

**NATIONAL SETTLEMENT AGREEMENT**

Made as of April 29, 2025

Between

**MARK SUNDERLAND and KEVIN MCFALL**

(the “**Plaintiffs**”)

**and**

**RE/MAX ONTARIO-ATLANTIC CANADA INC.**

(the “**Settling Defendant**”)

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## NATIONAL SETTLEMENT AGREEMENT

### RECITALS

- A. **WHEREAS** the Proceedings have been commenced by the Plaintiffs in the Federal Court;
- B. **WHEREAS** the statements of claim in the Proceedings allege, among other things, that the Settling Defendant and others aided, abetted and counseled a conspiracy, agreement or arrangement, contrary to subsection 45(1)(a) of the *Competition Act*, R.S.C. 1985, c. C-34 to fix, maintain, increase or control the price for the supply of buyer brokerage services for residential real estate during the relevant period;
- C. **WHEREAS** the Settling Defendant has denied and continues to deny each and all of the claims and allegations made by Plaintiffs and the Settlement Class members, including that there exists or existed any such conspiracy, agreement or arrangement and that the Plaintiffs and/or the Settlement Class members have suffered any harm or damage whatsoever, and all claims and allegations of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Proceedings, or otherwise;
- D. **WHEREAS** the Federal Court of Appeal's decision in the Sunderland Appeals is pending;
- E. **WHEREAS** the Plaintiffs, Class Counsel, and the Settling Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiffs' allegations against the Releasees, which allegations are expressly denied by the Settling Defendant;
- F. **WHEREAS** the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, after duly investigating and carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Proceedings, the legal and factual defences thereto, and the applicable law, and having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the class they seek to represent;

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

H. **WHEREAS** the Settling Defendant does not hereby attorn to the jurisdiction of the Federal Court or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent expressly provided in this Settlement Agreement with respect to the Proceedings;

I. **WHEREAS** counsel for the Settling Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement;

J. **WHEREAS** as a result of these settlement discussions and negotiations, the Settling Defendant and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendant and the Plaintiffs, both individually and on behalf of the class the Plaintiffs seek to represent, subject to approval of the Federal Court;

K. **WHEREAS** the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, all claims that were or could have been asserted against the Releasees in the Proceedings;

L. **WHEREAS** the Parties consent to certification of the Proceedings as a class proceeding solely for the purposes of implementing this Settlement Agreement and contingent on approval by the Federal Court as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

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

N. **WHEREAS** the Parties intend to pursue the approval of this Settlement Agreement in the Federal Court; and

O. **WHEREAS** the Settling Defendant, in addition to the settlement payments set forth below, has agreed to cooperate with Plaintiffs and to implement certain practice changes, each as set forth in this Settlement Agreement;

**NOW THEREFORE**, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceedings be settled and dismissed with prejudice as to the Settling Defendant only, all without costs as to the Plaintiffs, the class they seek to represent or the Settling Defendant, subject to the approval of the Federal Court, on the following terms and conditions:

### **SECTION 1 – DEFINITIONS**

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

- (1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notice, but excluding Class Counsel Fees, the Funder Levies and Class Counsel Disbursements.
- (2) ***Buyer Brokerage Commission Rules*** means the Canadian Real Estate Association Rule 11.2.1.3, the Toronto Regional Real Estate Board Rules 705, 710, 730 and 740, and the “Additional Regional Board Rules” set out in Appendix A to the Amended Statement of Claim in the McFall Proceeding.
- (3) ***Class Counsel*** means Kalloghlian Myers LLP, Paul Bates and John Syme.
- (4) ***Class Counsel Disbursements*** include the disbursements, Administration Expenses, and applicable taxes incurred by Class Counsel in the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in the Proceedings.
- (5) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person.

- (6) ***Class Period*** means the period between March 11, 2010 and the date of the order certifying the Proceedings against the Settling Defendant for settlement purposes.
- (7) ***Common Issue*** means: Did the Settling Defendant aid, abet and counsel a conspiracy, agreement or arrangement contrary to subsection 45(1)(a) of the *Competition Act*, R.S.C. 1985, c. C-34 to fix, maintain, increase or control the price for the supply of buyer brokerage services for residential real estate during the Class Period?
- (8) ***Date of Execution*** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement.
- (9) ***Defendants*** means the entities currently or formerly named as defendants in the Proceedings as set out in Schedule "A" to this Settlement Agreement. For greater certainty, Defendants includes the Settling Defendant.
- (10) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Federal Court.
- (11) ***Effective Date*** means the date when the Final Orders have been received.
- (12) ***Final Approval Order*** means the later of a final judgment pronounced by the Federal Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.
- (13) ***Final Dismissal Order*** means the later of a final order from the Federal Court dismissing the Proceedings as against the Settling Defendant, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the dismissal order in accordance with its terms, upon a final disposition of all appeals.
- (14) ***Final Orders*** means the Final Approval Order and the Final Dismissal Order.
- (15) ***Funder*** means Hereford Litigation Finance 1 Limited.
- (16) ***Funder Levies*** means the levies payable to the Funder.

(17) **McFall Proceeding** means the proceeding styled *McFall v. Canadian Real Estate Association et al.* (Federal Court File No. T-119-24).

(18) **Non-Settling Defendant** means a Defendant that is not: (i) a Settling Defendant; (ii) a Settled Defendant; or (iii) a Defendant against whom the Proceedings has been dismissed or discontinued, either before or after the Date of Execution.

(19) **Other Proceedings** means actions or proceedings, excluding the Proceedings, for the Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(20) **Party and Parties** means the Settling Defendant, the Plaintiffs, and, where necessary, the Settlement Class Members and Class Counsel.

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

(22) **Plaintiffs** means Mark Sunderland and Kevin McFall.

(23) **Potential Defendant** means any named or unnamed coconspirator, party to an agreement or arrangement, aider, abettor or counsellor that is not a Releasee.

(24) **Proceedings** means the McFall Proceeding and the Sunderland Proceeding.

(25) **Proportionate Liability** means the proportion of any judgment that, had the Settling Defendant not settled, the Federal Court would have apportioned to the Releasees.

(26) **Released Claims** means any and all manner of claims, including causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, subrogation or otherwise in nature, for damages, fees, costs, penalties, fines, debts, expenses, counsel fees, and interest, whenever incurred, and liabilities of

any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, actual or contingent, asserted or unasserted, liquidated or unliquidated, choate or inchoate, whether or not concealed or hidden, without regard to the subsequent discovery or existence of different or additional facts, in this or any other Canadian or foreign jurisdiction, which the Releasors ever had, now have, or hereafter can, shall or may have, representatively, derivatively, directly, indirectly or in any other capacity, and whether as buyers or sellers, against the Releasees as a result of, in connection with, arising from or relating in any way to any conduct alleged or that could have been alleged in the Proceedings and arising from the factual predicate of the Proceedings or any amended pleading therein, from the beginning of time to the Effective Date, whether in Canada or elsewhere, and specifically including, without limitation, any alleged conspiracy, aiding, abetting, counselling, unlawful agreement, or any other unilateral or coordinated anticompetitive conduct related to commissions associated with the purchase or sale of residential real estate on a multiple listing service anywhere in Canada including, without limitation, claims for consequential or follow on harm that arise after the Effective Date.

(27) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendant, RE/MAX of Western Canada (1998), LLC, RE/MAX Quebec Inc., and RE/MAX, LLC and each of their past, present and future, direct and indirect parents (including holding companies), owners, subsidiaries, divisions, predecessors, successors, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and each of their respective past, present and future franchisees, sub-franchisors, officers, directors, employees, agents, independent contractors, shareholders, attorneys, auditors, legal or other representatives, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators, insurers, spouses, family law claimants, beneficiaries, creditors and assigns of each of the foregoing.

(28) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members on behalf of themselves and each of their respective past, present and future, direct and indirect parents (including holding companies), owners, subsidiaries, divisions, predecessors, successors, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and each of their respective past, present and

future officers, directors, employees, agents, independent contractors, shareholders, attorneys, auditors, legal or other representatives, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators, insurers, spouses, family law claimants, beneficiaries, creditors and assigns of each of the foregoing (whether or not they object to the settlement set forth in the Settlement Agreement and whether or not they make a claim for payment from the Settlement Fund).

(29) ***Settled Defendants*** means any Defendant (excluding the Settling Defendant) that enters or entered a settlement agreement with the Plaintiffs in the Proceedings, and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Date of Execution.

(30) ***Settlement Agreement*** means this agreement, including the recitals and schedules.

(31) ***Settlement Amount*** means CAD\$7,800,000.

(32) ***Settlement Class*** means all Persons wherever they may reside or be domiciled, who sold residential real estate on a multiple listing service owned and operated by a Defendant between March 11, 2010 and the date of the order certifying the Proceedings against the Settling Defendant for settlement purposes. Excluded from the Settlement Class are the Defendants, their parent companies, subsidiaries, and affiliates, and any person who validly opts-out of the Proceedings or who was automatically excluded from the Proceedings pursuant to s. 334.21(2) of the *Federal Courts Rules*.

(33) ***Settlement Class Member*** means a member of the Settlement Class.

(34) ***Settling Defendant*** means RE/MAX Ontario-Atlantic Canada Inc. (named in the Proceedings as RE/MAX Ontario-Atlantic Canada, Inc. o/a RE/MAX Integra).

(35) ***Sunderland Appeal*** means the appeal by the plaintiff, appeal by certain Non-Settling Defendants and cross-appeal by the Settling Defendant and certain Non-Settling Defendants of the decision issued by the Federal Court, dated September 25, 2023, striking certain claims in the Sunderland Proceeding (2023 FC 1293), heard by the Federal Court of Appeal on October 7-8, 2024 with the decision currently pending (Federal Court of Appeal Court File Nos. A-273-23, A-267-23 and A-294-23).

(36) ***Sunderland Proceeding*** means the proceeding styled *Sunderland v. Toronto Regional Real Estate Board et al.* (Federal Court File No. T-595-21).

(37) ***Trust Account*** means a guaranteed investment product, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Class Counsel or a court-appointed claims administrator for the benefit of the Settlement Class Members, as provided for in this Settlement Agreement.

(38) ***U.S. Proceedings*** means U.S. litigation brought on behalf of a proposed class of home sellers, titled *Burnett et al. v. The National Association of Realtors et al.*, case no. 19-CV-00332-SRB and *Moehrl et al. v. The National Association of Realtors et al.*, case no. 1:19-cv-01610.

## SECTION 2 – SETTLEMENT APPROVAL

### 2.1 Reasonable Best Efforts

(1) The Parties shall use their reasonable best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Settling Defendant.

### 2.2 Motion Seeking Approval of Notice and Certification

(1) The Plaintiffs shall file a motion in the Federal Court, as soon as practicable after the Date of Execution, for an order approving the notice described in Section 12.1(1) and certifying the Proceedings for settlement purposes.

(2) The Federal Court order approving the notice described in Section 12.1(1) and certifying the Proceedings for settlement purposes shall be substantially in the form attached as Schedule A.

### 2.3 Motion Seeking Approval of the Settlement

(1) The Plaintiffs shall file a motion before the Federal Court for an order approving this Settlement Agreement as soon as practicable after:

- (a) the order referred to in Section 2.2(1) has been granted; and
- (b) the notice described in Section 12.1(1) has been published.

(2) The Federal Court order approving this Settlement Agreement shall be substantially in the form attached as Schedule B.

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

#### **2.4 Pre-Motion Confidentiality**

(1) Until the motion required by Section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of counsel for the Settling Defendant and Class Counsel, as the case may be, except: (i) as stated in Section 2.4(2), (ii) disclosure by the Settling Defendant to Releasees, (iii) disclosure by Class Counsel to the Releasors, (iv) disclosure by Class Counsel to the Non-Settling Defendants, and (v) as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), pursuant to regulatory requirements, as necessary to give effect to its terms, or as otherwise required by law.

(2) Upon the Date of Execution, Class Counsel may disclose the Settlement Agreement, including its existence and terms, to the Federal Court, Federal Court of Appeal and Non-Settling Defendants.

### **SECTION 3 – SETTLEMENT BENEFITS**

#### **3.1 Payment of Settlement Amount**

(1) The Settling Defendant shall pay the Settlement Amount to Class Counsel, for deposit into the Trust Account, within fourteen (14) business days of the Date of Execution.

(2) At least ten (10) days prior to the Settlement Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

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

(4) The Settlement Amount shall be inclusive of all amounts, including interest and costs.

(5) The Settling Defendant and other Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings, including, but not limited to, legal fees or costs of notice or administration.

(6) Class Counsel or its court-appointed agent shall maintain the Trust Account as provided for in this Settlement Agreement.

(7) Class Counsel and its court-appointed agent shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Federal Court obtained after notice to the Parties.

### **3.2 Taxes and Interest**

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

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account shall be the responsibility of the Settlement Class. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendant shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel.

## **SECTION 4 – COOPERATION**

### **4.1 Extent of Cooperation**

(1) Within sixty (60) days of the production of the documents and information in accordance with section 4.1(2) to (5), or at a time mutually agreed upon by the Parties acting reasonably, the Settling Defendant shall make available to Class Counsel:

- (a) One witness, to be identified and agreed via a good faith meet and confer process, for an interview;
- (b) The interview shall be conducted through a meeting between Class Counsel, the witness and counsel for the Settling Defendant including, at the discretion of the Settling Defendant, foreign external counsel and/or representatives of the Settling Defendant;
- (c) Class Counsel shall make reasonable efforts to provide a non-exhaustive list of questions and more specific topics to be covered at least ten (10) business days prior to the meeting;
- (d) The interview shall be conducted virtually through a secure virtual meeting platform or, at the discretion of the Settling Defendant, in person at the offices of McMillan LLP, Toronto, Canada with an option for Class Counsel to attend virtually through a secure virtual meeting platform. The interview may last up to eight (8) hours in one (1) business day; and
- (e) Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by the Settling Defendant and/or counsel for the Settling Defendant as part of the interview shall comply with any applicable protective orders in the U.S. Proceedings.

(2) Within sixty (60) days after the Effective Date, the Settling Defendant shall provide Class Counsel with electronic copies of the following documents to the extent the documents are within its power, possession and control:

- (a) The Settling Defendant and RE/MAX of Western Canada (1998), LLC Franchise Disclosure Documents for the period of March 11, 2010 to April 9, 2021;
  - (b) RE/MAX, LLC Brand Standards Manuals for the period of March 11, 2010 to April 9, 2021;
  - (c) RE/MAX Holdings, Inc. U.S. Securities and Exchange Commission Filings for the period of March 11, 2010 to April 9, 2021;
- (3) Within sixty (60) days after the Effective Date, the Settling Defendant shall use best efforts to provide Class Counsel with electronic copies of the following documents to the extent the documents are within its power, possession and control:
- (a) for the period of January 1, 2005 to April 9, 2021, documents located from a search of the Settling Defendant's electronic records of three (3) custodians, to be chosen by the Plaintiffs with the assistance of the Settling Defendant, and relevant to: (i) the Settling Defendant's participation in Canadian real estate associations, including Canadian Real Estate Association, regarding allegations in the Proceedings; and (ii) the Buyer Brokerage Commission Rules, including without limiting the generality of the foregoing, their creation, promulgation, adoption, implementation and enforcement. For greater certainty, there is no obligation for the Settling Defendant to search electronic or paper records of any third party, including any franchisee;
  - (b) documents that the Settling Defendant has already identified (whether or not for the period referred to above) relevant to: (i) the Settling Defendant's participation in Canadian real estate associations, including the Canadian Real Estate Association; (ii) Buyer Brokerage Commission Rules alleged in the Proceedings, including without limiting the generality of the foregoing, their creation, promulgation, adoption, implementation and enforcement; (iii) the non-public disclosure of buyer brokerage commissions offered by sellers; and (iv) rebates offered by buyer brokerage commissions to buyers;

- (c) any documents produced by the Settling Defendant and RE/MAX, LLC, as applicable, with respect to the issues raised in the Proceedings to: (i) the Canadian Competition Bureau; and (ii) the plaintiffs in the U.S. Proceedings; and
  - (d) transcripts of all depositions, if any, of current or former employees, officers or directors of RE/MAX, LLC in the U.S. Proceedings, including all exhibits thereto.
- (4) The witness and Counsel for the Settling Defendant shall make themselves available for reasonable follow-up questions from Class Counsel regarding the interview given pursuant to Section 4.1(1) or the documents produced pursuant to Sections 4.1(2)-4.1(3), and for that purpose Class Counsel may request one virtual meeting with the witness and/or Counsel for the Settling Defendant, of up to six (6) hours, for the purpose of discussing Class Counsel's consolidated reasonable follow-up questions. Class Counsel shall make reasonable efforts to provide a list of the consolidated reasonable follow-up questions at least ten (10) business days prior to the virtual meeting.
- (5) If requested by Class Counsel, the Settling Defendant agrees to:
- (a) use best efforts to assist the Plaintiffs in authenticating any of the documents produced in accordance with this Settlement Agreement to the extent that there is a current representative of the Settling Defendant who can establish their authenticity and the Plaintiffs require their authentication for their admission and use at any point in the Proceedings, including at trial;
  - (b) provide one (1) current officer or employee of the Settling Defendant, to be identified and agreed to via a good faith meet and confer process, to provide affidavit and/or testimonial evidence at the trial or as the Parties may otherwise agree, to the extent that there is a representative with relevant knowledge of the allegations in the Proceedings and related events, and provide access via counsel to the witness prior to trial testimony for up to eight (8) hours in one (1) business day; and
  - (c) if a Non-Settling Defendant includes a witness on a witness list in the Proceedings who is then a current officer or employee of the Settling Defendant or its subsidiaries, the Settling Defendant will make reasonable efforts to seek the

cooperation of that witness to make contact with Class Counsel prior to trial testimony.

(6) The Settling Defendant will not take a position in legal proceedings on an order prohibiting the Buyer Brokerage Commission Rules established by a Canadian real estate board or association as alleged in the Proceedings, which may be sought by the Plaintiffs, provided that nothing shall be interpreted as the Settling Defendant consenting to or not opposing a prohibition on the practices of franchisees and affiliated brokers, agents and salespeople, including offering buyer-side broker commissions.

#### **4.2 Limits on Cooperation**

(1) Nothing in this Settlement Agreement, including without limitation any obligations under section 4.1 or 13.2, shall require, or shall be construed to require, the Settling Defendant or any representative or employee of the Settling Defendant to disclose or produce any documents or information: (i) prepared by or for counsel for the Settling Defendant; (ii) that is not within the possession, custody or control of the Settling Defendant, regardless of whether the Settling Defendant could seek to obtain the documents or information through discovery, audit, other collection procedures or if the documents or information are within the possession, custody or control of franchisees or other third-parties; (iii) that is subject to any privilege, including solicitor-client, litigation, attorney work product, settlement, common-interest or joint defence privilege, or any other privilege or was obtained on a privileged basis from any party to any action or proceeding; (iv) in violation of any doctrine or law, including without limiting the generality of the foregoing, any privacy, bank secrecy and other laws, regulations, and policies of any Canadian or foreign jurisdiction; (v) in contravention of the terms of any order, regulatory directive, rule or law of this or any jurisdiction, including any protective order in the United States or other jurisdictions; (vi) in contravention of contractual obligations; (vii) in contravention of an instruction or directive of any regulatory authority or governmental body in Canada or any foreign jurisdiction; or (viii) with regard to conduct outside the scope of the Released Claims.

(2) A material factor influencing the Settling Defendant's decision to execute this Settlement Agreement is its desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendant, agree

not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendant.

(3) The Parties agree to reasonably collaborate for efficiency and to minimize the number of representatives required, the costs incurred by, time or travel requirements incurred by, and the expenses of, the employee(s) of the Settling Defendant in relation to such testimony, including any cost for travel and a translator.

(4) The failure of any officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs or Class Counsel, shall not constitute a violation of this Settlement Agreement. Class Counsel shall be responsible for all reasonable associated costs incurred by such representatives in connection with fulfilling the Settling Defendant's obligations under section 4.1(5).

(5) The scope of the Settling Defendant's cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceedings as presently filed.

(6) The Settling Defendant's cooperation obligations pursuant to this Section 4 are contingent upon the continuation of the Proceedings as against the Non-Settling Defendants and shall cease upon the final judgment, dismissal, discontinuance, abandonment or court-approved settlement of the Proceedings as against all Defendants.

(7) If any of the documents or information produced by the Settling Defendant pursuant to Section 4 are accidentally or inadvertently disclosed or produced, the Settling Defendant shall so notify Class Counsel and (i) such documents shall be promptly returned to the Settling Defendant, (ii) the documents and the information contained therein shall not be disclosed or used, directly or indirectly, except with the express written permission of the Settling Defendant, (iii) the production of such documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such documents, and (iv) the Plaintiffs shall not assert that any such waiver has occurred.

(8) The obligations of the Settling Defendant to cooperate as particularized in this Section 4 shall not be affected by the release provisions contained in Section 8 of this Settlement Agreement.

(9) If either of the Parties materially breaches Section 4, the other Party may move before the Federal Court to enforce the terms of this Settlement Agreement and may exercise any rights they have to seek compliance with the Settlement Agreement by the breaching Party.

(10) Subject to Section 4.2(9), the provisions set forth in this Section 4 are the exclusive means by which the Plaintiffs and Class Counsel may obtain discovery, information or documents from the Settling Defendant and other Releasees, and the Plaintiffs and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Settling Defendant or other Releasees, whether in Canada or elsewhere and whether under the rules or laws of any Canadian or foreign jurisdiction.

#### **4.3 Limits on Use of Documents and Other Information**

(1) The Plaintiffs may use the documents and information obtained from the Settling Defendants as evidence in the Proceedings, including but not limited to for the use of developing the Distribution Protocol(s) or any other allocation plan relating to any settlement or judgment proceeds, the motion for certification, discovery, summary judgment or a common issues trial, or any other step in the Proceedings, but the Plaintiffs shall not: (i) introduce an interview or a response to a follow-up question into the record as the source of the documents or information; (ii) subpoena any Counsel for the Settling Defendant or representative of the Settling Defendant related to an interview or follow-up questions and responses; (iii) use any documents or information obtained from the Settling Defendants in any other proceeding, suit, cause of action, claim or demand.

(2) It is understood and agreed that the interview and any follow-up questions and responses are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, except to the extent that the documents or information are or become publicly available without any breach of this Settlement Agreement by the Plaintiffs or Class Counsel, unless there is an agreement between the Plaintiffs and the Settling Defendant to make such disclosure. Further, Class Counsel will not attribute any factual information obtained from the interview or follow-up questions and responses to the Settling Defendant and/or Counsel for the Settling Defendant.

(3) The Plaintiffs and Class Counsel agree that they will adhere to the confidentiality designations and protections set out in the confidentiality orders in the U.S. Proceedings, appended to this Settlement Agreement at Schedule D and Schedule E unless and until superseded by any confidentiality order that Class Counsel and the Settling Defendant, acting reasonably, may agree to or as otherwise ordered by the Court.

(4) The Plaintiffs and Class Counsel agree that any documents or information provided pursuant to this Settlement Agreement shall be treated as “Discoverable Information” and will be provided with the same or greater confidentiality and protections as are required for such materials in the Protective and Confidentiality orders in the U.S. Proceedings, which are appended to this Settlement Agreement as Schedules D and E unless and until superseded by any confidentiality order that Class Counsel and the Settling Defendant, acting reasonably, may agree to or as otherwise ordered by the Court.

(5) The Plaintiffs and Class Counsel agree they will not disclose the documents provided by the Settling Defendant and any information contained therein except: (i) to experts, consultants or third-party service providers retained by them in connection with the Proceedings who have agreed to comply with the provisions of this Settlement Agreement and any confidentiality orders issued as contemplated by Section 4.3(3); (ii) as evidence in the Proceedings; (iii) to counsel for Non-Settling Defendants for the purposes of settlement negotiations, only to be shared on the basis that it is highly confidential, for external counsel eyes only and without-prejudice, and with advance notice to Counsel for the Settling Defendant; or (iv) as otherwise required by law. Subject to the foregoing, the Plaintiffs and Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such documents and information, and of any work product of Class Counsel that discloses such documents and information, except to the extent that the documents and information are or become publicly available without any breach of this Settlement Agreement by the Plaintiffs or Class Counsel.

(6) If the Plaintiffs intend to produce for discovery or file in the Proceedings any documents or other information provided by the Settling Defendant as cooperation under the Settlement Agreement, the Plaintiffs shall provide the Settling Defendant with an advance description of the documents or other information sought to be produced or filed at least thirty (30) days in advance of the proposed production or filing, in order that the Settling Defendant may make a motion to

obtain a sealing or confidentiality order or similar relief. If, within the thirty (30) day period, the Settling Defendant does not so move, the Plaintiffs and Class Counsel can produce or file the information or documents in the ordinary course. If, within that thirty (30) day period, the Settling Defendant so moves, the Plaintiffs and Class Counsel shall not oppose the position taken by the Settling Defendant and shall not disclose the confidential documents or information until the Settling Defendant's motion has been decided and all applicable appeal periods have expired.

(7) Notwithstanding Section 4.3(3), so as not to delay prosecution of the Proceedings, Class Counsel may:

- (a) provide, on an interim basis, documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree that, until the Settling Defendant's motion has been decided and all applicable appeal periods have expired, they will keep the documents or information on an external counsel only basis and will only disclose such documents or information to independent expert(s) retained by a Party for the purposes of the Proceedings, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the Proceedings, or a competitor of the Settling Defendant; and
- (b) file such documents or information with the Federal Court in sealed envelopes or other appropriate containers, segregated from the public record, endorsed with the title of the Proceeding and the following statement: "This envelope/box/container containing documents which are filed by [name of Party] and subject to a pending confidentiality motion is not to be opened nor the contents thereof to be displayed or revealed to any non-Court personnel except by order of the Court", and such records shall not form part of the public record in the relevant Proceeding except upon order of the Federal Court or by agreement of all Parties and/or the Settling Defendant whose confidential information is contained therein.

(8) In the event that a Person applies for an order requiring the Plaintiffs to disclose or produce any documents or information provided by the Settling Defendant as cooperation under this Settlement Agreement, the Plaintiffs shall notify the Settling Defendant of such application

promptly upon becoming aware of it and no later than ten (10) days after disclosure or production is sought, in order that the Settling Defendant may move to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production. The Plaintiffs and Class Counsel shall not oppose the position taken by the Settling Defendant and shall not disclose the confidential information or documents until the Settling Defendant's motion has been decided and a final order has been issued requiring the Plaintiffs and/or Class Counsel to produce the relevant information or documents and any applicable appeal periods have expired, except: (i) to the extent such information or documents are or become otherwise publicly available without any breach of this Settlement Agreement by the Plaintiffs or Class Counsel; (ii) as ordered to do so by a Federal Court; or (iii) in accordance with Section 4.3(4)(a).

(9) The Plaintiffs shall in good faith consult with the Settling Defendant before the Plaintiffs agree to the terms of any confidentiality agreement or confidentiality order which would govern the confidentiality of Documents or information originating from the Settling Defendant in the Proceedings and shall make reasonable efforts to accommodate the Settling Defendant's reasonable requests in respect of the same.

## **SECTION 5 – PRACTICE CHANGES**

### **5.1 Extent of Practice Changes**

(1) Within six (6) months after the Effective Date, the Settling Defendant will implement the following practice changes:

- (a) The Settling Defendant will make clear and periodically remind franchisees, and brokers, agents and salespeople affiliated with those franchisees, that:
  - (i) the Settling Defendant does not require them to make offers of compensation to buyer brokerages, agents or salespersons or accept offers of compensation from listing brokerages, agents or salespersons or that, if any such offers are made, does not require such offers to be blanket, unconditional, or unilateral;
  - (ii) franchisees and affiliated brokers, agents and salespeople have an obligation to show and market properties regardless of the existence

or amount of buyer brokerage compensation offered and must be transparent to prospective home sellers and buyers that brokerage commissions are not set by law and are negotiable; and

- (iii) buyer-side brokerages, brokers, salespersons and agents affiliated with franchisees must be transparent regarding the cooperative compensation offered on any listings for which a client requests information;

(b) The Settling Defendant will recommend and encourage that,

- (i) franchisees and their affiliated brokers, agents and salespeople disclose to prospective home sellers and buyers and state in conspicuous language that brokerage commissions are not set by law and are fully negotiable: (a) in their listing agreement, if it is not a government or association-specified form; (b) in their buyer representation agreement, if there is one and it is not a government or association-specified form; and (c) in pre-closing disclosure documents, if there are any and they are not government or association-specified forms; and
- (ii) if the listing agreement, buyer representation agreement, or pre-closing disclosure documents is a government or association-specified form, franchisees and their brokers, salespersons and agents include a disclosure with conspicuous language expressly stating that brokerage commissions are not set by law and are fully negotiable;

(c) The Settling Defendant will make clear that franchisees and affiliated brokers, salespersons and agents acting as buyer-side brokerages, brokers salespersons or agents must be transparent with their clients in accurately disclosing the compensation structure in connection with each transaction and must refrain from advertising or otherwise representing that their services are free (unless they are, in fact, not receiving any compensation for those services from any party);

- (d) Where such data are available to the Settling Defendant and allowed to be displayed (i) under Canadian law, (ii) by any applicable agreement by which the Settling Defendant obtains the data, and (iii) by the rules of the association or board providing the data, the Settling Defendant will display offers of compensation made by listing brokerages, brokers, salespersons or agents for all active listings posted on remax.ca, and, subject to the restrictions in (i)-(iii), recommend and encourage that franchisees, salespersons and agents include cooperative compensation offers (if any) on any listings that they publicly display and share that information with prospective buyers through IDX or VOW displays, or through any other form or format;
- (e) The Settling Defendant will not provide software that permits franchisees and affiliated brokers, salespersons and agents to filter out or restrict MLS listings based on the level of compensation offered to any buyer brokerage and recommend and encourage that franchisees and their brokers, salespersons and agents refrain from utilizing any technology or taking manual actions to filter out or restrict MLS listings that are searchable by or displayed to consumers based on the level of compensation offered to any buyer brokerage unless directed to do so by the client (and eliminate any internal systems or technological processes that may currently facilitate such practices);
- (f) The Settling Defendant will not express and will make best efforts not to imply a minimum commission requirement in franchise agreements, training materials or other policies;
- (g) The Settling Defendant will develop educational materials that reflect and are consistent with each provision in this Section 5.1 and make best efforts to eliminate educational materials, if any, that are contrary to it; and
- (h) The Settling Defendant will not require franchisees and their affiliated brokers, salespersons and agents to join or be members of the Canadian Real Estate Association or the Toronto Regional Real Estate Board or follow the Buyer Brokerage Commission Rules alleged in the Proceedings.

## **5.2 Limits on Practice Changes**

- (1) If not automatically terminated earlier, the obligations set forth in Section 5.1 above will terminate five (5) years after the Effective Date.
- (2) If another franchisor defendant to the Proceedings settles with the settlement class or a similarly situated class of plaintiffs on the basis of different practice changes than those set forth in Section 5.1 above and that settlement receives final Court approval, then the Settling Defendant may choose to adopt the practice changes agreed to by that other settling franchisor defendant instead of the practice changes in this agreement. In the event the Settling Defendant elects to adopt the practice changes agreed to by another settling franchisor defendant, the Settling Defendant shall advise Class Counsel forthwith.

## **SECTION 6 – OPTING OUT**

### **6.1 Procedure**

- (1) Class Counsel will seek approval from the Federal Court of the following opt-out process as part of the order certifying the Proceedings as class proceedings for settlement purposes:
  - (a) Persons seeking to opt-out of the Proceedings must do so by sending a written election to opt-out, signed by the Person or the Person's designee, by pre-paid mail, courier, or email to Class Counsel at an address to be identified in the notice described in Section 2.2.
  - (b) An election to opt-out sent by mail or courier will only be valid if it is postmarked on or before the Opt-Out Deadline to the designated address in the notice described in Section 2.2. Where the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked seven (7) business days prior to the date that it is received by Class Counsel.
  - (c) The written election to opt-out must contain the following information in order to be valid:
    - (1) the Person's full name, current mailing and email address, and telephone number;

- (2) if the Person seeking to opt-out is a corporation, the name of the corporation and the position of the Person submitting the request to opt-out on behalf of the corporation; and
    - (3) a statement to the effect that the Person wishes to be excluded from the Proceedings.
  - (d) Any putative Settlement Class member who validly opts-out shall be excluded from the Proceedings and the Class, and will not have the opportunity to benefit from the Settlement Agreement, and the Settling Defendant will retain all legal rights and defences with respect to any such putative Settlement Class members.
  - (e) Any putative Settlement Class member who does not validly opt-out of the Proceedings in the manner and time prescribed above, shall be deemed to have elected to participate in the Proceedings, including this Settlement Agreement.
  - (f) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendant a report containing the names of each Person who has validly and timely opted out of the Proceedings, the reasons for the opt-out, if known, and a summary of the information delivered by such Persons pursuant to this Section.
- (2) The Parties will not, directly or indirectly, encourage or cause any Person to opt out of the Proceedings.

## **SECTION 7 – TERMINATION OF SETTLEMENT AGREEMENT**

### **7.1 Right of Termination**

- (1) The Plaintiffs and the Settling Defendant shall, in their respective discretions, have the right to terminate the settlement set forth in this Settlement Agreement by providing written notice of their election to do so pursuant to Section 15.17 to all other Parties hereto within thirty (30) days of the date on which:
- (a) the Federal Court declines to certify the Proceedings as against the Settling Defendant for the purposes of the Settlement Agreement or does so in a materially modified form;
  - (b) the Federal Court declines to approve this Settlement Agreement or any material part hereof;

- (c) the Federal Court approves this Settlement Agreement in a materially modified form;
  - (d) the Federal Court issues a settlement approval order that is not substantially in the form attached to this Settlement Agreement as Schedule B; or
  - (e) any order approving this Settlement Agreement made by the Federal Court does not become a Final Approval Order.
- (2) If the Settlement Amount is not paid in accordance with Section 3.1, the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 15.17 or move before the Federal Court to enforce the terms of this Settlement Agreement.
- (3) Any order, ruling or determination with respect to Class Counsel Fees, Class Counsel Disbursements or the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

## **7.2 If Settlement Agreement is Terminated**

- (1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:
- (a) the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation, except as provided for in Section 7.4;
  - (b) no motion to certify the Proceedings as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
  - (c) any order certifying the Proceedings as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise;

- (d) any prior certification of the Proceedings as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings or any other litigation; and
- (e) any order dismissing the Proceedings against the Settling Defendant pursuant to this Settlement Agreement shall be set aside and declared null and void and of no force or effect.

### **7.3 Return of the Settlement Amount and Documents Following Termination**

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

- (a) within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, Class Counsel shall return to the Settling Defendant the amount the Settling Defendant has paid to Class Counsel, plus all accrued interest thereon and less any costs incurred with respect to the notice required by Section 12.1(1), and less any costs of translation required by Section 15.12, such costs of translation not to exceed thirty thousand Canadian dollars (CAD \$30,000);
- (b) within ten (10) days of such termination having occurred, Class Counsel shall return or destroy all documents or other materials provided by the Settling Defendant under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendant and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendant to any other Person, shall recover and destroy or cause the destruction of such documents or information. Class Counsel shall provide counsel to the Settling Defendant with a written certification by Class Counsel of such return or destruction within ten (10) days of such termination having occurred. Nothing contained in this Section 7.3 shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information

provided by the Settling Defendant, or received from the Settling Defendant in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendant. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

#### **7.4 Survival of Provisions After Termination**

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(3), 7.1, 7.2, 7.3, 7.4, 10.1, 10.2, 11.1(3), 12.1, 12.2, 13.2(5), 14.1 and 15 the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.2(3), 7.1, 7.2, 7.3, 7.4, 10.1, 10.2, 11.1(3), 12.1, 12.2, 13.2(5), 14.1 and 15 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

### **SECTION 8 – RELEASES AND DISMISSALS**

#### **8.1 Release of Releasees**

(1) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Proceedings against the Settling Defendant; and (ii) any and all Released Claims as against all Releasees.

(2) Upon the Effective Date, subject to Section 8.2, in consideration of the payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, each of the Releasors: (i) shall be deemed to have, and by operation of the Final Orders shall have, fully, finally, and forever waived, released, relinquished, and discharged the Releasees from all Released Claims regardless of whether such Releasor executes and delivers a proof of claim and release form and regardless of whether such Releasor discovers facts other than or different from those which he, she or it now knows or believes to be true with respect to the subject matter of Released Claims; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Releasees; and (iii) agrees and covenants not to sue any of the Releasees on the

basis of any Released Claims or to assist any other Person in commencing or maintaining any suit against any Releasee related in any way to any Released Claims.

(3) The Plaintiffs and Settlement Class acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Proceedings and the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

## **8.2 Covenant Not To Sue**

(1) Upon the Effective Date, and notwithstanding Section 8.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees for the Released Claims.

## **8.3 No Further Claims**

(1) Upon the Effective Date, each of the Releasors shall not then or thereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any Released Claims or any proceeding, suit, cause of action, claim or demand against any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claims, except for the continuation of the Proceedings against the Non-Settling Defendants or Potential Defendants or, if the Proceedings are not certified, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or Potential Defendant. For greater certainty and without limiting the generality of the foregoing, no Releasor shall assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

## **8.4 Dismissal of the Proceedings**

(1) Upon the Effective Date,

- (a) if the Sunderland Appeal is still pending, Mark Sunderland will withdraw his appeal in the Sunderland Appeal and the Sunderland Proceeding shall be confirmed as dismissed with prejudice and without costs as against the Settling Defendant pursuant to the Settlement Agreement;
  - (b) if the Federal Court of Appeal has reached a determination on the Sunderland Appeal and the result is such that the Settling Defendant is a party to the Sunderland Proceeding, the Sunderland Proceeding shall be dismissed with prejudice and without costs as against the Settling Defendant pursuant to the Settlement Agreement; and
  - (c) if the Federal Court of Appeal has reached a determination on the Sunderland Appeal and the result is such that the Settling Defendant is not a party to the Sunderland Proceeding, the Sunderland Proceeding shall be confirmed as dismissed with prejudice and without costs as against the Settling Defendant.
- (2) Upon the Effective Date, the McFall Proceeding shall be dismissed with prejudice and without costs as against the Settling Defendant pursuant to the Settlement Agreement.

## **8.5 Costs**

- (1) The Settling Defendant shall waive any entitlement to and release the Plaintiffs, Class Counsel and the Funder for any obligation to pay costs arising from or in relation to the Proceedings.

## **8.6 Releases a Material Term**

- (1) The releases and covenants contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Federal Court to approve the releases and covenants contemplated herein shall give rise to a right of termination pursuant to Section 7.1 of the Settlement Agreement.

# **SECTION 9 – BAR ORDER**

## **9.1 Bar Order**

- (1) The Parties agree that the order approving this Settlement Agreement must include a bar order providing for the following:

- (a) To the extent such claims are recognized at law, all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Proceedings, or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings by any Non-Settling Defendant, Potential Defendant, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, Potential Defendant, any Settled Defendant or any Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings or such claim is made in respect of a claim by the Settling Defendant or other Releasee arising in connection with the purchase and sale of the Settling Defendant).
- (b) If the Federal Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise,
  - (i) the Plaintiffs and Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or Potential Defendants and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) (collectively “**Loss**”) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
  - (ii) the Plaintiffs and Settlement Class Members shall limit their claims against the Non-Settling Defendant and/or Potential Defendant and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendant and/or Potential Defendant and/or any other Person or party that is not a Releasee, only claims for Loss attributable to the aggregate of the several liability of the Non-Settling

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

- (iii) the Federal Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceedings, whether or not the Releasees remain in the Proceedings or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceedings, solely with respect to the issue of Proportionate Liability, and any determination by the Federal Court in respect of the Proportionate Liability of the Releasees shall only apply in the Proceedings and shall not be binding on the Releasees in any other proceeding.
- (c) The Non-Settling Defendants retain any arguments regarding the reduction of any assessment of Loss against them in favour of members of the Settlement Class, and the Plaintiffs and Settlement Class retain all rights to oppose or resist such arguments, except as provided for in the approval order.
- (d) A Non-Settling Defendant may, on motion to the Federal Court, determined as if the Settling Defendant remained party to the Proceedings, and on at least thirty (30) days notice to counsel for the Settling Defendant, and not to be brought unless and until the Proceedings against the Non-Settling Defendant has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following with respect to the determination of Proportionate Liability:
  - (i) documentary discovery and an affidavit of documents from the Settling Defendant in accordance with the *Federal Courts Rules*;
  - (ii) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;

- (iii) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
  - (iv) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendant.
- (e) The Settling Defendant retain all rights to oppose such motion(s) brought pursuant to Section 9.1(1). Moreover, nothing herein restricts the Settling Defendant from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or information obtained from discovery in accordance with Section 9.1(1)(d). Notwithstanding any provision in the order approving this Settlement Agreement, on any motion brought pursuant to Section 9.1(1)(d), the Federal Court may make such orders as to costs and other terms as it considers appropriate.
- (f) A Non-Settling Defendant may serve the motion(s) referred to in Section 9.1(1)(d) on the Settling Defendant by service on counsel for the Settling Defendant in the Proceedings.
- (g) To the extent that such an order is granted pursuant to Section 9.1(1)(d) and discovery is provided to the Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendant to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant(s).
- (h) The Settling Defendant shall retain and reserve all rights to oppose any motion by Non-Settling Defendant to seek discovery from the Settling Defendant.
- (2) The Parties acknowledge that the bar orders shall be considered a material term of the Settlement Agreement and the failure of the Federal Court to approve the bar orders contemplated herein shall give rise to a right of termination pursuant to Section 7.1 of the Settlement Agreement.

## **SECTION 10 – EFFECT OF SETTLEMENT**

### **10.1 No Admission of Liability**

(1) The Parties expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees or any one of them, or of the truth of any of the claims or allegations contained in the Proceedings, or any other pleading filed by the Plaintiffs.

### **10.2 Agreement Not Evidence**

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not, except by the Settling Defendant or with its express written permission, be referred to, offered as evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, or as necessary in any insurance or indemnity-related proceeding, or as otherwise required by law.

## **SECTION 11– CERTIFICATION FOR SETTLEMENT ONLY**

### **11.1 Certification Solely for the Purposes of Settlement**

(1) The Parties agree that the Proceedings shall be certified as a class proceeding as against the Settling Defendant solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Federal Court.

(2) The Plaintiffs agree that, in the motion for certification of the Proceedings as a class proceeding for settlement purposes and for the approval of this Settlement Agreement, the only

common issue that they will seek to define is the Common Issue and the only class that they will assert is the Settlement Class.

(3) The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the settlement, and that if the settlement is terminated pursuant to Section 7.1: (a) this agreement as to certification of the Settlement Class becomes null and void *ab initio*, (b) this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of the Settlement Class, or in support of an argument for certifying a class for any purpose related to the Proceedings, and (c) the Settling Defendant retains all of its objections, arguments, and defences with respect to class certification, and reserves all rights to contest class certification.

## **SECTION 12 – NOTICE TO SETTLEMENT CLASS**

### **12.1 Notice Required**

(1) The proposed Settlement Class shall be given the following notices: (a) notice of certification against the Settling Defendant for settlement purposes; (b) notice of the hearing at which the Federal Court will be asked to approve the Settlement Agreement; (c) notice of the approval of the Settlement Agreement; (d) notice if the Settlement Agreement is not approved or is terminated; and (e) such further notice as may be directed by the Federal Court. At the election of the Plaintiffs, the notice may also contain notice of the hearing at which the Federal Court will be asked to approve Class Counsel Fees, Administration Expenses, the Funder Levies and a Distribution Protocol.

### **12.2 Form and Distribution of Notice**

(1) The notices shall be in a form agreed upon by the Parties, acting reasonably, and approved by the Federal Court or, if the Parties cannot agree on the form of a notice, the notice shall be in a form ordered by the Federal Court.

(2) Notices shall be disseminated by a method agreed upon by the Parties, acting reasonably, and approved by the Federal Court or, if the Parties cannot agree on a method for disseminating a notice, the notice shall be disseminated by a method ordered by the Federal Court.

### **12.3 Cost of Notice and Translation**

(1) The cost of notice and translation, including the cost of a notice provider to develop a notice protocol and disseminate notice and receive opt-outs, shall be paid from the Trust Account.

## **SECTION 13 – ADMINISTRATION AND IMPLEMENTATION**

### **13.1 Mechanics of Administration**

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Federal Court on motions brought by Class Counsel. The Settling Defendant shall not take a position on the motion seeking an order approving the Distribution Protocol.

### **13.2 Information and Assistance**

(1) The Settling Defendant will make reasonable efforts to provide to Class Counsel, a court-appointed notice provider or court-appointed claims administrator a list in electronic format of the names and addresses of potential Settlement Class Members who can be reasonably identified based on client records that the Settling Defendant have in their possession, custody or control.

(2) The information required by Section 13.2(1) shall be delivered to Class Counsel within thirty (30) days of the order of the Federal Court approving the notices described in Section 2.2 and certifying the Proceedings for settlement purposes, or such other time agreed to by the Parties, acting reasonably.

(3) The Settling Defendant makes no representation or admission that names on the list referred to in Section 13.2(1) are class members. The Settling Defendant make no representation as to, and shall bear no liability with respect to, the availability, completeness or accuracy of the information provided pursuant to this Section 13.2. Unavailable, incomplete or inaccurate information shall not constitute a breach or violation of this Settlement Agreement.

(4) Any information provided pursuant to Section 13.2(1) shall be maintained as confidential by Class Counsel, any court-appointed notice provider and any court-appointed claims administrator and used only for the purposes of providing potential Settlement Class Members with notice in accordance with this Agreement and facilitating the claims administration process

with respect to this Settlement Agreement and any other settlement agreement and/or court award achieved in the Proceeding.

(5) All information provided by the Settling Defendant pursuant to Section 13.2(1) shall be kept confidential, except that Class Counsel may disclose all information provided by the Settling Defendant pursuant to Section 13.2(1) to any court-appointed notice provider and/or any court-appointed claims administrator, to the extent reasonably necessary for the purposes enumerated in Section 13.2(4). Any court-appointed notice provider and/or any court-appointed claims administrator shall be bound by the same confidentiality obligations set out herein. If this Settlement Agreement is terminated, all information provided by the Settling Defendant pursuant to Section 13.2(1) shall be dealt with in accordance with Section 7.3(1)(a) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

### **13.3 Distribution Protocol**

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendant, Class Counsel will bring a motion seeking an order from the Federal Court approving the Distribution Protocol.

## **SECTION 14 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES**

### **14.1 Responsibility for Fees, Disbursements and Taxes**

(1) Except as provided herein, the Releasees shall not be liable for Class Counsel Fees, Class Counsel Disbursements, Funder Levies or any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount. The Settling Defendant shall take no position on Class Counsel's motion for approval of Class Counsel Disbursements, Counsel Fees or the Funder Levies.

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

(3) Class Counsel shall pay the costs of the notice required by Section 12 and any costs of translation required by Section 15.12 from the Trust Account, as they become due.

#### **14.2 Court Approval**

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

(2) No Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date, except pursuant to Section 14.1(3).

#### **14.3 Administrative Expenses**

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

### **SECTION 15 – MISCELLANEOUS**

#### **15.1 Motions for Directions**

(1) Class Counsel or the Settling Defendant may apply to the Federal Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

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

#### **15.2 Releasees Have No Liability for Administration**

(1) Except as otherwise set out herein, the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol.

### **15.3 Headings, etc.**

(1) In this Settlement Agreement:

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

### **15.4 Computation of Time**

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Federal Courts Rules*, the act may be done on the next day that is not a holiday.

### **15.5 Ongoing Jurisdiction**

(1) The Federal Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and Settling Defendant attorn to the jurisdiction of the Federal Court for such purposes only and for no other purpose.

### **15.6 Governing Law**

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

### **15.7 Entire Agreement**

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

### **15.8 Amendments**

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

### **15.9 Binding Effect**

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

### **15.10 Counterparts**

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

### **15.11 Negotiated Agreement**

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

Settlement Agreement, any term sheet or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

#### **15.12 Language**

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

#### **15.13 Recitals**

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

#### **15.14 Schedules**

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

#### **15.15 Acknowledgements**

(1) Each of the Parties hereby affirms and acknowledges that:

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

of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

#### **15.16 Authorized Signatures**

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

#### **15.17 Notice**

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

#### **For the Plaintiffs and for Class Counsel in the Proceedings:**

**Kalloghlian Myers LLP**

35 Prince Arthur Ave,  
Toronto, ON M5R 1B2

**Paul Bates**

Tel: 416.863.9891 ext. 01  
pbates@batesbarristers.com

**John Syme**

Tel: 613.290.3332  
jsyme@jls-law.ca

**Garth Myers**

Tel: 647.969.4472  
garth@kalloghlianmyers.com

#### **For the Settling Defendant:**

David Kent, Samantha Gordon and Guneev  
Bhinder

**MCMILLAN LLP**

Brookfield Place, Suite 4400  
181 Bay Street

Toronto, ON M5J 2T3

Tel: 416-865-7000

Fax: 416-865-7048

Email: david.kent@mcmillan.ca

samantha.gordon@mcmillan.ca

guneev.bhinder@mcmillan.ca

**15.18 Date of Execution**

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

**MARK SUNDERLAND and KEVIN MCFALL** on their own behalf and on behalf of the Settlement Class, by their counsel:

Name of Authorized Signatory: Garth Myers

Signature of Authorized Signatory: Kalloghlian Myers LLP  
Class Counsel

Name of Authorized Signatory: Paul Bates

Signature of Authorized Signatory: Paul Bates  
Class Counsel

Name of Authorized Signatory: John Syme

Signature of Authorized Signatory: John Syme  
Class Counsel

**RE/MAX ONTARIO-ATLANTIC CANADA INC.** by their counsel, McMillan LLP:

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_  
McMillan LLP

## SCHEDULE “A”

Proceeding	Plaintiffs	Defendants (Current and Former)
<p><i>Sunderland v. Toronto Regional Real Estate Board et al.</i></p> <p>(Federal Court File No. T-595-21)</p>	<p>Mark Sunderland</p>	<p>Toronto Regional Real Estate Board, The Canadian Real Estate Association, RE/MAX Ontario-Atlantic Canada, Inc. O/A RE/MAX Integra, Century 21 Canada Limited Partnership, Residential Income Fund L.P., Royal LePage Real Estate Services Ltd., Homelife Realty Services Inc., Right At Home Realty Inc., Forest Hill Real Estate Inc., Harvey Kalles Real Estate Ltd., Max Wright Real Estate Corporation, Chestnut Park Real Estate Limited, Sutton Group Realty Services Ltd. and iPro Realty Ltd.</p>
<p><i>McFall v. Canadian Real Estate Association et al.</i></p> <p>(Federal Court File No. T-119-24)</p>	<p>Kevin McFall</p>	<p>Canadian Real Estate Association, Newfoundland And Labrador Association of Realtors®, Prince Edward Island Real Estate Association, Nova Scotia Association of Realtors®, New Brunswick Real Estate Board, Greater Moncton Realtors®, The Real Estate Board of the Fredericton Area, Inc., Saint John Real Estate Board, Quebec Professional Association of Real Estate Brokers, Bancroft and Area Association of Realtors®, Barrie and District Association of Realtors®, Brampton Real Estate Board, Brantford Regional Real Estate Association, Cambridge Association of Realtors® Inc., Central Lakes Association of Realtors®, Chatham Kent Association of Realtors®, Cornwall and District Real Estate Board, Durham Region Association of Realtors®, Guelph and District Association of Realtors®, Huron Perth Association of Realtors®, Kawartha Lakes Real Estate Association Inc., Kingston and Area Real Estate Association, Kitchener-Waterloo Association of Realtors®, The Lakelands Association of Realtors®, Onepoint Association of Realtors®, London and St. Thomas Association of Realtors®, Mississauga Real Estate Board, Niagara Association of Realtors®, North Bay Real Estate Board, Northumberland Hills Association of Realtors®, Oakville, Milton and District Real Estate Board, Ottawa Real Estate Board, Parry Sound &amp; Area Association of Realtors®, Peterborough and the Kawarthas Association of Realtors®, Quinte &amp; District Association of Realtors® Inc., Realtors® Association of Grey Bruce Owen Sound, Realtors® Association of Hamilton-Burlington, Renfrew County Real Estate Board, Rideau-St. Lawrence Real Estate Board, Sarnia-Lambton Real Estate Board, Sault Ste. Marie Real Estate Board, Simcoe and District Real Estate Board, Southern Georgian Bay Association of Realtors®, Sudbury Real Estate Board, Thunder Bay Real Estate Board, Tillsonburg District Real Estate Board, Timmins, Cochrane &amp; Timiskaming Districts Association of Realtors®, Waterloo Region Association of Realtors®, Cornerstone Association of</p>

		<p>Realtors®, Windsor-Essex County Association of Realtors®, Woodstock-Ingersoll &amp; District Real Estate Board, Brandon Area Realtors®, Winnipeg Regional Real Estate Board, Saskatchewan Realtors® Association, Alberta West Realtors® Association, Calgary Real Estate Board, Central Alberta Realtors® Association, The Fort McMurray Realtors®, Grande Prairie &amp; Area Association of Realtors®, Lethbridge &amp; District Association of Realtors®, Medicine Hat Real Estate Board Co-Operative Ltd., Realtors® Association of Edmonton, Realtors® Association of Lloydminster &amp; District, Realtors® Association of South Central Alberta, Brooks Real Estate Co-Operative Limited, Association of Interior Realtors®, BC Northern Real Estate Board, Chilliwack and District Real Estate Board, Fraser Valley Real Estate Board, Kamloops &amp; District Real Estate Association, Kootenay Association of Realtors®, Powell River Sunshine Coast Real Estate Board, Real Estate Board of Greater Vancouver, Vancouver Island Real Estate Board, Victoria Real Estate Board, Northwest Territories Association of Realtors®, Yellowknife Real Estate Board, Yukon Real Estate Association, Cir Realty, Exp Realty, Macdonald Real Estate Group Inc., Maxwell Capital Realty, Oakwyn Realty Ltd., Real Estate Professionals Inc., Royal Pacific Realty Corp, Team 3000 Realty Ltd., Century 21 Canada Limited Partnership, Coldwell Banker Canada, Exit Realty Corp. International (Canada), Homelife Realty Services Inc., Maple Leaf Regional Investors ULC, Keller Williams Realty Canada, Keller Williams Realty Inc., Macdonald Real Estate Group Inc., RE/MAX Ontario-Atlantic Canada, Inc. O/A RE/MAX Integra, RE/MAX LLC, Max Wright Real Estate Corporation, Residential Income Fund L.P. and Sutton Group Realty Services Ltd.</p>
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**SCHEDULE “B”**

**Date:**

**Docket:** ● [see Schedule “A”]

**Toronto, Ontario, \_\_\_\_\_, 2025**

**Present: Chief Justice Paul Crampton**

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

**B E T W E E N :**

● [see Schedule “A”]

Plaintiff

- and -

● [see Schedule “A”]

Defendants

**ORDER**

**THIS MOTION**, made by the Plaintiff for an Order approving the short-form and long-form notices of settlement approval hearing and ancillary relief, the method of dissemination of said notices, and certifying this proceeding as a class proceeding for settlement purposes as against RE/MAX Ontario-Atlantic Canada Inc. (named in the Proceedings as RE/MAX Ontario-Atlantic Canada, Inc. o/a RE/MAX Integra) (the “**Settling Defendant**”) was heard this day at ●.

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

**AND ON BEING ADVISED** that the Plaintiff and the Settling Defendant consent to this Order and that the Non-Settling Defendants take no position on this Motion:

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that the short-form and long-form notices of settlement approval hearing and ancillary relief are hereby approved substantially in the forms attached respectively hereto as Schedules “B” to “C”.
3. **THIS COURT ORDERS** that the plan of dissemination for the short-form and long-form notices of settlement approval hearing and ancillary relief (the “**Plan of Dissemination**”) is hereby approved in the form attached hereto as Schedule “D” and that the notices of settlement approval hearing and ancillary relief shall be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that the deadline to opt out of the action is the date that is  
● days after the day on which the short-form or long-form notice is first published.
5. **THIS COURT ORDERS** that the Proceedings are certified as a class proceeding as against the Settling Defendant for settlement purposes only.
6. **THIS COURT ORDERS** that the “**Settlement Class**” is certified as follows:

All Persons wherever they may reside or be domiciled, who sold residential real estate on a multiple listing service owned and operated by a Defendant between March 11, 2010 and the date of the order certifying the Proceedings against the Settling Defendants for settlement purposes. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates, and any person who validly opts-out of the Proceedings or who was automatically excluded from the Proceedings pursuant to s. 334.21(2) of the *Federal Courts Rules*.

7. **THIS COURT ORDERS** that ● is appointed as the representative plaintiff for the Settlement Class.
8. **THIS COURT ORDERS** that the following issue is common to the Settlement Class:

Did the Settling Defendant aid, abet and counsel a conspiracy, agreement or arrangement contrary to subsection 45(1)(a) of the *Competition Act*, R.S.C. 1985, c. C-34 to fix, maintain, increase or control the price for the supply of buyer brokerage services for residential real estate during the Class Period?

9. **THIS COURT ORDERS** that the Settling Defendant will make reasonable efforts to provide to Class Counsel a list in electronic format of the names and addresses of potential

Settlement Class Members who can be reasonably identified based on client records that the Settling Defendant have in their possession, custody or control.

10. **THIS COURT ORDERS** that this Order, any reason given by the Court in connection with it and the certification of the Proceedings as against the Settling Defendant for settlement purposes pursuant to this Order, including, without limitation, the definition of the Settlement Class and the Common Issue, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Proceedings and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Proceedings, as against the Non-Settling Defendants.
11. **THIS COURT ORDERS** that this Order shall be set aside, declared null and void and of no force and effect in respect of the Settling Defendants on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

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The Honourable Chief Justice Crampton

**SCHEDULE “C”**

**Date:**

**Docket:** ● [see Schedule “A”]

**Toronto, Ontario, \_\_\_\_\_, 2025**

**Present: Chief Justice Paul Crampton**

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

**B E T W E E N :**

● [see Schedule “A”]

Plaintiff

- and -

● [see Schedule “A”]

Defendants

**ORDER**

**THIS MOTION**, made by the Plaintiff for an Order approving the settlement agreement entered into with RE/MAX Ontario-Atlantic Canada Inc. (named in the Proceeding as RE/MAX Ontario-Atlantic Canada, Inc. o/a RE/MAX Integra) (the “**Settling Defendant**”) and dismissing this Proceeding as against the Settling Defendant, was heard this day at ●.

**AND ON READING** the materials filed, including the settlement agreement dated ● attached to this Order as Schedule “A” (the “**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and counsel for the Settling Defendant, the Non-Settling Defendants taking no position;

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

**AND ON BEING ADVISED** that the deadline for opting out of the Proceeding has passed, and there were ● Persons who validly and timely exercised the right to opt out;

**AND ON BEING ADVISED** that the Plaintiff and the Settling Defendant consent to this Order and that the Non-Settling Defendants take no position in respect of this Order:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member including those Persons who are minors or mentally incapable.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 334.29 of the *Federal Courts Rules* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class shall be deemed to have consented to the dismissal as against the Releasees of any Other Proceedings he, she or it has commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Proceeding commenced in the Federal Court by any member of the Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other

Person, any proceeding, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or Potential Defendants or, if the Proceedings is not certified, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or Potential Defendant. For greater certainty and without limiting the generality of the foregoing, each of the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

10. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Proceedings, or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings by any Non-Settling Defendant, Potential Defendant, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, Potential Defendant, any Settled Defendant or any Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings or such claim is made in respect of a claim by the Settling Defendant or other Releasee arising in connection with the purchase and sale of the Settling Defendant);

13. **THIS COURT ORDERS** that if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:
- (a) the Plaintiff and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or Potential Defendants and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) (collectively “**Loss**”) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
  - (b) the Plaintiffs and the Settlement Class Members shall limit their claims against the Non-Settling Defendant and/or Potential Defendant and/or any other Person or party that is not a Releasee to include, and shall only be entitled to recover from the Non-Settling Defendant and/or Potential Defendant and/or any other Person or party that is not a Releasee, only claims for Loss attributable to the aggregate of the several liability of the Non-Settling Defendants and/or Potential Defendants and/or any other Person or party that is not a Releasee to the Plaintiffs and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendant and/or Potential Defendant and/or any other Person or party that is not a Releasee, to the extent provided by law; and
  - (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceedings, whether or not the Releasees remain in the Proceedings or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceedings and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Proceedings and shall not be binding on the Releasees in any other proceeding.
14. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the

reduction of any assessment of Loss against them in favour of Settlement Class Members in the Proceedings or the rights of the Plaintiffs and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

15. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendant remained parties to the Proceeding, and on at least thirty (30) days' notice to counsel for the Settling Defendant, and not to be brought unless and until the Proceedings against the Non-Settling Defendant have been certified and all appeals or times to appeal have been exhausted, seek Orders for the following with respect to the determination of Proportionate Liability:
  - (a) documentary discovery and an affidavit of documents from the Settling Defendant in accordance with the *Federal Courts Rules*;
  - (b) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
  - (c) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and
  - (d) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendant.
16. **THIS COURT ORDERS** that the Settling Defendant retain all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendant from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 15. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 15, the Court may make such orders as to costs and other terms as it considers appropriate.
17. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 15 above on the Settling Defendant by service on counsel for the Settling Defendant.

18. **THIS COURT ORDERS** that the approval of the Settlement Agreement and this Order, and any reasons given by the Court in connection with the approval of the Settlement Agreement or this Order (except for paragraphs 13-18 of this Order and any reasons given in connection with those paragraphs), are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Proceedings and, without restricting the generality of the foregoing, may not be relied upon by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Proceedings, as against the Non-Settling Defendants.
19. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendant attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order and for no other purpose.
20. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any member of the Settlement Class has or may have in the Proceedings against the Non-Settling Defendants or Potential Defendants.
21. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement or with respect to the Distribution Protocol, including administration, investment, or distribution of the Trust Account.
22. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Class Counsel for the benefit of the Settlement Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Class in the continued prosecution of the Proceedings against the Non-Settling Defendant. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Class to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-

Settling Defendants, or the rights of the Non-Settling Defendant to oppose and resist any such claim.

23. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.
24. **THIS COURT ORDERS** that the Proceeding is hereby [confirmed as] dismissed as against the Settling Defendant, without costs and with prejudice.

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The Honourable Chief Justice Crampton

**SCHEDULE “D”**

**SCHEDULE “E”**