

# **SETTLEMENT AGREEMENT**

Made as of December 5, 2023

**Between:**

**THERESA ORIET**

Plaintiff

-and-

**AGRONOMY COMPANY OF CANADA LTD. and SOLLIO AGRICULTURE L.P.**

Defendants

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RECITALS

- A. WHEREAS the Plaintiff commenced a proposed class action in the Ontario Superior Court of Justice (the “**Court**”) on February 8, 2021, bearing Court File No. CV-21-00000241-00CP as against Agronomy Company of Canada Ltd. and Sollio Agriculture L.P. (the “**Defendants**”)(the “**Class Action**”);
- B. WHEREAS the Class Action asserts claims against the Defendants in relation to a cyber attack that occurred in or around May 27, 2020 whereby criminal third-party cyber attackers gained unauthorized and illegal access to the Defendants’ computer systems;
- C. WHEREAS the Defendants deny all the allegations asserted by the Plaintiff in the Class Action, and maintain that they have good and valid defences to the claims asserted therein, but have agreed to enter into this Settlement Agreement in order to achieve an early full and final resolution of the claims made or which could have been made against them in the Class Action and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- D. WHEREAS Counsel for the Defendants and Class Counsel have engaged in extensive arm’s length settlement discussions and negotiations resulting in this Settlement Agreement;
- E. WHEREAS this Settlement Agreement embodies all of the terms and conditions of the settlement between the Defendants and the Plaintiff, both individually and on behalf of the Settlement Class she seeks to represent, subject to approval of the Court;
- F. WHEREAS the Defendants have agreed that, for the purposes of effecting this settlement of the Class Action only, they will consent to certification of this Action as a class proceeding with the Plaintiff appointed as the representative plaintiff;
- G. WHEREAS the Plaintiff has reviewed and fully understands the terms of this Settlement Agreement and, based on Class Counsel’s analyses of the facts and law applicable to the Plaintiff’s claims asserted in the Class Action, and having regard to the burdens and expense of prosecuting the Class Action, including, in particular, the risks and uncertainties associated with trials and appeals, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Class;
- H. WHEREAS the Plaintiff, Class Counsel, and the Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Defendants, or evidence of the truth of any of the Plaintiff’s allegations against the Defendants, which the Defendants expressly deny, nor any admission by or evidence against the Defendants as to the merits of the claims asserted in the Class Action; and
- I. WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Class Action and all Released Claims, as defined below, subject to the approval of this Settlement Agreement by the Court.

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Class Action shall be settled and dismissed with prejudice and without costs, subject to approval of the Court, on the following terms and conditions:

## ARTICLE I - DEFINITIONS

### **1.1 Definitions**

***Account*** means an interest bearing trust account at a Canadian Schedule 1 bank or a Provincially Registered Credit Union (listed under the *Credit Unions and Caisses Populaires Act*, 1994, S.O. 1994, c. 11) under the control of Class Counsel or the Claims Administrator, as the case may be, in which the Settlement Fund will be held for the benefit of Class Members until distributed pursuant to the Distribution Protocol.

***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel, the Claims Administrator, or otherwise, for the approval, implementation and operation of this Settlement Agreement including the costs of distribution of the Settlement Fund, the costs of all notices to the Class, and the costs of the Claims Administration, but excluding Class Counsel Fees.

***Breach*** means the events, culminating on or about May 27, 2020 whereby third party cyber-criminals accessed, collected and exfiltrated information, including Personal Information that was stored on the Defendants' computer systems.

***Claims Administrator*** means such entity or person appointed by the Court to administer this Settlement Agreement and any employees or agents thereof.

***Class or Class Members*** means all persons residing in Canada whose Personal Information was stored on the computer systems of the Defendants that were potentially compromised or accessed in the Breach, excluding senior executives, officers, directors, and managers of the Defendants, to whom the Defendants previously provided notice of the Breach and who are alive as of the date of the Settlement Approval Order, and ***Class Member*** means any one thereof.

***Class Action*** means the proposed class proceeding commenced by the Plaintiff in the Ontario Superior Court of Justice bearing Court File No. CV-21-00000241-00CP.

***Class Counsel*** means the law firms of Foreman & Company Professional Corporation and Waddell Phillips Professional Corporation.

***Class Counsel Fees*** include the fees, disbursements, costs, interest, HST and other applicable taxes or charges of Class Counsel in respect of the prosecution of the Class Action, as approved by the Court.

***Common Issue*** means: Were the Defendants negligent in the manner in which they collected, stored, maintained and protected Class Members' Personal Information?

**Credit Monitoring** means the credit monitoring and identity theft protection plan to be paid out of the Settlement Fund to the benefit of the Class.

**Court** means the Ontario Superior Court of Justice.

**Defendants** means Agronomy Company of Canada Ltd. and Sollio Agriculture L.P.

**Distribution Protocol** means the plan for distributing the Settlement Fund and accrued interest to the Class, as approved by the Court.

**Effective Date** means: (i) the first business day after the Settlement Approval Order is granted; or (ii) if any appeal is taken from the Settlement Approval Order, other than an appeal that concerns only the issue of Class Counsel Fees, then the Effective Date shall be the date upon which any such appeal is concluded by way of a Final Order; or (iii) the next business day following the Opt-Out Deadline; whichever is later.

**Final** when used in relation to a court order means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order.

**First Order** means the proposed order of the Court granting the following relief: (i) the Court's approval of the Notice of Hearing, and plan for distribution thereof.

**Net Settlement Fund:** means an amount equal to the Settlement Fund, less Class Counsel Fees and disbursements, any honorarium payable to the Plaintiff as approved by the Court, and less the Administration Expenses.

**Notice of Hearing** means the press release, short and long form of Notice of Hearing for Class Action certification, settlement approval, and Class Counsel Fee approval, approved by the Court to inform the Class of: (i) the date and location of the hearing to certify this Action as a class proceeding and to approve this Settlement Agreement; (ii) the key terms of this Settlement Agreement; (iii) Class Counsel Fees request; and (iv) a request for payment of an honorarium to the Plaintiff.

**Notice of Settlement Approval** means the press release, short and long form of notice of certification of the Class Action, settlement approval, and Class Counsel Fee approval by the Court to inform the Class of: (i) the certification of this action as a class proceeding; (ii) approval of this Settlement Agreement; (iii) approval of Class Counsel Fees, disbursements and honorarium to the Plaintiff; (iv) the process by which Class Members may opt out; and (v) the process by which Class Members may obtain compensation from the Settlement Fund.

**Notices** means the Notice of Hearing and Notice of Settlement Approval.

**Opt-Out Deadline** means the date which is thirty (30) days after the date on which the Notice of Settlement Approval is first published.

**Opt-Out Party** means any Person who would otherwise be a Class Member but who has validly opted out of the Class Action.

**Other Actions** means any actions or court proceedings, other than the Class Action against any of the Releasees to the extent that such actions or proceedings relate to any claim asserted in the Class Action or that could have been asserted in the Class Action.

**Parties**, when capitalized, means the signatories to this Settlement Agreement, being the Plaintiff and the Defendants, and **Party** means any one thereof.

**Personal Information** means information about an identifiable individual beyond their name, email and mailing address, and includes, but is not limited to financial information.

**Privacy Guide** means a document that offers best-practices privacy protection guidance to Class Members, and as may be reasonably informed by the Defendants' experiences with the Breach, subject to the approval of the Plaintiff and Class Counsel, which approval shall not be unreasonably withheld.

**Records** means the electronic copies of documents stolen from the Defendants during the Breach.

**Released Claims** means any and all manner of claims, complaints, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind whenever incurred (including compensatory, punitive or other damages or restitution), declaratory relief, liabilities of any nature whatsoever, including claims for contribution, indemnity, interest, costs, expenses, class administration expenses (including Administration Expenses), and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasers, or any of them ever had, could have had, now have, or hereafter can, shall, or may have, relating in any way to the claims made and conduct alleged (or which could have been made or alleged) in the Class Action, including any and all claims of the Releasers relating to or arising out of the Breach. For greater certainty, the Released Claims do not include any claims unrelated to the Breach that any Class Members may have against either or both of the Defendants in respect of the services that the Defendants have provided to any of the Class Members.

**Releasees** means, jointly and severally, individually and collectively, the Defendants and their predecessors, successors, parents, subsidiaries, affiliates, and all of their respective past and current officers, directors, employees, shareholders, insurers, successors, assigns, associated and related companies, trustees, servants, representatives and agents.

**Releasers** means, jointly and severally, individually and collectively, the Plaintiff and Class Members, and their respective successors, heirs, executors, administrators, trustees, insurers, assigns, or representatives of any kind.

**Settlement Agreement** means this agreement, including the recitals and schedules.

**Settlement Approval Order** means the anticipated order of the Court certifying the Class Action as a class proceeding, approving the terms of this Settlement Agreement, appointing the Claims Administrator, and granting the Defendants a full and final release of the Released Claims.

**Settlement Date** means the date when all Parties have executed the Settlement Agreement.

**Settlement Fund** means, subject to Article 4.1 **Error! Reference source not found.** of this Settlement Agreement, the all-inclusive amount of Five Hundred Thousand Canadian Dollars (CDN \$500,000.00), payable by the Defendants, plus any interest earned on the Settlement Fund after it has been transferred to Class Counsel and the Claims Administrator pursuant to Article IV of this Settlement Agreement, pending payment of the Settlement Fund to the Class.

## ARTICLE II - BEST EFFORTS TO SECURE COURT APPROVAL

### 2.1 Best Efforts

The Parties shall use their best efforts to fulfill the terms of this settlement and to secure Court approval and implementation of the settlement including the final dismissal of the Class Action, with prejudice, and without costs.

### 2.2 Court Approval Required for Enforceable Agreement

With the exception of those Articles expressly stated to survive termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless and until this Settlement Agreement is approved by the Court.

## ARTICLE III - SETTLEMENT APPROVAL

### 3.1 Motion for Approval of Notice of Hearing

As soon as possible after the Settlement Date, the Plaintiff shall bring a motion for the Court's approval of the Notice of Hearing. The order approving the Notice of Hearing described in this Article 3.1 shall be substantially in the form attached as **Schedule "A"**.

### 3.2 Motion for Settlement Approval Order

- (a) As soon as practicable after the order referred to in subsection 3.1 has been granted and the Notice of Hearing is published, the Plaintiff shall bring a motion for an order certifying the Class Action as a class proceeding and approving this Settlement Agreement. The Settlement Approval Order described in this Article 3.2 shall be substantially in the form attached as **Schedule "B"**.
- (b) Class Counsel may, at the same time, bring a motion for approval of Class Counsel Fees and disbursements, approval of the procedure by which members of the Class can make a claim for a portion of the Settlement Fund, and approving the payment of an honorarium not to exceed CDN \$500.00 payable to the Plaintiff.

### 3.3 Settlement of Common Issue

The Parties agree that this proceeding shall be certified as a class proceeding against the Defendants solely for purposes of settlement and the approval of this Settlement Agreement by the Court. The Plaintiff further agrees that in the motion for certification as a class proceeding and



approval of the Settlement Agreement, the only common issue that she will seek to define is the Common Issue and the only class that she will assert is the Class. The Plaintiff acknowledges that the Defendants agree to the definition of the Common Issue for purposes of settlement only.

#### **ARTICLE IV - SETTLEMENT BENEFITS**

##### **4.1 Payment of Settlement Fund and Other Consideration**

- (a) Within ten (10) business days of the Settlement Date, the Defendants shall pay or cause to be paid the CDN \$500,000.00 Settlement Fund to Class Counsel in trust for the benefit of the Class.
- (b) Within thirty (30) business days of the Effective Date, the Defendants shall publish or cause to be published the Privacy Guide for the general benefit of Class Members by the methods agreed to by the Parties.
- (c) At the request of Class Counsel, the Defendants will facilitate the purchase of bulk licenses for 5 years of Credit Monitoring so that each eligible Class Member may receive 5 years of Credit Monitoring to be paid for from the Net Settlement Fund.
- (d) The Settlement Fund and other consideration to be provided in accordance with the terms of this Settlement Agreement are paid by the Defendants in full satisfaction of the Released Claims against the Releasees.
- (e) The Defendants shall not have any obligation to pay to the Plaintiff or to the Class any amount in addition to the Settlement Fund unless otherwise expressly provided for in this Settlement Agreement.
- (f) Class Counsel shall hold the Settlement Fund in trust in their Account and maintain the Account, until the Settlement Agreement is approved, or it is terminated.
- (g) Class Counsel shall transfer the Net Settlement Fund to the Account of the Claims Administrator within twenty (20) business days after the Effective Date.
- (h) The Claims Administrator shall distribute the Net Settlement Fund in accordance with the Distribution Protocol approved by the Court.
- (i) Class Counsel shall not pay out any of the Settlement Fund in its Account, except in accordance with this Settlement Agreement and as ordered or permitted under an order of the Court.

##### **4.2 Taxes and Interest**

- (a) Except where otherwise provided in this Settlement Agreement, all interest earned on the Settlement Fund after it is transferred to Class Counsel shall accrue to the benefit of the Class and shall become and remain part of the Settlement Fund.

- (b) Subject to Article 4.2(c), all Canadian taxes payable on any interest that accrues on the Settlement Fund in the Accounts or otherwise in relation to the Settlement Fund shall be the sole responsibility of the Class. The Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Fund in the Accounts, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Fund shall be paid from the Claims Administrator's Account and deducted from the Settlement Fund.
- (c) The Defendants shall have no responsibility to make any income tax filings relating to the Settlement Fund and will have no responsibility to pay tax on any income earned by the Settlement Fund, including after it has been transferred to Class Counsel, except with respect to interest earned if this Settlement Agreement is terminated, in which case the interest earned on all of the Settlement Fund, shall be paid to the Defendants along with a return of the net Settlement Fund, and in such case, the Defendants shall be responsible for the payment of all taxes on such interest.

#### **4.3 Litigation Compliance**

- (a) The Plaintiff shall, as part of the resolution of the Class Action, consent to the dismissal of the Class Action on a with prejudice and without costs basis.
- (b) The Defendants shall consent to the dismissal of the Class Action on a with prejudice and without costs basis.

### **ARTICLE V - NOTICE TO THE CLASS**

#### **5.1 The Class List**

- (a) Within 20 days of the First Order becoming Final, the Defendants will provide to Class Counsel in Excel spreadsheet format a list of all Class Members, including the putative Class Members' name and last known contact information (including email address, where available) (the "**Class Member List**").
- (b) The Claims Administrator and Class Counsel or their duly appointed agent(s) will be directed to use the Class Member List solely to provide the Notices to Class Members.

#### **5.2 Costs of Disseminating Notice**

Subject to Article 0, the costs of disseminating the Notices to the Class shall be paid from the Settlement Fund, regardless of whether the Settlement is approved by the Court, or whether the Settlement Agreement is terminated.

#### **5.3 Publicity**

The Parties agree that:

- (a) they will issue a joint press release in the form agreed to by the Parties and that any public statements made by the Parties or their counsel shall be consistent with the press release;
- (b) the Parties shall act in good faith to ensure that any public statements, comments or communications of any kind about any descriptions of the settlement and the terms of this Settlement Agreement are balanced, fair and accurate; and
- (c) the Parties shall not make any public statements, comments or any communications of any kind about any negotiations or information exchanged as part of the settlement process, except as may be required for the Parties to comply with any order of the Court or as may be required under any applicable law.

## **ARTICLE VI - DISTRIBUTION OF THE SETTLEMENT FUND**

### **6.1 Distribution Protocol**

At the same time as the motion for certification and settlement approval Class Counsel will seek a Court order for approval of the Distribution Protocol for distribution of the Net Settlement Fund to the Class.

### **6.2 No responsibility for Administration, Independent Review or Fees**

The Releasees shall have no responsibility, obligations, financial or otherwise, or liability whatsoever with respect to the distribution of the Net Settlement Fund to the Class, any Administration Expenses and/or Class Counsel Fees, except as set out in this Settlement Agreement.

## **ARTICLE VII – OPTING OUT**

### **7.1 Procedure**

- (a) A Person may opt-out of the Action by sending a written election to opt-out, signed by the Person or the Person's designee, by pre-paid mail, courier, fax, or e-mail to Class Counsel or their duly appointed agent at an address to be identified in the Notice of Settlement Approval.
- (b) An election to opt-out will only be effective if it is received by Class Counsel or their duly appointed agent on or before the Opt-Out Deadline.
- (c) The written election to opt-out must contain the following information in order to be effective:
  - i. the Person's full name and current address; and,
  - ii. a statement to the effect that the Person wishes to be excluded from the Class Action.

## 7.2 Opt-Out Report

Class Counsel shall provide to the Defendants a report containing the names of each Person who has validly and timely opted-out of the Class Action and will file a copy with the Court.

## ARTICLE VIII - TERMINATION OF SETTLEMENT AGREEMENT

### 8.1 Right of Termination

- (a) The Defendants shall, in their sole discretion, have the option to terminate this Settlement Agreement in the event that:
- (i) The Court declines to approve any part of the Settlement Agreement that the Defendants deem material, or requires a change to the Settlement Agreement that the Defendants deem material as a pre-condition to approval;
  - (ii) The Court issues the Settlement Approval Order, but it does not become Final or is altered on appeal in a manner deemed material by the Defendants, in its sole discretion (acting reasonably); or
  - (iii) A court refuses to grant an order dismissing the Class Action as against the Defendants with prejudice and on a without costs basis.
- (b) The Plaintiff shall have the option to terminate the Settlement Agreement in the event that:
- (i) The Defendants fail to comply with their obligations pursuant to Article 4.1 the Payment of Settlement Fund and Other Consideration by the dates set out above in Article 4.1;
  - (ii) The Court declines to approve of any material part of the Settlement Agreement or requires a material change to the Settlement Agreement as a pre-condition to approval;
  - (iii) The Court issues the Settlement Approval Order, but it does not become Final or is materially altered on appeal; or
  - (iv) The Court refuses to grant an order dismissing the Class Action as against the Defendants with prejudice on a without costs basis.
- (c) If the Defendants elect to terminate the Settlement Agreement pursuant to Article 8.1(a), or the Plaintiff elects to terminate the Settlement Agreement pursuant to Article 8.1(b), a written notice of termination shall be provided by the terminating Party to the other Party's lawyers forthwith, and, in any event, no later than 10 business days after the event upon which the terminating Party relies. Upon delivery of such written notice, this Settlement

Agreement shall be terminated and, except as provided for in Articles 8.2 and 8.3, and the related Definitions in Article 1, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise, including but not limited to any motion for certification of the Class Action, or trial on the merits, except with the written consent of all Parties or as otherwise required by a Court.

- (d) Any order, ruling or determination made by the Court with respect to Class Counsel Fees or disbursements, Plaintiff's honorarium or with respect to the Distribution Protocol shall not be a material modification of this Settlement Agreement and shall not constitute a basis for the termination of this Settlement Agreement.

### **8.2 If Settlement Agreement is Terminated**

If this Settlement Agreement is terminated, any order made by the Court pursuant to this Settlement Agreement shall be set aside or vacated on the consent of the Parties, except for the First Order, if it has been issued and the Notice of Hearing has already been published. For greater certainty, on termination any order certifying this proceeding as a class proceeding shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise.

### **8.3 Allocation of Monies in the Account Following Termination**

If the Settlement Agreement is terminated, Class Counsel or the Claims Administrator, as the case may be, shall return to the Defendants as directed in writing by the Defendants, all monies in their Account including accrued interest, but less any Administration Expenses that have been actually incurred as at the date of termination, including the costs of publishing the Notices, including the estimated costs of Administration Expenses to be incurred to provide notice to the Class that the Settlement Agreement has been terminated, if such notice is required by the Court.

## **ARTICLE IX - RELEASES AND DISMISSALS**

### **9.1 Release of Releasees**

Upon the Effective Date, and in consideration of the payment of the Settlement Fund and for other valuable consideration set forth in this Settlement Agreement, the Releasers shall forever and absolutely release the Releasees from the Released Claims. For greater clarity, the Settlement Approval Order will include a full and final release of the Released Claims by the Plaintiff and the Class.

### **9.2 No Further Claims**

The Releasers shall not now, nor 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 against any other persons who may claim contribution or indemnity, or other claims over relief, from any Releasees in respect of any Released Claim. If the Releasers or any one of them commence such an action, or advance any such claim, and the Releasees or any one of them are validly added as a

third party, or against whom claims for contribution or indemnity are validly made, the Releasors will immediately discontinue the main action claims associated with the claims for contribution and indemnity with respect to the Released Claims. This Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in proceedings to dismiss a claim, action, complaint or proceeding in respect of any of the Released Claims on a summary basis and no objection will be raised by the Releasors in any subsequent action that the other parties in the subsequent action were not privy to formation of this Release.

### **9.3 Dismissal of the Class Action**

The Class Action will be dismissed on a with prejudice and without costs basis following the Settlement Approval Order becoming Final.

### **9.4 Ongoing Jurisdiction of the Court**

For purposes of implementation, administration, interpretation and enforcement of the Settlement Agreement, the Defendants acknowledge that the Court will retain an ongoing supervisory role and attorn to the jurisdiction of the Court solely for the purpose of implementing, administering, interpreting and enforcing the Settlement Agreement and Settlement Approval Order, subject to the terms and conditions set out in this Settlement Agreement.

### **9.5 Claims Against Other Entities Reserved**

Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Releasors against any Person other than the Releasees, and in respect of the Released Claims.

## **ARTICLE X - EFFECT OF SETTLEMENT**

### **10.1 No Admission of Liability**

- (a) Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Releasees, or of the truth of any claims or allegations contained in the Class Action or any other allegation made by the Plaintiff or the Class in any forum or context. The Releasees deny any liability and deny the truth of the allegations made against them. If the Settlement Agreement is not approved, the Defendants will defend the Class Action and oppose certification of the action as a class proceeding.
- (b) Neither the certification of a Class Action pursuant to the terms of this Settlement Agreement nor the statement of the Common Issue shall constitute, or be construed as, an admission on the part of the Defendants that the Class Action, or any other proposed class action, is appropriate for certification as a class action under any applicable law, or that the

Common Issue or any other common issue is appropriate for certification on a contested basis in the Class Action or on any basis in any other proceeding.

### **10.2 Agreement Not Evidence**

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

## **ARTICLE XI - CLASS COUNSEL AND ADMINISTRATION FEES**

### **11.1 Counsel Fees, disbursements and Plaintiff's Honorarium**

- (a) Class Counsel will seek the Court's approval to fix Class Counsel Fees and disbursements, and that the Class Counsel Fees, disbursements and Administration Expenses may be paid from the Settlement Fund when approval of this Settlement Agreement is Final, and before transferring the Net Settlement Fund to the Claims Administrator.
- (b) Class Counsel will seek the Court's approval for an honorarium to be paid to the Plaintiff in the amount of CDN \$500.00 in recognition for the contributions that she has made in the prosecution of this Class Action (the Plaintiff's Honorarium), which, if approved, may also be paid from the Settlement Fund before transferring the Net Settlement Fund to the Claims Administrator.

### **11.2 Administration Expenses**

The Defendants shall not be liable for any fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives of Class Counsel, the Plaintiff or the Class, all of which shall be paid from the Settlement Fund, as approved by the Court.

## **ARTICLE XII - MISCELLANEOUS**

### **12.1 Motions for Directions**

- (a) Class Counsel, counsel for the Defendants, or the Claims Administrator may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement or Distribution Protocol at any time.
- (b) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

## **12.2 Headings, etc.**

In this Settlement Agreement:

- (a) The division of the Settlement Agreement into articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) The terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular article or other portion of this Settlement Agreement.

## **12.3 Computation of Time**

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

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

## **12.4 Governing Law**

This Settlement Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and Canada.

## **12.5 Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle, and memoranda of understanding or agreement in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

## **12.6 Amendments**

This Settlement Agreement may not be modified or amended except in writing and on consent of the Plaintiff and the Defendants.

## **12.7 Binding Effect**

This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, Class Members, the Defendants, the Releasers, and the Releasees once it is approved by a Final order of the Court. Without limiting the generality of the foregoing, each covenant and agreement made by



the Plaintiff shall be binding upon all Releasors, once it is approved in the Final Settlement Approval Order of the Court.

### **12.8 Counterparts**

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

### **12.9 Negotiated Agreement**

This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of which 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 drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

### **12.10 Language**

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, a French translation of the Notices shall be prepared, which shall be prepared by Class Counsel or paid for from the Settlement Fund. The Parties agree that such translation is for the convenience of French speaking Class Members.

### **12.11 Recitals**

The Recitals to this Settlement Agreement form part of the Settlement Agreement.

### **12.12 Schedules**

The Schedules annexed hereto form part of this Settlement Agreement and are:

- (a) **Schedule A** – Notice Approval Order
- (b) **Schedule B** – Certification and Settlement Approval Order

### **12.13 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

- (a) They or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) The terms of this Settlement Agreement and the effects thereof have been fully explained to them or the Party's representative by their counsel;

- (c) They or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

**12.14 Authorized Signatures**

Each of the undersigned represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of their respective client(s).

Dated at London, Ontario this 5<sup>th</sup> day of December, 2023

**THERESA ORIET**

By her lawyers,

**FOREMAN & COMPANY PROFESSIONAL CORPORATION  
WADDELL PHILLIPS PROFESSIONAL CORPORATION**

Per: \_\_\_\_\_



**Jonathan Foreman**

Dated at Toronto, Ontario this 6<sup>th</sup> day of December, 2023

**AGRONOMY COMPANY OF CANADA LTD. and  
SOLLIO AGRICULTURE L.P.**

By their lawyers,

**BORDEN LADNER GERVAIS <sup>LLP</sup>**

Per: \_\_\_\_\_



**Markus Kremer / Daniel Girlando**

**SCHEDULE "A"**

Court File No. CP-21-241-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
JUSTICE K. TRANQUILLI ) OF , 2023

B E T W E E N :

**THERESA ORIET**

Plaintiff

- and -

**AGRONOMY COMPANY OF CANADA LTD. and SOLLIO AGRICULTURE L.P.**

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**ORDER  
(Notice Approval)**

**THIS MOTION** is made by the Plaintiff for an Order fixing the date of the Certification and Settlement Approval Motion, approving the notice of certification and settlement approval hearings, and its method of dissemination was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the settlement agreement dated ●, attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendants;

**AND ON BEING ADVISED** that ● has consented to being appointed as notice provider in accordance with the terms of this Order;

**AND ON BEING ADVISED** that the Plaintiff and the Defendants consent to this Order:

1. **THIS COURT ORDERS** that, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the press release, short-form and long-form notices of the certification and settlement approval hearing (the “Notices”) are hereby approved substantially in the form attached hereto as Schedule “●”.
3. **THIS COURT ORDERS** that the plan of disseminating the Notices (the “Plan of Dissemination”) is hereby approved substantially in the form attached hereto as Schedule “●” and that the Notices shall be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that the date of the hearing of the Certification and Settlement Approval Motions shall be set for \_\_\_\_\_.

Date:

\_\_\_\_\_  
The Honourable Madam Justice K. Tranquilli

THERESA ORIET

v.

AGRONOMY COMPANY OF CANADA  
LTD. ET AL.

Court File No. CV 21-241-00CP CP

Plaintiff

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER  
(Notice Approval)**

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Lawyers for the Plaintiff

**SCHEDULE "B"**

Court File No. CP-21-241-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
JUSTICE K. TRANQUILLI ) OF , 2023

B E T W E E N :

**THERESA ORIET**

Plaintiff

- and -

**AGRONOMY COMPANY OF CANADA LTD. and SOLLIO AGRICULTURE L.P.**

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**ORDER  
(Certification, Settlement Approval)**

**THIS MOTION** is made by the Plaintiff for an Order certifying this proceeding as a class proceeding for settlement purposes, approving the settlement agreement entered into with the Defendants, and dismissing this action as against the Defendants, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the settlement agreement dated ●, 2023 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendants;

**ON FINDING** that the certification requirements set out in s. 5(1) of the *Class Proceedings Act, 1992* are satisfied;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been ● objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the Plaintiff and the Defendants consent to this Order:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.

**Certification**

3. **THIS COURT ORDERS** that this action is certified as a class proceeding as against the Defendants for settlement purposes only.
4. **THIS COURT ORDERS** that the “Class” is certified as follows:

All persons residing in Canada whose Personal Information was stored on the computer systems of the Defendants that were potentially compromised or accessed in the Breach, excluding senior executives, officers, directors, and managers of the Defendants, to whom the Defendants previously provided notice of the Breach and who are alive as of the date of this Order; where:

“Personal Information” means information about an identifiable individual beyond their name, email and mailing address, and includes, but is not limited to financial information; and

“Breach” means the events, culminating on or about May 27, 2020 whereby third party cyber-criminals accessed, collected and exfiltrated information, including Personal Information that was stored on the Defendants’ computer systems.

5. **THIS COURT ORDERS** that the Class Action is certified on the basis of the following issue which is common to the Class:

Were the Defendants negligent in the manner in which they collected, stored, maintained and protected the Class Members' Personal Information?

6. **THIS COURT ORDERS** that the Plaintiff, Theresa Oriet, is appointed as the representative Plaintiff for the Class.
7. **THIS COURT ORDERS** that Class members who wish to opt-out of this Class Action must do so by sending a written election to opt-out, signed by the Person or the Person's designee, together with the information required in the Settlement Agreement to Class Counsel or their duly appointed agent, by pre-paid mail, courier, fax or e-mail received on or before the Opt-Out Deadline.
8. **THIS COURT ORDERS** that any Class Member who has validly opted-out of this Class Action shall no longer participate or have the opportunity in the future to participate in this Class Action.
9. **THIS COURT ORDERS** that any Class Member who has not validly opted-out of this Class Action will be bound by the Settlement Agreement and may not opt-out of this Class Action in the future.

**Settlement Approval**

10. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.



11. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 27.1 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
12. **THIS COURT ORDERS** that 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 any of the provisions of the Settlement Agreement.
13. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Class Action.
14. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, the Releasers shall release and shall be conclusively deemed to have forever and absolutely released and discharged the Releasees from the Released Claims.
15. **THIS COURT ORDERS** that each Releasor 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 and are permanently barred and enjoined from doing so. For greater certainty, this clause shall apply, without limitation, to any proceedings of an administrative or regulatory nature, relating to the Breach or the Defendants' conduct prior, or in response, to the Breach.

16. **THIS COURT ORDERS AND DECLARES** that the use of the terms “Releasers” and “Released Claims” in this Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
17. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
18. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Class Member who has not validly opted-out of this action shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions, he, she or it has commenced, without costs and with prejudice.
19. **THIS COURT ORDERS AND ADJUDGES**, upon the Effective Date, that this action be and is hereby dismissed against the Defendants with prejudice and without costs (other than contingency fees, disbursements and applicable taxes which may be awarded out of the Settlement Amount to Class Counsel).
20. **THIS COURT ORDERS** that no Releasee shall have any responsibility for and no liability whatsoever relating to the administration of the Settlement Agreement or Distribution Protocol.
21. **THIS COURT ORDERS** that for purposes of implementation, administration, interpretation and enforcement of the Settlement Agreement and this Order, this Court will

retain an ongoing supervisory role and the Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, interpreting and enforcing the Settlement Agreement and this Order, and are subject to the terms and conditions set out in the Settlement Agreement and this Order.

22. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on a subsequent motion made on notice.

Date:

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The Honourable Madam Justice K. Tranquilli

THERESA ORIET

v.

AGRONOMY COMPANY OF CANADA  
LTD. ET AL.

Court File No. CV 21-241-00CP CP

Plaintiff

Defendants

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

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**ORDER  
(Certification, Settlement Approval)**

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