

**SETTLEMENT AGREEMENT**  
**AND DISCHARGE**

**This Settlement Agreement and Discharge** (hereinafter, “the Agreement”) is made and entered into by and among:

1. Hodgson Russ LLP (“Hodgson”);
2. Minnesota Department of Revenue; and
3. Cynthia Bauerly, in her official capacity as Commissioner of the Minnesota Department of Revenue (Minnesota Department of Revenue and Cynthia Bauerly shall hereinafter be referred to collectively as “Minnesota Revenue”).<sup>1</sup>

**Recitals**

- A. Hodgson is a New York limited liability partnership engaged in the practice of law with its principal office at 140 Pearl Street, Buffalo, New York 14202.
- B. The Minnesota Department of Revenue is an administrative agency of the State of Minnesota with its principal office at 600 North Robert Street, St. Paul, Minnesota, 55101. Cynthia Bauerly is the Minnesota Commissioner of Revenue, and is a party to this matter in her official capacity only.
- C. On June 26, 2014, Hodgson initiated a Hybrid Proceeding against Minnesota Revenue (Index No. 000097/2014), alleging causes of action for (1) declaratory judgment under Article 30 of the New York Civil Practice Law and Rules (“CPLR”); (2) judgment under Article 78 of the CPLR; and (3) for violations of and relief under 42 U.S.C. §§ 1983 and 1988 (hereinafter the “Hybrid Proceeding”).
- D. Hodgson’s hybrid proceeding was filed in response to correspondence issued to Hodgson by Minnesota Revenue (hereinafter Minnesota Revenue Correspondence), in which Minnesota Revenue stated that Hodgson had tax nexus with the State of Minnesota from the tax period ending December 31, 2004 and “forward.”
- E. Hodgson continues to deny that it had nexus with Minnesota between the periods ending December 31, 2004 and December 31, 2012.
- F. Both Hodgson and Minnesota Revenue wish to fully and finally resolve and settle any and all disputes and claims between and among them concerning Hodgson’s Hybrid

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<sup>1</sup> Hodgson and Minnesota Revenue will hereinafter be referred to collectively as the “Parties.”

Proceeding (and all related pleadings) and Minnesota Revenue's statements regarding Hodgson's nexus with Minnesota, related to Minnesota Corporate Franchise Tax for the period from January 1, 2004, through December 31, 2012.

Minnesota Revenue continues to deny the allegations Hodgson raised against Minnesota Revenue in the Hybrid Proceeding.

- G. On February 27, 2015, in an appearance before the Hon. Timothy J. Walker, Acting Supreme Court Justice, Commercial Division, of the New York State Supreme Court, Eight Judicial District, the Parties stated in open court and on the record the principal terms of this Agreement.

### **Agreement**

In consideration of the foregoing and of the mutual covenants and promises set forth below, the sufficiency of which is hereby acknowledged, Hodgson and Minnesota Revenue hereby agree as follows:

#### **1.0 Mutual Limited Release and Discharge**

In consideration of the terms set forth in Section 2.0 – “Mutual Covenants” – the Parties completely release and forever discharge each other, and their respective subdivisions, partners, officers, agents, employees or counsel, from any and all past, present, or future claims, demands, obligations, actions, causes of action, rights, damages (liquidated or otherwise), equitable remedies, costs, expenses, and compensation of any nature whatsoever between them, including those arising out of the subjects of Hodgson's Hybrid Action filed in the present matter and the matters addressed in Minnesota Revenue's Correspondence issued to Hodgson (and all related pleadings), or the Recitals of this Agreement, related to Minnesota Corporate Franchise Tax for the period from January 1, 2004, through December 31, 2012, whether based on common, federal, or Constitutional law, statute, contract, or any other theory of recovery which the Parties had, or now have (hereinafter, “**Claims for Damages, Equitable, and Injunctive Relief**”).

- 1.1 This release is intended to be broadly construed to effectuate a plenary release of all past, present, or future Claims for Damages, Equitable, and Injunctive Relief arising out of the subject of the complaints filed in the Hybrid Action and Minnesota Revenue's Correspondence (and all related pleadings) or the Recitals of this Agreement, or any other disputes of any kind that may exist between the Parties, related to Minnesota Corporate Franchise Tax for the period from January

1, 2004, through December 31, 2012. The Parties, however, acknowledge and agree that this Agreement does not release, and expressly excludes a release or discharge of the following enumerated obligations: (1) Hodgson's obligation to file Minnesota tax returns, should Hodgson have corporate franchise tax nexus with Minnesota after December 31, 2012, or (2) Minnesota Revenue's obligation to comply with federal constitutional Due Process and Commerce Clause standards when conducting an investigation or audit to determine whether Hodgson has income tax nexus with Minnesota during any reporting period after December 31, 2012. This provision will survive any termination of this Agreement.

- 1.2 It is understood and agreed upon by the Parties that this Agreement is a compromise of disputed claims, and that settling the disputed claims is not to be construed as an admission of any Minnesota tax liability on the part of Hodgson, by whom any liability is expressly and explicitly denied. Similarly, this Agreement and settlement is not an admission by Minnesota Revenue to any of the allegations Hodgson raised against Minnesota Revenue in the Hybrid Proceeding.
- 1.3 The Parties acknowledge and agree that this Agreement and the consideration set forth herein are the result of an arm's length negotiation. All consideration and agreements from each Party should be considered the result of an arm's length negotiation in total in the context of the overall Agreement.

## **2.0 Mutual Covenants**

In full and final settlement of any and all of the claims set forth in the complaints filed in Hodgson's Hybrid Action (and all related pleadings) or the Recitals of this Agreement, Hodgson agrees to withdraw by executing a stipulation of discontinuance with Minnesota Revenue and the State of New York Supreme Court, County of Erie, with prejudice, all of its claims stated in the Hybrid Action for income tax reporting periods ending December 31, 2004 through December 31, 2012. Minnesota Revenue agrees to drop all audits and/or investigations of Hodgson related to the Minnesota tax reporting periods ending December 31, 2004 through December 31, 2012. Minnesota Revenue additionally agrees not to require Hodgson to file Minnesota tax returns for any of the aforementioned periods, and Minnesota Revenue will not issue any Notice of Deficiency, Notice and Demand, or any similar document for Minnesota Tax due for the aforementioned period, and Minnesota Revenue agrees not to file Minnesota tax returns on Hodgson's behalf for the aforementioned periods.

### **3.0 No Confidentiality**

The Parties agree that this Agreement, including the Recitals, Covenants, and other relevant terms shall not be Confidential, and either party is free to disclose to any person or entity, including, but not limited to, the press or any media outlet, any of the details or terms and conditions of this Agreement, including, but not limited to, the nature of the claims and the terms of the settlement.

- 3.1** This agreement of non-confidentiality is being made part of the consideration for the settlement of this dispute, and any attempt to keep this Agreement Confidential shall constitute a breach of this Agreement. The Parties shall be entitled to pursue any and all remedies available at law or in equity, including specific performance, damages, injunction, or any other legal or equitable remedy arising out of any breach of the Parties' non-confidentiality obligations set forth in this Agreement.
- 3.2** Neither this Agreement nor the discussions surrounding it may be used or asserted by any Party as evidence of any liability or culpability on the part of another Party, except that the terms of this Agreement may be used as required to enforce the obligations of a Party under this Agreement. This provision will survive any termination of this Agreement.

### **4.0 Breach of Agreement**

In the event of any breach of this Agreement or any of its provisions by any of the Parties, each of the other Parties shall be entitled to all remedies available at law or in equity, including specific performance, damages, injunction, or any other legal or equitable remedy. This provision is not limited in any way.

### **5.0 Attorneys' Fees**

The Parties shall each bear their own attorneys' fees, costs, disbursements, and expenses arising from the Hybrid Action and Minnesota Revenue's Correspondence, the subjects of the complaints filed in the Hybrid Action (and all related pleadings) or the Recitals of this Agreement, or any other disputes of any kind that may exist between them, including, but not limited to, those attorneys' fees, costs, disbursements, and expenses incurred in connection with this Agreement.

## **6.0 Retention of Jurisdiction in this Matter**

In the event of any violation (or any alleged or purported violation) of this Agreement, the Parties agree that the New York Supreme Court, Eighth Judicial District, Commercial Division, shall retain jurisdiction over all parties and such dispute.

## **7.0 Warranty of Capacity to Execute Agreement**

The Parties represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in this Agreement, except as otherwise set forth herein; that each Party has the sole right and exclusive authority to execute this Agreement, and that each Party has not sold, assigned, transferred or conveyed any of the claims, demands, obligations, or causes of action referred to in the Recitals of this Agreement, or which are the subject of the complaint filed in the Hybrid Action (and all related pleadings), or which otherwise may exist between them.

## **8.0 Construction and Governing Law**

This Agreement shall be construed, interpreted, governed, and enforced by the substantive laws of the State of New York, excluding choice of law principles. The Parties further agree that they have shared in the drafting of this Agreement, and the terms may not be construed against any Party.

## **9.0 Additional Documents**

All Parties agree to cooperate fully and, within reason, execute any and all supplemental documents and take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

## **10.0 Dismissal of the Action**

Upon the execution of this Agreement by the Parties, counsel for Hodgson shall deliver to counsel for Minnesota Revenue executed Stipulations of Dismissal With Prejudice for the Hybrid Action. Once this Agreement is fully executed, Hodgson hereby authorizes counsel for Minnesota Revenue to file the Stipulations

of Dismissal With Prejudice with the Supreme Court, County of Erie, and enter them as a matter of record.

#### **11.0 Entire Agreement / Successors in Interest**

This Agreement contains the sole and entire settlement agreement among the Parties, and supersedes all prior agreements, negotiations, and discussions between the Parties and/or their counsel with respect to the subjects of the complaints filed in the Hybrid Action (and all related pleadings), or the Recitals of this Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the Parties. This Agreement may not be modified except by a writing signed and authorized by the Parties. This agreement shall be void upon a showing of fraud or malfeasance, or misrepresentation of a material fact.

#### **12.0 Severability**

The provisions of this Agreement are severable. If any part of the Agreement is found to be unenforceable, all other provisions shall remain fully valid and enforceable.

#### **13.0 Counterparts and Multiple Copies**

This Agreement may be signed in counterparts. In addition, this Agreement may be executed in multiple copies with each having the same effect as the original. Facsimile or "pdf" signatures via email shall constitute an original signature for purposes of this Agreement.

#### **14.0 Headings**

The paragraph headings herein are for convenience only, and shall not affect the interpretation or construction of this Agreement.

#### **15.0 Effectiveness**

This Agreement shall become effective immediately following execution by all Parties.

## 16.0 Notice

All notices required or permitted to be given hereunder shall be in writing and shall be delivered by email and overnight courier with package tracing capabilities, addressed as follows:

### **If to Hodgson:**

Hodgson Russ LLP  
The Guaranty Building  
140 Pearl Street, Suite 100  
Buffalo, New York 14202  
Attention: Stephen W. Kelkenberg, Esq.  
E-mail: [skelkenberg@hodgsonruss.com](mailto:skelkenberg@hodgsonruss.com)

### **If to Minnesota Revenue:**

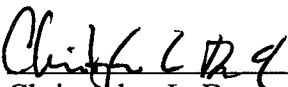
c/o Woods Oviatt Gilman LLP  
1900 Main Place Tower  
350 Main Street  
Buffalo, New York 14202  
Attention: William F. Savino, Esq.  
E-mail: [wsavino@woodsoviatt.com](mailto:wsavino@woodsoviatt.com)

and

The Minnesota Department of Revenue  
600 North Robert St.  
St. Paul, Minnesota 55101  
Attention: John Mule, Esq., Asst. State of Minnesota Attorney General  
E-mail: [john.mule@ag.state.mn.us](mailto:john.mule@ag.state.mn.us)

**READ AND AGREED:**

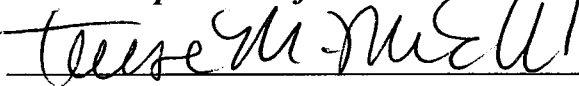
**Hodgson Russ LLP**

By:   
Christopher L. Doyle, Esq. and Stephen W. Kelkenberg, Esq.  
For and on Behalf of: Hodgson Russ LLP

Title: Partners, Hodgson Russ LLP

Date: 5/13/2015

**The Minnesota Department of Revenue**

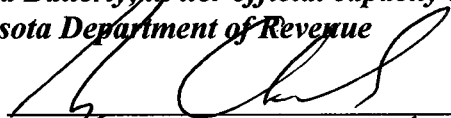
By: 

Print Name: Terese Mitchell  
For and on Behalf of: The Minnesota Department of Revenue

Title: Director, Appeals & Legal Services

Date: May 22, 2015

**Cynthia Bauerly, in her official capacity as Commissioner of the Minnesota Department of Revenue**

By:   
Cynthia Bauerly Ryan Church on behalf of Cynthia Bauerly  
For and on Behalf of: Herself, in her official capacity as  
Commissioner of the Minnesota Department of Revenue  
Ryan Church, Deputy Commissioner

Title: Commissioner of the Minnesota Department of Revenue

Date: May 26, 2015