

**BOSTON SCIENTIFIC'S TRANSVAGINAL MESH
CLASS ACTION NATIONAL SETTLEMENT AGREEMENT**

Made as of December 20, 2019

Between

SUSAN VESTER AND DARIN VESTER

Plaintiffs

- and -

BOSTON SCIENTIFIC LTD. AND BOSTON SCIENTIFIC CORPORATION

Defendants

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PREAMBLE & RECITALS

A. The Parties hereby enter into this Settlement Agreement to settle the class proceeding styled *Vester et al. v Boston Scientific Ltd. et al*, commenced in the Ontario Superior Court of Justice under Court File No. CV-15-527310-00CP, and pursuant to the terms and conditions set forth herein, and subject to approval by the Court on a national basis;

B. WHEREAS, the Ontario Proceeding was certified as a national class action by the Ontario Superior Court of Justice pursuant to the Order issued on February 17, 2017;

C. WHEREAS, the Ontario Proceeding alleges, *inter alia*, negligence, with respect to the design of the Defendants’ transvaginal mesh devices used to treat stress urinary incontinence and/or pelvic organ prolapse, which allegations the Defendants deny;

D. WHEREAS, the Quebec Proceeding was discontinued by the Quebec Superior Court of Justice pursuant to the Order issued on January 12, 2018;

E. WHEREAS, the Parallel Proceedings were discontinued by the Court of Queen's Bench of Alberta pursuant to the Order issued on November 29, 2019 and pursuant to the notice of discontinuance filed with the Court of Queen's Bench of Saskatchewan on December 6, 2019;

F. WHEREAS, the Parties intend by this Settlement Agreement to resolve all claims for damages alleged to be due in any way related to the use of BSC Transvaginal Mesh Devices by (a) all women resident in Canada, including their estates, who were implanted with a BSC Transvaginal Mesh Device(s); (b) all persons resident in Canada who by virtue of a personal relationship to one or more of such persons described in (a) have claims for common law or statutory damages; and (c) all Provincial Health Insurers' claims with respect to Settling Claimants (as further particularized below);

G. WHEREAS, counsel to the Parties have conducted settlement negotiations in good faith and at arms-length over many years to come to the within resolution;

H. WHEREAS, the Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful or otherwise actionable conduct alleged in the Proceedings or otherwise and in fact deny any such allegations;

I. WHEREAS, the Plaintiffs, Class Counsel, and the Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Released Parties or evidence of the truth of any of the Plaintiffs' allegations against the Released Parties, which allegations are expressly denied by the Defendants;

J. WHEREAS, the Defendants do not hereby attorn to the jurisdiction of the Ontario Court or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceedings and as is expressly provided in this Settlement Agreement with respect to the Proceedings;

K. WHEREAS, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement provides substantial benefits to Class Members and is fair, reasonable and in the best interests of Class Members based on an analysis of the facts and applicable law, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated

with protracted trials and appeals, as well as the fair, cost-effective and assured method provided in this Settlement Agreement of resolving the claims of Class Members;

L. WHEREAS, the Defendants have similarly concluded that this Settlement Agreement is desirable in order to avoid the time, risk, uncertainty and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of Class Members;

M. WHEREAS, the Parties intend by this Settlement Agreement to finally resolve, on a national basis, without admission of liability, the Proceedings and all the present and future claims of Class Members relating in any way to BSC Transvaginal Mesh Devices;

N. WHEREAS, the Parties shall seek an order approving the Settlement;

O. WHEREAS, the Provincial Health Insurers have confirmed, or shall confirm, that they approve, and will not object to court approval of, the settlement provided for in this Settlement Agreement, and they will accept a payment, as provided for in the Compensation Protocol, in satisfaction of all Provincial Health Insurer Rights of Recovery that they may have, whether by subrogation or by independent right of action, respecting Settling Claimants' implantation with any BSC Transvaginal Mesh Devices;

P. NOW THEREFORE, subject to the issuance of the Settlement Approval Order, this Settlement Agreement embodies the terms of the resolution of claims of Class Members and of the Provincial Health Insurers.

SECTION 1 - DEFINITIONS

Unless a particular section of this Settlement Agreement explicitly provides for another interpretation, the following terms, as used in this Settlement Agreement and its exhibits, shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and vice versa, where appropriate. Feminine pronouns and female references shall be deemed to include the masculine, and vice versa, where appropriate.

- (a) "BSC" means Boston Scientific Ltd. and Boston Scientific Corporation;

- (b) **“BSC Transvaginal Mesh Device(s)”** means Advantage System (including, but not limited to Advantage Fit System), Obtryx Transobturator Mid-Urethral Sling, Obtryx II, Lynx Suprapubic Mid-Urethral Sling System, Solyx Single Incision Sling (SIS), Pinnacle Pelvic Floor Repair Kit, anterior/apical and posterior configuration, and Uphold Vaginal Support System;
- (c) **“Certification Order”** means the order of the Court dated February 17, 2017 in respect of the certification of the Ontario Proceeding under the *Class Proceedings Act, 1992*;
- (d) **“Certification Amendment Order”** shall be the Order amending the class definition in the Ontario Proceeding to extend the class period up to and including the date the Certification Amendment Order is granted, substantially in the form of Schedule “B” hereto;
- (e) **“Claims Administration Costs”** means all costs, other than Class Counsel Legal Fees, required to implement this Settlement Agreement, including without limitation, costs required to satisfy the notice provisions;
- (f) **“Claims Administrator”** means RicePoint Administration Inc., or such other administrator agreed to between the Parties and approved by the Court;
- (g) **“Class”** means, collectively, the Primary Class, the Family Class and the Expanded Class, but, for greater certainty, does not include any Opt Out or Provincial Health Insurer;
- (h) **“Class Counsel”** means Siskinds LLP;
- (i) **“Class Counsel Legal Fees”** means all legal fees, disbursements and applicable taxes in respect of all legal services provided by Class Counsel or any other law firm for the benefit of the Class, as approved by the Court, but does not include fees for legal services for the benefit of particular Settling Claimants (which are payable by the Settling Claimant);

- (j) “**Class Members**” means members of the Class, but, for greater certainty, does not include any Opt Out or Provincial Health Insurer;
- (k) “**Compensation Protocol**” means the Court-approved plan for administering this Settlement Agreement and distributing the Settlement Amount to Class Members;
- (l) “**Court**” means the Ontario Superior Court of Justice;
- (m) “**Defendants**” means Boston Scientific Ltd. and Boston Scientific Corporation;
- (n) “**Defendants’ Counsel**” means the law firm of Osler, Hoskin & Harcourt LLP and such other legal counsel as may represent BSC in respect of the Ontario Proceeding;
- (o) “**Effective Date**” means the date on which: (i) each Provincial Health Insurer has executed a Provincial Health Insurer Release; (ii) copies of all the Provincial Health Insurer Releases have been provided to counsel for the Defendants; and (iii) the Settlement Approval Order becomes a Final Order;
- (p) “**Expanded Class**” means:
 - (i) All persons resident in Canada who have been implanted with a BSC Transvaginal Mesh Device at any time on or before the date of the Certification Amendment Order (the “**Primary Class**”);
 - (ii) All persons resident in Canada who by virtue of a personal relationship to one or more such persons described in (i) above, having standing in this action pursuant to section 61(1) of the *Family Law Act*, RSO 1990, c F 3 or analogous provincial legislation or at common law (the “**Family Class**”).
- (q) “**Expanded Class Period**” means the additional period of time reflected by the amendment to the class definition for the Original Class in the Certification Amendment Order, and for greater certainty, being February 17, 2017 to the date the Certification Amendment Order is granted;

- (r) **“Final Order”** means any order contemplated by this Settlement 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, or proposed appeal, such as the delivery of a notice of appeal or application for leave to appeal;
- (s) **“Future Injury and Late Implant Compensation Pool”** shall mean a portion of the Settlement Amount to be allocated to (i) Class Members making claims after the Initial Claim Deadline and prior to the Supplemental Claim Deadline and (ii) Class Members with BSC Transvaginal Mesh Devices implanted on or after April 1, 2016, who make claims prior to the Supplemental Claim Deadline.
- (t) **“Hearing Notice”** means the notice (in long, abridged and press release form) approved by the Court, in a form agreed to by the Parties, in English and French, which advises Class Members of the hearing to approve the settlement provided for in this Settlement Agreement and advises Class Members who have opt out rights pursuant to the Certification Amendment Order of the method to do so;
- (u) **“Hearing Notice Order”** means the order of the Ontario Superior Court of Justice that approves the Hearing Notice and Hearing Notice Plan, in a form agreed to by the Parties;
- (v) **“Hearing Notice Plan”** means the method by which the Hearing Notice is disseminated, in a form agreeable to the Parties and approved by the Court;
- (w) **“Initial Claim Deadline”** means one hundred and twenty (120) days after the last day on which the Settlement Approval Notice is published;
- (x) **“Net Settlement Proceeds”** means the Settlement Amount less the amounts payable in respect of Claims Administration Costs, Class Counsel Legal Fees and any other costs associated with claims administration and notice of settlement approval hearing and, where the settlement is approved, notice of settlement approval;
- (y) **“Non-Refundable Expenses”** means the costs of publishing and distributing the Hearing Notice, including the associated professional fees (but expressly excluding

Class Counsel Legal Fees), and any Claims Administration Costs incurred prior to any termination of this Settlement Agreement pursuant to section 5;

- (z) **“Non-Settling Defendant”** shall mean any person or entity other than Defendants or a Released Party, against whom or which a Released Claim has been or is hereafter made, asserted, or commenced in any action (irrespective of whether Defendants or another Released Party are also parties to that action), by any Class Member who has not timely and properly opted-out;
- (aa) **“Ontario Court”** means the Ontario Superior Court of Justice;
- (bb) **“Ontario Proceeding”** means *Vester et al. v Boston Scientific Ltd. et al.* commenced in the Ontario Superior Court of Justice under Court File No. CV-15-527310-00CP;
- (cc) **“Opt Out”** means a person who would have been a Class Member but for her timely and valid request for exclusion pursuant to (i) the order issued on February 17, 2017, approving the notice and opt out procedures following certification of the Ontario Proceeding as a national class action; or (ii) the process set out in section 6.1 of this Settlement Agreement;
- (dd) **“Opt Out Deadline”** means the date sixty (60) days after the date on which the Hearing Notice is first published, or such other date as the Parties agree and may be approved by the Court;
- (ee) **“Opt Out Form”** means the form for requesting exclusion from the Class as defined in the Certification Amendment Order;
- (ff) **“Opt Out Threshold”** shall mean the threshold agreed upon by the Plaintiffs and Defendants, delivered to the Court under seal and kept confidential by the Plaintiffs, the Defendants and the Court;
- (gg) **“Original Class”** means,
 - (i) All persons resident in Canada who have been implanted with the transvaginal mesh products listed below at any time on or before the

date of the certification order, and which products were designed, developed, tested, manufactured, licensed, assembled, labeled, marketed, instructed for use, distributed and/or sold or otherwise placed into the stream of commerce by the Defendants:

- (1) Advantage System, including Advantage Fit System;
- (2) Obtryx Transobturator Mid-Urethral Sling and Obtryx II;
- (3) Lynx Suprapubic Mid-Urethral Sling System;
- (4) Solyx Single Incision Sling;
- (5) Pinnacle Pelvic Floor Repair Kit, anterior/apical and posterior configuration; and
- (6) Uphold Vaginal Support System.

- (ii) All persons resident in Canada who by virtue of a personal relationship to one or more of such persons described in (i) above, have standing in this action pursuant to section 61(1) of the *Family Law Act*, RSO 1990, c F 3 or analogous provincial legislation or at common law.

- (hh) **“Parallel Actions”** means *Rosemary Maximovich and Stephen Maximovich v. American Medical Systems Inc., AMS Canada Inc., Endo Pharmaceuticals, Boston Scientific Corporation, Boston Scientific Ltd., Coloplast A/S, Coloplast Canada, C.R. Bard, Inc., Bard Canada Inc., Bard Medical Division, Johnson & Johnson, Ethicon Inc., Ethicon Women’s Health and Urology, Gynecare Inc., Ethicon SARL, Johnson & Johnson Medical Companies Inc., Mentor Corporation, Covidien LLC*, commenced in the Court of Queen’s Bench of Saskatchewan under Court File number Q.B. No. 1190 of 2013 and *Kathleen Boschman and Robert Boschman v. American Medical Systems Inc., AMS Canada Inc., Endo Pharmaceuticals, Boston Scientific Corporation, Boston Scientific Ltd., Coloplast A/S, Coloplast Canada, C.R. Bard, Inc., Bard Canada Inc., Bard Medical Division, Johnson & Johnson, Ethicon Inc., Ethicon Women’s Health and Urology, Gynecare Inc., Ethicon SARL, Johnson & Johnson Medical Companies Inc., Mentor Corporation, Covidien,*

commenced in the Court of Queen's Bench of Alberta under Court File number 1203 17913;

- (ii) **"Parties"** means the Plaintiffs and the Defendants;
- (jj) **"Plaintiffs"** means Susan Vester and Darin Vester, individually and collectively in their capacities both personally and as representative of the Class Members;
- (kk) **"Primary Class"** shall mean all persons resident in Canada who were or are implanted with a BSC Transvaginal Mesh Device at any time on or before the date of the Certification Amendment Order;
- (ll) **"Proceedings"** shall mean the Ontario Proceeding, the Quebec Proceeding and the Parallel Actions;
- (mm) **"Provincial Health Insurers"** means all provincial and territorial Ministries of Health or equivalents, and/or provincial and territorial plans funding medical and health care services and costs throughout Canada as listed on Schedule "C" hereto;
- (nn) **"Provincial Health Insurer Release"** means the form of Release, attached hereto as Schedule "D";
- (oo) **"Provincial Health Insurer Rights of Recovery"** means all statutory authority for the recovery of costs of insured health or medical services, as defined in the empowering legislation of each jurisdiction and listed on Schedule "C" hereto;
- (pp) **"Quebec Proceeding"** means *Mélanie Boucher et al c. Boston Scientific Ltd. et al*, commenced in the Superior Court of Quebec under Court File number 200-06-000156-128;
- (qq) **"Released Claims"** means:
 - (i) For all Releasers other than the Provincial Health Insurers any and all legal, equitable, administrative or other claims of any kind, regardless of the legal, equitable, statutory or other theory on which they are based, including all existing, future, known, and unknown

claims, actions, demands, causes of action, cross-claims, counterclaims, obligations, contracts, indemnity, contribution, suits, debts, sums, accounts, controversies, rights, damages, costs, lawyers' fees, administration costs, losses, expenses, and all liabilities whatsoever existing now or arising in the future,, whether class, individual or otherwise in nature, including direct, contingent or absolute, accrued, mature, derivative, subrogated, personal, assigned, discovered, undiscovered, suspected, unsuspected, disclosed, undisclosed, asserted, unasserted, known, unknown inchoate, or otherwise relating in any way to any conduct anywhere: 1) that arise directly or indirectly out of, relating to, or in any way connected with BSC Transvaginal Mesh Device(s); 2) that have been brought or could be brought by the Class that relate to the BSC Transvaginal Mesh Device(s); and/or 3) relating to the creation, design, manufacture, testing, distribution, promotion, advertising, sale, administration, research, development, efficacy, inspection, clinical investigation, licensing, regulatory approval or authorization, packaging, labelling, use, marketing, recommendation, implantation, revision, excision, disposal, compliance with regulatory obligations or reporting requirements, warnings and post-sale warnings, packaging, instructions for use, directions for use, condition, promises, and any other matter arising out of, relating to, resulting from, or in any way connected with or related to the BSC Transvaginal Mesh Device(s), including by way of example but without limitation, failure to warn, design defect, manufacturing defect, and/or labeling defect, of BSC Transvaginal Mesh Device(s); 4) any alleged representations, promises, statements, warranties (express or implied) or guarantees given or made by anyone affiliated with or representing the Released Parties relating to the BSC Transvaginal Mesh Device(s); and 5) this Settlement Agreement relating to the BSC Transvaginal Mesh Device(s), except for a claim or action to enforce the terms of this

Release. Subject to the foregoing, the “Released Claims” include all claims for damages or remedies of whatever kind or character, known or unknown, that are now recognized or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, for or in respect of, arising out of or relating to any BSC Transvaginal Mesh Device, including:

- (A) Personal injury and/or bodily injury, latent injury, future injury, progression of existing injury, surgery, medical treatment, damage, disease, death, fear of death, disease or injury, mental or physical pain or suffering, emotional or mental harm, anguish, or loss of enjoyment of life;
- (B) Compensatory damages, general damages, special damages, punitive, exemplary, and statutory and other damages or penalties of any kind;
- (C) Loss of wages, income, earnings or earning capacity;
- (D) Medical expenses, doctor, hospital, nursing, and drug bills;
- (E) Loss of support, services, consortium, companionship, society or affection, or damage to familial relations, by spouses, former spouses, parents, children, other relatives who by virtue of a personal relationship to one or more such persons in the Class have standing in this action pursuant to section 61(1) of the *Family Law Act*, RSO 1990, c. F. 3 or analogous provincial legislation or at common law;
- (F) Consumer protection remedies of any kind, including, but not limited to, remedies under provincial consumer protection legislation or the *Competition Act*, disgorgement of profit, and other similar claims whether arising under statute, regulation, or judicial decision;
- (G) Wrongful death and survivorship;
- (H) Medical screening and monitoring;
- (I) Injunctive and declaratory relief;
- (J) Economic or business losses;
- (K) Prejudgment or post-judgment interest; and
- (L) Legal fees.

- (ii) For the Provincial Health Insurers, any and all manner of claims which a Provincial Health Insurer ever had, now has or hereafter can, shall or may have pursuant to provincial or territorial legislation that permits the recovery of healthcare costs or medical expenses from third parties, whether known or unknown, direct or indirect, subrogated or otherwise, relating in any way to the design, manufacture, sale, distribution, labelling, use, purchase and/or implantation of BSC Transvaginal Mesh Products in Class Members during the Class Period, including, without limitation and by way of example, all subrogated and/or direct claims in respect of Class Members that were or could have been brought for the cost of medical care and treatment provided to Class Members, as well as medical screening and monitoring, arising from the facts alleged in the Proceedings.
- (rr) **“Released Parties”** means, jointly and severally, individually and collectively, the Defendants, BSC, and any and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, controlling persons, general or limited partners, insurers, vendors, contractors, agents and assigns, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated or related, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, estate administrators, assigns and personal representatives (or equivalent thereto) of each of the foregoing; any and all suppliers of materials, components, and services used in the manufacture of any BSC Transvaginal Mesh Devices, including the labelling, packaging, marketing and selling thereof, along with any and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, controlling persons, general or limited partners, insurers, vendors, contractors and assigns, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated or related, and all of their respective past, present and future officers, directors, employees, agents,

shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, estate administrators, assigns and personal representatives (or equivalent thereto) of each of the foregoing; any and all distributors of BSC Transvaginal Mesh Devices, including those involved in the labelling, packaging, marketing and selling of BSC Transvaginal Mesh Devices, wholesale distributors, private label distributors, retail distributors, hospitals and clinics, and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, controlling persons, general or limited partners, insurers, vendors, contractors and assigns, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated or related, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, estate administrators, assigns and personal representatives (or equivalent thereto) of each of the foregoing;

- (ss) **“Releasors”** shall mean, jointly and severally, individually and collectively, the Plaintiffs and the Class Members and all of their present, future and former representatives, predecessors, successors, heirs, executors, administrators, insurers and assigns;
- (tt) **“Settlement Agreement”** means this agreement, including the recitals, exhibits and schedules;
- (uu) **“Settlement Amount”** means CAD \$21,500,000.00 inclusive of all interest, taxes, costs, (including, for greater certainty, any costs payable in any event of the cause pursuant to the decision of Justice Perell in *Vester v. Boston Scientific Ltd.*, 2017 ONSC 2498, but not including any amounts paid by the Defendants as of the Effective Date), Class Counsel Legal Fees, and Claims Administration Costs;
- (vv) **“Settlement Approval Notice”** means the notice approved by the Ontario Court, in full and abridged forms, and a press release, all in a form agreed to by the Parties, which advises Class Members of the approval of the settlement provided for in this Settlement Agreement;

- (ww) **“Settlement Approval Notice Plan”** means the method by which the Settlement Approval Notice is disseminated, in a form agreeable to the Parties and approved by the Ontario Court;
- (xx) **“Settlement Approval Order”** means the orders or judgments issued by the Ontario Court substantially in the form of Schedule “A” hereto.
- (yy) **“Settling Claimant”** (together, the Settling Claimants) means each Class Member who files a claim pursuant to the Compensation Protocol;
- (zz) **“Supplemental Claim Deadline”** means two years after the Initial Claim Deadline; and
- (aaa) **“Trust Account”** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Siskinds LLP or the Claims Administrator, once appointed, for the benefit of the Settlement Claimants, as provided for in this Settlement Agreement.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

(1) The Parties shall use their best efforts to implement this settlement and to secure the prompt, complete and final dismissal with prejudice of the Ontario Proceeding as against the Defendants. Pending approval of the Settlement Agreement, the Parties agree to hold the Ontario Proceeding in abeyance.

2.2 Motion Seeking Approval of Hearing Notice and Certification Amendment Order

(1) The Plaintiffs shall file motions in the Ontario Court, on consent of the Defendants, as soon as practicable after this Settlement Agreement is executed, for an order approving the Hearing Notice and Hearing Notice Plan (the Hearing Notice Order).

(2) Concurrently with the filings provided for in section 2.2(1), and on consent of the Defendants, the Plaintiffs shall seek the Certification Amendment Order.

(3) The Certification Amendment Order shall be substantially in the form attached as Schedule “B” or such other form as the Plaintiffs and Defendants agree and the Ontario Court approves.

(4) Prior to the filing of the motion materials in connection with this section, Class Counsel will provide them to counsel for the Defendants in draft form for comment.

2.3 Motion Seeking Settlement Approval Order

(1) The Plaintiffs shall file a motion with the Ontario Court for the Settlement Approval Order as soon as practicable after:

- (a) The Certification Amendment Order has been granted;
- (b) the Hearing Notice Order has been granted;
- (c) the Hearing Notice has been provided to Class Members in accordance with the Hearing Notice Order; and
- (d) the time has expired to opt-out in accordance with section 6.1(1).

(2) Prior to filing the motion materials in connection with this section, Class Counsel will provide them to counsel for the Defendant in draft form for comment.

(3) Prior to the hearing of the Settlement Approval motion, Class Counsel will provide all of the executed Provincial Health Insurer Releases to counsel for the Defendants.

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

2.4 Pre-Motion Confidentiality

(1) Until the motion required by section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of Counsel for the Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law. Nothing in this section shall bar counsel from communicating with clients or the Provincial Health Insurers, provided that they also shall be required to maintain confidentiality consistent with the provisions of this section.

SECTION 3- NOTICE TO THE CLASS

3.1 The Notices

(1) The Parties have agreed to the form, contents and method of dissemination of the Hearing Notice and Hearing Notice Plan, subject to court approval, which shall be sought by way of the Plaintiffs' motion.

(2) The Settlement Approval Notice shall be disseminated in accordance with the Settlement Approval Notice Plan as soon as practicable after the Effective Date.

(3) The costs of publishing and distributing the Hearing Notice and the Settlement Approval Notice, including the associated professional fees (but expressly excluding Class Counsel Legal Fees), will form part of the Claims Administration Costs to be paid out of the Settlement Amount.

3.2 Notice of Termination

(1) If this Settlement Agreement is terminated and the Ontario Court orders that notice be given to the Class, the Defendants will cause any such notice, in a form approved by the Ontario Court, to be published and disseminated as the Ontario Court directs.

(2) If this Settlement Agreement is terminated, the Defendants shall be solely liable for the Non-Refundable Expenses and any costs which may arise as described in section 3.2(1).

3.3 Cooperation

(1) The Parties shall cooperate, assist one another and the Claims Administrator and undertake all reasonable actions in order to ensure that the Hearing Notice and Settlement Approval Notice are disseminated in a timely manner by the Claims Administrator.

3.4 Payment of Settlement Amount

(1) BSC shall pay \$18,000,000.00 CAD to Class Counsel for deposit into the Trust Account within 30 days of execution of this Settlement Agreement ("First Settlement Payment").

(2) BSC shall pay \$3,500,000.00 CAD to the Claims Administrator in trust within 60 days of the filing deadline for the Future Injury and Late Implant Compensation Pool ("Second Settlement Payment").

(3) Payments of the Settlement Amount shall be made by wire transfer. At least fifteen (15) business days prior to the partial payment of the Settlement Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address and bank contact details.

(4) The Settlement Amount to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Released Parties.

(5) The Settlement Amount shall be inclusive of all amounts, including, without limitation, interest, costs, (including, for greater certainty, any costs payable in any event of the cause pursuant to the decision of Justice Perell in *Vester v. Boston Scientific Ltd.*, 2017, ONSC 2498, but not including any amounts paid by the Defendants as of the Effective Date), Class Counsel Legal Fees and Claims Administration Costs and, if any, amounts payable to the Fonds d'aide aux actions collectives.

(6) The Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.

(7) Once the appointment of the Claims Administrator has been approved by the Ontario Court, Class Counsel shall transfer control of the Trust Account to the Claims Administrator.

(8) Class Counsel and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement and shall not pay out all or any part of the money in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Ontario Court obtained after notice to the Parties.

3.5 Taxes and Interest

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

(2) All taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account.

Siskinds LLP or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the money in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Siskinds LLP or the Claims Administrator.

3.6 Compensation Protocol

(1) Class Counsel will draft the Compensation Protocol, to be approved by the Ontario Court. The Compensation Protocol will provide for a Future Injury and Late Implant Compensation Pool the applicable claims deadline and the amount of which will be agreed to by both the Plaintiffs and the Defendants. Otherwise, the Defendants shall have no involvement in the formulation, drafting, or approval of the Compensation Protocol, except that Class Counsel may consult with the Defendants and/or Defendants' Counsel to formulate the Compensation Protocol at Class Counsel's sole discretion.

(2) Upon approval by the Ontario Court, the Compensation Protocol will be provided to the Claims Administrator for use in determining the amount each Class Member (and Provincial Health Insurer, if relevant) will be entitled to by way of recovery from the Net Settlement Proceeds.

3.7 Claims and Claimants

(1) Class Members and Provincial Health Insurers shall be eligible for the relief provided for in this Settlement Agreement and the Compensation Protocol.

3.8 Cy Près Distribution

(1) Any *de minimus* funds remaining after distribution of the Net Settlement Proceeds pursuant to the Compensation Protocol, whether as a result of failure of Class Members to make claims or as a result of cheques having become stale dated and/or such other forms of payment as may be made to Settling Claimants and which may otherwise expire without having been claimed, shall be distributed to an organization to benefit women's health as proposed by Class Counsel and approved by the Ontario Court, in accordance with the Compensation Protocol

(2) The Act respecting the Fonds d'aide aux actions collectives, CQLR c F-3.2.0.1.1 will apply to the portion of any remaining balance, if any, attributable to Class Members resident in Quebec.

SECTION 4 - DISTRIBUTION OF THE SETTLEMENT AMOUNT

(1) From each Settlement Payment (First and Second), on or after the Effective Date, the Claims Administrator shall distribute the Net Settlement Amount to the Settling Claimants and Provincial Health Insurers in accordance with the Compensation Protocol, after payment of the following:

- (a) Class Counsel Legal Fees, as approved by the Ontario Court;
- (b) all of the costs and expenses reasonably and actually incurred in connection with the provision of Settlement Approval Notice in accordance with the Notice Plan;
- (c) any remaining Claims Administration Costs, including the professional fees of the Claims Administrator; and
- (d) any taxes required by law to be paid to any governmental authority.

(2) Payments made to the Provincial Health Insurers shall be in full and final satisfaction of all Provincial Health Insurer Rights of Recovery they may have in relation to Settling Claimants' implantation with a BSC Transvaginal Mesh device, for the costs of services, pursuant to the legislation of each jurisdiction, whether already provided or to be provided to Settling Claimants.

(3) In order to receive a payment, a Provincial Health Insurer must execute the Provincial Health Insurer Release.

SECTION 5 - TERMINATION

5.1 General

(1) Termination rights are as follows:

(a) The Defendants shall have the right to terminate this Settlement Agreement in the event that:

- (i) any of the Provincial Health Insurers (a) do not confirm their approval of this Settlement Agreement or (b) object to court approval of the settlement provided for in this Settlement Agreement;
- (ii) The Ontario Court refuses to approve this Settlement Agreement; or
- (iii) The Opt Out Threshold is exceeded.

(b) Each of the Parties shall have the right to terminate this Settlement Agreement in the event that:

- (i) a Settlement Approval Order is denied and, following appeal, the denial of the Settlement Approval Order becomes a Final Order;
- (ii) a Settlement Approval Order is entered but reversed on appeal and the reversal becomes a Final Order; or
- (iii) The Ontario Court issues an order approving the Settlement Agreement in a materially modified form that is not agreed to by both the Plaintiffs and the Defendants.

(2) Any order, ruling or determination made (or rejected) by the Ontario Court with respect to Class Counsel Legal Fees shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

(3) In all cases, failure of the Defendant to pay the Settlement Amount in accordance with this Settlement Agreement shall be grounds to terminate the Settlement Agreement.

5.2 Effect of Termination

- (1) In the event this Settlement Agreement is terminated in accordance with its terms:
 - (a) it shall be null and void and shall have no force or effect, and the Parties shall not be bound by its terms, except as specifically provided in this Settlement Agreement;
 - (b) all negotiations, statements and proceedings relating to this Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be restored to their respective positions existing immediately before this Settlement Agreement was executed;
 - (c) the Defendants shall reimburse Class Counsel for the Non-Refundable Expenses, if, and only if, the Defendants elect to terminate pursuant to Paragraph 5.1(1)(a) or Subparagraph 5.1(1)(b)(iii); and
 - (d) the Parties shall be returned to the status quo ante in respect of the Ontario Proceeding.

5.3 Survival

- (1) Notwithstanding section 5.2(1) of this Settlement Agreement, if this Settlement Agreement is terminated, the provisions of this section, and sections 2.4, 3.2, 3.5(3), 5.4, 5.5, 7.1 and 7.2, and the definitions applicable thereto of this Settlement Agreement, shall survive termination and shall continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of interpreting these sections of this Settlement Agreement, but for no other purposes.

5.4 Accounting

- (1) If this Settlement Agreement is terminated after the Settlement Amount has been paid pursuant to section 3.4(1), Class Counsel shall account to the Ontario Court and the Parties for all payments made from the Trust Account by no later than fifteen (15) days after such termination.

5.5 Termination Orders

- (1) If this Settlement Agreement is terminated, Class Counsel shall, within thirty (30) days after termination, apply to the Ontario Court, on notice to the Claims Administrator, for an order:

- (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions of those sections listed in section 5.3(1) of this Settlement Agreement;
 - (b) providing that any funds paid by the Defendants under the terms of this Agreement, other than those related to the Non-Refundable Expenses, shall be returned to Defendants by wire transfer within fifteen (15) days; and
 - (c) setting aside the Settlement Approval Order in accordance with the terms of this Settlement Agreement.
- (2) Subject to section 5.5(2) of this Settlement Agreement, the Parties shall consent to the orders sought in any motion made pursuant to section 5.5(1) of this Settlement Agreement.
- (3) If there is any dispute about the termination of this Settlement Agreement, the Ontario Court shall determine any dispute by motion on notice to the Parties.

SECTION 6 - OPT OUT PROVISIONS

6.1 Opting Out

- (1) Persons who were or are implanted with a BSC Transvaginal Mesh Device on or after February 17, 2017 and on or before the date of the Certification Amendment Order, and persons who have standing in this action by virtue of a personal relationship with one or more such persons, pursuant to section 61(1) of the *Family Law Act*, RSO 1990, c.F.3 or analogous provincial legislation or at common law, who would become Class Members as a result of the Certification Amendment Order, but who were neither Class Members nor Opt Outs prior to the Certification Amendment Order, may exclude themselves from the Class;
- (2) Persons described in section 6.1(1) above may exclude themselves from the Class by exercising their rights to opt out pursuant to s. 9 of the *Class Proceedings Act, 1992*, SO 1992, c 6, by submitting a complete and signed Opt Out Form to Siskinds LLP in accordance with the Hearing Notice Order, by the Opt Out Deadline.
- (3) In the event that an Opt Out seeks to retain Class Counsel for any purpose related to the Proceeding, Class Counsel hereby agree to refuse to represent the Opt Out.

(4) Notwithstanding any other provision in this Settlement Agreement, no person who was implanted with a BSC Transvaginal Mesh Device on or before February 17, 2017 and no person who has standing in this action by virtue of a personal relationship with one or more such persons, pursuant to section 61(1) of the *Family Law Act*, RSO 1990, c.F.3 or analogous provincial legislation or at common law, shall be entitled to opt out of the Ontario Proceeding or otherwise become an Opt Out as a result of the Certification Amendment Order.

(5) Notwithstanding any other provision in this Settlement Agreement, and for greater certainty, no person who was a member of the Original Class shall be entitled to opt out of the Ontario Proceeding or otherwise become an Opt Out as a result of the Certification Amendment Order.

6.2 Opt Out Report

(1) Class Counsel shall provide Defendants' Counsel with a report advising as to the number of Opt Outs pursuant to section 6.1(1), the reasons for their opting out and details of the Opt Out's individual claim, if known, and a copy of all information provided, including the Opt Out Form, within thirty (30) days of the Opt Out Deadline.

6.3 Defendants' Rights Reserved

(1) The Defendants reserve all of their legal rights and defences with respect to any Opt Outs.

(2) Under article 580 of the *Code of Civil Procedure* of Quebec, a class member eligible to opt out pursuant to section 6.1(1), who does not discontinue an originating application having the same subject matter as the Ontario Proceeding before the time for opting out has expired, is deemed to have opted out.

SECTION 7 - EFFECT OF SETTLEMENT

7.1 No Admission of Liability

(1) The Plaintiffs and the Released Parties expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement

Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Released Parties, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

7.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a pending or future proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

7.3 No Further Litigation

(1) Except with respect to the enforcement or administration of this Settlement Agreement, neither the Plaintiffs nor Class Counsel (whether directly or via local counsel in any Canadian Province or Territory) may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims. Moreover, subject to the other terms of this Settlement Agreement, the Plaintiffs and Class Counsel (whether directly or via local counsel in any Canadian Province or Territory) may not divulge to anyone for any purpose any information obtained in the course of the Proceeding or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available (so long as the information does not become publicly available through a breach of this section) or unless ordered to do so by a court of competent jurisdiction.

SECTION 8 - RELEASES AND DISMISSALS

8.1 Exclusive Remedy

(1) This Settlement Agreement shall be the exclusive remedy for all claims by or through Class Members respecting their implantation with BSC Transvaginal Mesh Device(s).

(2) On the Effective Date, each Class Member, whether or not he or she submits a claim or otherwise receives compensation, shall be deemed by this Settlement Agreement to have completely and unconditionally released, forever discharged, and acquitted the Released Parties from the Released Claims.

(3) On the Effective Date, each Provincial Health Insurer shall be deemed by this Settlement Agreement to have completely and unconditionally released, forever discharged, and acquitted the Released Parties from the Released Claims.

(4) In consideration for the Settlement Amount, Class Counsel agrees, on behalf of the Class Members, that any prosecution of a settled claim in breach of section 8.1(2) shall cause irreparable harm to the Released Parties, in respect of which a stay or injunction is an appropriate remedy. For the same consideration, Class Counsel agree on behalf of Class Members to cooperate with the Released Parties in seeking such a stay or injunction.

8.2 Third-Party Contribution or Indemnity Claims

(1) Class Members who commence or continue litigation against any person or entity who may make a claim for contribution and/or indemnity against any Released Party, shall limit the value and right of recovery of such claim against such person or entity to the quantum of damages, interest, costs and all losses and other compensation proven and apportioned against such person or entity, severally and not jointly with any Released Party.

(2) In the event that litigation commenced or continued by a Class Member who has not opted-out of the Ontario Proceeding results in a claim over or judgment against any or all of the Defendants and/or any other Released Party to pay any amount to any party, such Class Member shall then fully hold harmless, reimburse and indemnify the Defendants and/or other Released Parties for the full amount of such claim over or judgment, together with any interest, exclusive of counsel fees and disbursements incurred by Defendants and/or Released Parties in defence of such claims.

(3) Class Counsel on behalf of Class Members agrees that the lack of a judicial determination that Defendants or other Released Parties are joint tortfeasors does not preclude Non-Settling Defendants from obtaining the right to limit any judgment against them to the quantum of damages,

interest, costs and all losses and other compensation proven and apportioned against such Non-Settling Defendant pursuant to section 8.1(1) herein.

(4) The provisions in sections 8.2(1)-(3) are intended to obviate the necessity and expense of having Defendants and the Released Parties added or remain as parties on the record and obliged to participate in a trial merely for the purpose of determining if in fact they were tortfeasors so as to entitle Non-Settling Defendants to limit any recovery against such Non-Settling Defendants to the quantum of damages, interest, costs and all losses and other compensation proven and apportioned against them as provided in section 8.2(1) herein.

(5) To the extent that the provision of benefits to any Settling Claimant under this Settlement Agreement may give rise to a claim or potential claim for subrogation or reimbursement against Defendants and/or Released Parties by any person or entity other than a Provincial Health Insurer, the Settling Claimant with respect to whom such claim or potential claim relates shall be responsible for resolving such claim or potential claim prior to receiving any benefits under this Settlement Agreement.

(6) To the extent that any such claim for subrogation or reimbursement is asserted against Defendants and/or Released Parties by any person or entity other than a Provincial Health Insurer notwithstanding this provision, such Claimant shall then fully hold harmless, reimburse and indemnify the Defendants or Released Parties for the full amount of such claims, together with any interest, exclusive of counsel fees and disbursements incurred by Defendants or Released Parties in the defence of such claims.

8.3 Other Litigation

(1) The Released Claims do not include any claims for damages or remedies of whatever kind or character, known or unknown, that are now recognized or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, for or in respect of, arising out of or relating to devices other than the BSC Transvaginal Mesh Devices.

SECTION 9 - SUBMITTING CLAIMS

(1) Claims shall be submitted by Class Members in the manner contemplated by the Compensation Protocol, or in any other manner approved by the Ontario Court.

SECTION 10 - LIMITATION DEFENCE

(1) Except as provided herein, no Class Member who satisfies the criteria for payment pursuant to the Compensation Protocol shall be considered ineligible to receive a payment pursuant to this Settlement Agreement on the basis of any statute of limitation or repose, prescription period, or any other limitation or prescription defence.

(2) Nothing in this Settlement Agreement shall constitute or be deemed to constitute a waiver by the Defendants or Released Parties of defences based on statutes of limitation or repose, prescription periods or any other limitation or prescription defence with respect to any Opt Out.

SECTION 11 - AMENDMENTS TO THE SETTLEMENT AGREEMENT

(1) The Parties may amend this Settlement Agreement in writing, by consent and upon approval of the Ontario Court.

SECTION 12 - LEGAL FEES AND DISBURSEMENTS

12.1 Fee Approval

(1) Class Counsel shall bring a motion to the Ontario Court for the determination of Class Counsel Legal Fees to be paid from the Settlement Amount.

(2) The approval of the Settlement Agreement is not contingent on the outcome of any motion regarding Class Counsel Legal Fees.

(3) Class Counsel shall not be precluded from making additional motions to the Ontario Court for expenses incurred as a result of implementing the terms of this Settlement Agreement. All amounts awarded on account of Class Counsel Legal Fees shall be paid from the Settlement Amount.

(4) The Released Parties hereby acknowledge and agree that they are not parties to the motions concerning the approval of Class Counsel Legal Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Legal Fees and they will not take any position or make any submissions concerning Class Counsel Legal Fees.

12.2 Individual Claims

(1) Class Members who retain lawyers to assist them in making their individual claims for compensation pursuant to this Settlement Agreement or to appeal the classification or rejection of their claim for compensation, shall be responsible for the legal fees and expenses of such lawyers.

SECTION 13 - CLAIMS ADMINISTRATOR

13.1 Appointment of Claims Administrator

(1) The Parties will jointly propose a Claims Administrator to be appointed by the Ontario Court for the purpose of processing and classifying claims and paying claims as provided in this Settlement Agreement and under the authority of the Ontario Court. The Claims Administrator shall follow the Compensation Protocol.

(2) The Claims Administrator shall be bilingual (French/English).

13.2 Investment Guidelines

(1) The Claims Administrator shall invest all funds in its possession under this Settlement Agreement in the classes of securities provided in section 26 of the *Trustee Act*, RSO 1990, c. T 23.

(2) All fees and costs of any custodian holding and/or investing such funds shall be paid out of the income of such funds and shall not be the responsibility of Defendants.

(3) All taxes due and owing on investment proceeds shall be paid by the Claims Administrator from the settlement funds.

13.3 Confidentiality Obligations

(1) The Claims Administrator and any person appointed by the Claims Administrator to assist in the processing of claims must sign and adhere to a confidentiality statement by which they agree to keep confidential any information concerning Class Members, and the Claims Administrator shall institute procedures to ensure that the identity of all Class Members, and all information regarding their claims and submissions, will be kept confidential and not be provided to persons except as may otherwise be provided in this Settlement Agreement or as may be required by law.

(2) The Claims Administrator shall be subject to removal by the Ontario Court for cause. In the event of such removal, any successor Claims Administrator shall be identified and appointed as set forth in section 13.1(1).

SECTION 14 - MISCELLANEOUS PROVISIONS

14.1 Ongoing Authority

(1) The Ontario Court shall retain exclusive and continuing jurisdiction over the approval, implementation and administration, interpretation and enforcement of this Settlement Agreement and the Plaintiffs, Class Members and Defendants attorn to the jurisdiction of the Ontario Court for such purposes.

14.2 Recitals

(1) The Parties represent and warrant that the recitals referred to in section 1 are accurate and agree that they form part of this Settlement Agreement.

14.3 Negotiated Agreement

(1) This Settlement Agreement is the product of arm's length negotiations between Class Counsel, counsel for the Defendants, and/or parties represented by counsel. No Party shall be deemed to be the drafter of this Settlement Agreement or any provisions hereof. No presumption shall be deemed to exist in favor of or against any Party as a result of the preparation or negotiation of this Settlement Agreement.

(2) This Settlement Agreement shall be binding on the Parties regardless of any change in the law that might occur after the date each Party signed this Settlement Agreement.

14.4 Entire Agreement

(1) This Settlement Agreement, including its recitals and exhibits, as well as other documents expressly referred to and defined herein (*e.g.* the Certification Amendment Order, Hearing Notice, Hearing Notice Plan, Hearing Notice Order, Settlement Approval Notice, Settlement Approval Notice Plan, Settlement Approval Order, and Provincial Health Insurer Release) constitutes the entire agreement by and among the Parties with regard to the subject matter of this Settlement Agreement and, on the Effective Date, shall supersede any previous agreements and

understandings between the Parties with respect to the subject matter of this Settlement Agreement.

14.5 Counterparts

(1) This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(2) Each of the signatories hereto warrant and represent that they are authorized to enter into this Settlement Agreement on behalf of the Parties on whose behalf this Settlement Agreement has been executed.

14.6 Class Member Notification

(1) All communications from the Claims Administrator to Class Members may be made by regular mail and/or email to such person's last mailing address and/or email address provided by such person to the Claims Administrator.

14.7 Governing Law

(1) This Settlement Agreement shall be governed by and interpreted pursuant to the laws of Ontario.

14.8 Severability

(1) If any provision of this Settlement Agreement is held to be void or invalid, the same shall not affect any other provision and the remainder shall be effective as though such provision had not been contained herein.

14.9 Dates

(1) Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and, as necessary, with the approval of the Ontario Court.

14.10 Party Notification

(1) Any notification, request, instruction or other document to be given by any Party to any other Party to this Settlement Agreement (other than class notification) shall be in writing and shall be addressed as follows:

(a) If to: THE PLAINTIFFS and/or CLASS COUNSEL,

Charles M. Wright & Daniel E. H. Bach
Siskinds LLP
680 Waterloo Street
London, ON N6A 3V8
Tel.: (519) 672-2121
Fax: (519) 672-6065
Email : charles.wright@siskinds.com
daniel.bach@siskinds.com

(b) If to: BOSTON SCIENTIFIC LTD. and BOSTON SCIENTIFIC CORPORATION

Boston Scientific Corporation
Attention: General Counsel
300 Boston Scientific Way
Marlborough, MA 01752
Tel: (508) 683-4000

David Morrirt
Sonia Bjorkquist
Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, PO Box 50
Toronto, ON M5X 1B8
Tel: (416) 862-5876
Fax: (416) 416-862-6666
Email: dmorrirt@osler.com and sbjorkquist@osler.com

14.11 French Translation

(1) Class Counsel shall prepare a French translation of this Settlement Agreement. The text of the translation shall be subject to approval by the Defendants.

(2) Class Counsel shall be responsible for the costs incurred to translate settlement documents into French, as necessary. The text of the translation shall be subject to approval by the Defendants.

(3) In case of any ambiguity or dispute about interpretation, the English version is official and shall prevail.

14.12 English Language Clause

- (1) Les parties ont convenu que cette Entente soit rédigée en anglais.

14.13 Motions for Directions

- (1) Class Counsel or the Defendants may apply to the Ontario Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and Defendants, as applicable.

14.14 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
 - (a) He, she, they or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
 - (b) The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, them or the Party's representative by his, her or its counsel;
 - (c) He, she, they or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
 - (d) No Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute the Settlement Agreement.

14.15 Authorized Signatures

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

Date of Execution

- (2) The Parties have executed the Settlement Agreement as of the date on the cover page.

Dated: December 23, 2019

CLASS COUNSEL



Name: Daniel Bach
SISKINDS LLP
Class Counsel

Dated: December 20, 2019

BOSTON SCIENTIFIC LTD. AND BOSTON
SCIENTIFIC CORPORATION



Desiree Ralls-Morrison
SVP, General Counsel and Corporate Secretary

I have authority to bind the corporations

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between the terms of this Order and the Settlement Agreement, the terms of this Order shall prevail.
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 hereby approved pursuant to section 12, 19, 20, 29(2), and 29(3) of the *Class Proceedings Act, 1992* S.O. 1992, c. 6 and shall be implemented and enforced in accordance with its terms.
5. **THIS COURT ORDERS** that all provisions of the Settlement Agreement (including its Recitals and Definitions) form part of this Order and are binding upon Class Members who did not opt out of this action in accordance with the order issued on February 17, 2017, approving the notice and opt out procedures following certification of the Ontario Proceeding as a national class action, or in accordance with the Settlement Hearing Notice Order of this Court dated ● (the “Hearing Notice Order”), including those persons who are mentally incapable, Class Counsel, the Provincial Health Insurers and the Defendants.
6. **THIS COURT ORDERS** that the releases as provided at section 8.1 of the Settlement Agreement are approved and will take effect upon the Effective Date.
7. **THIS COURT ORDERS** that the form and content of the Settlement Approval Notice, substantially in the full and abridged forms attached as Schedule “A” is approved.

8. **THIS COURT ORDERS** that the Notice Plan, substantially in the form attached as Schedule “B” is approved.

9. **THIS COURT ORDERS** that this proceeding be and is hereby dismissed against the Defendants, without costs and with prejudice, and that such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

THE HONOURABLE JUSTICE P. PERELL

1. **THIS COURT ORDERS** that, except as otherwise specified in, or as modified by, this Order, capitalized terms used herein shall have the meaning ascribed to them in the Settlement Agreement.

2. **THIS COURT ORDERS** that the definition of the Class in the Certification Order dated February 17, 2017 (attached hereto as Schedule “A”) be amended to provide for an Expanded Class as follows:

- a. All persons resident in Canada who have been implanted with a BSC Transvaginal Mesh Device at any time on or before the date of this Order (the “Primary Class”);
- b. All persons resident in Canada who by virtue of a personal relationship to one or more such persons described in (a) above, having standing in this action pursuant to section 61(1) of the *Family Law Act*, RSO 1990, c F 3 or analogous provincial legislation or at common law (the “Family Class”).

3. **THIS COURT ORDERS** that:

- a. Only the following individuals may exclude themselves from the Class:
 - (i) persons who were or are implanted with a BSC Transvaginal Mesh Device after February 17, 2017, and on or before the date of this Order but who were neither Class Members nor Opt Outs prior to the Certification Amendment Order; and
 - (ii) persons who have standing in this action by virtue of a personal relationship with one or more persons described in paragraph 3(i) above, pursuant to

section 61(1) of the *Family Law Act*, RSO 1990, c.F. 3 or analogous provincial legislation or at common law, but who were neither Class Members nor Opt Outs prior to the Certification Amendment Order;

- b. persons described in paragraph 3a above may exclude themselves from the Class by exercising their right to opt out by submitting a complete and signed Opt Out Form to Class Counsel in accordance with the Hearing Notice Order, by the Opt Out Deadline;
- c. no person who was implanted with a BSC Transvaginal Mesh Device on or before February 17, 2017, and no person who has standing in this action by virtue of a personal relationship with one or more such persons may exclude themselves from the Class;
- d. the Opt Out Form is approved substantially in the form attached as Schedule “B”;
and,
- e. a person eligible to opt out and who opts out of this class proceeding in the manner provided for in this Order shall be an Opt Out and shall not be a Class Member.

SCHEDULE “C”: LIST OF PROVINCIAL HEALTH INSURERS

Province/ Territory	Ministry / Department	Legislation	Right of Recovery
Nova Scotia	Minister of Health and Wellness Department of Health and Wellness	<i>Health Services and Insurance Act</i> , RSNS 1989, c 197	“cost of the care, services and benefits”
New Brunswick	Minister of Health Executive Council	<i>Medical Services Payment Act</i> , RSNB 1973, c M-7 <i>Health Services Act</i> , RSNB 2014, c 112	“entitled services”
Prince Edward Island	Minister of Health and Wellness	<i>Health Services Payment Act</i> , RSPEI 1988, c H-2 <i>Hospital and Diagnostic Services Insurance Act</i> , RSPEI 1988, c H-8	“basic health services” “insured services”
Newfoundland and Labrador	Minister of Health and Community Services	<i>Medical Care and Hospital Insurance Act</i> , SNL2016 cM-5.01	“insured services”
Ontario	Minister of Health and Minister of Long-Term Care	<i>Health Insurance Act</i> , RSO 1990 c H 6 <i>Home Care and Community Services Act 1994</i> , S.O., 1994, c.26	“insured services” “approved services”
Manitoba	Minister of Health, Seniors and Active Living	<i>Health Services Insurance Act</i> , CCSM, 2015 c H35	“insured services”
Saskatchewan	Minister of Health	<i>The Health Administration Act</i> , SS 2014, c E-13.1	“health services”
Quebec	Régie de l’assurance maladie du Québec	<i>Health Insurance Act</i> , 2017 CQLR c A-29 <i>Hospital Insurance Act</i> , CQLR c A-28	“insured services”

Province/ Territory	Ministry / Department	Legislation	Right of Recovery
Yukon	Minister of Health and Social Services	<i>Hospital Insurance Services Act</i> , RSY 2002, c 112 <i>Health Care Insurance Plan Act</i> , RSY 2002, c.107	“insured services” “insured health services”
Northwest Territories and Nunavut	Minister of Health and Social Services	<i>Hospital Insurance and Health and Social Services Administration Act</i> , RSNWT 1998, c T-3 <i>Medical Care Act</i> , R.S.N.W.T. 1988, c.M-8	“insured services”
Alberta	Minister of Health	<i>Crown’s Right of Recovery Act</i> , SA 2009, c C-35	“the Crown’s cost of health services”
British Columbia	Minister of Health	<i>Healthcare Costs Recovery Act</i> , SBC 2008 c. 27	“health care services”

SCHEDULE “D”: PROVINCIAL HEALTH INSURER CONSENT AND RELEASE

WHEREAS [province specific legislation] (the “**Act**”) permits a direct or subrogated claim (a “**Claim**”) for the recovery of the costs for [insured services or analogous term] that have been incurred in the past and that will probably be incurred in the future and as further described in the Act and its regulations (collectively [“**Insured Services or Analogous Term**”]);

AND WHEREAS proceedings were commenced in Ontario, Saskatchewan, Alberta, and Quebec against Boston Scientific Ltd and Boston Scientific Corporation (collectively, the “**BSC Entities**”) on behalf of proposed classes of Canadian residents who were implanted with one or more BSC Transvaginal Mesh Device(s) (as defined in the Settlement Agreement) (the “**Proceedings**”);

AND WHEREAS pursuant to a Settlement Agreement dated ● (the “**Settlement Agreement**”) the Proceedings and all of the present and future claims of Class Members (as defined in the Settlement Agreement) for or relating in any way to BSC Transvaginal Mesh Devices are to be fully resolved, on a national basis, without admission of liability;

AND WHEREAS the Provincial Health Insurer (as defined in the Settlement Agreement) hereby consents to the Settlement Agreement;

AND WHEREAS pursuant to the Settlement Agreement, Class Members will have an opportunity to submit individual claims for settlement benefits (the “**Settling Claimants**” as further defined in the Settlement Agreement);

IN CONSIDERATION OF the payment to be made from the Settlement Amount to the Provincial Health Insurer as good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the undersigned, ●, on behalf of the Provincial Health Insurer (hereinafter “**Releasor**”), release any and all manner of claims which a Provincial Health Insurer ever had, now has or hereafter can, shall or may have pursuant to provincial or territorial legislation that permits the recovery of healthcare costs or medical expenses from third parties, whether known or unknown, direct or indirect, subrogated or otherwise, relating in any way to the design, manufacture, sale, distribution, labelling, use, purchase and/or implantation of BSC Transvaginal Mesh Devices in Class Members during the Class Period, including, without limitation and by way of example, all subrogated and/or direct claims in respect of Class Members that were or could have been brought for the cost of medical care and treatment provided to Class Members, as well as medical screening and monitoring, arising from the facts alleged in the Proceedings (as defined in the Settlement Agreement), against the Released Parties (as defined in the Settlement Agreement).

AND THE STATUTORILY DESIGNATED OFFICIAL FOR THE PROVINCIAL HEALTH INSURER REPRESENTS AND CONFIRMS that s/he has authority to bind the Releasor.

AND THE RELEASOR ACKNOWLEDGES and agrees that s/he has not been induced to execute this Release by reason of any representation or warranty of any nature or kind whatsoever and that there is no condition express or implied or collateral agreement affecting the said release.

AND FOR THE SAID CONSIDERATION the Releasor covenants and agrees not to make a claim or to commence or take proceedings against any of the Released Parties, including any

person, firm, partnership, business or corporation who or which might claim contribution from, or to be indemnified by, the BSC Entities, in respect of those matters to which this release applies.

AND IT IS UNDERSTOOD that Released Parties, and each of them, do not admit any liability to the Releasor or others and that such liability is specifically and expressly denied.

IN WITNESS WHEREOF the Releasor ● has hereunto set his/her hand and seal this
day of _____, 2019.

Witness

Printed Name of Statutorily Designated Official for
the Provincial Health Insurer on behalf of
[Province]

Signature of Statutorily Designated Official for the
Provincial Health Insurer on behalf of [Province]