

SETTLEMENT AGREEMENT

Made as of the 21ST day of August, 2014

Between

**Elizabeth Fricke and Maryanne Mallinos, individually and in their capacity as the
proposed representative plaintiffs in
Fricke, et al. v. Nevsun et al. (Court File No.12-CV-17903)**

and

**Nevsun Resources Ltd.
Clifford T. Davis
Peter J. Hardie
Scott Trebilcock**

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SETTLEMENT AGREEMENT

Subject to the approval of the Court as provided herein, the Plaintiffs and the Defendants hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon the Approval Order approving the Settlement and directing the implementation of the terms and conditions of the Settlement as set forth in this Agreement becoming final, this Action will be settled and compromised on the terms and conditions contained herein.

SECTION 1 – RECITALS

1.1 WHEREAS

A. The Plaintiffs commenced the Action alleging, among other things, that the Defendants knew or ought to have known that the stated gold reserves at the Bisha mine located in Eritrea, Africa, were materially overstated;

B. The Defendants have denied and continue to deny all allegations of wrongdoing, fault, liability or damage in respect of the claims alleged in the Action, and would have actively and diligently pursued affirmative defences and all other defences had the Action not been settled;

C. Counsel for the Plaintiffs and counsel for the Defendants have engaged in extensive and protracted arm's-length settlement discussions and negotiations in an effort to resolve the Action, including a full-day mediation in December 2013 before an experienced mediator, continued settlement negotiations from January through March, 2014, and a second full-day mediation in April 2014 before a retired United States District Court Judge;

D. As a result of these extensive and protracted settlement discussions and negotiations, the Defendants and the Plaintiffs have entered into this Agreement, which embodies all of the terms and conditions of the Settlement between the Defendants and the Plaintiffs, both individually and on behalf of the Class, subject to approval of the Court;

E. The Parties have negotiated and entered into this Agreement to fully, definitively and permanently resolve, settle and release and discharge all claims asserted, or which could have been asserted, against the Defendants by the Plaintiffs on their own behalf and on behalf of the

Class they seek to represent, and to avoid the further expense, inconvenience and burden of this litigation and avoid the risks inherent in uncertain, complex and protracted litigation;

F. The Plaintiffs have agreed to accept this Settlement, in part, because of the amount of the Settlement Funds to be provided by the Defendants pursuant to this Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by the Defendants;

G. The Defendants do not admit, through the execution of this Agreement, any of the conduct alleged in the Action and expressly deny any and all allegations of fault wrongdoing, liability or damage whatsoever or infirmity in the defences that the Defendants have asserted or could have asserted in the Action or otherwise;

H. The Plaintiffs and Class Counsel confirm that neither this Agreement, nor any statement made in the negotiation thereof, shall be deemed or construed to be an admission by or evidence against the Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Defendants;

I. The Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs, and having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, have concluded that this Settlement is fair, reasonable and in the best interests of the Plaintiffs and the Class. The Parties therefore wish to, and hereby do, finally resolve on a global basis, without admission of liability, the Action as against the Defendants;

J. For the purposes of settlement only and contingent on the approval of the Settlement by the Court, as provided for in this Agreement, the Plaintiffs will consent to a dismissal of the Action;

K. The Plaintiffs assert that they are adequate class representatives for the class they seek to represent and will seek to be appointed representative plaintiffs in the Action;

NOW THEREFORE, in consideration of the covenants, agreements, promises and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be settled on the merits, subject to the approval of the Settlement by the Court, and that all claims against

the Defendants which any person, other than any Opt-Out Party, shall or may have or assert against any of the Defendants be forever extinguished and released on the following terms and conditions:

SECTION 2 – DEFINITIONS

2.1 Definitions

For the purposes of this Agreement, including the Recitals and Schedules hereto, the following definitions shall have the meanings indicated below:

- (1) **Action** means the action *Fricke et al. v. Nevsun Resources Ltd. et al.* brought in the Ontario Superior Court of Justice under Court File No. 12-CV-17903 (Windsor).
- (2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to notice, approval, implementation and administration of the Settlement, including the costs of translating, publishing and delivering notices and the fees, disbursements and taxes paid to the Administrator, the person appointed to receive and report on objections to the Settlement to the Court, the Referee, TMX Equity Transfer Services, Broadridge Financial Solutions Inc. and any other expenses approved by the Court which shall all be paid from the Settlement Amount. For greater certainty, Administration Expenses include the Non-Refundable Expenses, but do not include Class Counsel Fees.
- (3) **Administrator** means the third-party firm selected at arm's length, and recommended by Class Counsel and appointed by the Court to administer the Agreement, and any employees of such firm.
- (4) **Agreement** means this agreement, including the recitals and schedules hereto.
- (5) **Approval Hearing** means the hearing of the Second Motion.
- (6) **Approval Order** means the order made by the Court approving the Settlement, generally in the form of the order at Schedule "A".
- (7) **Authorized Claimant** means any Class Member who has been approved for compensation by the Administrator in accordance with the Plan of Allocation.
- (8) **Claim Form** means the form or forms to be approved by the Court which, when completed and submitted in a timely manner to the Administrator, enables a Class Member to apply for compensation pursuant to the Agreement, generally in the form at Schedule "H".

- (9) **Claims Bar Deadline** means the date by which each Class Member must file a Claim Form and all required supporting documentation with the Administrator which date shall be one hundred and twenty (120) days after the date on which the Second Notice is first published.
- (10) **Class or Class Members** means all persons, other than Excluded Persons and Opt-Out Parties, who acquired Shares during the Class Period and who held some or all of those Shares at the close of trading on the TSX on February 6, 2012.
- (11) **Class Counsel** means Sutts, Strosberg LLP, Groia & Company Professional Corporation and the Law Office of Andrew J. Morganti, JD, LL.M.
- (12) **Class Counsel Fees** means the fees, disbursements, costs, , HST and other applicable taxes or charges of Class Counsel and a pro rata share of all interest earned on the Settlement Amount to the date of payment, as approved by the Court.
- (13) **Class Period** means the period from and including March 31, 2011 to and including February 6, 2012.
- (14) **Court** means the Ontario Superior Court of Justice.
- (15) **CPA** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended.
- (16) **Defendants** mean Nevsun Resources Ltd., Clifford T. Davis, Peter J. Hardie and Scott Trebilcock.
- (17) **Effective Date** means the date on which the Approval Order becomes a final order and the time for any appeal has expired.
- (18) **Eligible Shares** means Shares purchased or otherwise acquired by a Class Member or Opt-Out Party during the Class Period and held at the close of trading on February 6, 2012.
- (19) **Escrow Account** means the interest bearing trust account with one of the Canadian Schedule 1 banks in Ontario initially under the control of Sutts, Strosberg LLP and then transferred to the control of the Administrator.
- (20) **Escrow Settlement Amount** means the Settlement Amount plus any interest accruing thereon as a result of investment thereof after payment of all Non-Refundable Expenses.

- (21) ***Excluded Persons*** means
- (a) the Individual Defendants;
 - (b) Nevsun’s past or present subsidiaries, affiliates, legal representatives, predecessors, successors and assigns;
 - (c) any person who was an officer or director of Nevsun during the Class Period;
 - (d) any immediate member of the Individual Defendants’ families;
 - (e) any entity in which any of the above persons has or had during the Class Period any legal or de facto controlling interest; or
 - (f) persons who purchased or otherwise acquired Shares on the New York Stock Exchange or any other U.S. trading platform.
- (22) ***First Motion*** means the motion brought by the Plaintiffs before the Court for an order:
- (i) setting the date for the hearing of the Second Motion;
 - (ii) approving the form of and authorizing the manner of publication and dissemination of the First Notice;
 - (iii) appointing Sutts, Strosberg LLP to manage the Escrow Account; and
 - (iv) appointing Gregory Wrigglesworth of Kirwin Partners LLP to receive and report to the Court on Class Members’ objections to the Settlement, if any;
- which order shall generally be in accordance with the order at Schedule “B”.
- (23) ***First Notice*** means notice to the Class of the Second Motion in a form to be approved by the Court which shall generally be in accordance with the notice at Schedule “C”.
- (24) ***Individual Defendants*** means Clifford T. Davis, Peter J. Hardie and Scott Trebilcock;
- (25) ***Nevsun*** means Nevsun Resources Ltd.
- (26) ***Newspapers*** means the following newspaper publications: Globe and Mail (National Edition) and La Presse;
- (27) ***Non-Refundable Expenses*** means certain administration expenses stipulated in section 4.1(1) of the Agreement to be paid from the Settlement Amount;

- (28) **Opt-Out Deadline** means the date sixty (60) days after the date on which the Second Notice is first published in the Newspapers;
- (29) **Opt-Out Form** means the documents in English and French, as approved by the Court, which shall generally be in accordance with the document at Schedule G, that if properly completed and submitted by a Class Member to Gregory Wrigglesworth of Kirwin Partners LLP excludes that Class Member from the Action and participation in the Settlement;
- (30) **Opt-Out Party** means any person who would otherwise be a Class Member who validly opts out of the Action;
- (31) **Opt-Out Threshold** means the total number of Eligible Shares particularized in the Collateral Agreement entered into between counsel for the Parties;
- (32) **Opting-Out** means properly completing and submitting an Opt-Out Form and all necessary supporting documents before the expiry of the Opt-Out Deadline.
- (33) **Parties** means the Plaintiffs and the Defendants;
- (34) **Plaintiffs** means Elizabeth Fricke and Maryanne Mallinos;
- (35) **Plan of Allocation** means the plan, as approved by the Court, which shall generally be in accordance with the plan at Schedule “D”;
- (36) **Plan of Notice** means the plan for disseminating the First Notice and the Second Notice to the Class, as approved by the Court, which shall generally be in accordance with the plan attached as Schedule “E”;
- (37) **Referee** means Gregory Wrigglesworth of Kirwin Partners LLP or such other person or persons appointed by the Court to serve in that capacity.
- (38) **Released Claims** (or **Released Claim** in the singular) means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, derivative or otherwise in nature, whether personal or subrogated, damages whenever incurred, and rights and liabilities of any nature whatsoever, including interest, costs, expenses, administration expenses, penalties, Class Counsel Fees and lawyers’ fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees or any one or more of the Releasees relating in any way to the purchase,

acquisition, sale, pricing, marketing or distributing of Shares, or to any conduct alleged, or that could have been alleged, in the Action, without limitation, any such claims that have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Shares in the Class Period;

(39) **Releasees** means the Defendants, their insurers and their respective past and present affiliates, subsidiaries, directors, officers, partners, employees, trustees, servants, consultants, underwriters, advisors, lawyers, representatives, successors, assigns and their heirs, executors, administrators, successors and assigns;

(40) **Releasors** means, jointly and severally, the Plaintiffs, the Class Members (excluding those who have validly opted out), including any person having a legal and/or beneficial interest in the Shares purchased or acquired by these Class Members, and their respective past and present directors, officers, employees, agents, trustees, servants, consultants, underwriters, advisors, representatives, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, as the case may be;

(41) **Second Motion** means the motion brought by the Plaintiffs in the Court for the Approval Order approving the Settlement, appointing the Administrator and the Referee, and the motion brought by Class Counsel approving Class Counsel Fees;

(42) **Second Notice** means notices in English and French to the Class of the Approval Order, as approved by the Court, which shall generally be in accordance with the notice in English at Schedule "F";

(43) **Settlement** means the settlement provided for in the Agreement;

(44) **Settlement Amount** means \$5,350,000 (USD), inclusive of the Administration Expenses, Class Counsel Fees, and any other costs or expenses related to the Action or the Settlement;

(45) **Shares** means common shares of Nevsun; and

(46) **TSX** means the Toronto Stock Exchange.

SECTION 3 – THE MOTIONS

3.1 Nature of Motions

- (1) The Parties shall use their best efforts to implement the Agreement and to secure the prompt, complete and final dismissal with prejudice of the Action.
- (2) The Plaintiffs shall bring the First Motion as soon as reasonably possible following the execution of the Agreement. The Defendants shall consent to the First Motion provided that it is consistent with the terms of this Agreement.
- (3) Following the determination of the First Motion, the First Notice shall be published in accordance with the directions of the Court and section 10.1 of the Agreement.
- (4) The Plaintiffs will thereafter bring the Second Motion before the Court in accordance with its directions and the Defendants shall consent to the Approval Order sought in the Second Motion provided that it is consistent with the terms of this Agreement.
- (5) Following the hearing and determination of the Second Motion, provided that the Approval Order and the Settlement are approved, Class Counsel shall hold the signed Approval Order in escrow until such time as the Settlement Amount is deposited in full with Sutts, Strosberg LLP, in trust, in accordance with section 5.1 of this Agreement, after which time (i) the Approval Order shall be immediately and automatically released from escrow and (ii) Class Counsel shall forthwith enter the Approval Order with the registrar of the Court.
- (6) Following the hearing and determination of the Second Motion, provided that the Settlement is approved by the Court, the Second Notice shall be published in accordance with the directions of the Court and section 10.2 of the Agreement.

3.2 Attornment

The Plaintiffs, individually and on behalf of all Class Members, hereby attorn to the jurisdiction of the Court in the Action, regardless of their province or territory or country of residence or where he/she/it purchased their shares of Nevsun during the Class Period.

SECTION 4 – NON-REFUNDABLE EXPENSES

4.1 Payments

(1) Reasonable expenses incurred for the following purposes shall be the Non-Refundable Expenses, and shall be payable from the Settlement Amount, when incurred:

- (a) the costs incurred in connection with establishing and operating the Escrow Account;
- (b) the costs incurred for translating, publishing and disseminating the First Notice;
- (c) the costs of Gregory Wrigglesworth in connection with receiving objections and Opt-Out Forms and reporting to the Courts to a maximum of \$6,000 for fees, plus disbursements and HST; and
- (d) the cost incurred in translating, publishing and disseminating the Second Notice;
- (e) if necessary, the costs incurred in translating, publishing and disseminating notice to the class that the Agreement has been terminated; and
- (f) if the Court appoints the Administrator and thereafter the Agreement is terminated by the Defendants pursuant to section 12, the costs reasonably incurred by the Administrator for performing the services required to prepare to implement the Settlement, including any mailing expenses, to a maximum of \$75,000 (USD).

(2) In no event shall the total of the Non-Refundable Expenses relating to this Settlement exceed \$75,000 (USD) prior to the Effective Date.

(3) Sutts, Strosberg LLP shall account to the Court and the Parties for all payments it makes from the Escrow Account. In the event that the Agreement is terminated, this accounting shall be delivered no later than ten (10) days after such termination.

4.2 Disputes Concerning Non-Refundable Expenses

Any dispute concerning the entitlement to or quantum of Non-Refundable Expenses shall be dealt with by a motion to the Court on notice to the Parties.

SECTION 5 – THE SETTLEMENT AMOUNT

5.1 Payment of Escrow Settlement Amount

Within ten (10) days of execution of this Agreement, the Defendants shall pay or cause to be paid \$75,000 (USD) of the Settlement Amount to Sutts, Strosberg LLP, in trust, to be held in trust and used only for the purposes of paying the anticipated costs referred to in sections 4.1(1)(a), 4.1(1)(b) and 10.1 of this Agreement. Within thirty (30) days after the Court issues the Approval Order, the Defendants shall pay or cause to be paid \$5,275,000 (USD), being the balance of the Settlement Amount, to Sutts, Strosberg LLP, in trust, in full satisfaction of the Released Claims against the Releasees. Sutts, Strosberg LLP will transfer the Settlement Amount, less the anticipated costs referred to in sections 4.1(1)(a), 4.1(1)(b) and 10.1 of this Agreement, into the Escrow Account.

5.2 Interim Investment of Escrow Account

Sutts, Strosberg LLP, and then the Administrator after the Settlement becomes final, shall hold the Escrow Settlement Amount in the Escrow Account and shall invest the Escrow Settlement Amount in a liquid money market account or equivalent security with a rating equivalent to, or better than that of an interest bearing account in a Canadian Schedule 1 bank and shall not pay out any amount from the Escrow Account, except in accordance with the terms of the Agreement. The Defendants shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions executed by Sutts, Strosberg LLP or the Administrator. The Escrow Settlement Amount shall bear all risks related to the investments of the Settlement Amount.

5.3 Taxes on Interest

- (1) Except as provided in section 5.3(2), all taxes payable on any interest which accrues in relation to the Settlement Amount, shall be the Class' responsibility and shall be paid by Class Counsel, or the Administrator, as appropriate, from the Escrow Settlement Amount, or by the Class as the Administrator considers appropriate.
- (2) If the Administrator or Class Counsel returns any portion of the Settlement Amount plus accrued interest to the Defendants, pursuant to the provisions of the Agreement, the taxes

payable on the interest portion of the returned amount shall be the responsibility of the Defendants to be allocated by agreement among themselves.

SECTION 6 – NO REVERSION

Unless the Agreement is terminated as provided herein or otherwise ordered by the Court, the Defendants shall not, under any circumstances, be entitled to the repayment of any portion of the Settlement Amount and then only to the extent of and in accordance with the terms provided herein.

SECTION 7 - DISTRIBUTION OF THE ESCROW SETTLEMENT AMOUNT

If the Settlement becomes final as contemplated by section 13 of this Agreement, the Administrator shall distribute the Escrow Settlement Amount in accordance with the following priorities:

- (a) to pay Class Counsel Fees;
- (b) to pay all of the costs and expenses reasonably and actually incurred in connection with the provision of notices, locating Class Members for the sole purpose of providing notice to them, soliciting Class Members to submit a Claim Form, including the notice expenses reasonably and actually incurred by TMX Equity Transfer Services and/or Computershare, Broadridge Financial Solutions Inc. in connection with the provision of notice of this Settlement to Class Members. For greater certainty, the Defendants are specifically excluded from eligibility for any payment of costs and expenses under this subsection;
- (c) to pay all of the costs and expenses reasonably and actually incurred by the Administrator and the Referee, relating to determining eligibility, the filing of Claim Forms, processing Opt-Out Forms and Claim Forms, resolving disputes arising from the processing of Claim Forms and administering and distributing the Settlement Amount;
- (d) to pay any taxes required by law to be paid to any governmental authority; and
- (e) to pay a *pro rata* share of the balance of the Escrow Settlement Amount to each Authorized Claimant in proportion to his/her/its claim as recognized in accordance with the Plan of Allocation.

SECTION 8 – EFFECT OF SETTLEMENT

8.1 No Admission of Liability

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 fault, wrongdoing, liability or damage by the Releasees, or as a concession or admission by the Releasees of the truthfulness or merit of any claim or allegation asserted in the Action. Neither the 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 statement, release or written document or financial report, and in fact the Defendants continue to vigorously dispute, deny and contest the allegations made in the Action.

8.2 Agreement Not Evidence

(1) Whether or not the Agreement is terminated, neither the Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Agreement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, quasi-criminal or administrative action or proceeding.

(2) Notwithstanding section 8.2(1), the Agreement may be referred to or offered as evidence in a proceeding to approve or enforce the Agreement, to defend against the assertion of Released Claims, and as otherwise required by law.

8.3 Best Efforts

The Parties shall use their best efforts to implement the terms of the Agreement. The Parties agree to hold in abeyance all steps in the Actions, including all discovery, other than proceedings provided for in the Agreement, the First Motion, the Second Motion and such other proceedings required to implement the terms of the Agreement, until the date the Settlement becomes final or the termination of the Agreement.

8.4 Restrictions on Further Litigation

(1) Class Counsel, and anyone currently or hereafter employed by, or a partner with Class Counsel may not, directly or indirectly, participate or be involved in, or in any way assist with

respect to any claim or action commenced by any person which relates to or arises from the Released Claims.

(2) Class Counsel and the Plaintiffs are prohibited from divulging to anyone, other than to each other, for any purpose any information obtained in the course of the negotiation, preparation or execution of this Agreement, without the prior written consent of the Defendants or unless ordered to do so by a court.

SECTION 9 – CERTIFICATION

9.1 Certification

(1) Subject to the approval of the Court, and for the purposes of Settlement only, the Defendants will consent to the certification of the Action and approval of the Settlement pursuant to the *CPA*.

(2) The Parties agree that the certification of the Action as a class proceeding in accordance with the terms of this Agreement is for the sole purpose of effecting the Settlement. In the event that this Agreement is terminated as provided herein, the certification order, if any, shall be vacated or set aside as set out herein, and shall be without prejudice to any position that any of the Parties may later take on any issue in the Action, including in a subsequent certification motion. In particular, the fact that the Defendants consent to certification for settlement purposes shall not be referenced in any way in the further prosecution of the Action, nor shall such consent be deemed to be an admission by the Defendants that the Plaintiffs have met any of the requisite criteria for certification of the Action as a class proceeding.

SECTION 10 – NOTICE TO THE CLASS

10.1 First Notice

Class Counsel shall cause the First Notice to be translated, published and disseminated in accordance with the Plan of Notice as approved by the Court and these costs shall be paid as a Non-Refundable Expense as provided in 4.1(1)(b).

10.2 Second Notice

Class Counsel shall cause the Second Notice to be translated, published and disseminated in accordance with the Plan of Notice as approved by the Court and the costs of so doing shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(d).

10.3 Report to the Court

Forthwith after the publication and dissemination of each of the notices required by this section, Class Counsel shall file with the Court an affidavit confirming that the notices have been translated, published and disseminated in accordance with this Agreement and the Plan of Notice.

10.4 Notice of Termination

If the Agreement is terminated after the Second Notice has been translated, published and disseminated, a notice of the termination will be given to the Class. Class Counsel will cause the notice of termination, in a form approved by the Court, to be translated, published and disseminated as the Court directs and the costs of so doing shall be paid as a Non-Refundable Expense as provided in section 4.1(1)(e).

SECTION 11 – OPTING OUT

11.1 Awareness of any Potential Opt-Outs

The Defendants and Class Counsel represent and warrant that:

- (a) they are unaware of any Class Member who has either opted out or expressed an intention to opt out of the Settlement; and
- (b) they will not encourage or solicit any Class Member to opt out of the Settlement.

11.2 Opt-Out Procedure

(1) Each Class Member who wishes to opt out must submit a properly completed Opt-Out Form, along with all required supporting documents, to Gregory Wrigglesworth on or before the Opt-Out Deadline.

(2) If a Class Member fails to submit a properly completed Opt-Out Form and/or all required supporting documents before the Opt-Out Deadline, the Class Member shall not have opted out of the Action, subject to order of the Court to the contrary, and will in all respects be subject to, and bound by, the provisions of the Agreement and the releases contained herein.

- (3) The Opt-Out Deadline shall not be extended unless the Court orders otherwise.
- (4) All Opt-Out Parties will be excluded from any and all rights and obligations arising from the Settlement. Class Members who do not opt out shall be bound by the Settlement and the terms of the Agreement regardless of whether the Class Member files a Claim Form or receives compensation from the Settlement.

11.3 Notification of Number of Opt-Outs

Within ten (10) days after the Opt-Out Deadline, Gregory Wigglesworth shall report to the Court and to the Parties as to the number of Opt-Out Parties, the number of Eligible Shares held by each Opt-Out Party, a summary of the information delivered by each Opt-Out Party and the total number of Eligible Shares held by the Opt-Out Parties.

SECTION 12 – TERMINATION OF THE AGREEMENT

12.1 General

- (1) The Agreement shall, without notice, be automatically terminated if:
 - (a) an order in the form of the Approval Order (excluding approval of Class Counsel Fees) is not granted by the Court generally in accordance with the form at Schedule “A” or;
 - (b) the Approval Order is reversed on appeal and the reversal becomes final.
- (2) The Defendants may terminate this Agreement, with notice to the Plaintiffs, in the event that:
 - (a) the Court declines to approve this Agreement or any material term or part thereof;
 - (b) the Court approves this Agreement in a materially modified form;
 - (c) the Approval Order does not finally dismiss the Action against all the Defendants with prejudice and without costs; or
 - (d) the Opt-Out Threshold is exceeded, as provided for in section 12.2 of this Agreement.
- (3) An approval or award of Class Counsel Fees and Non-Refundable Expenses is not a condition of this Agreement and the failure of the Court to approve the request by Class Counsel

for Class Counsel Fees or Non-Refundable Expenses shall not be grounds to terminate this Agreement.

(4) In the event the Agreement is terminated in accordance with its terms, or not approved by the Court, or any Approval Order is reversed, vacated or terminated by any appellate court and/or the Approval Order does not become final:

- (a) the Plaintiffs and the Defendants will be restored to their respective positions prior to the execution of the Agreement;
- (b) the Parties will consent to orders setting aside any order certifying the Action as a class proceeding for the purposes of implementing this Agreement;
- (c) the Agreement will have no further force and effect and no effect on the rights of the Plaintiffs or the Defendants;
- (d) the certification of the Action will be deemed to have been without prejudice to any position that any of the Plaintiffs and Defendants may later take on any issue in the Action;
- (e) any amounts paid for establishing and operating the Escrow Account, translating, publishing and disseminating the First Notice, the Second Notice and the Termination Notice, if any, and to Gregory D. Wrigglesworth and the Administrator pursuant to section 4.1(1) are non-recoverable from the Plaintiffs, the Class Members or Class Counsel;
- (f) the Settlement Amount will be returned to the Defendants less any Non-Recoverable Expenses that have already been properly incurred, together with a full accounting thereof;
- (g) the Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendants.

(5) Notwithstanding the provisions of section 12.1(4)(c), if the Agreement is terminated, the provisions of this section and sections 2, 4, 5.2, 5.3, 8.1, 8.2, 10.3, 10.4, 12.1(4), 12.1(5), 12.3, 12.4, 15.1(2), 18.1, 18.2, 18.3, 18.4, 18.5, 18.6(2), 18.8, 18.9, 18.10, 18.11, 18.12, 18.13, 18.14 and the recitals and schedules applicable thereto shall survive termination and shall continue in full force and effect.

12.2 Effect of Exceeding the Opt-Out Threshold

(1) Notwithstanding any other provision in the Agreement, the Defendants, in their sole discretion, may elect to terminate the Agreement if the total number of Eligible Shares held by Opt-Out Parties exceeds the Opt-Out Threshold, provided that their election is made within thirty (30) days of being notified by either Gregory Wrigglesworth or Class Counsel of the information described in section 11.3. If the Defendants do not elect to terminate the Agreement within this period, their right to terminate the Agreement pursuant to the provisions of this section will have expired.

(2) The Opt-Out Threshold shall be stated in the Collateral Agreement signed contemporaneously with the execution of this Agreement. The Opt-Out Threshold stated in the Collateral Agreement shall be kept confidential by the Parties and their counsel, and may be disclosed to the Court, if requested, but shall not be otherwise disclosed, unless disclosure is ordered by the Court.

12.3 Allocation of Monies in the Escrow Account Following Termination

(1) The Administrator and Sutts, Strosberg LLP shall account to the Court and the Parties for the amounts maintained in the Escrow Account. If the Agreement is terminated, this accounting shall be delivered no later than ten (10) days after such termination.

(2) If the Agreement is terminated, the Defendants shall, within thirty (30) days after termination, apply to the Court, on notice to the Plaintiffs and the Administrator, for an order:

- (a) declaring the Agreement null and void and of no force or effect except for the provisions of those sections listed in section 12.1(5);
- (b) requiring the notice of termination to be sent out to the Class Members and, if so, the form and method of disseminating such a notice;
- (c) requesting an order setting aside, *nunc pro tunc*, all prior orders or judgments entered by the Court in accordance with the terms of this Agreement; and
- (d) authorizing the payment of:
 - (i) all funds received from any of the Defendants and not yet paid into the Escrow Account pursuant to section 4.1; and
 - (ii) all funds in the Escrow Account, including accrued interest,

to the Defendants, apportioned *pro rata*, based on their respective contributions, directly or indirectly, to the Escrow Account, as the case may be, minus any amounts paid out of the Escrow Account in accordance with the terms of the Agreement.

- (3) Subject to section 12.4, the Parties shall consent to the orders sought in any motion made by the Defendants pursuant to section 12.3(2).

12.4 Disputes Relating to Termination

If there are any disputes about the termination of the Agreement, the Court shall determine any dispute by motion on notice to the Parties.

SECTION 13 – DETERMINATION THAT THE SETTLEMENT IS FINAL

- (1) The Settlement shall be considered final on the Effective Date.
- (2) Within ten (10) days after the Effective Date, Class Counsel shall transfer the Escrow Account to the Administrator.

SECTION 14 – RELEASES AND JURISDICTION OF THE COURT

14.1 Release of Releasees

As of the Effective Date, provided that the Settlement Amount has been deposited into the Escrow Account, the Releasers in exchange for and in consideration of the foregoing, and inasmuch as the terms and conditions of the Settlement are approved by the Court, forever and absolutely release the Releasees from the Released Claims.

14.2 No Further Claims

- (1) As of the Effective Date and provided that the Settlement Amount has been deposited into the Escrow Account, the Releasers 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 (including on behalf of any Opt-Out Party), any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.

(2) For greater certainty, the Releasors and Class Counsel acknowledge that they may subsequently discover facts adding to those they now know, but nonetheless agree that on the Effective Date, they shall have fully, definitively and permanently settled and released and discharged all claims, no matter if they were unknown, unsuspected, not disclosed, and regardless of the subsequent discovery of facts different from those they are aware of on the Effective Date. By means of the Settlement, the Releasors waive any right they might have under the law, common law, civil law, in equity or otherwise, to disregard or avoid the release and discharge of the unknown claims for any reason whatsoever and expressly relinquish any such right and each Class Member shall be deemed to have waived and relinquished such right. Furthermore, the Releasors agree to this waiver of their own volition, with full knowledge of its consequences and that this waiver was negotiated and constitutes a key element of the Settlement.

14.3 Dismissal of the Action

(1) Except as otherwise provided in the Agreement and the Approval Order, and as a condition of Settlement, the Action shall be dismissed without costs and with prejudice.

SECTION 15 – ADMINISTRATION

15.1 Appointment of the Administrator

(1) The Court will appoint the Administrator to serve until further order of the Court, to implement the Agreement and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Agreement and in the Plan of Allocation.

(2) If the Agreement is terminated, the Administrator's fees, disbursements and taxes will be fixed as set out in sections 4.1(1)(f) and 4.1(2).

(3) If the Settlement becomes final as contemplated by section 13 the Court will fix the Administrator's compensation and payment schedule.

15.2 Appointment of the Referee

(1) The Court will appoint the Referee with the powers, duties and responsibilities set out in the Agreement and the Plan of Allocation.

(2) The fees, disbursements and taxes of the Referee will be fixed by the Court and shall not exceed \$25,000, exclusive of disbursements and HST. When directed by the Court, the Administrator will pay the Referee from the Escrow Settlement Amount.

15.3 Information and Assistance from the Defendants

(1) Within thirty (30) days of the approval of the Settlement, upon request, Nevsun will authorize and direct TMX Equity Transfer Services and/or Computershare to deliver a computerized list of the names and addresses of persons who purchased Shares during the Class Period in its possession to Class Counsel and the Administrator. Upon request, Nevsun will also authorize Broadridge Financial Solutions Inc. to obtain information about Class Members who held beneficial interests in the Shares during the Class Period.

(2) Nevsun will identify a person to whom the Administrator may address any requests for information in respect of s. 15.3(1) of the Agreement. Nevsun agrees to make reasonable efforts to answer any reasonable inquiry from the Administrator in order to facilitate the administration and implementation of the Agreement and the Plan of Allocation.

(3) Class Counsel and/or the Administrator may use the information obtained in accordance with sections 15.3(1) and (2) only for the purposes of delivering the Second Notice and administering and implementing the Agreement and the Plan of Allocation.

(4) 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 the Agreement and Plan of Allocation.

15.4 Claims Process

(1) In order to seek payment from the Settlement Amount, a Class Member must submit a completed Claim Form to the Administrator, in accordance with the provisions of the Plan of Allocation, on or before the Claims Bar Deadline and, any Class Member who fails to do so shall not share in any distribution made in accordance with the Plan of Allocation unless the Court orders otherwise as provided in section 18.4.

(2) 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 thirty (30) 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 the thirty (30) day period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the Court to the contrary as provided in section 18.4, but will in all other respects be subject to, and bound by, the provisions of the Agreement and the releases contained herein.

15.5 Disputes Concerning the Decisions of the Administrator

(1) In the event that a Class Member disputes the Administrator's decision, whether in whole or in part, the Class Member may appeal the decision to the Referee in accordance with the provisions in the Plan of Allocation. The decision of the Referee will be final with no right of appeal.

(2) No action shall lie against the Defendants, the Defendants' counsel, Class Counsel, the Administrator, the Referee, or Kirwin Partners LLP for any decision made in the administration of the Agreement and Plan of Allocation without an order from the Court authorizing such an action.

15.6 Conclusion of the Administration

(1) Following the Claims Bar Deadline, and in accordance with the terms of the Agreement, the Plan of Allocation, and such further order of the Court as may be necessary, or as circumstances may require, the Administrator shall distribute the Escrow Settlement Amount to Authorized Claimants.

(2) No claims or appeals shall lie against the Defendants, the Defendants' counsel, Class Counsel, the Administrator, the Referee, or Kirwin Partners LLP based on distributions made substantially in accordance with the Agreement and the Plan of Allocation.

(3) If the Escrow Account is in a positive balance (whether by reason of tax refunds, uncashed cheques or otherwise) after one hundred eighty (180) days from the date of distribution of the Escrow Settlement Amount to the Authorized Claimants, the Administrator shall, if economically feasible, allocate such balance among Authorized Claimants in an equitable fashion up to the limit of each person's actual loss. If there is a balance in the Escrow Account after each Authorized Claimant is paid up to his/her/its actual loss, the remaining funds shall be paid *cy prés* to a recipient selected by Class Counsel and approved by the Court.

(4) Upon the conclusion of the administration, or at such other time(s) as the Court directs, the Administrator shall report to the Court on the administration and shall account for all monies

it has received, administered and disbursed and obtain an order from the Court discharging it as Administrator.

SECTION 16 – THE PLAN OF ALLOCATION

(1) The Defendants shall have no obligation to consent to but shall not oppose the Court's approval of the Plan of Allocation.

(2) Section 16(1) is not an acknowledgement by the Class or Class Counsel that the Defendants have standing to make any submissions to the Courts about the Plan of Allocation.

SECTION 17 – THE FEE AGREEMENT AND CLASS COUNSEL FEES

17.1 Motion for Approval of Class Counsel Fees

(1) At the Approval Hearing, Class Counsel shall 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. All amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount.

(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 make any submissions to the Courts concerning Class Counsel Fees.

(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 and may 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 the Agreement or affect or delay the finality of the Approval Order and the Settlement of the Action as provided herein.

17.2 Payment of Class Counsel Fees

(1) Forthwith after the Settlement becomes final, as contemplated in section 13, the Administrator shall pay to Sutts, Strosberg LLP, in trust, the Class Counsel Fees approved by the Court from the Escrow Account.

SECTION 18 – MISCELLANEOUS

18.1 Motions for Directions

(1) Any one or more of the Parties, Class Counsel, the Administrator or the Referee may apply to the Court for directions in respect of any matter in relation to the Agreement and Plan of Allocation.

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

18.2 Defendants Have No Responsibility or Liability for Administration

Except for the obligation to pay the Settlement Amount and provide the information and assistance contemplated by sections 15.3(1) and (2), the Defendants shall have no responsibility for and no liability whatsoever with respect to the administration or implementation of the Agreement and Plan of Allocation, including, without limitation, the processing and payment of claims by the Administrator.

18.3 Headings, etc.

(1) In the Agreement:

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

- (2) In the computation of time in the 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 holiday, the act may be done on the next day that is not a holiday.

18.4 Governing Law

- (1) The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- (2) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Agreement.

18.5 Entire Agreement

The Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of the Agreement, unless expressly incorporated herein. The Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment must be approved by the Court.

18.6 Binding Effect

- (1) If the Settlement is approved by the Court and becomes final as contemplated in section 13, the Agreement shall be binding upon, and enure to the benefit of the Plaintiffs, the Class Members, the Defendants, the Releasees, the Releasers 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 Releasers and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.
- (2) The person signing this Agreement represents and warrants (as applicable) that:

- (a) he/she has all requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transaction contemplated hereby on his/her own behalf;
- (b) the execution, delivery, and performance of the Agreement and the consummation of the Actions contemplated herein have been duly authorized by all necessary corporate action;
- (c) the Agreement has been duly and validly executed and delivered by him/her and constitutes legal, valid, and binding obligations; and
- (d) he/she agrees to use his/her best efforts to satisfy all conditions precedent to the Effective Date.

18.7 Survival

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

18.8 Negotiated Agreement

The Agreement and the underlying Settlement have been the subject of negotiations and many discussions among the Parties. Each of the undersigned has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of the 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, or any agreement in principle, shall have no bearing upon the proper interpretation of the Agreement.

18.9 Recitals and Schedules

- (1) The recitals and schedules to the Agreement are material and integral parts hereof and are fully incorporated into, and form part of, the Agreement.
- (2) The schedules to the Agreement are:
 - (a) Schedule “A” – Approval Order
 - (b) Schedule “B” – First Order
 - (c) Schedule “C” – First Notice

- (d) Schedule “D” – Plan of Allocation
- (e) Schedule “E” – Plan of Notice
- (f) Schedule “F” – Second Notice
- (g) Schedule “G” – Opt-Out Form
- (h) Schedule “H” – Claim Form

18.10 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or its representative has the authority to bind the Party with respect to the matters set forth herein and has read and understood the Agreement;
- (b) the terms of the Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel; and
- (c) he, she or its representative fully understands each term of the Agreement and its effect.

18.11 Authorized Signatures

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, the Agreement on behalf of the Party for whom he or she is signing.

18.12 Counterparts

The Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same Agreement, and a facsimile signature shall be deemed an original signature for purposes of executing the Agreement.

18.13 Translation

(1) The Parties acknowledge that they have required and consented that this Agreement and all related documents be prepared in English. Nevertheless, a French translation of the Agreement will be prepared, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Agreement, the English version shall govern.

18.14 Notice

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

For the Plaintiffs and Class Counsel to:

Jay Strosberg
Sutts, Strosberg LLP
Lawyers
600-251 Goyeau Street
Windsor, ON N9A 6V1

Telephone: 519.561.6285
Facsimile: 519.561.6203
Email: jay@strosbergco.com

For Nevsun Resources Ltd., Clifford T. Davis, Peter J. Hardie and Scott Trebilcock to:

Derek D. Ricci
Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Telephone: 416.367.7471
Facsimile: 416.863.0871
Email: dricci@dwpv.com

The Parties have executed the Agreement as of the date on the cover page.

Elizabeth Fricke

Nevsun Resources Ltd.

By: _____

Name
Title

Maryanne Mallinos

Clifford T. Davis

Peter J. Hardie

Scott Trebilcock

Sutts, Strosberg LLP has executed the Agreement as of the date on the cover page to signify its consent to hold the Escrow Account on the terms provided in the Agreement and to be bound by the terms of the Agreement.

Sutts, Strosberg LLP

By:

Jay Strosberg
Partner

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