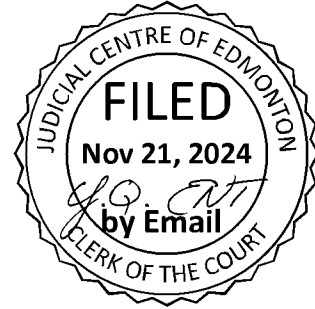


COURT FILE NO. 2103 10542  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON



PLAINTIFFS EVAN MARTINDALE, ~~MATTHEW BAKER~~, MICHAEL REMPEL, MERIT OPENSHOP CONTRACTORS ASSOCIATION OF ONTARIO, MERIT CONTRACTORS ASSOCIATION OF NOVA SCOTIA, MERIT CONTRACTORS ASSOCIATION INC., and MERIT CONTRACTORS ASSOCIATION OF MANITOBA INC. AS REPRESENTATIVE PLAINTIFFS

DEFENDANTS MERCON BENEFIT SERVICES, MERIT CONTRACTORS ASSOCIATION, AND CURTIS MONSEBROTEN, JOHN DOE #1, JOHN DOE #2, JOHN DOE #3, JOHN DOE #4, JOHN DOE #5, JOHN DOE #6, AS TRUSTEES FOR THE MERIT CONTRACTORS ASSOCIATION BENEFIT PLAN TRUST

DOCUMENT **APPROVAL ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No. C1165

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**DATE ON WHICH JUDGMENT WAS PRONOUNCED: NOVEMBER 20, 2024**

**LOCATION OF HEARING OR TRIAL: Law Courts Building, Edmonton, Alberta**

**NAME OF JUDGE WHO MADE THIS ORDER: THE HONOURABLE JUSTICE R.A. GRAESSER, CASE MANAGEMENT JUDGE**

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**UPON THE APPLICATION** of the Plaintiffs for an Order, among other things, *inter alia*, certifying the within Action for settlement purposes, and approving: (1) the Settlement Agreement; (2) the Distribution Plan; (3) the form and content of the Approval Notice; and authorizing its dissemination pursuant to the Plan of Notice as set out in the Pre-Approval Order; (4) the Opt-Out Form; and (5) Class Counsel Fees; (6) Proposed Honoraria for Michael Rempel and Evan Martindale; and (7) Class Counsel Disbursements and Administration Expenses; **AND UPON READING** the materials submitted, including the Settlement Agreement between the Plaintiffs and the Defendants dated October 15, 2024 attached hereto as **Schedule “A”** (the “**Settlement Agreement**”); **AND UPON HEARING** counsel for the Plaintiffs and counsel for the Defendants, and noting the consent of counsel for the Defendants;

**IT IS HEREBY ORDERED THAT:**

1. Except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement.
2. The Action is Certified as a Class Proceeding pursuant to section 5(1) of the *Class Proceedings Act*, SA 2003, c C-16.5 (“CPA”).
3. The Certified Class is a Settlement Class, as defined in section 4 of the CPA, and is comprised of:

All individuals (1) who were employed on an hourly wage basis by a Participating Firm in the Merit Contractors Association Benefit Plan (the “**Defendants’ Benefit Plan**”), (2) who participated in the Defendants’ Benefit Plan offered by the Merit Contractors Association Benefit Plan Trust; (3) whose employer ceased to be a Participating Firm in the Merit Contractors Association Benefit Plan Trust in the calendar year 2020 and (4) whose employer then ceased to be a Participating Firm in the Defendants’ Benefit Plan in 2020 and moved directly to become a Participating Firm in any of the Saskatchewan Construction Industry Plan, the Manitoba Construction Industry Plan, the Ontario Construction Industry Benefit Plan, or the Nova Scotia Construction Industry Plan (collectively, the “**New Plans**”) in 2020; and (5) the individual hourly employee continued to be employed by that Participating Firm on a continuous basis to the time that the Approval Order is granted (6) excluding any Opt-Outs.

4. The Settlement Agreement is fair, reasonable and in the best interests of the Class.
5. The Settlement Agreement is approved pursuant to Section 35 of the CPA.
6. The Settlement Agreement shall be implemented in accordance with its terms.
7. The Settlement Agreement, in its entirety, forms part of this Order and is binding upon the Defendants, the Plaintiffs and the Class Members, including those persons or estates that require Litigation Representatives and the requirements of Rules 2.11 and 2.18 are hereby disposed of.
8. Class Counsel Fees in the amount of 30% of the Settlement Amount, plus applicable taxes, and disbursements of \$133,362.19, plus applicable taxes, are hereby approved.

9. Honoraria in the amount of \$10,000, to be distributed evenly between the Representative Plaintiffs, Michael Rempel and Evan Martindale, is hereby approved.
10. The Distribution Plan, attached hereto as **Schedule "B"**, is hereby approved as fair and reasonable, and the Settlement Amount held in the Escrow Account shall be distributed in accordance with the Distribution Plan after the payment of Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, and Honoraria.
11. The form and content of the Approval Notice, substantially in the form attached hereto as **Schedule "C"**, is hereby approved.
12. The Opt-Out Form, substantially in the form attached hereto as **Schedule "D"**, is hereby approved.
13. The Approval Notice (which encloses the Opt-Out Form) shall be published and disseminated in accordance with the Plan of Notice.
14. On notice to the Court but without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out the provisions of the Settlement Agreement.
15. Except for the obligation to pay the Settlement Amount, the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
16. If the Settlement Agreement is terminated pursuant to any rights of termination therein, then:
  - a) the Order shall be set aside, be of no further force or effect, and be without prejudice to any party; and
  - b) each party to the Action shall be restored to his or its respective position in the Action as it existed immediately prior to the execution of the Settlement Agreement.
17. As of the date that the Settlement Agreement becomes Final pursuant to its terms, the Releasors forever and absolutely release the Releasees from the Released Claims.
18. As of the date that the Settlement Agreement becomes Final pursuant to its terms, the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.

19. As of the date that the Settlement Agreement becomes Final pursuant to its terms, the Action shall be dismissed against the Defendants without costs and with prejudice, without further order.



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THE HONOURABLE R.A. GRAESSER  
JUSTICE OF THE COURT OF KING'S BENCH  
OF ALBERTA

**SCHEDULE A**

**SETTLEMENT AGREEMENT**

Dated the 15<sup>th</sup> day of October, 2024

Between

**Evan Martindale, Michael Rempel, Merit OpenShop Contractors Association of Ontario,  
Merit Contractors Association of Nova Scotia, Merit Contractors Association Inc., and  
Merit Contractors Association of Manitoba Inc., all in their capacities as Representative  
Plaintiffs  
under the *Class Proceedings Act*, SA 2003, c. C-16.5,**

- and -

**Mercon Benefit Services, Merit Contractors Association, and Curtis Monsebroten, John  
Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5, John Doe #6, as Trustees  
for the Merit Contractors Association Benefit Plan Trust**

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**SCHEDULE "F" - APPROVAL NOTICE (Schedule "C" to the Approval Order)**

**SCHEDULE "G" - OPT-OUT FORM (Schedule "D" to the Approval Order)**

## SETTLEMENT AGREEMENT

Subject to the approval of the Court as provided herein, the Plaintiffs and the Defendants named in the Court of King's Bench of Alberta Court File No. 2103 10542 (hereinafter referred to collectively as the "**Parties**") hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon the granting of the Approval Order referred to below, the Action will be settled subject to the terms and conditions contained herein.

### SECTION 2 - RECITALS

#### WHEREAS:

- I. On July 20, 2021, the Plaintiffs, Evan Martindale, Michael Rempel, Merit OpenShop Contractors Association of Ontario ("**Merit Ontario**"), Merit Contractors Association of Nova Scotia, ("**Merit Nova Scotia**"), Merit Contractors Association Inc. ("**Merit Saskatchewan**"), and Merit Contractors Association of Manitoba Inc. ("**Merit Manitoba**")<sup>1</sup> (collectively, the "**Plaintiffs**") all in their capacities as Representative Plaintiffs, commenced a proposed class action in the Court of King's Bench of Alberta, bearing Court File No. 2103 10542 against Mercon Benefit Services, Merit Contractors Association ("**Merit Alberta**") and Merit Contractors Association Benefit Plan Trust.
- II. On December 8, 2022, the Plaintiffs amended their Statement of Claim to remove Merit Contractors Association Benefit Plan Trust as a defendant and added Curtis Monsebroten, John Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5, and John Doe #6 as defendants in their capacities as Trustees for the Merit Contractors Association Benefit Plan Trust (the "**Trust**"), as Defendants.
- III. The Plaintiffs further amended their Statement of Claim on November 2, 2023, to limit their claims against the Defendants to the several liability of the Defendants.
- IV. The Action made various allegations against the Defendants in relation to an Hour Bank Health and Welfare Benefit Plan (defined herein as the "**Defendants' Benefit Plan**") for hourly employees (the "**Proposed Class Members**") in which the Proposed Class Members had allegedly participated. It was alleged that the Defendants made misrepresentations concerning the operation of the Defendants' Benefit Plan and that the Defendants engaged in certain wrongful conduct as more particularly alleged in the Action.
- V. The allegations in the Action included that the Defendants, or any of them, refused to transfer the Proposed Class Members' banked hours in their individual hour bank accounts over to their new benefit plans, after they, at the behest of their employers, left the Defendants' Benefit Plan to participate in new plans set up by Merit Ontario, Merit Nova Scotia, Merit Saskatchewan, and Merit Manitoba (the "**Merit Associations**").
- VI. The Plaintiffs in the Action sought a transfer of banked hours of the Proposed Class Members from the Defendants' Benefit Plan to one of the New Plans, or the cash equivalent of those hours, as well as what was styled as the "growth in reserves" of the

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<sup>1</sup> The Original Statement of Claim included a Representative Plaintiff by the name of Matthew Baker who since asked that his name be removed from the list of Representative Plaintiffs in the Action. His name has been removed from the Action.

fund of the Defendants' Benefit Plan as a result of the participation of the Plaintiffs in the Defendants' Benefit Plan.

- VII. Among the causes of action alleged by the Plaintiffs in the Action were misrepresentation, breaches of the *Competition Act*, breaches of the *Consumer Protection Act (Alberta)*, the tort of deceit/civil fraud, unjust enrichment, breach of contract, negligent misrepresentation, breach of trust and breach of fiduciary duty, and civil conspiracy.
- VIII. The Defendants have denied and continue to deny all the Plaintiffs' claims in the Action and have vigorously denied any wrongdoing or liability of any kind and would have actively and diligently continued to pursue affirmative and other defences had this Action not been settled.
- IX. Class Counsel has fully explained to the Plaintiffs the terms of this Agreement. The Plaintiffs have reviewed the terms of this Agreement and, based upon an analysis of the facts and law applicable to the issues in this case, and taking into consideration the extensive burdens, complexities, risks and expenses of continuing this litigation, the uncertainty of the Defendants' liability and potential statutory and other limits thereto, the evidence of experts retained by the Parties in the Action, the determination of damages that may be owing to the Class, any potential appeals, and the fair, cost-effective and assured resolution of the claims, the Plaintiffs, with the benefit of advice from Class Counsel, have concluded that this Agreement is fair and reasonable, and in the best interests of the Class.
- X. The Defendants, with the benefit of advice from legal counsel, have similarly concluded that the settlement of the Action subject to the terms of this Agreement is desirable, in order to achieve certainty, and to avoid the time, risk and expense of continuing with the litigation, including any potential appeals, and to finally and completely resolve the pending claims of the Plaintiffs and the proposed Class.
- XI. The Plaintiffs and the Defendants have engaged in hard-fought arm's length negotiations over several months. The Plaintiffs and the Defendants intend to, and hereby do, finally resolve this Action and all of the claims that were or could have been asserted in the Action against the Defendants, subject to approval of this Court as hereunder provided, without any admission of liability or wrongdoing whatsoever by the Defendants.
- XII. Defined terms in these recitals bear the meanings set out in Section 2.1 of this Agreement.

**NOW THEREFORE FOR VALUE RECEIVED**, the receipt and sufficiency of which is hereby acknowledged, the Parties stipulate and agree, subject to the approval of the Court, that any and all claims made or that could have been made in this Action against the Defendants shall be finally settled and resolved on the terms and conditions set forth in this Agreement.

### **SECTION 3 - DEFINITIONS**

#### **3.1 Defined Terms**

- (1) In this Agreement, including the recitals and schedules hereto:
  - (A) **Action** means the proposed class action commenced by Evan Martindale, Michael Rempel, Merit OpenShop Contractors Association of Ontario, Merit Contractors

Association of Nova Scotia, Merit Contractors Association Inc., and Merit Contractors Association of Manitoba Inc. as proposed Representative Plaintiffs against Mercon Benefit Services, Merit Contractors Association, and Curtis Monsebroten, John Doe #1, John Doe #2, John Doe #3, John Doe #4, John Doe #5, John Doe #6, as Trustees for the Merit Contractors Association Benefit Plan Trust, in the Court of King's Bench of Alberta, Judicial Centre of Edmonton, bearing Court File No. 2103 10542, including all amendments thereto.

- (B) **Administration Expenses** means, individually or collectively, all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the Settlement, including the costs of publishing and delivering notices, the fees, disbursements and taxes paid to the implement and distribute the Settlement Amount, and any other expenses approved by the Court which shall be paid from the Settlement Amount. For greater clarity, Administration Expenses include the Partially Refundable Expenses for the purposes of the Settlement Agreement, but do not include the Class Counsel Fees.
- (C) **Agreement** means this settlement agreement, including the recitals and schedules.
- (D) **Approval Application** means an application brought by the Plaintiffs before the Court for orders certifying the Action as a class proceeding for settlement purposes pursuant to section 5(1) of the *Class Proceedings Act*, SA 2003, c C-16.5, and approving: (1) the Agreement; (2) the Distribution Plan; (3) the form and content of the Approval Notice, and authorizing its dissemination pursuant to the Plan of Notice as set out in the Pre-Approval Order; (4) the form and content of the Opt-Out form (5) Class Counsel Fees and Class Counsel Disbursements and (5) Administration Expenses.
- (E) **Approval Hearing** means the hearing of the Approval Application by the Court.
- (F) **Approval Notice** means the Notice, substantially in the form attached hereto as **Schedule "F"** as may be amended and approved by the Court at or as a result of the Approval Application.
- (G) **Approval Order** means the order issued by the Court as a result of the Approval Application, which, amongst other things:
  - (i) Certifies the Alberta Action as a class proceeding pursuant to section 5(1) of the *Class Proceedings Act*, SA 2003, c C-16.5, for settlement purposes;
  - (ii) Approves this Agreement;
  - (iii) Approves the Distribution Plan;
  - (iv) Approves the form and content of the Approval Notice including the Opt-Out Form and Opt-Out procedure, and authorizes its dissemination pursuant to the Plan of Notice as set out in the Pre-Approval Order;
  - (v) Approves Class Counsel Fees;

- (vi) Approves Class Counsel Disbursements;
- (vii) Approves Administration Expenses; and
- (viii) Approves the Consent Dismissal Order of the Action;

substantially in the form attached hereto as **Schedule “D”**.

- (H) **Certification** means the certification of the Action pursuant to section 5(1) of the *Class Proceedings Act*, SA 2003, c. C-16.5, for settlement purposes.
- (I) **Class** or **Class Members** means all individuals (1) who were employed on an hourly wage basis by a Participating Firm in the Merit Contractors Association Benefit Plan (the “**Defendants’ Benefit Plan**”), (2) who participated in the Defendants’ Benefit Plan offered by the Merit Contractors Association Benefit Plan Trust; (3) whose employer ceased to be a Participating Firm in the Merit Contractors Association Benefit Plan Trust in the calendar year 2020 (4) whose employer then ceased to be a Participating Firm in the Defendants’ Benefit Plan in 2020 and moved directly to become a Participating Firm in any of the Saskatchewan Construction Industry Plan, the Manitoba Construction Industry Plan, the Ontario Construction Industry Benefit Plan, or the Nova Scotia Construction Industry Plan (collectively, the “**New Plans**”) in 2020; and (5) the individual hourly employee continued to be employed by that Participating Firm on a continuous basis to the time that the Approval Order is granted (6) excluding any Opt-Outs.
- (J) **Class Counsel** means Anthony Leoni and Kendal Paul of Rice Harbut Elliott LLP and Angela Bespflug of Murphy Battista LLP.
- (K) **Class Period** means the period from and including November 14, 2002 to and including December 31, 2020.
- (L) **Class Counsel Disbursements** means the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Action.
- (M) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon authorized by the Court to be paid to Counsel for the prosecution of the Action approved by the Court.
- (N) **Charitable Organizations** means those organizations identified in the Distribution Plan as set out in **Schedule “E”** who will be paid the Net Settlement Amounts in the proportions therein specified.
- (O) **Charitable Payments** means some portion of the Net Settlement Amount that is to be distributed to those charitable organizations identified in the Distribution Plan, with the approval of the Court.
- (P) **Counsel for the Defendants** means Donald J. McGarvey, K.C. and Joel Franz of McLennan Ross LLP.

- (Q) **Court** means the Court of King's Bench of Alberta.
- (R) **Defendants** means Mercon Benefit Services, Merit Contractors Association, Curtis Monsebroten, and all past and present Trustees of the Merit Contractors Association Benefit Plan Trust.
- (S) **Distribution Plan** means the plan for distribution of the Net Settlement Funds in accordance with the plan set out in **Schedule "E"** hereto or such other plan of distribution as may be approved by the Court.
- (T) **Effective Date** means the date upon which the Approval Order becomes Final.
- (U) **Escrow Account** means the interest bearing trust account, with one of the Canadian Schedule 1 banks, under the control of Class Counsel.
- (V) **Fee Agreement** means the contingency fee agreement approved by the Court at the Approval Application and signed by the below named Representative Plaintiffs on the following dates:
- (i) Evan Martindale, on May 13, 2021;
  - (ii) Michael Rempel, on May 20, 2021;
  - (iii) Karen Low, past president of Merit Saskatchewan, on May 14, 2021;
  - (iv) Yvette Milner, president of Merit Manitoba, on May 25, 2021;
  - (v) Paul Dube, president of Merit Nova Scotia, on May 26, 2021; and
  - (vi) Michael Gallardo, president of Merit Ontario, on June 2, 2021.
- (W) **Final** when used in relation to:
- (i) the Agreement, means that the Effective Date has passed and that any right of termination has either become inoperative and of no force and effect or has been waived; or
  - (ii) a court order or judgment, means that all rights of appeal from such order or judgment, if any right of appeal lies therein, have expired, or have been exhausted and the ultimate court to which an appeal (if any) was taken has upheld such order or judgment.
- (X) **Honoraria** means payments authorized by the Court, to be paid to the Plaintiffs Evan Martindale and Michael Rempel for their contributions to the Action.
- (Y) **Merit Associations** means the corporate Plaintiffs: Merit Ontario, Merit Nova Scotia, Merit Saskatchewan, and Merit Manitoba.

- (Z) **Net Settlement Amount** means the Settlement Amount less: (i) Class Counsel Disbursements as approved by the Court; (ii) Class Counsel Fees as approved by the Court; and (iii) Administration Expenses approved by the Court.
- (AA) **New Plans** means the Saskatchewan Construction Industry Plan, the Manitoba Construction Industry Plan, the Ontario Construction Industry Benefit Plan, or the Nova Scotia Construction Industry Plan.
- (BB) **Partially Refundable Expenses** means certain Administration Expenses stipulated in section 7 of the Agreement to be paid pursuant to section 7.2.
- (CC) **Notice of Certification and Settlement** means the notice to the Class of Certification and this Agreement substantially in the form set out in **Schedule “C”**, as may be amended and approved by the Court in the Pre-Approval Application.
- (DD) **Objection Deadline** means November 12, 2024.
- (EE) **Opt-Out Deadline** means December 2, 2024.
- (FF) **Opt-Out Form** means the document substantially in the form of **Schedule “G”** to this Agreement, which, if properly completed and submitted by a Class Member to Class Counsel and received by Class Counsel before the expiry of the Opt-Out Deadline, excludes that Class Member from the Class and from participation in the Settlement contemplated by this Agreement.
- (GG) **Opt-Out Party or Opt-Out Parties** means, individually or collectively, a person that otherwise would be a Class Member who submits a properly completed Opt-Out Form to Class Counsel and which Opt-Out Form is received by Class Counsel on or before the Opt-Out Deadline thereby excluding that Class Member from the Class and from participating in the Settlement contemplated by this Agreement.
- (HH) **Opt-Out Threshold** means the maximum total of Class Members which may decline to participate in the Settlement reflected by this Agreement and not Opt-Out, being 30 Class Members. For greater clarity, if more than 30 Class Members elect to Opt-Out of the Settlement, the Defendants shall have the option, in their sole discretion, to terminate the Settlement pursuant to the terms of the Agreement.
- (II) **Party and Parties** means, individually or collectively, the Plaintiffs and the Defendants.
- (JJ) **Plaintiffs** means collectively Evan Martindale, Michael Rempel, Merit Ontario, Merit Nova Scotia, Merit Saskatchewan, and Merit Manitoba, all in their capacities as representative plaintiffs.
- (KK) **Plan of Notice** means the plan for dissemination of the Notice of Certification and Settlement and the Approval Notice, generally in accordance with the plan set out in **Schedule “B”** of this Agreement, or such other plan of dissemination as approved by the Court.

- (LL) **Pre-Approval Application** means an application brought by the Plaintiffs before the Court for an order approving: (1) the form and content of the Notice of Certification and Settlement and authorizing its dissemination; and (2) the Plan of Notice.
- (MM) **Pre-Approval Order** means the order issued by the Court as a result of the Pre-Approval Application, which, among other things:
- (i) Approves the form and content of the Notice of Certification and Settlement and authorizing its dissemination;
  - (ii) Approves the Plan of Notice; and
  - (iii) Confirms the date for the Approval Hearing;
- substantially in the form attached hereto as **Schedule “A”**.
- (NN) **Released Claim(s)** means any and all manner of claims, demands, actions, suits, debts, dues, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, in respect of damages whenever incurred, and liabilities of any nature whatsoever, including interest, costs, expenses, Administration Expenses, penalties, Class Counsel Fees and lawyer’s fees, disbursements, known or unknown, suspected or unsuspected, in law, under statute, or in equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees, relating in any way to the Action or to any allegations made or that could have been made in the Action, including, without limitation, relating in any way to the Benefits Agreements made between the corporate Plaintiffs and the Merit Contractors Association Benefit Plan Trust, its past, present and future Trustees, the terms of the Defendants’ Bank Benefit Plan, the payment of Contribution Fees, the transfer of or access to the Hour Bank of the Class Members, entitlement to growth in reserves, or to any representations made by the Releasees during the Class Period to anyone concerning the Defendants’ Benefit Plan, the access to benefits under the Defendants’ Benefit Plan or relating to any acts and omissions alleged (or which could have been alleged) in the Action, including, without limitation, negligent misrepresentation, breach of contract, breach of statutory duty, unjust enrichment, breach of trust, breach of fiduciary duty, and the tort of deceit, which have been asserted, or could have been asserted in the Action.
- (OO) **Releasees** means the Mercon Benefit Services and Merit Contractors Association, their past, present and future directors, officers, employees, successors, affiliates, subsidiaries, heirs, successors and assigns, along with all Trustees of the Merit Contractors Association Benefit Plan Trust, their heirs, successors, and assigns, as well as all consultants, agents, experts, legal counsel, insurers, reinsurers and representatives and their respective assigns of Mercon Benefit Services, Merit Contractors Association and the Trustees as aforesaid.
- (PP) **Releasors** means, jointly and severally, the Plaintiffs, all individuals and companies resident in Canada who participated in or made contributions to the Defendants’ Benefit Plan administered by the Defendants at any time on or after



November 14, 2002 and who, after April 2020 but no later than December 31, 2020, transferred to one of the New Plans offered by Merit OpenShop Contractors' Association of Ontario, Merit Contractors Association of Nova Scotia, Merit Contractors Association Inc., and Merit Contractors Association of Manitoba Inc. and each of Merit OpenShop Contractors Association of Ontario, Merit Contractors Association of Nova Scotia, Merit Contractors Association Inc., and Merit Contractors Association of Manitoba and their respective heirs, executors, administrators, successors and assigns but does not include the Opt-Out Parties.

(QQ) **Settlement** means the settlement reflected in this Agreement.

(RR) **Settlement Amount** means \$450,000.00, inclusive of the Administration Expenses, Class Counsel Fees, Class Counsel Disbursements, Honoraria and any other costs or expenses related to the Action or Settlement.

## **SECTION 4 - TIMING AND PAYMENT OF THE SETTLEMENT AMOUNT**

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

- (1) Within 30 days after the date of execution of this Agreement, the Defendants shall pay the Settlement Amount to Class Counsel. The Settlement Amount will be placed in the Escrow Account immediately upon receipt by Class Counsel.
- (2) The Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Agreement.

### **4.2 Escrow Account**

- (1) Class Counsel shall hold the Settlement Amount in the Escrow Account and shall not pay out any amount from the Escrow Account, except in accordance with the terms of this Agreement, or pursuant to an order of the Court made on notice to the Parties.

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

- (1) All interest earned on the Settlement Amount in the Escrow Account shall accrue to the benefit of the Charitable Organizations and become and remain part of the Escrow Account.
- (2) All taxes payable on any interest which accrues in relation to the Settlement Amount shall be the responsibility of the Class and shall be paid by Class Counsel, as appropriate, from the Settlement Amount.
- (3) If the Settlement is terminated as provided herein, the Defendants are entitled to all interest earned while the Settlement Amount is held in Escrow and will be responsible for taxes payable on any such interest earned.

### **4.4 No Reversion**

- (1) Unless this Agreement is terminated as provided herein, the Defendants shall not, under any circumstances, be entitled to the repayment of any portion of the Settlement Amount.

If the Agreement is terminated as provided herein, the Defendants are entitled to repayment only in accordance with the terms provided herein.

## **SECTION 5 - APPROVAL AND NOTICE PROCESS**

### **5.1 Pre-Approval Application and Notice**

- (1) The Plaintiffs will bring the Pre-Approval Application on October 17, 2024.
- (2) The Defendants shall consent to the Pre-Approval Order, provided that it is substantially similar to the form attached as **Schedule "A"** hereto.

### **5.2 Dissemination of the Notice of Certification and Settlement**

- (1) Upon the granting of the Pre-Approval Order, Class Counsel shall cause the Notice of Certification and Settlement (**Schedule C**) to be disseminated to Class Members in accordance with the Plan of Notice as set out in the Pre-Approval Order, and the costs of so doing shall be paid as a Partially Refundable Expense as provided in section 7.

### **5.3 Approval Application**

- (1) The Plaintiffs will thereafter bring the Approval Application before the Court on November 20, 2024.
- (2) The Defendants shall consent to the Approval Order, provided that it is substantially similar to the form attached as **Schedule "D"** hereto.

### **5.4 Approval Notice**

- (1) Upon the granting of the Approval Order, Class Counsel shall cause the Approval Notice (**Schedule F**) to be disseminated to Class Members, including the Opt-Out Form (**Schedule G**), in accordance with the Plan of Notice (**Schedule B**) subject to any amendment or additional direction of the Court, and the cost of doing so shall be paid as a Partially Refundable Expense as provided in section 7.

### **5.5 Report to the Court**

- (1) After dissemination of each of the notices required by this section, Class Counsel shall file with the Court an affidavit confirming dissemination.

## **SECTION 6 - OPTING OUT AND OBJECTIONS**

### **6.1 Awareness of any Potential Opt-Outs**

- (1) The Plaintiffs represent and warrant that:
  - (A) they are unaware of any Class Member who has expressed an intention to opt-out of the Class; and
  - (B) they will not encourage or solicit any Class Member to opt-out of the Class.

## **6.2 Opt-Out Procedure**

- (1) Each Class Member who wishes to exclude himself or herself from the Class must submit a properly completed Opt-Out Form in the form set out in **Schedule "G"** along with all required supporting documents to Class Counsel by the Opt-Out Deadline.
- (2) In order to remedy any deficiency in the completion of the Opt-Out Form, Class Counsel may require and request that additional information be submitted by a Class Member who submits an Opt-Out Form, but all such additional information shall be received by Class Counsel by the Opt-Out Deadline.
- (3) If a Class Member fails to submit a properly completed Opt-Out Form and all required supporting documents to Class Counsel or fails to remedy any deficiency by the Opt-Out Deadline, the Class Member shall be deemed not to have opted out of the Settlement, subject to any order of the Court to the contrary, and will in all other respects be subject to, and bound by the Settlement, the terms of this Agreement and the releases contained herein.
- (4) An Opt-Out Form shall be deemed not to have been submitted until it is received by Class Counsel.
- (5) The Opt-Out Deadline will not be extended unless the Court orders otherwise.
- (6) Opt-Out Parties will be excluded from any and all rights and obligations arising from the Settlement. Subject to this Agreement terminating according to its terms, Class Members who do not opt out shall be bound by the Settlement and the terms of this Agreement.

## **6.3 Notice of the Opt-Out Parties**

- (1) Within seven (7) days after the Opt-Out Deadline, Class Counsel shall report to Counsel for the Defendants with the names of the Opt-Out Parties.
- (2) Class Counsel shall also provide to Counsel for the Defendants copies of all of the Opt-Out Forms and additional information submitted to Class Counsel by the Opt-Out Parties and all supporting documents at the same time as the report in section 5.3(1) noted above.
- (3) Should either of the Parties object to the validity of an Opt-Out, such dispute shall be determined by way of court application. Such application shall be brought by way of application to the Court, which application shall be filed and served within 10 business days of the report referenced in section 5.3(1). All then-existing obligations and deadlines under this Agreement will thereafter be suspended until the final determination of any such application, including any appeal, and subject to any directions of the Court.

## **6.4 Objection Procedure**

- (1) Each Class Member who wishes to object to the approval of the Agreement must submit a properly completed Objection Form and Notice of Intention to Appear along with all required supporting documents to Class Counsel by the Objection Deadline.

- (2) Class Counsel will inform Counsel for the Defendants of any objections received and provide all supporting documentation no later than 7 days prior to the Approval Application.

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

### **7.1 General**

- (1) The Agreement shall, without notice, be automatically terminated if:
- (A) an order substantially in the form of the Approval Order is not granted by the Court upon the Approval Application;
  - (B) the Approval Order is reversed on appeal and the reversal becomes a Final order;
  - (C) The Opt-Out Threshold is exceeded and the Defendants exercise their right to terminate in accordance with section 6.2(1) of this Agreement; or
  - (D) the Approval Order does not lead to or have the effect of securing a Final order dismissing the Action.
- (2) In the event the Agreement is terminated in accordance with its terms:
- (A) the Parties will be restored to their respective positions prior to the execution of this Agreement;
  - (B) the Plaintiffs and the Defendants will consent to an order vacating or setting aside any order certifying the Action as a class proceeding for the purposes of implementing this Agreement and such order shall include a declaration that the prior consent certification of the Action for settlement purposes shall not be deemed to be an admission by the Defendants that the Actions met any of the criteria for certification as a class action, and that no Party to these Actions and no other person may rely upon the fact of the prior consent certification order for any purpose whatsoever;
  - (C) this Agreement will have no further force and effect and no effect on the rights of the Parties except as specifically provided for herein;
  - (D) all statutes of limitations applicable to the claims asserted in the Action shall be deemed to have been tolled during the period beginning with the execution of this Agreement and ending with the day on which the orders contemplated by section 6.1(2)(B) are entered;
  - (E) this Agreement and the consent certification order will not be introduced into evidence or otherwise referred to in any litigation against the Defendants; and
  - (F) If the Settlement is terminated in accordance with the provisions set forth herein, section 6 and section 7 shall survive termination and shall continue in full force and effect.

## **7.2 Right to Terminate the Settlement**

- (1) Notwithstanding any other provision of the Agreement, the Defendants may, in their sole discretion, elect to terminate the Agreement if the cumulative number of Opt-Out Parties exceeds the Opt-Out Threshold, provided that written notice to elect to terminate is provided to Class Counsel within ten (10) business days of Counsel for the Defendants receiving the report referred to in section 5.3(1) along with any additional information outlined in section 5.2(2). If the Opt-Out Threshold is not exceeded, the Defendants' right to terminate the Agreement under this provision is inoperative. For greater clarity, if an application is made under section 5.3(3), the Defendants' option to terminate under this section is suspended until ten (10) business days following the final determination of any such application, including any appeal, and subject to any directions of the Court.

## **7.3 Allocation of Monies in the Escrow Account Following Termination**

- (1) Class Counsel shall account to the Court and the Parties for the amounts maintained in and disbursed from the Escrow Account. If the Agreement is terminated this accounting shall be delivered no later than fifteen (15) days after termination.
- (2) If the Agreement is terminated by the provisions of section 6.2, the Defendants shall, within thirty (30) days after termination, apply to the Court, on notice to Class Counsel as may be necessary, for an order:
  - (A) declaring this Agreement null and void and of no force or effect except for those provisions listed in section 6 and section 7;
  - (B) in the event of termination pursuant to section 6.2 determining whether a notice of termination shall be sent out to the Class Members and, if so, the form and method of disseminating such a notice;
  - (C) requesting an order setting aside, nunc pro tunc, all prior orders or judgments entered by the Court in accordance with the terms of this Agreement, including any order certifying either the Actions as a class proceeding for the purposes of implementing this Agreement; and
  - (D) authorizing the payment of the Settlement Amount to the Defendants.

## **7.4 Disputes Relating to Termination**

- (1) If there is any dispute about the termination of the Agreement, the Court shall determine any dispute by application made by a Party on notice to the other Parties. Such application shall be filed and served within 10 days of any purported termination of the Agreement, and returnable as soon as reasonably practicable thereafter. Pending the final determination of any such application, all then-outstanding obligations and deadlines in this Agreement shall be suspended, with any Party having the ability to seek direction of the Court relating to process and timing.

## **7.5 No Right to Terminate**

- (1) For greater clarity, no dispute or disagreement among the Plaintiffs or Class Members or any of them about the proposed distribution of the Settlement Amount or the Distribution Plan shall give rise to a right to terminate this Settlement.
- (2) Further, any order, ruling or determination made or rejected by the Court with respect to the Honoraria, Class Counsel Fees, Class Counsel Disbursements or the Administration Procedure shall not be deemed to be a material modification of all, or a part, of this Agreement and shall not provide any basis for the termination of this Agreement.

## **SECTION 8 - REFUNDABLE OR PARTIALLY REFUNDABLE EXPENSES**

### **8.1 Payments**

- (1) Expenses reasonably incurred for the following purposes, as approved by the Court, shall be Partially Refundable Expenses, and shall be payable from the Settlement Amount:
  - (A) the reasonable disbursements incurred in connection with establishing and operating the Escrow Account;
  - (B) the reasonable disbursements incurred in publishing and distributing the Notice of Certification and Settlement, including mailing expenses as may be applicable;
  - (C) the reasonable disbursements incurred in publishing and distributing the Approval Notice including the Opt-Out Form, and including mailing expenses as may be applicable;
  - (D) if necessary, the reasonable disbursements incurred in publishing and distributing the notice to the Class that the Agreement has been terminated, including mailing expenses as may be applicable; and
  - (E) the reasonable disbursements reasonably incurred by Class Counsel in distributing the Charitable Payments, including any mailing expenses, to a maximum of \$10,000.00, as approved by the Court.

### **8.2 Payment of Partially Refundable Expenses**

- (1) If this Agreement is terminated, the Partially Refundable Expenses shall be paid first from the accrued interest in the Escrow Account. If the accrued interest in the Escrow Account exceeds the Partially Refundable Expenses, the remaining balance shall form part of the Settlement Amount. If the Partially Refundable Expenses exceed the accrued interest in the Escrow Account, the payment of the remaining portion shall be shared equally between the Plaintiffs and the Defendants.

### **8.3 Disputes Concerning Refundable Expenses**

- (1) Any dispute concerning the entitlement to or quantum of Partially Refundable Expenses shall be dealt with by an application to the Court on notice to the Parties.

## **SECTION 9 - ADMINISTRATION**

### **9.1 Administration of the Settlement Funds**

- (1) It is agreed that Class Counsel will be responsible for disseminating the Plan of Notice as described in **Schedule "B"**, the Notice of Certification and Settlement as described in **Schedule "C"**, and the Approval Notice as described in **Schedule "F"**, without the assistance of a third party claims administrator.
- (2) It is further agreed that Class Counsel will be exclusively responsible for carrying out the Distribution Plan, in accordance with **Schedule "E"**, without the assistance of a third party claims administrator.

### **9.2 No Settlement Funds to the Corporate Plaintiffs**

- (1) It is agreed that no portion of the Settlement Amount will be for the beneficial use of the Merit Associations, nor will any portion of the Settlement Amount be used by any of the New Plans.

### **9.3 Disputes Concerning the Action and Settlement Agreement Decisions as to Administration of the Settlement Funds**

- (1) No action, claim, or proceeding of any kind shall lie against the Plaintiffs, including the Merit Associations and current or past representatives thereof, Class Counsel, the Defendants, or Defendants' Counsel for any matter related to this Action, including but not limited to any decision made in relation to the distribution or allocation of the Settlement Funds, including the Net Settlement Amount, except in the event that the terms of the Agreement have not been followed once approved by the Court.

### **9.4 Conclusion of the Administration**

- (1) In accordance with the terms of this Agreement, the Distribution Plan, and such further approval or order of the Court as may be necessary, or as circumstances may require, Class Counsel shall distribute the Settlement Amount in keeping with the Distribution Plan in **Schedule "E"**.
- (2) No claims or appeals shall lie against Class Counsel based on distributions made substantially in accordance with the Agreement, the Distribution Plan, or with any other order or judgment of the Court.
- (3) Within 30 days of the distribution of the Settlement Amount in accordance with the Distribution Plan, or at such other time as the Court directs, Class Counsel shall report to the Court and shall account for all monies it has received, administered and disbursed and obtain an order from the Court approving of the distribution thereby discharging Class Counsel in relation to all acts related to the Distribution Plan and the distribution of the Settlement Amount.

## **SECTION 10 - RELEASES AND DISMISSALS**

### **10.1 Release of Releasees**

- (1) Upon the date the Agreement becomes Final, the Releasors fully, finally and forever release and discharge the Releasees from the Released Claims.

### **10.2 No Further Claims**

- (1) Upon and after the date the Agreement becomes Final, the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against the Releasees or any other corporation or person who might claim over against the Releasees, or who might claim contribution or indemnity under any statutory provision or otherwise from the Releasees, or who might seek declaratory relief in a third party proceeding against the Releasees, in respect of any Released Claim or any matter related thereto.
- (2) In the event that any Releasor should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against any of the Releasees in connection with the matters which are released and discharged above, the Agreement may be raised as a complete bar to any such demand, action, claim or proceeding.
- (3) Further, upon and after the date the Agreement becomes Final, the Defendants shall not now or hereafter contest or oppose, either directly or indirectly, on their own behalf or on behalf of any other person, any motion or application by Merit Contractors Association of Canada or its members, including but not limited to the Merit Associations, to gain use of the MERIT trademark formerly registered under Registration Number TMA758,403.

### **10.3 Dismissal of the Action by Consent**

- (1) Except as otherwise provided in this Agreement and the Approval Order, the Action shall be dismissed by consent against the Defendants, without costs and with prejudice, no earlier than the date on which the Agreement becomes Final.

## **SECTION 11 - APPROVAL OF THE DISTRIBUTION PLAN**

### **11.1 No Submission by the Defendant Regarding Administration**

- (1) The Defendants shall have no obligation to consent to, but shall not oppose, the Court's approval of the Distribution Plan.
- (2) Unless directed to do so by the Court, the Defendants will not make any submissions to the Court relating to the Distribution Plan.



## **SECTION 12 - DISTRIBUTION OF THE SETTLEMENT AMOUNT**

### **12.1 Process for Distribution**

- (1) After the Agreement is Final, Class Counsel shall pay out the Settlement Amount in the Escrow Account in accordance with the following priorities:
  - (A) Class Counsel Fees as approved by the Court;
  - (B) Class Counsel Disbursements as approved by the Court;
  - (C) All Administration Expenses and Partially Refundable Expenses. The Defendants are specifically excluded from eligibility for any payment of costs or expenses under this section;
  - (D) Any taxes required by law or to be paid to any governmental authority;
  - (E) Honoraria as approved by the Court; and
  - (F) Charitable Payments as approved by the Court served in a jointly worded letter as approved by Counsel for the Defendants and Class Counsel as follows: "Attached is a donation cheque to your organization, arising from the settlement of a proposed class action in which our clients participated. The Alberta Court of Kings Bench approved the settlement and approved the charitable distribution of the settlement funds to your organization".

### **12.2 Distribution to the Limited Class**

- (1) Subject to the approval of the Court, the parties have agreed to a distribution of the Net Settlement Funds in the nature of *cy-près*, meaning that the Net Settlement Funds will be distributed as Charitable Payments in keeping with the Distribution Plan in **Schedule "E"**.

## **SECTION 13 - THE FEE AGREEMENT AND CLASS COUNSEL FEES & DISBURSEMENTS**

### **13.1 Application for Approval of Class Counsel Fees and Class Counsel Disbursements**

- (1) Class Counsel will make an application for fee and disbursement approval to the Court. Class Counsel's application for approval of Administration Expenses, Class Counsel Fees and Class Counsel Disbursements shall be returnable together with the Approval Application.
- (2) Class Counsel is not precluded from making additional applications for expenses incurred as a result of implementing the terms of this Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount.
- (3) The Defendants acknowledge that they are not parties to the application concerning the approval of Class Counsel Fees or Class Counsel Disbursements and will have no involvement in the approval process to determine the amount of Class Counsel Fees and will not take any position or make submissions to the Court concerning Class Counsel Fees.

- (4) The procedure for, and the allowance or disallowance by the Court of, any requests for Class Counsel Fees or Class Counsel Disbursements to be paid out of the Settlement Amount are not part of the Settlement provided for herein, except as specifically provided in section 12.1(2), and are to be considered by the Court separately from its consideration of the fairness, reasonableness and adequacy of the Settlement provided for herein.
- (5) Any order or proceedings relating to Class Counsel Fees or Class Counsel Disbursements, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or affect or delay the finality of the Approval Order and the Settlement of the Action provided herein.

## **SECTION 14 - NO ADMISSION OF WRONGDOING**

### **14.1 No Admission of Liability**

- (1) Neither the Agreement nor anything contained herein is or shall be interpreted as a concession or admission of wrongdoing or liability by the Defendants, or as a concession or admission by the Defendants of the truthfulness of any claim or allegation asserted in the Action. Neither the Agreement nor anything contained herein shall be used or construed as an admission by the Defendants of any fault, omission, liability or wrongdoing in any statement, release, or written document.

### **14.2 Agreement Not Evidence**

- (1) Neither the Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Agreement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding.
- (2) Notwithstanding section 13.2(1), this Agreement may be referred to or offered as evidence in order to obtain the orders of directions from the Court contemplated in this Agreement, in a proceeding to approve or enforce the Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

## **SECTION 15 - CONSENT TO CERTIFICATION**

- (1) The Defendants will consent to, and the Plaintiffs and Class Counsel will undertake to pursue, Certification in relation to the Class pursuant to section 5(1) of the *Class Proceedings Act*, SA 2003, c C-16.5, for settlement purposes.
- (2) The Parties agree to take whatever steps are reasonably necessary and to co-operate with one another in order to secure Certification, and Court approval of the Settlement.

## **SECTION 16 - MISCELLANEOUS**

### **16.1 Entire Agreement**

- (1) This Agreement (and its schedules) constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and

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

- (2) The recitals and schedules to this Agreement are material and integral parts hereof and are fully incorporated into, and form part of, this Agreement.

#### **16.2 Best Efforts**

- (1) The Parties shall use their best efforts to implement the terms of the Agreement and to secure the prompt, complete and final dismissal of the Action against the Defendants.
- (2) The Parties agree that the notices and forms to be used to implement the terms of the Agreement will be substantially as attached as the schedules to the Agreement. The Parties agree to cooperate with each other to make such revisions or changes to the notices and forms as may be required to give full effect to the terms of the Agreement.

#### **16.3 Ongoing Jurisdiction and Governing Law**

- (1) The Agreement shall be governed by, construed and interpreted in accordance with the laws of the Province of Alberta.
- (2) The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Action, the Parties and Class Members to interpret and enforce the terms, conditions and obligations under this Agreement and the Approval Order.

#### **16.4 Severability**

- (1) Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

#### **16.5 Applications for Directions**

- (1) Any one or more of the Parties may apply to the Court for directions in respect of any matter in relation to the Agreement and Distribution Plan.
- (2) All applications contemplated by the Agreement shall be on notice to the Parties, provided however that, once the Agreement becomes Final and the Settlement Amount has been paid, the Defendants shall not receive notice and shall have no standing relating to any issue raised on any such motion unless the Court orders otherwise.

#### **16.6 The Defendant Has No Responsibility or Liability for Administration**

- (1) Except for the obligation to pay the Settlement Amount, the Defendants have no responsibility for and no liability whatsoever with respect to the administration or implementation of the Agreement and Distribution Plan, including, without limitation, the processing and payment of the Honoraria or the Charitable Payments.

## **16.7 Interpretation**

- (1) In the Agreement:
  - (A) the division of the Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement;
  - (B) the recitals and schedules form part of the Agreement;
  - (C) the terms “the Agreement”, “herein”, “hereto” and similar expressions refer to the Agreement as a whole and not to any particular section or other portion of the Agreement; and
  - (D) all amounts referred to are in Canadian currency.
- (2) In the computation of time in this Agreement, except where a contrary intention appears:
  - (A) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days except where reference is made to business days which shall mean Monday through Friday excluding statutory holidays; and
  - (B) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

## **16.8 Binding Effect**

- (1) If the Settlement is approved by the Court and if the Agreement becomes Final, the Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Class Members, the Defendants, the Releasees, the Releasors and all of their heirs, executors, successors, predecessors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all the Releasors, and each and every covenant and agreement made herein by the Defendants shall be binding upon the Releasees.

## **16.9 Survival**

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

## **16.10 Negotiated Agreement**

- (1) The Agreement has been the subject of arm’s length negotiations and many discussions among the Parties and their counsel. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of the Agreement shall have no force or effect. The Parties further agree that the language

contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of the Agreement.

#### **16.11 Acknowledgements**

- (1) Each Party hereby affirms and acknowledges that:
  - (A) the Party's signatory has the authority to bind the Party with respect to the matters set forth herein and has reviewed the Agreement; and
  - (B) the terms of this Agreement and the effects thereof have been fully explained to the Party by his, her or its counsel.

#### **16.12 Authorized Signatures**

- (1) Each of the undersigned represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the Party for whom they are signing.

#### **16.13 Counterparts**

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

#### **16.14 Notice**

- (1) Where the Agreement requires a notice or any other communication or document to be given to the Parties, such notice, communication or document shall be in writing and delivered personally, by email, by facsimile during normal business hours, by courier, or by registered or certified mail, to:

Counsel for the Plaintiffs:

Kendal Paul  
Rice Harbut Elliott LLP  
#820 - 980 Howe Street  
Vancouver, BC V6Z 0C8  
Telephone: 604-682-3771  
Email: kpaul@rhelaw.com

Angela Bespflug  
Murphy Battista LLP  
#2020 - 650 West Georgia Street  
Vancouver, BC V6B 4N7  
Telephone : 604-683-9621  
Email : bespflug@murphybattista.com

Counsel for the Defendants:

Donald J. McGarvey, K.C. and  
Joel Franz  
McLennan Ross LLP  
600, 12220 Stony Plain Road  
Edmonton, AB T5N 3Y4

Telephone: 780.482.9200  
Facsimile: 780.482.9100  
Email: don.mcgarvey@mross.com  
joel.franz@mross.com

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

**For the Plaintiffs and the Class Members**



Per:

\_\_\_\_\_  
Kendal Paul, Rice Harbut Elliott LLP  
Angela Bespflug, Murphy Battista LLP

**For the Defendants**



Per:

\_\_\_\_\_  
Donald J. McGarvey, K.C.  
Joel Franz  
McLennan Ross LLP

**SCHEDULE "A" - PRE-APPROVAL ORDER**

COURT FILE NO. Enter [COURT FILE NO.]

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS EVAN MARTINDALE, ~~MATTHEW BAKER~~, MICHAEL REMPEL, MERIT OPENSHP CONTRACTORS ASSOCIATION OF ONTARIO, MERIT CONTRACTORS ASSOCIATION OF NOVA SCOTIA, MERIT CONTRACTORS ASSOCIATION INC., and MERIT CONTRACTORS ASSOCIATION OF MANITOBA INC. AS REPRESENTATIVE PLAINTIFFS

DEFENDANTS MERCON BENEFIT SERVICES, MERIT CONTRACTORS ASSOCIATION, AND CURTIS MONSEBROTEN, JOHN DOE #1, JOHN DOE #2, JOHN DOE #3, JOHN DOE #4, JOHN DOE #5, JOHN DOE #6, AS TRUSTEES FOR THE MERIT CONTRACTORS ASSOCIATION BENEFIT PLAN TRUST

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Rice Harbut Elliott LLP  
#820 - 980 Howe Street  
Vancouver, BC V6Z 0C8

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Telephone: 604-682-3771  
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Email: kpaul@rhelaw.com  
File No. 16909

Murphy Battista LLP  
#2020 - 650 West Georgia Street  
Vancouver, BC V6B 4N7

Lawyer: Angela Bospflug  
Telephone : 604-683-9621  
Email :  
bospflug@murphybattista.com  
File No. C1165

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**DATE ON WHICH JUDGMENT WAS PRONOUNCED: October 17, 2024**

**LOCATION OF HEARING OR TRIAL: Law Courts Building, Edmonton, Alberta**

**NAME OF JUDGE WHO MADE THIS ORDER: THE HONOURABLE JUSTICE R.A. GRAESSER, CASE MANAGEMENT JUDGE**

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**UPON THE APPLICATION** of the Plaintiffs for an Order, *inter alia*, approving: (1) the form and content of the Notice of Certification and Settlement and authorizing its dissemination; (2) the Plan of Notice, which includes the form and method of objections and opting out; (3) the confirmation of dates for the hearing of the Approval Application; **AND UPON** reading the filed materials, including the Affidavit of \_\_\_\_\_ sworn \_\_\_\_\_, 2024, filed, and the Settlement Agreement attached hereto as Schedule “A” (the “**Settlement Agreement**”); **AND UPON** hearing the submissions of counsel for the Plaintiffs and counsel for the Defendants; **AND UPON** noting the consent of the Defendants;

**IT IS HEREBY ORDERED THAT:**

1. Except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement attached at Schedule “A”.
2. The Approval Application shall take place virtually on November 20, 2024, in the Court of King’s Bench of Alberta, at the Law Courts Building, Edmonton, Alberta.
3. The Plan of Notice, a copy of which is attached as Schedule “B” to this Order, is approved and authorized.
4. The Notice of Certification and Settlement, a copy of which is attached as Schedule “C” to this Order, is approved as to its form and content, and its dissemination to Class Members is authorized pursuant to the Plan of Notice as approved.
5. Class Counsel shall, at or before the Approval Hearing, file with the Court proof of dissemination of the Notice of Certification and Settlement in accordance with the Plan of Notice.
6. Class Members who wish to file with the Court an objection to the approval of the Settlement Agreement or to the approval of Class Counsel Fees or Class Counsel Disbursements shall deliver a written statement to Class Counsel, at the address indicated in the Notice of Certification and Settlement, no later than November 12, 2024.

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THE HONOURABLE JUSTICE R.A.  
GRAESSER  
COURT OF KING’S BENCH OF ALBERTA



## **SCHEDULE “B” - PLAN OF NOTICE**

(SCHEDULE “B” TO THE PRE-APPROVAL ORDER)

Capitalized terms used in this Plan of Notice have the meanings ascribed to them in the Settlement Agreement.

### **PART 1 – NOTICE OF CERTIFICATION AND SETTLEMENT**

As soon as possible following the issuance of the Pre-Approval Order, and in any event no later than October 23, 2024:

1. Class Counsel will post the Notice of Certification and Settlement on:
  - <https://rhelaw.com/class-action/mercon-class-action/>
2. On or before October 23, 2024, Class Counsel will send a mass email to Participating Firms attaching the Notice of Certification and Settlement, with instructions for the Participating Firms to forward the attachments to all of their hourly employees immediately, or by October 25, 2024, at the latest.

### **PART 2 – NOTICE OF APPROVAL OF SETTLEMENT (WHICH INCLUDES THE OPT-OUT FORM)**

3. On or before November 25, 2024, Class Counsel will:
  - (ii) email the Approval Notice to Participating Firms, with instructions for the Participating Firms to forward the Approval Notice to all hourly employees immediately, or by November 27, 2024, at the latest; and
  - (iii) post the hard-copy Approval Notice in their physical offices immediately, or by November 27, 2024, at the latest.
4. No later than November 30, 2024, Class Counsel will post the Approval Notice at <https://rhelaw.com/class-action/mercon-class-action/>

## SCHEDULE “C” - NOTICE OF CERTIFICATION AND SETTLEMENT

(SCHEDULE “C” TO THE PRE-APPROVAL ORDER)

### HOURLY BANK BENEFIT PLAN CLASS ACTION

### NOTICE OF CERTIFICATION AND SETTLEMENT

#### Why did I get this Notice?

Your employer emailed you this Notice because your rights may be affected by the proposed settlement of the Hourly Bank Benefit Plan Class Action (the “**Settlement Agreement**”).

#### What is the Hourly Bank Benefit Plan Class Action about?

This Class Action made various allegations against the Defendants in relation to an Hourly Bank Health and Welfare Benefit Plan (the “**Defendants’ Benefit Plan**”) for hourly employees in which employees (the “**Proposed Class Members**”) had allegedly participated. It was alleged that the Defendants made misrepresentations concerning the operation of the Defendants’ Benefit Plan and engaged in other wrongful conduct as set out in the Action.

The allegations in the Action included that the Defendants, or any of them, refused to transfer the Proposed Class Members’ banked hours in their individual hourly bank accounts over to their new benefit plans, after they, at the behest of their employers, left the Defendants’ Benefit Plan to participate in the Saskatchewan Construction Industry Plan, the Manitoba Construction Industry Plan, the Ontario Construction Industry Benefit Plan, or the Nova Scotia Construction Industry Plan (collectively, the “**New Plans**”).

The Plaintiffs in the Action sought a transfer of banked hours of the Proposed Class Members from the Defendants’ Benefit Plan to one of the New Plans, or the cash equivalent of those hours, and the “growth in reserves” of the Fund of the Defendants Benefit Plan as a result of the participation of the Plaintiffs in the Defendants’ Benefit Plan.

Among the causes of action alleged by the Plaintiffs in the Action are misrepresentation, breaches of the *Competition Act*, breaches of the *Consumer Protection Act* (Alberta), the tort of deceit/civil fraud, unjust enrichment, breach of contract, negligent misrepresentation, breach of trust and breach of fiduciary duty, and civil conspiracy.

#### How do I know if I am a Class Member?

You are a Class Member for settlement purposes if you meet all criteria below:

- (1) You were employed on an hourly wage basis by a Participating Firm in the Merit Contractors Association Benefit Plan (the “**Defendants’ Benefit Plan**”).
- (2) You participated in the Defendants’ Benefit Plan offered by the Merit Contractors Association Benefit Plan Trust (the “**Trust**”).
- (3) Your employer ceased to be a Participating Firm in the Trust in the calendar year 2020.

(4) Your employer then ceased to be a Participating Firm in the Defendants' Benefit Plan in 2020 and moved directly to become a Participating Firm in any of the Saskatchewan Construction Industry Plan, the Manitoba Construction Industry Plan, the Ontario Construction Industry Benefit Plan, or the Nova Scotia Construction Industry Plan (collectively, the "**New Plans**") in 2020.

(5) The individual hourly employee (you) continued to be employed by the same Participating Firm on a continuous basis to the time that the Approval Order is granted.

(6) You have not Opted Out of the Class Action.

### **WILL I RECEIVE ANY MONEY IF I AM A CLASS MEMBER?**

If the Alberta Court of King's Bench (the "**Court**") approves the Settlement Agreement, **Class Members will receive no money.**

Under the Settlement Agreement, the Defendants will pay the sum of **\$450,000.00** (the "**Settlement Amount**") in full and final settlement of all claims of Plaintiffs in the Class Action including the claims of the Proposed Class Members against the Defendants. The Settlement Amount includes all legal fees, disbursements, taxes, and Administration Expenses and in return for the Settlement Amount, the Defendants will receive Releases and a dismissal of the Class Action.

Instead, the Settlement Amount, less (i) Administration Expenses as approved by the Court; (ii) Class Counsel Disbursements as approved by the Court; and (iii) Class Counsel Fees as approved by the Court (the "**Net Settlement Amount**") will be distributed as **honoraria and donated to certain organizations** (the "**Distribution Plan**"), which is described in better detail below.

### **REASONS FOR PROPOSED DISTRIBUTION PLAN**

The Action was prosecuted by Class Counsel and Affidavits (sworn statements of evidence) were filed by the Plaintiffs, an expert for the Plaintiffs, and others. Counsel for the Defendants cross-examined most of the individuals who swore those Affidavits as part of the Certification Application.

During this process, it became evident to Class Counsel that they would have significant difficulty proving the allegations that have been made in the action, including the allegation that employees (the Proposed Class Members) suffered a loss of their hour banks after transferring from the Merit Benefit Plan to their New Plans— a core claim in the Action

The Defendants filed a series of Applications with the Court including an Application to have the Action dismissed. Rather than face the risk that such an Application could be successful leaving the Plaintiffs (and the Proposed Class) with nothing, the Plaintiffs, through their counsel, chose to negotiate a resolution of the Action. The terms of that resolution are set forth in the Settlement Agreement.

### **OPTING OUT OF CLASS ACTION**

If any Class Member wishes to opt out of the settlement, they will be given the opportunity to complete an **Opt-Out Form** after the settlement approval hearing on November 17, 2024. They will need to submit it to Class Counsel by December 2, 2024. Further instructions on the Opt-Out Form will be emailed to Class Members by their employers on or after November 27, 2024.

Any Class Member who elects to Opt Out of the proposed settlement of this Action and does so successfully (the "**Opt Out Individuals**"), will have the option to start their own individual action against the Defendants **at their sole expense**.

Class Counsel warns those individuals who are contemplating Opting Out that if they choose to opt out and pursue own individual lawsuit at their own cost, they will likely face **significant problems proving their case**, as did the Plaintiffs in the Action.

If unsuccessful in prosecuting their own action, the Opt Out Individuals may be **responsible for the payment of costs** to the Defendants. Such costs will be the **sole responsibility** of the Opt Out Individuals.

### **APPROVAL HEARING IN EDMONTON, ALBERTA**

On **November 20, 2024**, counsel for the Plaintiffs will apply to Court to have the Class Action certified for settlement, and for the Settlement Agreement, Class Counsel Fees and Class Counsel Disbursements approved by the Court (the "**Approval Hearing**.")

The Approval Hearing will be held at the Law Courts Building, 1A Sir Winston Churchill Square, Edmonton, Alberta, at **10 o'clock am**.

Class Members do not need to attend the Approval Hearing but are welcome to do so.

### **CLASS COUNSEL FEES, CLASS COUNSEL DISBURSEMENTS AND ADMINISTRATIVE EXPENSES**

At the Approval Hearing, Class Counsel (as identified below) will ask the Court to approve their legal fees, which will be 30% plus applicable taxes charged on the Net Settlement Amount ("**Class Counsel Fees**").

Class Counsel will also ask the Court to approve Honoraria of \$5,000 for both individual Plaintiffs, Class Counsel Disbursements, Administration Expenses and of a distribution plan (the "**Distribution Plan**").

### **THE DISTRIBUTION PLAN**

The Net Settlement Amount will be distributed in accordance with the Distribution Plan attached as Schedule "E" to the Settlement Agreement, which, in general terms, provides that:

- (a) \$10,000 will be distributed evenly between the Representative Plaintiffs, Michael Rempel and Evan Martindale as Honoraria for their efforts in advancing the litigation ("**Honoraria**");

- (b) The remaining Net Settlement Amount, after deduction of Honorarium will then be distributed as follows:
- a. 37% to **Saskatchewan Polytechnic** for their trades' programs School of Construction ([saskpolytech.ca](http://saskpolytech.ca)), with 2/3 to be split between the Saskatoon Campus and the Regina Campus and the remaining 1/3 to be split between the Moose Jaw Campus and Prince Albert Campus;
  - b. 34% to the **Red River Scholarship Fund for apprentices** (<https://www.rrc.ca/future-students/awards/>);
  - c. 12% to **Build a Dream** (<https://www.webuildadream.com/donate/> in Ontario);
  - d. 17% to **Techsploration** (<https://www.techsploration.ca/>) and **Skills Canada Nova Scotia** (<https://www.skillsns.ca/>)

### **OBJECTIONS**

If you wish to **OBJECT** to the approval of the Settlement Agreement, Class Counsel Fees, Class Counsel Disbursements, Administration Expenses or the payment of Honorarium to the Representative Plaintiffs, you must deliver a letter or written objection by mail, fax or email to Class Counsel and must be received by **November 12, 2024**.

#### **What needs to be included in my objection letter?**

Your letter to Class Counsel should contain the following:

- Your full name, current mailing address, telephone number and email address;
- Confirmation that you are a Class Member;
- A statement explaining whether you are objecting to the Settlement Agreement, Class Counsel Fees, Class Counsel Disbursements, Administration Expenses and/or the payment of Honorarium to the Representative Plaintiffs, and why;
- Confirmation of whether you intend on coming to the Approval Hearing, whether alone or with a lawyer.

### **OTHER**

A copy of the Third Amended Statement of Claim, the Settlement Agreement including the Distribution Plan may be found on:

- <https://rhelaw.com/class-action/mercon-class-action/>

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

**ANY QUESTIONS ABOUT THIS NOTICE SHOULD BE DIRECTED TO CLASS COUNSEL**

Kendal Paul

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THIS NOTICE, AND DISTRIBUTION OF IT, HAS BEEN AUTHORIZED BY THE COURT OF  
KING'S BENCH OF ALBERTA

**SCHEDULE "D" - APPROVAL ORDER**

COURT FILE NO. 2103 10542

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS EVAN MARTINDALE, ~~MATTHEW BAKER~~, MICHAEL REMPEL, MERIT OPENSHP CONTRACTORS ASSOCIATION OF ONTARIO, MERIT CONTRACTORS ASSOCIATION OF NOVA SCOTIA, MERIT CONTRACTORS ASSOCIATION INC., and MERIT CONTRACTORS ASSOCIATION OF MANITOBA INC. AS REPRESENTATIVE PLAINTIFFS

DEFENDANTS MERCON BENEFIT SERVICES, MERIT CONTRACTORS ASSOCIATION, AND CURTIS MONSEBROTEN, JOHN DOE #1, JOHN DOE #2, JOHN DOE #3, JOHN DOE #4, JOHN DOE #5, JOHN DOE #6, AS TRUSTEES FOR THE MERIT CONTRACTORS ASSOCIATION BENEFIT PLAN TRUST

DOCUMENT **APPROVAL ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Rice Harbut Elliott LLP  
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Telephone: 604-682-3771  
Fax: 604-682-0587  
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File No. 16909

Murphy Battista LLP  
#2020 - 650 West Georgia Street  
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Lawyer: Angela Bessflug  
Telephone : 604-683-9621  
Email :  
bessflug@murphybattista.com  
File No. C1165

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**DATE ON WHICH JUDGMENT WAS PRONOUNCED: NOVEMBER 20, 2024**

**LOCATION OF HEARING OR TRIAL: Law Courts Building, Edmonton, Alberta**

**NAME OF JUDGE WHO MADE THIS ORDER: THE HONOURABLE JUSTICE R.A. GRAESSER, CASE MANAGEMENT JUDGE**

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**UPON THE APPLICATION** of the Plaintiffs for an Order, among other things, *inter alia*, certifying the within Action for settlement purposes, and approving: (1) the Settlement Agreement; (2) the Distribution Plan; (3) the form and content of the Approval Notice; and authorizing its dissemination pursuant to the Plan of Notice as set out in the Pre-Approval Order; (4) the Opt-Out Form; and (5) Class Counsel Fees; (6) Proposed Honoraria for Michael Rempel and Evan Martindale; and (7) Class Counsel Disbursements and Administration Expenses; **AND UPON READING** the materials submitted, including the Settlement Agreement between the Plaintiffs and the Defendants dated \_\_\_\_\_, 2024 attached hereto as Schedule “A” (the “**Settlement Agreement**”); **AND UPON HEARING** counsel for the Plaintiffs and counsel for the Defendants, and noting the consent of counsel for the Defendants;

**IT IS HEREBY ORDERED THAT:**

5. Except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement.
6. The Action is Certified as a Class Proceeding pursuant to section 5(1) of the *Class Proceedings Act*, SA 2003, c C-16.5 (“CPA”).
7. The Certified Class is a Settlement Class, as defined in section 4 of the CPA, and is comprised of:

All individuals (1) who were employed on an hourly wage basis by a Participating Firm in the Merit Contractors Association Benefit Plan (the “**Defendants’ Benefit Plan**”), (2) who participated in the Defendants’ Benefit Plan offered by the Merit Contractors Association Benefit Plan Trust; (3) whose employer ceased to be a Participating Firm in the Merit Contractors Association Benefit Plan Trust in the calendar year 2020 and (4) whose employer then ceased to be a Participating Firm in the Defendants’ Benefit Plan in 2020 and moved directly to become a Participating Firm in any of the Saskatchewan Construction Industry Plan, the Manitoba Construction Industry Plan, the Ontario Construction Industry Benefit Plan, or the Nova Scotia Construction Industry Plan (collectively, the “**New Plans**”) in 2020; and (5) the individual hourly employee continued to be employed by that Participating Firm on a continuous basis to the time that the Approval Order is granted (6) excluding any Opt-Outs.

8. The Settlement Agreement is fair, reasonable and in the best interests of the Class.
9. The Settlement Agreement is approved pursuant to Section 35 of the CPA.
10. The Settlement Agreement shall be implemented in accordance with its terms.
11. The Settlement Agreement, in its entirety, forms part of this Order and is binding upon the Defendants, the Plaintiffs and the Class Members, including those persons or estates that require Litigation Representatives and the requirements of Rules 2.11 and 2.18 are hereby disposed of.
12. Class Counsel Fees in the amount of \$ \_\_\_\_\_, and disbursements in the amounts actually incurred up to a maximum of \$ \_\_\_\_\_, plus applicable taxes, are hereby approved.



13. The Distribution Plan, attached hereto as **Schedule “B”**, is hereby approved as fair and reasonable, and the Settlement Amount held in the Escrow Account shall be distributed in accordance with the Distribution Plan after the payment of Class Counsel Fees, Class Counsel Disbursements and Administration Expenses.
14. The form and content of the Approval Notice, substantially in the form attached hereto as **Schedule “C”**, is hereby approved.
15. The Opt-Out Form, substantially in the form attached hereto as **Schedule “D”**, is hereby approved.
16. The Approval Notice (which encloses the Opt-Out Form) shall be published and disseminated in accordance with the Plan of Notice.
17. On notice to the Court but without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out the provisions of the Settlement Agreement.
18. Except for the obligation to pay the Settlement Amount the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
19. If the Settlement Agreement is terminated pursuant to any rights of termination therein, then:
  - c) the Order shall be set aside, be of no further force or effect, and be without prejudice to any party; and
  - d) each party to the Action shall be restored to his or its respective position in the Action as it existed immediately prior to the execution of the Settlement Agreement.
20. As of the date that the Settlement Agreement becomes Final pursuant to its terms, the Releasors forever and absolutely release the Releasees from the Released Claims.
21. As of the date that the Settlement Agreement becomes Final pursuant to its terms, the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.
22. As of the date that the Settlement Agreement becomes Final pursuant to its terms, the Action shall be dismissed against the Defendants without costs and with prejudice, without further order.

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THE HONOURABLE R.A. GRAESSER  
JUSTICE OF THE COURT OF KING'S BENCH  
OF ALBERTA

## SCHEDULE "E" - DISTRIBUTION PLAN

(SCHEDULE "B" TO THE APPROVAL ORDER)

### **Background**

1. A class action settlement has been reached in *Evan Martindale et al v. Mercon Benefit Services et al*, Court of King's Bench Alberta File # 2103 10542. The Settlement Agreement, Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, Honoraria and Distribution Plan must be approved by the Court to become binding.
2. This document sets out the proposed Distribution Plan that Class Counsel will seek to have approved by the Court as part of the Approval Hearing.
3. The definitions set out in the Settlement Agreement dated \_\_\_\_\_ apply to, and are incorporated in, the Distribution Plan

### **Priority of Distribution**

4. On or after the Effective Date, Class Counsel shall pay out the Settlement Amount in the Escrow Account according to the following priorities:
  - (1) Class Counsel Fees as approved by the Court;
  - (2) Class Counsel Disbursements as approved by the Court;
  - (3) All Administration Expenses and Partially Refundable Expenses. The Defendants are specifically excluded from eligibility for any payment of costs or expenses under this section;
  - (4) Any taxes required by law or to be paid to any governmental authority;
  - (5) Honoraria as approved by the Court; and
  - (6) Charitable Payments as approved by the Court.

### **Honoraria and Charitable Payments**

5. On or after the Effective Date, and keeping with the Priority of Distribution set out in section 4 of the Distribution Plan, Class Counsel shall pay out the Net Settlement Amount by cheque as follows:
  - (1) Approved Honoraria will be distributed and paid evenly between the Representative Plaintiffs, Michael Rempel and Evan Martindale as Honorarium for their efforts in advancing the litigation; and
  - (2) The remaining Net Settlement Amount, after deduction of approved Honoraria will then be distributed as follows:
    - (A) 37% to **Saskatchewan Polytechnic** for their trades' programs School of Construction (saskpolytech.ca), with 2/3 to be split between the Saskatoon Campus and the Regina Campus and the remaining 1/3 to be split between the Moose Jaw Campus and Prince Albert Campus;

- (B) 34% to the **Red River Scholarship Fund for apprentices** (<https://www.rrc.ca/future-students/awards/>);
- (C) 12% to **Build a Dream** (<https://www.webuildadream.com/donate/> in Ontario;
- (D) 17% to **Techsploration** (<https://www.techsploration.ca/>) and **Skills Canada Nova Scotia** (<https://www.skillsns.ca/>)

## SCHEDULE "F" - APPROVAL NOTICE

(SCHEDULE "C" TO THE APPROVAL ORDER)

### COURT APPROVAL OF THE SETTLEMENT OF HOUR BANK BENEFIT PLAN CLASS ACTION

READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.

#### Why am I receiving this Notice?

Your employer emailed you this Notice because your rights may be affected by the Court's certification of the Hour Bank Benefit Plan Class Action and the Court's approval of the settlement, distribution plan, and legal fees and disbursements (the "**Settlement Agreement**").

#### What happened at the Approval Hearing?

On November 20, 2024, the Court of King's Bench of Alberta Certified the Action as a Class Proceeding pursuant to section 5(1) of the *Class Proceedings Act*, SA 2003, c. C-16.5 ("**CPA**"), and Certified the Class as a Settlement Class, as defined in section 4 of the *CPA*, as follows:

All individuals (1) who were employed on an hourly wage basis by a Participating Firm in the Merit Contractors Association Benefit Plan (the "**Defendants' Benefit Plan**"), (2) who participated in the Defendants' Benefit Plan offered by the Merit Contractors Association Benefit Plan Trust; (3) whose employer ceased to be a Participating Firm in the Merit Contractors Association Benefit Plan Trust in the calendar year 2020 and (4) whose employer then ceased to be a Participating Firm in the Defendants' Benefit Plan in 2020 and moved directly to become a Participating Firm in any of the Saskatchewan Construction Industry Plan, the Manitoba Construction Industry Plan, the Ontario Construction Industry Benefit Plan, or the Nova Scotia Construction Industry Plan (collectively, the "**New Plans**") in 2020; and (5) the individual hourly employee continued to be employed by that Participating Firm on a continuous basis to the time that the Approval Order is granted (6) excluding any Opt-Outs.

The Court **has approved the Settlement Agreement** and declared that it is fair, reasonable and in the best interests of the Class Members. Under the Settlement Agreement, the Defendants will pay the sum of \$450,000.00 (the "**Settlement Amount**") in full and final settlement of all claims of Plaintiffs in the Class Action including the Class Members against the Defendants. The Settlement Amount includes all legal fees, disbursements, taxes, and Administration Expenses and in return for the Settlement Amount, the Defendants will receive Releases and a dismissal of the Class Action.

The Court also awarded Class Counsel their legal fees in the total amount of \$\_\_\_\_\_, plus disbursements actually incurred up to a maximum of \$\_\_\_\_\_, plus applicable taxes ("**Class Counsel Fees**"). As is customary in such cases, Class Counsel conducted the Class Action on a contingent fee basis. Class Counsel was not paid as the matter proceeded and funded the expenses of conducting the litigation. This amount will be the only compensation Class Counsel receives for conducting the Class Action. Class Counsel Fees will be deducted from the Settlement Amount before the Settlement Amount is distributed to Class Members.

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

### **Will I receive any money if I am a Class Member?**

Class Members receive **no money** under the Settlement Agreement.

Instead, the Settlement Amount, less (i) Administration Expenses as approved by the Court; (ii) Class Counsel Disbursements as approved by the Court; and (iii) Class Counsel Fees as approved by the Court (the "**Net Settlement Amount**") will be distributed as Honorarium and donated to certain organizations (the "**Distribution Plan**"), as follows:

- (a) \$10,000 will be distributed evenly between the Representative Plaintiffs, Michael Rempel and Evan Martindale as Honorarium for their efforts in advancing the litigation ("**Honoraria**");
- (b) The remaining Net Settlement Amount, after deduction of Honorarium will then be distributed as follows:
  - a. 37% to **Saskatchewan Polytechnic** for their trades' programs School of Construction ([saskpolytech.ca](https://www.saskpolytech.ca)), with 2/3 to be split between the Saskatoon Campus and the Regina Campus and the remaining 1/3 to be split between the Moose Jaw Campus and Prince Albert Campus;
  - b. 34% to the **Red River Scholarship Fund for apprentices** (<https://www.rrc.ca/future-students/awards/>);
  - c. 12% to **Build a Dream** (<https://www.webuildadream.com/donate/> in Ontario;
  - d. 17% to **Techsploration** (<https://www.techsploration.ca/>) and **Skills Canada Nova Scotia** (<https://www.skillsns.ca/>)

### **Why am I not receiving any money?**

The Action was prosecuted by Class Counsel and Affidavits (sworn statements of evidence) were filed by the Plaintiffs, an expert for the Plaintiffs, and others. Counsel for the Defendants cross-examined most of the individuals who swore those Affidavits as part of the Certification Application.

During this process, it became evident to Class Counsel that they would have **significant difficulty proving the allegations** that have been made in the action, including the allegation that employees (the proposed individual Class Members) suffered a loss of their hour banks after transferring from the Merit Benefit Plan to their new benefit plans – a core claim in the Action.

The Defendants filed a series of Applications with the Court including an Application to have the Action dismissed. Rather than face the risk that such an Application could be successful leaving the Plaintiffs (and the proposed Class) with nothing, the Plaintiffs, through their counsel, chose to negotiate a resolution of the Action. The terms of that resolution are set forth in the Settlement Agreement.

**What if I want to start my own lawsuit?**

Class Members will be bound by the terms of the Settlement Agreement unless they complete the Opt-Out Form and submit to Class Counsel by December 2, 2024. Class Members who do not submit an Opt-Out Form cannot start any other claim or legal proceeding against the Defendants or any other person released by the Settlement Agreement in relation to the claims advanced in this Class Action, and/ or claims that could have been advanced in this Class Action.

Any Class Member who elects to Opt Out of the proposed settlement of this Action and does so successfully (the “**Opt Out Individuals**”), will have the option to commence their own individual action against the Defendants **at their sole expense**.

Class Counsel **warns those individuals** who are contemplating Opting Out that if they choose to opt out and pursue their own individual lawsuit at their own cost, they will likely face **significant problems proving their case**, as did the Plaintiffs in the Action. If unsuccessful in prosecuting their own individual action, the Opt Out Individuals may be **responsible for the payment of costs to the Defendants**. Such costs will be the **sole responsibility** of the Opt Out Individuals.

If you wish to Opt Out, you must complete the **OPT OUT FORM** attached to this Notice and send to Class Counsel by mail, fax or email by **December 2, 2024** .

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or

Angela Bespflug  
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Vancouver, BC V6B 4N7  
Telephone : 604-683-9621  
Facsimile: 604-683-5084  
Email : bespflug@murphybattista.com

**IMPORTANT DEADLINE**

**Opt Out Deadline: DECEMBER 2, 2024**

**COPIES OF THE SETTLEMENT DOCUMENTS**

Copies of the Settlement Agreement and the Distribution Plan may be found on the website of Class Counsel at:

- <https://rhelaw.com/class-action/mercon-class-action/>

or by contacting Class Counsel at the contact information provided below.

**INTERPRETATION**

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

**DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED**

**BY THE COURT OF KING'S BENCH OF ALBERTA**





**Please check one of the following:**

My current intention is to begin individual litigation against the Defendants.

I am opting out of the class action for a reason other than to begin individual litigation against the Defendants. I am opting out for the following reason(s):

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**I UNDERSTAND THAT BY OPTING OUT, CLASS COUNSEL CANNOT REPRESENT ME IN ANY INDIVIDUAL ACTION I MAY BRING.**

**I FURTHER UNDERSTAND THAT BY OPTING OUT, I WILL BE RESPONSIBLE FOR ALL LEGAL FEES AND COSTS THAT MAY BE INCURRED BY ME IF I CHOOSE TO PURSUE MY OWN INDIVIDUAL CLAIM AND LITIGATION.**

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

This completed Opt-Out Form must be received by Class Counsel by email, regular mail or fax no later than **December 2, 2024**.

Class Counsel can be reached at:

Kendal Paul  
Rice Harbut Elliott LLP  
#820 - 980 Howe Street  
Vancouver, BC V6Z 0C8  
Telephone: 604-682-3771  
Facsimile: 604-682-0587  
Email: kpaul@rhelaw.com

Angela Bessflug  
Murphy Battista LLP  
#2020 - 650 West Georgia Street

Vancouver, BC V6B 4N7  
Telephone : 604-683-9621  
Facsimile: 604-683-5084  
Email : [bespflug@murphybattista.com](mailto:bespflug@murphybattista.com)

## SCHEDULE “B” - DISTRIBUTION PLAN

### **Background**

1. A class action settlement has been reached in *Evan Martindale et al v. Mercon Benefit Services et al*, Court of King’s Bench Alberta File # 2103 10542. The Settlement Agreement, Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, Honoraria and Distribution Plan must be approved by the Court to become binding.
2. This document sets out the proposed Distribution Plan that Class Counsel will seek to have approved by the Court as part of the Approval Hearing.
3. The definitions set out in the Settlement Agreement dated October 15, 2024 apply to, and are incorporated in, the Distribution Plan

### **Priority of Distribution**

4. On or after the Effective Date, Class Counsel shall pay out the Settlement Amount in the Escrow Account according to the following priorities:
  - (1) Class Counsel Fees as approved by the Court;
  - (2) Class Counsel Disbursements as approved by the Court;
  - (3) All Administration Expenses and Partially Refundable Expenses. The Defendants are specifically excluded from eligibility for any payment of costs or expenses under this section;
  - (4) Any taxes required by law or to be paid to any governmental authority;
  - (5) Honoraria as approved by the Court; and
  - (6) Charitable Payments as approved by the Court.

### **Honoraria and Charitable Payments**

5. On or after the Effective Date, and keeping with the Priority of Distribution set out in section 4 of the Distribution Plan, Class Counsel shall pay out the Net Settlement Amount by cheque as follows:
  - (1) Approved Honoraria will be distributed and paid evenly between the Representative Plaintiffs, Michael Rempel and Evan Martindale, as Honorarium for their efforts in advancing the litigation; and
  - (2) The remaining Net Settlement Amount, after deduction of approved Honoraria will then be distributed as follows:
    - (A) 37% to **Saskatchewan Polytechnic** for their trades’ programs School of Construction ([saskpolytech.ca](https://www.saskpolytech.ca)), with 2/3 to be split between the Saskatoon Campus and the Regina Campus and the remaining 1/3 to be split between the Moose Jaw Campus and Prince Albert Campus;
    - (B) 34% to the **Red River Scholarship Fund for apprentices** (<https://www.rrc.ca/future-students/awards/>);

- (C) 12% to **Build a Dream** (<https://www.webuildadream.com/donate/> in Ontario;
- (D) 17% to **Techsploration** (<https://www.techsploration.ca/>) and **Skills Canada Nova Scotia** (<https://www.skillsns.ca/>).

## SCHEDULE "C" - APPROVAL NOTICE

**COURT APPROVAL OF THE SETTLEMENT OF HOUR BANK BENEFIT PLAN CLASS ACTION**

READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.

**Why am I receiving this Notice?**

Your employer emailed you this Notice because your rights may be affected by the Court's certification of the Hour Bank Benefit Plan Class Action and the Court's approval of the settlement, distribution plan, and legal fees and disbursements (the "**Settlement Agreement**").

**What happened at the Approval Hearing?**

On November 20, 2024, the Court of King's Bench of Alberta Certified the Action as a Class Proceeding pursuant to section 5(1) of the *Class Proceedings Act*, SA 2003, c. C-16.5 ("**CPA**"), and Certified the Class as a Settlement Class, as defined in section 4 of the *CPA*, as follows:

All individuals (1) who were employed on an hourly wage basis by a Participating Firm in the Merit Contractors Association Benefit Plan (the "**Defendants' Benefit Plan**"), (2) who participated in the Defendants' Benefit Plan offered by the Merit Contractors Association Benefit Plan Trust; (3) whose employer ceased to be a Participating Firm in the Merit Contractors Association Benefit Plan Trust in the calendar year 2020 and (4) whose employer then ceased to be a Participating Firm in the Defendants' Benefit Plan in 2020 and moved directly to become a Participating Firm in any of the Saskatchewan Construction Industry Plan, the Manitoba Construction Industry Plan, the Ontario Construction Industry Benefit Plan, or the Nova Scotia Construction Industry Plan (collectively, the "**New Plans**") in 2020; and (5) the individual hourly employee continued to be employed by that Participating Firm on a continuous basis to the time that the Approval Order is granted (6) excluding any Opt-Outs.

The Court **has approved the Settlement Agreement** and declared that it is fair, reasonable and in the best interests of the Class Members. Under the Settlement Agreement, the Defendants will pay the sum of \$450,000.00 (the "**Settlement Amount**") in full and final settlement of all claims of Plaintiffs in the Class Action including the Class Members against the Defendants. The Settlement Amount includes all legal fees, disbursements, taxes, and Administration Expenses and in return for the Settlement Amount, the Defendants will receive Releases and a dismissal of the Class Action.

The Court also awarded Class Counsel their legal fees equal to 30% of the Settlement Amount, plus applicable taxes, and disbursements of \$133,362.19, plus applicable taxes ("**Class Counsel Fees**"). As is customary in such cases, Class Counsel conducted the Class Action on a contingent fee basis. Class Counsel was not paid as the matter proceeded and funded the expenses of conducting the litigation. This amount will be the only compensation Class Counsel receives for conducting the Class Action. Class Counsel Fees will be deducted from the Settlement Amount before the Settlement Amount is distributed to Class Members.

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

### **Will I receive any money if I am a Class Member?**

Class Members receive **no money** under the Settlement Agreement.

Instead, the Settlement Amount, less (i) Administration Expenses as approved by the Court; (ii) Class Counsel Disbursements as approved by the Court; and (iii) Class Counsel Fees as approved by the Court (the “**Net Settlement Amount**”) will be distributed as Honoraria and donated to certain organizations (the “**Distribution Plan**”), as follows:

- (c) \$10,000 will be distributed evenly between the Representative Plaintiffs, Michael Rempel and Evan Martindale, as Honorarium for their efforts in advancing the litigation (“**Honoraria**”);
- (d) The remaining Net Settlement Amount, after deduction of Honorarium will then be distributed as follows:
  - a. 37% to **Saskatchewan Polytechnic** for their trades’ programs School of Construction ([saskpolytech.ca](https://www.saskpolytech.ca)), with 2/3 to be split between the Saskatoon Campus and the Regina Campus and the remaining 1/3 to be split between the Moose Jaw Campus and Prince Albert Campus;
  - b. 34% to the **Red River Scholarship Fund for apprentices** (<https://www.rrc.ca/future-students/awards/>);
  - c. 12% to **Build a Dream** (<https://www.webuildadream.com/donate/> in Ontario);
  - d. 17% to **Techsploration** (<https://www.techsploration.ca/>) and **Skills Canada Nova Scotia** (<https://www.skillsns.ca/>).

### **Why am I not receiving any money?**

The Action was prosecuted by Class Counsel and Affidavits (sworn statements of evidence) were filed by the Plaintiffs, an expert for the Plaintiffs, and others. Counsel for the Defendants cross-examined most of the individuals who swore those Affidavits as part of the Certification Application.

During this process, it became evident to Class Counsel that they would have **significant difficulty proving the allegations** that have been made in the action, including the allegation that employees (the proposed individual Class Members) suffered a loss of their hour banks after transferring from the Merit Benefit Plan to their new benefit plans – a core claim in the Action.

The Defendants filed a series of Applications with the Court including an Application to have the Action dismissed. Rather than face the risk that such an Application could be successful leaving the Plaintiffs (and the proposed Class) with nothing, the Plaintiffs, through their counsel, chose to negotiate a resolution of the Action. The terms of that resolution are set forth in the Settlement Agreement.

### **What if I want to start my own lawsuit?**

Class Members will be bound by the terms of the Settlement Agreement unless they complete the Opt-Out Form and submit to Class Counsel by December 2, 2024. Class Members who do not submit an Opt-Out Form cannot start any other claim or legal proceeding against the

Defendants or any other person released by the Settlement Agreement in relation to the claims advanced in this Class Action, and/ or claims that could have been advanced in this Class Action.

Any Class Member who elects to Opt Out of the proposed settlement of this Action and does so successfully (the “**Opt Out Individuals**”), will have the option to commence their own individual action against the Defendants **at their sole expense**.

Class Counsel **warns those individuals** who are contemplating Opting Out that if they choose to opt out and pursue their own individual lawsuit at their own cost, they will likely face **significant problems proving their case**, as did the Plaintiffs in the Action. If unsuccessful in prosecuting their own individual action, the Opt Out Individuals may be **responsible for the payment of costs to the Defendants**. Such costs will be the **sole responsibility** of the Opt Out Individuals.

If you wish to Opt Out, you must complete the **OPT OUT FORM** attached to this Notice and send to Class Counsel by mail, fax or email by **December 2, 2024** .

Kendal Paul  
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#820 - 980 Howe Street  
Vancouver, BC V6Z 0C8  
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Vancouver, BC V6B 4N7  
Telephone : 604-683-9621  
Facsimile: 604-683-5084  
Email : bespflug@murphybattista.com

### **IMPORTANT DEADLINE**

**Opt Out Deadline: DECEMBER 2, 2024**

### **COPIES OF THE SETTLEMENT DOCUMENTS**

Copies of the Settlement Agreement and the Distribution Plan may be found on the website of Class Counsel at:

- <https://rhelaw.com/class-action/mercon-class-action/>

or by contacting Class Counsel at the contact information provided below.

**INTERPRETATION**

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

**DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED**

**BY THE COURT OF KING'S BENCH OF ALBERTA**







I am opting out of the class action for a reason other than to begin individual litigation against the Defendants. I am opting out for the following reason(s):

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**I UNDERSTAND THAT BY OPTING OUT, CLASS COUNSEL CANNOT REPRESENT ME IN ANY INDIVIDUAL ACTION I MAY BRING.**

**I FURTHER UNDERSTAND THAT BY OPTING OUT, I WILL BE RESPONSIBLE FOR ALL LEGAL FEES AND COSTS THAT MAY BE INCURRED BY ME IF I CHOOSE TO PURSUE MY OWN INDIVIDUAL CLAIM AND LITIGATION.**

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

This completed Opt-Out Form must be received by Class Counsel by email, regular mail or fax no later than **December 2, 2024**.

Class Counsel can be reached at:

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