

**SETTLEMENT AGREEMENT AND RELEASE:**  
**SNELL & WILMER LLP**

This Settlement Agreement and Release ("Agreement") is entered into this ~~27<sup>th</sup>~~ day of June, 2020, by and between Snell & Wilmer LLP ("Snell & Wilmer") and Wayne Klein as the duly appointed Receiver ("Receiver") for RaPower-3, LLC ("RaPower") and related entities, which are: International Automated Systems, Inc.; LTB 1, LLC; SOLCO I, LLC; XSun Energy, LLC; Cobblestone Centre, LC; DCL-16A, Inc.; DCL16BLT, Inc.; LTB O&M, LLC; N.P. Johnson Family Limited Partnership; Shepard Energy; Shepard Global, Inc; Solstice Enterprises; Black Night Enterprises; Starlite Holdings, Inc.; and U-Check, Inc. (collectively, the "Receivership Entities"). As used herein, all the collective known and unknown assets and liabilities of the Receivership Entities (except for the liabilities of Neldon Johnson and Greg Shepard) are referred to as the "Receivership Estate." Snell & Wilmer and the Receiver are collectively referred to as the "Parties."

**RECITALS**

WHEREAS, on November 23, 2015, the United States ("DOJ") filed a civil enforcement lawsuit against some of the Receivership Entities ("Original Defendants") accusing them of perpetrating a massive tax fraud. The lawsuit is captioned as *United States v. RaPower-3, LLC, 2:15CV828, Utah Dist. Ct.* (the "Action"). On October 31, 2018, following trial, the U.S. District Court of Utah ("Court") made findings of fraud and appointed Receiver to take control of the Original Defendants and their related assets. On May 3, 2019, the Court expanded the authority and control of the Receiver to include all of the Receivership Entities and all the Receivership Estate. Since his appointment, the Receiver has been uncovering and analyzing the assets, liabilities, financial condition and historical transactions of the Receivership Entities (collectively, the "Investigation");

WHEREAS, based on the Investigation, the Receiver believes that Snell & Wilmer improperly received at least \$160,584.68 in funds from various Receivership Entities during 2012, 2013, and 2018 (collectively, the "Transfers") for bankruptcy related legal services provided by Snell & Wilmer to Neldon Johnson (between 2011-2014) and to RaPower (in 2018). Prior to October 31, 2019, Snell & Wilmer fully cooperated with the Receiver's Investigation by providing information requested by the Receiver. This cooperation and related information led to settlement negotiations between the Receiver and Snell & Wilmer regarding the Transfers, but the negotiations were not successful and ended in an impasse;

WHEREAS, on October 31, 2019, Receiver filed a lawsuit against Snell & Wilmer, 2:19-cv-853 (D. Utah) ("S&W Lawsuit") seeking recovery and avoidance of the Transfers under the Utah Fraudulent Transfer Act ("UFTA") (the 2012 – 2013 Transfers) and under the Utah Voidable Transactions Act ("UVTA") (the 2018 Transfers);

WHEREAS, Snell & Wilmer filed an answer in the S&W Lawsuit, denied liability and asserted various defenses to the claims asserted therein by the Receiver, including a lack of standing under the UFTA and UVTA;

WHEREAS, on June 4, 2020, the Parties engaged in mediation to resolve the S&W Lawsuit and the various claims that were, or could have been, asserted therein (collectively, the “Claims”). The mediation resulted in this Agreement;

WHEREAS, in entering into this Agreement, Snell & Wilmer makes no admission of liability, fault or wrongdoing regarding the Claims. and

WHEREAS, the Parties have engaged in good faith and arms’ length negotiations to resolve all disputes between them relating to the Transfers and the Claims, without admission of any liability, fact, claim, or defense, on the terms and conditions set forth herein.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements herein, based upon the foregoing recitals, which are believed to be true, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Court Approval; Best Efforts.** This Agreement is conditioned on and is subject to the Court’s entry of an order in the Action approving this Agreement. The Receiver will promptly file a motion (the “Approval Motion”) seeking Court approval of this Agreement, and the Parties each agree to use their best efforts to secure Court approval of this Agreement in accordance with all applicable laws, rules and regulations. The Approval Motion will be served on all parties who have made an appearance in the Action. The Receiver also will publish the Approval Motion on the Receivership Estate’s official website. This Agreement shall be effective on the date that the Court Order approving this Agreement becomes final and non-appealable (the “Final Order”).
2. **Settlement Amount; Timing; Method.** The settlement amount (“Settlement Amount”) is \$130,000.00. Snell & Wilmer agrees to pay to the Receiver, for the benefit of the estate, the sum of \$31,730.00 (the “Total Cash Payment”). The Parties agree to stipulate that the Court may release to the Receiver \$97,430.00 that Snell & Wilmer previously remitted to the District Court Registry (the “Registry Funds”). The remaining \$840.00 shall consist of the amount that the Receiver was due to pay to the mediator and that the mediator has waived. The Total Cash Payment shall be remitted conditionally to “Wayne Klein, Receiver for RaPower-3 et. al, PO Box 1836, Salt Lake City, UT, 84110” on or before June 30, 2020. If a Final Order is not entered in the Action on or before September 30, 2020, the Receiver promptly will refund the full amount of the Total Cash Payment to “Snell & Wilmer, LLP, Attn: Christopher H. Bayley, One Arizona Center, 400 East Van Buren St, Phoenix, AZ 85004.” If a Final Order is entered on or before September 30, 2020, then the Total Cash Payment shall become unconditional, subject only to the further terms of this Agreement.
3. **Snell & Wilmer Release of Claims to Funds in Court Registry.** Subject only to the further terms of this Agreement and entry of the Final Order, Snell & Wilmer releases, waives and abandons any and all claims to and liens against the sum of \$97,430.00 (the “Registry Fund”).

that is on deposit in Registry of the Court and that Snell & Wilmer previously remitted to such Registry pursuant to the Court's prior *Amended and Restated Order Denying Application for Compensation and Reimbursement of Expenses*, Docket No. 18, in Case 2:18-cv-00608-DN.

4. **Release of Claims -- Against Receiver.** Effective upon the entry of the Final Order, Snell & Wilmer releases and forever discharges the Receiver, in his capacity as Receiver of the Receivership Entities, the Receivership Estate, and any one and all of the Receiver's affiliates, predecessors, successors, heirs, assigns, managers, subsidiaries, parents, officers, directors, partners, attorneys, agents and the employees, agents, attorneys, representatives, predecessors, successors and assigns thereof (collectively, the "**Receiver Release Parties**") from any and all manner of actions, causes of action in law or in equity, suits, debts, liens, contracts, liabilities, claims, demands, damages, losses, fees, costs, or expenses, set offs, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent that Snell & Wilmer may have against the Receiver Release Parties from the beginning of time to the date of this Agreement, or which may hereafter accrue against the Receiver Release Parties based upon any claims, acts or omissions occurring prior to the date of this Agreement relating to the Action including any claim that Snell & Wilmer might assert against funds recovered by the Receiver for distribution to creditors, and any other claim that Snell & Wilmer could have filed against the Receivership Estate; *provided however*, the release provided under this paragraph is not a release of any claims or causes of action arising or resulting from a default under or breach of this Agreement by the Receiver Released Parties; *provided further, however*, this release is not a release of any claims that Snell & Wilmer might assert or bring against persons who provided funds for the Transfers to Snell & Wilmer or made representations to Snell & Wilmer regarding the sources of such funds. Snell & Wilmer agrees to sign any additional documents reasonably necessary to effectuate the terms of this release.

5. **Release of Claims -- Against Snell & Wilmer.** Effective upon the Receiver's unconditional receipt of the Total Cash Payment and entry of the Final Order, the Receiver, on his behalf and on behalf of the Receiver Release Parties, the Receivership Entities, and the Receivership Estate releases and forever discharges Snell & Wilmer, and any one and all of Snell & Wilmer's employees, partners, attorneys, affiliates, predecessors, successors, heirs, assigns, managers, subsidiaries, parents, officers, directors, agents and the employees, agents, insurers, attorneys, representatives, predecessors, successors and assigns thereof (collectively, the "**Snell Release Parties**") from any and all manner of actions, causes of action in law or in equity, suits, debts, liens, contracts, liabilities, claims, demands, damages, losses, fees, costs, or expenses, set offs, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent that the Receiver or the Receiver Release Parties have, or may have, against Snell Release Parties, whether known, unknown, contingent, unliquidated or unmatured, from the beginning of time to the date of this Agreement, or which may hereafter accrue against Snell Release Parties based upon any claims, acts or omissions occurring prior to the date of this Agreement relating to the Action, the Transfers or the S&W Lawsuit; *provided however*, the release provided under this paragraph is not a release of any claims or causes of action arising or resulting from a default under or breach of this Agreement by Snell & Wilmer. The Receiver agrees to sign any additional documents reasonably necessary to effectuate the terms of this release.

6. **Special Stipulations Regarding Standing.** The Receiver asserts that the Claims against Snell & Wilmer are assets of the Receivership Estate and that he has exclusive authority

and standing to assert, recover and release (subject to Court approval) those Claims. Accordingly, this Agreement shall be binding upon all entities and persons who are, or might be, creditors of the Receivership Entities or who have, or might have, claims against the Receivership Estate. Any entity or person challenging the Receiver's exclusive authority and standing to assert, recover and release the Claims and enter into this Agreement, or who separately asserts, or wishes to assert, one or more of the Claims against Snell & Wilmer (collectively, a "Challenge"), must first raise the Challenge before the Court prior to or at any hearing on the Approval Motion and before entry of the Final Order. Should any such challenge be raised before the Receivership Estate is closed, the Receiver shall defend against any such Challenge of which he is aware, at the sole expense of the Receivership Estate, including but not limited to moving to dismiss, with prejudice, any such Challenge that is brought in another court or jurisdiction. The Receiver agrees that if, within two years after entry of a Final Order, any person(s) asserts a Challenge against Snell & Wilmer relating to the Claims and, notwithstanding the Receiver's opposition to the Challenge, such person(s) obtains a final, non-appealable ruling or order by a competent court that the Receiver did not have exclusive authority and standing to assert and release the Claims, or to enter into this Agreement ("Successful Challenge"), then, so long as the Receivership Estate has not been closed, Receiver promptly will return to Snell & Wilmer the Total Cash Payment and any other amounts paid by Snell & Wilmer or its agents, will return the Registry Fund to the registry of the Court, and all of Snell & Wilmer's defenses to the Claims, as well as its liens and interests in the Registry Fund, if otherwise waived and released in this Agreement, shall be restored to the status quo ante. Snell & Wilmer agrees that in that event, it waives any statute of limitations defenses it could have asserted against the Receiver between the time of this Agreement and 30 days after the Successful Challenge. The Receiver further agrees that the Approval Motion seeking Court approval of this Agreement will propose language for the Final Order that (a) the notice of the Approval Motion was adequate, (b) the Claims are the assets of the Receivership Estate, and (c) the Receiver has the exclusive authority and standing to assert and release the Claims and enter into this Agreement, subject to approval of the Court.

7. **Dismissal of Lawsuit.** Upon entry of the Final Order, the Receiver promptly will take steps to dismiss the S&W Lawsuit, with prejudice. The Parties agree to sign any documents necessary to accomplish this dismissal. Until entry of the Final Order, the Parties agree to suspend any litigation efforts, including the propounding of and responses to discovery requests.

8. **Representations and Warranties.** The person signing this agreement on behalf of Snell & Wilmer represents she/he has full power and authority to enter into this Agreement, and the same is binding upon and enforceable against Snell & Wilmer in accordance with its terms.

9. **Receiver Representation.** The Receiver represents that, as the Court-authorized representative of the Receivership Estate, he has full power and authority to enter into this Agreement and the same is binding upon and enforceable against the Receiver, the Receivership Release Parties and the Receivership Entities in accordance with its terms, subject to paragraph 1.

10. **Attorneys' Fees and Costs.** Each of the Parties shall bear its own respective attorneys' fees and costs incurred in connection with entering into and implementing this Agreement. However, in the event that any legal action is taken to enforce any term or provision of this Agreement, the Parties agree that the prevailing party shall be entitled to payment of its reasonable attorneys' fees, expenses and costs incurred to enforce the terms of this Agreement.

11. **Binding Effect.** This Agreement shall be binding upon each of the Parties, and their respective successors-in-interest, heirs and/or assigns, as well as upon any former, present or future creditor of the Receivership Entities. All representations and warranties made herein shall survive execution of this Agreement and shall at all times subsequent to the execution of this Agreement remain binding and fully enforceable.

12. **Voluntary Agreement.** This Agreement has been carefully read by the Parties and the Parties have been given an opportunity to consult with their respective legal counsel; the contents hereof are known and understood by the Parties; and each of the Parties acknowledges that such party is under no duress or undue influence and that each of the Parties executes this Agreement as its own free and voluntary act.

13. **Public Notice:** Snell & Wilmer acknowledges that a neutrally drafted summary description of this Agreement will be included in the motion filed with the Court seeking approval of this Agreement, may be included on the website maintained by the Receiver for this Receivership, and will be identified in status reports prepared by the Receiver and filed with the Court.

14. **Integration and Amendments.** This Agreement shall constitute the entire agreement and understanding of and between the Parties in relation to matters described herein, and no statements, representations, inducements or promises other than as expressly set forth herein have been given or received by any of the Parties (nor by their respective agents, employees, attorneys or representatives) in return for same. All negotiations, oral conversations, statements, representations and/or agreements leading up to the execution of this Agreement are merged herewith and shall not be the basis for any legal rights, claims or defenses in relation to any litigation or otherwise. No parole or extrinsic evidence may be used to contradict any of the terms of this Agreement. Any amendment to this Agreement must be in writing, signed by duly authorized representatives of the Parties hereto, and specifically state the intent of the Parties to amend this Agreement.

15. **Counterparts.** This Agreement may be executed by the Parties hereto in any number of identical counterparts, each of which, once executed and delivered in accordance with the terms of this Agreement, will be deemed an original with all such counterparts taken together constituting one and the same instrument. Delivery by facsimile, encrypted e-mail or e-mail file attachment of any such executed counterpart to this Agreement will be deemed the equivalent of the delivery of the original executed agreement or instrument.


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

[signatures on next page]

**SNELL & WILMER**

By:   
Printed: David Boden  
Its: Executive Director

**R. WAYNE KLEIN**

  
Receiver for RaPower and related Receivership  
Entities