

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

JUSTICE H. A. RADY

) Tuesday, THE 17<sup>th</sup>  
)  
)  
) DAY OF September, 2019

BETWEEN:

PETER ROONEY and ARCHIE LEACH

Plaintiffs

- and -

ARCELORMITTAL S.A., LAKSHMI N. MITTAL, ADITYA MITTAL,  
1843208 ONTARIO INC., PHILIPPUS F. DU TOIT,  
NUNAVUT IRON ORE ACQUISITION INC., IRON ORE HOLDINGS, LP,  
NGP MIDSTREAM & RESOURCES, L.P., NGP M&R OFFSHORE  
HOLDINGS, L.P., JOWDAT WAHEED, BRUCE WALTER, JOHN T.  
RAYMOND, JOHN CALVERT, BAFFINLAND IRON MINES  
CORPORATION, RICHARD D. MCCLOSKEY, JOHN LYDALL and  
DANIELLA DIMITROV

Defendants

**ORDER**

**THIS MOTION**, made by the Plaintiffs for an Order approving the Settlement Agreement reached between the Plaintiffs and the Defendants on June 7, 2019 ("**Settlement Agreement**"), was heard this day at 80 Dundas Street, London, Ontario.

**ON READING** the materials filed and on hearing the submissions of Class Counsel and counsel for the Defendants.

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been no written objections to the Settlement Agreement.

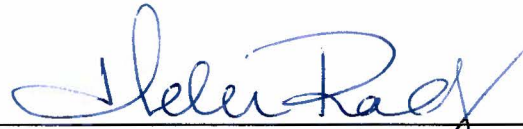
**AND ON BEING ADVISED** that the Defendants consent to this Order.

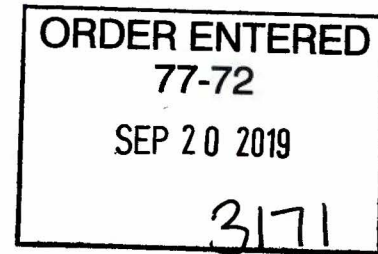


1. **THIS COURT ORDERS** that, except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement attached hereto as **Schedule “1”**.
2. **THIS COURT ORDERS** that the period for Class Members to opt out of this Action in accordance with the Order of the Ontario Superior Court of Justice dated June 13, 2019 expired as of August 12, 2019.
3. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
4. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to section 29 of the *Class Proceedings Act, 1992*, SO 1992, c 6.
5. **THIS COURT ORDERS** that all provisions of the Settlement Agreement (including the Recitals and Definitions) form part of this Order and are binding upon the Defendants in accordance with the terms thereof, and upon the Plaintiffs and all Class Members that did not opt out of this Action in accordance with the Order of the Ontario Superior Court of Justice dated June 13, 2019, including those persons that are minors or mentally incapable.
6. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
7. **THIS COURT ORDERS** that compliance with requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 is hereby dispensed with.
8. **THIS COURT ORDERS** that the Settlement Agreement shall be implemented in accordance with its terms.

9. **THIS COURT ORDERS** that the Plaintiffs and Defendants may, on notice to the Court but without the need for further order of the Court, agree to reasonable extensions of time to carry out any provisions of the Settlement Agreement.
10. **THIS COURT ORDERS** that, other than that which has been provided in section 13.2(1) of the Settlement Agreement, the Defendants and the other Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement.
11. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors under the Settlement Agreement forever and absolutely release, waive, and discharge, and shall be conclusively deemed to have fully, finally and forever released and discharged the Releasees from the Released Claims that any of them whether directly or indirectly or in any other capacity ever had, now have, or hereafter can, shall or will have, as provided by the Settlement Agreement.
12. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee, or any other person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim or any matter related thereto.

13. **THIS COURT ORDERS** that, upon the Effective Date, the Action shall be dismissed against all Defendants with prejudice and without costs.

  
The Honourable Justice Rady



# Schedule "1"

**BAFFINLAND IRON MINES CORPORATION  
CLASS ACTION SETTLEMENT AGREEMENT**

Made as of June 7, 2019

BETWEEN

**PETER ROONEY and ARCHIE LEACH**

**("Plaintiffs")**

- and -

**ARCELORMITTAL S.A., LAKSHMI N. MITTAL, ADITYA MITTAL,  
1843208 ONTARIO INC., PHILIPPUS F. DU TOIT, NUNAVUT IRON ORE  
ACQUISITION INC., IRON ORE HOLDINGS, LP, NGP MIDSTREAM &  
RESOURCES, L.P., NGP M&R OFFSHORE HOLDINGS, L.P.,  
JOWDAT WAHEED, BRUCE WALTER, JOHN T. RAYMOND, JOHN CALVERT,  
BAFFINLAND IRON MINES CORPORATION, RICHARD D. MCCLOSKEY,  
JOHN LYDALL and DANIELLA DIMITROV**

**("Defendants")**

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## **SETTLEMENT AGREEMENT**

Subject to the approval of the Court as provided herein, the Plaintiffs and the Defendants hereby agree that in consideration of the promises and covenants set forth in this Agreement and upon the Effective Date, this Action will be settled and compromised, and the Settlement implemented, pursuant to the terms and conditions contained herein.

### **SECTION 1 - RECITALS**

#### **WHEREAS:**

- A. On April 19, 2011, the Plaintiffs commenced the Action on behalf of the Class against the Defendants alleging, among other things, material misrepresentations in certain of the Defendants' public disclosures in connection with the take-over of Baffinland by the Offerors.
- B. By order dated May 18, 2018, the Court certified the Action as a class proceeding and appointed the Plaintiffs as representative plaintiffs.
- C. The Parties have engaged in years of hard-fought litigation in the Court, including numerous contested motions and appeals.
- D. The Parties have engaged in hard-fought arm's length negotiations, including a mediation session before the Honourable Warren K. Winkler (ret.) and subsequent negotiations with the assistance of Mr. Winkler, which resulted in an agreement in principle to settle the Action.
- E. The Defendants have denied and continue to deny the Plaintiffs' claims in the Action, have vigorously denied any wrongdoing or liability of any kind whatsoever, have asserted and would have actively and diligently pursued affirmative defences and other defences had this Action not been settled.

- F. The Plaintiffs, with the benefit of advice from Class Counsel and based upon an analysis of the facts and law applicable to the issues in this Action, taking into account the burdens, complexities, risks and expense of continued litigation, the estimated total damages suffered by Class Members, legal limitations on the value of the claims advanced, the value of an early settlement as well as the fair, cost-effective and assured method of resolving the claims of the Class, have concluded that settlement on the terms set out in this Agreement is fair, reasonable and in the best interests of the Class.
- G. The Defendants, similarly, have concluded that settlement on the terms set out in this Agreement is desirable in order to avoid the time, risk and expense of continuing with the Action, including any potential appeals, and to resolve finally and completely the pending claims raised in the Action.
- H. As hereinafter provided, the Parties intend to and hereby do finally resolve this Action and all the claims that were or could have been asserted in the Action against the Defendants, without any admission of liability or wrongdoing whatsoever by the Defendants, or any of them, with prejudice and without costs, subject to the approval of this Agreement by the Court.

**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, the Parties agree that this Agreement represents the agreement between the Parties to resolve and release, fully and finally, in accordance with the terms more particularly set out herein, all Released Claims, and subject to the approval of the Court as provided herein, to obtain the Second Order that is a Final Order dismissing the Action as against the Defendants with prejudice and without costs.

## **SECTION 2- DEFINITIONS**

In this Agreement, including the Recitals and Schedules hereto:

(1) **Action** means the action filed in the Superior Court of Justice in London, Ontario styled *Rooney and Leach v ArcelorMittal S.A., et al.* (Court File No. 3957-11CP).

(2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable in relation to the notice, approval, implementation and administration of the Settlement, including the costs of publication and delivery of notices, fees, disbursements and taxes paid to the Administrator, which shall be paid from the Escrow Settlement Funds in accordance with Section 4.1. For greater certainty, Administration Expenses do not include Class Counsel Fees or the Funding Commission.

(3) **Administrator** means the third party professional firm and any employees of such firm, selected at arm's length by Class Counsel, and appointed by the Court to do any one or more of the following:

- (a) facilitate dissemination of the First Notice;
- (b) facilitate dissemination of the Second Notice;
- (c) receive and review requests to opt out of the Class;
- (d) receive and review claims and administer the Settlement Amount in accordance with the Distribution Protocol; and
- (e) report to the Parties and the Court on the administration of the Settlement.

(4) **Agreement** means this settlement agreement.

- (5) *Approval Motion* means a motion to be brought by the Plaintiffs in the Court for the Second Order and the Third Order.
- (6) *Authorized Claimant* means any Class Member who has submitted a completed Claim Form which, pursuant to the terms of the Agreement and the Distribution Protocol, has been approved for compensation by the Administrator in accordance with the Distribution Protocol.
- (7) *Baffinland* means the Defendant, Baffinland Iron Mines Corporation.
- (8) *BIM Securities* means the Common Shares and the 2007 Warrants.
- (9) *Certification Order* means the order of the Court dated May 18, 2018 certifying the Action as a class proceeding.
- (10) *Claim Form* means the form to be approved by the Court which, when completed and submitted in a timely manner to the Administrator, using the online claim portal established by the Administrator or by submitting a paper form to the Administrator, constitutes a Class Member's claim for compensation pursuant to the Distribution Protocol.
- (11) *Class* or *Class Members* means the class defined by paragraph 4 of the Certification Order (which, for the avoidance of doubt, excludes the "Excluded Persons" defined in paragraph 1(a) of the Certification Order), other than Opt Out Parties.
- (12) *Class Counsel* or *Siskinds* means Siskinds LLP.
- (13) *Class Counsel Fees* means the fees, disbursements, costs, interest thereon in accordance with the CPA s 33(7)(c) plus HST and other applicable taxes or charges of Class Counsel as approved by the Court.

- (14) *Collateral Agreement* means the Collateral Agreement entered into by the Parties dated June 7, 2019.
- (15) *Common Shares* means common shares of Baffinland.
- (16) *Court* means the Ontario Superior Court of Justice.
- (17) *CPA* means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended.
- (18) *Defendants* means ArcelorMittal S.A., Lakshmi N. Mittal, Aditya Mittal, 1843208 Ontario Inc., Phillipus F. Du Toit, Nunavut Iron Ore Acquisition Inc., Iron Ore Holdings, L.P., NGP Midstream & Resources, L.P., NGP M&R Offshore Holdings L.P., Jowdat Waheed, Bruce Walter, John T. Raymond, John Calvert, Baffinland, Richard D. McCloskey, John Lydall and Daniella Dimitrov.
- (19) *Distribution Protocol* means the document attached as **Schedule "I"** stipulating the proposed distribution of the Net Settlement Amount or such other plan of distribution as may be approved by the Court.
- (20) *Effective Date* means the first date on which the Second Order has become a Final Order.
- (21) *Eligible Securities* means BIM Securities of which the sale, tender or disposition made a person a Class Member or, in the case of an Opt Out Party, BIM Securities of which the sale, tender or disposition would have made the person a Class Member if he, she or it had not excluded himself, herself or itself from the Class in accordance with the terms of the First Order and the First Notice.
- (22) *Escrow Account* means an interest bearing trust account at a Canadian Schedule 1 bank in Ontario initially under the control of Siskinds, and following the Effective Date, it shall be transferred to the Administrator appointed pursuant to the First Order.

(23) *Escrow Settlement Funds* means the Settlement Amount plus any interest accruing thereon in the Escrow Account.

(24) *Final Order* means any order contemplated by this Agreement from which no appeal lies or in respect of which any right of appeal has expired without the initiation of proceedings in respect of that appeal such as the delivery of a notice of motion for leave to appeal or a notice of appeal.

(25) *First Motion* means a motion to be brought by the Plaintiffs in the Court for the First Order.

(26) *First Notice* means the short-form and long-form notices of certification of the Action, the opt out procedures and the pendency of the Approval Motion substantially in the forms attached as **Schedules "B" and "C"** hereto or as fixed by the Court.

(27) *First Order* means the Order substantially in the form attached as **Schedule "A"** hereto:

- (a) appointing the Administrator;
- (b) approving the Plan of Notice for the purpose of the publication and dissemination of the First Notice;
- (c) prescribing opt out procedures; and
- (d) fixing the date for the Approval Motion.

(28) *Funder* means Claims Funding Australia Pty Ltd.

(29) *Funder's Security* means the amounts paid into Court by the Funder as security for its obligations pursuant to the Funding Order.

(30) ***Funding Agreement*** means the agreement entered into in November 2012 between the Plaintiffs and the Funder for the provision of, among other things, an indemnity against adverse costs in exchange for the payment of the Funding Commission and subsequently approved pursuant to the Funding Order.

(31) ***Funding Commission*** means the amount to be paid to the Funder pursuant to the Funding Agreement.

(32) ***Funding Order*** means the order of the Court dated November 21, 2013 approving the Funding Agreement.

(33) ***Implementation Date*** means the first date on which both the Second Order and the Third Order have become Final Orders.

(34) ***Net Settlement Amount*** means the amount available in the Escrow Account for distribution pursuant to the Distribution Protocol after payment of all Class Counsel Fees and Administration Expenses and other amounts contemplated by SECTION 6(1)(a) to SECTION 6(1)(f) hereof.

(35) ***Offerors*** means ArcelorMittal S.A., 1843208 Ontario Inc., Nunavut Iron Ore Acquisition Inc., Iron Ore Holdings, L.P., NGP Midstream & Resources, L.P. and NGP M&R Offshore Holdings L.P.

(36) ***Opt Out Party*** means a person who would otherwise be a Class Member but who excludes themselves from the Class in accordance with the terms of the First Order and the First Notice.

(37) ***Opt Out Threshold*** means the number of Eligible Securities held by Opt Out Parties confidentially agreed upon by the Parties in the Collateral Agreement as giving rise to the Defendants' right to terminate the Agreement pursuant to section 8.1(2).

(38) ***Parties*** mean the Plaintiffs and the Defendants.



(39) *Plaintiff* or *Plaintiffs* means, as the context requires, Peter Rooney and/or Archie Leach.

(40) *Plan of Notice* means the plan for disseminating the First Notice and Second Notice to the Class substantially in the form attached as **Schedule "H"** hereto or as fixed by the Court.

(41) *Released Claims* (or Released Claim in the singular) means any and all claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, including assigned claims, whether known or unknown, discoverable or not discoverable, asserted or unasserted, regardless of the legal theory, existing now or arising in the future by any and all of the Plaintiffs or the Class Members (excluding, for the avoidance of doubt, Opt Out Parties), arising out of or relating in any way to the sale, disposition or tendering of Eligible Securities and any claims or allegations which were raised or could have been raised in the Action. Released Claims include all claims for rescission; damages, including, but not limited to, punitive, aggravated, statutory and other multiple damages or penalties of any kind; or remedies of whatever kind or character, known or unknown, that are now recognized by law or equity or that may be created and recognized in the future by statute, regulation, judicial decision, or in any other manner; injunctive and declaratory relief; economic or business losses or disgorgement of revenues or profits; costs or lawyers' fees; and prejudgment and post-judgment interest.

(42) *Releasees* means the Defendants and, as applicable, each of their respective direct and indirect subsidiaries, affiliates, and divisions, along with each of their respective current and former officers, directors, employees, trustees, representatives, lawyers, agents, insurers, and re-insurers; any and all predecessors, successors, and/or shareholders of the Defendants and each of

their direct and indirect subsidiaries, affiliates, and divisions; and each of the Defendants' respective heirs, executors, trustees, administrators and assigns.

(43) *Releasors* means the Plaintiffs, the Class Members (excluding, for the avoidance of doubt, Opt Out Parties), including any person having a legal and/or beneficial interest in the Eligible Securities sold, disposed of, or tendered by Class Members, and their respective heirs, executors, trustees, administrators, assigns, attorneys, representatives, partners and insurers and their predecessors, successors, heirs, executors, trustees, administrators and assignees.

(44) *Second Notice* means the short-form and long-form notices of the Second Order and the Third Order substantially in the forms attached as **Schedules "F" and "G"** hereto or as fixed by the Court.

(45) *Second Order* means the order substantially in the form attached as **Schedule "D"**:

- (a) approving the Settlement;
- (b) ordering the release and discharge of the Released Claims against the Releasees by the Releasors; and
- (c) dismissing the Action as against the Defendants without costs and with prejudice on the Effective Date.

(46) *Settlement* means the settlement of the Action on the terms provided for in this Agreement.

(47) *Settlement Amount* means CAD\$6,500,000, inclusive of Administration Expenses, Class Counsel Fees, the Funding Commission and any other costs, expenses or taxes otherwise related to the Action and the Settlement.

(48) *Third Order* means the order substantially in the form attached as **Schedule “E”**:

- (a) approving the form of the Second Notice;
- (b) approving the Plan of Notice for the purpose of the publication and dissemination of the Second Notice; and
- (c) approving a Distribution Protocol.

(49) *2007 Warrants* means the share purchase warrants issued by Baffinland pursuant to a warrant indenture dated January 31, 2007 and previously listed for trading on the Toronto Stock Exchange under the ticker symbol “BIM.WT”.

### **SECTION 3 – APPROVAL AND NOTICE PROCESS**

#### **3.1 Best Efforts**

(1) The Parties shall use their best efforts to implement this Settlement, to secure the First Order and the Second Order and the prompt, complete and final dismissal of the Action.

(2) Until the Effective Date or the termination of this Agreement, whichever occurs first, the Parties agree to hold in abeyance all steps in the Action, other than the motions provided for in this Agreement and such other matters required to implement the terms of this Agreement.

#### **3.2 First Motion and First Notice**

(1) The Plaintiffs will, as soon as is reasonably practicable but, in any event by no later than June 13, 2019 (inclusive), bring the First Motion. The Defendants will consent to the issuance of the First Order.

(2) Following entry of the First Order, the Administrator shall cause the First Notice to be published and distributed in accordance with the Plan of Notice and

the direction of the Court. The costs of publishing and distributing the First Notice shall be paid from the Escrow Settlement Funds as and when incurred.

### **3.3 Approval Motion**

(1) The Plaintiffs will thereafter bring the Approval Motion before the Court in accordance with the Court's directions. The Defendants will consent to the issuance of the Second Order.

(2) At the Approval Motion, Class Counsel shall propose for approval by the Court the Distribution Protocol or such other plan for distributing the Net Settlement Amount to the Class as Class Counsel may advise. The Distribution Protocol is the responsibility of Class Counsel and the Defendants have no involvement in its design. Accordingly, the approval of the Distribution Protocol shall be considered separately from the approval of the Settlement and is not a condition of the approval of the Settlement itself and the dismissal of the Action as against the Defendants without costs and with prejudice in accordance with the Second Order.

(3) The Defendants will take no position or make any submission to the Court concerning the Distribution Protocol, except as requested or required by the Court.

(4) The Defendants will not oppose the issuance of the Third Order.

(5) The Plaintiffs may make any amendments to the Distribution Protocol, the Third Order, the Second Notice or the Plan of Notice as it relates to the Second Notice requested or directed by the Court.

### **3.4 Second Notice**

(1) Following the Implementation Date, the Administrator shall cause the Second Notice to be published and disseminated in accordance with the Plan of

Notice as approved by the Court. The costs of publishing the Second Notice shall be paid from the Escrow Settlement Funds as and when incurred.

#### **SECTION 4 - SETTLEMENT BENEFITS**

##### **4.1 Payment of Settlement Amount**

(1) The Defendants shall pay or cause to be paid the Settlement Amount to Siskinds LLP, in trust, in full and final settlement of the Action and the Released Claims within thirty (30) days of the execution of the Agreement. Siskinds shall hold the Settlement Amount in the Escrow Account.

(2) Siskinds may pay Administration Expenses as and when they are incurred from the Escrow Settlement Funds while in control of the Escrow Account.

(3) The Settlement Amount and other valuable consideration set forth in the Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) Neither the Defendants nor the Defendants' insurers or re-insurers shall have any obligation to pay any further amount to the Plaintiffs, the Class Members or Class Counsel with respect to this Agreement, the Action or the Released Claims for any reason whatsoever, including any amount for damages, interest, legal fees (including Class Counsel Fees), disbursements, taxes of any kind, costs and expenses relating in any way to the Action, the Released Claims, the Settlement, and Administration Expenses.

(5) Siskinds shall account to the Defendants and the Administrator for all payments made from the Escrow Settlement Funds prior to the transfer of the Escrow Account to the Administrator. After the transfer of the Escrow Account to the Administrator, the Administrator shall provide an accounting to the Parties every three (3) months for all payments made from the Escrow Settlement Funds by the Administrator. In the event this Agreement is terminated, Siskinds

or the Administrator, whichever then has control of the Escrow Account, shall deliver an accounting to the Parties for all payments made from the Escrow Settlement Funds no later than ten (10) days after the termination.

(6) Neither Siskinds nor the Administrator shall pay out any of Escrow Settlement Funds except in accordance with this Agreement.

(7) Any dispute concerning the entitlement to or quantum of expenses incurred in the publication and dissemination of the First Notice or the Second Notice, or Administration Expenses paid by Siskinds or the Administrator subsequently, shall be dealt with by a motion to the Court on notice to the Parties.

#### **4.2 Settlement Amount to be Held in Trust**

(1) Prior to the Effective Date, Siskinds shall maintain the Escrow Account and hold the Escrow Settlement Funds in trust as provided for in this Agreement.

(2) Within ten (10) days of the Effective Date, Siskinds shall transfer control of the Escrow Account and the Escrow Settlement Funds therein to the Administrator, but before doing so Siskinds may deduct and retain from Escrow Settlement Funds the Class Counsel Fees approved by the Court.

(3) Upon the transfer of the Escrow Account to the Administrator, the Administrator shall maintain the Escrow Settlement Funds in the Escrow Account under the control of the Administrator and hold the Escrow Settlement Funds in trust as provided for in this Agreement.

#### **4.3 Taxes on Interest**

- (1) Except as expressly provided herein, all interest earned on the Settlement Amount shall accrue to the benefit of the Class and shall become and remain part of the Escrow Settlement Funds in the Escrow Account.
- (2) Subject to section 4.3(3), all taxes payable on any interest which accrues on or otherwise in relation to the Escrow Settlement Funds in the Escrow Account shall be the exclusive responsibility of the Class. The Administrator shall be responsible for fulfilling all tax reporting and payment requirements arising from the Escrow Settlement Funds in the Escrow Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the interest earned by the Escrow Settlement Funds shall be paid from the Escrow Account.
- (3) The Defendants and their insurers shall have no responsibility to make any filings relating to the Escrow Settlement Funds, to pay tax on any income earned by the Escrow Settlement Funds, or to pay any taxes on the Escrow Settlement Funds, unless this Agreement is terminated, in which case any interest earned on the Escrow Settlement Funds in the Escrow Account shall be paid to the Defendants and the Defendants' insurers in accordance with and in proportion to their respective contributions to the Settlement Amount who, in such case, shall be responsible for the payment of any taxes on such interest not previously paid.

#### **SECTION 5 - NO REVERSION**

- (1) Unless this Agreement is terminated as provided herein, the Defendants and the Defendants' insurers shall not be entitled to the repayment from the Plaintiffs of any portion of the Escrow Settlement Funds. In the event this Agreement is terminated, the Defendants and the Defendants' insurers shall be

entitled to the repayment only to the extent of and in accordance with the terms provided herein.

**SECTION 6 - DISTRIBUTION OF THE SETTLEMENT AMOUNT**

(1) On or after the Implementation Date, the Administrator shall distribute the remainder of the Escrow Settlement Funds in accordance with the following priorities:

- (a) to pay Class Counsel Fees as awarded by the Court (unless the Class Counsel Fees have already been paid to Class Counsel in accordance with section 4.2(2));
- (b) to pay any honorarium to the Plaintiffs as the Court may decide to award;
- (c) to pay the Funding Commission to the Funder;
- (d) to pay all of the costs and expenses reasonably and actually incurred in connection with the provision of the Second Notice;
- (e) to pay all of the Administration Expenses. For greater certainty, the Defendants and the Class are specifically excluded from eligibility for any payment of costs and expenses under this subsection;
- (f) to pay any taxes required by law to be paid to any governmental authority;
- (g) to pay a *pro rata* share of the balance of the Escrow Settlement Funds to each Authorized Claimant in proportion to his, her or its claim as recognized in accordance with the Distribution Protocol;  
and



- (h) as directed by the Court, on the recommendation of Class Counsel, in the event that there shall remain thereafter Escrow Settlement Funds that are insufficient to allocate to each Authorized Claimant in accordance with the Distribution Protocol.

## **SECTION 7 - EFFECT OF SETTLEMENT**

### **7.1 No Admission of Liability**

(1) Whether or not this Agreement is terminated, this Agreement, anything contained in it, any and all negotiations, discussions, and communications associated with this Agreement, shall not be deemed, construed or interpreted as a concession or admission of wrongdoing or liability by the Releasees, or as a concession or admission by the Releasees of the truthfulness of any claim or allegation asserted in this Action. Neither this Agreement nor anything contained herein shall be used or construed as an admission by the Releasees of any fault, omission, liability or wrongdoing in connection with any disclosure document or oral statement at issue in the Action.

### **7.2 Agreement Not Evidence**

(1) The Parties agree that, whether or not it is terminated, unless otherwise agreed, this Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to implement this Agreement, shall not be referred to, offered as evidence or received as evidence or interpreted in this Action or in any other current or future civil, criminal, quasi-criminal, administrative action, disciplinary investigation or other proceeding as any presumption, concession or admission:

- (a) of the validity of any claim that has been or could have been asserted in the Action by the Plaintiffs against the Defendants, or

the deficiency of any defence that has been or could have been asserted in the Action;

- (b) of wrongdoing, fault, neglect or liability by the Defendants; and
- (c) that the consideration to be given hereunder represents the amount that could be or would have been recovered in the Action after trial.

(2) Notwithstanding section 7.2(1), this Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Court contemplated by this Agreement, in a proceeding to approve or enforce this Agreement, to defend against the assertion of Released Claims, in any coverage litigation or proceeding, between or among the Defendants and their insurers, or as otherwise required by law.

### **7.3 Restrictions on Further Litigation**

(1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity or other claims over for relief from any Releasee in respect of any Released Claim.

## **SECTION 8 - TERMINATION OF THE AGREEMENT**

### **8.1 General**

- (1) This Agreement shall automatically terminate if:
  - (a) on the return of the Approval Motion, the Court issues an order that is not substantially in the form of the Second Order, and such order becomes a Final Order; or

- (b) the Second Order is reversed on appeal and the reversal becomes a Final Order.

(2) The Defendants shall have the right to terminate this Agreement within 14 days, or on a later date on the consent of the Parties, of being notified by the Administrator that the number of Eligible Securities of Opt Out Parties exceeds the Opt Out Threshold. The Administrator shall notify the Defendants of the number of Eligible Securities of Opt Out Parties and such particulars provided by such Opt Out Parties in support of their request to exclude themselves from the Class in accordance with the terms of the First Order and the First Notice.

(3) The right to terminate this Agreement contemplated by section 8.1(2) may be exercised by any one or more of the Defendants notifying Siskinds in writing of his, her or their intention to terminate the Agreement, which notification shall have the effect of terminating this Agreement for all Defendants.

(4) The Opt Out Threshold shall be stated in the Collateral Agreement executed contemporaneously with the execution of this Agreement. The Opt Out Threshold shall be redacted in the Collateral Agreement that is filed with the Court or otherwise made available to the public. The Collateral Agreement, without redaction of the Opt Out Threshold, shall not be published and shall be kept confidential by the parties unless the Court orders its publication or disclosure.

(5) In the event this Agreement is terminated in accordance with its terms:

- (a) the Parties will be restored to their respective positions in the Action prior to the execution of this Agreement;
- (b) any Second Order or Third Order which has been granted will be null and void and set aside on the consent of the Parties;

- (c) subject to a cap of CAD\$250,000.00 (inclusive of tax), Administration Expenses reasonably incurred and paid out of the Escrow Settlement Funds are non-recoverable from the Plaintiffs, the Class Members, the Administrator or Class Counsel;
- (d) other than amounts properly incurred subject to a cap of CAD\$250,000.00 (inclusive of tax), for Administration Expenses, the Escrow Settlement Funds will be returned to the Defendants and the Defendants' insurers in proportion to their respective contributions to the Settlement Amount pursuant to a direction to be jointly given by the Defendants;
- (e) this Agreement shall be null and void and have no further force and effect and no effect on the rights of the Parties except as specifically provided for herein; and
- (f) this Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendants.

(6) Notwithstanding the provisions of section 8.1(5)(e), if this Agreement is terminated, the provisions of this SECTION 8 and SECTION 1, SECTION 2, section 4.1(4), section 4.1(5), section 4.1(6), section 4.1(7), section 4.3(2), section 4.3(3), SECTION 5(1), section 7.1, section 7.2 and SECTION 13 shall survive termination and shall continue in full force and effect.

## **8.2 Allocation of the Escrow Settlement Funds in the Escrow Account Following Termination**

(1) In the event this Agreement is terminated, Siskinds or the Administrator, whichever then has control of the Escrow Account, shall deliver an accounting to the Plaintiffs and the Defendants no later than ten (10) days after the termination.

(2) Within fourteen (14) days of the termination of the Agreement, on notice, one or more of the Parties may make a motion to the Court for orders giving directions as to whether a notice of termination shall be sent out to the Class Members and, if so, the form and method of disseminating such a notice including who should pay for such notice.

(3) Subject to section 8.2(4), thirty (30) days after the termination of the Agreement, Siskinds or the Administrator, whichever then has control of the Escrow Account, shall make the payment to the Defendants and the Defendants' insurers as provided in section 8.1(5)(d).

(4) If a motion is made pursuant to section 8.2(2) in which one or more of the Parties seeks an order requiring the Defendants to pay for notice of termination to Class Members, pending hearing and final determination of the motion, Siskinds or the Administrator, whichever then has control of the Escrow Account, shall retain in the Escrow Account and not pay out to the Defendants and the Defendants' insurers such amount that may be reasonably required for the dissemination of notice to the Class, if any, under section 8.2(2) in the event that the Court orders that the Defendants are required to pay for such notice. Any amount retained in the Escrow Account further to this section 8.2(4), including accrued interest, shall be paid to the Defendants and Defendants' insurers in proportion to their respective contributions to the Settlement Amount upon a final determination that the Defendants are not required to pay for the dissemination of notice of termination to Class Members.

### **8.3 Disputes Relating to Termination**

(1) If there is any dispute about the termination of this Agreement, the Court shall determine any dispute by motion made by a Party on notice to the other Parties.

#### **8.4 No Right to Terminate**

(1) For greater certainty, no dispute or disagreement among the Plaintiffs and/or members of the Class or any of them about the proposed distribution of the Settlement Amount or the Distribution Protocol shall give rise to a right to terminate this Agreement.

#### **SECTION 9 - DETERMINATION THAT THE SETTLEMENT IS FINAL**

(1) The Settlement shall be considered final on the Effective Date.

#### **SECTION 10 - RELEASES AND JURISDICTION OF THE COURT**

##### **10.1 Release of Releasees**

(1) As of the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Agreement, the Releasors forever and absolutely release, waive and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, or in any other capacity ever had, now have or hereafter can, shall or may have.

(2) The Releasors acknowledge that they may hereafter discover facts in addition to or different from those facts which they know or believe to be true with respect to the Action and the subject matter of this Agreement, and that 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 any such additional or different facts.

##### **10.2 No Further Claims**

(1) As of the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any action, suit,

cause of action, claim or demand against any of the Releasees or any other person who may claim contribution or indemnity from any of the Releasees in respect of any Released Claim.

### **10.3 Dismissal of the Action**

(1) As of the Effective Date, the Action shall be dismissed as against the Defendants with prejudice and without costs.

### **10.4 Release of the Funder's Security**

(1) On the Effective Date, the Parties shall cooperate in taking all reasonably required steps to secure the prompt payment out of Court to the Funder of the Funder's Security.

## **SECTION 11 - ADMINISTRATION**

### **11.1 Appointment of the Administrator**

(1) By order of the Court, the Administrator will be appointed to serve until such time as the Escrow Settlement Funds are distributed in accordance with this Agreement and/or the Distribution Protocol, on the terms and conditions and with the powers, rights, duties and responsibilities set out in this Agreement and/or in the Distribution Protocol.

### **11.2 Information and Assistance from the Defendants**

(1) Baffinland shall, forthwith upon entry of the First Order, deliver or cause to be delivered to the Administrator an electronic list of all persons identified in the records of its transfer agent as non-objecting beneficial owners of BIM Securities who were likely mailed notices relating to the joint offer by the Offerors, or otherwise who acquired BIM Securities between January 14, 2011 and February 17, 2011, along with such information as may be available to facilitate the delivery of notice to those persons. The reasonable fees and expenses required to be paid to Baffinland's transfer agent so as to accomplish

this shall be paid as an Administration Expense from the Escrow Settlement Funds.

(2) The Administrator may use the information obtained under section 11.2(1) for the purpose of delivering the First Notice and Second Notice and for the purposes of administering and implementing this Agreement, the Plan of Notice and the Distribution Protocol, but the Administrator shall otherwise keep confidential the information obtained under section 11.2(1).

(3) For greater certainty, any information obtained or created in the administration of this Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of this Agreement and the Distribution Protocol.

## **SECTION 12 - OTHER MOTIONS**

### **12.1 Motion for Approval of Class Counsel Fees**

(1) Immediately following the Approval Motion, Class Counsel may seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount. Class Counsel are not precluded from making additional applications to the Court for expenses incurred as a result of implementing the terms of the Agreement.

(2) The Defendants acknowledge that they are not parties to the motion concerning the approval of Class Counsel Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Fees and they will not take any position or make any submissions to the Court concerning Class Counsel Fees, except as requested and required by a Court.

(3) The procedure for and the allowance or disallowance by the Court of any requests for Class Counsel Fees to be paid out of the Settlement Amount are not part of the Settlement provided for herein, except as expressly provided in



SECTION 6, and are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement provided for herein.

(4) Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or affect or delay the finality of the Second Order and the Settlement of this Action provided herein.

## **12.2 Motions Relating to the Funding Commission and Honorariums**

(1) Immediately following the Approval Motion, Class Counsel may seek orders from the Court relating to the payment of the Funding Commission or the payment of an honorarium to the Plaintiffs.

(2) Class Counsel are not precluded from making additional motions to the Court relating to the payment of the Funding Commission or the payment of an honorarium to the Plaintiffs.

(3) The Defendants acknowledge that they are not parties to any motion concerning the payment of the Funding Commission or the payment of an honorarium to the Plaintiffs, they will have no involvement in any such motion, and they will not take any position or make any submissions to the Court concerning any such motion, except as requested and required by a Court.

(4) Any order or proceeding relating to payment of the Funding Commission or the payment of an honorarium to the Plaintiffs, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or affect or delay the finality of the Second Order and the Settlement of this Action provided herein.

## **SECTION 13 - MISCELLANEOUS**

### **13.1 Motions for Directions**

- (1) Any one or more of the Parties, Class Counsel, or the Administrator may apply to the Court for directions in respect of any matter in relation to this Agreement and the Distribution Protocol.
- (2) All motions contemplated by this Agreement shall be on notice to the Parties.

### **13.2 Defendants Have No Responsibility or Liability for Administration**

- (1) Except for the obligations in respect of the performance of the obligations under sections 4.1(1) and 11.2(1), the Defendants and their insurers shall have no responsibility for and no liability whatsoever with respect to the administration or implementation of this Agreement and the Distribution Protocol, including, without limitation, the processing and payment of claims by the Administrator.

### **13.3 Headings, etc.**

- (1) In this Agreement:
  - (a) the division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
  - (b) the terms “the Agreement”, “this Agreement”, “herein”, “hereto” and similar expressions refer to this Agreement and not to any particular section or other portion of the Agreement;
  - (c) all amounts referred to are in lawful money of Canada; and
  - (d) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited

partnerships, limited liability partnerships or limited liability companies, by whatever name in the jurisdiction in which the person is domiciled.

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

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a statutory holiday recognized in the Province of Ontario, the act may be done on the next day that is not such a holiday.

#### **13.4 Governing Law**

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

(2) The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Action, the Parties and the members of the Class to interpret and enforce the terms, conditions and obligations under this Agreement and the Second Order and the Third Order.

#### **13.5 Entire Agreement**

(1) This Agreement and the Collateral Agreement constitute the entire agreement among the Parties and supersede 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 Agreement and the Collateral Agreement, unless expressly incorporated herein. This Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment which is material to the substance of the Settlement is subject to the approval of the Court.

### **13.6 Binding Effect**

(1) If the Settlement is approved by the Court and becomes final as contemplated in SECTION 9(1), this Agreement shall be binding upon and enure to the benefit of the Plaintiffs, the Class Members, the Defendants, Class Counsel, the Releasees and the Releasors, the insurers, or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

(2) For greater certainty, no Opt Out Party shall be bound by this Agreement.

### **13.7 Survival**

(1) The representations and warranties contained in this Agreement shall survive its execution and implementation.

### **13.8 Negotiated Agreement**

(1) This Agreement and the Settlement have been the subject of arm's length negotiations between the Parties through their representatives and on the advice of counsel. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Agreement shall have no force and effect. The Parties further agree that the

language contained in or not contained in previous drafts of the Agreement shall have no bearing upon the proper interpretation of this Agreement.

(2) The Parties acknowledge that they have required and consented that this Agreement and all related documents be prepared in English; les parties reconnaissent avoir demandé que le présent règlement et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by the Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Agreement, the cost of which shall be paid from the Settlement Amount as an Administration Expense. In the event of any dispute as to the interpretation or application of this Agreement, only the English version shall govern.

### **13.9 Recitals**

(1) The recitals to this Agreement are true, constitute material and integral parts hereof and are fully incorporated into and form part of this Agreement.

### **13.10 Schedules**

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

### **13.11 Acknowledgements**

- (1) Each Party hereby affirms and acknowledges that:
- (a) its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Agreement;
  - (b) the terms of this Agreement and the effects thereof have been fully explained to it by counsel;

- (c) he, she or its representative fully understands each term of this 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 Agreement, with respect to the Party's decision to execute this Agreement.

### **13.12 Counterparts**

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

### **13.13 Notice**

- (1) Any notice, instruction, motion for Court approval or motion for directions or Court orders sought in connection with this Agreement or any other report or document to be given by any party to any other party shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid:

#### **For the Plaintiffs:**

Michael G. Robb  
**Siskinds LLP**

Telephone: (519) 660-7872  
Facsimile: (519) 660-7873  
Email: michael.robbs@siskinds.com

**For the Defendants, ArcelorMittal S.A., Lakshmi N. Mittal, Aditya Mittal, 1843208 Ontario Inc., Phillipus F. du Toit and Baffinland Iron Mines Corporation:**

Steve Tenai  
**Aird & Berlis LLP**

Telephone: (416) 865-4620  
Facsimile: (416) 863-1515  
Email: stenai@airdberlis.com

**For the Defendants, Nunavut Iron Ore Acquisition Inc., Iron Ore Holdings, LP, NGP Midstream & Resources, L.P., NGP M&R Offshore Holdings, L.P., Jowdat Waheed, Bruce Walter, John T. Raymond and John Calvert:**

Andrea Burke  
**Davies Ward Phillips & Vineberg LLP**

Telephone: (416) 863-0900  
Facsimile: (416) 863-0871  
Email: aburke@dwpv.com

**For the Defendants, Richard D. McCloskey, John Lydall and Daniella Dimitrov:**


Alex Rose  
**Stikeman Elliott LLP**

Telephone: (416) 869-5261  
Facsimile: (416) 947-0866  
Email: arose@stikeman.com

### 13.14 Date of Execution

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

For the Plaintiffs:

Per:   
Name: Michael Robb  
Title: Siskinds LLP, Partner

For the Defendants, ArcelorMittal S.A.,  
Lakshmi N. Mittal, Aditya Mittal,  
1843208 Ontario Inc., Phillipus F. du  
Toit and Baffinland Iron Mines  
Corporation:

Per: \_\_\_\_\_  
Name:  
Title:

For the Defendants, Richard D.  
McCloskey, John Lydall and Daniella  
Dimitrov:

Per: \_\_\_\_\_  
Name:  
Title:

For the Defendants, Nunavut Iron Ore  
Acquisition Inc., Iron Ore Holdings, LP,  
NGP Midstream & Resources, L.P.,  
NGP M&R Offshore Holdings, L.P.,  
Jowdat Waheed, Bruce Walter, John T.  
Raymond and John Calvert:

Per: \_\_\_\_\_  
Name:  
Title:



**13.14 Date of Execution**

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


**For the Plaintiffs:**

Per: \_\_\_\_\_  
Name:  
Title:

**For the Defendants, ArcelorMittal S.A.,  
Lakshmi N. Mittal, Aditya Mittal,  
1843208 Ontario Inc., Phillipus F. du  
Toit and Baffinland Iron Mines  
Corporation:**

**For the Defendants, Nunavut Iron Ore  
Acquisition Inc., Iron Ore Holdings, LP,  
NGP Midstream & Resources, L.P.,  
NGP M&R Offshore Holdings, L.P.,  
Jowdat Waheed, Bruce Walter, John T.  
Raymond and John Calvert:**

Per: \_\_\_\_\_  
Name:  
Title:

Per:  for Andrea Banks, DWPV  
Name:  
Title:

**For the Defendants, Richard D.  
McCloskey, John Lydall and Daniella  
Dimitrov:**

Per: \_\_\_\_\_  
Name:  
Title:

**13.14 Date of Execution**

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

**For the Plaintiffs:**

Per: \_\_\_\_\_  
Name:  
Title:

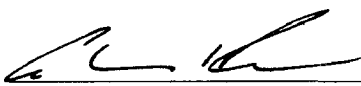
**For the Defendants, ArcelorMittal S.A.,  
Lakshmi N. Mittal, Aditya Mittal,  
1843208 Ontario Inc., Phillipus F. du  
Toit and Baffinland Iron Mines  
Corporation:**

**For the Defendants, Nunavut Iron Ore  
Acquisition Inc., Iron Ore Holdings, LP,  
NGP Midstream & Resources, L.P.,  
NGP M&R Offshore Holdings, L.P.,  
Jowdat Waheed, Bruce Walter, John T.  
Raymond and John Calvert:**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**For the Defendants, Richard D.  
McCloskey, John Lydall and Daniella  
Dimitrov:**

Per:   
Name: *ALEXANDER ROSE*  
Title: *PARTNER, STIKEMAN ELLIOTT LLP*

**13.14 Date of Execution**

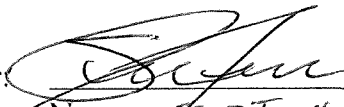
(1) The Parties have executed this Agreement as of the date on the cover page.

**For the Plaintiffs:**

Per: \_\_\_\_\_  
Name:  
Title:

**For the Defendants, ArcelorMittal S.A.,  
Lakshmi N. Mittal, Aditya Mittal,  
1843208 Ontario Inc., Phillipus F. du  
Toit and Baffinland Iron Mines  
Corporation:**

**For the Defendants, Nunavut Iron Ore  
Acquisition Inc., Iron Ore Holdings, LP,  
NGP Midstream & Resources, L.P.,  
NGP M&R Offshore Holdings, L.P.,  
Jowdat Waheed, Bruce Walter, John T.  
Raymond and John Calvert:**

Per:  \_\_\_\_\_  
Name: *STEVE TENAI*  
Title: *PARTNER, AIRDA BERLIS LLP*

Per: \_\_\_\_\_  
Name:  
Title:

**For the Defendants, Richard D.  
McCloskey, John Lydall and Daniella  
Dimitrov:**

Per: \_\_\_\_\_  
Name:  
Title:

# Schedule A

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) \_\_\_\_\_, THE \_\_\_\_\_  
JUSTICE H. A. RADY ) DAY OF \_\_\_\_\_, 2019

BETWEEN:

PETER ROONEY and ARCHIE LEACH

Plaintiffs

- and -

ARCELORMITTAL S.A., LAKSHMI N. MITTAL, ADITYA MITTAL,  
1843208 ONTARIO INC., PHILIPPUS F. DU TOIT,  
NUNAVUT IRON ORE ACQUISITION INC., IRON ORE HOLDINGS, LP,  
NGP MIDSTREAM & RESOURCES, L.P., NGP M&R OFFSHORE HOLDINGS, L.P.,  
JOWDAT WAHEED, BRUCE WALTER, JOHN T. RAYMOND, JOHN CALVERT,  
BAFFINLAND IRON MINES CORPORATION, RICHARD D. MCCLOSKEY, JOHN  
LYDALL and DANIELLA DIMITROV

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION**, made by the Plaintiffs for, *inter alia*, an Order fixing the date of a settlement approval motion, appointing an administrator, approving the form, content and method of dissemination of a notice of certification and settlement approval hearing, approving the claim form, and prescribing opt out procedures, was heard this day at 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the Settlement Agreement dated ●, 2019 attached hereto as **Schedule “1” (“Settlement Agreement”)**, and on hearing the submissions of Counsel for the Plaintiffs and Counsel for the Defendants.

**ON BEING ADVISED** that the Defendants consent to this Order.

1. **THIS COURT DECLARES** that, except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement.
2. **THIS COURT ORDERS** that the hearing of the Plaintiffs' motion to approve the Settlement and the hearing of the Plaintiffs' motion for approval of Class Counsel Fees shall take place on ●, 2019.
3. **THIS COURT ORDERS** that the form and content of the short-form First Notice, substantially in the form attached hereto as **Schedule "2"**, is hereby approved.
4. **THIS COURT ORDERS** that the form and content of the long-form First Notice, substantially in the form attached hereto as **Schedule "3"**, is hereby approved.
5. **THIS COURT ORDERS** that the Plan of Notice, substantially in the form attached hereto as **Schedule "4"**, is hereby approved for the purpose of the publication and dissemination of the First Notice and the Claim Form.
6. **THIS COURT ORDERS** that the form and content of the Claim Form, substantially in the form attached hereto as **Schedule "5"**, is hereby approved.
7. **THIS COURT ORDERS** that ● is hereby appointed as the Administrator pursuant to the Settlement Agreement.
8. **THIS COURT ORDERS** that in order to be entitled to participate in a distribution from the Net Settlement Amount, a Class Member must:
  - (a) submit a properly completed Claim Form to the Administrator, using the online claim portal established by the Administrator or by submitting a paper Claim Form by mail or courier to the Administrator, received by the Administrator on or

before 11:59pm Toronto (Eastern) time on the date that is one hundred and eighty (180) calendar days after the date on which the First Notice is first published (**“Claims Bar Deadline”**);

(b) submit, together with the Claim Form, any supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Administrator; and

(c) otherwise comply with the instructions set out in the Claim Form.

9. **THIS COURT ORDERS** that any Class Member who wishes to validly exclude him, her or itself from the Action must do so by submitting to the Administrator by mail, courier or email a written opt out election (**“Opt Out Election”**) to be received by the Administrator on or before 5:00pm Toronto (Eastern) time on the date that is 45 calendar days after the date on which the First Notice is first published (**“Opt Out Deadline”**).

10. **THIS COURT ORDERS** that an Opt Out Election:

(a) must contain a statement of intention to opt out of the Action by the Class Member or a person authorized to bind the Class Member;

(b) must state the number of Common Shares and the number of 2007 Warrants held by the Class Member at the close of trading on the Toronto Stock Exchange on September 21, 2010;

(c) must contain a listing of all transactions on and after September 22, 2010 by which the Class Member purchased, acquired, sold or tendered BIM Securities,

which must show, for each transaction, the type of BIM Security (Common Shares or 2007 Warrants), the number of BIM Securities and the date of the transaction;

- (d) must be supported by documents to evidence such transactions, in the form of trade confirmations, brokerage statements or other transaction records allowing the Administrator to verify the transactions;
- (e) must contain the name, address, telephone number and email address of the Class Member; and
- (f) may, at the option of the Class Member, contain a statement of the Class Member's reason for opting out.

11. **THIS COURT ORDERS** that any Class Member who delivers a valid Opt Out Election, in accordance with paragraphs 9 and 10 of this Order, may revoke that Opt Out Election by submitting to the Administrator by mail, courier or email a written statement that he, she or it wishes to revoke the Opt Out Election, which must be received by the Administrator on or before 5:00pm Toronto (Eastern) time on the date that is five (5) calendar days after the Opt Out Deadline ("**Opt Out Revocation Deadline**").
12. **THIS COURT ORDERS** that an Opt Out Election that is revoked in accordance with paragraph 11 of this Order shall be null and void and have no force or effect, and the Class Member who submitted the Opt Out Election shall not be considered an Opt Out Party.



13. **THIS COURT ORDERS** that the Administrator shall, immediately upon receipt by it, provide to Class Counsel copies of any Opt Out Elections received on or before the Opt Out Deadline.
14. **THIS COURT ORDERS** that, at any time up to the Opt Out Revocation Deadline, Class Counsel may contact any Class Member who has submitted an Opt Out Election to confirm that they wish to exclude him, her or itself from the Action, and to explain to him, her or it the significance of the Opt Out Election.
15. **THIS COURT ORDERS** that, by no later than the date that is seven (7) calendar days after the Opt Out Deadline, the Administrator shall:
  - (a) report to the lawyers for the Parties the number of Eligible Securities of each Opt Out Party and the total number of Eligible Securities of all Opt Out Parties; and
  - (b) provide to the lawyers for the Parties copies of the Opt Out Elections submitted by Opt Out Parties.
16. **THIS COURT ORDERS** that any person who would otherwise be a Class Member who validly excludes him, her or itself from the Action, in accordance with paragraphs 9 and 10 of this Order, and who has not revoked his, her or its Opt Out Election in accordance with paragraph 11 of this Order, is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the Action and the Settlement.
17. **THIS COURT ORDERS** that any person who is a member of the Class and who does not validly exclude him, her or itself from the Action in accordance with paragraphs 9 and 10 of this Order, or who revokes an Opt Out Election in accordance with

paragraph 11 of this Order, will be bound by the Settlement Agreement, including the releases contained therein, if and when it becomes effective, and may not exclude him, her or itself from the Action in the future, whether or not a claim to participate in the distribution of the Settlement Amount is submitted by that person.

18. **THIS COURT ORDERS** that Class Members who wish to file with the Court an objection or comment on the Settlement, the Distribution Protocol or the request for approval of Class Counsel Fees shall deliver to Class Counsel by mail, courier or email a written statement by no later than 14 days prior to the Approval Motion.
19. **THIS COURT ORDERS** that Baffinland shall forthwith deliver or cause to be delivered to the Administrator the information required under section 11.2(1) of the Settlement Agreement.

---

THE HONOURABLE JUSTICE H.A. RADY

Rooney & Leach  
Plaintiffs

ArcelorMittal S.A., et al.  
v  
Defendants

Court File No. 3957-11CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**Siskinds LLP**

Barristers & Solicitors  
680 Waterloo Street  
P.O. Box 2520  
London, ON N6A 3V8

**Michael G. Robb** (LSO#: 45787G)

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Toronto, ON M5C 1M3

**Anthony O'Brien** (LSO#: 56129U)

Tel: 416-594-4394

Fax: 519-672-6065

Lawyers for the Plaintiffs

# Schedule B

**Did you tender securities of Baffinland Iron Mines Corporation (“Baffinland”) to the take-over bid or otherwise dispose of Baffinland securities on or after January 14, 2011?**

A settlement has been reached in the certified class action against Baffinland and other defendants. The class action alleges misrepresentations, oppression and other causes of action in connection with the take-over bid made by certain of the defendants to acquire Baffinland securities that concluded in February 2011 and Baffinland’s January 13, 2011 news release concerning the results of the feasibility study on the road haulage option for its Mary River Project.

The settlement provides for the payment by the defendants of the total amount of CAD\$6,500,000 to resolve those claims. The settlement is a compromise of disputed claims and is not an admission of liability or wrongdoing by Baffinland or any of the other defendants.

The settlement must be approved by the Ontario Court. A settlement approval hearing has been set for ●, 2019 in London, Ontario. At the hearing, the Court will also address a motion to approve Class Counsel’s fees, which will not exceed ●% of the recovery plus reimbursement for expenses incurred in the litigation.

The Court has appointed ● as the Administrator of the settlement. To be eligible for compensation, Class Members must submit a completed Claim Form to the Administrator by no later than ●. If the settlement is approved, and if you do not file a claim by this deadline, you may not be able to claim a portion of the settlement and your claim will be extinguished.

You must opt out by ● if you do not want to be part of the class action and be bound by the terms of the settlement. Class Members may also express their views about the proposed settlement to the Court. If you wish to express your views, you must do so in writing by ●.

For more information about the certification of the class action, who qualifies as a class member, the settlement, how to make a claim for compensation from the settlement, and your rights to opt out of the class and the settlement or object to the settlement, see the long-form notice available online at ● or call toll-free: ●.

# Schedule C

**BAFFINLAND IRON MINES CORPORATION SECURITIES CLASS ACTION**  
**NOTICES OF CERTIFICATION AND OF SETTLEMENT APPROVAL HEARING**

**Read this notice carefully as it may affect your legal rights.**  
**You may need to take prompt action.**

**This notice is directed to:** All persons, other than Excluded Persons (as defined below) and those who validly opt out of the class action (in accordance with the instructions below), who: (i) tendered for sale BIM Securities\* to take-over bids by ArcelorMittal S.A., Nunavut Iron Ore Acquisition Inc., Iron Ore Holdings, L.P., NPG Midstream & Resources, L.P., NGP M&R Offshore Holdings, L.P. and/or 1843208 Ontario Inc. (collectively, “**Offerors**”) and whose BIM Securities\* were taken up by the Offerors; or (ii) otherwise disposed of BIM Securities\* on or after January 14, 2011 (“**Class Members**”).

\* “BIM Securities” means the common shares of Baffinland Iron Mines Corporation (“**Baffinland**”) and the share purchase warrants issued by Baffinland pursuant to a warrant indenture dated January 31, 2007 and previously listed for trading on the Toronto Stock Exchange under the ticker symbol “BIM.WT”.

**Important Deadlines**

**Claims Bar Deadline** (to file a claim for compensation): 11:59pm Toronto (Eastern) time on ●

**Opt Out Deadline** (to exclude yourself from the class action and the settlement): 5:00pm Toronto (Eastern) time on ●

***Claims Forms may not be accepted after the Claims Bar Deadline. As a result, it is necessary that you act without delay.***

**Purpose of this Notice**

The class action brought on behalf of Class Members has been certified. It has also been settled, subject to court approval. This notice provides Class Members with information about the certification, who qualifies as a Class Member, the right to opt out of the class action, the settlement and their rights to participate in the court proceedings considering whether to approve the settlement.

The notice also provides Class Members with information about how to apply for compensation from the settlement. **Class Members who wish to do so must do so by 11:59pm Toronto (Eastern) time on ●.**

**The Action and Class Certification**

In 2011, a class proceeding (“**Action**”) was commenced in the Ontario Superior Court of Justice (“**Ontario Court**”) against the Offerors, Baffinland, Lakshmi N. Mittal, Aditya Mittal, Phillipus F. Du Toit, Jowdat Waheed, Bruce Walter, John T. Raymond, John Calvert, Richard D. McCloskey, John Lydall and Daniella Dimitrov (collectively, “**Defendants**”).

The Action concerns the take-over bid made by the Offerors to acquire all of the BIM Securities, which ultimately concluded in February 2011 (“**Joint Bid**”). The Action alleges that disclosure documents issued leading up to and in connection with the Joint Bid contained misrepresentations and that certain of the Defendants engaged in conduct that oppressed the Class Members. It also includes allegations of misrepresentation in Baffinland’s January 13, 2011 news release announcing the results of a feasibility study into a road haulage option for its Mary River Project. It is alleged that the Class Members were damaged by the conduct of the Defendants.

On May 18, 2018, the Ontario Court certified the Action as a class action on behalf of the following class:

All persons, other than Excluded Persons, who:

- (i) tendered for sale BIM Securities to take-over bids by the Offerors and whose BIM Securities were taken up by the Offerors; or
- (ii) otherwise disposed of BIM Securities on or after January 14, 2011.

“Excluded Persons” means (1) the Defendants, and their past and present subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns; (2) any member of the families of the individual Defendants; (3) the following individuals or entities, each of which directly or indirectly entered into a lock-up agreement pursuant to which BIM Securities were tendered to the Joint Bid: Resource Capital Fund IV L.P.; Resource Capital Fund III L.P.; RCF Management LLC; John Lydall; Walmley Investments Ltd; Gordon Watts; Michael T. Zurowski; Richard Matthews; Richard D. McCloskey; Gregory G. Missal; Ronald S. Simkus; Daniella E. Dimitrov; Grant Edey; Wide Range Mining Projects Pty Ltd, as trustee for the G&K Fietz Family Trust; Gwen M. Gareau; and Russell L Cranswick; and (4) those persons whose BIM Securities were transferred to 1843208 Ontario Inc. pursuant to the Plan of Arrangement completed on March 25, 2011, including (without limitation) the dissenting shareholders identified in Schedule “A” of the Notice of Application filed on May 17, 2011 in the dissent and appraisal proceeding commenced by 1843208 Ontario Inc. in Superior Court of Justice, Toronto Region (Commercial List), Court File No. CV-11-9222-00CL; however, such exclusion taking effect only to the extent of the BIM Securities transferred by those persons to 1843208 Ontario Inc. pursuant to the Plan of Arrangement.

### **The Settlement**

On ●, 2019, the Plaintiffs and the Defendants executed a Settlement Agreement providing for the settlement of the Action (“**Settlement**”), which is subject to approval by the Ontario Court. The Settlement Agreement provides for the payment of CAD\$6,500,000.00 (“**Settlement Amount**”) in consideration of the full and final settlement of the claims of Class Members. The Settlement Amount includes all legal fees, disbursements, taxes and administration expenses.

The Settlement provides that if it is approved by the Ontario Court, the claims of all Class Members asserted or which could have been asserted in the Action will be fully and finally released, and the Action will be dismissed. The Settlement is not an admission of liability, wrongdoing or fault on the part of the Defendants, all of whom have denied, and continue to deny, the allegations against them.



### **Participating in the Settlement or Excluding Yourself (“Opting Out”) from the Class Action and the Settlement**

If you are a Class Member, you will be bound by the outcome of the Action, including the terms of the Settlement if approved, unless you opt out of the Action. Class Members who do not opt out will (i) be entitled to participate in the Settlement; (ii) be bound by the terms of the Settlement; and (iii) not be permitted to bring other legal proceedings in relation to the matters alleged in the Action against the Defendants, or any person released by the approved Settlement. Conversely, if you are a Class Member who opts out of the Action (an “**Opt Out Party**”), you will not be able to make a claim to receive compensation from the Settlement Amount but will maintain the right to pursue your own claim against the Defendants relating to the matters alleged in the Action.

If you are a Class Member and wish to opt out, you must submit a written election to do so, together with required supporting documentation (“**Opt Out Election**”), to ●.

To be valid, an Opt Out Election: (a) must contain a statement of intention to opt out of the Action by you or a person authorized to bind you; (b) must state the number of Common Shares and the number of 2007 Warrants held by you at the close of trading on the Toronto Stock Exchange on September 21, 2010; (c) must contain a listing of all transactions on and after September 22, 2010 by which you purchased, acquired, sold or tendered BIM Securities, which must show, for each transaction, the type of BIM Security (Common Shares or 2007 Warrants), the number of BIM Securities and the date of the transaction; (d) must be supported by documents to evidence such transactions, in the form of trade confirmations, brokerage statements or other transaction records acceptable to ●; (e) must contain your name, address, telephone number and email address; and (f) may, at your option, contain a statement of your reason for opting out.

● must receive your Opt Out Election by no later **5:00pm Toronto (Eastern) time on ●** (“**Opt Out Deadline**”).

Opt Out Elections may be sent electronically or by mail or courier to:

●

An Opt-Out Election that does not contain all of the required information or is received after the Opt Out Deadline will not be valid, which means that you will be bound by the outcome of the Action, including the Settlement, if it is approved.

You may revoke an Opt Out Election by delivering to ● by mail, courier or email a written statement that you wish to revoke the Opt Out Election, which must be received on or before 5:00pm Toronto (Eastern) time on ●.

### **Settlement Approval Hearing**

The Settlement is conditional on approval by the Ontario Court. The Settlement will be approved if the Ontario Court determines that it is fair and reasonable and in the best interests of Class Members to approve it.

The Ontario Court will hear a motion for approval of the Settlement on ● at ● at the courthouse located at 80 Dundas Street, London, Ontario.

### **Release of Claims and Effect on Other Proceedings**

If the Settlement Agreement is approved by the Ontario Court, the claims and allegations of Class Members which were asserted or which could have been asserted in the Action will be released (“**Released Claims**”), and the Action will be dismissed. Class Members will not be able to pursue any action in relation to the Released Claims regardless of whether or not they file a claim for compensation from the Settlement. **If approved, the Settlement will therefore represent the only means of compensation available to Class Members in respect of the Released Claims.**

### **Approval of Class Counsel Fees and Other Expenses**

In addition to seeking the Ontario Court’s approval of the Settlement Agreement, Class Counsel will seek the Court’s approval of legal fees not to exceed ●% of the Settlement Amount (“**Class Counsel Fees**”), plus disbursements not exceeding CAD\$● and applicable taxes. This fee request is consistent with the retainer agreements entered into between Class Counsel and the Plaintiffs at the beginning of the litigation. As is customary in such cases, Class Counsel conducted the class action on a contingent fee basis. Class Counsel was not paid as the matter proceeded and funded the expenses of conducting the litigation.

Class Counsel will also seek the Ontario Court’s approval for the payment of an honorarium to the Plaintiffs. Class Counsel will be requesting that the honorarium be deducted directly from the Settlement Amount.

The approval of the Settlement is not contingent on the approval of the Class Counsel Fees requested or an honorarium to the Plaintiffs. The Settlement may still be approved even if the requested Class Counsel Fees or the Plaintiffs’ honorarium are not approved.

The Plaintiffs entered into a litigation funding agreement with Claims Funding Australia Pty Ltd (“CFA”). Pursuant to that agreement, CFA agreed to pay any adverse cost awards against the Plaintiffs, and to pay CAD\$50,000 towards disbursements. In return, CFA is entitled to receive from the Settlement Amount reimbursement of disbursements paid and 7% of the amounts distributed to the Class Members after the deduction of Class Counsel Fees and Administration Expenses (“**Funding Expenses**”). The litigation funding agreement with CFA was approved by the Ontario Court on November 21, 2013. Amounts owing to CFA will be deducted from the amounts to be distributed to the Class Members before the actual distribution.

The fees of the Administrator, together with any other costs relating to approval, notification, implementation and administration of the settlement (“**Administration Expenses**”), will also be paid from the Settlement Amount.

### **Class Members’ Entitlement to Compensation**

Class Members will be eligible for compensation pursuant to the Settlement if they submit a completed Claim Form, including any supporting documentation, with the Administrator, and their claim satisfies the criteria set out in the Distribution Protocol.

To be eligible for compensation under the Settlement, Class Members must submit their Claim Form **no later than 11:59pm Toronto (Eastern) time on ●** (“**Claims Bar Deadline**”). Only Class Members are permitted to recover from the Settlement.

If the Settlement Agreement is approved by the Ontario Court, the Settlement Amount, after deduction of Class Counsel Fees, Administration Expenses, Funding Expenses and any approved honorarium (“**Net Settlement Amount**”) will be distributed to Class Members in accordance with the Distribution Protocol, subject to the Ontario Court’s approval.

The proposed Distribution Protocol provides that in order to determine the individual entitlements of Class Members who make claims, interests in the Net Settlement Amount (“**Net Settlement Amount Interests**”) will be allocated to a claimant for each BIM Security that was tendered for sale to the Joint Bid or otherwise disposed of on or after January 14, 2011. The number of Net Settlement Amount Interests allocated to each such BIM Security depends on when the BIM Security was purchased or acquired and whether the BIM Security is a share or a warrant. Once the Net Settlement Amount Interests of all Class Members who have filed valid claims have been calculated, each Class Member’s actual compensation will be the portion of the Net Settlement Amount equivalent to the ratio of his, her or its number of Net Settlement Amount Interests to the total number of Net Settlement Amount Interests of all Class Members who have filed valid claims, multiplied by the Net Settlement Amount. Because the Net Settlement Amount will be distributed *pro rata*, it is not possible to estimate the individual recovery of any individual Class Member until all the claims have been received and reviewed.

The approval of the Settlement is not contingent on the approval of the Distribution Protocol. The Court may still approve the Settlement even if it does not approve the Distribution Protocol or approves amendments to the Distribution Protocol.

In the event any amounts remain undistributed 180 days after the distribution of the Net Settlement Amount (because of uncashed cheques or for other administrative reasons), those amounts will be distributed to eligible Class Members (if sufficient to warrant a further distribution) or allocated in a manner approved by the Ontario Court.

### **Administrator**

The Ontario Court has appointed ● as the Administrator of the Settlement. The Administrator will, among other things: (i) receive and process the Claim Forms; (ii) determine Class Members’ eligibility for and entitlement to compensation pursuant to the Distribution Protocol; (iii) communicate with Class Members regarding claims for compensation; and (iv) manage and distribute the Settlement Amount in accordance with the Settlement Agreement and the orders of the Ontario Court. The Administrator can be contacted at:

Telephone: ●

Mailing Address: ●

Website: ●

### **Filing a Claim**

All claims for compensation from the Settlement must be received by no later than 11:59pm Toronto (Eastern) time on ●.

The most efficient way to file a claim is to visit the Administrator's website at ●. The website provides step by step instructions on how to file a claim. In order to verify claims, the Administrator will require supporting documentation, including brokerage statements or confirmations evidencing the claimed transactions in BIM Securities. Accordingly, Class Members should visit the Administrator's site as soon as possible so that they have time to obtain the required documentation prior to the Claims Bar Deadline.

The Administrator will also accept Claim Forms filed by mail or courier. To obtain a copy of the Claim Form, Class Members may print one from the Administrator's website or contact the Administrator to have one sent by email or regular mail. Claim Forms sent by mail or courier should be sent to:

●

Class Members with questions about how to complete or file a Claim Form, or the documentation required to support a claim, should contact the Administrator at the above coordinates.

### **Class Members' Right to Participate in the Motion for Approval**

Class Counsel has posted or will post the following material on its website ([www.siskinds.com/class-action/baffinland-iron-mines-corporation/](http://www.siskinds.com/class-action/baffinland-iron-mines-corporation/)) on or before the dates set out below:

1. The Settlement Agreement, including the proposed Distribution Protocol (posted prior to or at the time of publication of this notice);
2. A summary of the basis upon which Class Counsel recommends the Settlement and Distribution Protocol (posted prior to or at the time of publication of this notice);
3. Sample calculations of Net Settlement Amount Interests using the Distribution Protocol (posted prior to or at the time of publication of this notice);
4. The Plaintiffs' evidence and written argument in support of the approval of the Settlement and Distribution Protocol (by ●); and
5. Class Counsel's evidence and written argument in support of the request for approval of Class Counsel's fees and disbursements (by ●).

Class Members who wish to comment on, or make an objection to, the approval of the Settlement Agreement, the Distribution Protocol or the Class Counsel Fees requested shall deliver a written submission to Class Counsel, at the address listed below, no later than ●. Any objections delivered by that date will be filed with the Ontario Court.

Class Members may attend at the hearing whether or not they deliver an objection. Class Members who wish a lawyer to speak on their behalf at the hearing may retain one to do so at their own expense.

### **Copies of the Settlement Documents**

Copies of the Settlement Agreement, the Distribution Protocol and other documents relating to the Settlement may be found on the Administrator's website, Class Counsel's website or by contacting the Administrator or Class Counsel using the contact information provided in this notice.

### **Class Counsel**

Siskinds LLP is Class Counsel. Inquiries may be directed to:

Anthony O'Brien  
Siskinds LLP  
302 – 100 Lombard Street  
Toronto, ON M5C 1M3  
Tel: 1-877-672-2121 x ●  
Fax: 519-672-6065  
Email: [anthony.obrien@siskinds.com](mailto:anthony.obrien@siskinds.com)  
Website: [www.siskinds.com/class-action/baffinland-iron-mines-corporation/](http://www.siskinds.com/class-action/baffinland-iron-mines-corporation/)

### **Interpretation**

If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

PLEASE DO NOT CONTACT THE COURT WITH INQUIRIES ABOUT THE CLASS ACTION OR THE SETTLEMENT. All inquiries should be directed to the Administrator or Class Counsel.

PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO  
SUPERIOR COURT OF JUSTICE.

# Schedule D

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	_____ , THE _____
	)	
JUSTICE H. A. RADY	)	DAY OF _____ , 2019
	)	

B E T W E E N :

PETER ROONEY and ARCHIE LEACH

Plaintiffs

- and -

ARCELORMITTAL S.A., LAKSHMI N. MITTAL, ADITYA MITTAL,  
1843208 ONTARIO INC., PHILIPPUS F. DU TOIT,  
NUNAVUT IRON ORE ACQUISITION INC., IRON ORE HOLDINGS, LP,  
NGP MIDSTREAM & RESOURCES, L.P., NGP M&R OFFSHORE  
HOLDINGS, L.P., JOWDAT WAHEED, BRUCE WALTER, JOHN T.  
RAYMOND, JOHN CALVERT, BAFFINLAND IRON MINES  
CORPORATION, RICHARD D. MCCLOSKEY, JOHN LYDALL and  
DANIELLA DIMITROV

Defendants

**ORDER**

**THIS MOTION**, made by the Plaintiffs for an Order approving the Settlement Agreement reached between the Plaintiffs and the Defendants on ●, 2019 (“**Settlement Agreement**”), was heard this day at 80 Dundas Street, London, Ontario.

**ON READING** the materials filed and on hearing the submissions of Class Counsel and counsel for the Defendants.

**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 Defendants consent to this Order.

1. **THIS COURT ORDERS** that, except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement attached hereto as **Schedule “1”**.
2. **THIS COURT ORDERS** that the period for Class Members to opt out of this Action in accordance with the Order of the Ontario Superior Court of Justice dated June ●, 2019 expired as of August ●, 2019.
3. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
4. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to section 29 of the *Class Proceedings Act, 1992*, SO 1992, c 6.
5. **THIS COURT ORDERS** that all provisions of the Settlement Agreement (including the Recitals and Definitions) form part of this Order and are binding upon the Defendants in accordance with the terms thereof, and upon the Plaintiffs and all Class Members that did not opt out of this Action in accordance with the Order of the Ontario Superior Court of Justice dated ●, including those persons that are minors or mentally incapable.
6. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
7. **THIS COURT ORDERS** that compliance with requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 is hereby dispensed with.
8. **THIS COURT ORDERS** that the Settlement Agreement shall be implemented in accordance with its terms.



9. **THIS COURT ORDERS** that the Plaintiffs and Defendants may, on notice to the Court but without the need for further order of the Court, agree to reasonable extensions of time to carry out any provisions of the Settlement Agreement.
10. **THIS COURT ORDERS** that, other than that which has been provided in section 13.2(1) of the Settlement Agreement, the Defendants and the other Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement.
11. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors under the Settlement Agreement forever and absolutely release, waive, and discharge, and shall be conclusively deemed to have fully, finally and forever released and discharged the Releasees from the Released Claims that any of them whether directly or indirectly or in any other capacity ever had, now have, or hereafter can, shall or will have, as provided by the Settlement Agreement.
12. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee, or any other person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim or any matter related thereto.

13. **THIS COURT ORDERS** that, upon the Effective Date, the Action shall be dismissed against all Defendants with prejudice and without costs.

---

The Honourable Justice Rady

ROONEY AND LEACH  
Plaintiffs

v. ARCELORMITTAL S.A., *et al.*  
Defendants

Court File No. 3957-11CP

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**Siskinds LLP**

Barristers & Solicitors  
680 Waterloo Street  
P.O. Box 2520  
London, ON N6A 3V8

**Michael G. Robb** (LSO#: 45787G)

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302-100 Lombard Street

Toronto, ON M5C 1M3

**Anthony O'Brien** (LSO#: 56129U)

Tel: 416-594-4394

Fax: 519-672-6065

Lawyers for the Plaintiffs

# Schedule E

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	_____, THE _____
	)	
JUSTICE H. A. RADY	)	DAY OF _____, 2019
	)	

B E T W E E N :

PETER ROONEY and ARCHIE LEACH

Plaintiffs

- and -

ARCELORMITTAL S.A., LAKSHMI N. MITTAL, ADITYA MITTAL,  
1843208 ONTARIO INC., PHILIPPUS F. DU TOIT,  
NUNAVUT IRON ORE ACQUISITION INC., IRON ORE HOLDINGS, LP,  
NGP MIDSTREAM & RESOURCES, L.P., NGP M&R OFFSHORE  
HOLDINGS, L.P., JOWDAT WAHEED, BRUCE WALTER, JOHN T.  
RAYMOND, JOHN CALVERT, BAFFINLAND IRON MINES  
CORPORATION, RICHARD D. MCCLOSKEY, JOHN LYDALL and  
DANIELLA DIMITROV

Defendants

**ORDER**

**THIS MOTION**, made by the Plaintiffs for an Order: (i) approving the Distribution Protocol; (ii) approving the form and method of publication and dissemination of the notices of settlement approval, was heard this day at 80 Dundas Street, London, Ontario.

**ON READING** the materials filed and on hearing the submissions of Class Counsel and counsel for the Defendants.

**AND ON BEING ADVISED** that the deadline for objecting to the Distribution Protocol has passed and there have been ● written objections to the Distribution Protocol.

**AND ON BEING ADVISED** that the Defendants do not oppose this Order.

1. **THIS COURT ORDERS** that, except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement reached between the Plaintiffs and the Defendants on ●, 2019 (“**Settlement Agreement**”) attached hereto as **Schedule “1”**.
2. **THIS COURT ORDERS** that the Distribution Protocol, substantially in the form attached hereto as **Schedule “2”**, is fair and appropriate.
3. **THIS COURT ORDERS** that the Distribution Protocol is approved and that the Settlement Amount shall be distributed in accordance with the terms of the Settlement Agreement, following payment of Class Counsel Fees approved by this Court, the Funding Commission, Administration Expenses and any other expenses approved by this Court.
4. **THIS COURT ORDERS** that the Plan of Notice, substantially in the form attached hereto as **Schedule “3”**, is hereby approved for the purpose of the publication and dissemination of the Second Notice.
5. **THIS COURT ORDERS** that the form and content of the short-form Second Notice, substantially in the form attached hereto as **Schedule “4”**, is hereby approved.
6. **THIS COURT ORDERS** that the form and content of the long-form Second Notice, substantially in the form attached hereto as **Schedule “5”**, is hereby approved.

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The Honourable Justice Rady

ROONEY AND LEACH  
Plaintiffs

v. ARCELORMITTAL S.A., *et al.*  
Defendants

Court File No. 3957-11CP

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**Siskinds LLP**

Barristers & Solicitors  
680 Waterloo Street  
P.O. Box 2520  
London, ON N6A 3V8

**Michael G. Robb** (LSO#: 45787G)

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Toronto, ON M5C 1M3

**Anthony O'Brien** (LSO#: 56129U)

Tel: 416-594-4394

Fax: 519-672-6065

Lawyers for the Plaintiffs

# Schedule F



**Did you tender securities of Baffinland Iron Mines Corporation (“Baffinland”) to the take-over bid or otherwise dispose of Baffinland securities on or after January 14, 2011?**

A settlement has been reached in the certified class action against Baffinland and other defendants. The class action alleges misrepresentations, oppression and other causes of action in connection with the take-over bid made by certain of the defendants to acquire Baffinland securities that concluded in February 2011 and Baffinland’s January 13, 2011 news release concerning the results of the feasibility study on the road haulage option for its Mary River Project.

The defendants have agreed that the total amount of CAD\$6,500,000 shall be paid in settlement of the class action. The settlement is a compromise of disputed claims and is not an admission of liability or wrongdoing by the defendants.

The settlement has been approved by the Ontario Superior Court of Justice.

For more information about your rights and how to exercise them, see the long-form notice available online at ● or call toll-free at: ●.

# Schedule G

# **BAFFINLAND IRON MINES CORPORATION SECURITIES CLASS ACTION**

## **NOTICE OF SETTLEMENT APPROVAL**

**Read this notice carefully as it may affect your legal rights.  
You may need to take prompt action.**

**This notice is directed to:** All persons, other than Excluded Persons (as defined below) and those who validly opted out of the class action, who: (i) tendered for sale BIM Securities\* to take-over bids by ArcelorMittal S.A., Nunavut Iron Ore Acquisition Inc., Iron Ore Holdings, L.P., NPG Midstream & Resources, L.P., NGP M&R Offshore Holdings, L.P. and/or 1843208 Ontario Inc. (collectively, “**Offerors**”) and whose BIM Securities\* were taken up by the Offerors; or (ii) otherwise disposed of BIM Securities\* on or after January 14, 2011 (“**Class Members**”).

\* “BIM Securities” means the common shares of Baffinland Iron Mines Corporation (“**Baffinland**”) and the share purchase warrants issued by Baffinland pursuant to a warrant indenture dated January 31, 2007 and previously listed for trading on the Toronto Stock Exchange under the ticker symbol “BIM.WT”.

### **Purpose of this Notice**

The purpose of this notice is to advise Class Members of the approval of the settlement of the class proceeding brought on behalf of Class Members.

### **The Action and Class Certification**

In 2011, a class proceeding (“**Action**”) was commenced in the Ontario Superior Court of Justice (“**Ontario Court**”) against the Offerors, Baffinland, Lakshmi N. Mittal, Aditya Mittal, Phillipus F. Du Toit, Jowdat Waheed, Bruce Walter, John T. Raymond, John Calvert, Richard D. McCloskey, John Lydall and Daniella Dimitrov (collectively, “**Defendants**”).

The Action concerns the take-over bid made by the Offerors to acquire all of the BIM Securities, which ultimately concluded in February 2011 (“**Joint Bid**”). The Action alleges that disclosure documents issued leading up to and in connection with the Joint Bid contained misrepresentations and that certain of the Defendants engaged in conduct that oppressed the Class Members. It also includes allegations of misrepresentation in Baffinland’s January 13, 2011 news release announcing the results of a feasibility study into a road haulage option for its Mary River Project. It is alleged that the Class Members were damaged by the conduct of the Defendants.

On May 18, 2018, the Ontario Court certified the Action as a class action on behalf of the following class:

All persons, other than Excluded Persons, who:

- (i) tendered for sale BIM Securities to take-over bids by the Offerors and whose BIM Securities were taken up by the Offerors; or

- (ii) otherwise disposed of BIM Securities on or after January 14, 2011.

“Excluded Persons” means (1) the Defendants, and their past and present subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns; (2) any member of the families of the individual Defendants; (3) the following individuals or entities, each of which directly or indirectly entered into a lock-up agreement pursuant to which BIM Securities were tendered to the Joint Bid: Resource Capital Fund IV L.P.; Resource Capital Fund III L.P.; RCF Management LLC; John Lydall; Walmley Investments Ltd; Gordon Watts; Michael T. Zurowski; Richard Matthews; Richard D. McCloskey; Gregory G. Missal; Ronald S. Simkus; Daniella E. Dimitrov; Grant Edey; Wide Range Mining Projects Pty Ltd, as trustee for the G&K Fietz Family Trust; Gwen M. Gareau; and Russell L Cranswick; and (4) those persons whose BIM Securities were transferred to 1843208 Ontario Inc. pursuant to the Plan of Arrangement completed on March 25, 2011, including (without limitation) the dissenting shareholders identified in Schedule “A” of the Notice of Application filed on May 17, 2011 in the dissent and appraisal proceeding commenced by 1843208 Ontario Inc. in Superior Court of Justice, Toronto Region (Commercial List), Court File No. CV-11-9222-00CL; however, such exclusion taking effect only to the extent of the BIM Securities transferred by those persons to 1843208 Ontario Inc. pursuant to the Plan of Arrangement.

Pursuant to an order of the Ontario Court dated ●, Class Members were afforded the right to exclude themselves or “opt out” of the class by no later than ●. This notice does not affect persons who validly exercised the right to opt out. Persons who opted out are not entitled to participate in the settlement.

### **Court Approval of the Settlement**

On ●, 2019, the Plaintiffs and the Defendants executed a Settlement Agreement providing for the settlement of the Action (“**Settlement**”). The Settlement Agreement provides for the payment of CAD\$6,500,000.00 (“**Settlement Amount**”) in consideration of the full and final settlement of the claims of Class Members. The Settlement Amount includes all legal fees, disbursements, taxes and administration expenses.

The Settlement provides that the claims of all Class Members asserted or which could have been asserted in the Action will be fully and finally released, and the Action will be dismissed. The Settlement is not an admission of liability, wrongdoing or fault on the part of the Defendants, all of whom have denied, and continue to deny, the allegations against them.

On ●, the Ontario Court approved the Settlement and ordered that it be implemented in accordance with its terms.

The Ontario Court also awarded Siskinds LLP (“**Class Counsel**”) total legal fees, expenses and applicable taxes in the amount of CAD\$● (“**Class Counsel Fees**”) inclusive of disbursements of CAD\$●, plus HST. As is customary in such cases, Class Counsel conducted the class action on a contingent fee basis. Class Counsel was not paid as the matter proceeded and funded the expenses of conducting the litigation. Class Counsel Fees will be deducted from the Settlement Amount before it is distributed to Class Members.

Expenses incurred or payable relating to approval, notification, implementation and administration of the Settlement (“**Administration Expenses**”) will also be paid from the Settlement Amount before it is distributed to Class Members.

The Plaintiffs entered into a litigation funding agreement with Claims Funding Australia Pty Ltd (“CFA”). Pursuant to that agreement, CFA agreed to pay any adverse cost awards against the Plaintiffs, and to pay C\$50,000 towards disbursements. In return, CFA is entitled to receive from the Settlement Amount reimbursement of disbursements paid and 7% of the amounts distributed to the Class Members after the deduction of Class Counsel Fees and Administration Expenses (“**Funding Expenses**”). The litigation funding agreement with CFA was approved by the Ontario Court on November 21, 2013. Amounts owing to CFA will be deducted from the amounts to be distributed to the Class Members before the actual distribution.

The Ontario Court also approved the payment of an honorarium to the Plaintiffs in the amount of CAD\$●. The honorarium will be deducted from the Settlement Amount before it is distributed to Class Members.

### **Class Members’ Entitlement to Compensation**

Pursuant to the Ontario Court order approving the Settlement, the claims of Class Members which were or could have been asserted in the Action are now released and the Action has been dismissed. Class Members may not pursue individual or class actions for those claims, regardless of whether or not they file a claim for compensation from the Settlement. **The Settlement therefore represents the only means of compensation available to Class Members in respect of the claims raised in the Action.**

For instructions on how to make a claim for compensation from the Settlement, refer to the previously-issued notice of certification and settlement approval hearing, which is available at ●. To be eligible for compensation under the Settlement, Class Members must submit their Claim Form **no later than 11:59pm Toronto (Eastern) time on ●.**

After deduction of Class Counsel Fees, Administration Expenses, Funding Expenses and the approved honorarium, the balance of the Settlement Amount (“**Net Settlement Amount**”) will be distributed to Class Members in accordance with the Distribution Protocol approved by the Ontario Court.

Each Class Member who has filed a valid claim will receive a portion of the Net Settlement Amount calculated in accordance with the Distribution Protocol. The Distribution Protocol provides that in order to determine the individual entitlements of Class Members who make claims, interests in the Net Settlement Amount (“**Net Settlement Amount Interests**”) will be allocated to a claimant for each BIM Security that was tendered for sale to the Joint Bid or otherwise disposed of on or after January 14, 2011. The number of Net Settlement Amount Interests allocated to each such BIM Security depends on when the BIM Security was purchased or acquired and whether the BIM Security is a share or a warrant. Once the Net Settlement Amount Interests of all Class Members who have filed valid claims have been calculated, each Class Member’s actual compensation will be the portion of the Net Settlement Amount equivalent to the ratio of his, her or its number of Net Settlement Amount Interests to the total number of Net Settlement Amount Interests of all Class Member who have filed valid claims, multiplied by the Net Settlement Amount. Because the Net Settlement Amount will be

distributed *pro rata*, it is not possible to estimate the individual recovery of any individual Class Member until all the claims have been received and reviewed.

In the event any amounts remain undistributed 180 days after the distribution of the Net Settlement Amount (because of uncashed cheques or for other administrative reasons), those amounts will be distributed to eligible Class Members (if sufficient to warrant a further distribution) or allocated in a manner approved by the Ontario Court.

### **Copies of the Settlement Documents**

Copies of the Settlement Agreement, the Distribution Protocol and other documents relating to the Settlement may be found on the Administrator's website, Class Counsel's website or by contacting the Administrator or Class Counsel using the contact information provided in this notice.

### **Administrator**

The Administrator can be contacted at:

Telephone: ●

Mailing Address: ●

Website: ●

### **Class Counsel**

Siskinds LLP is Class Counsel. Inquiries may be directed to:

Anthony O'Brien

Siskinds LLP

302 – 100 Lombard Street

Toronto, ON M5C 1M3

Tel: 1-877-672-2121 x ●

Fax: 519-672-6065

Email: [anthony.obrien@siskinds.com](mailto:anthony.obrien@siskinds.com)

Website: [www.siskinds.com/class-action/baffinland-iron-mines-corporation/](http://www.siskinds.com/class-action/baffinland-iron-mines-corporation/)

### **Interpretation**

If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

PLEASE DO NOT CONTACT THE COURT WITH INQUIRIES ABOUT THE CLASS ACTION OR THE SETTLEMENT. All inquiries should be directed to the Administrator or Class Counsel.

PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO  
SUPERIOR COURT OF JUSTICE.

# Schedule H

## PLAN OF NOTICE

Capitalized terms used in this Plan of Notice have the meanings ascribed to them in the Settlement Agreement dated June ●, 2019.

*Subject to such alternative or additional direction by the Court, notices provided for as contemplated in the Settlement Agreement will be disseminated as follows:*

### PART 1 – FIRST NOTICE

#### A. First Notice: Short-Form

As soon as possible following the entry of the First Order, but in any event within seventeen (17) calendar days of the entry of the First Order, the short-form First Notice will be disseminated as follows:

##### Newspaper Publication

Print publication of the short-form First Notice will be at least a ¼ page in size. Print publication will be made in Canada in the English language in the business section of the national weekend edition of *The Globe and Mail* and in the French language in the business section of *La Presse*.

##### NewsWire Publication

The English and French language versions of the short-form First Notice will be issued (with necessary formatting modifications) across *Canada Newswire*, a major business newswire in Canada, and sent to *Institutional Shareholder Services Inc. (ISS)*.

#### B. First Notice: Long-Form

##### Individual Notice

As soon as possible following the entry of the First Order, but in any event within twenty-five (25) calendar days of the entry of the First Order, the long-form First Notice and the Claim Form will be sent to all putative Class Members as follows:

1. The Administrator shall mail the long-form First Notice and the Claim Form to individuals and entities identified as a result of Baffinland delivering to Class Counsel and the Administrator an electronic list of potential Class Members as required by the Settlement Agreement; and
2. The Administrator shall send the long-form First Notice and the Claim Form to the Canadian brokerage firms in the Administrator's proprietary databases requesting that the brokerage firms either send a copy of the long-form First Notice and the Claim Form to all individuals and entities identified by the brokerage firms as being Class Members, or to send the names and addresses of all known Class Members to the Administrator (who shall subsequently mail the long-form First Notice and the Claim Form to the individuals and entities so identified).



### Publication by Class Counsel

As soon as possible following the entry of the First Order, but in any event within seventeen (17) calendar days of the entry of the First Order, the long-form First Notice will be disseminated as follows:

Electronic publication of the long-form First Notice will occur in both the English and French languages on the Baffinland class action website of Class Counsel at <https://www.siskinds.com/class-action/baffinland-iron-mines-corporation/> (“**Class Counsel Website**”).

The long-form First Notice will be mailed, electronically or physically, as may be required, to those persons and entities who have previously contacted Class Counsel for the purposes of receiving notice of developments in the Action.

Class Counsel shall make a toll-free number and email address available to the public that will enable Class Members to contact Class Counsel in order that they may, amongst other things:

- (a) obtain more information about the Settlement, how to object to the Settlement, the claims process and the opt out process; and/or
- (b) request that a copy of the Settlement Agreement, the long-form First Notice and the Claim Form be electronically or physically mailed to them.

Class Counsel will post on the Class Counsel Website:

- 1. the Settlement Agreement;
- 2. the Collateral Agreement, with the opt-out threshold figure redacted;
- 3. the long-form First Notice;
- 4. a short summary of the rationale for the Settlement;
- 5. sample calculations of Net Settlement Amount Interests pursuant to the Distribution Protocol;
- 6. its evidence and written submissions in support of the motion for approval of the Settlement (no less than 30 days prior to the motion to approve the Settlement); and
- 7. its evidence and written submissions in support of the motion for approval of Class Counsel Fees and disbursements (no less than 30 days prior to the motion to approve Class Counsel Fees and disbursements).

## **PART 2 – SECOND NOTICE**

### **A. Second Notice: Short-Form**

As soon as possible following the Implementation Date, but in any event within fourteen (14) calendar days of the Implementation Date, the short-form Second Notice will be disseminated as follows:

The English and French language versions of the short-form Second Notice will be issued (with necessary formatting modifications) across *Canada Newswire*, a major business newswire in Canada, and sent to *Institutional Shareholder Services Inc. (ISS)*.

### **B. Second Notice: Long-Form**

As soon as possible following the Implementation Date, but in any event within fourteen (14) calendar days of the Implementation Date, the long-form Second Notice will be disseminated as follows:

Electronic publication of the long-form Second Notice will occur in both the English and French languages on the Class Counsel Website.

Class Counsel shall mail or email the long-form Second Notice to those persons that have contacted Class Counsel as of the publication date regarding this litigation and have provided Class Counsel with their contact information.

Class Counsel shall make a toll-free number and email address available to the public that will enable Class Members to obtain more information about the settlement and to request that a copy of the long-form Second Notice be sent electronically or physically to them directly.

# Schedule I

## DISTRIBUTION PROTOCOL

This Distribution Protocol should be read in conjunction with the Settlement Agreement dated ●, 2019 (“**Settlement Agreement**”).

### DEFINED TERMS

1. Unless otherwise defined herein, capitalized terms used herein are as defined in the Settlement Agreement, which definitions apply to and are incorporated herein. In addition, the following definitions apply to this Distribution Protocol:
  - (a) “**Authorized Claimant**” means a Claimant who is entitled to a number of Net Settlement Amount Interests greater than zero under this Distribution Protocol;
  - (b) “**Claimant**” means a Class Member who submits a properly completed Claim Form and all required supporting documentation to the Administrator on or before the Claims Bar Deadline;
  - (c) “**Claims Bar Deadline**” means 11:59pm Toronto (Eastern) time on the date that is one hundred and eighty (180) calendar days after the date on which the First Notice is first published or such other date as may be fixed by the Court;
  - (d) “**FIFO**” means “first in, first out”, whereby for the purpose of determining Claimants’ Net Settlement Amount Interests, securities are deemed to be sold in the same order that they were purchased (e.g. the first BIM Securities purchased by a Claimant are deemed to be the first BIM Securities sold); and
  - (e) “**Net Settlement Amount Interest**” means a single undivided interest in the Net Settlement Amount as calculated pursuant to the formulae set forth in this

Distribution Protocol, which forms the basis upon which each Authorized Claimant's *pro rata* share of the Net Settlement Amount is determined.

## **OBJECTIVE**

2. The objective of this Distribution Protocol is to equitably distribute the Net Settlement Amount among Authorized Claimants.

## **CALCULATION OF MONETARY COMPENSATION**

3. The Net Settlement Amount will be distributed in accordance with this Distribution Protocol.
4. The Administrator shall first determine the number of Net Settlement Amount Interests to which a Claimant is entitled. If the Claimant is entitled to a number of Net Settlement Amount Interests greater than zero, they become an Authorized Claimant, and the Administrator will go on to calculate the Authorized Claimant's monetary compensation.
5. A Claimant must be entitled to a number of Net Settlement Amount Interests greater than zero in order to be eligible to receive a payment from the Net Settlement Amount. A Claimant that is not entitled to a number of Net Settlement Amount Interests greater than zero will not be entitled to receive any portion of the Net Settlement Amount.
6. The Administrator will apply FIFO to match purchases or acquisitions of BIM Securities with tenders or dispositions of BIM Securities for the purposes of determining the date of purchase or acquisition of Eligible Securities.
7. The date of a purchase, acquisition, tender for sale or disposition of a BIM Security shall be the trade date, as opposed to the settlement date of the transaction or the payment date.

8. The Administrator shall account for any splits or consolidations, such that Claimants' holdings for the purposes of the calculations are completed in units equivalent to those traded on and after January 14, 2011.
9. Transfers of BIM Securities between accounts belonging to the same Claimant will not be taken into account in determining the number of Net Settlement Amount Interests to which a Claimant is entitled. By way of example, if a Claimant acquired Eligible Securities prior to September 21, 2010, and then transferred those Eligible Securities to another account belonging to the same Claimant during the period from September 22, 2010 to January 13, 2011, those Eligible Securities will be treated as having been acquired on or before September 21, 2010 for the purposes of determining the number of Net Settlement Amount Interests to which a Claimant is entitled.
10. The Administrator will use the data, derived from applying FIFO, in the calculation of a Claimant's Net Settlement Amount Interests and an Authorized Claimant's monetary compensation according to the formulae below.
11. The number of Net Settlement Amount Interests to which a Claimant is entitled will be calculated as follows:
  - I. **For Eligible Securities that were held at the close of trading on the Toronto Stock Exchange on September 21, 2010, a Claimant is entitled to:**
    - A. **three (3) Net Settlement Amount Interests for each such Eligible Security that is a Common Share; and**
    - B. **one-fifth (0.2) of a Net Settlement Amount Interest for each such Eligible Security that is a 2007 Warrant.**
  - II. **For Eligible Securities that were purchased or acquired between**

**September 22, 2010 and January 13, 2011 (inclusive), a Claimant is entitled to:**

- A. three-quarters (0.75) of a Net Settlement Amount Interest for each such Eligible Security that is a Common Share; and**
- B. one-twentieth (0.05) of a Net Settlement Amount Interest for each such Eligible Security that is a 2007 Warrant.**

**III. For Eligible Securities that were purchased or acquired on or after January 14, 2011, a Claimant is not entitled to any Net Settlement Amount Interests for such Eligible Securities.**

- 12. The total number of Net Settlement Amount Interests of all Authorized Claimants equals the sum of the Net Settlement Amount Interests to which each Authorized Claimant is entitled.
- 13. After determining the number of Net Settlement Amount Interests to which an Authorized Claimant is entitled and the total number of Net Settlement Amount Interests of all Authorized Claimants, the Administrator shall then determine the monetary compensation payable to each Authorized Claimant.
- 14. Each Authorized Claimant's actual compensation will be the portion of the Net Settlement Amount equivalent to the ratio of his, her or its number of Net Settlement Amount Interests to the total number of Net Settlement Amount Interests of all Authorized Claimants, multiplied by the Net Settlement Amount, as calculated by the Administrator.

15. The following is an illustration of the calculation of an Authorized Claimant's compensation applying the formula set out in this Distribution Protocol:

- (a) assume that a particular Claimant ("**Claimant A**") purchased 1,000 Common Shares on January 1, 2010 and 100 2007 Warrants on November 1, 2010;
- (b) assume that Claimant A tendered the 1,000 Common Shares to the take-over bid of the Offerors and had those Common Shares taken up by the Offerors, and sold the 100 2007 Warrants on the secondary market on February 1, 2011;
- (c) assume that Claimant A had no other transactions in BIM Securities;
- (d) assume that all Authorized Claimants, including Claimant A, are entitled to 15,025,000 Net Settlement Amount Interests;
- (e) assume that the Net Settlement Amount is equal to CAD\$4,000,000;
- (f) accordingly:
  - (i) the number of Net Settlement Amount Interests to which Claimant A is entitled is 3,005 (calculated as  $1,000 \times 3 + 100 \times 0.05$ ); and
  - (ii) Claimant A's actual compensation is CAD\$800 (calculated as  $3,005 / 15,025,000 \times \text{CAD\$4,000,000}$ ).

## **CLAIMS PROCESS**

16. In order to seek payment from the Settlement Amount, a Class Member shall submit a completed Claim Form to the Administrator on or before the Claims Bar Deadline.



17. The Administrator shall review each Claim Form and verify that the Claimant is eligible for compensation from the Net Settlement Amount, as follows:
  - (a) for a Claimant claiming as a Class Member, the Administrator shall be satisfied that the Claimant is a Class Member;
  - (b) for a Claimant claiming on behalf of a Class Member or a Class Member's estate, the Administrator shall be satisfied that:
    - (i) the Claimant has authority to act on behalf of the Class Member or the Class Member's estate in respect of financial affairs;
    - (ii) the person or estate on whose behalf the claim was submitted was a Class Member; and
    - (iii) the Claimant has provided all supporting documentation required by the Claim Form or alternative documentation acceptable to the Administrator.
18. The Administrator shall ensure that only claims for compensation in respect of Eligible Securities in the Claim Form are approved.
19. If, for any reason, a Claimant is unable to complete the Claim Form then it may be completed by the Claimant's personal representative or a member of the Claimant's family duly authorized by the Claimant to the satisfaction of the Administrator.

#### **IRREGULAR CLAIMS**

20. The claims process is intended to be expeditious, cost effective and "user friendly" to minimize the burden on Claimants. The Administrator shall, in the absence of reasonable grounds to the contrary, assume Claimants to be acting honestly and in good faith.

21. Where a Claim Form contains minor omissions or errors, the Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Administrator.
22. In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of sixty (60) days from the date of the request from the Administrator or the Claims Bar Deadline to rectify the deficiency. Any person who does not respond to such a request for information within this period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the Court to the contrary, but will in all other respects be subject to and bound by the provisions of the Settlement Agreement and the releases contained therein.
23. The claims process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Administrator believes that the claim contains unintentional errors which would materially exaggerate the number of Net Settlement Amount Interests to which the Claimant is entitled, then the Administrator may disallow the claim in its entirety or make such adjustments so that an appropriate number of Net Settlement Amount Interests is allocated to the Claimant. If the Administrator believes that the claim is fraudulent or contains intentional errors which would materially exaggerate the number of Net Settlement Amount Interests to which the Claimant is entitled, then the Administrator shall disallow the claim in its entirety.
24. Where the Administrator disallows a claim in its entirety, the Administrator shall send to the Claimant, at the email or postal address provided by the Claimant or the Claimant's

last known email or postal address, a notice advising that the claim has been disallowed and that the Claimant may request the Administrator to reconsider its decision. For greater certainty, a Claimant is not entitled to a notice or a review where a claim is allowed but the Claimant disputes the determination of Net Settlement Amount Interests or his, her or its individual compensation.

25. Any request for reconsideration must be received by the Administrator within 45 days of the date of the notice advising of the disallowance. If no request is received within this time period, the Claimant shall be deemed to have accepted the Administrator's determination and the determination shall be final and not subject to further review by any court or other tribunal.
26. Where a Claimant files a request for reconsideration with the Administrator, the Administrator shall advise Class Counsel of the request and conduct an administrative review of the Claimant's complaint.
27. Following its determination in an administrative review, the Administrator shall advise the Claimant of its determination. In the event the Administrator reverses a disallowance, the Administrator shall send the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice specifying the revision to the Administrator's disallowance.
28. The determination of the Administrator in an administrative review is final and is not subject to further review by any court or other tribunal.
29. Any matter not referred to above shall be determined by analogy by the Administrator in consultation with Class Counsel.

30. No action shall lie against Class Counsel or the Administrator for any decision made in the administration of the Settlement Agreement and the Distribution Protocol without an order from a Court authorizing such an action.

#### **EXTENSION OF DEADLINES**

31. By agreement between the Administrator and Class Counsel, any deadline contained in this Distribution Protocol, including the Claims Bar Deadline, may be extended. Class Counsel and the Administrator shall agree to extend a deadline if, in their opinions, doing so will not adversely affect the efficient administration of the Settlement and it is in the best interests of the Class to do so.

#### **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

32. Following the Claims Bar Deadline, and in accordance with the terms of the Settlement Agreement, the Distribution Protocol, and such further approval or order of the Court as may be necessary, or as circumstances may require, the Administrator shall distribute the Net Settlement Amount to Authorized Claimants.
33. No claims or appeals shall lie against Class Counsel or the Administrator based on distributions made substantially in accordance with the Settlement Agreement, the Distribution Protocol, or with any other order or judgment of the Court.
34. The Administrator shall not make payments to Authorized Claimants whose *pro rata* entitlement under this Distribution Protocol is less than CAD\$10.00. Such amounts shall instead be allocated *pro rata* to other Authorized Claimants.
35. Compensation shall be paid to Authorized Claimants in Canadian currency.

36. The Administrator shall make payment to an Authorized Claimant by either bank transfer or by cheque at the address provided by the Authorized Claimant or the last known postal address for the Authorized Claimant. If, for any reason, an Authorized Claimant does not cash a cheque within six months after the date on which the cheque was sent to the Authorized Claimant, the Authorized Claimant shall forfeit the right to compensation and the funds shall be distributed in accordance with this Distribution Protocol.
37. If, one hundred eighty (180) days from the date on which the Administrator distributes the Net Settlement Amount to Authorized Claimants, the Escrow Account remains in a positive balance (whether due to tax refunds, uncashed cheques, or otherwise), the Administrator shall, if feasible, reallocate such balance among the Authorized Claimants in an equitable and economic fashion. In the event any such remaining balance is less than may practically be distributed to Authorized Claimants in the opinion of Class Counsel and the Administrator, such balance shall be allocated *cy pres* to one or more recipients to be approved by the Court.
38. Upon conclusion of the administration, the Administrator shall provide an accounting to the Parties for all payments made from the Escrow Account.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

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