Contributions to the Settlement Funds

- (a) The Insurers shall pay the Initial Instalment of the Poseidon Settlement Funds pursuant to the Plan, and the Initial Instalment of the Class Settlement Funds pursuant to the Settlement Agreement, by wire transfer of immediately available funds to the Monitor, in trust, within thirty (30) days after the granting of the Approval and Settlement Order. It is acknowledged by the Parties hereto that CAD \$29,000,000 has already been paid by the Insurers and that such moneys constitute a partial payment of the aggregate amount payable in respect of the Initial Instalment of the Poseidon Settlement Funds and the Initial Instalment of the Class Settlement Funds (i.e. CAD \$29,000,000 of the CAD \$30,000,000 payable has already been paid and only CAD \$1,000,000 is owing). The Insurers shall pay the Final Instalment of the Poseidon Settlement Funds pursuant to the Plan (if and to the extent remaining as provided for and defined in Article 1.1 of the Plan) and the Final Instalment of the Class Settlement Funds pursuant to the Settlement Agreement (if and to the extent remaining as provided for and defined in Article 1.1 of the Plan), to the Monitor in accordance with such definition. The Settling Defendants shall have no personal liability for the payment of the Poseidon Settlement Funds and the Class Settlement Funds (excluding the Additional Proceeds, which are the sole responsibility of the contributors to same). Should this Plan be terminated in accordance with its terms, such monies shall be returned, with interest accrued, if any, and without deduction or holdback, forthwith to the Insurers. Any taxes payable on any interest that accrues in relation to the Poseidon Settlement Funds and the Class Settlement Funds shall be payable by the recipient(s) of any such interest earned.
- (b) The Additional Proceeds shall be paid by KPMG, the Underwriters and Peyto under the Settlement Agreement in amounts agreed upon separately and confidentially as between them. Each such contributor shall only be responsible for their individual contribution to the aggregate amount payable. Payment shall be made by wire transfer of immediately available funds to the Monitor, in trust, within thirty (30) days after the granting of the Approval and Settlement Order and the Alberta Dismissal Order, whichever is later. Should this Plan be terminated in accordance with its terms, such monies shall be returned, with interest accrued, if any, and without deduction or holdback, forthwith to the contributing parties. Any taxes payable on any interest that accrues in relation to the Additional Proceeds shall be payable by the recipient(s) of any such interest earned.

4.2 Distributions of Settlement Funds

The Poseidon Settlement Funds and the Class Settlement Funds shall be held by the Monitor in trust in one or more interest bearing accounts. The Poseidon Settlement Funds shall be distributed by the Monitor to Poseidon's estate, for distribution to the Priority Claims. The Class Settlement Funds shall be held by the Monitor and, on the Plan Implementation Date, distributed to Class Counsel, in trust, to be distributed in accordance with further order(s) of the CCAA Court.

Notwithstanding the above, the following persons and entities shall not be entitled to any allocation or distribution of the Class Settlement Funds:

- (a) The following entities and their past and present directors, officers, senior employees, partners, subsidiaries, affiliates, legal representatives, heirs, predecessors, successors and assigns: Poseidon Concepts Corp; Poseidon Concepts Ltd.; Poseidon Concepts Limited Partnership; Poseidon Concepts Inc.; Open Range Energy Corp.; Peyto Exploration & Development Corp.; National Bank of Canada; National Bank Financial Inc.; The Toronto Dominion Bank; The Bank of Nova Scotia; HSBC Bank of Canada; KPMG LLP; BMO Nesbitt Burns Inc.; CIBC World Markets Inc.; Haywood Securities Inc.; Peters & Co. Limited; Canaccord Genuity Corp.; Cormark Securities Inc.; Dundee Securities Ltd.; and FirstEnergy Capital Corp.; and
- (b) The following individuals and any individual who is a member of their immediate families: Matthew MacKenzie; Clifford Wiebe; Joseph Kostelecky; Lyle Michaluk; Scott Dawson; Dean Jensen; Jim McKee; Neil Richardson; David Belcher; Sonja Kuehnle; Harley Winger; Doug Robinson; Kenneth Faircloth; and Wazir (Mike) Seth.

4.3 [Intentionally deleted]

4.4 Timing of Distributions

The distributions contemplated by this Plan shall be made as soon as reasonably possible following the Plan Implementation Date.

4.5 Delivery of Distributions to Creditors

Distributions made in accordance with the terms of this Plan by the Monitor shall be deemed to be made to the Senior Secured Creditors by delivery of such funds to counsel for the Senior Secured Creditors.

4.6 Allocation of Distributions

All distributions made pursuant to this Plan, other than in respect of the Class Settlement Funds, shall be applied firstly in payment of all fees, costs, and expenses; secondly in payment of the outstanding principal amount of the Claim and, thirdly and only after the principal portion of any such Claim is satisfied in full, to any portion of such Claim comprising accrued and unpaid interest.

4.7 Transfer of Claims; Record Date for Distributions

Claims may be sold, transferred or assigned at any time by the holder thereof, whether prior or subsequent to the Plan Implementation Date, provided that:

- (a) Neither Poseidon nor the Monitor shall be obligated to deal with or to recognize the purchaser, transferee or assignee of the Claim as the creditor in respect thereof unless and until written notice of the sale, transfer or assignment is provided to the Monitor, such notice to be in form and substance satisfactory to the Monitor, acting reasonably within five (5) Business Days prior to the Plan Implementation Date;
- (b) only holders of record of Claims as at the date of the Meeting and Hearing Order shall be entitled to attend, vote or otherwise participate at such Meeting; provided, however, that: (A) for the purposes of determining whether this Plan has been approved by a majority in number of the creditors only the vote of the transferor or the transferee, whichever holds the highest dollar value of such Claims will be counted, and, if such value shall be equal,

only the vote of the transferee will be counted; and (B) if a Claim has been transferred to more than one transferee, for purposes of determining whether this Plan has been approved by a majority in number of the creditors, only the vote of the transferee with the highest value of such Claim will be counted; and

- (c) only holders of record of Claims as at five (5) Business Days prior to the Plan Implementation Date shall have the right to participate in the corresponding distribution provided for under Section 4.2 and 4.3 of this Plan.

4.8 No Further Contributions, Liability or Exposure

Notwithstanding any other provision of the Plan or the Settlement Agreement, and without in any way restricting, limiting or derogating from the releases provided herein and in the Settlement Agreement, or in any way restricting, limiting or derogating from any other protection provided in the Plan or the Settlement Agreement to the Released Parties, under no circumstances shall the Released Parties be required to or be called upon to make any further financial contribution or payment in respect of any Claim including the Class Actions, Monitor Action, KPMG Claim, Underwriter Claim, or Senior Secured Creditor Action, nor shall the Released Parties have any liability whatsoever for or have any exposure whatsoever to anything directly or indirectly, related to, arising out of, based on, or connected with the Class Actions, Monitor Action, KPMG Claim, Underwriter Claim, or Senior Secured Creditor Action, over and above the payment of the Poseidon Settlement Funds and the Class Settlement Funds (excluding the Additional Proceeds), which payment is solely the responsibility of the Insurers, and the Additional Proceeds, which payment is solely the responsibility of the parties contributing to same.

Costs associated with any notices required in connection with the Plan or the Settlement Agreement shall be paid for by Poseidon. Under no circumstances shall the cost of notice be payable by the Released Parties.

The Poseidon Settlement Funds and the Class Settlement Funds are the full monetary contribution or payment of any kind to be made by the Released Parties and is inclusive of all costs, interest, legal fees, taxes (inclusive of any GST, HST, or any other taxes that may be payable in respect of the Plan or the Settlement Agreement), costs associated with any distributions, further litigation, administration or otherwise.

ARTICLE 5 RELEASES AND INJUNCTIONS

5.1 Plan Release

Subject to Article 5.2 hereof, the Approval and Settlement Order and the U.S. Approval Order shall provide that the Released Parties are fully, finally, irrevocably, absolutely, and forever released, remised and discharged from any and all Claims as of the Effective Time on the Plan Implementation Date including the following Claims:

- (a) all Claims of the Class against the Released Parties;
- (b) all Claims of the Senior Secured Creditors against the Released Parties;
- (c) all Claims of KPMG against the Released Parties;

- (d) all Claims of the Underwriters against the Released Parties;
- (e) all Claims of Poseidon against the Released Parties;
- (f) all Claims of the Monitor against the Released Parties and the Senior Secured Creditors;
- (g) all Claims of the Released Parties against Poseidon, the Class Representatives, the Class Members, the Senior Secured Creditors, and any other Released Parties; and
- (h) [Intentionally deleted]
- (i) all Claims of any other Person against the Released Parties.

5.2 Claims Not Released

Subject only to Article 5.8, Article 5.1 shall not waive, compromise, release, discharge, cancel, bar or otherwise affect any of the following:

- (a) any Person of its obligations under the Plan, the Approval Orders, and the Settlement Agreement, including the obligation to pay the Additional Proceeds and the obligations of the Insurers to pay the Class Settlement Funds (excluding the Additional Proceeds) and the Poseidon Settlement Funds;
- (b) Unaffected Claims;
- (c) Claims that cannot be released by operation of s. 5.1(2) and 19(2) of the CCAA;
- (d) [Intentionally deleted]
- (e) [Intentionally deleted]
- (f) [Intentionally deleted]
- (g) [Intentionally deleted]
- (h) [Intentionally deleted]
- (i) the rights of the Insureds (excluding Poseidon, whose rights against the Insurers are fully released under Article 5.1 above) against the Insurers under the Insurance Policies except as affected by the declarations set out in Article 5.8 below; and
- (j) the rights of any Person, including the Senior Secured Creditors, in respect of matters that are completely unrelated to any Claims, including rights in respect of matters that are completely unrelated to any Claims as against any Released Parties.

5.3 Bar Order / Injunctions

- (a) Subject to Articles 5.4 and 5.8, all Persons (regardless of whether or not such Persons are creditors or Claimants), including the Class, Settling Defendants, Poseidon, the Released Parties, KPMG and the Underwriters, shall be permanently and forever barred,

estopped, stayed and enjoined, as of the Effective Time on the Plan Implementation Date, from:

- (i) commencing, conducting, pursuing, instituting, intervening in, asserting, advancing, or continuing in any manner, directly or indirectly, any Claim or other related proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties;
- (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree, Damages, or order against the Released Parties or their property;
- (iii) making, asserting, pursuing, instituting, intervening in, advancing, commencing, conducting or continuing in any manner, directly or indirectly, any Claim, including for contribution or indemnity or other relief, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes or asserts, or might reasonably be expected to make or assert, such a Claim, in any manner or forum, against one or more of the Released Parties;
- (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or
- (v) taking any actions to interfere with the implementation or consummation of this Plan.

(b) [Intentionally deleted]

5.4 Limitations on Injunctions

Subject only to Article 5.8, Article 5.3 shall not bar, estop, stay and enjoin or otherwise affect any of the following:

- (a) any Person of its obligations under the Plan, the Approval Orders, and the Settlement Agreement;
- (b) Unaffected Claims;
- (c) [Intentionally deleted]
- (d) [Intentionally deleted]
- (e) [Intentionally deleted]
- (f) the rights of the Insureds (excluding Poseidon, whose rights against the Insurers are fully barred, estopped, stayed and enjoined under Article 5.3 above) against the Insurers under the Insurance Policies except as affected by the declarations set out in Article 5.8 below; and

- (g) [Intentionally deleted]
- (h) the rights of any Person, including the Senior Secured Creditors, in respect of matters that are completely unrelated to the Claims, including rights in respect of matters that are completely unrelated to any Claims as against any Released Parties.

5.5 Timing of Releases and Injunctions

All releases and injunctions set forth in this Article 5 shall become effective at the Effective Time on the Plan Implementation Date.

5.6 [Intentionally deleted]

5.7 [Intentionally deleted]

5.8 Declarations re Insurance

The Approval Orders shall declare that:

- (a) the Contribution:
 - (i) does not violate the rights or interests, in respect of the Insurance Policies, of the Class Representatives, the Class, the Monitor, the Senior Secured Creditors, KPMG, the Underwriters, or any other Person who might have a claim against any person or entity potentially covered under the Insurance Policies;
 - (ii) constitutes covered Loss (as defined in the Insurance Policies);
 - (iii) reduces the Limits of Liability (as defined in the Insurance Policies) under the Insurance Policies for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action, that the Settling Defendants, or any of them, engaged in conduct that triggered or may have triggered any exclusion, term or condition of the Insurance Policies, or any of them, so as to disentitle them to coverage under the Insurance Policies, or any of them;
 - (iv) is without prejudice to any coverage positions or reservations of rights taken by the Insurers in relation to any other matter advised to the Insurers or any other Claim (as defined in the Insurance Policies) made or yet to be made against the Insureds, provided that neither coverage nor payment in respect of the settlement of the Class Actions, the Monitor Action or the Senior Secured Creditor Action, nor the settlement of the Class Actions, the Monitor Action or the Senior Secured Creditor Action, will be voided or impacted by any such coverage position or reservation of rights; and
 - (v) fully and finally releases the Insurers from any further obligation, and from any and all claims against them under or in relation to the Insurance Policies, in respect of the portion of the Limits of Liability that were expended to fund the Contribution;

- (b) once the Contribution has been funded, there is no further coverage under the Insurance Policies for Poseidon. For clarity, this declaration is not intended to, and does not, extinguish any remaining coverage under the Insurance Policies for the individual Insureds.
- (c) With the exception of payment in the aggregate amount of CAD \$30,000 by the Insurers towards the settlement of regulatory proceedings by the Chartered Professional Accountants of Alberta against Lyle Michaluk, which shall be treated as Criminal / Regulatory Defence Costs, the determination of what constitutes reasonable Defence Costs paid or payable by any of the Insurers for Criminal/Regulatory Defence Costs and which reduce the amount of the Final Instalment of the Class Settlement Funds and the Final Instalment of the Poseidon Settlement Funds, all such terms as defined in Article 1.1 of this Plan, shall be within the sole purview and discretion of the Insurer paying them in accordance with the applicable litigation guidelines and, except for the individual Insured on whose behalf they are being paid, shall not be subject to review or challenge by any other Person, including but not limited to the Monitor, the Senior Secured Creditors, the Class Members or the Class Representatives.
- (d) in addition to the reduction of the Limits of Liability under the Policies pursuant to Article 5.8(a)(iii), the Limits of Liability under the following Policies will be deemed to have been further reduced by the following amounts pursuant to an agreement between the Insurers and the Insureds under the Policies:

Policy Issued by:	Policy	Limits of Liability to be Reduced by:
Encon Group Inc.	DO-409880	\$250,000
Chubb Insurance Company of Canada	8224-5964	\$250,000
Travelers Insurance Company of Canada	75237516	\$250,000
Royal & Sun Alliance Insurance Company of Canada	9500854	\$250,000
Chartis Insurance Company of Canada, now known as AIG Insurance Company of Canada	01-340-62-02	\$2,500,000
Lloyd's Underwriters	ODLA052012-10150	\$0

5.9 Acknowledgements

- (a) For greater certainty, the Settling Parties acknowledge that they may subsequently discover facts adding to those they now know, but nonetheless agree that at the Effective Time on the Plan Implementation Date, all of the protections provided for herein (including the protections in Article 5 of the Plan) for the Settling Parties and the Released Parties shall be definitive and permanent irrespective of whether any subsequently discovered facts were unknown, unsuspected, or not disclosed.
- (b) By means of the Settlement, the Settling Parties waive any right they might have under the law, common law, civil law, in equity or otherwise, to disregard or avoid the protections provided for herein (including the protections in Article 5 of the Plan) and expressly relinquish any such right and each Class Member shall be deemed to have

waived and relinquished such right. Furthermore, the Settling Parties agree to this waiver of their own volition, with full knowledge of its consequences and that this waiver was negotiated and constitutes a key element of the Settlement.

- (c) It is understood and agreed by the D&Os (and Kuehnle and Robinson) that each individual D&O's (and Kuehnle and Robinson's) entitlement to Criminal / Regulatory Defence Costs shall be limited to CAD \$2.5 million (such amount being a cap on, and not a guarantee of the availability of, funds), except for Joseph Kostelecky whose entitlement to Criminal / Regulatory Defence Costs shall be limited to USD \$2.0 million (such amount being a cap on, and not a guarantee of the availability of, funds), and no D&O (nor Kuehnle and Robinson) shall be entitled to request or receive in excess of CAD \$2.5 million in respect of Criminal / Regulatory Defence Costs from the Insurers, except for Joseph Kostelecky who shall not be entitled to request or receive in excess of USD \$2.0 million in respect of Criminal / Regulatory Defence Costs from the Insurers. For the purposes of calculating the drawdown of the CAD \$6.5 million available for the Final Instalment of Class Settlement Funds and Final Instalment of Poseidon Settlement Funds by payment of Criminal / Regulatory Defence Costs, payments of USD will be converted to CAD at the time an Insurer pays the Criminal / Regulatory Defence Costs.

5.10 Settlement Recognition Orders Required

Forthwith upon obtaining the Approval and Settlement Order and U.S. Approval Order, the Class Representatives and, where appropriate, the U.S. Class Representative, or their nominees, shall seek a Settlement Recognition Order in each of the Competent Courts in Ontario and Quebec and, in the United States, the United States Bankruptcy Court and/or the Competent Court, as the case may be, with respect to each Class Action commenced in Ontario, Quebec, and the United States. The Class Representatives and the U.S. Class Representative, or their nominees, shall make their commercially reasonable best efforts to obtain the Settlement Recognition Orders.

ARTICLE 6

CONDITIONS PRECEDENT AND IMPLEMENTATION

6.1 Conditions Precedent to Implementation of Plan

The implementation of this Plan shall be conditional upon the fulfillment of the following conditions on or before the Plan Implementation Date:

- (a) Approval of this Plan

The Plan shall have been approved by the required majority of Affected Creditors.

- (b) Granting of the Approval and Settlement Order

The Approval and Settlement Order shall have been granted, including the granting by the CCAA Court of its approval of the compromises, releases and injunctions contained in and effected by this Plan, as well as the approval of the CCAA Court of the Settlement Agreement.

- (c) Granting of the U.S. Approval Order

The U.S. Approval Order shall have been granted by the United States Bankruptcy Court, recognizing and enforcing the Approval and Settlement Order.

(d) Granting of the Settlement Recognition Orders

The Settlement Recognition Orders shall have been granted by the Competent Courts in Ontario, Quebec, and in the United States.

(e) Granting of the Alberta Dismissal Orders

The Alberta Dismissal Orders shall have been granted by the Competent Court in Alberta.

(f) Expiry of Appeal Periods

The Approval Orders shall have become Final Orders.

(g) Contributions

The Poseidon Settlement Funds and the Class Settlement Funds shall have been paid to the Monitor in accordance with the terms of the Plan and the Settlement Agreement respectively. This condition may be waived expressly and in writing by the Monitor with respect to the payment of the Poseidon Settlement Funds and/or by the Class Representatives with respect to the payment of the Class Settlement Funds.

(h) Insurer Release

The Monitor receiving court approval to execute a release in favour of the insurers, in the form attached to the Plan as Schedule "E", and the amending agreement in respect of that release, attached to the Plan as Schedule "F".

6.2 Monitor's Certificate

Within thirty (30) days after the satisfaction of the conditions set out in Article 6.1 hereof, the Monitor shall file with the CCAA Court in the CCAA Proceeding and the United States Bankruptcy Court a certificate that states that all conditions precedent set out in Article 6.1 of this Plan have been satisfied and that the Plan Implementation Date has occurred.

ARTICLE 7 GENERAL

7.1 Binding Effect

At the Effective Time on the Plan Implementation Date:

- (a) the Plan shall be final, binding and effective in accordance with its terms for all purposes on all Persons named in, referred to in, or subject to the Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;

- (b) each Person named or referred to in, or subject to, the Plan will be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety, shall be deemed to have executed and delivered all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety, and shall be forever bound by the terms of the Plan; and
- (c) the Monitor shall be entitled to make all distributions and conveyances in accordance with this Plan.

7.2 Deeming Provisions

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

7.3 No Admission of Liability

Neither the Plan, nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability by the Released Parties, or as a concession or admission by the Released Parties of the truthfulness or merit of any claim or allegation asserted in the Class Actions, the Monitor Action, the KPMG Claim, the Underwriter Claim, or the Senior Secured Creditor Action. Neither the Plan, nor anything contained herein, shall be used or construed as an admission by the Released Parties of any fault, omission, liability or wrongdoing whatsoever. Any and all liability or wrongdoing is expressly denied.

7.4 Agreement not Evidence

Except as required to defend against the assertion of a Released Claim and to enforce the terms of the Plan, neither the Plan, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Plan shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, quasi-criminal, regulatory or administrative action or proceeding.

7.5 Plan Amendment

Poseidon reserves the right, at any time prior to the Plan Implementation Date, to amend, modify and/or supplement this Plan, provided that:

- (a) any such amendment, modification or supplement must be contained in a written document that is filed with the CCAA Court, and must be discussed in advance with, and not objected to by, the Released Parties, the Senior Secured Creditors and the Class Representatives and, if made following the Meeting, communicated to such of the creditors and in such manner, if any, as may be ordered by the CCAA Court;
- (b) any amendment, modification or supplement may be made unilaterally by the Monitor, on behalf of Poseidon following the Approval Orders, provided that it concerns a matter which, in the opinion of the Monitor, acting reasonably, is of an administrative nature required to better give effect to the implementation of this Plan and to the Approval Orders and is not adverse in any way to the Senior Secured Creditors, the Released Parties or the Class Members; and

- (c) any supplementary plan or plans of compromise or arrangement filed with the CCAA Court by Poseidon and, if required by this Article 7.6, approved by the CCAA Court shall, for all purposes, be and be deemed to be a part of and incorporated in this Plan.

7.6 Rights of Termination

The Plan shall terminate if:

- (a) the Approval and Settlement Order, the Alberta Dismissal Orders or the U.S. Approval Order are not granted and no further rights of appeal exist;
- (b) the Approval and Settlement Order, the Alberta Dismissal Orders and the U.S. Approval Order are granted, overturned on appeal, and no further rights of appeal exist;
- (c) any of the Settlement Recognition Orders are not granted and no further rights of appeal exist;
- (d) any of the Settlement Recognition Orders are granted, overturned on appeal, and no further rights of appeal exist; or
- (e) the Plan is terminated by for any reason by Final Order of the CCAA Court.

If there are any disputes about the termination of the Plan, the dispute shall be determined by the CCAA Court on notice to the Settling Parties.

7.7 Impact of Non-Consummation, Non-Approval and/or Termination

If the conditions precedent set out in Article 6.1 are not met, or if the Settlement Agreement or the Plan terminates or is terminated in accordance with its terms, then:

- (a) the Plan and the Settlement Agreement shall be null and void in all respects (subject to any survival provisions);
- (b) any settlement or compromise embodied in the Plan, or the Settlement Agreement, and any document or agreement executed pursuant to the Plan or Settlement Agreement shall be deemed null and void;
- (c) nothing contained in the Plan or the Settlement Agreement, and no act taken in preparation of the consummation of the Plan or the Settlement Agreement, shall:
 - (i) constitute or be deemed to constitute a waiver or release of any Claims or any defences thereto, by or against any of the Released Parties or any other Person;
 - (ii) prejudice in any manner the rights of any of the creditors, the Released Parties or any other Person; or
 - (iii) constitute an admission of any sort by any of the creditors, the Released Parties or any other Person; and

- (d) the Settling Parties and any other Person affected by the Plan or the Settlement Agreement will be restored to their respective positions prior to the execution of the Agreement;
- (e) [Intentionally deleted]
- (f) [Intentionally deleted]
- (g) subject to any survival provisions herein, the Agreement will have no further force and effect and no effect on the rights of the Settling Parties or any other Person affected by the Plan or the Settlement Agreement;
- (h) [Intentionally deleted]
- (i) the Poseidon Settlement Funds and the Class Settlement Funds will be returned to the payor(s) of such funds, with interest and without deduction or holdback, within 30 days after the date upon which the triggering event for repayment occurs. Any taxes payable on any interest that accrues in relation to the Poseidon Settlement Funds and Class Settlement Funds shall be payable by the recipient(s) of any such interest earned;
- (j) neither the Settlement Agreement nor the Plan will be introduced into evidence or otherwise referred to in any litigation or proceeding against the Released Parties;
- (k) the provisions of this Article, and Articles 1.1, 1.2, 7.3, 7.4, 7.8, 7.9, 7.10, 7.11, 7.13, 7.14, 7.15, 7.16 and 7.17, and the recitals and schedules applicable thereto shall survive termination and shall continue in full force and effect;
- (l) Poseidon and/or the Monitor or Class Counsel, as applicable, shall, within 30 days after the date upon which the triggering event for repayment occurs, apply to the CCAA Court and the Competent Courts, as necessary, for orders:
 - (i) declaring the Plan and the Settlement Agreement null and void and of no force or effect except for the provisions of those Articles and sections that are expressly specified as continuing in force; and
 - (ii) setting aside, *nunc pro tunc*, all prior orders or judgments entered in accordance with the terms of the Plan and/or the Settlement Agreement;

but the obligation to apply to the CCAA Court and the Competent Courts for such orders will only be required if, for example, the Plan has been approved, the Settlement Agreement has been executed, an order or judgment has been entered into, or other prerequisite has occurred such that there is utility in applying for the above-noted orders.

7.8 Paramourncy

From and after the Plan Implementation Date, any conflict between: (a) this Plan; and (b) any information summary in respect of this Plan, or the covenants, warranties, representations; terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, indenture, loan agreement, commitment letter, document or agreement, written or oral, and any and all amendments and supplements thereto existing between Poseidon and any creditor, Released Party or other Person as

at the Plan Implementation Date, will be deemed to be governed by the terms, conditions and provisions of this Plan and the Approval Orders, which shall take precedence and priority.

7.9 Responsibilities of the Monitor

The Monitor is acting in its capacity as Monitor in the CCAA Proceeding, and the Monitor will not be personally responsible or liable for any obligations of Poseidon hereunder. The Monitor will have only those powers granted to it by this Plan, by the CCAA and by any Order of the CCAA Court in the CCAA Proceeding, including the Initial Order.

7.10 Notices

Any notice or other communication to be delivered hereunder must be in writing and reference the Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail, facsimile or email addressed to the respective parties as follows:

(a) If to Poseidon:

Bennett Jones LLP
4500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4K7

Attention: Mr. Ken Lenz, Q.C.
Fax: 403-265-7219
Email: lenzk@bennettjones.com

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

(b) If to the Monitor:

PricewaterhouseCoopers Inc.
Suite 3100, 111 – 5th Avenue S.W.
Calgary, Alberta T2P 5L3

Attention: Mr. Clinton Roberts
Fax: 403-781-1825
Email: clinton.l.roberts@ca.pwc.com

with a copy by email or fax (which shall not be deemed notice) to:

Attention: Mr. Ken Lenz, Q.C.
Fax: 403-265-7219
Email: lenzk@bennettjones.com

(c) If to the Class Representatives:

Paliare Roland Rosenberg Rothstein LLP
35th Floor, 155 Wellington Street W.
Toronto, Ontario M5V 3H1

Attention: Mr. Max Starnino
Fax: 416-646-4301
Email: max.starnino@paliareroland.com

(d) If to the Senior Secured Creditors:

Dentons Canada LLP
15th Floor, 850 2nd St SW
Calgary AB T2P 0R8

Attention: Mr. David Mann
Fax: 403-268-3100
Email: david.mann@dentons.com

and

Rose LLP
810-333 5 Avenue SW
Calgary AB T2P 3B6

Attention: Mr. Matthew Lindsay
Fax: 403-776-0601
Email: matt.lindsay@rosellp.com

(e) If to the U.S. Class Representative:

The Rosen Law Firm
275 Madison Avenue, 34th Floor
New York, NY 10016

Attention: Mr. Jonathan Horne
Fax: 212-202-3827
Email: jhorne@rosenlegal.com

(f) If to Matthew MacKenzie:

Burnet, Duckworth & Palmer LLP
525 – 8TH Avenue S.W., Suite 2400
Calgary, AB T2P 1G1

Attention: Mr. Daniel J. McDonald, Q.C.
Fax: 403-260-0332
Email: dim@bdplaw.com

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

(g) If to Lyle Michaluk:

Peacock Linder Halt & Mack LLP
400 3rd Avenue S.W., Suite 4050
Calgary, AB T2P 4H2

Attention: Mr. J. Patrick Peacock, Q.C.
Fax: 403-296-2299
Email: jppeacock@plhlaw.ca

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

(h) If to Harley Winger:

Peacock Linder Halt & Mack LLP
400 3rd Avenue S.W., Suite 4050
Calgary, AB T2P 4H2

Attention: Mr. Perry R. Mack, Q.C.
Fax: 403-296-2299
Email: pmack@plhlaw.ca

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

(i) If to Scott Dawson:

Parlee McLaws LLP
3300 TD Canada Trust Tower
421-7 Avenue S.W.
Calgary, AB T2P 4K9

Attention: Mr. Gregory D.M. Stirling, Q.C.
Fax: 403-767-8874
Email: gstirling@parlee.com

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

(j) If to Clifford Wiebe:

Scott Venturo LLP
200 Barclay Parade S.W.
Calgary, AB T2P 4R5

Attention: Mr. Domenic Venturo
Fax: 403-265-4632
Email: d.venturo@scottventuro.com

(k) If to Joseph Kostelecky:

Code Hunter LLP
440 2nd Avenue S.W., Suite 850
Calgary, AB T2P 5E9

Attention: Messrs. Eric Groody and Robert Moyse
Fax: 403-261-2054
Email: eric.groody@codehunterllp.com and robert.moyse@codehunterllp.com

(l) If to David Belcher:

Brownlee LLP
2200 Commerce Place
10155 – 102 Street
Edmonton, AB T5J 4G8

Attention: Mr. Havelock B. Madill, Q.C.

Fax: 780-424-3254
Email: hmadill@brownleelaw.com

- (m) If to Lyle D. Michaluk, Matt C. MacKenzie, A. Scott Dawson, Clifford L. Wiebe, Harley L. Winger, Dean Jensen, James McKee and Neil Richardson in their capacity as Defendants in the U.S. Action:

Kaufman Borgeest & Ryan LLP
200 Summit Lake Drive
Valhalla, New York 10595

Attention: Mr. Paul T. Curley
Fax: 914-449-1100
Email: pcurley@kbrlaw.com

- (n) If to Sonja Kuehnle and Doug Robinson:

Fasken Martineau DuMoulin LLP
350 7th Avenue S.W., Suite 3400
Calgary, AB T2P 3N9

Attention: Mr. Robert D. Maxwell
Fax: 403-261-5351
Email: rmaxwell@fasken.com

- (o) If to Peyto Exploration and Development Corp. or New Open Range

Goodmans LLP
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Attention: Mr. David Conklin
Fax: 416-979-1234
Email: dconklin@goodmans.ca

- (p) If to Kenneth Faircloth and Wazir (Mike) Seth:

Ormston List Frawley LLP
6 Adelaide Street East, Suite 500
Toronto, ON M5C 1H6

Attention: John P. Ormston
Fax: 416-594-9690
Email: jormston@olflaw.com

- (q) If to KPMG:

McLennan Ross LLP
1000 First Canadian Centre
350 – 7th Avenue, SW

Calgary, AB T2P 3N9

Attention: Graham McLennan, Q.C.
Fax : 403-543-9150
Email : gmlennan@mross.com

(r) If to the Underwriters:

Lenczner Slaght Royce Smith Griffin LLP
130 Adelaide St W., Suite 2600
Toronto, ON M5H 3P5

Attention: Shara Roy
Fax: 416-865-3973
Email: sroy@litigate.com

or to such other address as any party may from time to time notify the others in accordance with this Article. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or emailing, provided that such day in either event is a Business Day and the communication is so delivered, faxed or emailed before 5:00 p.m. (Calgary time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

7.11 Further Assurances

- (a) The Settling Parties all covenant and agree to:
- (i) pursue as promptly as practicable Court approval of the Plan and the granting of the Approval Orders in an expedited and commercially reasonable fashion; and
 - (ii) execute any and all documents and perform any and all acts required by the Plan and the Settlement Agreement, including any consent, approval or waiver requested by the Settling Parties, acting reasonably.
- (b) The Settling Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the settlement and transactions contemplated by this Plan and the Settlement Agreement, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purpose of this Plan and the Settlement Agreement and carry out their provisions.

7.12 Currency

Unless otherwise specified, all references in this Plan are to Canadian dollars.

7.13 Successors and Assigns

The Plan shall be binding upon and shall ensure to the benefit of the heirs, administrators, executors, legal personal representatives; successors and assigns of any Person named or referred to in the Plan.

7.14 Entire Agreement

The Settlement Agreement and this Plan together constitute the entire agreement between the Settling Parties with respect to the matter herein. The execution of the Plan has not been induced by, nor do any of the Settling Parties rely upon or regard as material, any representations, promises, agreements or statements whatsoever not incorporated herein and made a part hereof.

7.15 Governing Law

The Plan shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the jurisdiction of the CCAA Court.

7.16 Expenses

Each of the Settling Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the Plan and its implementation.

7.17 Counterparts

The Plan may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement. Delivery of an executed original counterpart of a signature page of the Plan by facsimile or electronic transmission shall be as effective as delivery of a manually executed original counterpart of the Plan.

7.18 Schedules

The following Schedules to the Plan are incorporated by reference into the Plan and form part of the Plan:

- Schedule "A" List of Released Parties
- Schedule "B" Settlement Agreement
- Schedule "C" Draft Approval and Settlement Order
- Schedule "D" [Intentionally deleted]
- Schedule "E" Insurer Release
- Schedule "F" Amending Agreement re Insurer Release

SCHEDULE "A"

RELEASED PARTIES

1. All of the defendants and third (or subsequent) parties named in, and all other Persons who could have been or could in the future be named in, the Class Actions, the Monitor Action, the Senior Secured Creditor Action, the KPMG Claim, or the Underwriter Claim including, jointly and severally, individually and collectively:
 - New Open Range
 - Peyto Exploration and Development Corp.
 - the D&Os
 - the Employees
 - the Underwriters
 - KPMG
 - Poseidon
2. All of the past, present and future, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, predecessors, successors, assigns, purchasers, directors, officers, employees, agents, servants, consultants, representatives, attorneys, lawyers, in-house counsel, outside counsel, and administrators of:
 - New Open Range
 - Peyto Exploration and Development Corp.
 - the Underwriters
 - KPMG
 - Poseidon
3. All of the past, present and future insurers, Employees and D&Os (to the extent not otherwise included in #1 above), agents, servants, consultants, representatives, attorneys, lawyers, in-house counsel, outside counsel, and administrators of Poseidon.
4. All of the past, present and future, direct and indirect agents, trustees, servants, consultants, representatives, attorneys, lawyers, heirs, executors, administrators, guardians, estate trustees, relatives, insurers, assigns, as the case may be, of the Persons identified or referred to directly or indirectly in paragraphs 1, 2 and 3 above.
5. All Persons, partnerships, joint ventures, or corporations with whom any of the Released Parties in paragraph 1-4 above have been, or are now, affiliated.
6. The Insurers.

SCHEDULE "B"

SETTLEMENT AGREEMENT

THIS AGREEMENT AMONG:

MATTHEW MACKENZIE, CLIFFORD WIEBE, JOSEPH KOSTELECKY, LYLE MICHALUK, SCOTT DAWSON, DEAN JENSEN, JIM MCKEE, NEIL RICHARDSON, DAVID BELCHER, SONJA KUEHNLE, HARLEY WINGER, DOUG ROBINSON, KENNETH FAIRCLOTH, and WAZIR (MIKE) SETH

-and-

FRANZ AUER, MOHAMED RAMZY, THOMAS JAMES and MARIAN LEWIS personally and as representatives of Class Members (as defined in the Representation Order issued by the CCAA Court dated May 30, 2013 as amended *nunc pro tunc* on December 17, 2014 and on September 26, 2016) on behalf of such Class Members

-and-

GERALD KOLAR personally and as representative of all putative class members in the putative class proceedings in the U.S. District Court for the Southern District of New York (Case Nos. 13-CV-1213(DLC) and 13-cv-1412(DLC))

-and-

THE TORONTO-DOMINION BANK, as agent for itself and HSBC BANK CANADA, THE BANK OF NOVA SCOTIA, and NATIONAL BANK OF CANADA

-and-

PEYTO EXPLORATION AND DEVELOPMENT CORP.

-and-

POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS LIMITED PARTNERSHIP and POSEIDON CONCEPTS INC., by their court appointed Monitor, PRICEWATERHOUSECOOPERS INC.

-and-

NATIONAL BANK FINANCIAL INC., BMO NESBITT BURNS INC., CIBC WORLD MARKETS INC., HAYWOOD SECURITIES INC., PETERS & CO. LIMITED, CANACCORD GENUITY CORP., CORMARK SECURITIES INC., DUNDEE SECURITIES LTD. and FIRST ENERGY CAPITAL CORP.

-and-

KPMG LLP

Dated: April 6, 2018

WHEREAS the Class, the Senior Secured Creditors and the Monitor are all stakeholders in the proceeding under *the Companies' Creditors Arrangement Act* ("**CCAA**") in the Alberta Court of Queen's Bench File No. 1301-04364 ("**CCAA Proceeding**") and have asserted various claims in respect of Poseidon;

AND WHEREAS through a court sponsored mediation process and otherwise the Settling Parties have negotiated a settlement that will resolve a number of lawsuits and claims, and bring value to the estate of Poseidon;

AND WHEREAS the Settling Defendants deny liability in respect of the claims alleged in the Class Actions, the Monitor Action and the Senior Secured Creditor Action and believe that they have good and reasonable defences to the Class Actions, the Monitor Action and the Senior Secured Creditor Action;

AND WHEREAS the Settling Defendants assert that they would vigorously defend the Class Actions, the Monitor Action and the Senior Secured Creditor Action if the Class Actions, the Monitor Action and the Senior Secured Creditor Action are pursued against them;

AND WHEREAS the Settling Defendants do not admit any of the conduct alleged in the Class Actions, the Monitor Action and the Senior Secured Creditor Action and expressly deny any and all allegations of wrongdoing;

AND WHEREAS it is essential to the Released Parties that by virtue of this Plan and the Settlement Agreement, all Claims and possible Claims related in any way to Poseidon be fully and finally resolved so as to bring finality to their potential liability, and without such finality, the financial contributions under this Plan and the Settlement Agreement would not have been made, and the Parties agree that this Plan and the Settlement Agreement together provide finality to the Released Parties;

AND WHEREAS the settlement consists of the agreement set out in this Settlement Agreement and the agreement set out in the Plan in the CCAA Proceeding, and the settlement is contingent on both the Plan of Compromise and the Settlement Agreement being approved by the CCAA Court, and given full recognition and effect by the United States Bankruptcy Court and the Competent Courts;

AND WHEREAS by the Representation Order, the CCAA Court appointed the Class Representatives to formally represent, in the CCAA Proceeding, the interests of the persons comprising the proposed classes in the Class Actions, and authorized the Class Representatives to settle or compromise Claims on behalf of all Class Members, and to take all steps and to do all acts necessary or desirable to carry out the terms of that order;

NOW THEREFORE IN THE CONSIDERATION OF THE COVENANTS AND AGREEMENTS EXCHANGED AMONG THE SETTLING PARTIES AND THE SUM OF TEN DOLLARS (CAD\$10.00), THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE SETTLING PARTIES HEREBY AGREE AS FOLLOWS:

1. Definitions and Interpretation

(a) Definitions

Capitalized terms used in this Settlement Agreement shall have the meaning ascribed to such terms in the Plan, unless otherwise defined in this Settlement Agreement, including the following:

“Administrator” means the third-party firm appointed by Class Counsel, and approved by the Court, to administer the distribution of funds to or for the benefit of the Class, including any proceeds of the Settlement Agreement, and any employees of such firm;

“Administration Expenses” means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the settlement including the costs of translating, publishing and delivering notices and the fees, disbursements and taxes paid to the Administrator, the person appointed to receive and report on objections to the settlement to the CCAA Court, and any other expenses approved by the CCAA Court which shall all be paid from the Class Settlement Funds if, and only if, Plan Implementation Date has occurred. For greater certainty, (i) Administration Expenses do not include Class Counsel Fees; and (ii) if the Plan Implementation Date does not occur, then no fees, disbursements, expenses, costs, taxes or other amounts shall be paid from the Class Settlement Funds.

“Escrow Account” means an interest bearing trust account with one of the Canadian Schedule 1 banks or a liquid money market account or equivalent security with a rating equivalent to, or better than, that of an interest bearing account in a Canadian Schedule 1 bank in Ontario;

“Plan” means the Amended Plan of Compromise and Arrangement filed by Poseidon in the CCAA Proceeding, as may be amended, modified or supplemented from time to time in accordance with the terms thereof;

“Settlement Agreement” means this Agreement; and

“Shares” means the common shares of Poseidon.

(b) Interpretation

This Settlement Agreement shall be interpreted applying the following rules of interpretation:

- (i) any reference in the Settlement Agreement to an order, agreement, contract, instrument, release, exhibit or other document means such order, agreement, contract, instrument, release, exhibit or other document as it may have been or may be validly amended, modified or supplemented;
- (ii) the division of the Settlement Agreement into "sections" is for convenience of reference only and it does not affect the construction or interpretation of the Settlement Agreement, nor are the descriptive headings of the "sections" intended as complete or accurate descriptions of the content thereof;

- (iii) unless the context otherwise requires, words importing the singular shall include the plural and vice versa, and words importing any gender shall include all genders;
- (iv) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (v) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Calgary, Alberta and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Calgary time) on such Business Day;
- (vi) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;
- (vii) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation; and
- (viii) references to a specified "article" or "section" shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article of the Plan or a section of the Settlement Agreement, whereas the terms "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to the Settlement Agreement and not to any particular section or other portion of the Settlement Agreement and include any documents supplemental hereto.

2. MOTIONS FOR SETTLEMENT APPROVAL

- (a) The Settling Parties shall use their best efforts to implement the Settlement Agreement and, among other things, to secure the prompt, complete and final dismissal, with prejudice and without costs, of the Class Actions, the Senior Secured Creditor Action, the Monitor Action and any related Claims as against the Settling Defendants pursuant to the Approval Orders.
- (b) The Settling Parties shall consent to all orders, including the Approval Orders, required to implement the Settlement Agreement provided that they are consistent with the terms of this Settlement Agreement.

3. PAYMENTS

(a) Payments

- (i) The Insurers shall pay the Initial Instalment of the Poseidon Settlement Funds pursuant to the Plan, and the Initial Instalment of the Class Settlement Funds pursuant to this Settlement Agreement, by wire transfer of immediately available funds to the Monitor, in trust, within thirty (30) days after the granting of the Approval and Settlement Order. It is acknowledged by the Parties hereto that CAD \$29,000,000 has already been paid by the Insurers and that such moneys constitute a partial payment of the aggregate amount payable in respect of the Initial Instalment of the Poseidon Settlement Funds and the Initial Instalment of the Class Settlement Funds. The Insurers shall pay the Final Instalment of the Poseidon Settlement Funds pursuant to the Plan (if and to the extent remaining as provided for and defined in Article 1.1 of the Plan) and the Final Instalment of the Class Settlement Funds pursuant to the Settlement Agreement (if and to the extent remaining as provided for and defined in Article 1.1 of the Plan), to the Monitor in accordance with such definition. The Settling Defendants shall have no personal liability for the payment of the Poseidon Settlement Funds and the Class Settlement Funds (except for the Additional Proceeds, which are the sole responsibility of the contributors to same). Should the Settlement Agreement be terminated in accordance with its terms, such monies shall be returned, with interest accrued, if any, and without deduction or holdback, forthwith to the Insurers. Any taxes payable on any interest that accrues in relation to the Poseidon Settlement Funds and the Class Settlement Funds shall be payable by the recipient(s) of any such interest earned.
- (ii) The Additional Proceeds shall be paid by KPMG, the Underwriters and Peyto under the Settlement Agreement in amounts agreed upon separately and confidentially as between them. Each such contributor shall only be responsible for their individual contribution to the aggregate amount payable. Payment shall be made by wire transfer of immediately available funds to the Monitor, in trust, within thirty (30) days after the granting of the Approval and Settlement Order. If payment of the total Additional Proceeds is not made in accordance with this provision, the proportionate contribution of the defaulting party shall be disclosed to the Class Representatives, who will have thirty (30) days from such disclosure to elect whether to terminate this Settlement Agreement or pursue the defaulting party for such non-payment. Should this Settlement Agreement be terminated in accordance with its terms, such monies shall be returned, with interest accrued, if any, and without deduction or holdback, forthwith to the contributing parties. Any taxes payable on any interest that accrues in relation to the Additional Proceeds shall be payable by the recipient(s) of any such interest earned.

(b) Use of the Class Settlement Funds

The Class Settlement Funds shall be held in trust by the Monitor in an Escrow Account and, after the Plan Implementation Date, distributed to Class Counsel, in trust, to be distributed in accordance with further order of the CCAA Court, having regard to, among other things, the following priority claims:

- (i) Class Counsel Fees and reimbursement of notice expenses;
- (ii) any fees payable to Claims Funding Australia Pty Ltd., in its capacity as the litigation funder, pursuant to the Amended and Restated Litigation Funding Agreement made as of November 2015, approved by the Alberta Court Order dated August 8, 2016 and the Ontario Court Order dated November 30, 2016, the particulars of which shall be determined by further order of the CCAA Court;
- (iii) Administration Expenses; and
- (iv) taxes required by law to be paid to any governmental authority.

Notwithstanding the above, the following persons and entities shall not be entitled to any allocation or distribution of the Class Settlement Funds:

- (i) The following entities and their past and present directors, officers, senior employees, partners, subsidiaries, affiliates, legal representatives, heirs, predecessors, successors and assigns:

Poseidon Concepts Corp; Poseidon Concepts Ltd.; Poseidon Concepts Limited Partnership; Poseidon Concepts Inc.; Open Range Energy Corp.; Peyto Exploration & Development Corp.; National Bank of Canada; National Bank Financial Inc.; The Toronto Dominion Bank; The Bank of Nova Scotia; HSBC Bank of Canada; KPMG LLP; BMO Nesbitt Burns Inc.; CIBC World Markets Inc.; Haywood Securities Inc.; Peters & Co. Limited; Canaccord Genuity Corp.; Cormark Securities Inc.; Dundee Securities Ltd.; and FirstEnergy Capital Corp.; and

- (ii) The following individuals and any individual who is a member of their immediate families:

Matthew MacKenzie; Clifford Wiebe; Joseph Kostelecky; Lyle Michaluk; Scott Dawson; Dean Jensen; Jim McKee; Neil Richardson; David Belcher; Sonja Kuehnle; Harley Winger; Doug Robinson; Kenneth Faircloth; and Wazir (Mike) Seth.

(c) **Use of the Poseidon Settlement Funds**

The Poseidon Settlement Funds shall be held in trust by the Monitor and, forthwith after the Plan Implementation Date, distributed by the Monitor as follows:

- (i) first in favour of the Monitor's charges, costs and expenses; and
- (ii) second, in favour of the Priority Claims.

(d) **No Further Contributions, Liability or Exposure**

Notwithstanding any other provision of the Plan or the Settlement Agreement, and without in any way restricting, limiting or derogating from the releases provided herein and in the Plan, or in any way restricting, limiting or derogating from any other protection provided for herein and in the Plan to the Released Parties, under no circumstances shall the Released Parties be required to or be called upon to make any further financial contribution or payment in respect of any Claim including the Class Actions,

Monitor Action, KPMG Claim, Underwriter Claim, or Senior Secured Creditor Action, nor shall the Released Parties have any liability whatsoever for or have any exposure whatsoever to anything directly or indirectly, related to, arising out of, based on, or connected with any Claim including the Class Actions, Monitor Action, KPMG Claim, Underwriter Claim, or Senior Secured Creditor Action, over and above the payment of the Poseidon Settlement Funds and the Class Settlement Funds (excluding the Additional Proceeds), which payment is solely the responsibility of the Insurers, and the Additional Proceeds, which payment is solely the responsibility of the parties contributing to same. Costs associated with any notice to Claimants required in connection with the Plan or the Settlement Agreement shall not be paid by the Released Parties. The Poseidon Settlement Funds and the Class Settlement Funds are the full monetary contribution and payment of any kind to be made by the Released Parties, and are inclusive of all costs, interest, legal fees, taxes (inclusive of any GST, HST, or any other taxes that may be payable in respect of the Plan or the Settlement Agreement), costs associated with any distributions, further litigation, administration or otherwise.

4. RELEASES AND BAR ORDER / INJUNCTIONS

(a) Release

Subject to section 4(b) of this Settlement Agreement, the Approval Orders shall provide that the Released Parties are fully, finally, irrevocably, absolutely, and forever released, remised and discharged from any and all Claims as of the Effective Time on the Plan Implementation Date including the following Claims:

- (i) all Claims of the Class against the Released Parties;
- (ii) all Claims of the Senior Secured Creditors against the Released Parties;
- (iii) all Claims of KPMG against the Released Parties;
- (iv) all Claims of the Underwriters against the Released Parties;
- (v) all Claims of Poseidon against the Released Parties;
- (vi) all Claims of the Monitor against the Released Parties and the Senior Secured Creditors;
- (vii) all Claims of the Released Parties against Poseidon, the Class Representatives, the Class Members, the Senior Secured Creditors, and any other Released Parties; and
- (viii) [Intentionally deleted]
- (ix) all Claims of any other Person against the Released Parties.

The foregoing shall apply to Claims contemplated by s. 5.1(2) and 19(2) of the CCAA but shall not apply to the enforcement of any obligations under the Settlement Agreement.

(b) Claims Not Released

Nothing in section 4(a) of this Settlement Agreement shall waive, compromise, release, discharge, cancel, bar or otherwise affect any of the following:

- (i) the obligations of any Person in respect of the Plan, the Approval Orders, and the Settlement Agreement, including the obligation to pay the Additional Proceeds and the obligations of the Insurers to pay the Class Settlement Funds (excluding the Additional Proceeds) and the Poseidon Settlement Funds;
- (ii) Unaffected Claims;
- (iii) [Intentionally deleted]
- (iv) [Intentionally deleted]
- (v) [Intentionally deleted]
- (vi) [Intentionally deleted]
- (vii) [Intentionally deleted]
- (viii) [Intentionally deleted]
- (ix) the rights of the Insureds (excluding Poseidon, whose rights against the Insurers are fully released under s. 4(a) above) against the Insurers under the Insurance Policies except as affected by the declarations set out in section 4(h) below; and
- (x) the rights of any Person, including the Senior Secured Creditors, in respect of matters completely unrelated to the Claims, including any rights against the Released Parties that are in respect of matters completely unrelated to the Claims.

(c) **Bar Order / Injunctions**

Subject to section 4(d) of this Settlement Agreement, the Approval Orders shall provide that all Persons (regardless of whether or not such Persons are creditors or Claimants), including the Class, Settling Defendants, Poseidon, the Released Parties, KPMG and the Underwriters, shall be permanently and forever barred, estopped, stayed and enjoined, as of the Effective Time on the Plan Implementation Date, from:

- (i) commencing, conducting, pursuing, instituting, intervening in, asserting, advancing, or continuing in any manner, directly or indirectly, any Claim or other related proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties;
- (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree, Damages, or order against the Released Parties or their property;
- (iii) making, asserting, pursuing, instituting, intervening in, advancing, commencing, conducting or continuing in any manner, directly or indirectly, any Claim, including for contribution or indemnity or other relief, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes or asserts, or might

reasonably be expected to make or assert, such a Claim, in any manner or forum, against one or more of the Released Parties;

- (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or
- (v) taking any actions to interfere with the implementation or consummation of the Settlement Agreement;

The foregoing shall apply to Claims contemplated by s. 5.1(2) and 19(2) of the CCAA but shall not apply to the enforcement of any obligations under the Settlement Agreement.

(d) **Saving Provision re section 4(c)**

The Approval Orders shall not bar, estop, stay and enjoin or otherwise affect any of the following:

- (i) the obligations of any Person in respect of the Plan, the Approval Orders, and the Settlement Agreement;
 - (ii) Unaffected Claims;
 - (iii) [Intentionally deleted]
 - (iv) [Intentionally deleted]
 - (v) [Intentionally deleted]
 - (vi) the rights of the Insureds (excluding Poseidon, whose rights against the Insurers are fully barred, estopped, stayed and enjoined under section 4(c) above) against the Insurers under the Insurance Policies except as affected by the declarations set out in section 4(h) below; and
 - (vii) the rights of any Person, including the Senior Secured Creditors, in respect of matters completely unrelated to the Claims, including any rights against the Released Parties that are in respect of matters completely unrelated to the Claims.
- (e) [Intentionally deleted]
- (f) **Acknowledgement that Knowledge not Complete**

For greater certainty, the Settling Parties acknowledge that they may subsequently discover facts adding to those they now know, but nonetheless agree that on the Effective Date, all of the protections provided for herein (including the protections in section 4 of this Settlement Agreement) for the Settling Parties and the Released Parties shall be definitive and permanent irrespective of whether any subsequently discovered facts were unknown, unsuspected, or not disclosed.

By means of the Settlement, the Settling Parties waive any right they might have under the law, common law, civil law, in equity or otherwise, to disregard or avoid the protections provided for herein (including the protections in section 4 of this Settlement Agreement) and expressly relinquish any such right and each Class Member shall be deemed to have waived and relinquished such right. Furthermore, the

Settling Parties agree to this waiver of their own volition, with full knowledge of its consequences and that this waiver was negotiated and constitutes a key element of the Settlement.

- (g) [Intentionally deleted]
- (h) Declarations Regarding Insurance

The Approval Orders shall declare that:

- A. the Contribution:
 - I. does not violate the rights, in respect of the Insurance Policies, of the Class Representatives, the Class, the Monitor, the Senior Secured Creditors, KPMG, the Underwriters, or any other Person who might have a claim against any person or entity potentially covered under the Insurance Policies;
 - II. constitutes covered Loss (as defined in the Insurance Policies);
 - III. reduces the Limits of Liability (as defined in the Insurance Policies) under the Insurance Policies for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action, that the Settling Defendants, or any of them, engaged in conduct that triggered or may have triggered any exclusion, term or condition of the Insurance Policies, or any of them, so as to disentitle them to coverage under the Insurance Policies, or any of them;
 - IV. is without prejudice to any coverage positions or reservations of rights taken by the Insurers in relation to any other matter advised to the Insurers or any other Claim (as defined in the Insurance Policies) made or yet to be made against the Insureds (as defined in the Insurance Policies), provided that neither coverage nor payment in respect of the settlement of the Class Actions, the Monitor Action or the Senior Secured Creditor Action, nor the settlement of the Class Actions, the Monitor Action or the Senior Secured Creditor Action, will be voided or impacted by any such coverage position or reservation of rights; and
 - V. fully and finally releases the Insurers from any further obligation, and from any and all claims against them under or in relation to the Insurance Policies, in respect of the portion of the Limits of Liability that were expended to fund the Contribution;
- B. once the Contribution has been funded, there is no further coverage under the Insurance Policies for Poseidon. For clarity, this declaration is not intended to, and does not, extinguish any remaining coverage under the Insurance Policies for the individual Insureds.
- C. with the exception of payment in the aggregate amount of CAD \$30,000 by the Insurers towards the settlement of regulatory proceedings by the Chartered Professional Accountants of Alberta against Lyle Michaluk, which shall be treated as Criminal / Regulatory Defence Costs, the determination of what constitutes reasonable Defence Costs paid or payable by any of the Insurers for Criminal/Regulatory Defence Costs and

which reduce the amount of the Final Instalment of the Class Settlement Funds and the Final Instalment of the Poseidon Settlement Funds, all such terms as defined in Article 1.1 of the Plan, shall be within the sole purview and discretion of the Insurer paying them in accordance with the applicable litigation guidelines and, except for the individual Insured on whose behalf they are being paid, shall not be subject to review or challenge by any other Person, including but not limited to the Monitor, the Senior Secured Creditors, Class Members or the Class Representatives.

- D. in addition to the reduction of the Limits of Liability under the Policies pursuant to section 4(h)(A).III, the Limits of Liability under the following Policies will be deemed to have been further reduced by the following amounts pursuant to an agreement between the Insurers and the Insureds under the Policies:

Policy Issued by:	Policy	Limits of Liability to be Reduced by:
Encon Group Inc.	DO-409880	\$250,000
Chubb Insurance Company of Canada	8224-5964	\$250,000
Travelers Insurance Company of Canada	75237516	\$250,000
Royal & Sun Alliance Insurance Company of Canada	9500854	\$250,000
Chartis Insurance Company of Canada, now known as AIG Insurance Company of Canada	01-340-62-02	\$2,500,000
Lloyd's Underwriters	ODLA052012-10150	\$0

5. CONDITIONS PRECEDENT

The terms of this Settlement Agreement are conditional upon the fulfillment of the following conditions on or before the Plan Implementation Date:

- (a) **Approval of the Plan**
The Plan in its entirety shall have been approved by the required majority of Affected Creditors.
- (b) **Granting of the Approval and Settlement Order**
The Approval and Settlement Order shall have been granted by the CCAA Court, including the granting by the CCAA Court of its approval of all of the compromises, releases and injunctions contained in and effected by the Plan.
- (c) **Granting of the U.S. Approval Order**
The U.S. Approval Order shall have been granted by the Bankruptcy Court, including the granting by the Bankruptcy Court of its approval of all of the compromises, releases and injunctions contained in and effected by the Plan.
- (d) **Granting of the Settlement Recognition Orders**

The Settlement Recognition Orders shall have been granted by the Competent Courts in Ontario, Quebec, and in the United States.

(e) Granting of the Alberta Dismissal Orders

The Alberta Dismissal Orders shall have been granted by the Court of Queen's Bench of Alberta.

(f) Expiry of Appeal Periods

The Approval Orders shall have become Final Orders.

(g) Insurer Release

The Monitor receiving court approval to execute a release in favour of the insurers, in the form attached to the Plan as Schedule "E" and the amending agreement in respect of that release, attached to the Plan as Schedule "F".

6. EFFECT OF SETTLEMENT

(a) **No Admission of Liability**

Neither this Settlement Agreement, nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability by the Released Parties, or as a concession or admission by the Released Parties of the truthfulness or merit of any claim or allegation asserted in the Class Actions, the Monitor Action, the KPMG Claim, the Underwriters Claim, or the Senior Secured Creditor Action. Neither this Settlement Agreement, nor anything contained herein, shall be used or construed as an admission by the Released Parties of any fault, omission, liability or wrongdoing whatsoever. Any and all liability or wrongdoing is expressly denied.

(b) **Agreement Not Evidence**

Except as required to defend against the assertion of Released Claims and to enforce the terms of this Settlement Agreement, neither this Settlement Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Settlement Agreement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, quasi-criminal, regulatory or administrative action or proceeding.

7. DISMISSAL OF ALL ACTIONS

- (a) Except as otherwise provided in this Settlement Agreement, upon the granting of the Approval and Settlement Order or as soon as reasonably practicable thereafter, all Claims in Alberta including the Class Actions in Alberta, the Monitor Action, and the Senior Secured Creditor Action, and all claims, crossclaims, counterclaims, and third (or subsequent) party claims in, in connection with, or related to, such Claims shall be dismissed, without costs and with prejudice.
- (b) Except as otherwise provided in this Settlement Agreement, upon the approval of the Settlement Recognition Orders or as soon as reasonably practicable thereafter, all Claims outside of Alberta, including the Class Actions in Quebec, the Class Actions in Ontario, the Class Actions in the United States District Court for the Southern District of

New York, and all claims, crossclaims, counterclaims, and third (or subsequent) party claims in, in connection with, or related to, such Claims shall be dismissed, without costs and with prejudice.

- (c) [intentionally deleted]
- (d) [intentionally deleted]
- (e) [intentionally deleted]
- (f) [Intentionally deleted]
- (g) [Intentionally deleted]
- (h) [Intentionally deleted]

8. [Intentionally deleted]

9. **ADMINISTRATION**

(a) **Appointment of the Administrator**

- (i) Class Counsel will, subject to the approval of the CCAA Court, appoint the Administrator to serve until further order of the CCAA Court, to implement the distribution of the Class Settlement Funds as directed by the CCAA Court.
- (ii) The CCAA Court will fix the Administrator's compensation and payment schedule.

(b) **Information and Assistance from the Monitor**

Subject to the Plan Implementation Date having occurred:

- (i) Upon request, the Monitor, Poseidon and/or any successor to Poseidon will authorize and direct TMX Equity Transfer Services or similar provider to deliver a computerized list of the names and addresses of persons who purchased Shares during the period of November 1, 2011 through February 14, 2013 or similar available information in its possession to Class Counsel and the Administrator, as applicable. Upon request, the Monitor will also authorize Broadridge Financial Solutions Inc. to obtain information about Class Members who hold or held beneficial interests in the Shares during the period of November 1, 2011 through February 14, 2013.
- (ii) The Monitor will identify a person to whom Class Counsel and the Administrator may address any requests for information in respect of s. 9(b)(i) of this Settlement Agreement. The Monitor agrees to make reasonable efforts to answer any reasonable inquiry from the Administrator in order to facilitate the administration and implementation of the Settlement Agreement.
- (iii) Class Counsel and/or the Administrator may use the information obtained pursuant to sections 9(b)(i) and (ii) only for the purposes of delivering the notices and administering and implementing the distribution of Class Settlement Funds and other proceeds of

litigation, consequent to this Settlement Agreement or as otherwise ordered by the Court.

- (iv) Any information obtained or created in the administration of this Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of the administration of this Settlement Agreement or as otherwise ordered by the Court.
- (v) If, and only if, the Plan Implementation Date has occurred, any professional fees or other costs associated with this paragraph shall be paid out of the Class Settlement Funds.

(c) **Use of Class Settlement Funds**

Subject to section 3 hereof, Class Counsel will distribute the Class Settlement Funds in accordance with one or more orders of the CCAA Court.

10. CLASS COUNSEL FEES

- (a) Class Counsel shall seek the CCAA Court's approval of Class Counsel Fees to be paid as a first charge on the Class Settlement Funds. Class Counsel are not precluded from making additional applications to the CCAA Court for expenses incurred as a result of implementing the terms of the Settlement Agreement.
- (b) The Settling Defendants acknowledge that they are not parties to the motion concerning the approval of Class Counsel Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Fees and they will not make any submissions to the CCAA Court concerning Class Counsel Fees.
- (c) Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement Agreement or affect or delay the finality of the settlement provided herein.

11. MISCELLANEOUS

(a) **Entire Agreement**

This Settlement Agreement and the Plan together constitute the entire agreement between the Settling Parties with respect to the matter herein. The execution of this Settlement Agreement has not been induced by, nor do any of the Settling Parties rely upon or regard as material, any representations, promises, agreements or statements whatsoever not incorporated herein and made a part hereof.

(b) **Governing Law**

This Settlement Agreement shall be governed by, and will be construed and interpreted in accordance with, the laws of the Province of Alberta and the laws of Canada applicable in the Province of Alberta. The Settling Parties hereby attorn to the jurisdiction of the Court of Queen's Bench in the Province of Alberta, in the CCAA Proceeding, in respect of any dispute arising from this Settlement Agreement except

with respect to disputes concerning solely the U.S. Class Members, in which case the Settling Parties hereby attorn to the jurisdiction of the United States District Court for the Southern District of New York.

(c) **Amendment**

No amendment, supplement, modification or waiver or termination of this Settlement Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the party to be bound thereby.

(d) **Expenses**

Each of the Settling Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with this Settlement Agreement and its implementation.

(e) **Monitor's Capacity**

The Settling Parties acknowledge and agree that the Monitor, acting in its capacity as the Monitor of Poseidon in the CCAA Proceeding, will have no liability in connection with this Settlement Agreement (including in relation to any information or data provided by the Monitor in connection with this Settlement Agreement) whatsoever in its capacity as Monitor, in its personal capacity or otherwise; provided however that the Monitor shall exercise the powers granted to the Monitor under any order of the CCAA Court to perform the Monitor's obligations in respect of this Settlement Agreement and the Monitor shall be bound by the releases provided for in this Agreement and in the Plan at the Effective Time on the Plan Implementation Date.

(f) **Counterparts**

This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement. Delivery of an executed original counterpart of a signature page of this Settlement Agreement by facsimile or electronic transmission shall be as effective as delivery of a manually executed original counterpart of this Settlement Agreement.

(g) **Motions for Directions**

Any one or more of the Settling Parties, Class Counsel or the Administrator may apply to the CCAA Court for directions in respect of any matter in relation to this Settlement Agreement. All motions contemplated by the Settlement Agreement shall be on notice to the Settling Parties.

(h) **Released Parties Have No Responsibility or Liability for Administration**

The Released Parties shall not have any responsibility for, or any liability whatsoever with respect to, the administration or implementation of this Settlement Agreement, including, without limitation, the allocation, processing and payment of claims by the Administrator.

(i) **Negotiated Agreement**

The Settlement Agreement has been the subject of negotiations and many discussions among the Settling Parties. Each of the Settling Parties 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 drafters of the Settlement Agreement shall have no force and effect. The

Settling Parties further agree that the language contained in or not contained in previous drafts of the Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of the Settlement Agreement.

(j) **Acknowledgements**

Each of the Settling Parties hereby represents and warrants that:

- (i) he/she has all requisite corporate power and authority to execute, deliver and perform the Settlement Agreement and has been duly authorized to do so;
- (ii) the Settlement Agreement has been duly and validly executed and delivered by him/her and constitutes legal, valid, and binding obligations;
- (iii) the terms of the Settlement Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel;
- (iv) he, she or its representative fully understands each term of the Settlement Agreement and its effect; and
- (v) he, she or its representative have required and consented that this Settlement Agreement and all related documents be prepared only in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés seulement en Anglais.

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

(k) **Notices**

Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with the Settlement Agreement or any other report or document to be given by any of the Settling Parties to any of the other Settling Parties shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid as follows:

A. If to Poseidon:

Bennett Jones LLP
4500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4K7

Attention: Mr. Ken Lenz, Q.C.
Fax: 403-265-7219
Email: lenzk@bennettjones.com

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW

Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

B. If to the Monitor:

PricewaterhouseCoopers Inc.
Suite 3100, 111 – 5th Avenue S.W.
Calgary, Alberta T2P 5L3

Attention: Mr. Clinton Roberts
Fax: 403-781-1825
Email: clinton.l.roberts@ca.pwc.com

with a copy by email or fax (which shall not be deemed notice) to:

Attention: Mr. Ken Lenz, Q.C.
Fax: 403-265-7219
Email: lenzk@bennettjones.com

C. If to the Class Representatives:

Paliare Roland Rosenberg Rothstein LLP
35th Floor, 155 Wellington Street W.
Toronto, Ontario M5V 3H1

Attention: Mr. Max Starnino
Fax: 416-646-4301
Email: max.starnino@paliareroland.com

D. If to the Senior Secured Creditors:

Dentons Canada LLP
15th Floor, 850 2nd St SW
Calgary AB T2P 0R8

Attention: Mr. David Mann
Fax: 403-268-3100
Email: david.mann@dentons.com

and

Rose LLP
810-333 5 Avenue SW
Calgary AB T2P 3B6

Attention: Mr. Matthew Lindsay
Fax: 403-776-0601
Email: matt.lindsay@rosellp.com

E. If to the Class Members in the U.S. Action:

The Rosen Law Firm
275 Madison Avenue, 34th Floor
New York, NY 10016

Attention: Mr. Jonathan Horne
Fax: 212-202-3827
Email: jhorne@rosenlegal.com

F. If to Matthew MacKenzie:

Burnet, Duckworth & Palmer LLP
525 – 8TH Avenue S.W., Suite 2400
Calgary, AB T2P 1G1

Attention: Mr. Daniel J. McDonald, Q.C.
Fax: 403-260-0332
Email: djm@bdplaw.com

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

G. If to Lyle Michaluk:

Peacock Linder Halt & Mack LLP
400 3rd Avenue S.W., Suite 4050
Calgary, AB T2P 4H2

Attention: Mr. J. Patrick Peacock, Q.C.
Fax: 403-296-2299
Email: jppeacock@plhlaw.ca

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

H. If to Harley Winger:

Peacock Linder Halt & Mack LLP
400 3rd Avenue S.W., Suite 4050

Calgary, AB T2P 4H2

Attention: Mr. Perry R. Mack, Q.C.
Fax: 403-296-2299
Email: pmack@plhlaw.ca

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

I. If to Scott Dawson:

Parlee McLaws LLP
3300 TD Canada Trust Tower
421-7 Avenue S.W.
Calgary, AB T2P 4K9

Attention: Mr. Gregory D.M. Stirling, Q.C.
Fax: 403-767-8874
Email: gstirling@parlee.com

with a copy by email to:

Gowling WLG (Canada) LLP
1600, 421 7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Mr. David Bishop and Mr. Scott Kugler
Email: david.bishop@gowlingwlg.com and scott.kugler@gowlingwlg.com

J. If to Clifford Wiebe:

Scott Venturo LLP
200 Barclay Parade S.W.
Calgary, AB T2P 4R5

Attention: Mr. Domenic Venturo
Fax: 403-265-4632
Email: d.venturo@scottventuro.com

K. If to Joseph Kostelecky:

Code Hunter LLP
440 2nd Avenue S.W., Suite 850

Calgary, AB T2P 5E9

Attention: Messrs. Eric Groody and Robert Moyse
Fax: 403-261-2054
Email: eric.groody@codehunterllp.com and robert.moyse@codehunterllp.com

L. If to David Belcher:

Brownlee LLP
2200 Commerce Place
10155 – 102 Street
Edmonton, AB T5J 4G8

Attention: Mr. Havelock B. Madill, Q.C.
Fax: 780-424-3254
Email: hmadill@brownleelaw.com

M. If to Lyle D. Michaluk, Matt C. MacKenzie, A. Scott Dawson, Clifford L. Wiebe, Harley L. Winger, Dean Jensen, James McKee and Neil Richardson in their capacity as Defendants in the U.S. Action:

Kaufman Borgeest & Ryan LLP
200 Summit Lake Drive
Valhalla, New York 10595

Attention: Mr. Paul T. Curley
Fax: 914-449-1100
Email: pcurley@kbrlaw.com

N. If to Sonja Kuehnle and Doug Robinson:

Fasken Martineau DuMoulin LLP
350 7th Avenue S.W., Suite 3400
Calgary, AB T2P 3N9

Attention: Mr. Robert D. Maxwell
Fax: 403-261-5351
Email: rmaxwell@fasken.com

O. If to Peyto Exploration and Development Corp.

Goodmans LLP
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Attention: Mr. David Conklin
Fax: 416-979-1234
Email: dconklin@goodmans.ca

P. If to Kenneth Faircloth and Wazir (Mike) Seth:

Ormston List Frawley LLP
6 Adelaide Street East, Suite 500
Toronto, ON M5C 1H6

Attention: John P. Ormston
Fax: 416-594-9690
Email: jormston@olflaw.com

Q. If to KPMG:

McLennan Ross LLP
1000 First Canadian Centre
350 – 7th Avenue, SW
Calgary, AB T2P 3N9

Attention: Graham McLennan, Q.C.
Fax : 403-543-9150
Email : gmcclennan@mross.com

R. If to the Underwriters:

Lenczner Slaght Royce Smith Griffin LLP
130 Adelaide St W., Suite 2600
Toronto, ON M5H 3P5

Attention: Shara Roy
Fax: 416-865-3973
Email: sroy@litigate.com

or to such other address as any party may from time to time notify the others in accordance with this section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or emailing, provided that such day in either event is a Business Day and the communication is so delivered, faxed or emailed before 5:00 p.m. (Calgary time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

(l) **Further Assurances**

The Settling Parties all covenant and agree to:

- (i) pursue as promptly as practicable and in coordination with the Plan, Court approval of the Settlement Agreement and the granting of the Class Action Settlement Orders in an expedited and commercially reasonable fashion; and
- (ii) execute any and all documents and perform any and all acts required by the Plan and the Settlement Agreement, including any consent, approval or waiver requested by the Settling Parties, acting reasonably.

(m) **Successors and Assigns**

This Settlement Agreement shall be binding upon and shall ensure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in this Settlement Agreement.

(n) **Fonds d'aide aux actions collectives Levy**

The Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives will apply to the portion of any remaining balance (or "reliquat") attributable to Quebec residents who are Class Members after all the Class Actions have been resolved.

12. TERMINATION(a) **Rights of Termination**

This Settlement Agreement shall terminate if:

- (i) the Approval and Settlement Order, the Alberta Dismissal Orders or the U.S. Approval Order are not granted and no further rights of appeal exist;
- (ii) the Approval and Settlement Order, the Alberta Dismissal Orders and the U.S. Approval Order are granted, overturned on appeal, and no further rights of appeal exist;
- (iii) any of the Settlement Recognition Orders are not granted and no further rights of appeal exist;
- (iv) any of the Settlement Recognition Orders are granted, overturned on appeal, and no further rights of appeal exist; or
- (v) the Plan is terminated for any reason by Final Order of the CCAA Court.

If there are any disputes about the termination of the Settlement Agreement, the dispute shall be determined by the CCAA Court on notice to the Settling Parties.

(b) **No Termination Rights Regarding Class Counsel Fees**

The refusal of the Competent Courts to approve, or uphold in the case of an appeal, any request by Class counsel for fees shall not be grounds to terminate this Settlement Agreement.

(c) **Impact of Non-Approval and/or Termination**

If the conditions precedent set out in section 5 of this Settlement Agreement are not met, or if the Settlement Agreement or the Plan terminates or is terminated in accordance with its terms, then:

- (i) the Plan and the Settlement Agreement shall be null and void in all respects (subject to any survival provisions);

- (ii) any settlement or compromise embodied in the Plan, or the Settlement Agreement, and any document or agreement executed pursuant to the Plan or Settlement Agreement shall be deemed null and void;
- (iii) nothing contained in the Plan or the Settlement Agreement, and no act taken in preparation of the consummation of the Plan or the Settlement Agreement, shall:
 - A. constitute or be deemed to constitute a waiver or release of any Claims or any defences thereto, by or against any of the Released Parties or any other Person;
 - B. prejudice in any manner the rights of any of the creditors, the Released Parties or any other Person; or
 - C. constitute an admission of any sort by any of the creditors, the Released Parties or any other Person; and
- (iv) the Settling Parties and any other Person affected by the Plan or the Settlement Agreement will be restored to their respective positions prior to the execution of the Settlement Agreement;
- (v) [Intentionally deleted]
- (vi) [Intentionally deleted]
- (vii) subject to any survival provisions herein, the Settlement Agreement will have no further force and effect and no effect on the rights of the Settling Parties and any other Person affected by the Plan or the Settlement Agreement;
- (viii) [Intentionally deleted]
- (ix) the Poseidon Settlement Funds and the Class Settlement Funds will be returned to the payor(s) of such funds, with interest and without deduction or holdback, within 30 days after the date upon which the triggering event for repayment occurs. Any taxes payable on any interest that accrues in relation to the Class Settlement Funds shall be payable by the recipient(s) of any such interest earned;
- (x) neither the Settlement Agreement nor the Plan will be introduced into evidence or otherwise referred to in any litigation or proceeding against the Released Parties;
- (xi) the provisions of this section, and sections 1(a), 1(b), 6(a), 6(b), 11(a)-(k), 11(l)(ii) and the recitals and schedules applicable thereto shall survive termination and shall continue in full force and effect;
- (xii) Poseidon and/or the Monitor, or Class Counsel, as applicable, shall, within 30 days after the date upon which the triggering event for repayment occurs, apply to the CCAA Court and the Competent Courts, as necessary, for orders:
 - A. declaring the Plan and the Settlement Agreement null and void and of no force or effect except for the provisions of those Articles and sections that are expressly specified as continuing in force; and

- B. setting aside, *nunc pro tunc*, all prior orders or judgments entered in accordance with the terms of the Plan and/or the Settlement Agreement;

but the obligation to apply to the CCAA Court and the Competent Courts for such orders will only be required if, for example, the Plan has been approved, the Settlement Agreement has been executed, an order or judgment has been entered into, or other prerequisite has occurred such that there is utility in applying for the above-noted orders.

IN WITNESS OF WHICH the Settling Parties have executed this Settlement Agreement.

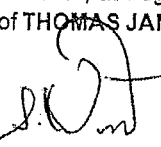
<p>JENSEN SHAWA SOLOMON DUGUID HAWKES LLP, as Legal Counsel for and on behalf of FRANZ AUER and MOHAMED RAMZY</p> <p>Per: _____ <i>GAVIN PRICE</i></p>	<p>SISKINDS LLP, as Legal Counsel for and on behalf of THOMAS JAMES and MARIAN LEWIS</p> <p>Per: _____</p>
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<p>THE TORONTO-DOMINION BANK, as Agent for itself and HSBC BANK CANADA, THE BANK OF NOVA SCOTIA and NATIONAL BANK OF CANADA</p> <p>Per: _____ Title: _____</p>	<p>POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS LIMITED PARTNERSHIP and POSEIDON CONCEPTS INC. by its Court Appointed Monitor, PRICEWATERHOUSECOOPERS INC.</p> <p>Per: _____ Title: _____</p>
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B. setting aside, *nunc pro tunc*, all prior orders or judgments entered in accordance with the terms of the Plan and/or the Settlement Agreement;

but the obligation to apply to the CCAA Court and the Competent Courts for such orders will only be required if, for example, the Plan has been approved, the Settlement Agreement has been executed, an order or judgment has been entered into, or other prerequisite has occurred such that there is utility in applying for the above-noted orders.

IN WITNESS OF WHICH the Settling Parties have executed this Settlement Agreement.

<p>JENSEN SHAWA SOLOMON DUGUID HAWKES LLP, as Legal Counsel for and on behalf of FRANZ AUER and MOHAMED RAMZY</p> <p>Per: _____</p>	<p>SISKINDS LLP, as Legal Counsel for and on behalf of THOMAS JAMES and MARIAN LEWIS</p> <p>Per:  Sajjad Nematollahi</p>
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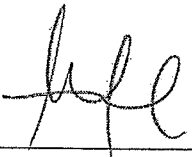
<p>THE TORONTO-DOMINION BANK, as Agent for itself and HSBC BANK CANADA, THE BANK OF NOVA SCOTIA and NATIONAL BANK OF CANADA</p> <p>Per: _____</p> <p>Title: _____</p>	<p>POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS LIMITED PARTNERSHIP and POSEIDON CONCEPTS INC. by its Court Appointed Monitor, PRICEWATERHOUSECOOPERS INC.</p> <p>Per: _____</p> <p>Title: _____</p>
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B. setting aside, *nunc pro tunc*, all prior orders or judgments entered in accordance with the terms of the Plan and/or the Settlement Agreement;

but the obligation to apply to the CCAA Court and the Competent Courts for such orders will only be required if, for example, the Plan has been approved, the Settlement Agreement has been executed, an order or judgment has been entered into, or other prerequisite has occurred such that there is utility in applying for the above-noted orders.

IN WITNESS OF WHICH the Settling Parties have executed this Settlement Agreement.

<p>JENSEN SHAWA SOLOMON DUGUID HAWKES LLP, as Legal Counsel for and on behalf of FRANZ AUER and MOHAMED RAMZY</p> <p>Per: _____</p>	<p>SISKINDS LLP, as Legal Counsel for and on behalf of THOMAS JAMES and MARIAN LEWIS</p> <p>Per: _____</p>
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<p>THE TORONTO-DOMINION BANK, as Agent for itself and HSBC BANK CANADA, THE BANK OF NOVA SCOTIA and NATIONAL BANK OF CANADA</p> <p>Per:  _____</p> <p>Title: <u>Andi Zeneli</u> Vice President, Loan Syndications-Agency</p>	<p>POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS LIMITED PARTNERSHIP and POSEIDON CONCEPTS INC. by its Court Appointed Monitor, PRICEWATERHOUSECOOPERS INC.</p> <p>Per: _____</p> <p>Title: _____</p>
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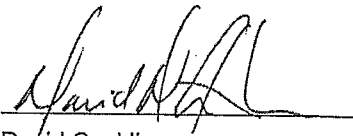
- B. setting aside, *nunc pro tunc*, all prior orders or judgments entered in accordance with the terms of the Plan and/or the Settlement Agreement;

but the obligation to apply to the CCAA Court and the Competent Courts for such orders will only be required if, for example, the Plan has been approved, the Settlement Agreement has been executed, an order or judgment has been entered into, or other prerequisite has occurred such that there is utility in applying for the above-noted orders.

IN WITNESS OF WHICH the Settling Parties have executed this Settlement Agreement.

<p>JENSEN SHAWA SOLOMON DUGUID HAWKES LLP, as Legal Counsel for and on behalf of FRANZ AUER and MOHAMED RAMZY</p> <p>Per: _____</p>	<p>SISKINDS LLP, as Legal Counsel for and on behalf of THOMAS JAMES and MARIAN LEWIS</p> <p>Per: _____</p>
--	---

<p>THE TORONTO-DOMINION BANK, as Agent for itself and HSBC BANK CANADA, THE BANK OF NOVA SCOTIA and NATIONAL BANK OF CANADA</p> <p>Per: _____</p> <p>Title: _____</p>	<p>POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS LIMITED PARTNERSHIP and POSEIDON CONCEPTS INC. by its Court Appointed Monitor, PRICEWATERHOUSECOOPERS INC.</p> <p>Per: <u>[Signature]</u></p> <p>Title: <u>Senior Vice President</u></p>
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	<p>GOODMANS LLP, as Legal Counsel for Peyto Exploration and Development Corp.</p> <p>Per:  David Conklin</p>
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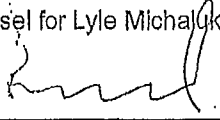
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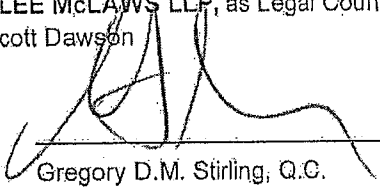
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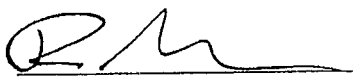
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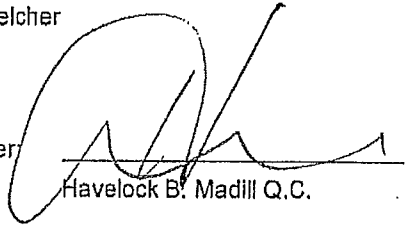
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Graham McLennan, Q.C.

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Shara Roy

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Per: _____
John P. Ormston

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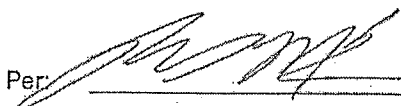
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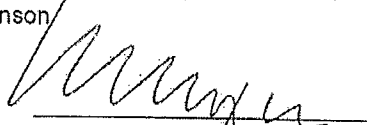
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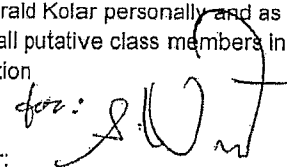
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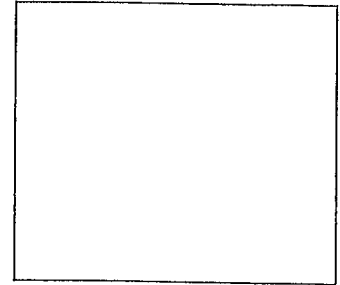
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Per:  _____
Jonathan Horne

SCHEDULE "C"

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COURT FILE NUMBERS 1301-04364

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED

AND IN THE MATTER OF POSEIDON
CONCEPTS CORP., POSEIDON CONCEPTS
LTD., POSEIDON CONCEPTS LIMITED
PARTNERSHIP AND POSEIDON CONCEPTS
INC.

APPLICANTS POSEIDON CONCEPTS CORP., POSEIDON
CONCEPTS LTD., POSEIDON CONCEPTS
LIMITED PARTNERSHIP, AND POSEIDON
CONCEPTS INC.

DOCUMENT ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT Bennett Jones LLP
4500, 855 – 2nd Street S.W.
Calgary, AB T2P 4K7

Ken Lenz, Q.C.
Phone: (403) 298-3317
Fax: (403) 265-7219
lenzk@bennettjones.com
File No.: 11866-66

DATE ON WHICH ORDER WAS PRONOUNCED: May 4, 2018

LOCATION OF HEARING OR TRIAL: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: Justice Horner

THE APPLICATION OF Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership, and Poseidon Concepts Inc. (collectively, the "**Applicants**") and by the Class Representatives, in their own and in a representative capacity, and by the Senior Secured Creditors, in the proceeding in the Court of Queen's Bench of Alberta bearing Court File No. 1301-04364 (the "**CCAA Proceedings**") for an Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") approving and giving effect to: (i) the Amended Plan of Compromise and Arrangement dated April 6, 2018 attached as Schedule "A" hereto, as amended, varied or supplemented from time to time in accordance with its terms (the "**Plan**"); and, (ii) the Settlement Agreement, dated April 6, 2018 attached as Schedule "B" hereto (the "**Settlement Agreement**"), was considered this day, at the Court of Queen's Bench of Alberta at the Calgary Court Centre, 601-5th Street SW, City of Calgary, in the Province of Alberta;

UPON READING the Notice of Application; the Forty-[●] Report of PricewaterhouseCoopers Inc., in its capacity as monitor of the Applicants (the "**Monitor**"), dated April [●], 2018 (the "**Monitor's Report**"); as well as the other materials filed by the parties;

AND UPON HEARING the submissions of counsel for the Applicants, counsel for the Monitor, Class Counsel, and such other counsel as were present;

AND UPON BEING ADVISED that all of the Settling Parties support the Plan and the Settlement Agreement;

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINED TERMS

1. Any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to such terms in the Plan and the Settlement Agreement.

SERVICE, NOTICE, AND MEETING

2. The time for service of the Notice of Application and the Monitor's Report is hereby abridged and validated so that this Application is properly returnable today, and the Court hereby dispenses with further service.

3. There has been good and sufficient notice, service, and delivery of the Meeting and Hearing Order, Plan, and Settlement Agreement to all Persons upon which notice, service, and delivery was required. All applicable parties adhered to, and acted in accordance with, the Meeting and Hearing Order and the Global Settlement Notice Order. All Persons shall be forever barred from raising any further objection to the Plan or the Settlement Agreement.
4. The Meeting was duly convened and held, all in conformity with the CCAA and the orders of this Court, including, without limitation, the Meeting and Hearing Order.

APPROVAL OF THE PLAN AND THE SETTLEMENT AGREEMENT

5. The Plan, the Settlement Agreement, and all the terms and conditions thereof, and matters and transactions contemplated thereby, are fair and reasonable.
6. The Plan is hereby sanctioned and approved pursuant to Section 6 of the CCAA.
7. The Settlement Agreement is hereby approved pursuant to Section 11 of the CCAA.
8. The terms of the Plan and the Settlement Agreement are incorporated by reference into this Order and are hereby approved.

PLAN AND SETTLEMENT AGREEMENT IMPLEMENTATION

9. At the Effective Time on the Plan Implementation Date, the Plan shall be final, binding, and effective in accordance with its terms against, and enure to the benefit of, as the case may be, the Applicants, the Released Parties, the Affected Creditors, the Class Representatives, the Class Members, and all other Persons and parties named or referred to in, affected by, or subject to the Plan, including, without limitation, respective heirs, executors, administrators, legal representatives, successors, and assigns of all of them without any ability to "opt-out" or otherwise not be bound by the Plan.
10. At the Effective Time on the Plan Implementation Date, the Settlement Agreement shall be final, binding, and effective against the Class Representatives and Class Members, as well as any Person who is a plaintiff/applicant, defendant/respondent, third, fourth, or

subsequent party or mis-en-cause in any Claim, including the Class Actions, without any ability to "opt-out" or otherwise not be bound by the Settlement Agreement.

11. Each Person named or referred to in, or subject to, the Plan is hereby deemed to have consented and agreed to all of the provisions of the Plan, in its entirety, and is hereby deemed to have executed and delivered all consents, releases, assignments, and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.
12. Each of the Applicants is authorized and directed, and the Monitor, Senior Secured Creditors, Released Parties, and the Class Representatives are authorized and empowered, to take all steps and actions, and to do all things, necessary or appropriate to implement the Plan and the Settlement Agreement in accordance with their terms, and to enter into, execute, deliver, complete, implement, and consummate all of the steps, transactions, distributions, deliveries, allocations, instruments, and agreements contemplated pursuant to the Plan including but not limited to the Monitor executing the release at Schedule "E" to the Plan, the amending agreement at Schedule "F" to the Plan, and such steps and actions are hereby authorized, ratified and approved.
13. On or after the Plan Implementation Date, the Class Settlement Funds shall be held, allocated, and distributed by Class Counsel in accordance with the further order of this Court.
14. Upon being provided with confirmation satisfactory to it that the conditions precedent set out in article 6.1 of the Plan have been satisfied or waived, as applicable, in accordance with the terms of the Plan, the Monitor is hereby authorized and directed to deliver to the Applicants, the Class Representatives, the Senior Secured Creditors, the Settling Defendants and the other parties to the service list in the CCAA Proceeding, a certificate signed by the Monitor (the "**Monitor's Certificate**") certifying that the Plan Implementation Date has occurred and that the Plan and this Sanction Order are effective in accordance with their respective terms, and, following delivery of the Monitor's Certificate as contemplated above, the Monitor shall file the Monitor's Certificate with this Court and with the United States Bankruptcy Court.

15. Section 36.1 of the CCAA, sections 95 to 101 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, and any other federal or provincial law relating to preferences, fraudulent conveyances, transfers at undervalue or oppressive misconduct, shall not apply to the Plan or to any transactions, distributions, transfers, allocations, transactions, or payments implemented pursuant to the Plan, the Settlement Agreement, or this Order.
16. The steps, compromises, releases, injunctions, discharges, cancellations, transactions, arrangements, and reorganizations to be effected on the Plan Implementation Date are deemed to occur and be effected in the sequential order contemplated in the Plan, without any further act or formality, beginning at the Effective Time.
17. On the Plan Implementation Date, (a) Poseidon shall establish an Administration Charge Reserve in the approximate amount of \$200,000, or such other amount as agreed to by the Monitor and the Senior Secured Creditors, which cash reserve: (i) shall be maintained and administered by the Monitor, in trust, for the purpose of paying any amounts secured by the Administration Charge; and (ii) upon the termination of the Administration Charge pursuant to the Plan, shall be paid to the Senior Secured Creditors in addition to any other amounts payable pursuant to the Plan; and (b) the Directors' Charge and the previously existing Administration Charge shall be vacated and discharged in all respects.

COMPROMISE OF CLAIMS, RELEASE AND DISCHARGE OF CLAIMS

18. On the Plan Implementation Date, any and all Affected Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, and barred, subject only to the right of the applicable Persons to receive the distributions and interests to which they are entitled pursuant to the Plan.
19. Pursuant to Article 5.1 of the Plan, and subject to Article 5.2 of the Plan, the Released Parties are fully, finally, irrevocably, absolutely, and forever released, remised and discharged from all Claims, including those identified in Article 5.1 of the Plan, as of the Effective Time on the Plan Implementation Date pursuant to the Plan and this Order.
20. Pursuant to Articles 5.1 and 5.3 of the Plan, and subject to Articles 5.2, 5.4 and 5.8 of the Plan, as of the Plan Implementation Date, the ability of any Person to proceed

against the Released Parties in respect of any Released Claim shall be forever discharged, barred and restrained, and all proceedings with respect to, in connection with or relating to any such matter shall be permanently barred, estopped, stayed and enjoined.

21. Pursuant to Article 5.3 of the Plan and subject to Articles 5.4 and 5.8 of the Plan, all Persons (regardless of whether or not such Persons are creditors or Claimants), including the Settling Defendants, Class Representatives, Class Members, Poseidon, and the Released Parties shall be permanently and forever barred, estopped, stayed and enjoined, as of the Effective Time on the Plan Implementation Date, from taking any step, or doing any activity or other thing, identified in Article 5.3 of the Plan.
22. Pursuant to section 4(a) of the Settlement Agreement, and subject to section 4(b) of the Settlement Agreement, the Released Parties are fully, finally, irrevocably, absolutely, and forever released, remised and discharged from all Claims, including those identified in section 4(a) of the Settlement Agreement, as of the Effective Time on the Plan Implementation Date pursuant to the Settlement Agreement and this Order.
23. Pursuant to section 4(c) of the Settlement Agreement and subject to section 4(d) of the Settlement Agreement, all Persons (regardless of whether or not such Persons are creditors or Claimants), including the Settling Defendants, Class Representatives, Class Members, Poseidon, and the Released Parties shall be permanently and forever barred, estopped, stayed and enjoined, as of the Effective Time on the Plan Implementation Date, from taking any step, or doing any activity or other thing, identified in section 4(c) of the Settlement Agreement. Nothing in the Settlement Agreement or in this Order shall bar, estop, stay or enjoin any of the steps or activities or other things identified in section 4(d) of the Settlement Agreement.
24. The Class Actions, the Monitor Action, the Senior Secured Creditor Action and any and all claims, counterclaims, crossclaims, and third (or subsequent) party claims related thereto, including the KPMG Claim, are to be dismissed, with prejudice and without costs, pursuant to the Plan and the Settlement Agreement.
25. No further Claims by or against the Released Parties may be commenced.

26. In accordance with Article 4.7 of the Plan and section 3(d) of the Settlement Agreement:
- (a) under no circumstances shall the Released Parties be liable to make any further financial contribution or payment in respect of any Claim including the Class Actions, Monitor Action, KPMG Claim, Underwriter Claim, or Senior Secured Creditor Action, nor shall the Released Parties have any liability whatsoever for or have any exposure whatsoever to anything directly or indirectly, related to, arising out of, based on, or connected with the Class Actions, Monitor Action, KPMG Claim, Underwriter Claim, or Senior Secured Creditor Action, over and above the payment of the Poseidon Settlement Funds and the Class Settlement Funds;
 - (b) costs associated with any notices required in connection with the Plan and the Settlement Agreement shall not be paid for by the Released Parties; and
 - (c) the Poseidon Settlement Funds and the Class Settlement Funds are:
 - (i) the full monetary contribution or payment of any kind to be made by the Released Parties, and is inclusive of all costs, interest, legal fees, taxes (inclusive of any GST, HST, or any other taxes that may be payable in respect of the Plan or the Settlement Agreement), costs associated with any distributions, further litigation, administration or otherwise; and
 - (ii) a tangible and meaningful contribution on behalf of the Released Parties to the resolution of issues on the terms set out in the Plan and the Settlement Agreement.

POWERS OF THE MONITOR

27. In connection with its role holding funds and making or facilitating payments and distributions contemplated by the Plan:
- (a) the Monitor is solely doing so as administrative payment agent for the Applicants and neither the Monitor nor PricewaterhouseCoopers Inc. has agreed to become, and neither is assuming any responsibility as a receiver, assignee, curator, liquidator, administrator, receiver-manager, agent of the creditors or legal

representative of any of the Applicants within the meaning of any relevant tax legislation;

- (b) the Monitor shall be provided with and is entitled to have access to all of the non-privileged books and records of the Applicants and to all non-privileged documents and other information required by it from time to time, whether in the possession of the Applicants or a third party, in connection with its role hereunder; and
 - (c) the Monitor shall not exercise discretion over the funds to be paid or distributed hereunder and shall only make payments as contemplated by the Plan, this Order and any future Order of this Court.
28. Any payments and deliveries made by, or with the consent of, the Monitor in accordance with the Plan or this Order (including without limitation payments made to or for the benefit of the Affected Creditors) shall not constitute a "distribution" for the purposes of any federal, provincial or territorial tax legislation (collectively, the "**Tax Statutes**"), and the Monitor, in making any such payments is merely a disbursing agent under the Plan and is not exercising any discretion in making payments under the Plan and is not "distributing" such funds for the purpose of the Tax Statutes, and the Monitor shall not incur any liability under the Tax Statutes in respect of payments or deliveries made by it, or with its consent, and the Monitor is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of payments made by, or with the consent of the Monitor in accordance with the Plan and this Order and any claims of this nature are hereby forever barred.
29. From and after the Plan Implementation Date, in addition to its prescribed rights and obligations under the CCAA and the powers provided to the Monitor herein and in the Plan, the Monitor shall be empowered and authorized, but not obligated, to:
- (a) take such actions and execute such documents, in the name of and on behalf of the Applicants, as the Monitor considers necessary or desirable in order to:

- (i) effect the liquidation, bankruptcy, winding-up or dissolution of the Applicants;
 - (ii) facilitate the completion and administration of the estates of the Applicants in the CCAA Proceeding and any other proceedings commenced in respect of the Applicants or any of them; and,
 - (iii) act, if required, as trustee in bankruptcy, liquidator, receiver or a similar official of such entities;
- (b) exercise any powers which may be properly exercised by any officer, any member of the board of directors or of the board of directors of any of the Applicants except for the waiver of privilege belonging to the Applicants;
 - (c) cause the Applicants to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Applicants in dealing with their operations, restructuring, wind-down, liquidation or other activities except for the waiver of privilege belonging to the Applicants;
 - (d) engage assistants or advisors or cause the Applicants to engage assistants or advisors as the Monitor deems necessary or desirable to carry out the terms of the Orders in the CCAA Proceeding or for purposes of the Plan; and
 - (e) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under any other Order granted by this Court including for advice and directions with respect to any matter,

and in each case where the Monitor takes any such actions or steps it shall not be deemed to be a director or officer of the Applicants, and it shall be exclusively authorized and empowered to take any such actions or steps, to the exclusion of all other Persons, and without interference from any other Person, provided that the Monitor shall comply with all applicable law.

30. Without limiting the provisions of the Initial Order or the provisions of any other Order granted in the CCAA Proceeding, including this Order, the Applicants shall remain in possession and control of the Property (as defined in the Plan) and Business (as defined

in the Initial Order) and the Monitor shall not take possession or be deemed to be in possession and/or control of the Property or Business.

31. Nothing herein shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of any of the Applicants within the meaning of any relevant legislation.
32. The Monitor's Report, and the Monitor's activities and conduct in relation to the Applicants up to the date hereof, including the activities described in the foregoing Report, are hereby approved.
33. That: (i) in carrying out the terms of this Order and the Plan, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, and as an officer of the Court, including the stay of proceedings in its favour; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of and exercising the powers given to it under this Order and the Plan, save and except for any gross negligence or wilful misconduct on its part; (iii) the Monitor shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants without independent investigation; and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

DECLARATIONS RE INSURANCE

34. The Contribution:
 - (a) does not violate the interests of the Class Representatives, the Class, the Monitor, the Senior Secured Creditors, KPMG, the Underwriters, or any other Person who might have a claim against any person or entity potentially covered under the Insurance Policies;
 - (b) constitutes covered Loss (as defined in the Insurance Policies);
 - (c) reduces the Limits of Liability (as defined in the Insurance Policies) under the Insurance Policies for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action, that the Settling Defendants, or any of them, engaged in conduct that triggered or may

have triggered any exclusion, term or condition of the Insurance Policies, or any of them, so as to disentitle them to coverage under the Insurance Policies, or any of them;


- (d) is without prejudice to any coverage positions or reservations of rights taken by the Insurers in relation to any other matter advised to the Insurers or any other Claim (as defined in the Insurance Policies) made or yet to be made against the Insureds, provided that neither coverage nor payment in respect of the settlement of the Class Actions, the Monitor Action or the Senior Secured Creditor Action, nor the settlement of the Class Actions, the Monitor Action or the Senior Secured Creditor Action, will be voided or impacted by any such coverage position or reservation of rights; and
 - (e) fully and finally releases the Insurers from any further obligation, and from any and all claims against them under or in relation to the Insurance Policies, in respect of the portion of the Limits of Liability that were expended to fund the Contribution.
35. Once the Contribution has been funded, there is no further coverage under the Insurance Policies for Poseidon. For clarity, this declaration is not intended to, and does not, extinguish any remaining coverage under the Insurance Policies for the individual Insureds.
36. With the exception of payment in the aggregate amount of CAD \$30,000 by the Insurers towards the settlement of regulatory proceedings by the Chartered Professional Accountants of Alberta against Lyle Michaluk, which shall be treated as Criminal / Regulatory Defence Costs, the determination of what constitutes reasonable Defence Costs paid or payable by any of the Insurers for Criminal/Regulatory Defence Costs and which reduce the amount of the Final Instalment of the Poseidon Settlement Funds and the Final Instalment of the Class Settlement Funds, all such terms as defined in Article 1.1 of the Plan, shall be within the sole purview and discretion of the Insurer paying them in accordance with the applicable litigation guidelines and, except for the individual Insured on whose behalf they are being paid, shall not be subject to review or challenge

by any other Person, including but not limited to the Monitor, the Senior Secured Creditors, Class Members or the Class Representatives.

37. In addition to the reduction of the Limits of Liability under the Policies pursuant to Article 5.8(a)(iii) of the Plan and section 4(h)A.III. of the Settlement Agreement, the Limits of Liability under the following Policies will be deemed to have been further reduced by the following amounts pursuant to an agreement between the Insurers and the Insureds under the Policies:

Policy Issued by:	Policy	Limits of Liability to be Reduced by:
Encon Group Inc.	DO-409880	\$250,000
Chubb Insurance Company of Canada	8224-5964	\$250,000
Travelers Insurance Company of Canada	75237516	\$250,000
Royal & Sun Alliance Insurance Company of Canada	9500854	\$250,000
Chartis Insurance Company of Canada, now known as AIG Insurance Company of Canada	01-340-62-02	\$2,500,000
Lloyd's Underwriters	ODLA052012-10150	\$0

STAY EXTENSION

38. The Stay Period in the Initial Order be and is hereby extended until and including , or such later date as this Court may order.

EFFECT, RECOGNITION AND ASSISTANCE

39. This Court shall retain an ongoing supervisory role for the purposes of implementing, administering and enforcing the Plan and the Settlement Agreement and matters related to the Class Settlement Funds. Any disputes arising with respect to the performance or effect of, or any other aspect of, the Settlement Agreement shall be determined by this Court, and, except with leave of this Court first obtained, no person or party shall commence or continue any proceeding or enforcement process in any other court or

- tribunal, with respect to the performance or effect of, or any other aspect of the Plan or Settlement Agreement.
40. This Order shall have full force and effect in all provinces and territories of Canada and abroad as against all persons and parties against whom it may otherwise be enforced.
 41. The Applicants, the Released Parties, Class Representatives, the Senior Secured Creditors, and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order, or any further order as may be contemplated by the Plan or the Settlement Agreement or be otherwise required, and for assistance in carrying out the terms of this Orders, the Plan and the Settlement Agreement.
 42. The aid and recognition of any court or any judicial, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Released Parties, the Monitor, the Class Representatives, the Senior Secured Creditors and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, the Monitor, the Class Representatives, and the Senior Secured Creditors, as may be necessary or desirable to give effect to this Order or to assist them in carrying out the terms of this Order, including, without limitation, by granting representative status to the Monitor in any foreign proceeding.
 43. Any conflict or inconsistency between the Plan and this Order shall be governed by the terms, conditions and provision of the Plan, which shall take precedence and priority.
 44. Any conflict or inconsistency between the Settlement Agreement and this Order shall be governed by the terms, conditions and provision of the Settlement Agreement, which shall take precedence and priority.

J.C.Q.B.A.

SCHEDULE "D"

INTENTIONALLY OMMITED

SCHEDULE "E"

CONFIDENTIAL FULL AND FINAL RELEASE

THIS CONFIDENTIAL FULL AND FINAL RELEASE (the "AGREEMENT") is made by and between Encon Group, Inc., as managing general agent for Continental Casualty Company, Temple Insurance Company, Aviva Insurance Company of Canada and XL Reinsurance America Inc. (hereinafter "ENCON"), Chubb Insurance Company of Canada ("CHUBB"), Travelers Insurance Company of Canada ("TRAVELERS"), Royal & SunAlliance Insurance Company of Canada ("RSA") and AIG Insurance Company of Canada (formerly known as Chartis Insurance Company of Canada) ("AIG"; and collectively with ENCON, CHUBB, TRAVELERS and RSA, the "INSURERS"), on the one hand, and Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Ltd. Partnership and Poseidon Concepts Inc., by and through their Monitor PricewaterhouseCoopers Inc. (all hereinafter collectively, the "POSEIDON ENTITIES"), Matthew MacKenzie, Lyle Michaluk, Scott Dawson, Harley Winger, Clifford Wiebe, Joseph Kostelecky, Dean Jensen, David Belcher, Neil Richardson, Kenneth Faircloth, Wazir (Mike) Seth and James McKee (all, hereinafter collectively, the "INSURED PERSONS") and Sonja Kuehnle (Sanborn) and Douglas Robinson (hereinafter collectively, the "POSEIDON EMPLOYEES"), on the other hand (the INSURERS, the POSEIDON ENTITIES, the INSURED PERSONS and the POSEIDON EMPLOYEES are collectively referred to herein as the "PARTIES").

RECITALS

- I. WHEREAS, the INSURERS respectively issued the following insurance policies to Poseidon Concepts Corp. for the period November 1, 2012 to November 1, 2013 (collectively, the "POLICIES"):
 - (i) Encon policy no. DO409880 (the "ENCON POLICY"), with a Limit of Liability of

\$10,000,000¹ inclusive of the \$50,000 deductible, and a separate \$1,000,000 Side A Excess Extension in excess of the \$10,000,000 limit contained in the AIG POLICY described below;

- (ii) Chubb Policy No. 8224-9694 (the "CHUBB POLICY"), with a Limit of Liability of \$10,000,000 in excess of \$10,000,000 in underlying insurance, along with a separate \$1,000,000 Side A Excess Extension in excess of the \$1,000,000 Side A Excess Extension contained in the ENCON POLICY;
- (iii) Travelers Policy No. 75237516 (the "TRAVELERS POLICY"), with a \$10,000,000 Limit of Liability in excess of \$20,000,000 in underlying insurance, along with a separate \$1,000,000 Side A Excess Extension in excess of the \$1,000,000 Side A Excess Extensions contained in the ENCON POLICY and the CHUBB POLICY;
- (iv) RSA Policy No. 9500854 (the "RSA POLICY"), with a \$10,000,000 Limit of Liability in excess of \$30,000,000 in underlying insurance, along with a separate \$1,000,000 Side A Excess Extension in excess of the \$1,000,000 Side A Excess Extensions contained in the ENCON POLICY, the CHUBB POLICY and the TRAVELERS POLICY; and
- (v) AIG Policy No. 01-340-62-02 (the "AIG POLICY"), with a \$10,000,000 Limit of Liability in excess of \$40,000,000 in underlying insurance.

II. WHEREAS, the POSEIDON ENTITIES, the INSURED PERSONS and/or the POSEIDON EMPLOYEES have provided notice under the POLICIES of the actions and proceedings identified on Schedule "A" hereto (the "SCHEDULE "A" ACTIONS/PROCEEDINGS");

III. WHEREAS, the INSURERS have asserted certain defences to coverage for the

¹ All sums of money referenced in this AGREEMENT are in Canadian currency.

SCHEDULE "A" ACTIONS/PROCEEDINGS;

- IV. WHEREAS, the \$10,000,000 Limit of Liability of the ENCON POLICY has been exhausted through payment of defence expenses for certain of the SCHEDULE "A" ACTIONS/PROCEEDINGS;
- V. WHEREAS, a portion of the \$10,000,000 Limit of Liability of the CHUBB POLICY has been eroded through payment of defence expenses for certain of the SCHEDULE "A" ACTIONS/PROCEEDINGS;
- VI. WHEREAS, the parties to the SCHEDULE "A" ACTIONS/PROCEEDINGS identified with an asterisk are negotiating a Plan of Compromise and Arrangement (the "PLAN") and a separate Settlement Agreement (the "SETTLEMENT AGREEMENT"; and collectively, with the PLAN, the "POSEIDON SETTLEMENTS") to resolve such actions/proceedings against the INSURED PERSONS and the POSEIDON EMPLOYEES in exchange for an aggregate payment of up to \$36,500,000, consisting of:
- (i) an initial payment of \$29,000,000 (the "Initial Instalment"); and
 - (ii) \$7,500,000, less defence costs incurred by the INSURED PERSONS and the POSEIDON EMPLOYEES during the Relevant Period (defined below) that have been paid by, or that are payable by, the INSURERS for the defence of any criminal or regulatory (including enforcement) proceedings actually commenced, on or before April 10, 2019, against one or more of them ("CRIMINAL/REGULATORY DEFENCE COSTS"). For the purposes of this definition, the term "Relevant Period" means April 10, 2017 until the later of (i) the date upon which all such criminal /regulatory proceedings are completed (i.e. any appeals that could be brought have been completed or the time for bringing such appeals has expired) and (ii)

April 10, 2019. This residual amount is the "FINAL INSTALMENT"; and collectively with the INITIAL INSTALMENT, the "POSEIDON SETTLEMENT FUNDS".

- VII. WHEREAS, the POSEIDON ENTITIES, the INSURED PERSONS and the POSEIDON EMPLOYEES have requested that the INSURERS fund \$25,250,000 of the INITIAL INSTALMENT and fund the entire FINAL INSTALMENT (if any) (the "INSURER CONTRIBUTION");
- VIII. WHEREAS, the INSURERS have been advised that the \$3,750,000 of the INITIAL INSTALMENT not paid by the INSURERS will be funded by Lloyd's Underwriters ("LLOYD'S"), pursuant to its policy no. ODLA052012 10150 issued to Burstall Winger LLP (the "LLOYD'S CONTRIBUTION");
- IX. WHEREAS, the POSEIDON ENTITIES, the INSURED PERSONS and the POSEIDON EMPLOYEES represent and warrant that they will not execute the SETTLEMENT AGREEMENT without obtaining consent from the INSURERS;
- X. WHEREAS, in conjunction with the CRIMINAL/REGULATORY DEFENCE COSTS, the INSURED PERSONS and the POSEIDON EMPLOYEES have requested that the INSURERS make available from their POLICIES up to \$7,500,000 to be used, if needed, by defence counsel to the INSURED PERSONS and the POSEIDON EMPLOYEES within the sole purview and discretion of the INSURER paying them in accordance with the applicable litigation guidelines in accordance with Article 5.8(c) of the PLAN (the "\$7,500,000 DEFENCE COST RESERVE");
- XI. WHEREAS, the INSURED PERSONS' and the POSEIDON EMPLOYEES' arrangement for allocating proceeds from the \$7,500,000 DEFENCE COST RESERVE are set forth in Article 5.9(c) of the PLAN;

- XII. WHEREAS, the INSURED PERSONS and the POSEIDON EMPLOYEES represent, warrant and acknowledge that, as described in the PLAN, they each have agreed to a maximum cap representing their maximum potential allocable share of the insurance proceeds from the \$7,500,000 DEFENCE COSTS RESERVE and that, under no circumstances, will any INSURED PERSON or any POSEIDON EMPLOYEE seek payment from the \$7,500,000 DEFENCE COSTS RESERVE from the INSURERS for any amount that exceeds such INSURED PERSON'S or POSEIDON EMPLOYEE'S respective potential allocable share of proceeds therefrom;
- XIII. WHEREAS, the POSEIDON ENTITIES' agreement herein is conditional upon the Monitor receiving court approval to execute this AGREEMENT;
- XIV. WHEREAS, the PARTIES desire to compromise, resolve and fully settle all demands for insurance proceeds from the POLICIES on the terms set out herein.

AGREEMENT

IN CONSIDERATION OF:

1. The payment by ENCON and CHUBB under the ENCON POLICY and the CHUBB POLICY of all covered DEFENCE COSTS (as such term is defined in the POLICIES) incurred to date by the POSEIDON ENTITIES, the INSURED PERSONS and the POSEIDON EMPLOYEES in defence of the SCHEDULE "A" ACTIONS/PROCEEDINGS (the "PAID DEFENCE COSTS");
2. the INSURERS' (with the exception of AIG, whose agreement to pay is on behalf of the INSURED PERSONS and the POSEIDON EMPLOYEES only) agreement to pay under the POLICIES, on behalf of the POSEIDON ENTITIES, the INSURED PERSONS and the POSEIDON EMPLOYEES and in accordance with the payment provisions of the POSEIDON SETTLEMENTS and the limits of their respective POLICIES as eroded, the

aggregate sum of THIRTY-TWO MILLION AND SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$32,750,000.00) (consisting of the funds made available to fund the \$7,500,000 DEFENSE COST RESERVE and the INSURER CONTRIBUTION) to be funded as follows:

- i. the remaining limits from the \$10,000,000 Limit of Liability of the CHUBB POLICY to be funded toward the INITIAL INSTALMENT;
 - ii. \$10,000,000 from the Limit of Liability of the TRAVELERS POLICY to be funded toward the INITIAL INSTALMENT;
 - iii. up to \$10,000,000 from the Limit of Liability of the RSA POLICY to be funded toward the INITIAL INSTALMENT;
 - iv. after the LLOYD'S CONTRIBUTION has been made toward the INITIAL INSTALMENT, up to a maximum amount of \$7,500,000 from the AIG Policy to be funded toward the INITIAL INSTALMENT and/or to be available toward the \$7,500,000 DEFENCE COST RESERVE and, if necessary, the FINAL INSTALMENT (it being understood and agreed that the remaining \$2,500,000 limit from the AIG POLICY is being completely released by the INSURED PERSONS and the POSEIDON EMPLOYEES, as further described below); and
 - v. a sufficient amount from the Side A Extension of the ENCON POLICY to be made available to fund that portion of the \$7,500,000 DEFENCE COST RESERVE and/or the FINAL INSTALMENT which is not funded by AIG (it being understood and agreed that \$250,000 of the Side A Extension of the ENCON POLICY is being completely released by the INSURED PERSONS and the POSEIDON EMPLOYEES, as further described below, leaving a Side A Extension limit of \$750,000.00).
3. the INSURERS' agreement to pay (in addition to their obligations with respect to the \$7,500,000 DEFENCE COST RESERVE) on behalf of the INSURED PERSONS and/or

the POSEIDON EMPLOYEES under the POLICIES, subject to the POLICY LIMITS REDUCTION (as defined below), the wording of the POLICIES, the reduced Side A limits of their respective POLICIES as eroded and the INSURERS' reservations of rights as previously advised:

- a. Defence Costs (as such term is defined in the Policies) incurred by the INSURED PERSONS in complying with their obligations under the POSEIDON SETTLEMENTS to provide certain co-operation to the Plaintiffs in the SCHEDULE "A" ACTIONS/PROCEEDINGS identified with an asterisk,
- b. Defence Costs (as defined in the POLICIES) incurred in the future in connection with the defence of those SCHEDULE "A" ACTIONS/PROCEEDINGS which are not resolved by the POSEIDON SETTLEMENTS,
- c. Defence Costs (as defined in the POLICIES) incurred in the future in connection with the SCHEDULE "A" ACTIONS/PROCEEDINGS and, in particular, the approval and enforcement of the POSEIDON SETTLEMENTS;
- d. Defence Costs (as such term is defined in the POLICIES) incurred in the future with respect to any future Claims (as defined in the POLICIES) which might be made against the INSURED PERSONS and/or the POSEIDON EMPLOYEES which arise out of any of the SCHEDULE "A" ACTIONS/PROCEEDINGS or the facts or allegations set out therein and for which coverage is or may be afforded by the POLICIES ("FUTURE COVERED CLAIMS and DEFENCE COSTS");

(the INSURERS' agreement as set out in paragraphs 2 and 3 above, to pay the INSURER CONTRIBUTION, fund the \$7,500,000 DEFENCE COST RESERVE and to pay FUTURE COVERED CLAIMS and DEFENCE COSTS is hereinafter collectively referred to as the "INSURERS' OBLIGATIONS").

4. **AND FOR OTHER GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which is hereby acknowledged, subject to section 5 hereof, the POSEIDON ENTITIES, the INSURED PERSONS and the POSEIDON EMPLOYEES do hereby release and forever discharge the INSURERS, their present and former parents, subsidiaries, affiliates, related companies and reinsurers, and each of their respective present and former directors, officers, shareholders, partners, associates, employees, servants, agents, professional advisors and administrators, and each of their heirs, executors, administrators, trustees, successors and assigns (all collectively the "INSURER RELEASEES") from, with the exception of the INSURERS' OBLIGATIONS, any and all actions, causes of action, claims and demands, for damages, loss or injury, howsoever arising, which heretofore may have been or may hereafter be sustained by them in connection with:

- a) the SCHEDULE "A" ACTIONS/PROCEEDINGS;
- b) any other claims, regulatory investigations or proceedings and/or criminal charges whatsoever (which have been brought or which may be brought in the future) against any of the POSEIDON ENTITIES, the INSURED PERSONS and/or the POSEIDON EMPLOYEES in respect of the POLICIES; and
- c) that portion of the Limits of Liability (as such term is defined in the POLICIES) of each of the POLICIES which the INSURED PERSONS and the POSEIDON EMPLOYEES have agreed, by reason of certain coverage issues raised by the INSURERS, will not be paid and is expressly released and/or waived by the INSURED PERSONS and the POSEIDON EMPLOYEES:

POLICY	LIMITS OF LIABILITY REDUCTION (\$CDN.)
ENCON POLICY	\$250,000.00
CHUBB POLICY	\$250,000.00

TRAVELERS POLICY	\$250,000.00
RSA POLICY	\$250,000.00
AIG POLICY	\$2,500,000.00

such amounts hereinafter collectively the "POLICY LIMITS REDUCTION");² including any claim for coverage under the POLICIES for all such amounts (collectively the "RELEASED MATTERS"). The RELEASED MATTERS further include, but are not limited to, a complete release and discharge of:

- i. any claims against the INSURERS which do not allege, arise out of, and/or which are not based upon or attributable to the Wrongful Acts alleged in any of the SCHEDULE "A" ACTIONS/PROCEEDINGS;
- ii. claims against the INSURERS for "bad faith," unfair claims handling practices and/or breach of implied covenant of good faith and fair dealing in connection with any of the INSURERS' handling of any of the SCHEDULE "A" ACTIONS/PROCEEDINGS; and
- iii. all rights and claims, if any, which the POSEIDON ENTITIES, the INSURED PERSONS and/or the POSEIDON EMPLOYEES now have, claim to have or may have in the future, against the INSURERS related to any of the SCHEDULE "A" ACTIONS/PROCEEDINGS, other than the INSURERS' OBLIGATIONS.

5. **IT IS FURTHER UNDERSTOOD AND AGREED** that this AGREEMENT, including but not limited to the releases pertaining to the RELEASED MATTERS, shall become effective upon the execution of this AGREEMENT. However, if FINAL ORDERS are not obtained, and upon return of the POSEIDON SETTLEMENT FUNDS to the INSURERS and to LLOYDS, this AGREEMENT shall be deemed null and void, and the releases and

² For the avoidance of any doubt, and notwithstanding anything in this AGREEMENT that might be construed to the contrary, it is understood and agreed by each of the INSURED PERSONS and the POSEIDON EMPLOYEES that the POLICY LIMITS REDUCTION is a material term of this AGREEMENT and under no circumstances will any amounts being released pursuant to the POLICY LIMITS REDUCTION be available as LOSS or otherwise to or for the benefit of any of the INSURED PERSONS or POSEIDON EMPLOYEES upon the execution of this AGREEMENT.

other obligations of the PARTIES hereunder shall not be enforceable. For purposes of this AGREEMENT, the term "FINAL ORDERS" means the issuance by the Courts of the final, non-appealable requisite order(s) approving the POSEIDON SETTLEMENTS.

6. **WITHOUT LIMITING THE GENERALITY OF THE FORGOING**, the POSEIDON ENTITIES, the INSURED PERSONS and the POSEIDON EMPLOYEES declare that the intent of this AGREEMENT is to conclude all issues between them and the INSURERS in connection with the RELEASED MATTERS on the terms set out herein.
7. **AND FOR THE SAID CONSIDERATION** the POSEIDON ENTITIES, the INSURED PERSONS and the POSEIDON EMPLOYEES further agree not to make any claim or take any proceeding against any other person, corporation, partnership, business or entity of any nature whatsoever, who or which might assert a claim for contribution, damages, indemnity, other relief over, or on any other basis in law against or from the INSURERS in relation to the RELEASED MATTERS.
8. **IT IS UNDERSTOOD AND AGREED** that if any of the POSEIDON ENTITIES, the INSURED PERSONS or POSEIDON EMPLOYEES institutes or maintains any action or proceeding, or takes any steps to advance any claim in connection with any of the RELEASED MATTERS against any other person, corporation, partnership, business or entity of any nature whatsoever, who or which might assert a claim for contribution, damages, indemnity or other relief from any of the INSURER RELEASEES, whether justified in law or not, it, he or she will immediately discontinue such action, claim or proceeding and fully indemnify the INSURER RELEASEES for all costs, legal fees, and liabilities incurred by any or all of them in responding to or in connection with any such claim, action or proceeding.
9. **AND FOR THE SAID CONSIDERATION** the POSEIDON ENTITIES, the INSURED

PERSONS and the POSEIDON EMPLOYEES hereby represent and warrant that they have not assigned to any person, firm, corporation or any other entity, any cause of action, claim, suit or demand of any nature or kind which, by their execution of this AGREEMENT, is hereby being released or with respect to which they have agreed not to make any claim or take any proceeding.

10. IT IS UNDERSTOOD AND AGREED that:

- a. payment of the PAID DEFENCE COSTS, the INSURER CONTRIBUTION, any defence costs in connection with the \$7,500,000 DEFENCE COST RESERVE, and the FUTURE COVERED CLAIMS AND DEFENCE COSTS by the INSURERS shall be deemed no admission whatsoever of any liability or obligation owed by them under the POLICIES to or on behalf of the POSEIDON ENTITIES, the INSURED PERSONS or the POSEIDON EMPLOYEES in respect of any of the SCHEDULE "A" ACTIONS/PROCEEDINGS, or in respect of any other civil, regulatory or criminal proceeding whatsoever, and any such liability or obligation is specifically denied; and
- b. funds made available toward the \$7,500,000 DEFENCE COST RESERVE could, in certain circumstances, not be paid by INSURERS before other INSURERS may be required to contribute toward the FUTURE COVERED CLAIMS AND DEFENCE COSTS. In no circumstance will any of the PARTIES hereto assert that any obligation to fund Defence Costs in connection with any FUTURE COVERED CLAIMS AND DEFENCE COSTS has not been triggered due to lack of exhaustion due to any amount that has not yet been paid from the \$7,500,000 DEFENCE COST RESERVE.

11. IT IS FURTHER UNDERSTOOD AND AGREED by each of the PARTIES that AIG will not deny coverage to Mr. Kostelecky under the AIG POLICY for defence costs payable

from the DEFENCE COST RESERVE, other than in accordance with Article 5.9(c) of the PLAN, for the lawsuit styled United States v. Kostelecky, pending in the United States District Court for the District of North Dakota.

12. **THIS AGREEMENT SHALL BE BINDING** upon the POSEIDON ENTITIES, their present and former parents, subsidiaries, affiliates, related companies, shareholders, their respective present and former directors, officers, shareholders, partners, associates, employees, servants, agents, professional advisors and administrators, and each of their heirs, executors, administrators, trustees, successors and assigns, court-appointed Monitors, as well as upon any party who claims a right or interest through any of them, and upon the INSURED PERSONS and the POSEIDON EMPLOYEES, and each of their heirs, executors, administrators, trustees, successors and assigns, as well as upon any party who claims a right or interest through any of them.
13. **NOTWITHSTANDING** any other provision of this AGREEMENT, nothing in this AGREEMENT in any way impacts any Claims (as defined in the Plan) by the Class (as defined in the Plan), the POSEIDON ENTITIES or the Senior Secured Creditors (as defined in the Plan) against the Non-Settling Defendants (as defined in the Plan) in the Class Actions, the Monitor Action and the Senior Secured Creditor Action (all as defined in the Plan).
14. **THIS AGREEMENT** may be executed in separate counterparts, each of which shall be deemed to be an original and such separate counterparts shall constitute one and the same instrument, and facsimile or digitally transmitted copies of the signatures are deemed to be and count as originals in all respects.
15. **THIS AGREEMENT** shall be governed by and construed in accordance with the laws of the Province of Ontario.

16. IN WITNESS WHEREOF the POSEIDON ENTITIES, the INSURED PERSONS and the POSEIDON EMPLOYEES have hereunto set their hands (in the case of the POSEIDON ENTITIES, by PricewaterhouseCoopers Inc., Court-appointed Monitor of the POSEIDON ENTITIES) on the dates below indicated.

POSEIDON CONCEPTS CORP.

Date Per: _____ c/s
I have authority to bind the corporation.
PricewaterhouseCoopers Inc.

POSEIDON CONCEPTS LTD.

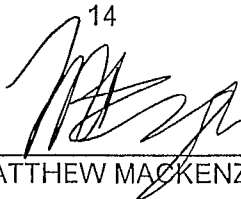
Date Per: _____ c/s
I have authority to bind the corporation.
PricewaterhouseCoopers Inc.

POSEIDON CONCEPTS LIMITED PARTNERSHIP

Date Per: _____ c/s
I have authority to bind the corporation.
PricewaterhouseCoopers Inc.

POSEIDON CONCEPTS INC.

Date Per: _____ c/s
I have authority to bind the corporation.
PricewaterhouseCoopers Inc.

¹⁴


Witness

MATTHEW MACKENZIE

Print Name

Date

Witness

LYLE MICHALUK

Print Name

Date

Witness

SCOTT DAWSON

Print Name

Date

Witness

HARLEY WINGER

Print Name

Date

Witness

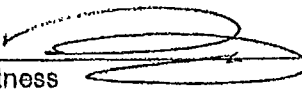
CLIFFORD WIEBE

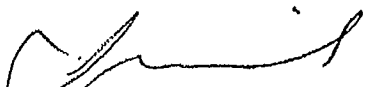
Witness _____

MATTHEW MACKENZIE

Print Name _____

Date _____

Witness 



LYLE MICHALUK

KARA MICHALUK
Print Name

JUN 13 / 17
Date

Witness _____

SCOTT DAWSON

Print Name _____

Date _____

Witness _____

HARLEY WINGER

Print Name _____

Date _____

Witness

MATTHEW MACKENZIE

Print Name

Date

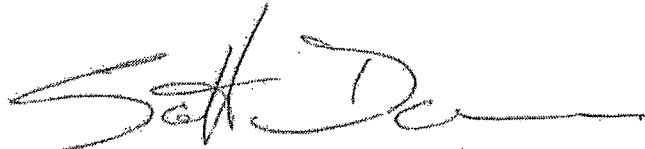
Witness

LYLE MICHALUK

Print Name

Date

S. Brennan
Witness



SCOTT DAWSON

SALLY BRENNAN
Print Name

June 15, 2017
Date

Witness

HARLEY WINGER

Print Name

Date

Witness

MATTHEW MACKENZIE

Print Name

Date

Witness

LYLE MICHALUK

Print Name

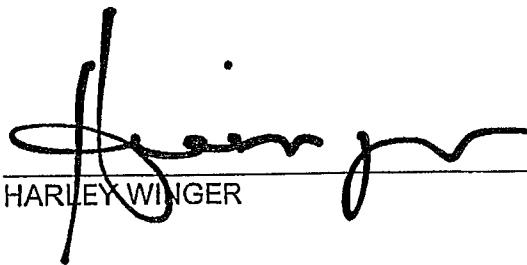
Date

Witness

SCOTT DAWSON

Print Name

Date



Witness

HARLEY WINGER

Harley Simonds

Print Name

June 12, 2017

Date

Print Name

Date

Witness

LYLE MICHALUK

Print Name

Date

Witness

SCOTT DAWSON

Print Name

Date

Witness

HARLEY WINGER

Print Name

Date

Clifford Wiebe

Witness

Clifford Wiebe

CLIFFORD WIEBE

Witness

CLIFFORD WIEBE

Print Name

Date

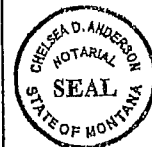
Chelsea D. Anderson

Witness

JOSEPH KOSTELECKY

Chelsea D. Anderson

Print Name



CHELSEA D. ANDERSON
NOTARY PUBLIC for the
State of Montana
Residing at Billings, Montana
My Commission Expires
April 29, 2019

6/12/17

Date

Witness

DEAN JENSEN

Print Name

Date

Witness

DAVID BELCHER

Print Name

Date

Witness _____

CLIFFORD WIEBE _____

Print Name _____


Date _____

Witness _____

JOSEPH KOSTELECKY _____

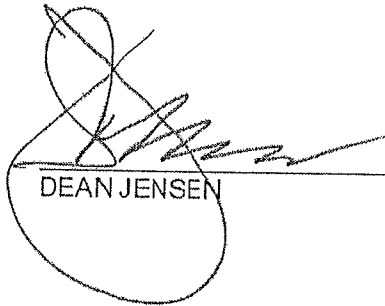
Print Name _____

Date _____


Witness _____

ROBYN JENSEN
Print Name _____

JUNE 14, 2017
Date _____


DEAN JENSEN _____

Witness _____

DAVID BELCHER _____

Print Name _____

Date _____

Witness

CLIFFORD WIEBE

Print Name

Date

Witness

JOSEPH KOSTELECKY

Print Name

Date

Witness

DEAN JENSEN

Print Name

Date



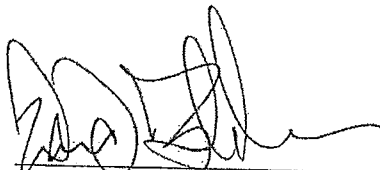
Witness

ANDREA BELCHER

Print Name

JUN 12, 2017

Date



DAVID BELCHER

Alicia Richardson AA
Witness NEIL RICHARDSON

Alicia Richardson
Print Name

6/14/17
Date

Witness

KENNETH FAIRCLOTH

Print Name

Date

Witness

WAZIR (MIKE) SETH

Print Name

Date

Witness

JAMES MCKEE

Print Name

Date

Witness

NEIL RICHARDSON

Print Name

Date

Naida Faircloth
Witness

Kenneth Faircloth
KENNETH FAIRCLOTH

NAIDA FAIRCLOTH
Print Name

June 13, 2017
Date

Witness

WAZIR (MIKE) SETH

Print Name

Date

Witness

JAMES MCKEE

Print Name

Date

Witness

NEIL RICHARDSON

Print Name

Date

Witness

KENNETH FAIRCLOTH

Print Name

Date

Ashley Bettcher
Witness

Wazir (Mike) SETH
WAZIR (MIKE) SETH

Ashley Bettcher
Print Name

June 13, 2017
Date

Witness

JAMES MCKEE

Print Name

Date

Witness _____

NEIL RICHARDSON _____

Print Name _____

Date _____

Witness _____

KENNETH FAIRCLOTH _____

Print Name _____


Date _____

Witness _____

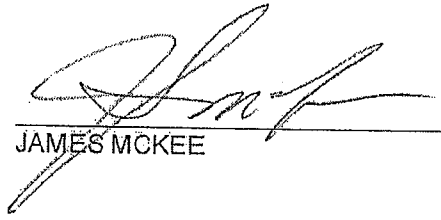
WAZIR (MIKE) SETH _____

Print Name _____

Date _____



Witness _____



JAMES MCKEE _____

TINA MCKEE
Print Name _____

June 13/17
Date _____

Witness

Jody Benteau
Print Name

6/21/2017
Date

[Signature]
SONJA KUEHNLE (SANBORN)

Witness

Print Name

Date

DOUGLAS ROBINSON

ENCON GROUP INC.

Per: _____ c/s
I have the power to bind the corporation.

CHUBB INSURANCE COMPANY OF CANADA

Per: _____ c/s
I have the power to bind the corporation.

Witness


SONJA KUEHNLE (SANBORN)

Print Name

Date

Parman

Witness



DOUGLAS ROBINSON

Lata Parman

Print Name

June 12/2017

Date

ENCON GROUP INC.

Per: _____ c/s
I have the power to bind the corporation.

CHUBB INSURANCE COMPANY OF CANADA

Per: _____ c/s
I have the power to bind the corporation.

Witness

SONJA KUEHNLE (SANBORN)

Print Name

Date

Witness

DOUGLAS ROBINSON

Print Name

Date

ENCON GROUP INC.

22 June 2017

Per: *Kaplan* c/s
I have the power to bind the corporation.

CHUBB INSURANCE COMPANY OF CANADA

Per: _____ c/s
I have the power to bind the corporation.

Witness

SONJA KUEHNLE (SANBORN)

Print Name

Date

Witness

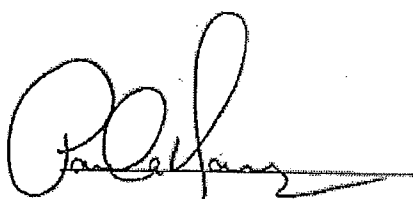
DOUGLAS ROBINSON

Print Name

Date

ENCON GROUP INC.

Per: _____ c/s
I have the power to bind the corporation.



CHUBB INSURANCE COMPANY OF CANADA

Per: PAULA VARGAS, Vice President c/s
I have the power to bind the corporation.

TRAVELERS INSURANCE COMPANY OF CANADA

David Clark

Per: DAVID CLARK c/s
I have the power to bind the corporation

ROYAL & SUNALLIANCE INSURANCE COMPANY

Per: _____ c/s
I have the power to bind the corporation.

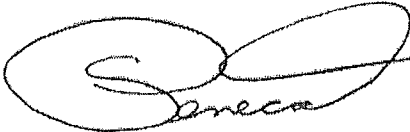
AIG INSURANCE COMPANY OF CANADA F/K/A
CHARTIS INSURANCE COMPANY OF CANADA

Per: _____ c/s
We together have the power to bind the corporation.

Per: _____ c/s
We together have the power to bind the corporation.

TRAVELERS INSURANCE COMPANY OF CANADA

Per: _____ c/s
I have the power to bind the corporation



ROYAL & SUNALLIANCE INSURANCE COMPANY

Digitally signed by Philippe Senecal
DN: dc=ca, dc=royalsunalliance, ou=HEAD
OFFICE, ou=Users, cn=Philippe Senecal
Date: 2017.06.20 18:11:12 -04'00'



Per: _____ c/s
I have the power to bind the corporation.

AIG INSURANCE COMPANY OF CANADA F/K/A
CHARTIS INSURANCE COMPANY OF CANADA

Per: _____ c/s
We together have the power to bind the corporation.

Per: _____ c/s
We together have the power to bind the corporation.


TRAVELERS INSURANCE COMPANY OF CANADA

Per: _____ c/s
I have the power to bind the corporation

ROYAL & SUNALLIANCE INSURANCE COMPANY

Per: _____ c/s
I have the power to bind the corporation.

AIG INSURANCE COMPANY OF CANADA F/K/A
CHARTIS INSURANCE COMPANY OF CANADA

Per:  _____ c/s
We together have the power to bind the corporation.

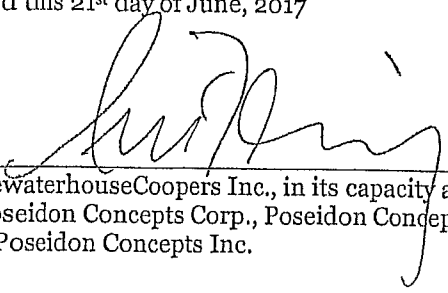
Per:  _____ c/s
We together have the power to bind the corporation.

SCHEDULE "A"

1. Class Actions, as defined in the Plan *
2. Monitor Action, as defined in the Plan *
3. Senior Secured Creditor Action, as defined in the Plan *
4. Underwriter Claim, as defined in the Plan *
5. KPMG Claim, as defined in the Plan *
6. ASC Investigation and Proceeding and related judicial review proceeding by KPMG
7. SEC Investigation and Proceeding
8. DOJ Investigation
9. Manitoba Securities Commission Investigation
10. United States of America v. Joseph A. Kostecky (USDC N.D., 17-CR-15)
11. Chartered Professional Accountants of Alberta Investigation and Proceeding (File 2017027)

PricewaterhouseCoopers Inc., in its capacity as Monitor of Poseidon Concepts Corp., Poseidon Concepts Ltd. Partnership and Poseidon Concepts Inc. (the "Poseidon Entities") hereby undertakes on behalf of the Poseidon Entities to sign the attached release (the "Release") and deliver a copy to the other parties thereto upon Court approval of the Poseidon Entities' Plan of Arrangement and the Release.

Dated this 21st day of June, 2017



PricewaterhouseCoopers Inc., in its capacity as Monitor
of Poseidon Concepts Corp., Poseidon Concepts Ltd. Partnership
and Poseidon Concepts Inc.

SCHEDULE "F"

AMENDED CONFIDENTIAL FULL AND FINAL RELEASE

THIS AMENDED CONFIDENTIAL FULL AND FINAL RELEASE (the "AMENDING AGREEMENT") is made by and between Encon Group, Inc., as managing general agent for Continental Casualty Company, Temple Insurance Company, Aviva Insurance Company of Canada and XL Reinsurance America Inc. (hereinafter "ENCON"), Chubb Insurance Company of Canada ("CHUBB"), Travelers Insurance Company of Canada ("TRAVELERS"), Royal & SunAlliance Insurance Company of Canada ("RSA") and AIG Insurance Company of Canada (formerly known as Chartis Insurance Company of Canada) ("AIG"; and collectively with ENCON, CHUBB, TRAVELERS and RSA, the "INSURERS"), on the one hand, and Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Ltd. Partnership and Poseidon Concepts Inc., by and through their Monitor PricewaterhouseCoopers Inc. (all hereinafter collectively, the "POSEIDON ENTITIES"), Matthew MacKenzie, Lyle Michaluk, Scott Dawson, Harley Winger, Clifford Wiebe, Joseph Kostelecky, Dean Jensen, David Belcher, Neil Richardson, Kenneth Faircloth, Wazir (Mike) Seth and James McKee (all, hereinafter collectively, the "INSURED PERSONS") and Sonja Kuehnle (Sanborn) and Douglas Robinson (hereinafter collectively, the "POSEIDON EMPLOYEES"), on the other hand (the INSURERS, the POSEIDON ENTITIES, the INSURED PERSONS and the POSEIDON EMPLOYEES are collectively referred to herein as the "PARTIES").

RECITALS

- I. WHEREAS the PARTIES entered into a Confidential Full and Final Release in June 2017, a copy of which is found at Schedule "A" to this AGREEMENT (the "INSURER RELEASE");

- II. AND WHEREAS the PARTIES, other than the INSURERS, and others entered into a Plan of Compromise and Arrangement and Settlement Agreement in June 2017 that did not include KPMG or the Underwriters in the settlement contemplated therein (the "INITIAL PLAN AND SETTLEMENT");
- III. AND WHEREAS a global settlement was subsequently reached that involves KPMG and the Underwriters, which is set out in an Amended Plan of Compromise and Arrangement (the "PLAN") and an Amended Settlement Agreement (the "SETTLEMENT AGREEMENT"), which, when executed, will supersede and replace the INITIAL PLAN AND SETTLEMENT;
- IV. AND WHEREAS under the PLAN and the SETTLEMENT AGREEMENT, the INITIAL INSTALMENT will increase from \$29,000,000 to \$30,000,000, and the FINAL INSTALMENT will decrease from a maximum of \$7,500,000 to a maximum of \$6,500,000;
- V. AND WHEREAS the PARTIES desire to enter into this AMENDING AGREEMENT to amend the INSURER RELEASE to reflect the changes that have been made to the INITIAL PLAN AND SETTLEMENT;
- VI. AND WHEREAS any capitalized terms used herein that are not defined herein have the same meaning ascribed to such terms in the INSURER RELEASE;
- VII. AND WHEREAS the POSEIDON ENTITIES' agreement herein is conditional upon the Monitor receiving court approval to execute this AGREEMENT;
- VIII. AND WHEREAS PricewaterhouseCoopers Inc., in its capacity as Monitor of the POSEIDON ENTITIES has undertaken on behalf of the POSEIDON ENTITIES to sign the INSURER RELEASE and this AMENDING AGREEMENT and deliver copies of both

documents to the PARTIES upon Court approval of the Plan of Arrangement, the Settlement Agreement, the INSURER RELEASE and this AMENDING AGREEMENT.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

AGREEMENT

1. All references in the INSURER RELEASE to the INITIAL PLAN AND SETTLEMENT shall now be read as references to the PLAN and SETTLEMENT AGREEMENT.
2. The aggregate amount payable by the INSURERS under section 2 of the INSURER RELEASE shall remain unchanged at \$32,750,000.
3. The INSURERS' contribution to the INITIAL INSTALMENT shall be \$26,250,000 instead of \$25,250,000.
4. The INSURERS' commitment to fund the FINAL INSTALMENT shall be limited to \$6,500,000 instead of \$7,500,000.
5. All references to "\$7,500,000 DEFENCE COST RESERVE" shall be replaced with references to "\$6,500,000 DEFENCE COST RESERVE".
6. The \$6,500,000 DEFENCE COST RESERVE shall be \$6,500,000 instead of \$7,500,000.
7. The aggregate monetary limit for CRIMINAL/REGULATORY DEFENCE COSTS shall be \$6,500,000 instead of \$7,500,000.
8. The increase of \$1,000,000 to the INITIAL INSTALMENT shall be funded from the AIG Policy (it is understood and agreed that in no event shall the \$1,000,000 contribution to the Initial Instalment from the AIG Policy affect or reduce the \$2,500,000 that is being released from the AIG Policy as part of the POLICY LIMITS REDUCTION).

9. Payment in the aggregate amount of \$30,000 by the INSURERS towards the settlement of regulatory proceedings by the Chartered Professional Accountants of Alberta against Lyle Michaluk shall be treated as CRIMINAL/REGULATORY DEFENCE COSTS.

10. All others terms and conditions of the INSURER RELEASE remain unchanged.

11. This AMENDING AGREEMENT shall be governed by and construed in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF the PARTIES have hereunto set their hands (in the case of the POSEIDON ENTITIES, by PricewaterhouseCoopers Inc., Court-appointed Monitor of the POSEIDON ENTITIES) on the dates below indicated.

POSEIDON CONCEPTS CORP.

Date

Per: _____ c/s
I have authority to bind the corporation.
PricewaterhouseCoopers Inc.

POSEIDON CONCEPTS LTD.

Date

Per: _____ c/s
I have authority to bind the corporation.
PricewaterhouseCoopers Inc.

POSEIDON CONCEPTS LIMITED PARTNERSHIP

Date

Per: _____ c/s
I have authority to bind the corporation.
PricewaterhouseCoopers Inc.

POSEIDON CONCEPTS INC.

Date

Per: _____ c/s
I have authority to bind the corporation.
PricewaterhouseCoopers Inc.

Witness



MATTHEW MACKENZIE

Print Name

Date

Witness

LYLE MICHALUK

Print Name

Date

Witness

SCOTT DAWSON

Print Name

Date

POSEIDON CONCEPTS INC.

Date

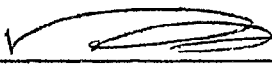
Per: _____ c/s
I have authority to bind the corporation,
PricewaterhouseCoopers Inc.

Witness

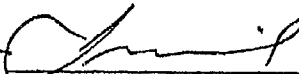
MATTHEW MACKENZIE

Print Name

Date



Witness



LYLE MICHALUK

KARA MICHALUK

Print Name

APRIL 11, 2013

Date

Witness

SCOTT DAWSON

Print Name

Date

POSEIDON CONCEPTS INC.

Date

Per: _____ c/s
I have authority to bind the corporation.
PricewaterhouseCoopers Inc.

Witness

MATTHEW MACKENZIE

Print Name

Date

Witness

LYLE MICHALUK

Print Name

Date

Renée Larose

Witness

Scott Dawson

SCOTT DAWSON

Renée Larose

Print Name

4/12/18

Date

Megan King
Witness

HARLEY WINGER

Megan King
Print Name

April 12, 2018
Date

Witness

CLIFFORD WIEBE

Print Name

Date

Witness

JOSEPH KOSTELECKY

Print Name

Date

Witness

DEAN JENSEN

Print Name

Date

Witness

HARLEY WINGER

Print Name

Date

[Signature]

Witness

[Signature]

CLIFFORD WIEBE

Barbara Wiebe

Print Name

April 6, 2018

Date

Witness

JOSEPH KOSTELECKY

Print Name

Date

Witness

DEAN JENSEN

Print Name

Date

Witness _____

HARLEY WINGER _____

Print Name _____

Date _____

Witness _____

CLIFFORD WIEBE _____

Print Name _____

Date _____

Witness _____

[Signature]
JOSEPH KOSTELECKY _____

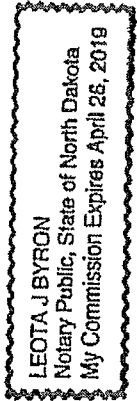
Print Name _____

State of ND County of Stark
The foregoing instrument was acknowledged before me
this 14 day of April 2018
by Joseph Kostelecky

Date _____

[Signature]

Notary Public



Witness _____

DEAN JENSEN _____

Print Name _____

Date _____

Witness

HARLEY WINGER

Print Name

Date

Witness

CLIFFORD WIEBE

Print Name

Date

Witness

JOSEPH KOSTELECKY

Print Name

Date



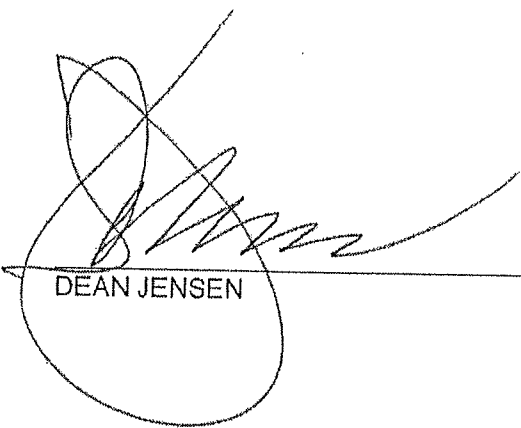
Witness

Robyn G. JENSEN

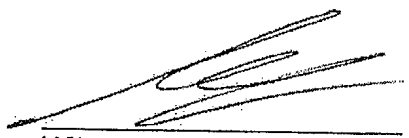
Print Name

April 12, 2018

Date



DEAN JENSEN



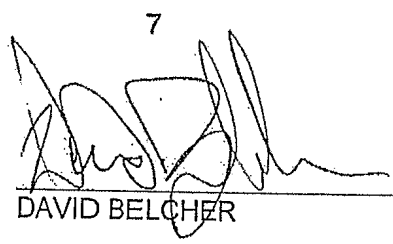
Witness

MARCOE BASTIAN

Print Name

APR 6, 2018

Date

7


DAVID BELCHER

Witness

Print Name

Date

NEIL RICHARDSON

Witness

Print Name

Date

KENNETH FAIRCLOTH

Witness

Print Name

Date

WAZIR (MIKE) SETH

Witness

DAVID BELCHER

Print Name

Date

Alicia Richardson

Witness

Neil Richardson

NEIL RICHARDSON

Alicia Richardson

Print Name

4/15/18

Date

Witness

KENNETH FAIRCLOTH

Print Name

Date

Witness

WAZIR (MIKE) SETH

Print Name

Date

Witness

DAVID BELCHER

Print Name

Date

Witness

NEIL RICHARDSON

Print Name

Date

Witness

Kenneth Faircloth

KENNETH FAIRCLOTH

Print Name

Date

Witness

WAZIR (MIKE) SETH

Print Name

Date

Witness

DAVID BELCHER

Print Name

Date

Witness

NEIL RICHARDSON

Print Name

Date

Witness

KENNETH FAIRCLOTH

Print Name

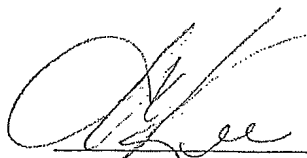
Date

Witness

WAZIR (MIKE) SETH

Print Name

Date



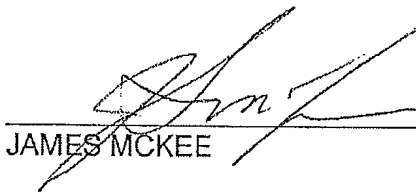
Witness

TINA MCKEE

Print Name

APRIL 12, 2018

Date



JAMES MCKEE

Witness

SONJA KUEHNLE (SANBORN)

Print Name

Date

Witness

DOUGLAS ROBINSON

Print Name

Date

ENCON GROUP INC.

Per. _____ c/s
I have the power to bind the corporation.

Witness

JAMES MCKEE

Print Name

Date

Alison Pertus

Witness

[Signature]

SONJA KUEHNLE (SANBORN)

Alison Pertus

Print Name

4/9/2008

Date

Witness

DOUGLAS ROBINSON

Print Name

Date

ENCON GROUP INC.

Per: _____ c/s
I have the power to bind the corporation.

Witness

JAMES MCKEE

Print Name

Date

Witness

SONJA KUEHNLE (SANBORN)

Print Name

Date

Anita Collett

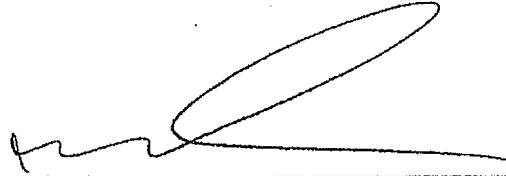
Witness

ANITA COLLETT

Print Name

04/10/2018

Date



DOUGLAS ROBINSON

ENCON GROUP INC.

Per: _____ c/s
I have the power to bind the corporation.

Witness

JAMES MCKEE

Print Name

Date

Witness

SONJA KUEHNLE (SANBORN)

Print Name

Date

Witness

DOUGLAS ROBINSON

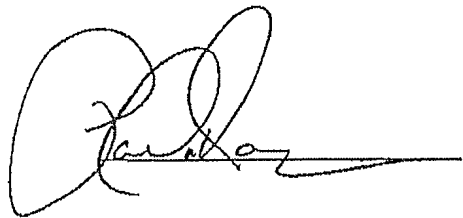
Print Name

Date

ENCON GROUP INC.

April 16 / 18

Per: Jon Bey c/s
I have the power to bind the corporation.



CHUBB INSURANCE COMPANY OF CANADA

Per: PAULA KARGAS c/s
I have the power to bind the corporation.

TRAVELERS INSURANCE COMPANY OF CANADA

Per: _____ c/s
I have the power to bind the corporation

ROYAL & SUNALLIANCE INSURANCE COMPANY

Per: _____ c/s
I have the power to bind the corporation.

AIG INSURANCE COMPANY OF CANADA F/K/A
CHARTIS INSURANCE COMPANY OF CANADA

Per: _____ c/s
We together have the power to bind the corporation.

Per: _____ c/s
We together have the power to bind the corporation.

CHUBB INSURANCE COMPANY OF CANADA

Per: _____ c/s
I have the power to bind the corporation.

TRAVELERS INSURANCE COMPANY OF CANADA

April 10, 2018

Per: David Clark c/s
I have the power to bind the corporation
DAVID CLARK

ROYAL & SUNALLIANCE INSURANCE COMPANY

Per: _____ c/s
I have the power to bind the corporation.

AIG INSURANCE COMPANY OF CANADA F/K/A
CHARTIS INSURANCE COMPANY OF CANADA

Per: _____ c/s
We together have the power to bind the corporation.

Per: _____ c/s
We together have the power to bind the corporation.

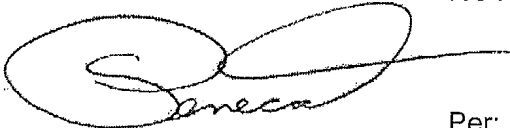
CHUBB INSURANCE COMPANY OF CANADA

Per: _____ c/s
I have the power to bind the corporation.

TRAVELERS INSURANCE COMPANY OF CANADA

Per: _____ c/s
I have the power to bind the corporation

ROYAL & SUNALLIANCE INSURANCE COMPANY



Digitally signed by Philippe Senecal
DN: dc=ca, dc=royalsunalliance, ou=HEAD
OFFICE, ou=Users, cn=Philippe Senecal
Date: 2018.04.10 16:55:32 -04'00'

Per: _____ c/s
I have the power to bind the corporation.

AIG INSURANCE COMPANY OF CANADA F/K/A
CHARTIS INSURANCE COMPANY OF CANADA

Per: _____ c/s
We together have the power to bind the corporation.

Per: _____ c/s
We together have the power to bind the corporation.

CHUBB INSURANCE COMPANY OF CANADA

Per: _____ c/s
I have the power to bind the corporation.

TRAVELERS INSURANCE COMPANY OF CANADA

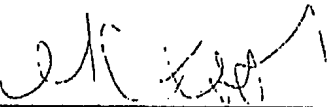
Per: _____ c/s
I have the power to bind the corporation

ROYAL & SUNALLIANCE INSURANCE COMPANY

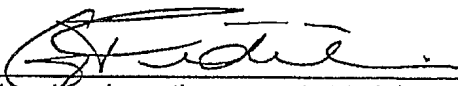
Per: _____ c/s
I have the power to bind the corporation.

AIG INSURANCE COMPANY OF CANADA F/K/A
CHARTIS INSURANCE COMPANY OF CANADA

April 13, 2013

Per:  _____ c/s
We together have the power to bind the corporation.
MARIE-CHRISTINE LEVASSEUR

April 13, 2013

Per:  _____ c/s
We together have the power to bind the corporation.
JOE FIDILIO