

**NATIONAL MEDTRONIC DEFIBRILLATOR BATTERY  
SETTLEMENT AGREEMENT**

Made as of April 24, 2019

Between

**FRANK PETER, Mrs. BERNADETT PETER, MARK PETER,  
Ms. BERNADETT PETER, BRIAN FREDERICK FOOTE, RHONDA LYNN LO  
MONACO, ANITA PRAIN and FRANCINE NOROUZI (the “Plaintiffs”)**

- and -

**MEDTRONIC, INC. and MEDTRONIC OF CANADA LTD. (the “Defendants”)**

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## 1. PREAMBLE AND RECITALS

This Settlement Agreement is made and entered into this 24<sup>th</sup> day of April, 2019 by, and among the Plaintiffs in the Action on their own behalf and in their capacity as representative plaintiffs of the Class and the Family Class and the Defendants (as defined below and collectively referred to as “the Parties”), providing for the settlement of all claims asserted or which could have been asserted against the Defendants in the Action, pursuant to the terms and conditions set forth herein, subject to the approval of the Court as set forth herein;

**WHEREAS**, extensive arm’s length settlement negotiations have taken place between Class Counsel and counsel for the Defendants, including a mediation before the Honourable Frank Iacobucci on January 10 and 11, 2018 which was attended by Class Counsel, the representatives of the Public Health Insurers and the Defendants;

**WHEREAS**, as a result of these settlement discussions and negotiations, the Parties have entered into this Settlement Agreement, which embodies all the terms and conditions of the settlement between the Parties, subject to final approval of the Court;

**WHEREAS**, the Defendants deny any liability or wrongdoing and further deny that the Plaintiffs, Class Members, Family Class Members or Public Health Insurers have any justifiable claim for relief or that they have any liability to the Plaintiffs, Class Members, Family Class Members, or Public Health Insurers, and assert that they have numerous meritorious affirmative defences to the claims advanced in the Action;

**WHEREAS**, the Parties intend by this Settlement Agreement to resolve all past, present, and future claims of the Plaintiffs and all Class Members, Family Class Members and Public Health Insurers;

**WHEREAS**, the Parties agree that while the Public Health Insurers shall not be signatories to this Settlement Agreement, nevertheless the Settlement Agreement shall not become effective unless and until all Public Health Insurers consent to its terms in writing, as provided for in this Settlement Agreement;

**WHEREAS**, pursuant to an order dated December 6, 2007, the Action was certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6 (“CPA”) and the right of Class Members to exclude themselves from the Action under section 9 of the CPA has expired and therefore the Parties agree that Class Members may no longer opt out of the Action;

**WHEREAS**, the Defendants have agreed to pay the amount stipulated herein to settle all claims made by Class Members and Family Class Members, all subrogated and/or direct claims made by the Public Health Insurers as described herein, all administrative, adjudicative and notice costs associated with the

implementation of this Settlement Agreement and all Class Counsel fees, disbursements and applicable taxes, as may be approved by the Court;

**WHEREAS**, the Parties agree that neither this Settlement Agreement nor any document relating thereto, nor any action taken to carry out this Settlement Agreement, shall be offered in evidence in any action or proceeding or in any court, administrative agency or other tribunal in Canada or elsewhere in the world for any purpose whatsoever other than to give effect to and enforce the provisions of this Settlement Agreement or to seek court approval of the Settlement Agreement;

**WHEREAS**, the Parties agree that this Settlement Agreement shall be binding on all Class Members and Family Class Members, the Public Health Insurers and all persons who assert claims that are derivative to claims of such persons including private insurers with related claims in respect of such persons and that all such claims will be satisfied by this Settlement Agreement;

**WHEREAS**, the Plaintiffs and Plaintiffs' Counsel have concluded that this Settlement Agreement provides substantial benefits to Class Members, Family Class Members and Public Health Insurers and is fair, reasonable, and in the best interests of Class Members, Family Class Members and Public Health Insurers based on an analysis of the facts and the law as applied to the claims, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted litigation, trials and appeals, as well as the fair, cost-effective and assured method provided in the Settlement Agreement of resolving the claims of Class Members, Family Class Members and Public Health Insurers (including all related derivative and subrogated claims, including the claims of all private insurers);

**WHEREAS**, the Defendants have similarly concluded that this Settlement Agreement is desirable in order to avoid the time, risks and expense of defending protracted litigation, and to resolve finally and completely the pending and potential claims of Class Members, Family Class Members and Public Health Insurers (including all related derivative and subrogated claims);

**WHEREAS**, the Defendants do not admit through the execution of the Settlement Agreement any of the conduct alleged in the Action;

**NOW THEREFORE**, subject to Court approval, this Settlement Agreement embodies the terms of the resolution of the within action, including past, present and future claims against the Defendants by Class Members, Family Class Members and Public Health Insurers;

**IN CONSIDERATION** of the covenants, agreements and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency

of which is hereby acknowledged, the Parties, by their respective counsel,  
**AGREE AS FOLLOWS:**

## **2. DEFINITIONS**

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. Feminine pronouns and female references shall be deemed to include masculine, and vice versa, where appropriate.

2.1 **“Acknowledgment Letter”** means the letter the Claims Administrator shall send to Claimants within seven (7) days of receiving a Claim Package and shall be in the form attached as Exhibit H;

2.2 **“Action”** means the within class action commenced in the Ontario Superior Court of Justice, bearing Court File No. 05-CV-295910 CP;

2.3 **“Approval Hearing”** means the hearing at which the Parties to the Action will seek the approval of the Court of the Settlement Agreement, pursuant to section 29(2) of the CPA;

2.4 **“Approval Hearing Notice”** means the court-approved notice that advises Class Members of the Approval Hearing as more particularly detailed in Exhibit B;

2.5 **“Approval Hearing Notice Order”** means the Order of the Court in the form attached as Exhibit A hereto that appoints the Claims Administrator and approves the Approval Hearing Notice and the Notice Plan (Exhibit C) as more particularly described in Sections 3 and 4 herein;

2.6 **“Approved Claims”** shall mean the Claims of Class Members and Family Class Members that have been approved for payment(s) by the Claims Administrator pursuant to the Claims Eligibility Criteria Compensation and Administration Procedures;

2.7 **“Claim”** means a claim made by or on behalf of a Claimant for compensation pursuant to the Settlement Agreement;

2.8 **“Claimant”** means a Class Member or a Family Class Member, or the executor, administrator or personal representative of a deceased person who, had he or she not died, would have been a Class Member or Family Class Member, and who has submitted a Claim Package within the Claim Period;

2.9 **“Claim Determination Letter”** means the letter the Claims Administrator shall send to Claimants following a determination of the Claim’s eligibility and compensation value and shall be in the form attached as Exhibit J;

2.10 **“Claim Package”** means all the materials required to be submitted in order for a Claim to be considered, as defined and described more particularly in Exhibit G;

2.11 **“Claim Period”** means the one hundred and eighty (180) day period following the Effective Date or such other date as may be fixed by the Court and reflected in the Settlement Approval Notice and any related Order(s);

2.12 **“Claims Administrator”** means RicePoint Administration Inc. (“RicePoint”), whose appointment is subject to approval by the Court, along with its agents and employees and/or its successors;

2.13 **“Claims Eligibility Criteria, Compensation and Administration Procedures”** means the criteria, developed and proposed solely by Class Counsel and on which the Defendants take no position, that must be satisfied in order for a Claimant to be eligible for any of the forms of compensation available under this Settlement, along with the procedures to be followed in the submission and processing of Claims under the Settlement Agreement, as more particularly detailed in Exhibit F;

2.14 **“Class” or “Class Members”** means, for the purposes of this Settlement, all persons who were implanted in Canada with one or more of the Defibrillators and who did not opt out of the Action;

2.15 **“Class Counsel”** means the firms Rochon Genova LLP and Kim Spencer McPhee Barristers P.C. and has the same meaning as “Plaintiffs’ Counsel”;

2.16 **“Compensatory Payments”** means the amounts to be paid to Claimants with Approved Claims, the values of which shall be assessed and determined by the Claims Administrator in accordance with the Claims Eligibility Criteria, Compensation and Administration Procedures (Exhibit F), subject to any of the limitations contained therein;

2.17 **“Court”** means the Ontario Superior Court of Justice;

2.18 **“CPA”** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;

2.19 **“Day”** means calendar day as used herein for the purposes of calculating various time frames;

2.20 **“Defendants”** means Medtronic, Inc. and Medtronic of Canada Ltd.;

2.21 **“Deficiency Letter”** means the letter the Claims Administrator shall send to Claimants to advise of deficiencies in submitted Claim Packages and shall be in the form attached as Exhibit I;

2.22 **“Defibrillator”** means one of the devices set out in the chart below:

<b>Defibrillator</b>	<b>Model</b>	<b>Manufactured Before</b>
Marquis VR	7230	December 31, 2003
Marquis DR	7274	December 31, 2003
Maximo VR	7232	December 31, 2003
Maximo DR	7278	December 31, 2003
InSync Marquis	7277	December 31, 2003
InSync III Marquis	7279	December 31, 2003

2.23 **“Effective Date”** means the date of Final Court Approval;

2.24 **“Escrow Account”** means an interest bearing trust account at a Canadian Schedule 1 bank in Ontario under the control of the Claims Administrator appointed pursuant to the Approval Hearing Notice Order, in which the Settlement Amount will be held, invested, administered, and disbursed pursuant to the terms of the Settlement Agreement and the Escrow Agreement;

2.25 **“Escrow Agent”** means the Claims Administrator;

2.26 **“Escrow Agreement”** means the agreement substantially in the form attached hereto as Exhibit K by and among Class Counsel, the Claims Administrator and the Defendants with respect to the escrow of the funds to be deposited into the Escrow Account pursuant to this Settlement Agreement;

2.27 **“Escrow Settlement Funds”** means the Settlement Amount plus any interest accruing thereon;

2.28 **“Extraordinary Injury Fund”** means the portion of the Settlement Amount allocated to compensate Claimants with Approved Claims for complications arising from the premature explant/replacement of a Defibrillator as a result of the advisory/recall;

2.29 **“Extraordinary Injury Fund Award”** means the amount to be paid to a Claimant with an approved Extraordinary Injury Fund claim, the value of which shall be recommended by the Claims Administrator in accordance with the Claims Eligibility Criteria, Compensation and Administration Procedures (Exhibit F), subject to any of the limitations contained therein, and which shall be confirmed or modified by Class Counsel;

2.30 **“Family Class” or “Family Class Members”** means, for the purposes of this Settlement, all spouses, children and parents of Class Members;

2.31 **“Final Court Approval”** means the granting of the Settlement Approval Order and the expiry of any applicable appeal period arising therefrom or, if an appeal is made, the date of the final disposition of any such appeal;

2.32 **“Notice Plan”** means the plan for disseminating the Approval Hearing Notice and the Settlement Approval Notice which shall be pursuant to the protocols set out in Exhibit C or in such other form as may be agreed by the Plaintiffs and Defendants and approved by the Court;

2.33 **“Party”** means any one of the Plaintiffs or the Defendants and may be referred to herein collectively as “the Parties”;

2.34 **“Plaintiffs”** means Frank Peter, Bernadett Peter, Mark Peter, Brian Frederick Foote, Rhonda Lynn Lo Monaco, Anita Prain and Francine Norouzi;

2.35 **“Plaintiffs’ Counsel”** means the firms Rochon Genova LLP and Kim Spencer McPhee Barristers PC, and has the same meaning as “Class Counsel”;

2.36 **“Public Health Insurers”** means all of the Canadian Provincial and Territorial Ministries of Health or equivalents, and/or publicly funded plans for health care in Canada, including the Régie de l’assurance maladie du Québec, all of which shall execute and deliver a Public Health Insurer Consent and Release in the form attached hereto as Exhibit L, failing which the Settlement Agreement shall not become effective;

2.37 **“Released Claims”** means:

- (a) For all Releasors other than Public Health Insurers, any and all claims, demands, debts, obligations, damages, liabilities, actions, proceedings, loss and causes of action, including assigned claims, asserted or unasserted, direct or derivative, whether known or unknown, foreseen or unforeseen, whether accrued in whole or in part, regardless of legal theory, by Class Members, that arise from or relate to the design, manufacture, marketing, sale, distribution, labelling, use, purchase and/or implantation of the Defibrillators and all claims of Family Class Members related thereto, including, without limitation and by way of example, all claims that were or could have been brought in the Action by Class Members or by Family Class Members, all subrogated and/or direct claims in respect of Class Members that were or could have been brought by private health insurers in the Action arising from the facts alleged in the Action, and all claims for damages or remedies of whatever kind or character, that relate to the Defibrillators, including, but not limited to, claims for:



- i. personal injury and/or bodily injury, damage, death, or disease or injury, mental or physical pain or suffering, emotional or mental harm, loss of enjoyment of life;
- ii. the cost of medical care and treatment provided to Class Members and/or Family Class Members in the past and potentially in the future;
- iii. loss of wages, income, earnings, and earning capacity, medical expense, doctor, hospital, nursing and drug bills;
- iv. loss of support, services, consortium, companionship, society or affection, or damage to familial relations, by spouses, parents, children, other relatives, or “significant others” of Class Members;
- v. wrongful death and survival actions;
- vi. medical screening and monitoring;
- vii. injunctive and declaratory relief;
- viii. consumer fraud, refunds, unfair business practices, deceptive trade practices, unjust enrichment, disgorgement, unfair competition, anticompetitive conduct, and other similar claims whether arising under statute, regulation, or judicial decision;
- ix. economic or business losses;
- x. pre-judgment or post judgment interest; and,
- xi. any other incidental or consequential damages not included above; and

(b) For the Public Health Insurers, any and all manner of claims which a Public 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, marketing, sale, distribution, labelling, use, purchase and/or implantation of the Defibrillators, including, without limitation and by way of example, all subrogated and/or direct claims for the cost of medical care and treatment provided to Class Members and/or any and all claims for the costs of medical screening and monitoring provided to Class Members arising from the facts alleged in the Action, that were or could have been brought in the Action by or on behalf of the Public Health Insurers.

2.38 **“Released Parties”** means:

- a) the Defendants as well as their respective current and former parents, subsidiaries, affiliates and divisions and each of their respective current and former shareholders, officers, directors, servants, employees, lawyers, agents and insurers and each of their respective successors, predecessors and assigns;
- b) any and all manufacturers or suppliers of materials, components, technology, and services, used in the manufacture of the Defibrillators, including the labelling and packaging thereof, as well as their respective current and former

parents, subsidiaries, affiliates, and divisions, and each of their respective current and former shareholders, officers, directors, servants, employees, lawyers, agents and insurers, and each of their respective predecessors, successors and assigns.

2.39 **“Releasors”** means, jointly and severally, individually and collectively, the Plaintiffs, the Class Members, the Family Class Members and the Public Health Insurers, and their respective successors, heirs, executors, administrators, trustees and assigns;

2.40 **“Residue”** means any balance remaining in the Escrow Settlement Funds after all Claimants have been paid at their Claim’s fully assessed value, 50% of which balance shall be allocated *pari passu* among all Approved Claims and 50% of which shall be paid to Class Counsel in trust to be distributed among the Public Health Insurers on a population distribution basis;

2.41 **“Settlement”** means the proposed settlement of the Action, as defined herein, pursuant to the terms set forth in this Settlement Agreement;

2.42 **“Settlement Agreement”** means this agreement, including all Exhibits hereto;

2.43 **“Settlement Amount”** means the sum of \$3,072,000.00 in Canadian funds to be paid by the Defendants;

2.44 **“Settlement Approval Notice”** means the Court-approved notice that advises Class Members of the final Court Approval of the Settlement Agreement, and the procedure for making a Claim, as provided for in Section 5 and Exhibit E;

2.45 **“Settlement Approval Notice Date”** means the date upon which the Settlement Approval Notice is first published in any of the publications and/or social media websites identified in Exhibit C;

2.46 **“Settlement Approval Order”** means the Order of the Court that approves this Settlement Agreement, as more particularly described in Section 5 and which is attached as Exhibit D.

### 3. **ORDER APPROVING THE APPROVAL HEARING NOTICE AND APPOINTING THE CLAIMS ADMINISTRATOR**

3.1 At a time mutually agreed to by the Parties after the execution of this Settlement Agreement and following execution and delivery by all Public Health

Insurers of the Consent and Release attached hereto as Exhibit L, the Plaintiffs shall move for the Approval Hearing Notice Order from the Court.

**4. APPROVAL HEARING NOTICE**

4.1 The Approval Hearing Notice shall be in the form set out in Exhibit B and shall be disseminated pursuant to the relevant provisions of the Notice Plan outlined in Exhibit C or in such other form as may be agreed by the Plaintiffs and Defendants and approved by the Court.

4.2 The costs of disseminating the Approval Hearing Notice in accordance with the Notice Plan shall be paid from the Settlement Amount.

4.3 The Claims Administrator shall collect all written objections to the Settlement received prior to the deadline set out in the Approval Hearing Notice and shall file all such objections with the Court and provide copies to Class Counsel and Counsel for the Defendants upon receipt.

**5. ORDER APPROVING THE SETTLEMENT AGREEMENT**

5.1 Following dissemination of the Approval Hearing Notice, the Plaintiffs shall move for the Settlement Approval Order from the Court.

**6. SETTLEMENT AGREEMENT EFFECTIVE**

6.1 This Settlement Agreement shall become effective on the Effective Date, unless otherwise expressly provided herein.

**7. SETTLEMENT BENEFITS**

7.1 Pursuant to this Settlement Agreement, and subject to its terms and conditions, including approval by the Court, the Defendants agree to pay the Settlement Amount in full and final settlement of the Released Claims, contingent upon the dismissal with prejudice of the Action.

7.2 The Settlement Amount shall be all-inclusive and the Defendants shall have no obligation to pay any amount in addition to the Settlement Amount.

7.3 After Final Court Approval, the following benefits and expenses shall be paid from the Settlement Amount:

- (a) all Compensatory Payments and all Extraordinary Injury Fund Awards to eligible Claimants, including any additional payments that may be made in the event that there is a Residue, as provided for in Section 8;

- (b) payment of \$500,000.00 CDN, to be distributed on a population distribution basis among the Public Health Insurers, as well as any additional payments that may be made in the event that there is a Residue, as provided for in Section 8;
- (c) payment of \$10,000.00 CDN each as honourarium to Frank Peter, Brian Foote, Francine Norouzi and Rhonda Lynn Lo Monaco;
- (d) all costs associated with implementing the Notice Plan as approved by the Court;
- (e) all costs associated with the administration of the Settlement as approved by the Court; and
- (f) Class Counsel fees, disbursements and all applicable taxes as may be approved by the Court.

## **8. PAYMENT SCHEDULE**

8.1 The Defendants shall, within thirty (30) days after execution of this Settlement Agreement, pay the Settlement Amount to Stikeman Elliott LLP in trust, pending execution and delivery to Class Counsel and the Defendants by all Public Health Insurers of the Consent and Release attached hereto as Exhibit L and pending Court approval and appointment of the Claims Administrator pursuant to the terms of the Approval Hearing Notice Order. Within fifteen (15) days of issuance of the Approval Hearing Notice Order by the Court, and following execution of the Escrow Agreement, the Defendants shall direct Stikeman Elliott LLP to pay the Settlement Amount to the Claims Administrator who shall hold the Settlement Amount in the Escrow Account in accordance with the terms of the Escrow Agreement. No amount shall be paid out of the Escrow Account except in accordance with this Settlement Agreement.

8.2 The costs associated with disseminating the Approval Hearing Notice and the costs associated with translating the Settlement Agreement not to \$150,000.00 CDN as approved by the Court may be paid from the Escrow Settlement Funds prior to the Effective Date.

8.3 After the Effective Date, the Claims Administrator shall pay from the Escrow Settlement Funds:

- a) The honouraria payable to Frank Peter, Brian Foote, Francine Norouzi and Rhonda Lynn Lo Monaco, as approved by the Court;

- b) \$500,000 to Class Counsel in trust to be distributed among the Public Health Insurers in accordance with directions from the Public Health Insurers for doing so;
- c) The costs of disseminating the Settlement Approval Notice in accordance with the terms of the Notice Plan as approved by the Court;
- d) The costs of administering the Settlement, as approved by the Court; and
- e) Class Counsel's fees, disbursements and applicable taxes as approved by the Court.

8.4 After making the payments set out in Sections 8.2 and 8.3, the Claims Administrator shall use the remaining balance of the Escrow Settlement Funds for Compensatory Payments, Extraordinary Injury Fund Awards, and the distribution of Residue, if any, in accordance with Section 8.6 and in accordance with the Claims Eligibility Criteria, Compensation and Administration Procedures, as set out in Exhibit F. The amount notionally allocated to pay all Compensatory Payments shall be 80% of the balance remaining in the Escrow Settlement Funds and the amount notionally allocated to pay all Extraordinary Injury Fund Awards shall be 20% of the balance remaining in the Escrow Settlement Funds.

8.5 Within ninety (90) days following the final adjudication of all submitted Claims, on notice to all Parties, the Claims Administrator shall distribute Compensatory Payments and Extraordinary Injury Fund Awards to all Claimants with Approved Claims, subject to any *pro rata* reductions as may be required based on the number and value of all Approved Claims and the money remaining from the Escrow Settlement Funds.

8.6 In the event that, after all Claimants have been paid at their Claim's fully assessed value, money remains in the Escrow Settlement Funds, 50% of the Residue shall be allocated *pari passu* among all Approved Claims and 50% shall be paid to Class Counsel in trust for the benefit of the Public Health Insurers, to be distributed among the Public Health Insurers on a population distribution basis.

8.7 After making the payment set out in Section 8.2, the Defendants shall have no responsibility whatsoever for the allocation or distribution of the Settlement Amount and shall not be responsible or otherwise liable for any disputes relating to the amounts allocated, the distribution of fees, costs or awards.

## **9. WAIVER OF LIMITATION DEFENCE**

9.1 Subject to Court approval, for the purposes of making a Claim under this Settlement Agreement, no Claimant shall be considered ineligible to receive Compensatory Payment on the basis of any statute of limitation, prescription

period or any other limitation or prescription defence, including tolling of any applicable statute of limitation.

## **10. ROLE OF CLAIMS ADMINISTRATOR**

10.1 The Claims Administrator must sign, and any person appointed to assist in the administration of the Settlement Agreement must adhere to the terms of the Escrow Agreement substantially in the form attached hereto as Exhibit K to govern the holding of the Settlement Amount pending Final Court Approval and must also sign a confidentiality statement, in a form satisfactory to the Plaintiffs and Defendants, by which they agree to keep confidential any information concerning Claimants, Class Members, Family Class Members, Public Health Insurers and the Defendants, and the Claims Administrator shall institute and maintain procedures to ensure that the identity of all Claimants, Class Members, Family Class Members and all information regarding their Claims and submissions will be kept strictly confidential and will not be provided to any person except as may be provided for in this Settlement Agreement or as may be required by law.

10.2 The Claims Administrator shall be required to administer all monies payable under the Settlement Agreement, as provided for herein, and to process all Claim Packages and adjudicate all Claims in accordance with this Settlement Agreement.

10.3 The Claims Administrator shall invest all funds in its possession under this Settlement Agreement pursuant to the investment standards and authorized investments provided for in Section 27 of the *Trustee Act* R.S.O. 1990, c. T.23 with a Chartered Canadian Bank.

10.4 All interest earned on the Settlement Amount, once paid by the Defendants to the Claims Administrator, shall be added to and treated in the same manner as the Settlement Amount. All taxes payable on any interest which accrues in relation to the Settlement Amount shall be paid by the Claims Administrator from the Settlement Amount as may be required by law. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Settlement Amount and shall be responsible for any and all tax reporting and payment requirements arising from this Settlement, including all interest income earned by the Settlement Amount, all such tax payments to be made by the Claims Administrator from the Settlement Amount.

10.5 Subject to Section 10.6, all taxes payable on any interest which accrues on or otherwise in relation to the Settlement Amount in the Escrow Account shall be the responsibility of the Class. The Claims Administrator shall be responsible for fulfilling all tax reporting and payment requirements arising from the Escrow Settlement Funds in the Escrow Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and

penalties) due with respect to the income earned by the Escrow Settlement Funds shall be paid from the Escrow Account.

10.6 The Defendants shall have no responsibility to make any filings relating to the Escrow Account, to pay tax on any income earned by the Settlement Amount, or to pay any taxes on the monies in the Escrow Account, unless this Settlement Agreement is terminated, in which case any interest earned on the Settlement Amount in the Escrow Account shall be paid to the Defendants who, in such case, shall be responsible for the payment of any taxes on such interest.

10.7 The Claims Administrator shall offer services in both French and English.

10.8 Subject to its duties herein, the Claims Administrator shall report quarterly to Class Counsel the number of Claim Packages received in that quarter, as well as the name, address, telephone number, fax number (if any) and e-mail address (if any) of all Class Members who have filed Claim Packages and the decision made in respect of each Claim, and when deemed necessary by the Claims Administrator or Class Counsel, special meetings may be called, on reasonable notice to all Parties. The Claims Administrator shall report quarterly to Defendants' counsel on the number of Claims received and the decision made in respect of each Claim.

10.9 The Claims Administrator shall be subject to removal by the Court for cause, on a motion by any Party on reasonable notice to all other Parties and the Claims Administrator.

10.10 In the event that the Claims Administrator is unable to continue to act for any reason, the Plaintiffs and Defendants shall propose a substitute claims administrator, whose appointment shall be subject to the approval of the Court.

10.11 The Claims Administrator shall determine the eligibility of all Claims submitted by or on behalf of Class Members and shall determine the amounts payable in respect of all Approved Claims, which shall be confirmed or modified by Class Counsel, all in accordance with the Claims Eligibility Criteria, Compensation and Administration Procedures. All decisions of the Claims Administrator, as confirmed or modified by Class Counsel, shall be final and not subject to review.

## **11. PAYMENTS TO AND RELEASE BY PUBLIC HEALTH INSURERS**

11.1 All payments made under this Settlement Agreement shall be full and final and include all obligations, payments or costs potentially payable to the Public Health Insurers in relation to all costs of insured health care services provided by the Public Health Insurers to all Class Members related to the Released Claims.

11.2 In order for this Settlement Agreement to become effective, each Public Health Insurer must execute and deliver to Class Counsel a Public Health Insurer Consent and Release in the form attached hereto as Exhibit L.

## **12. RELEASE OF CLAIMS, COVENANT NOT TO SUE AND DISMISSAL OF ACTION**

12.1 Upon the Effective Date, the Releasors shall be deemed to and do hereby forever and absolutely release and discharge the Released Parties from the Released Claims and for the consideration provided herein, the Releasors agree not to make any claim or take or continue any proceedings arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity (including, without limitation, any health care professionals, health care providers or health care facilities) which might claim damages and/or contribution and indemnity and/or other relief under the provisions of the Negligence Act or other comparable provincial legislation and any amendments thereto, the common law, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Released Parties.

12.2 The Releasors shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim proceeding complaint or demand against or collect or seek to recover from any Released Party and agree to indemnify and hold forever harmless the Released Parties for any current or future claims including without limitation, claims related to liens and claims for subrogation, contribution or indemnification, including the costs of defence, that such Releasors may seek to pursue in the future, arising from or relating in any way to the Released Claims.

12.3 Without limiting any other provision herein, each Class Member and Family Class Member, whether or not he or she submits a claim, will be deemed by the Settlement Agreement completely and unconditionally to have released and forever discharged the Released Parties from all Released Claims.

12.4 As of the Effective Date, the Action against the Defendants shall be dismissed with prejudice and without costs, as set out in the Settlement Approval Order.

## **13. TERMINATION**

13.1 This Settlement Agreement shall automatically terminate if (i) the Public Health Insurer Consent and Release is not executed and delivered to Class Counsel and the Defendants by all Public Health Insurers, (ii) the Court does not issue the Settlement Approval Order in substantially the form attached as Exhibit



D, (iii) the Settlement Approval Order is materially modified on appeal, (iv) Final Court Approval is not granted or (v) the Court declines to dismiss the Action against the Defendants.

13.2 This Settlement Agreement may be terminated by the Defendants if the form and content of the Approval Hearing Notice or Settlement Approval Notice approved by the Court departs in a material respect from the form and content agreed upon by the Plaintiffs and Defendants and attached as Exhibits B and E.

13.3 Any order, ruling or determination made by the Court with respect to Class Counsel Fees or the Claims Eligibility Criteria, Compensation and Administration Procedures set out in Exhibit F shall not be deemed to be a material modification of all, or part of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

13.4 In the event this Settlement Agreement is terminated in accordance with its terms:

- (a) the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement;
- (b) this Settlement Agreement shall be null and void and will have no further force and effect and no effect on the rights of the Parties except as specifically provided for herein;
- (c) this Settlement Agreement, and all negotiations, statements and proceedings relating to this Settlement Agreement shall be without prejudice to the rights of all Parties, all of whom shall be restored to their respective positions existing immediately before this Settlement Agreement;
- (d) the Claims Administrator shall provide an accounting and shall return to the Defendants the Escrow Settlement Funds including interest, less any amounts expended for translation or dissemination of notice within thirty (30) days of Final Court Approval not being granted or on receiving notice of termination of the Settlement Agreement signed by Class Counsel and Counsel for the Defendants or upon any order of the Court;
- (e) the Parties agree that whether or not it is approved by Court, this Settlement Agreement and the fact of its negotiation and execution shall not constitute any admission by the Defendants or be used against the Defendants for any purpose in this or any other proceeding in Canada or elsewhere in the world and, without limiting the generality of the foregoing, this Settlement Agreement and the fact of its negotiation and execution shall not constitute an admission or be used by anyone (whether or not a party to these proceedings) in an effort to establish any of the

alleged facts, the jurisdiction of the Canadian courts over any foreign party or the certification of these or other proceedings in any province.

13.5 If this Agreement is terminated, the provisions of Sections 13, 15, 16.4 and 16.5 and the Definitions applicable thereto, shall survive termination and shall continue in full force and effect.

#### **14. CLASS COUNSEL'S FEES AND DISBURSEMENTS**

14.1 Concurrently with the Settlement Approval Hearing, Class Counsel shall seek approval of their fees, disbursements and applicable taxes in accordance with the retainer agreements with the Plaintiffs.

#### **15. NO ADMISSION OF LIABILITY**

15.1 The Parties agree that, whether or not this Settlement Agreement is finally approved or 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 deemed, construed, or interpreted to be an admission of any violation of any statute or law, or any wrongdoing or liability by the Released Parties, or the truth of any of the claims or allegations made in the Action.

#### **16. MISCELLANEOUS PROVISIONS**

##### **16.1 Amendments to the Settlement Agreement**

(a) Where the Parties agree that an amendment is necessary to the Settlement Agreement, a motion may be brought on consent to the Court for the purpose of approving said amendment to the terms of this Settlement Agreement.

##### **16.2 Construction of Agreement**

(a) Except as set out herein with respect to the Claims Eligibility Criteria, Compensation and Administration Procedures, this Settlement Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

(b) The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

### 16.3 Entire Agreement

(a) This Settlement Agreement, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all prior understandings, representations, negotiations, discussions, and agreements, either oral or written, which may have occurred prior to the execution of this Settlement Agreement. There are no other representations between the Parties in connection with the subject matter of this Settlement Agreement except as specifically set forth herein and none have been relied upon by the Parties in entering into this Settlement Agreement.

### 16.4 Ongoing Authority

(a) Following Final Court Approval, the Court will retain exclusive jurisdiction over the Action, and over all Parties named or described herein, as well as all Class Members and Family Class Members, the Public Health Insurers and the Claims Administrator.

(b) Following Final Court Approval, the Court will also retain exclusive jurisdiction over this Settlement Agreement to ensure that all payments and disbursements are properly made, and to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

### 16.5 Applicable Law

(a) The laws of Ontario shall govern this Settlement Agreement.

### 16.6 Communication with Class Members

(a) All written communications from the Claims Administrator to Class Members shall be made by regular mail and email where available to such Class Member's last mailing address provided by the Class Member to the Claims Administrator. Class Members shall keep the Claims Administrator apprised of their current mailing address.

### 16.7 Confidentiality of and Access to Class Member Information

(a) Any information provided by or regarding a Class Member or otherwise obtained pursuant to this Settlement Agreement shall be kept strictly confidential and shall not be disclosed, except to appropriate persons to the extent necessary to process claims, and/or to provide benefits under this Settlement Agreement, or as otherwise expressly provided in this Settlement Agreement. All Class Members shall be deemed to have consented to the disclosure of all this information for these purposes.

(b) Class Counsel shall have access to all information maintained by the Claims Administrator regarding Class Members, and the processing and payment of claims.

#### 16.8 Notices

(a) All communications to be provided pursuant to or in connection with this Settlement Agreement shall be in writing and shall be delivered personally or sent by overnight delivery service, costs prepaid to the Parties at the addresses set forth below, or to such other individuals and addresses as Class Counsel or the Defendants may designate from time to time.

**If to Class Counsel:**

**ROCHON GENOVA LLP**

Barristers – Avocats  
121 Richmond Street West – Suite 900  
Toronto, Ontario M5H 2K1  
Attention: Joel P. Rochon

-and-

**KIM SPENCER MCPHEE BARRISTERS P.C.**

9 Prince Arthur Ave.  
Toronto, ON M5R 1B2  
Attention: Aris Gyamfi

**If to the Defendants' Counsel:**

**STIKEMAN ELLIOTT LLP**

5300 Commerce Court West - 199 Bay Street  
Toronto, ON M5L 1B9

Attention: Patrick O'Kelly and Danielle Royal

#### 16.9 Binding Effect

(a) Upon the Effective Date, this Settlement Agreement shall be binding upon, and inure to the benefit of, the Plaintiffs, the Class Members, the Family Class Members, the Public Health Insurers, the Releasers, the Defendants, the Released Parties, Class Counsel and the Claims Administrator.

#### 16.10 Confidentiality

(a) The Parties agree that no public statements shall be made regarding the Action or its settlement which are in any way inconsistent with the terms of the Settlement Agreement. In particular, the Parties agree that any public statements regarding these Proceedings will indicate clearly that the settlement has been negotiated, agreed and approved by the Ontario Court without any admissions or findings of liability or wrongdoing, and without any admissions or conclusions as to the truth of any of the facts alleged in the Proceedings, all of which are specifically denied.

(b) The Parties and their counsel agree that when commenting publicly on the cases settled pursuant to this Settlement Agreement, they shall not comment in a manner that disparages any Party and, except as may be required by law or for the Defendants to meet their business needs, decline to comment in a manner that reveals anything said during the settlement negotiations.

#### 16.11 French Translation

(a) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English. Les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en Anglais. A French translation of this Settlement Agreement and applicable notices shall 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 Settlement Agreement, only the English version shall govern.

#### 16.12 Interpretation of Agreement

(a) All disputes relating to the proper interpretation of this Settlement Agreement shall be resolved by application to the Court.

#### 16.13 Canadian Dollars

(a) All dollar amounts set forth in this Settlement Agreement are expressed in Canadian dollars.

#### 16.14 Execution and Processing of Settlement Agreement

(a) The Parties and their respective counsel shall expeditiously do all things as may be reasonably required to give effect to this Settlement Agreement.

(b) The Parties agree that this Settlement Agreement may be executed by their respective counsel.

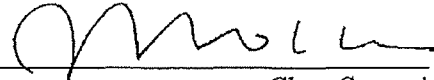
(c) The Parties agree that this Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original for all purposes and executed counterparts taken together shall constitute the complete Settlement Agreement.

Date:

24 April 2019

ROCHON GENOVA LLP

per:



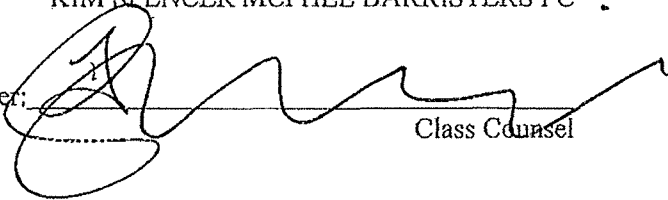
Class Counsel

Date:

April 24/19

KIM SPENCER MCPHEE BARRISTERS PC

per:



Class Counsel

Date:

STIKEMAN ELLIOTT LLP

per:

\_\_\_\_\_

Counsel for the Defendants

(c) The Parties agree that this Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original for all purposes and executed counterparts taken together shall constitute the complete Settlement Agreement.

Date:

ROCHON GENOVA LLP

per: \_\_\_\_\_  
Class Counsel

Date:

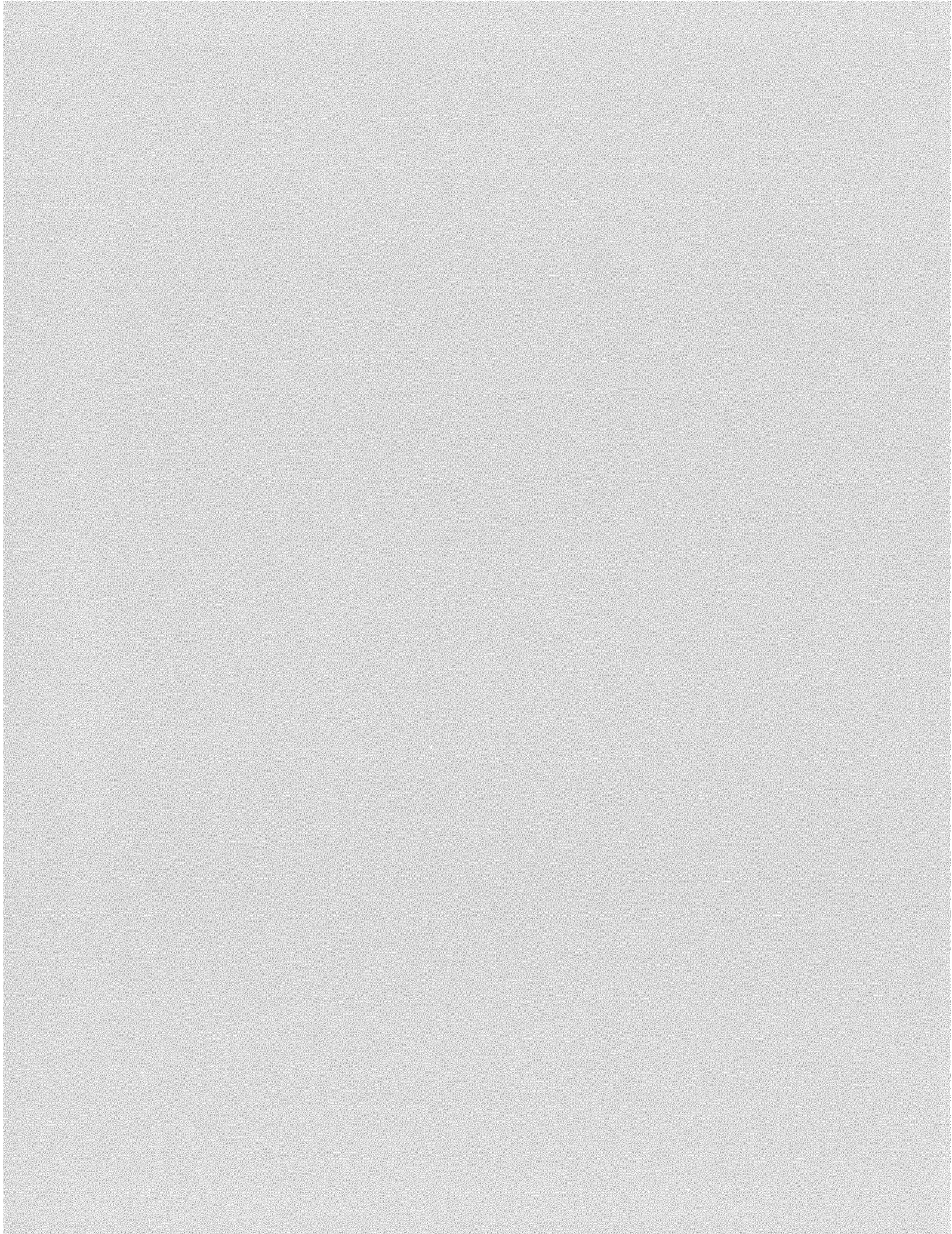
KIM SPENCER MCPHEE BARRISTERS PC

per: \_\_\_\_\_  
Class Counsel

Date: *April 24, 2019*

STIKEMAN ELLIOTT LLP

per: \_\_\_\_\_  
*[Signature]*  
Counsel for the Defendants





**EXHIBIT "A"**

Court File No. 05-CV-295910 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) DAY, THE DAY OF  
MR. JUSTICE GLUSTEIN ) , 2019

BETWEEN:

**FRANK PETER, Mrs. BERNADETT PETER, MARK PETER,  
Ms. BERNADETT PETER, BRIAN FREDERICK FOOTE, RHONDA LYNN LO  
MONACO, ANITA PRAIN, FRANCINE NOROUZI  
and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA as  
represented by the Minister of Health and Wellness**

Plaintiffs

- and -

**MEDTRONIC, INC. and  
MEDTRONIC OF CANADA LTD.**

Defendants

**Proceeding under the *Class Proceedings Act, 1992***

**ORDER**

**THIS MOTION** made by the Plaintiffs, on consent of the Defendants and Her Majesty the Queen in Right of the Province of Alberta as represented by the Minister of Health and Wellness, for an Order approving the form and content of the Approval Hearing Notice and

approving the method of dissemination of the Approval Hearing Notice (the “Notice Plan”) was heard on **DATE, 2019**, at the Court House, Osgoode Hall, 130 Queen St. W., Toronto, Ontario.

**ON READING** the material filed, including the Settlement Agreement entered into between the Parties hereto and dated April 24, 2019, a copy of which is attached to this Order as Schedule “A” (the “Settlement Agreement”), on hearing submissions of counsel for the Plaintiffs and counsel for the Defendants and on being advised that the Plaintiffs, the Defendants and the Public Health Insurers consent to this Order:

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

**2. THIS COURT ORDERS** that at the Approval Hearing, to be held on **DATE, 2019**, beginning at **TIME**, at Osgood Hall, 130 Queen St. W., Toronto, Ontario, this Court will be asked to decide:

- a) Whether to approve the Settlement Agreement as fair, reasonable and in the best interests of the Class Members and Family Class Members;
- b) Whether Class Counsel’s application for fees, disbursements and applicable taxes should be granted; and
- c) Any other matters as the Court may deem appropriate.

3. **THIS COURT ORDERS** that the form of the Approval Hearing Notice, as set forth in Exhibit “B” to the Settlement Agreement and attached hereto as Schedule “B” is hereby approved.

4. **THIS COURT ORDERS** that the Approval Hearing Notice shall be published and disseminated in accordance with the Notice Plan, as set forth in Exhibit “C” to the Settlement Agreement and attached hereto as Schedule “C”.

5. **THIS COURT ORDERS** that the form and manner of notice as set out in the Approval Hearing Notice and the Notice Plan as approved herein is the best notice practicable under the circumstances, constitutes sufficient notice to all persons entitled to notice, and satisfies the requirements of notice under sections 17 and 19 of the *Class Proceedings Act*.

6. **THIS COURT ORDERS** that the costs associated with disseminating the Approval Hearing Notice and various pre-approval administration costs shall be paid from the Escrow Settlement Funds in accordance with the terms of the Settlement Agreement.

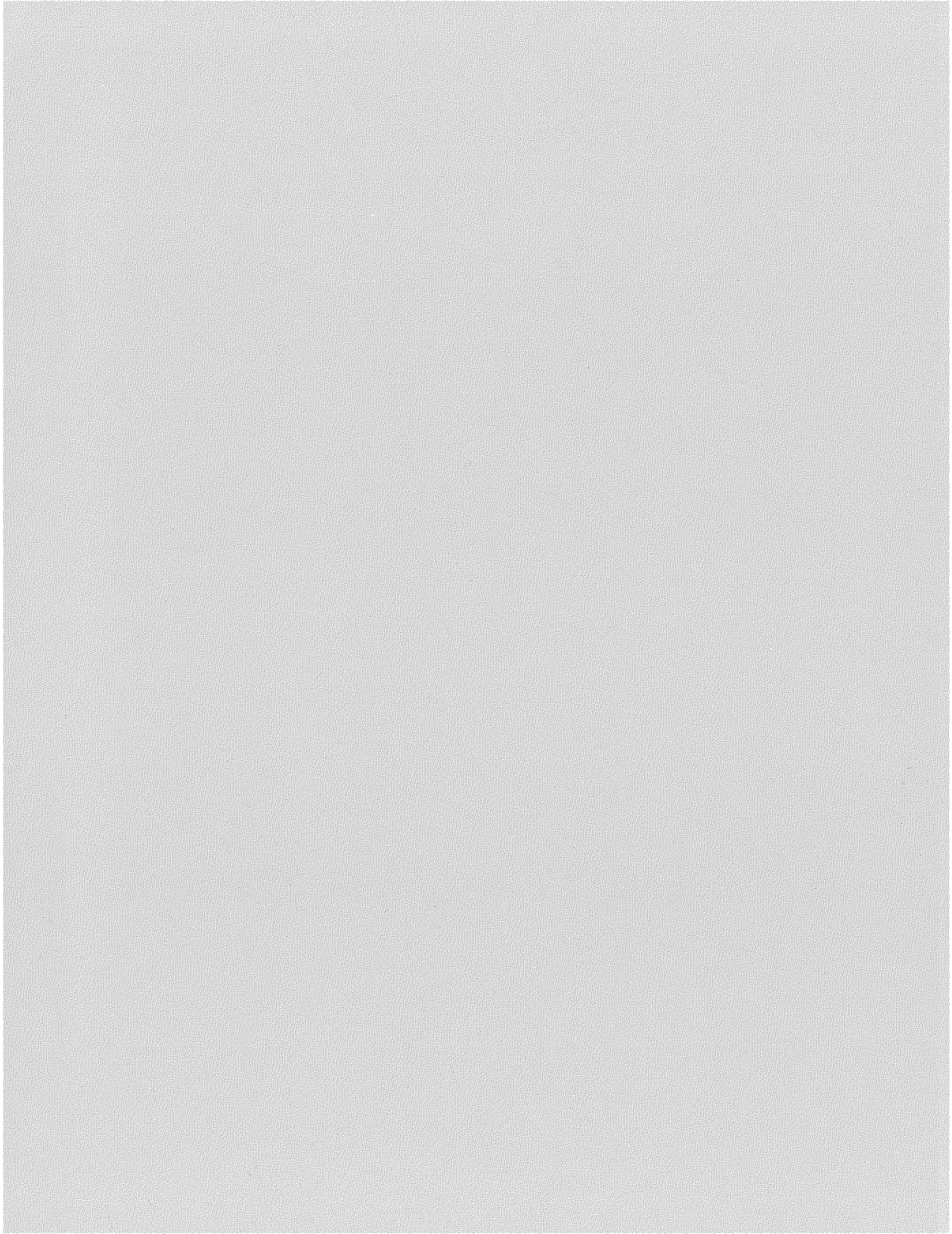
7. **THIS COURT ORDERS** that the date and time of the Approval Hearing shall be set forth in the Approval Hearing Notice, but shall be subject to adjournment by the Court without further notice other than that which may be posted at the settlement website ([www.medtronicdefibsettlement.ca](http://www.medtronicdefibsettlement.ca)).

8. **THIS COURT ORDERS** that Class Members who wish to file with the Court an objection or comment on the Settlement or the request for approval of Class Counsel Fees shall deliver a written statement to the Claims Administrator, at the address indicated in the Approval Hearing Notice no later than **[date]**, 2019.

9. **THIS COURT ORDERS** that RicePoint Administration Inc. shall be appointed as Escrow Agent and Claims Administrator to hold the Settlement Amount in escrow in accordance with the terms of the Settlement Agreement and Escrow Agreement and for the coordination of the Approval Hearing Notice, administration of objections and related tasks, including establishing a website for purposes of posting the Approval Hearing Notice, the Settlement Agreement and related documents, all pursuant to the terms of the Settlement Agreement.

10. **THIS COURT ORDERS** that any party affected by this Order may apply to the court for further directions.

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# NOTICE OF SETTLEMENT APPROVAL HEARING FOR CANADIAN MEDTRONIC DEFIBRILLATORS CLASS ACTION

**PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS**

## WHO IS THIS NOTICE FOR?

This Notice is directed to Canadians who are Class Members in a Class Action related to certain Defibrillators manufactured by Medtronic, Inc. and/or Medtronic of Canada Ltd. The Class Action includes all persons who were implanted in Canada with one of the following Medtronic Defibrillators ("the Defibrillators"):

Defibrillator	Model	Manufactured Before
Marquis VR	7230	December 31, 2003
Marquis DR	7274	December 31, 2003
Maximo VR	7232	December 31, 2003
Maximo DR	7278	December 31, 2003
InSync Marquis	7277	December 31, 2003
InSync III Marquis	7279	December 31, 2003

The Canada-wide class action lawsuit alleges that the Defendants were negligent in the design and manufacturing of the Defibrillators. On December 6, 2007, the Ontario Superior Court of Justice (the "Court") certified the Defibrillator Class Action as a class proceeding and the time to opt out of this action has passed.

The parties in the Class Action have reached a proposed settlement ("the Settlement"), subject to approval of the Court. This notice provides a summary of the proposed settlement.

## WHAT IS THE PROPOSED SETTLEMENT?

The proposed Settlement provides for the creation of a \$3.072 million (CDN) Settlement Fund which will be used to pay Approved Claims, \$500,000.00 towards the claims of the Public Health Insurers, as well as the costs of notice and administration, representative plaintiff honouraria and Court-approved Class Counsel Legal Fees, disbursements and taxes.

If the Settlement is approved, and subject to the total number of Approved Claims, payments of up to \$5,000 will be made to Class Members who establish that they had their Defibrillator explanted prematurely as a result of an advisory that was issued in February, 2005. Further compensation may be paid to Class Members who suffered from certain complications following the explant surgery. The quantum of compensation will depend on the total number of Approved Claims and all payments will be inclusive of all Family Class Members' claims.

Not all Class Members will be eligible for compensation. If money remains in the Settlement Amount after the payment of all Approved Claims, the payment to the Public Health Insurers, the costs of notice and administration, representative plaintiff honouraria and Class Counsel Fees, disbursements and applicable taxes, the balance will be split on a 50/50 basis between Class Members with Approved Claims and the Public Health Insurers.

## FOR MORE INFORMATION:

RicePoint Administration Inc. has been appointed by the Court as the Claims Administrator for various pre-approval purposes and will be proposed as the Claims Administrator for the Settlement. If you have questions about the Settlement and/or would like to obtain more information and/or copies of the Settlement Agreement and related documents, please visit the settlement website at: [www.medtronicdefibsettlement.ca](http://www.medtronicdefibsettlement.ca) or contact the Claims Administrator at:

RicePoint Administration Inc.

ADDRESS

E-MAIL

1-888-xxx-xxxx

## THE PROPOSED SETTLEMENT REQUIRES COURT APPROVAL

In order for the Settlement to become effective, it must be approved by the Court, which must be satisfied that the Settlement is fair, reasonable and in the best interests of Class Members. The Approval Hearing has been scheduled as follows:

**DATE, 2019 at TIME at LOCATION, Toronto, Ontario.**

## OBJECTING TO THE PROPOSED SETTLEMENT AND OPPORTUNITY TO APPEAR

If you wish to object to the proposed Settlement, you must submit a written objection to the Claims Administrator by **no later than DATE, 2019** at the address listed in this Notice. The Claims Administrator will file copies of all objections with the Court. **Do NOT send an objection directly to the Court.** You may also attend the hearing on the date noted above, and if you have submitted a written objection to the Claims Administrator, you may make oral submissions to the Court.

## PARTICIPATING IN THE SETTLEMENT

If the proposed Settlement is approved by the Court, Claimants will have a limited amount of time within which to submit a claim for compensation. Downloadable versions of the Claim Packages are now available online at [www.medtronicdefibsettlement.ca](http://www.medtronicdefibsettlement.ca). Claim Packages can also be requested from the Claims Administrator. If you intend to submit a claim under the proposed Settlement, you must do so on or before the expiry of the Claim Period, which will be posted on the Claims Administrator's website.

## WHO REPRESENTS ME? CLASS COUNSEL ARE:

Rochon Genova LLP  
Barristers • Avocats  
900-121 Richmond St. W.  
Toronto, ON M5H 2K1  
Joel P. Rochon  
Tel: (416) 363-1867  
Fax: (416) 363-0263  
[jrochon@rochongenova.com](mailto:jrochon@rochongenova.com)

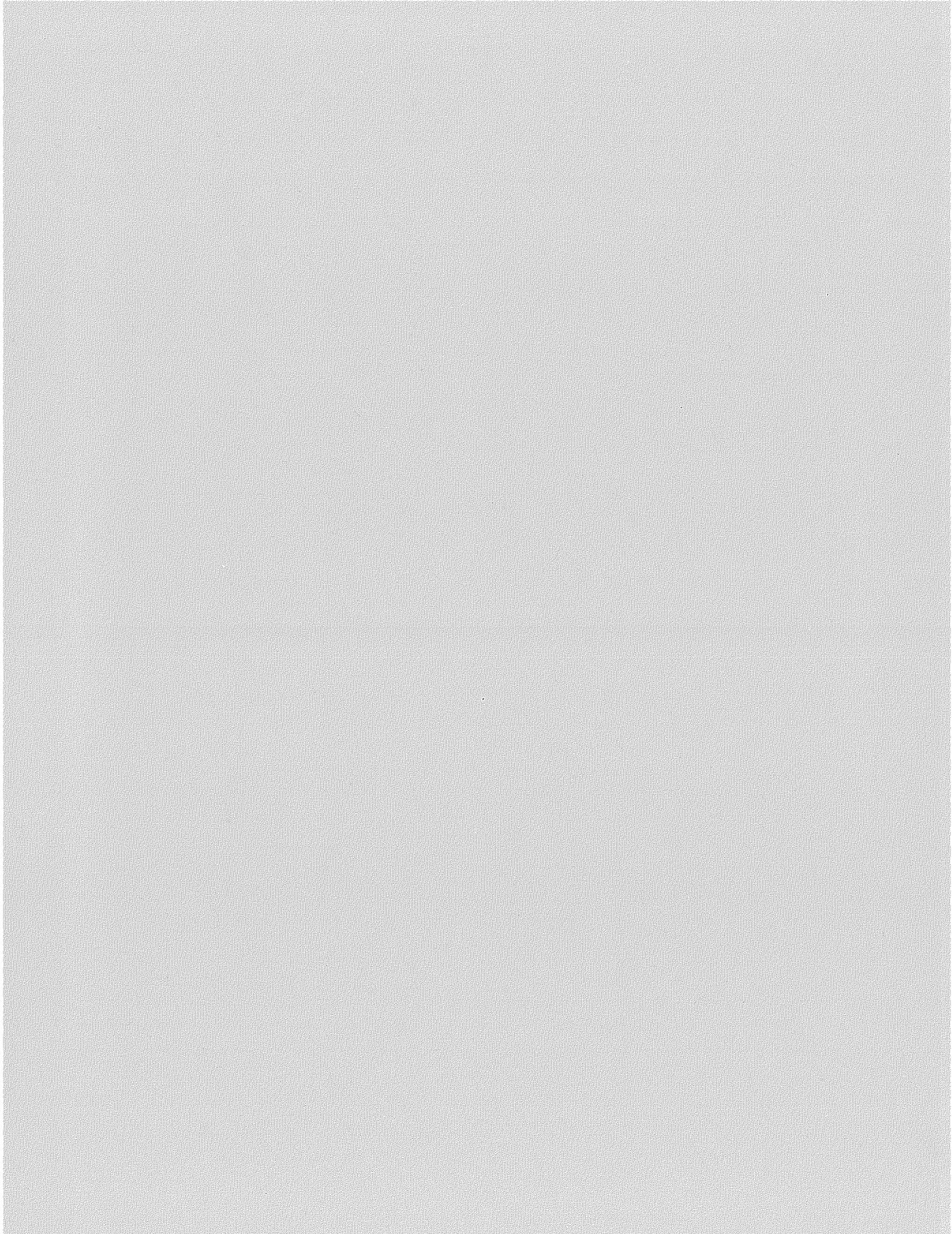
Kim Spencer McPhee  
Barristers PC  
9 Prince Arthur Ave.  
Toronto, ON. M5R 1B2  
Aris Gyamfi  
Tel: (416) 596-1414  
Fax: (416) 598-0601  
[ag@complexlaw.ca](mailto:ag@complexlaw.ca)

## LEGAL FEES

At the Approval Hearing, Class Counsel will request approval for payment of their fees, disbursements and applicable taxes. Class Counsel has pursued this lawsuit on a contingency basis and will seek approval from the Court for such payment in accordance with the terms of their 30% retainer agreements with the representative plaintiffs and payment of fees as agreed to with the Public Health Insurers.

*This Notice has been approved by the Ontario Superior Court of Justice*





## **CANADIAN MEDTRONIC DEFIBRILLATORS CLASS ACTION NOTICE PLAN**

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### **OBJECTIVE:**

To effect fair, reasonable and adequate notice to Class Members of the Approval Hearing in the Medtronic Defibrillators Class Action that will seek the Court's approval of a proposed Settlement Agreement and of the Court's approval of same if/when granted.

Reasonable notification entails:

- Achieving broad reach of the target group
- In all regions of the country
- In English and French

All communications will comply with the provisions of the Class Proceedings legislation (the *Class Proceedings Act, 1992*, SO 1992, c.6).

### **COMMUNICATIONS OBJECTIVES:**

The objectives of this notice program are:

- To advise Class Members of the proposed Settlement Agreement;
- To advise Class Members of the Approval Hearing relating to the proposed Settlement Agreement and of their right to object to the approval of the Settlement Agreement;
- To advise Class Members of the benefits available under the proposed Settlement Agreement and the actions they must take either to object to the Settlement Agreement or submit a claim; and
- If the Court approves the Settlement Agreement, to provide Class Members with notice of such approval as well as all relevant information and deadlines for participating in the Settlement.



## **COMMUNICATIONS STRATEGY:**

A combination of direct mail, including mailings to known Class Members and to Canadian cardiologists and electrophysiologists, paid advertising in print and digital media and publicity (press releases) will be used in an effort to reach as large a percentage of Class Members as feasible.

Planned communications include:

### **1. Approval Hearing Notice**

- Direct mailing by the Claims Administrator to all known Class Members, enclosing a copy of the Approval Hearing Notice, to be delivered by e-mail where such addresses are known and by regular mail otherwise, with follow-up (best efforts) for any undeliverable e-mails and/or returned mail;
- A further direct mailing by the Claims Administrator to all cardiologists and electrophysiologists in Canada with a request that they bring the notice to the attention of their affected patients;
- The Approval Hearing Notice will be published in national and regional newspapers in English and French, in accordance with Schedule “A” to this Notice Plan;
- Paid search engine advertising;
- The Approval Hearing Notice will also be posted in both English and French by Class Counsel on Class Counsel’s respective websites and on the website to be created by the Claims Administrator for the purpose of the Settlement Agreement, which dedicated website will provide further information about the Settlement Agreement, including the settlement documents, downloadable forms and will facilitate communication with the Claims Administrator;
- Press release, to be issued in English and French via Canada News Wire advising of the proposed Settlement Agreement and the details of the Approval Hearing;

### **2. Settlement Approval Notice**

- If the Settlement Agreement is approved by the Court, the Settlement Approval Notice will be mailed to all known Class Members, all Canadian cardiologists

and electrophysiologists and will be posted on Class Counsel's website and on the Settlement website.

### **TARGET AUDIENCE:**

For the purposes of paid media/newspaper selection (as opposed to the mailing components of the plan), the target audience is defined as:

- Adults 18 years of age or older
- Split evenly between males and females
- In all geographic regions of Canada in English and French

### **SETTLEMENT WEBSITE:**

All communications will direct Class Members to the Canadian Medtronic Defibrillators Class Action Settlement website ([www.medtronicdefibsettlement.ca](http://www.medtronicdefibsettlement.ca)) as a source of comprehensive information and updates.

The Settlement website will contain:

- Detailed information about and updates on the status of the Action;
- Description of the proposed Settlement;
- Frequently Asked Questions;
- Important dates;
- Case documents;
- Instructions and forms for submitting a claim;
- Contact information for Class Counsel.

### **FORM OF PROPOSED NOTICE**

The Approval Hearing Notice and the Settlement Approval Notice to be delivered to known Class Members, Canadian cardiologists and electrophysiologists and which will be posted on Class Counsel's websites and on the settlement website will be in the form set out in Exhibits "B" and "E" to the Settlement Agreement.

With respect to the Approval Hearing Notice to be published in print media, it may be necessary to make slight typesetting revisions in order to accommodate the different

sizes of each publication; however, the wording will not change and the overall page layout will remain as consistent as possible in each.

### **DIRECT NOTICE - MAILING TO CLASS MEMBERS AND PHYSICIANS**

The Claims Administrator will deliver letters (which will contain an abbreviated description of the Action, the terms of the proposed Settlement Agreement and instructions for filing an objection to the Settlement and/or making a claim and will enclose the Approval Hearing Notice) to all Class Members at their last known address (via e-mail where possible) and to all Canadian cardiologists and electrophysiologists at the addresses listed with their provincial/territorial colleges.

If the Settlement Agreement is approved, a further direct notification will be delivered to all Class Members at their last known address (via e-mail where possible).

Estimated cost:

Mailout writing, printing, handling and mailing (including postage)	\$25,000.00
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### **INDIRECT NOTICE - NEWSPAPER NOTICES**

To broaden the program's reach and to provide Class Members with an additional opportunity to learn about and participate in the Approval Hearing and/or the Settlement, if approved, the Approval Hearing Notice will be published in the print media set out in Schedule "A".

These newspapers have been selected based on the broad coverage, economical reach, and flexibility of timing they provide. (It is estimated that approximately 70% of Canadians read a newspaper on a regular basis. Vividata, 2017).

The ¼-page notice, containing a detailed description of the Settlement Agreement, and the procedures and dates for objecting and submitting a claim, will run one time in each newspaper and will advise the reader to consult with either the settlement website and/or Class Counsel's website for news about the Settlement's approval or non-approval and related deadline(s).

Estimated cost:

\$94,480.86

### **INDIRECT NOTICE – SEARCH ENGINE ADVERTISING**

Paid ads on Google will be used to supplement printed notices. The ads will run for two months leading up to the Approval Hearing. All digital ads will contain abbreviated messages with links to the Settlement website and Class Counsel's websites.

Estimated cost: \$13,560.00

### **INDIRECT NOTICE - PRESS RELEASE**

A press release will be issued in English and French via Canada News Wire prior to and following the Approval Hearing.

Estimated cost \$2,400.00

### **ESTIMATED REACH:**

While it is not possible to provide an accurate reach number for this notice program, the anticipated reach is enhanced by the direct mailing components which ensure that the highest number of potential class members is reached. Further, the selection of a range of mass market print and digital media provides Class Members with multiple opportunities for obtaining information about the Action and the proposed settlement. This increases their chances of seeing a notice and maximizes the effectiveness of the funds allocated to the notification program.

**SCHEDULE “A”**  
**CANADIAN MEDTRONIC DEFIBRILLATOR SETTLEMENT**  
**Approval Hearing Notice**  
**Print & Digital Media Costing**

**Key Notes and Assumptions:**

- Notices will NOT contain the full text of the Approval Hearing notice. They will contain abbreviated information and direct readers to the full notice
- Counsel to provide publication notice and press release translation
- All media publication content and placement is subject to final review and approval by the publications' editorial departments

Media Notice	Unit/ Description	# of Units	Total Cost	Notes
<b>Newspapers</b>				
Globe and Mail	1/4 page advertisement/ News	1	\$24,892.00	National edition. Saturday placement. Published twice
Vancouver Province	1/4 page advertisement/ News	1	\$2,138.80	British Columbia. Saturday placement
Victoria Times Colonist	1/4 page advertisement/ News	1	\$3,195.00	British Columbia. Saturday placement
Calgary Herald	1/4 page advertisement/ News	1	\$3,031.70	Alberta. Saturday placement
Edmonton Journal	1/4 page advertisement/ News	1	\$2,777.20	Alberta. Saturday placement
Saskatoon Star Phoenix	1/4 page advertisement/ News	1	\$1,263.80	Saskatchewan. Saturday placement
Winnipeg FP	1/4 page advertisement/ News	1	\$3,750.00	Manitoba. Saturday placement
Toronto Star	1/4 page advertisement/ News	1	\$6,045.00	Ontario. Saturday placement
London Free Press	1/4 page advertisement/ News	1	\$2,771.30	Ontario. Saturday placement
Montreal Gazette	1/4 page advertisement/ News	1	\$2,458.80	Quebec. Saturday placement; special rate – horizontal format
Journal de Montreal	1/4 page advertisement/ News	1	\$5,069.00	Quebec. Saturday placement
Journal de Quebec	1/4 page advertisement/ News	1	\$2,775.00	Quebec. Saturday placement
Moncton Times and Transcript	1/4 page advertisement/ News	1	\$2,706.78	New Brunswick. Saturday placement
Halifax Chronicle Herald	1/4 page advertisement/ News	1	\$1,500.00	Nova Scotia. Saturday placement
Charlottetown Guardian	1/4 page advertisement/ News	1	\$1,001.00	P.E.I. Saturday placement
St. John's Telegram	1/4 page advertisement/ News	1	\$1,650.00	Newfoundland. Saturday placement
Northern News Service	1/4 page advertisement/ Legal	1	\$678.00	Yukon & NWT. Weekend placement
Toronto Metro	1/4 page advertisement/ News	1	\$1,318.00	Ontario. Friday placement
Ottawa Metro	1/4 page advertisement/ News	1	\$1,318.00	Ontario. Friday placement
Vancouver Metro	1/4 page advertisement/ News	1	\$1,318.00	British Columbia. Friday placement
Calgary Metro	1/4 page advertisement/ News	1	\$1,318.00	Alberta. Friday placement
Edmonton Journal Metro	1/4 page advertisement/ News	1	\$1,318.00	Alberta. Friday placement
Montreal Metro	1/4 page advertisement/ News	1	\$1,318.00	Quebec. Friday placement
Professional Services – Newspapers:			\$8,000.00	
1. Obtain price for all outlets				
2. Optimize notice for readability and size				
3. Sign off from counsel on the notice proofs				
4. Set notice to the dimensions of each outlet				
5. Book space and confirm pricing				
6. Draft insertion order confirming publication date, section and price. Receive signoff and monitor progress				
7. Confirm notice publication, collect tear sheets and final analytics				
8. Draft and circulate notice report				
9. Process payments				
<b>Subtotal Newspapers (ex taxes)</b>			<b>\$83,611.38</b>	

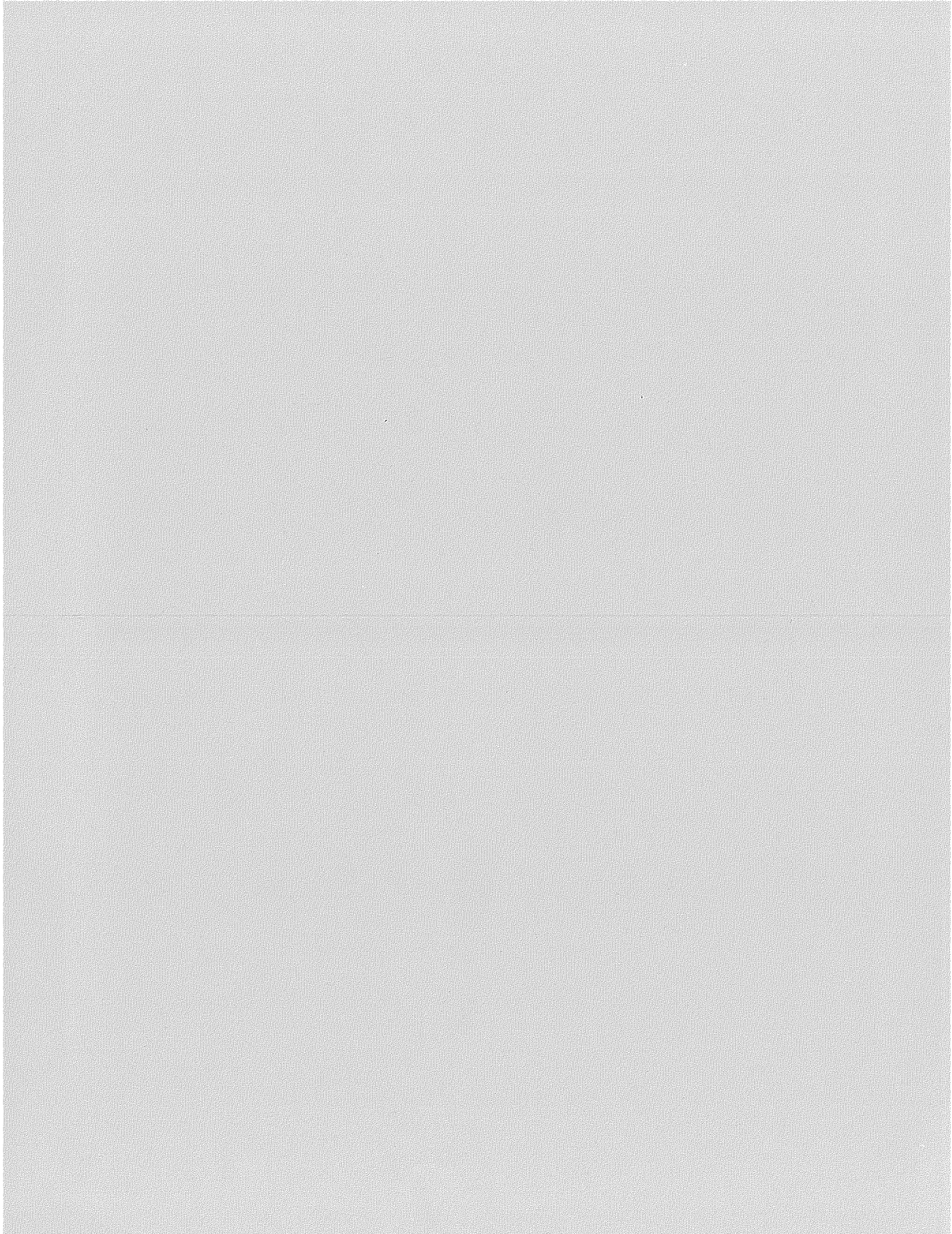
Internet Advertising & Social Media Activity				
Google Search Engine advertising		2 months @ \$4,500/mo	\$9,000.00	
Professional Services – Internet & Social Media:			\$3,000.00	
1. Production and pricing for all web content.				
2. Draft and produce notice advertisements and optimize for readability and size.				
3. Sign off from counsel on all notice proofs.				
4. Set notice to the dimensions of each outlet.				
5. Book space and confirm pricing.				
6. Draft insertion order confirming publication date, section and price. Receive signoff and monitor progress.				
7. Confirm notice publication and collect tear sheets.				
8. Monitor progress, optimize for best results. Draft and circulate notice report.				
9. Process payments with website.				
<b>Subtotal Internet &amp; Social Media (ex. Taxes)</b>			<b>\$12,000.00</b>	

Totals			
<b>Total Notice Program Before Tax:</b>			\$95,611.38
<b>Tax:</b>			\$12,429.48
<b>Total Notice Program After Tax:</b>			<b>\$108,040.86</b>

\*Prices are valid for 30 days; all rates based on 2018 rate cards

\*\*Cost may vary slightly at time of booking

\*\*\*All rates are quoted net, exclusive of applicable tax





**EXHIBIT “D”**

Court File No. 05-CV-295910 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) DAY, THE DAY OF  
MR. JUSTICE GLUSTEIN ) , 2019

BETWEEN:

**FRANK PETER, Mrs. BERNADETT PETER, MARK PETER,  
Ms. BERNADETT PETER, BRIAN FREDERICK FOOTE, RHONDA LYNN LO  
MONACO, ANITA PRAIN, FRANCINE NOROUZI  
and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA as  
represented by the Minister of Health and Wellness**

Plaintiffs

- and -

**MEDTRONIC, INC. and  
MEDTRONIC OF CANADA LTD.**

Defendants

**Proceeding under the *Class Proceedings Act, 1992***

**ORDER**

**THIS MOTION** made by the Plaintiffs, on consent of the Defendants and the Public Health Insurers, for an Order approving a settlement entered into between the Plaintiffs and the Defendants was heard on **DATE, 2019**, at the Court House, Osgoode Hall, 130 Queen St. W., Toronto, Ontario.



**ON READING** the material filed, including the Settlement Agreement entered into between the Parties hereto and dated April 24, 2019, a copy of which is attached to this Order as Schedule “A” (the “Settlement Agreement”), on hearing submissions of counsel for the Plaintiffs and counsel for the Defendants and any objector who has submitted a written objection to the Claims Administrator pursuant to the terms of the Settlement Agreement, and on being advised that the Plaintiffs, the Public Health Insurers and the Defendants consent to this Order:

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class Members, Family Class Members and the Public Health Insurers.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s.29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
4. **THIS COURT ORDERS** that Class Counsel fees, disbursements and applicable taxes in the total amount of \$XX are hereby approved.
5. **THIS COURT ORDERS** that RicePoint Administration Inc. shall, in its role as Claims Administrator, administer the Settlement in accordance with the terms of the Settlement Agreement.
6. **THIS COURT ORDERS** that the Settlement Approval Notice, substantially in the form attached to the Settlement Agreement as Exhibit E and attached hereto as Schedule B, is hereby

approved and that the Settlement Approval Notice shall be disseminated in accordance with the Notice Plan (Exhibit C to the Settlement Agreement, attached hereto as Schedule C).

**7. THIS COURT ORDERS** that, within thirty (30) days of the Effective Date, the Claims Administrator shall pay from the Escrow Account:

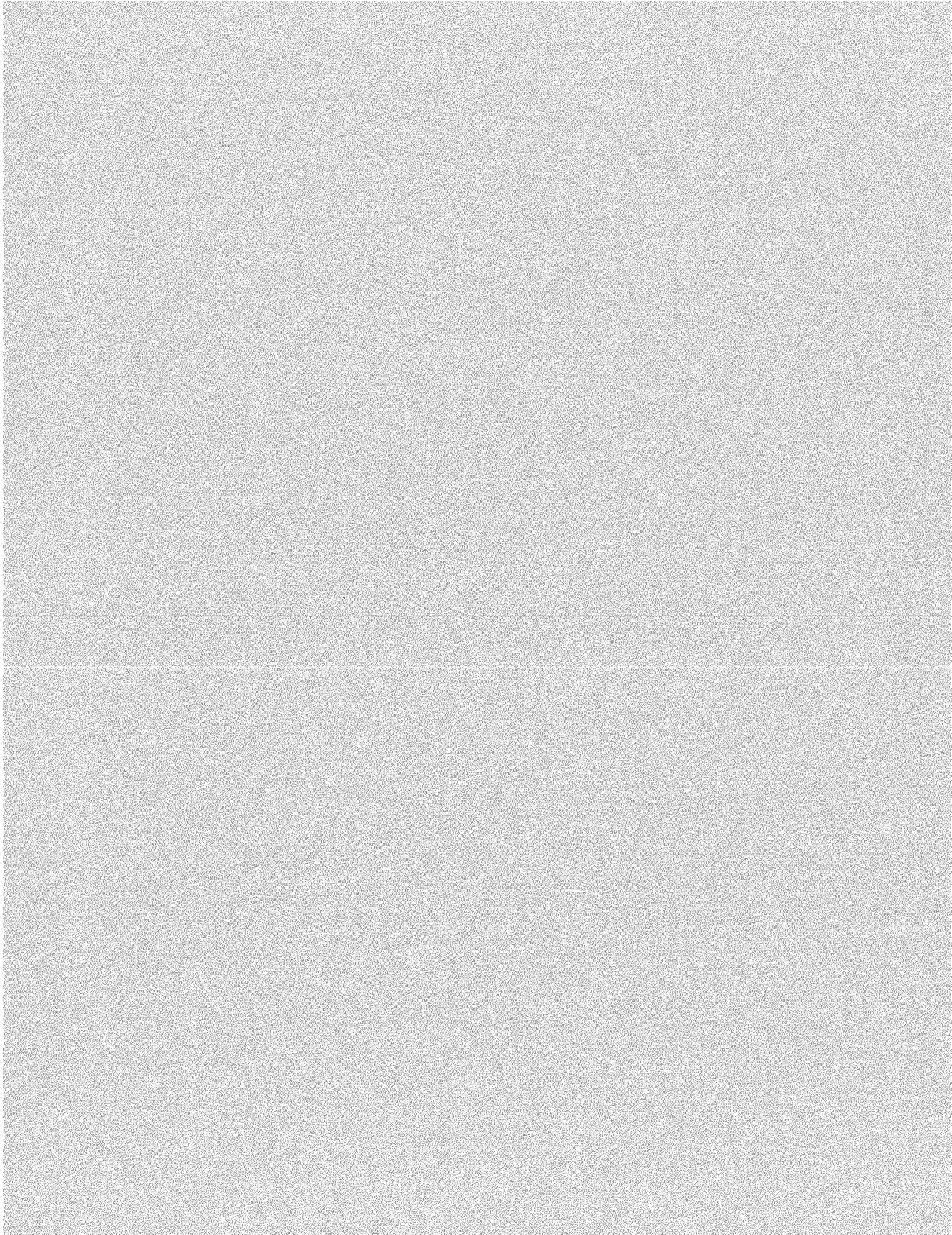
- a) \$10,000.00 CDN each to Frank Peter, Brian Foote, Francine Norouzi and Rhonda Lynn Lo Monaco as honouraria;
- b) \$500,000.00 CDN to Class Counsel in trust, to be distributed (less fees, disbursements and taxes) by Class Counsel on a population-distribution basis to the Public Health Insurers;
- c) Class Counsel fees, disbursements and applicable taxes in the amount of \$XX;
- d) \$XX to pay for the dissemination of the Settlement Approval Notice in accordance with the terms of the Notice Plan; and
- e) \$XX to RicePoint Administration Inc. in full satisfaction of its fees and costs for administering the Settlement.

**8. THIS COURT ORDERS** that RicePoint Administration Inc. shall, after making the payments set out in paragraph 7 above, use the remaining balance of the Escrow Settlement Funds for Compensatory Payments, Extraordinary Injury Fund Awards and distribution of Residue, if any, all of which shall be paid in accordance with the Claims Eligibility Criteria, Compensation and Administration Procedures and this Court declares that the procedures and protocols for distributing the Compensatory Payments, Extraordinary Injury Fund Awards and

**14. THIS COURT ORDERS** that in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void.

**15. THIS COURT ORDERS AND ADJUDGES** that this action against the Defendants shall be dismissed with prejudice and without costs on the Effective Date and that such dismissal shall be a full defence to any subsequent action in respect of the subject matter hereof.

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# NOTICE OF SETTLEMENT APPROVAL FOR CANADIAN MEDTRONIC DEFIBRILLATORS CLASS ACTION

**PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS**

## NOTICE OF SETTLEMENT APPROVAL

A Canada-wide settlement has been reached in a Class Action related to certain Defibrillators manufactured by Medtronic, Inc. and/or Medtronic of Canada Ltd. This lawsuit alleged that the Defendants were negligent in the design and manufacturing of the Defibrillators and sought damages on behalf of Canadians for harm related to alleged defects in these medical devices. The defendants deny the allegations made in the lawsuit, make no admission as to the truth of the allegations and deny any wrongdoing.

This Notice advises you that, following publication of a notice program, a hearing was held in the Ontario Superior Court of Justice on **DATE**, 2019 ("the Approval Hearing") and the Court issued an Order approving the Settlement, finding that the Settlement was fair, reasonable and in the best interests of Class Members. The Approval Order can be reviewed at the settlement website, [www.medtronicdefibsettlement.ca](http://www.medtronicdefibsettlement.ca).

## WHO IS THIS NOTICE FOR?

The Settlement applies to all persons who were implanted in Canada with one of the following Medtronic Defibrillators ("the Defibrillators") and who did not opt out of the lawsuit:

Defibrillator	Model	Manufactured Before
Marquis VR	7230	December 31, 2003
Marquis DR	7274	December 31, 2003
Maximo VR	7232	December 31, 2003
Maximo DR	7278	December 31, 2003
InSync Marquis	7277	December 31, 2003
InSync III Marquis	7279	December 31, 2003

## WHAT IS THE PROPOSED SETTLEMENT?

The Settlement provides for the creation of a \$3.072 million (CDN) Settlement Fund which will be used to pay Approved Claims, \$500,000.00 towards the claims of the Public Health Insurers, as well as the costs of notice, administration, representative plaintiff honouraria and Court-approved Class Counsel Legal Fees, disbursements and taxes.

Subject to the total number of Approved Claims, payments of up to \$5,000 will be made to Class Members who establish that they had their Defibrillator(s) explanted prematurely as a result of an advisory that was issued in February, 2005. Further compensation may be paid to Class Members who suffered from certain complications following the explant surgery. The quantum of compensation will depend on the total number of Approved Claims and all payments will be inclusive of all Family Class Members' claims.

Not all Class Members will be eligible for compensation. If money remains in the Settlement Amount after the payment of all Approved Claims, the payment to the Public Health Insurers, the costs of notice and administration, representative plaintiff honouraria and Class Counsel Fees, disbursements and applicable taxes, the balance will be split on a 50/50 basis between Class Members with Approved Claims and the Public Health Insurers.

## PARTICIPATING IN THE SETTLEMENT

To be entitled to a payment pursuant to the Settlement, you must file a claim with the Claims Administrator on or before the end of the Claim Period which expires on **DATE**, 2019. Downloadable versions of the Claim Package are currently available online at the settlement website: [www.medtronicdefibsettlement.ca](http://www.medtronicdefibsettlement.ca) or, alternatively, Claim Packages can be requested from the Claims Administrator.

**TO BE ELIGIBLE FOR ANY COMPENSATION FROM THE SETTLEMENT, CLAIMANTS MUST SUBMIT THEIR CLAIM DOCUMENTATION TO THE CLAIMS ADMINISTRATOR BEFORE THE EXPIRY OF THE CLAIM PERIOD ON DATE, 2019.** If, for any reason, this deadline is extended, any extension and new deadline will be posted at the settlement website.

## WHO REPRESENTS ME? CLASS COUNSEL ARE

Rochon Genova LLP  
Barristers • Avocats  
900-121 Richmond St. W.  
Toronto, ON M5H 2K1  
Joel P. Rochon  
Tel: (416) 363-1867  
Fax: (416) 363-0263  
[jrochon@rochongenova.com](mailto:jrochon@rochongenova.com)

Kim Spencer McPhee  
Barristers PC  
9 Prince Arthur Ave.  
Toronto, ON. M5R 1B2  
Aris Gyamfi  
Tel: (416) 596-1414  
Fax: (416) 598-0601  
[ag@complexlaw.ca](mailto:ag@complexlaw.ca)

## LEGAL FEES

At the Approval Hearing, Class Counsel requested and received the Court's approval for payment of their fees, disbursements and applicable taxes in the amount of \$XX. Claimants may retain their own lawyers to assist them in making individual claims under the Settlement Agreement and will be responsible for any fees charged by such lawyers.

## FOR MORE INFORMATION:

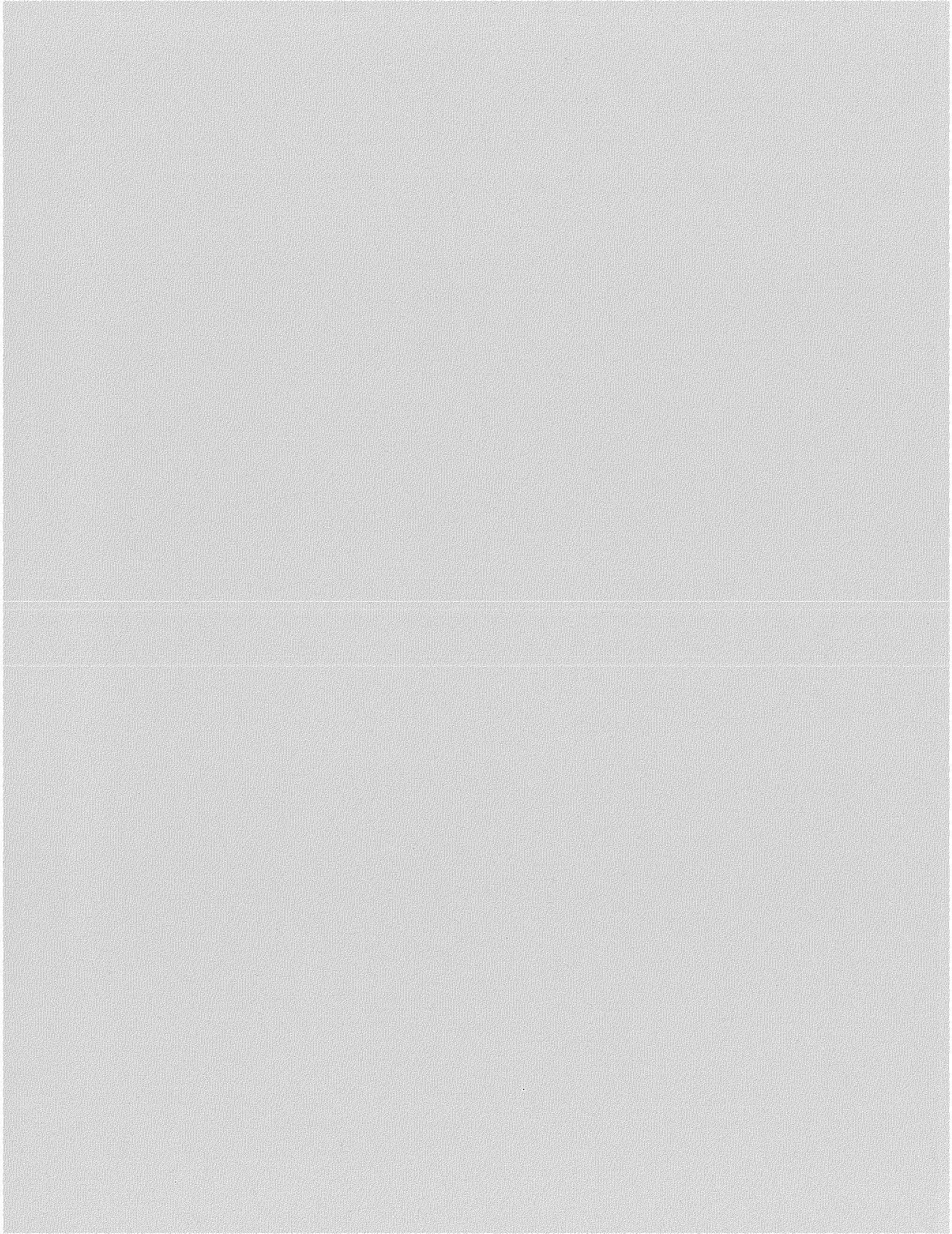
RicePoint Administration Inc. has been appointed by the Court as the Claims Administrator for the Settlement. If you have questions about the Settlement and/or would like to obtain more information and/or copies of the Settlement Agreement and related documents, please visit the settlement website or contact the Claims Administrator at:

**RicePoint Administration Inc.**  
**ADDRESS**  
**E-MAIL**  
**1-888-xxx-xxxx**

This Notice contains a summary of some of the terms of the Settlement. If there is a conflict between this Notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

*This Notice has been approved by the Ontario Superior Court of Justice*





**EXHIBIT “F”**  
**CLAIMS ELIGIBILITY CRITERIA, COMPENSATION AND**  
**ADMINISTRATION PROCEDURES**

**1. CLAIMS ELIGIBILITY CRITERIA AND SUPPORTING DOCUMENTATION**

- 1.1. In order to be eligible for compensation under the Settlement Agreement, each Claimant must provide evidence of the Class Member’s implantation **AND** premature explantation/replacement of one of the following Defibrillators:

<b>Defibrillator</b>	<b>Model</b>	<b>Manufactured Before</b>
Marquis VR	7230	December 31, 2003
Marquis DR	7274	December 31, 2003
Maximo VR	7232	December 31, 2003
Maximo DR	7278	December 31, 2003
InSync Marquis	7277	December 31, 2003
InSync III Marquis	7279	December 31, 2003

- 1.2. In order to establish that the Class Member was implanted with one of the Defibrillators, a submitted Claim Package must include one of the following:
- a) if the Class Member received a Certification Notice Letter, the signed solemn declaration contained in the Claim Form attesting to the fact that the Class Member had previously received a Certification Notice Letter; **or**
  - b) a photocopy of the Class Member’s Medtronic Implanted Pacer-Cardioverter-Defibrillator ID Card which reflects the Defibrillator Type, Model and Implant Date; **or**
  - c) one of the following medical records which reflects the Class Member’s Defibrillator Type, Model and Implant Date, including, but not limited to:
    - i. a Medtronic Quick Look Report; **or**
    - ii. an operative report describing the Class Member’s implantation with one of the Defibrillators, including the Type, Model and Implant Date; **or**

- iii. any other medical record reflecting the Class Member's implantation with one of the Defibrillators, which record must include the Defibrillator Type, Model and Implant Date.
- 1.3. In order to be eligible for compensation under the Settlement Agreement, it must be established that the Class Member's Defibrillator was **prematurely** explanted/replaced **as a result of** the Health Canada advisory (recall) issued in February, 2005.
- 1.4. To establish that a Class Member's Defibrillator was prematurely explanted/replaced as a result of the recall, one of the following must be included with the Claimant's Claim Package:
  - a) if the Class Member's defibrillator was explanted/replaced between February 1, 2005 and August 31, 2005, the operative report from the hospital where the Defibrillator was explanted/replaced; **or**
  - b) if the Class Member's defibrillator was explanted/replaced on or after September 1, 2005, medical records reflecting the explant/replacement procedure which contains a contemporaneous medical opinion stating that the explant/replacement was a result of the recall; **or**
  - c) if the Class Member's defibrillator was explanted/replaced on or after September 1, 2005 and the explant/replacement records do not include any medical opinion attributing the explant/replacement to the recall, a completed and signed Physician Declaration, as contained in the Claim Package.
- 1.5. In order to be eligible for compensation from the Extraordinary Injury Fund, a Claimant must satisfy the criteria set out above **and** must also establish that the Class Member suffered from either Minor or Major Complications as set out below **within 45 days** of the premature explant/replacement of their Defibrillator.
- 1.6. For the purposes of this Settlement, Minor Complications shall include any one or more of the following:
  - a) Hematomas lasting more than 7 days with tenseness, drainage, or minor dehiscence managed as an outpatient;
  - b) Hematomas without tenseness be requiring additional outpatient evaluation;
  - c) Implant related pain lasting more than 7 days requiring prolonged use of narcotic pain medications;



- d) Cellulitis treated as an outpatient with oral antibiotics;
- e) Stitch abscess;
- f) Minor surgical wound findings;
- g) Unanticipated device reprogramming resulting from inadequate lead performance with significant patient symptoms or status change, excluding asymptomatic threshold changes;
- h) Reversal of sedation for respiratory compromise requiring benzodiazepine or opioid receptor antagonist;
- i) Peripheral nerve injury; or
- j) Superficial phlebitis.

1.7. For the purposes of this Settlement, Major Complications shall include any one or more of the following:

- a) Pneumothorax requiring observation or chest tube placement;
- b) Hemothorax;
- c) Stroke within 45 days of the explant/replacement procedure;
- d) Hemodynamic instability during the procedure requiring unplanned intervention and/or aborting the procedure;
- e) Infection requiring intravenous antibiotics and/or system removal/extraction;
- f) Generator or lead malfunction requiring reoperation;
- g) Pocket revision requiring reoperation;
- h) Prolonged hospitalization attributable to the device replacement procedure;
- i) Hematoma requiring evacuation, drainage, blood transfusion, hospitalization, or extension of hospital stay to treat hematoma;
- j) Hospital readmission directly related to the explant/replacement procedure;
- k) Coronary venous dissection with hemodynamic instability;
- l) Pulmonary embolus;
- m) Peripheral arterial embolus;
- n) Deep vein thrombosis;
- o) Drug reaction resulting in an aborted procedure;
- p) Cardiac valve injury; or

q) New atrioventricular conduction block developing as a result of the procedure.

- 1.8. In order to establish that a Class Member suffered from a Minor and/or a Major Complication, the Claimant must complete the relevant sections of the Claim Form as contained in the Claim Package, and submit medical records reflecting the Class Member's treatment/diagnosis related to the Minor and/or Major Complication(s) suffered by the Class Member within 45 days of the premature explant/replacement procedure.
- 1.9. If a Claimant is seeking compensation related to the Class Member's out-of-pocket expenses and/or wage loss, details must be provided in the relevant sections of the Claim Form, along with supporting documentation reflecting any such loss(es).

## 2. **COMPENSATORY PAYMENTS AND PAYMENT SCHEDULE**

- 2.1. Claimants with Approved Claims shall be entitled to a maximum Compensatory Payment in the amount of \$5,000.00 CDN, which is inclusive of all claims of Family Class Members, out-of-pocket expenses, and income losses, which may be subject to a *pro rata* reduction, depending on the total number of Approved Claims.
- 2.2. If the total value of all Approved Claims exceeds 80% of the amount remaining in the Escrow Settlement Funds following the payments set out in Sections 8.2 and 8.3 of the Settlement Agreement, the Claims Administrator shall reduce the value of all Approved Claims on a *pro rata* basis.
- 2.3. If the total value of all Approved Claims is less than 80% of the amount remaining in the Escrow Settlement Funds following the payments set out in Sections 8.2 and 8.3 of the Settlement Agreement, the excess money shall be available to top up Extraordinary Injury Fund Awards, if those have been reduced in accordance with s.2.7 below. If there has been no reduction applied to the Extraordinary Injury Fund Awards, 50% of the Residue shall be allocated *pari passu* among all Approved Claims and 50% shall be paid to Class Counsel in trust for the benefit of the Public Health Insurers, to be distributed among the Public Health Insurers on a population distribution basis.
- 2.4. If the Claims Administrator determines that a Class Member with an Approved Claim also suffered Minor or Major Complication(s), an award shall be recommended by the Claims Administrator and confirmed or modified by Class Counsel based on the severity of the complication(s) and any proven out-of-pocket expenses and/or wage loss.

- 2.5. Claimants shall only be eligible for one award from the Extraordinary Injury Fund, regardless of the number of Minor or Major Complications the Class Member may have suffered and proven. The Claimant shall receive the award for the most severe Complication deemed proven.
- 2.6. If the total value of all Extraordinary Injury Fund awards exceeds 20% of the amount remaining in the Escrow Settlement Funds following the payments set out in Sections 8.2 and 8.3 of the Settlement Agreement, the Claims Administrator shall reduce the value of all Extraordinary Injury Fund Awards on a *pro rata* basis.
- 2.7. If the total value of all assessed Extraordinary Injury Fund Awards is less than 20% of the amount remaining in the Escrow Settlement Funds following the payments set out in Section 8.2 and 8.3 of the Settlement Agreement, such funds shall be allocated to increase the value of Approved Claims if the value of same has been reduced in accordance with Section 2.2 and if there has been no such reduction in the value of Approved Claims, 50% of the remaining funds shall be allocated *pari passu* among all Approved Claims and 50% shall be paid to the Public Health Insurers, to be distributed among them on a population distribution basis.
- 2.8. No payment shall be issued to any Claimant until the Claims Administrator has adjudicated all Claims submitted during the Claim Period and has determined whether any adjustments are required in accordance with Sections 2.2, 2.7, or 2.8 above are necessary, after which, the Claims Administrator shall deliver Claim Determination Letters to all Claimants enclosing cheques for all Approved Claims.
- 2.9. The determinations of the Claims Administrator as approved or modified by Class Counsel on all Claims are final and binding and shall not be subject to further review.

### **3. OVERVIEW OF SETTLEMENT ADMINISTRATION**

- 3.1. The procedures set forth herein are for the administration of the Settlement Agreement and for the submission, processing, approval or denial, compensation, and review of Class Members' claims pursuant to the Settlement Agreement. These procedures shall be implemented by the Claims Administrator, subject to the ongoing authority and supervision of the Court.
- 3.2. The Claims Administrator may adopt additional policies and procedures for the administration of the Settlement Agreement that are consistent with the Settlement Agreement and with any Orders of the Court. Any change

or amendment to these Claims Administration Procedures requires approval of the Court.

- 3.3. The Claims Administrator shall implement the Settlement Agreement so as to provide benefits to eligible Claimants in a timely and efficient manner, designed to treat similarly situated Claimants as uniformly as possible and to minimize, to the extent reasonably practicable, the administration and other transaction costs associated with the implementation of the Settlement Agreement.
- 3.4. The Claims Administrator shall provide copies of any written communication to or from the Claims Administrator relating in any way to this settlement to Plaintiffs' Counsel. Any counsel entitled to receive copies of such written communication under this provision may waive that entitlement by so advising the Claims Administrator. The Claims Administrator shall also provide "read-only" access to the claims administration computer system to Plaintiffs' Counsel.
- 3.5. All defined terms are as defined in the Settlement Agreement or herein. All calculations of time and deadlines pursuant to these Claims Administration Procedures shall be calculated in accordance with the *Ontario Rules of Civil Procedure* which are available at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca) as Regulation 194 to the *Courts of Justice Act* R.S.O. 1990, c. C.43.

#### **4. ROLES IN CLAIMS ADMINISTRATION**

##### **Role and Appointment of the Claims Administrator**

- 4.1 RicePoint Administration Inc. ("RicePoint") shall be appointed by the Court as the Claims Administrator and shall be responsible for holding, investing and disbursing the Escrow Settlement Funds in accordance with the terms of the Settlement Agreement and the Escrow Agreement.
- 4.2 RicePoint shall invest all funds in its possession under the Settlement Agreement pursuant to the investment standards and authorized investments provided for in section 27 of the *Trustee Act*, R.S.O. 1990, c.T.23 with all interest or other income on such funds being added to the monies in trust as set out in the Settlement Agreement. All fees and costs of any custodian holding and/or investing such funds shall be paid out of such funds or out of the interest and/or income of such funds.
- 4.3 RicePoint shall take all reasonable steps to minimize the imposition of taxes upon the Escrow Settlement Funds, and shall have the discretion to pay any taxes imposed on such monies out of the monies in the Escrow Account.

- 4.4 Disbursement of any monies out of the Escrow Settlement Funds in the Escrow Account shall only be made in accordance with the Settlement Agreement or upon directions issued by the Court.
- 4.5 RicePoint shall provide quarterly written reports to Plaintiffs' Counsel, as well as reporting on such other matters as may be requested by the Court. In addition, Plaintiffs' Counsel may request reports or information not required by the Settlement Agreement. RicePoint shall respond to any such request within seven (7) days
- 4.6 In addition, RicePoint shall be responsible for:
- (i) providing adequately trained, supervised and monitored personnel in such reasonable numbers as are required for the performance of its duties within reasonable timeframes;
  - (ii) setting up and maintaining a system for the handling of queries from Class Members and Claimants in both English and French, including a bilingual toll-free telephone line and web site;
  - (iii) preparing and distributing Claim Packages in both French and English;
  - (iv) developing, installing and implementing systems and procedures for receiving and processing Claim Packages, determining the completeness of Claim Packages and delivering Deficiency Letters to Claimants, and adjudicating Claims in a timely manner and in accordance with the terms of the Settlement Agreement and related Exhibits and delivering Determination Letters to Claimants;
  - (v) forwarding payment to qualified Claimants;
  - (vi) reporting as required by the Settlement Agreement, including reporting on a quarterly basis with respect to the implementation of the Settlement generally, and, without limiting the generality of the foregoing, providing information as to the number of Claim Packages received, the number of claims processed, the type of claims processed, the total amount of money distributed, the amount of money remaining in the Escrow Settlement Funds, the interest accrued, the number of Deficiency Letters delivered and the number of Claim Determination Letters delivered;
  - (vii) making such minor modifications to the Claim Package as may be necessary for the implementation of the Settlement Agreement, however, any substantive change or amendment to these forms requires approval of the Court;

- (viii) co-ordinating with Plaintiffs' Counsel and holding regular administrative conference calls to advise them of the progress of the administration of the Settlement. In addition, when deemed necessary by the Claims Administrator, calling special meetings on reasonable notice to all Parties; and
- (ix) such other duties and responsibilities as the Court may from time to time direct.

## **5. CLAIM PACKAGE REQUIREMENTS**

### **General Provisions**

- 5.1. A completed Claim Package in the form attached as Exhibit G to the Settlement Agreement shall include a completed and signed Claim Form, along with all required supporting documentation as identified herein and as set out in the Claim Package.
- 5.2. Qualification for benefits pursuant to the Settlement Agreement requires the timely filing with the Claims Administrator of a complete Claim Package and all related documentation. The Claims Administrator shall review all Claim Packages submitted within the Claim Period for sufficiency within thirty (30) days of receipt.
- 5.3. If an incomplete Claim Package is submitted by a Claimant, the Claims Administrator shall advise the Claimant of any such deficiency by delivering a letter to the Claimant, indicating what deficiencies exist (a "Deficiency Letter") and requiring that the Claimant cure the deficiency/ies within forty five (45) days of the mailing of the Deficiency Letter.
- 5.4. The Claimant shall have the option, but shall not be required to, cure the deficiency(ies) identified by the Claims Administrator through providing more complete information and/or obtaining and submitting further documentation, as the case may be.
- 5.5. Once the forty five (45) day curing period has expired, the Claims Administrator shall determine the claim (whether or not any identified deficiency has been cured by the Claimant) and determine the Claimant's eligibility under the Settlement Agreement.

### **Claim Form**

- 5.6. The Claim Form shall be completed and signed by the Claimant and must include information regarding the identity, the address and other contact information for the Claimant (or his/her representative), along with the requisite documentation and/or declaration(s) confirming the

Class Member's implant and establishing that the Class Member had one of the Defibrillators prematurely explanted/replaced as a result of the recall.

- 5.7. Where a Claimant is seeking compensation from the Extraordinary Injury Fund, the relevant section(s) of the Claim Form must be completed by the Claimant and the requisite supporting documentation must be submitted, confirming the Class Member's Minor and/or Major Complication(s).
- 5.8. Where a claim is filed on behalf of a deceased Class Member, it must be filed by an executor or other person with the legal authority to administer the Class Member's estate and documentary proof of that legal authority must be submitted with the Claim Package.
- 5.9. Where a claim is filed for a Class Member under a legal disability, it must be filed by an individual with appropriate legal authority to represent the disabled Class Member and documentary proof of his or her legal authority to act on behalf of the Class Member must be submitted with the Claim Package.

## **6. PROCESSING OF CLAIMS**

### **Review of Claim Packages**

- 6.1 Upon receipt of a Claim Package, the Claims Administrator shall deliver a letter to the Claimant within seven (7) days, acknowledging receipt of the Claim Package (the "Acknowledgement Letter", Exhibit H to the Settlement Agreement) and shall assign an individual claim number to the Claim Package and post the contents of the Claim Package on the Claims Administrator's claims administration system. Read-only access via a secure website to the claims administration system shall be granted to Plaintiffs' Counsel. Plaintiffs' Counsel shall also be entitled to obtain hard copies of a specified Claim Package, or any part thereof, upon request to the Claims Administrator.
- 6.2 Within thirty (30) days of receipt, the Claims Administrator shall review the Claim Package to ensure that:
  - (a) It includes a completed and signed Claim Form;
  - (b) It includes any/all necessary declaration(s) and/or supporting medical documents;
  - (c) It includes any other documentation required by the terms of the Settlement Agreement (i.e. proof of executorship, guardianship, relationship with a Class Member, etc.); and
  - (d) It was received by RicePoint within the Claim Period.

- 6.3 Where the Claim Package is deemed to be incomplete, RicePoint shall, within seven (7) days of such determination, so advise the Claimant in a Deficiency Letter (Exhibit I to the Settlement Agreement). The Deficiency Letter shall advise the Claimant as to the deficiencies in the Claim Package and shall provide the Claimant with a further forty five (45) days within which the Claimant has the right to cure any such deficiencies.
- 6.4 Where the Claim Package is deemed to be complete and/or after the time for curing deficiencies has elapsed, the Claims Administrator shall review the Claim Package to determine whether the Class Member is eligible for compensation under the Settlement Agreement.
- 6.5 Within ninety (90) days following the final adjudication of all submitted Claims, RicePoint shall deliver Claim Determination Letters (Exhibit J to the Settlement Agreement) to all Claimants, enclosing cheques for all Claimants with Approved Claims. All decisions of RicePoint on the eligibility and quantification of Claims, as confirmed or modified by Class Counsel, are final and not subject to review.

## **7. MISCELLANEOUS**

### **Timeliness of Submissions**

- 7.1. All Claim Packages shall be submitted to the Claims Administrator via regular mail, electronic mail, or courier, or by any other means agreed to by the Parties and the Claims Administrator. All submissions by mail shall be conclusively deemed to have been submitted to the Claims Administrator on the postmark date of such mail. All Claim Packages delivered to the Claims Administrator by courier shall be conclusively deemed to have been submitted to the Claims Administrator on the date of the receipt by the Claims Administrator of such submissions. Where the Claims Administrator and the Parties agree to an alternative means of submission, the date of receipt by the Claims Administrator shall be conclusively deemed to be the date of submission.
- 7.2. In order to qualify for compensation, Claimants must submit their Claim Packages prior to the expiration of the Claim Period.
- 7.3. In the event that the Claims Administrator receives a Claim Package after the expiration of the Claim Period, the Claims Administrator shall process the Claim Package in the ordinary course only upon the Claimant establishing good cause for the late submission, the determination of which rests exclusively with the Claims Administrator.



**Extension of Deadlines**

- 7.4. In the event that any of the deadlines prescribed herein relating to the administration and processing of claims cannot be met, a motion may be made to the Court for directions which may allow for the extension of such deadlines in circumstances where such extensions are demonstrably justifiable. Any such motion must be made on notice to all Parties.
- 7.5. In the event that any deadline for the administration or determination of claims is not met by the Claims Administrator, such an event shall not affect give rise to a right of challenge by a Claimant and shall not affect any Claimant's entitlement to benefits pursuant to the Settlement Agreement.

**Call Centre**

- 7.6. The Claims Administrator shall establish a bilingual toll-free call centre for the assistance of Claimants and to provide Claimants with information on the status of their claims.

**Website**

- 7.7. The Claims Administrator shall establish a bilingual website for the assistance of Claimants.

**Correspondence with Class Members**

- 7.8. All written communications from the Claims Administrator to Claimants shall be delivered by regular mail, unless instructed by the Claimant to communicate via electronic mail. The Claims Administrator shall direct such written communications to the Claimant's legal counsel if the Claimant is represented by counsel, otherwise, such written communications shall be directed to the last known address provided by the Claimant to the Claims Administrator. The Claimant (or legal counsel to a represented Claimant) shall be responsible for apprising the Claims Administrator of the Claimant's and counsel's correct and current mailing and/or electronic address.

**Legal Counsel to Claimants**

- 7.9. A Claimant shall be considered to be represented by legal counsel in connection with a claim only if the Claims Administrator has received written notice signed by the Claimant of the identity of the Claimant's counsel. If a Claimant discontinues such representation at any time the Claimant shall provide written notice of same to the Claims Administrator and their former counsel.

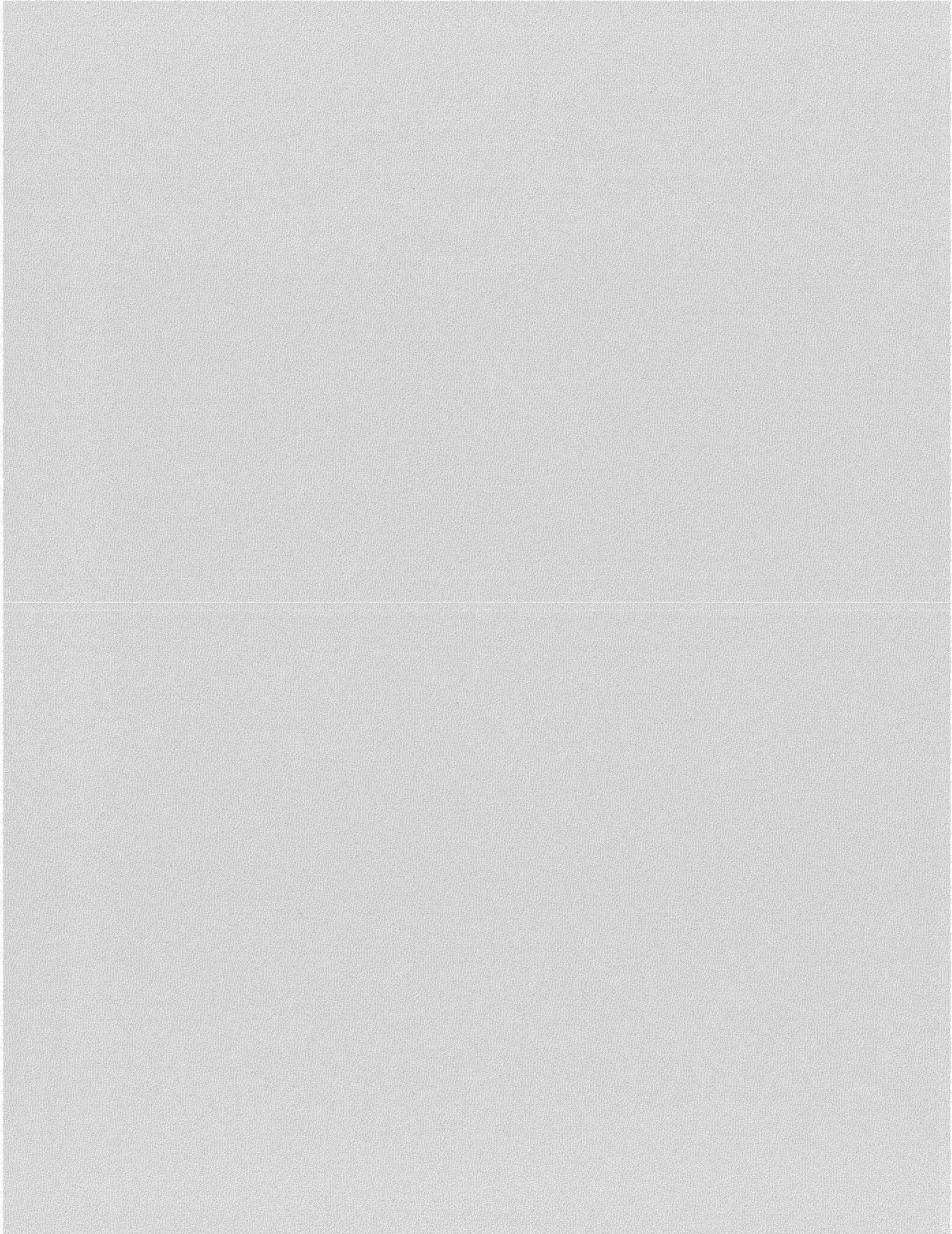
- 7.10. No liens or claims for counsel fees or costs may be asserted against the Claims Administrator or the funds held by the Claims Administrator at any time.

#### **Preservation and Disposition of Claim Packages**

- 7.11. The Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, the Claim Packages, until a date one (1) year following the completion of all payments out of the Escrow Settlement Funds and at such time shall dispose of the Claim Packages by shredding or such other means as will render the materials permanently illegible.

#### **Privacy of Communications**

- 7.12. Any information provided by or regarding any Class Member or Claimant, or such information otherwise obtained pursuant to this Settlement shall be kept confidential and shall not be disclosed except to appropriate persons to the extent necessary to process claims or provide benefits pursuant to this Settlement or as otherwise expressly provided in the Settlement Agreement. All Claimants shall be deemed to have consented to the disclosure of this information for these purposes.



**EXHIBIT “G”**  
**CANADIAN MEDTRONIC**  
**DEFIBRILLATOR SETTLEMENT**  
**Claim Package**

This Claim Package contains:

- A Privacy Statement;
- Instructions for Claimants; and
- A Claim Form;

## **PRIVACY STATEMENT**

Personal Information regarding Claimants is collected, used, and retained by the Claims Administrator pursuant to the Personal Information Protection and Electronics Documents Act. S.C. 2000, c.5 (PIPEDA):

- For the purpose of operating and administering the Canadian Medtronic Defibrillator Settlement Agreement (“Settlement”);
- To evaluate and consider the Claimant’s eligibility under the Settlement; and
- Is strictly private and confidential and will not be disclosed without the express written consent of the Claimant except as provided for in the Settlement.

## **INSTRUCTIONS FOR CLAIMANTS**

These instructions provide basic guidelines for submitting claims under the Settlement. In the case of any conflict between these instructions and the Settlement, the Settlement shall prevail. For more detailed information, please refer to the Settlement Agreement, which can be viewed or downloaded at <http://www.medtronicdefibsettlement.ca>

To establish your right to benefits under the terms and conditions of the Settlement, a completed Claim Package must be submitted to the Claims Administrator which shall consist of:

- A completed and signed Claim Form;
- A completed and signed Physician Declaration, if applicable; and
- All other required documentation as described herein.

**All completed Claim Packages must be submitted to the Claims Administrator postmarked no later than DATE, 2019, at the following address:**

**RicePoint Administration Inc.**  
**address**  
**Attention: Canadian Medtronic Defibrillator Settlement**

Claimants who do not submit a Claim Package to the Claims Administrator on or before **DATE, 2019**, shall forever forfeit their rights to benefits from the Settlement and will be precluded from ever bringing an action in relation to the Defibrillators against any of the Released Parties.

If you require assistance or advice regarding completion of the Claim Package or have any questions related to your claim, you may retain legal counsel at your own expense, or contact the Claims Administrator, free of charge at 1-800-xxx-xxxx, email \*\*\*\*\* or view the website at [www.medtronicdefibsettlement.ca](http://www.medtronicdefibsettlement.ca). **Claimants who retain lawyers or agents in making their claims under the Settlement shall be solely responsible for the fees and expenses of such lawyers or agents.**

Claimants may communicate with the Claims Administrator and obtain forms in either English or French. Claimants (or their lawyers/agents) **must** advise the Claims Administrator of any changes or corrections in address, name, phone number or legal representation.

**Please keep copies of all documentation you send to the Claims Administrator.** Completing the documentation process takes time. **ACT NOW.** Do not wait until the last few weeks before the Claim Period expires.

# CANADIAN MEDTRONIC DEFIBRILLATOR SETTLEMENT CLAIM FORM

**Strictly Private and Confidential**

## Section 1 – Claimant Identification

I am making a claim as a:

- € **Class Member** (the person who had one of the Medtronic Defibrillators<sup>1</sup> prematurely explanted/replaced as a result of a Health Canada advisory issued in February, 2005)
- € **Representative of a Class Member** (a person who is the legal representative of a Class Member who is deceased, a minor and/or otherwise under a legal disability)

## Section 2 - Class Member Identification

Class Member Last Name: \_\_\_\_\_ First Name \_\_\_\_\_

Address \_\_\_\_\_ P.O. Box \_\_\_\_\_

City \_\_\_\_\_ Province \_\_\_\_\_ Postal Code \_\_\_\_\_

Birth Date: Year: \_\_\_\_\_ Month: \_\_\_\_\_ Day: \_\_\_\_\_

Date of Death (if applicable): Year \_\_\_\_\_ Month \_\_\_\_\_ Day \_\_\_\_\_

€ Official Death certificate attached

Home Phone \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Work Phone \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Fax \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ e-mail \_\_\_\_\_

<sup>1</sup> The included Defibrillators are:

Defibrillator	Model	Manufactured Before
Marquis VR	7230	December 31, 2003
Marquis DR	7274	December 31, 2003
Maximo VR	7232	December 31, 2003
Maximo DR	7278	December 31, 2003
InSync Marquis	7277	December 31, 2003
InSync III Marquis	7279	December 31, 2003

### Section 3 - Representative Claimant Identification

This section is to be completed only if you are submitting a claim as the Representative of a Class Member. You **MUST** provide proof of your authority to act as the representative of a Class Member. Before completing this section, you MUST complete Sections 1 and 2 to identify the Class Member that you are representing.

I am applying on behalf of a Class Member who is:

- ☐ **A minor (under 18 years of age)**  
 Please enclose a copy of your authority to act (i.e. long-form birth certificate, baptismal certificate, court order or other proof of guardianship)
- ☐ **A person under legal disability**  
 Please enclose a copy of your authority to act (i.e. power of attorney, etc.)
- ☐ **Deceased**  
 Please enclose a copy of your authority to act (i.e. will, etc)

Representative Claimant Last Name: \_\_\_\_\_ First Name \_\_\_\_\_

Address \_\_\_\_\_ P.O. Box \_\_\_\_\_

City \_\_\_\_\_ Province \_\_\_\_\_ Postal Code \_\_\_\_\_

Birth Date: Year: \_\_\_\_\_ Month: \_\_\_\_\_ Day: \_\_\_\_\_

Home Phone \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Work Phone \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Fax \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ e-mail \_\_\_\_\_

## Section 4 – Legal Representative Identification

**This section is to be completed ONLY IF a lawyer or agent is representing the Claimant.**

Name of Law Firm or Agency \_\_\_\_\_

Lawyer's or Agent's Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_

Address \_\_\_\_\_ P.O. Box \_\_\_\_\_

City \_\_\_\_\_ Province \_\_\_\_\_ Postal Code \_\_\_\_\_

Phone \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Fax \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

e-mail \_\_\_\_\_

Provincial Law Society# (if applicable) \_\_\_\_\_

**NOTE: If you complete Section 4 above, all correspondence will be sent to your legal representative, who must notify the Claims Administrator of any change in mailing address. If you change your legal representation or cease to retain your legal representative, you must notify your former legal representative and the Claims Administrator in writing.**



## Section 5 – Proof of Implant and Premature Explant/Replacement of Defibrillator

In order to be eligible for compensation under the Settlement, each Claimant must provide evidence of the Class Member's implantation **AND** premature explantation/replacement of one of the following Defibrillators:

Defibrillator	Model	Manufactured Before
Marquis VR	7230	December 31, 2003
Marquis DR	7274	December 31, 2003
Maximo VR	7232	December 31, 2003
Maximo DR	7278	December 31, 2003
InSync Marquis	7277	December 31, 2003
InSync III Marquis	7279	December 31, 2003

To establish that the Class Member was **implanted** with one of the Defibrillators, **one** of the following **must** be submitted:

- € if the Class Member previously received a Certification Notice Letter, check the appropriate section in the Claimant Declaration (Section 7, below); **OR**
- € a photocopy of the Class Member's Medtronic Implanted Pacer-Cardioverter-Defibrillator ID Card which reflects the Defibrillator Type, Model and Implant Date; **OR**
- € one of the following medical records which reflects the Class Member's Defibrillator Type, Model and Implant Date, including, but not limited to:
  - € a Medtronic Quick Look Report; **OR**
  - € an operative report describing the Class Member's implantation with one of the Defibrillators, including the Type, Model and Implant Date; **OR**
  - € any other medical record reflecting the Class Member's implantation with one of the Defibrillators, which record must include the Defibrillator Type, Model and Implant Date.

**AND**

To establish that the Class Member's Defibrillator was **prematurely explanted/replaced as a result of** the recall, **one** of the following **must** be submitted:

- € if the Class Member's defibrillator was explanted/replaced between February 1, 2005 and August 31, 2005, the operative report from the hospital where the Defibrillator was explanted/replaced; **OR**
- € if the Class Member's defibrillator was explanted/replaced on or after September 1, 2005, medical records reflecting the explant/replacement procedure which contains a contemporaneous medical opinion stating that the explant/replacement was a result of the recall; **OR**
- € if the Class Member's defibrillator was explanted/replaced on or after September 1, 2005 and the explant/replacement records do not include any medical opinion attributing the explant/replacement to the recall, a completed and signed Physician Declaration, as contained in Section 8 below.

## Section 6 – Extraordinary Injury Fund Claim

Please complete this section **ONLY** if you are seeking compensation from the Extraordinary Injury Fund. In order to be eligible for compensation from the Extraordinary Injury Fund, a Claimant must satisfy the criteria set out above **and** must also establish that the Class Member suffered from either Minor or Major Complications as set out below **within 45 days** of the premature explant/replacement of their Defibrillator.

Please indicate the Minor and/or Major Complication(s) the Class Member is alleged to have suffered. Check all that apply:

### Minor Complications:

- € Hematomas lasting more than 7 days with tenseness, drainage, or minor dehiscence managed as an outpatient.
- € Hematomas without tenseness but requiring additional outpatient evaluation.
- € Implant related pain lasting more than 7 days requiring prolonged use of narcotic pain medications.
- € Cellulitis treated as an outpatient with oral antibiotics.
- € Stitch abscess.
- € Minor surgical wound findings.
- € Unanticipated device reprogramming resulting from inadequate lead performance with significant patient symptoms or status change, excluding asymptomatic threshold changes.
- € Reversal of sedation for respiratory compromise requiring benzodiazepine or opioid receptor antagonist.
- € Peripheral nerve injury.
- € Superficial phlebitis.

### Major Complications:

- € Pneumothorax requiring observation or chest tube placement.
- € Hemothorax.
- € Stroke within 45 days of the explant/replacement procedure.
- € Hemodynamic instability during the procedure requiring unplanned intervention and/or aborting the procedure.
- € Infection requiring intravenous antibiotics and/or system removal/extraction.
- € Generator or lead malfunction requiring reoperation.
- € Pocket revision requiring reoperation.

- € Prolonged hospitalization attributable to the device replacement procedure.
- € Hematoma requiring evacuation, drainage, blood transfusion, hospitalization, or extension of hospital stay to treat hematoma.
- € Hospital readmission directly related to the explant/replacement procedure.
- € Coronary venous dissection with hemodynamic instability.
- € Pulmonary embolus.
- € Peripheral arterial embolus.
- € Deep vein thrombosis.
- € Drug reaction resulting in an aborted procedure.
- € Cardiac valve injury.
- € New atrioventricular conduction block developing as a result of the procedure.

You **must** submit with this Claim Package medical records reflecting the Class Member's diagnosis and treatment related to the Minor and/or Major Complication(s) suffered by the Class Member within 45 days of the premature explant/replacement procedure.

If you are seeking compensation from the Extraordinary Injury Fund for out of pocket expenses related to the Class Member's Minor and/or Major Complication(s), please complete the chart below and attach all relevant supporting documents. If you need more space, please attach a separate page:

Description of Expense	Amount Claimed	Description of Supporting Documentation

If you are seeking compensation from the Extraordinary Injury Fund for income loss allegedly suffered by the by the Class Member because of Minor and/or Major Complications, you must complete the following section and submit the required supporting documentation:

At the time of the Class Member's Minor and/or Major Complication(s), s/he was employed by:

Name of Company: \_\_\_\_\_

Job Description: \_\_\_\_\_

Rate of pay: \$ \_\_\_\_\_

Name of Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

The Class Member was off work for \_\_\_\_\_ days as a result of the Minor and/or Major Complications.

The Class Member's alleged income loss is: \$ \_\_\_\_\_

You must provide documentation supporting the Class Member's alleged income loss.

## Section 7 – Claimant Declaration

The undersigned hereby consent(s) to the disclosure of the information contained herein to the extent necessary to process this claim for benefits. The undersigned acknowledges and understands that this Claim Form is an official Court document sanctioned by the Court that presides over the Settlement, and submitting this Claim Form to the Claims Administrator is equivalent to filing it with the Court.

The undersigned hereby declares under penalty of perjury that the Class Member:

€ **did** previously receive a Certification Notice Letter; or

€ **did not** previously receive a Certification Notice letter.

After reviewing the information that has been supplied on this Claim Form, the undersigned declares under penalty of perjury that the information provided in this Claim Form is true and correct to the best of his/her knowledge, information and belief.

\_\_\_\_\_  
Signature of Claimant

Date \_\_\_\_\_  
DDMMYYYY

## Section 8 – Physician Declaration

I solemnly declare that:

1. I am a physician licensed to practice medicine in the province of \_\_\_\_\_.
2. I am/was a treating physician for \_\_\_\_\_ who was implanted with one of the following Medtronic Defibrillators (please check applicable defibrillator) which was subject to a Health Canada advisory (recall) in February, 2005.

√	Defibrillator	Model	Manufactured Before
	Marquis VR	7230	December 31, 2003
	Marquis DR	7274	December 31, 2003
	Maximo VR	7232	December 31, 2003
	Maximo DR	7278	December 31, 2003
	InSync Marquis	7277	December 31, 2003
	InSync III Marquis	7279	December 31, 2003

3. The Health Canada advisory (recall) associated with the Medtronic Defibrillator implanted in \_\_\_\_\_ was a substantial factor in the decision to explant his/her Medtronic Defibrillator.

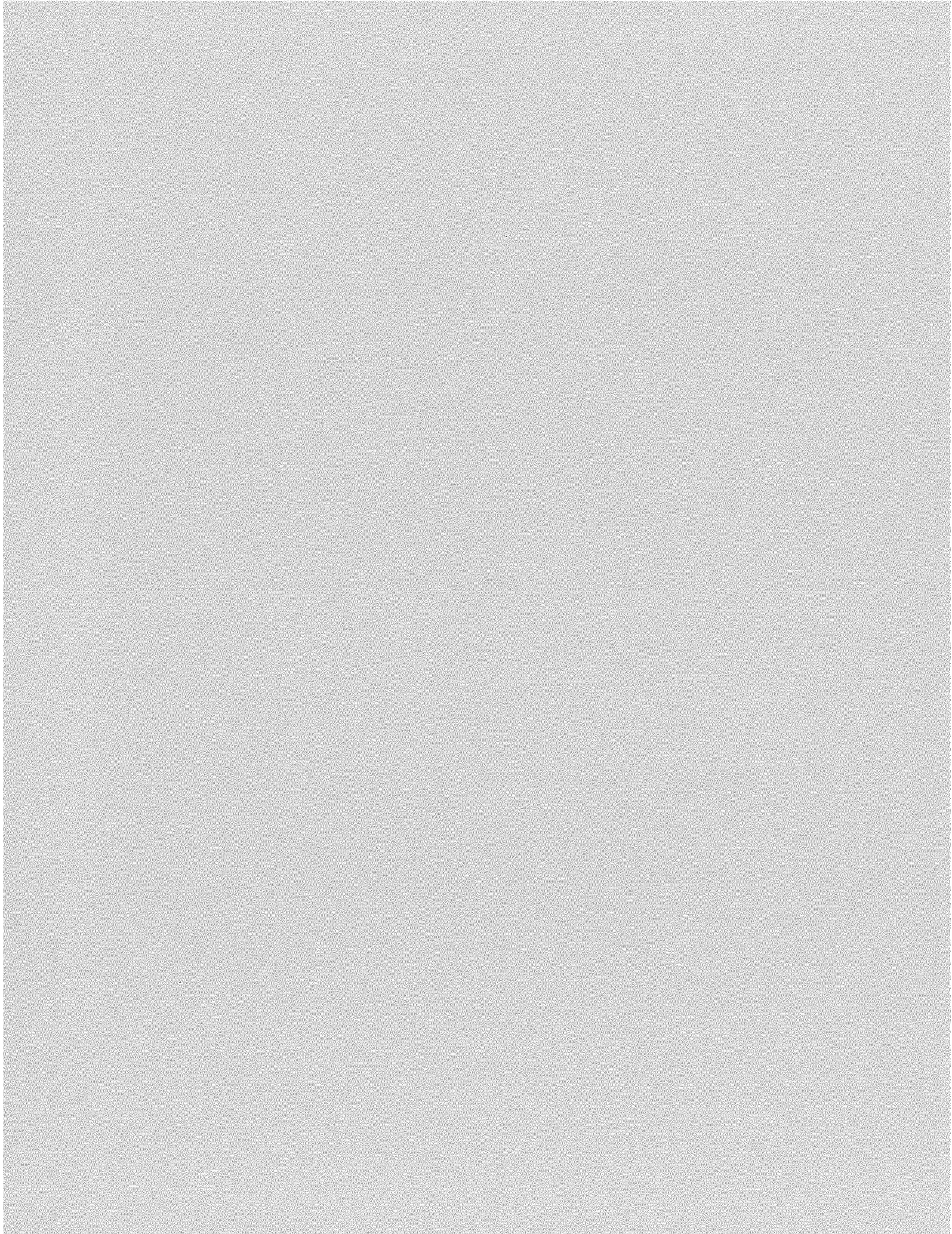
\_\_\_\_\_  
Signature of Physician

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Physician

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_





**EXHIBIT "H"**  
**[insert RicePoint Letterhead]**

**CANADIAN MEDTRONIC  
DEFIBRILLATOR SETTLEMENT  
ACKNOWLEDGMENT LETTER**

DATE

CLAIMANT NAME  
CLAIMANT ADDRESS  
CLAIMANT CITY, PROV, POSTAL

**RE: Your file #**

We are writing to you as the Court-appointed Claims Administrator of the Canadian Medtronic Defibrillator Settlement.

Thank you for submitting your Canadian Medtronic Defibrillator Settlement Claim Package.

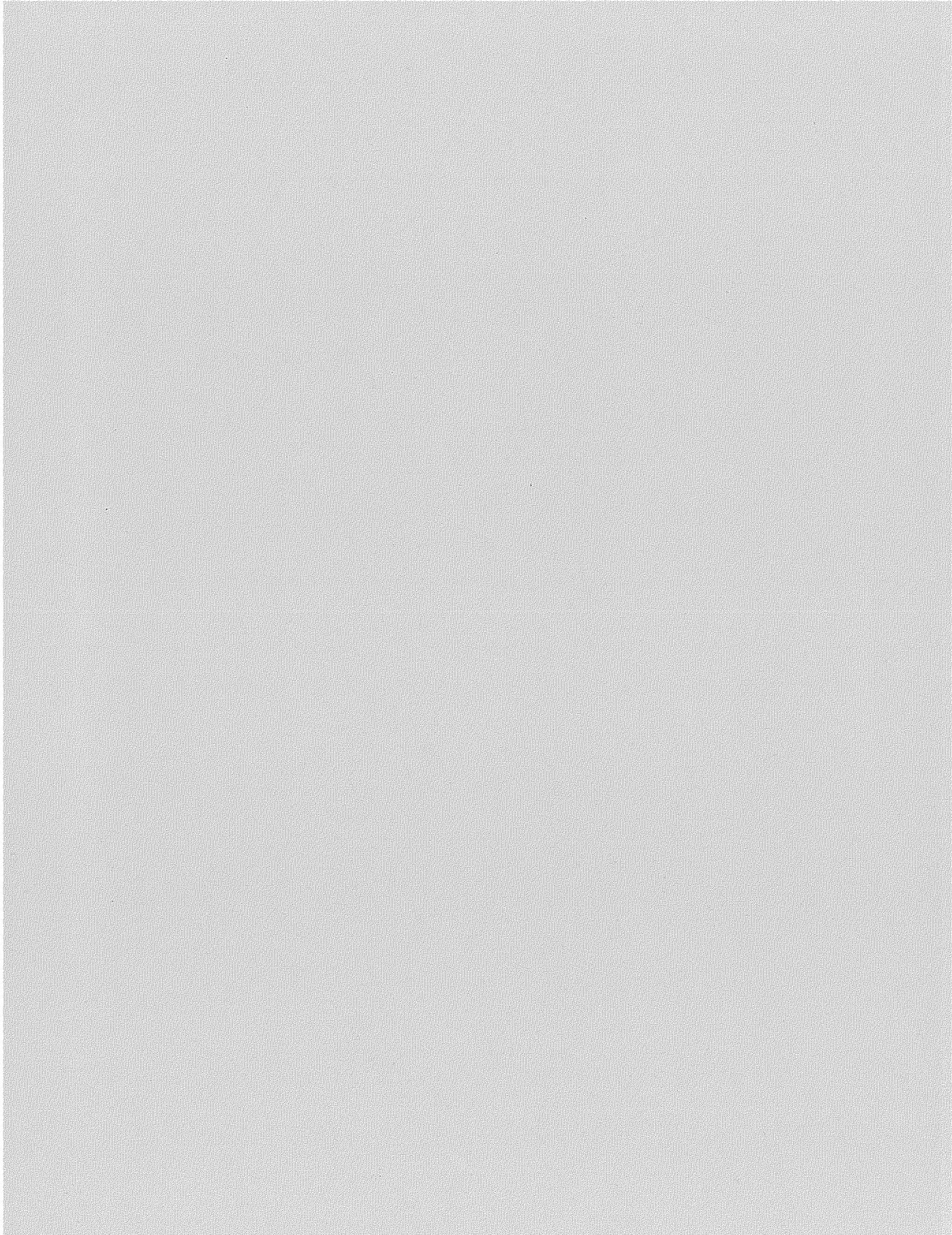
This letter confirms that we have received your Claim Package and any attached supporting documentation. Your Claim Package will now be reviewed for completeness and if it is considered to be deficient (i.e. missing any of the required information and/or documentation) you will be notified in writing and given an opportunity to provide additional information and/or documentation.

If your Claim Package is complete at this time, the Claims Administrator will move forward with reviewing your Claim Package for a determination on the eligibility of your claim. Within ninety (90) days after all Claims have been finally adjudicated, you will be sent a Claim Determination Letter which will advise you whether your Claim was deemed eligible and, if so, the amount of the Compensatory Payment awarded, along with a cheque in that amount.

If you have any questions or concerns, please contact the Claims Administrator's Information Line at 1-800-xxx-xxxx or e-mail **insert RicePoint e-mail**.

Sincerely,

Claims Administrator



**EXHIBIT "T"**  
**[insert RicePoint Letterhead]**

**CANADIAN MEDTRONIC  
DEFIBRILLATOR SETTLEMENT  
DEFICIENCY LETTER**

DATE

CLAIMANT NAME  
CLAIMANT ADDRESS  
CLAIMANT CITY, PROV, POSTAL

**RE: Your file #**

We are writing to you as the Court-appointed Claims Administrator of the Canadian Medtronic Defibrillator Settlement. Thank you for submitting your Canadian Medtronic Defibrillator Settlement Claim Package. We have reviewed your Claim Package for completeness pursuant to the terms of the Settlement, and have determined that the package is missing the following information and/or documentation necessary to support your Claim:

**[particulars as to nature of deficiency/ies to be listed here]**

As your Claim Package and/or supporting documentation has been deemed to be deficient, you may seek to obtain the referenced missing information and/or documentation. If you choose to do so, any such further information and/or documentation must be submitted to the Claims Administrator within **forty-five (45) days** of receipt of this letter. You are not required to provide the requested information or further documentation. **However, if you do not provide the requested information or documentation listed above, this may affect your eligibility to obtain compensation for your Claim.**

Kindly submit all further documentation to the Claims Administrator at the following address:

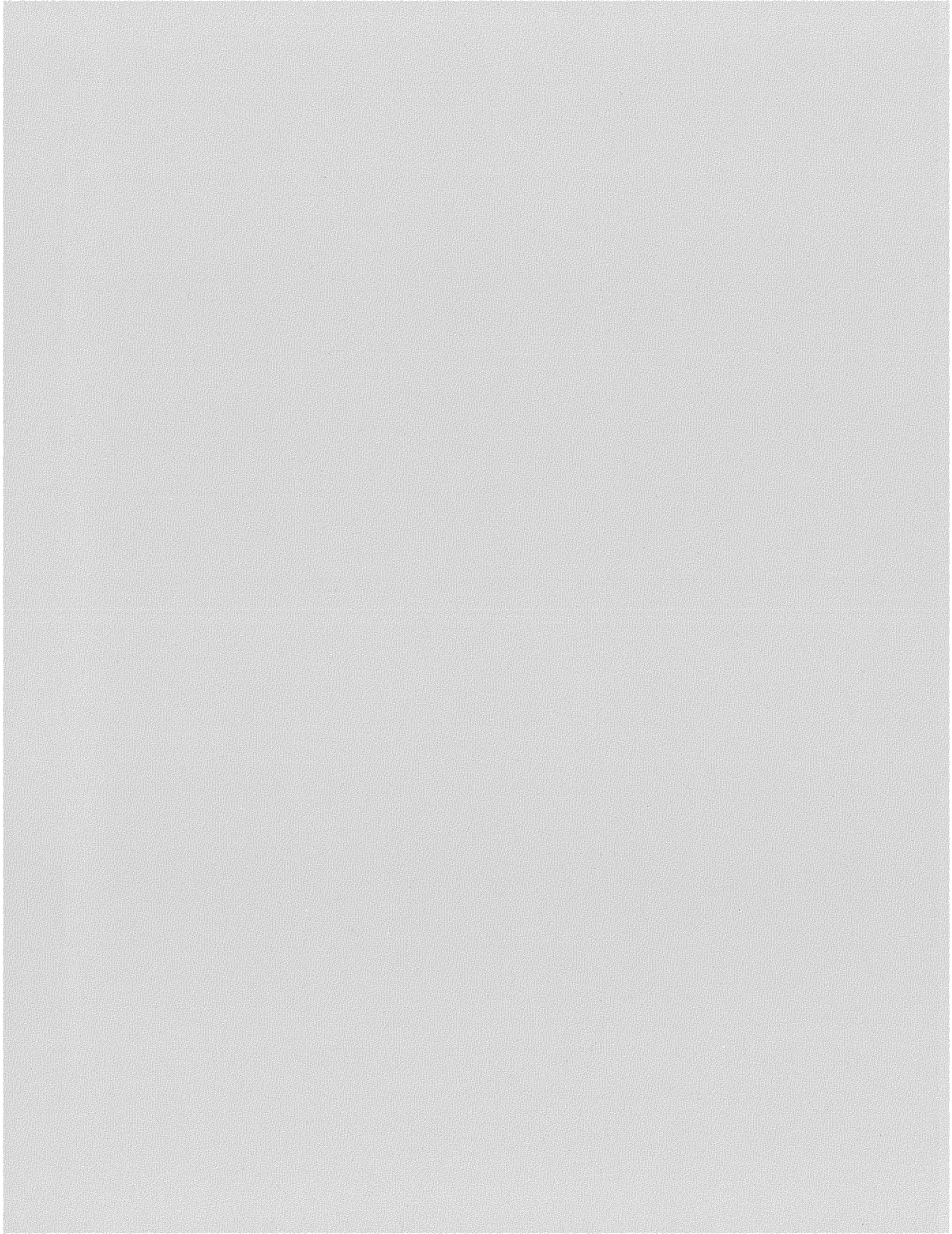
**RicePoint Administration Inc.  
Address  
Attention: Canadian Medtronic Defibrillator Settlement**

If you have any questions or concerns, please contact the Claims Administrator's Information Line at 1-800-xxx-xxxx or e-mail **insert RicePoint e-mail**.

Sincerely,

Claims Administrator





**EXHIBIT “J”**  
**[insert RicePoint Letterhead]**

**CANADIAN MEDTRONIC  
DEFIBRILLATOR SETTLEMENT  
CLAIM DETERMINATION LETTER**

DATE

CLAIMANT NAME  
CLAIMANT ADDRESS  
CLAIMANT CITY, PROV, POSTAL

**RE: Your file #**

We are writing to you as the Court-appointed Claims Administrator of the Canadian Medtronic Defibrillator Settlement. Thank you for submitting your Canadian Medtronic Defibrillator Settlement Claim Package. We have now reviewed your Claim package for eligibility pursuant to the terms of the Settlement.

It has been determined that your Claim is:

**[particulars as to determination on eligibility to be inserted here]**

**[where claim deemed eligible, particulars as to determination as to quantum of compensation to be inserted here, including any required explanation related to any *pro rata* decrease or *pari passu* increase in payment, along with a note that a cheque in that amount is enclosed]**

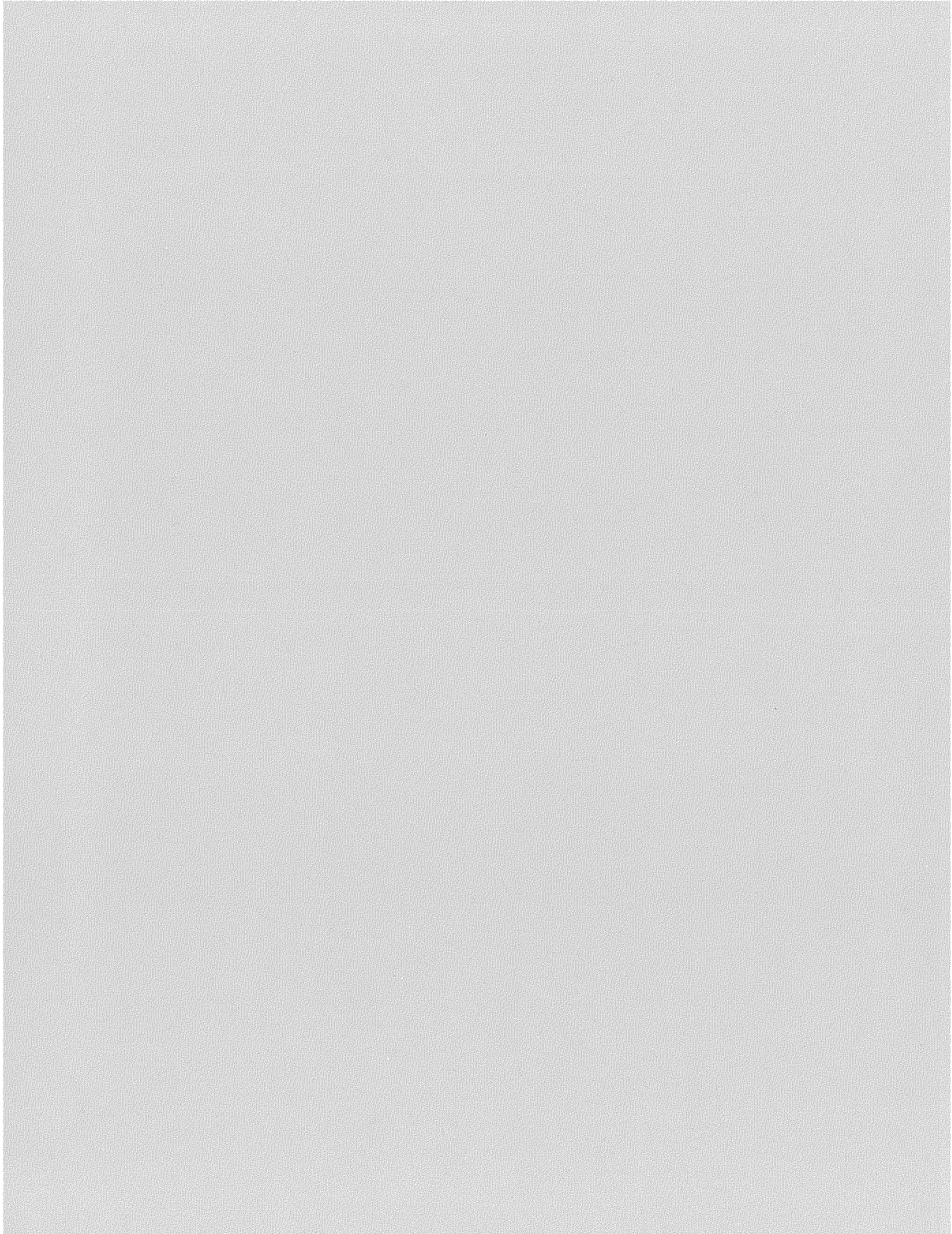
In accordance with the terms of the Settlement Agreement, this decision is final and binding and not subject to any further review.

If you have any questions or concerns, please contact the Claims Administrator's Information Line at 1-800-xxx-xxxx or e-mail **insert RicePoint e-mail**.

Sincerely,

Claims Administrator





## EXHIBIT “K”

### ESCROW AGREEMENT

**THIS ESCROW AGREEMENT** is entered into and effective this [DATE], 2019, by and among RicePoint Administration Inc.; Medtronic, Inc. and Medtronic of Canada Ltd. (collectively, “**Medtronic**”); and class counsel (“**Class Counsel**”) in the action commenced in the Ontario Superior Court of Justice bearing Court File No. 05-CV-295910CP (the “**Action**”). Class Counsel enter this agreement on behalf of the plaintiffs (“**Plaintiffs**”), individually and on behalf of the classes certified in the Action.

**WHEREAS**, Medtronic and Plaintiffs have reached an agreement with respect to the settlement and resolution of the Action, which is reflected in the Settlement Agreement attached hereto as Schedule “A”; and

**WHEREAS**, this agreement sets forth the terms and conditions of an escrow agreement with respect to certain funds (the “**Settlement Amount**”) to be delivered by Medtronic and deposited into an escrow account and to be retained therein and distributed therefrom in accordance with the terms of the Settlement Agreement;

**NOW, THEREFORE**, in consideration of the promises herein, the parties hereto agree as follows:

#### **I. Terms and Conditions**

1. Medtronic and Class Counsel hereby appoint RicePoint Administration Inc. (“**Escrow Agent**”) to act as escrow agent on the terms and conditions set forth herein, and RicePoint Administration Inc. hereby accepts such appointment on such terms and conditions.
2. Medtronic shall arrange for the delivery to the Escrow Agent of \$3,072,000.00 in Canadian dollars (“**Escrow Settlement Funds**”), subject to the terms of the attached Settlement Agreement. The Escrow Agent shall establish an escrow account (“**Escrow Account**”) in accordance with the terms of the attached Settlement Agreement. The Escrow Agent shall promptly confirm receipt of the Escrow Settlement Funds and the establishment of the Escrow Account in writing to Class Counsel and counsel for Medtronic.
3. Until otherwise instructed in writing by Class Counsel and Medtronic, the Escrow Agent shall invest and reinvest the Escrow Settlement Funds in a single interest-bearing trust account in Ontario at a Canadian Schedule I Bank.
4. All interest on or other income realized by investment of the Escrow Settlement Funds, or any portion thereof, shall be accumulated and added to and be part of the Escrow Settlement Funds.
5. This Escrow Agreement, the Escrow Account and the Escrow Settlement Funds are intended to be subject to the supervision and control of the Ontario Superior Court

(the “**Court**”) where the Action is pending. Except as otherwise provided in paragraphs 6(a) and 6(b) of this Section I, the Escrow Settlement Funds shall only be withdrawn or otherwise removed from the Escrow Account established pursuant to this Escrow Agreement in accordance with the terms of the Settlement Agreement or an order of the Court delivered to the Escrow Agent by Class Counsel or counsel for Medtronic.

6. Subject to the Settlement Agreement, the Escrow Agent shall deliver the Escrow Settlement Funds only as set forth below:
  - (a) Promptly following receipt of either: (i) written notice signed by counsel for Medtronic and Class Counsel stating that the Settlement Agreement has not been approved by the Court or has been cancelled or terminated or has become null and void for any reason; (ii) written notice signed by counsel for Medtronic and Class Counsel directing the return to Medtronic of any Escrow Settlement Funds required to be returned pursuant to the Settlement Agreement; or (iii) an order of the Court so directing, the Escrow Agent shall disburse the Escrow Settlement Funds, or the applicable portion thereof, together with interest thereon, to Medtronic (less amounts necessary for notice and administration costs incurred in connection with the implementation of the Settlement Agreement or expenses of Escrow Agent in connection therewith).
  - (b) Prior to the Effective Date of the Settlement Agreement, and upon receipt of a request in writing from Class Counsel (who shall give reasonable notice to Medtronic), the Escrow Agent shall disburse such amounts of the Escrow Account:
    - (i) for payment of or reserves for taxes and associated tax expenses (if any);
    - (ii) for notice and administration costs incurred in connection with the implementation of the Settlement Agreement, as approved by the Court; and
    - (iii) for reimbursement for any tax liability that is finally assessed and paid as a result of income realized by the investment of the Escrow Settlement Funds.
  - (c) After the Effective Date of the Settlement Agreement, upon receipt of an order of the Court so directing, the Escrow Agent shall pay the amounts set out in Sections 8.3, 8.4, 8.5 and 8.6 of the Settlement Agreement.
7. Class Counsel shall be solely responsible for directing the Escrow Agent to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Escrow Settlement Funds. Further, Class Counsel shall be solely responsible for directing the Escrow Agent to take out of the Escrow Settlement Funds, as and when legally required and as provided in paragraph 6 above, any tax payments, including interest and penalties due on income earned by the Escrow Settlement Funds. Medtronic shall have no responsibility to make any filings



relating to the Escrow Settlement Funds and shall have no responsibility to pay tax on any income earned by the Escrow Settlement Funds or to pay any taxes on the Escrow Settlement Funds. Other than as specifically set forth herein, Medtronic shall have no responsibility for the payment of taxes or tax expenses. If for any reason, for any period of time, Medtronic is required to pay taxes on income earned by the Escrow Account, the Escrow Agent shall, upon written instructions from Medtronic with notice to Class Counsel, timely pay to Medtronic sufficient funds to enable it to pay all taxes (state, provincial, federal or other) on income earned by the Escrow Account.

8. After the Effective Date of the Settlement Agreement, Medtronic shall no longer have any interest in the Escrow Settlement Funds, and shall no longer have any rights or obligations under this Escrow Agreement, except as provided in Section I, paragraph 7, or as provided in the Settlement Agreement.

## **II. Provisions as to Escrow Agent**

1. This Escrow Agreement expressly and exclusively sets forth the duties of the Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent.
2. This Escrow Agreement constitutes the entire agreement between the Escrow Agent and the other parties hereto in connection with the subject matter of this escrow. Unless it is signed by the Escrow Agent as a party, no other agreement entered into between the parties, or any of them, shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be deposited with the Escrow Agent or that the Escrow Agent may have knowledge thereof.
3. The Escrow Agent shall in no way be responsible for notifying nor shall it have a duty to notify any party hereto or any other party interested in this Escrow Agreement of any payment required or maturity occurring under this Escrow Agreement or under the terms of any instrument deposited therewith unless such notice is explicitly provided for in this Escrow Agreement or the Settlement Agreement.
4. The Escrow Agent shall be protected in acting upon any documents that Escrow Agent, in good faith and after reasonable investigation, believes to be genuine, and any documents that purport to be Court orders authorizing release, disbursement or retention of the Escrow Funds.
5. In the event of any disagreement between any of the parties to this Escrow Agreement, or between any of them and any other party, resulting in inconsistent claims or demands being made in connection with the matters covered by this Escrow Agreement, or in the event that the Escrow Agent, in good faith, be in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any

such event, Escrow Agent shall not be or become liable in any way or to any party for its failure or refusal to act, and Escrow Agent shall be entitled to continue to refrain from acting until (i) the rights of all interested parties shall have been fully and finally adjudicated by the Court, or (ii) all differences shall have been resolved and all doubt eliminated by agreement among all of the interested parties, and the Escrow Agent shall have been notified thereof in writing signed by all such parties.

6. The Court shall retain jurisdiction over any suit, action or proceeding to enforce any provision of, or based upon any right arising out of this Escrow Agreement, and the parties agree not to commence any such suit, action or proceeding except in the Court, unless the Court determines that it lacks jurisdiction over a matter submitted to it. Nothing herein shall be construed as a submission to jurisdiction for any purpose other than enforcement of this Escrow Agreement.

### **III. Compensation of Escrow Agent**

1. Except as provided in Section I, paragraph 6(a), the Escrow Agent shall not debit the Escrow Funds for any charge for its fees or its costs and expenses, until it shall have received a copy of an order issued by the Court, approving the amount of fees, costs and expenses to which it is entitled. Fees, costs, and expenses of Escrow Agent shall be charged against the Escrow Funds and, to the extent possible, be paid out of interest earned thereon.

### **IV. Miscellaneous**

1. Any notice, request for consent, report, or any other communication required or permitted in this Escrow Agreement shall be in writing and shall be delivered by (i) e-mail together with a copy sent by first class mail, postage prepaid, or (ii) overnight delivery service, and shall be deemed to have been given when received. The addresses and e-mail addresses of the parties are as follows:

**Escrow Agent:**

RicePoint Administration Inc.  
[TBC]

**Wire Instructions:**

[TBC]

**Medtronic:**

Danielle K. Royal  
Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9  
E-mail: droyal@stikeman.com

**Class Counsel:**

Joel Rochon  
Rochon Genova LLP  
121 Richmond Street West, Suite 900  
Toronto, ON M5H 2K1  
E-mail: jrochon@rochongenova.com

and

Won J. Kim  
Kim Spencer McPhee Barristers P.C.  
9 Prince Arthur Avenue  
Toronto, ON M5R 1B2  
E-mail: wjk@complexlaw.ca

Any party may unilaterally designate a different addressee, address or telephone or e-mail by giving notice of each change in the manner specified above to the other parties.

2. Escrow Agent shall send monthly statements relating to the Escrow Account to Class Counsel and counsel for Medtronic.
3. This Escrow Agreement is being made in and is intended to be construed and enforced according to the laws of Ontario. It shall inure to and be binding upon the parties and their respective successors and assigns. All representations, covenants, and indemnification provisions contained in this agreement shall survive the termination of this Escrow Agreement.
4. The terms of this Escrow Agreement may be altered, amended, modified or revoked only by an instrument in writing signed by all the parties hereto.
5. If any provision of this Escrow Agreement shall be held or deemed to be, or shall in fact be, void, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same void, inoperative or unenforceable to any extent whatsoever.
6. All titles and headings in this agreement are intended solely for the convenience of reference and shall in no way limit or otherwise affect the interpretation of any of the provisions hereof.
7. This Escrow 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.

IN WITNESS WHEREOF, the undersigned have caused this Escrow Agreement to be duly executed as of the date first above written.

**ESCROW AGENT**

By: \_\_\_\_\_

Name:

Title:

**MEDTRONIC, INC.**

By: \_\_\_\_\_

Name:

Title:

**MEDTRONIC OF CANADA LTD.**

By: \_\_\_\_\_

Name:

Title:

**CLASS COUNSEL**

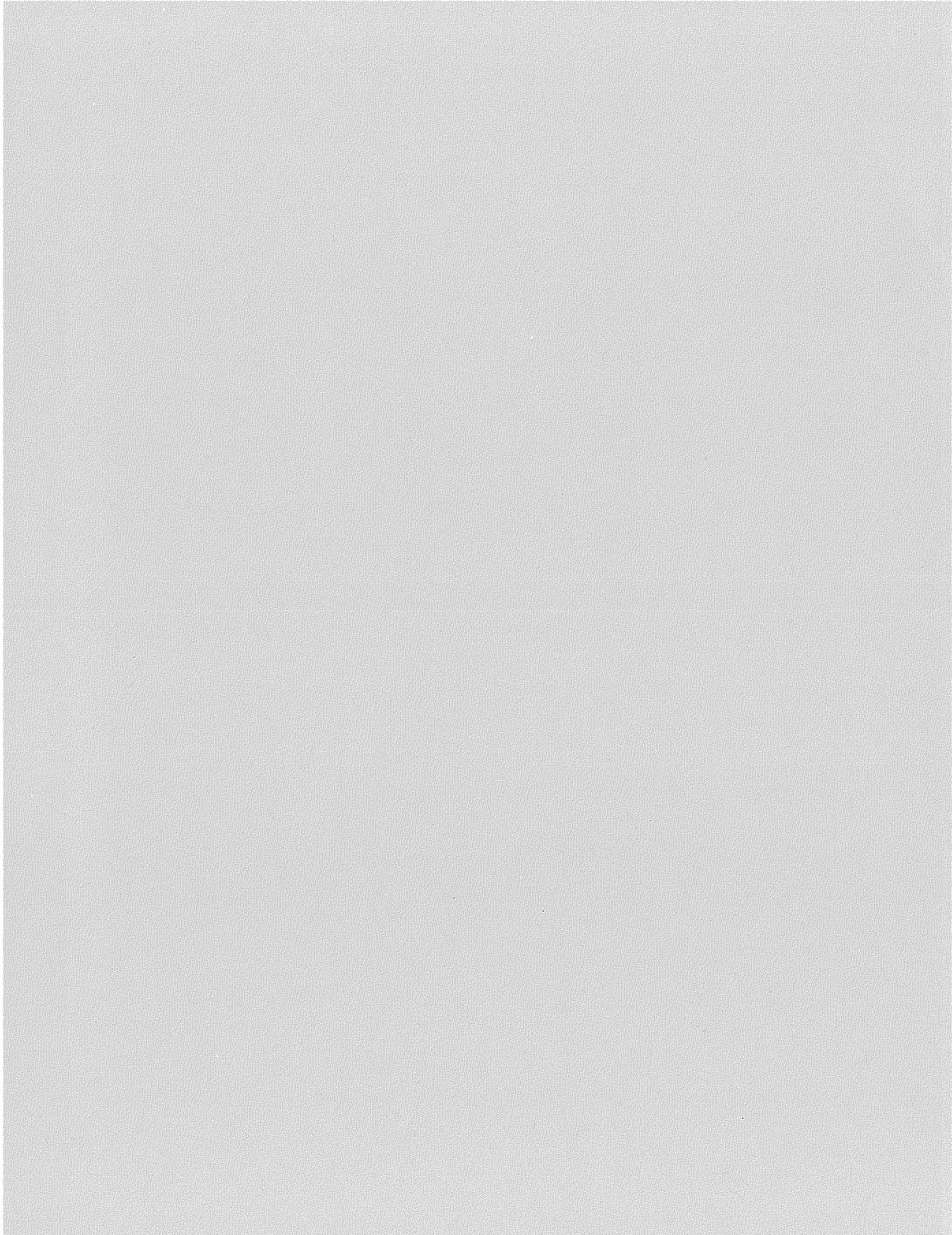
By: \_\_\_\_\_

Name:

Title:

**Schedule A**

See attached.



**EXHIBIT “L”**

**FRANK PETER, Mrs. BERNADETT PETER, MARK PETER,  
Ms. BERNADETT PETER, BRIAN FREDERICK FOOTE, RHONDA LYNN LO  
MONACO, ANITA PRIN, FRANCINE NOROUZI  
and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA as  
represented by the Minister of Health and Wellness (the “Plaintiffs”)**

- and -

**MEDTRONIC, INC. and MEDTRONIC OF CANADA LTD. (“the Defendants”)**

**PUBLIC HEALTH INSURER  
CONSENT and RELEASE**

**TO: Rochon Genova LLP and Kim Spencer McPhee Barristers P.C.**

**RE: Consent to National Medtronic Defibrillator Battery Settlement Agreement and  
Release of Claims**

**EXCEPT AS OTHERWISE SPECIFIED IN** or as modified by this Consent, capitalized terms used herein shall have the meaning ascribed in the National Medtronic Defibrillator Battery Settlement Agreement dated April 24, 2019 as amended by the Addendum to Settlement Agreement dated October 1, 2019 (the “Settlement Agreement”), a copy of which is attached hereto and the receipt and review of which is hereby acknowledged.

1. The undersigned confirms that s/he has authority to bind: \_\_\_\_\_  
[insert Public Health Insurer]

pursuant to, and in compliance with: \_\_\_\_\_  
[insert citation of relevant provincial/territorial statute(s)]

2. The undersigned, hereby and on behalf of \_\_\_\_\_  
[insert Public Health Insurer]

consents to the terms of the National Medtronic Defibrillator Battery Settlement Agreement

insofar as they relate to the claims of \_\_\_\_\_  
[insert Public Health Insurer]

3. In particular, and without limiting the foregoing, \_\_\_\_\_  
[insert Public Health Insurer]

consents to receiving its proportionate share of \$500,000.00 CDN (less Class Counsel fees, disbursements and applicable taxes) along with the possibility of a further payment in the event that there is a Residue, in exchange for its release of all claims which are released by and through the Settlement Agreement.

Dated of this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

SIGNED, SEALED AND DELIVERED  
in the presence of:

)
)
)
)
)
)

**[insert Public Health Insurer]**

WITNESS

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Per:
print name:
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ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

FRANK PETER, Mrs. BERNADETT PETER, MARK PETER,  
Ms. BERNADETT PETER, BRIAN FREDERICK FOOTE, RHONDA LYNN LO  
MONACO, ANITA PRAIN, FRANCINE NOROUZI  
and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA as  
represented by the Minister of Health and Wellness

Plaintiffs

- and -

MEDTRONIC, INC. and  
MEDTRONIC OF CANADA LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ADDENDUM TO SETTLEMENT AGREEMENT**

A. PREAMBLE

*WHEREAS* the individual plaintiffs and the defendants in the within proceeding have reached a Settlement Agreement which was executed on April 24, 2019 ("Settlement Agreement");

*WHEREAS* the Settlement Agreement incorrectly identifies Her Majesty the Queen in Right of the Province of Alberta as represented by the Minister of Health and Wellness ("Alberta") as a party to the Settlement Agreement, in accordance with the current Statement of Claim;

*WHEREAS* Alberta is a plaintiff in the proceedings, it was not a party to the Settlement Agreement but is otherwise satisfied with the terms of the Settlement Agreement as they relate to the settlement of all of its claims arising from the within proceeding and its participation in the Settlement Agreement will be in its capacity as Provincial Health Insurer;

*NOW THEREFORE*, this Addendum Agreement embodies the proposed means by which the parties agree to modify the Settlement Agreement to reflect Alberta's request to not be included as a named party to the Settlement Agreement.

## B. DEFINITIONS

Except to the extent that they are modified herein, all defined terms used in this document have the meanings ascribed to them in the Settlement Agreement, dated April 24, 2019.

## C. TERMS

1. The Preamble is part of this Addendum Agreement.
2. The parties hereby agree that: the title page of the Settlement Agreement be amended and replaced with the title page attached hereto as Schedule "A";
3. The parties agree that page 6 of the Settlement Agreement, containing Section 2.34 (the definition of "Plaintiffs") be amended and replaced with the page 6 attached hereto as Schedule "B";
4. The parties agree that Exhibit L of the Settlement Agreement be amended and replaced with the Exhibit L attached hereto as Schedule "C";
3. The parties agree that these amendments will be brought to the Court's attention at or before the hearing of the motion to approve the Approval Hearing Notice and that approval of this Addendum Agreement will be sought as part of the Settlement Approval Order;
4. The terms of the Settlement Agreement remain in full force and effect, except to the extent that they have been modified by this Addendum Agreement, including Schedules "A", "B" and "C" hereto.

Date:

1 October 2019

ROCHON GENOVA LLP

per:



Class Counsel

Date: 1.10.19

KIM SPENCER MCPHEE BARRISTERS PC


per:



Class Counsel

Date: October 3, 2019

STIKEMAN ELLIOTT LLP

per:  \_\_\_\_\_  
Counsel for the Defendants

**SCHEDULE "A"**

**NATIONAL MEDTRONIC DEFIBRILLATOR BATTERY  
SETTLEMENT AGREEMENT**

Made as of April 24, 2019

Between

**FRANK PETER, Mrs. BERNADETT PETER, MARK PETER,  
Ms. BERNADETT PETER, BRIAN FREDERICK FOOTE, RHONDA LYNN LO  
MONACO, ANITA PRAIN and FRANCINE NOROUZI (the "Plaintiffs")**

- and -

**MEDTRONIC, INC. and MEDTRONIC OF CANADA LTD. (the "Defendants")**

## SCHEDULE "B"

2.31 **"Final Court Approval"** means the granting of the Settlement Approval Order and the expiry of any applicable appeal period arising therefrom or, if an appeal is made, the date of the final disposition of any such appeal;

2.32 **"Notice Plan"** means the plan for disseminating the Approval Hearing Notice and the Settlement Approval Notice which shall be pursuant to the protocols set out in Exhibit C or in such other form as may be agreed by the Plaintiffs and Defendants and approved by the Court;

2.33 **"Party"** means any one of the Plaintiffs or the Defendants and may be referred to herein collectively as "the Parties";

2.34 **"Plaintiffs"** means Frank Peter, Bernadett Peter, Mark Peter, Brian Frederick Foote, Rhonda Lynn Lo Monaco, Anita Prain and Francine Norouzi;

2.35 **"Plaintiffs' Counsel"** means the firms Rochon Genova LLP and Kim Spencer McPhee Barristers PC, and has the same meaning as "Class Counsel";

2.36 **"Public Health Insurers"** means all of the Canadian Provincial and Territorial Ministries of Health or equivalents, and/or publicly funded plans for health care in Canada, including the Régie de l'assurance maladie du Québec, all of which shall execute and deliver a Public Health Insurer Consent and Release in the form attached hereto as Exhibit L, failing which the Settlement Agreement shall not become effective;

2.37 **"Released Claims"** means:

- (a) For all Releasors other than Public Health Insurers, any and all claims, demands, debts, obligations, damages, liabilities, actions, proceedings, loss and causes of action, including assigned claims, asserted or unasserted, direct or derivative, whether known or unknown, foreseen or unforeseen, whether accrued in whole or in part, regardless of legal theory, by Class Members, that arise from or relate to the design, manufacture, marketing, sale, distribution, labelling, use, purchase and/or implantation of the Defibrillators and all claims of Family Class Members related thereto, including, without limitation and by way of example, all claims that were or could have been brought in the Action by Class Members or by Family Class Members, all subrogated and/or direct claims in respect of Class Members that were or could have been brought by private health insurers in the Action arising from the facts alleged in the Action, and all claims for damages or remedies of whatever kind or character, that relate to the Defibrillators, including, but not limited to, claims for:

**SCHEDULE "C"**

**EXHIBIT "L"**

**FRANK PETER, Mrs. BERNADETT PETER, MARK PETER,  
Ms. BERNADETT PETER, BRIAN FREDERICK FOOTE, RHONDA LYNN LO  
MONACO, ANITA PRIN, FRANCINE NOROUZI  
and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA as  
represented by the Minister of Health and Wellness (the "Plaintiffs")**

- and -

**MEDTRONIC, INC. and MEDTRONIC OF CANADA LTD. ("the Defendants")**

**PUBLIC HEALTH INSURER  
CONSENT and RELEASE**

**TO: Rochon Genova LLP and Kim Spencer McPhee Barristers P.C.**

**RE: Consent to National Medtronic Defibrillator Battery Settlement Agreement and  
Release of Claims**

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1. The undersigned confirms that s/he has authority to bind: \_\_\_\_\_  
[Insert Public Health Insurer]

pursuant to, and in compliance with: \_\_\_\_\_  
[Insert citation of relevant provincial/territorial statute(s)]

2. The undersigned, hereby and on behalf of \_\_\_\_\_  
[Insert Public Health Insurer]

consents to the terms of the National Medtronic Defibrillator Battery Settlement Agreement

insofar as they relate to the claims of \_\_\_\_\_  
[insert Public Health Insurer]

3. In particular, and without limiting the foregoing, \_\_\_\_\_  
 [Insert Public Health Insurer]  
 consents to receiving its proportionate share of \$500,000.00 CDN (less Class Counsel fees,  
 disbursements and applicable taxes) along with the possibility of a further payment in the event  
 that there is a Residue, in exchange for its release of all claims which are released by and through  
 the Settlement Agreement.

Dated of this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

SIGNED, SEALED AND DELIVERED  
 in the presence of:

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)  
)  
)  
)

\_\_\_\_\_  
 [Insert Public Health Insurer]

\_\_\_\_\_  
 WITNESS

\_\_\_\_\_  
 Per:  
 print name: