

**FILM CAPACITORS CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Between:

SEAN ALLOTT, SARA RAMSAY AND OPTION CONSOMMATEURS
(the "Plaintiffs")

and

NITSUKO ELECTRONICS CORPORATION
(the "Settling Defendant")

Executed December 15, 2017

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RECITALS

- A. WHEREAS the Proceedings were commenced by the Ontario Plaintiff in London, Ontario, the BC Plaintiff in Vancouver, British Columbia and the Québec Plaintiff in Montreal, Québec;
- B. AND WHEREAS in the Proceedings, the Plaintiffs allege that certain companies participated in an unlawful conspiracy to fix, raise, maintain or stabilize the price of Capacitors in Canada contrary to Part VI of the *Competition Act* and the common law and/or civil law;
- C. WHEREAS the Settling Defendant does not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings, or otherwise;
- D. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendant 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 Settling Defendant or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendant, which allegations are expressly denied by the Settling Defendant;
- E. WHEREAS the Settling Defendant is entering into this Settlement Agreement in order to achieve a final and nationwide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- F. WHEREAS the Settling Defendant does not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent expressly provided in this Settlement Agreement with respect to the Proceedings;

- G. WHEREAS the Settling Defendant did not manufacture, sell or distribute any electrolytic, aluminum or tantalum capacitors during the Class Period;
- H. WHEREAS Counsel for the Settling Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;
- I. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendant and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendant and the Plaintiffs, both individually and on behalf of the classes they represent or seek to represent, subject to approval of the Courts;
- J. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent;
- K. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceedings as against the Settling Defendant;
- L. WHEREAS for the purposes of settlement only, the Parties now consent to certification or authorization of the Proceedings as class proceedings and to the Settlement Classes and a Common Issue in respect of each of the Proceedings solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the

respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and,

- M. WHEREAS the Plaintiffs assert that they are adequate class representatives for the classes they seek to represent and will seek to be appointed representative plaintiffs in their respective Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the Parties that the Ontario Action and BC Action be settled and dismissed with prejudice as to the Settling Defendant only, without costs as to the Plaintiffs, the classes they represent or seek to represent or the Releasees, and that the Québec Action shall be settled out of court and without costs, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (a) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and the costs of claims administration, but excluding Class Counsel Fees.
- (b) **Approval Hearings** mean the hearings brought by Class Counsel for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (c) **BC Action** means the proceeding commenced by the BC Plaintiff before the BC Court that is identified in Schedule "A" to this Settlement Agreement.
- (d) **BC Counsel** means Camp Fiorante Matthews Mogerman.
- (e) **BC Court** means the Supreme Court of British Columbia.
- (f) **BC Plaintiff** means Sara Ramsay.

- (g) **BC Settlement Class** means the settlement class in respect of the BC Action that is defined in Schedule “A” to this Settlement Agreement.
- (h) **Capacitors** means electronic components that store electric charges between one or more pairs of conductors separated by an insulator. It includes electrolytic, aluminum, tantalum and/or Film Capacitors.
- (i) **Claims Administrator** means the firm to be proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (j) **Class Counsel** means Ontario Counsel, BC Counsel and Québec Counsel.
- (k) **Class Counsel Fees** include the fees, disbursements, costs, interest, GST or HST (as the case may be) and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or Person as a result of the Settlement Agreement, including the Fonds d’aide aux actions collectives in Québec.
- (l) **Class Period** means January 1, 2002 to December 31, 2014.
- (m) **Common Issue** means: Did the Settling Defendant conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Film Capacitors directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (n) **Courts** means the Ontario Court, the BC Court and the Québec Court.
- (o) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule “A” to this Settlement Agreement, and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes, without limitation, the Settling Defendant.
- (p) **Distribution Protocol** means the plan to be developed by Class Counsel for distributing the Settlement Amount, plus accrued interest and less approved

Administration Expenses and Class Counsel Fees, to Settlement Class Members, as approved by the Courts.

- (q) **Documents** mean all papers, computer or electronic records, or other materials within the scope of *Rule 1.03(1)* and *Rule 30.01(1)* of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (r) **Effective Date** means the date when the Final Orders have been received from all Courts approving this Settlement Agreement.
- (s) **Execution Date** means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and the Settling Defendant.
- (t) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.
- (u) **Film Capacitors** means capacitors which use insulating plastic film and one of two conductive materials, propylene and/or polyester. Film Capacitors include, but are not limited to, the following four generations: (1) film and aluminum foil capacitors, (2) film and other metal capacitors, (3) layered capacitors, and (4) surface-mount capacitors (i.e., capacitors without leaves).
- (v) **Final Order(s)** means the later of a final judgment entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.
- (w) **Non-Settling Defendant(s)** means any Defendant that is not a Releasee and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for

any reason, whether or not such settlement agreement is in existence at the Execution Date.

- (x) **Notice of Certification and of Approval Hearings** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendant, or such other form or forms of notice as may be approved by the Courts, which informs the Settlement Class of: (i) the certification or authorization of the Proceedings as class proceedings for settlement purposes; (ii) the right to opt-out of the certified or authorized Proceedings and the process for doing so; (iii) the dates and locations of the Approval Hearings; and, (iiii) the process by which a Settlement Class Member may object to the settlement.
- (y) **Ontario Action** means the proceeding commenced by the Ontario Plaintiff before the Ontario Court as identified in Schedule "A" to this Settlement Agreement.
- (z) **Ontario Counsel** means Harrison Pensa ^{LLP}.
- (aa) **Ontario Court** means the Ontario Superior Court of Justice.
- (bb) **Ontario Plaintiff** means Sean Allott.
- (cc) **Ontario Settlement Class** means the settlement class in respect of the Ontario Action that is defined in Schedule "A" to this Settlement Agreement.
- (dd) **Opt-Out Deadline** means the date which is sixty (60) days after the date on which the Notice of Certification and of Approval Hearings is first published.
- (ee) **Other Actions** means any other actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (ff) **Party and Parties** means the Settling Defendant, the Plaintiffs, and, where necessary, the Settlement Class Members.

- (gg) **Person(s)** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (hh) **Plaintiffs** means the Ontario Plaintiff, the BC Plaintiff and the Québec Plaintiff.
- (ii) **Proceedings** means the Ontario Action, the BC Action and the Québec Action, as defined in Schedule “A” to this Settlement Agreement.
- (jj) **Proportionate Liability** means the proportion of any judgment that, had the Settling Defendant not settled, the Ontario or the BC Court, as applicable, would have apportioned to the Settling Defendant.
- (kk) **Québec Action** means the proceeding commenced by the Québec Plaintiff before the Québec Court identified in Schedule “A” to this Settlement Agreement.
- (ll) **Québec Counsel** means Belleau Lapointe s.e.n.c.r.l.
- (mm) **Québec Court** means the Superior Court of Québec.
- (nn) **Québec Plaintiff** means Option Consommateurs.
- (oo) **Québec Settlement Class** means the settlement class in respect of the Québec Action that is defined in Schedule “A” to this Settlement Agreement.
- (pp) **Recitals** means the recitals to this Settlement Agreement.
- (qq) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, 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, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "Claims" or, individually, a "Claim"), 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, relating in any way to any conduct anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing or distributing of or compensation for, Capacitors in Canada, specifically including, without limitation, any Claims in any way related to Capacitors' prices or relating to any conduct alleged or which could have been alleged, directly or indirectly, in the Proceedings including, without limitation, any Claims, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or any other horizontal or vertical, or unilateral or coordinated, anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) in connection with the purchase, sale, pricing, discounting, marketing or distributing of Film Capacitors in Canada during the Class Period, including, without limitation, any claims for consequential, subsequent or follow on harm that arise after the date hereof in respect of any agreement or conduct that occurred prior to the date hereof. For greater certainty, nothing herein shall be construed to release any claims arising from, breach of contract, for negligence, bailment, failure to deliver, lost goods, delayed or damaged goods or similar claim between the Releasees and Releasors relating to Capacitors.

- (rr) **Releasees** means jointly and severally, individually and collectively, the Settling Defendant, and all of its present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated and all of their past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and their affiliates.

- (ss) **Releasors** means jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a present or former, direct or indirect, parent, subsidiary, affiliate, division or department, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, trustee, servant, contractor or representative of any kind. Releasors excludes any Person who validly and timely opted-out of their Settlement Class.
- (tt) **Schedules** mean the schedules to this Settlement Agreement.
- (uu) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (vv) **Settlement Amount** means the sum of one hundred and ninety thousand United States dollars (USD \$190,000.00).
- (ww) **Settlement Class** means all Persons included in the Ontario Settlement Class, the BC Settlement Class and the Québec Settlement Class.
- (xx) **Settlement Class Member(s)** means a member of a Settlement Class.
- (yy) **Settling Defendant** means Nitsuko Electronics Corporation.
- (zz) **Trust Account** means an interest-bearing trust account at a Canadian Schedule 1 bank under the control of Ontario Counsel, for the benefit of the Settlement Class Members or the Settling Defendant, as provided for in this Settlement Agreement.
- (aaa) **U.S. Proceedings** means the direct and indirect purchaser class proceedings in the United States which pertain to Capacitors which have been consolidated and are proceeding as class action litigation under the general style of cause, for both direct and indirect purchaser class proceedings, *In re: Capacitors Antitrust Litigation*, case number 3:14-cv-03264-JD, U.S. District Court for the Northern District of California.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Settling Defendant in the Ontario Action and BC Action, and a prompt, complete declaration of settlement out of court of the Québec Action as against the Settling Defendant in the Québec Action.

2.2 Motions Seeking Approval of Notice and Certification or Authorization

- (1) Subject to subsection 2.2(2), the Plaintiffs shall bring motions before the Courts, as soon as practicable after the Execution Date, for orders approving the Notice of Certification and of Approval Hearings, and certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding as against the Settling Defendant (for settlement purposes only).
- (2) The motions required by subsection 2.2(1) may be filed in Quebec, British Columbia and Ontario at the same time but, unless the Courts require otherwise or the motions proceed by way of a joint hearing of the Courts, the Plaintiffs shall not proceed to a hearing of the motions in Quebec and British Columbia until the Ontario Court has heard the motion.
- (3) The Ontario order approving the Notice of Certification and of Approval Hearings described in subsection 2.2(1) and certifying the Ontario Action for settlement purposes shall be substantially in the form attached as Schedule "B". The form and content of the Québec and BC orders approving the Notice of Certification and of Approval Hearings described in subsection 2.2(1) and authorizing or certifying the Québec and BC Actions for settlement purposes shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "B".

2.3 Motions Seeking Approval of the Settlement

- (1) As soon as practicable after the orders referred to in subsection 2.2(1) have been granted and the Notice of Certification and of Approval Hearings has been published, and subject to subsection 2.3(2), the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.
- (2) The motions required by subsection 2.3(1) may be filed in Quebec, British Columbia and Ontario at the same time but, unless the Courts require otherwise or the motions proceed by way of a joint hearing of the Courts, the Plaintiffs shall not proceed to a hearing of the motions in Quebec and British Columbia until the Ontario Court has heard and granted the motion.
- (3) The Ontario order approving this Settlement Agreement shall be substantially in the form attached as Schedule "C". The Québec and BC orders approving this Settlement Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order.
- (4) This Settlement Agreement shall only become final on the Effective Date.

2.4 Pre-Motion Confidentiality

- (1) Until the first of the motions required by subsection 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of counsel for the Settling Defendant and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to the terms of this Settlement Agreement, or as otherwise required by law.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (1) Within thirty (30) days of the Execution Date, the Settling Defendant shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account.

- (2) The Settlement Amount shall be all-inclusive of all amounts, including interest and costs, and shall be paid in full satisfaction of the Released Claims against the Releasees.
- (3) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.
- (4) Ontario Counsel or its duly appointed agent shall maintain the Trust Account as provided for in this Settlement Agreement.
- (5) Ontario Counsel or its duly appointed agent shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

3.2 Taxes and Interest

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.
- (2) Subject to subsection 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account shall be the responsibility of the Settlement Class. Ontario Counsel or its duly appointed agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the monies in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the monies in the Trust Account shall be paid from the Trust Account.
- (3) The Settling Defendant shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the monies in the Trust Account or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated

or otherwise fails to take effect, in which case the interest earned on the Settlement Amount in the Trust Account shall be paid to the Settling Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Ontario Counsel or its duly appointed agent.

SECTION 4 - COOPERATION

4.1 Extent of Cooperation

(1) Within thirty (30) days after the Effective Date, or at a time mutually agreed upon by the Parties, subject to any other provisions of this Settlement Agreement and any other legal restrictions:

(a) Counsel for the Settling Defendant shall provide an oral proffer of facts known to them about the conspiracy alleged in the Proceedings, including meetings or communications between competitors in the Capacitors industry, at a location to be agreed upon by the Parties.

(b) The Settling Defendant shall provide to Class Counsel:

- (i) copies of Documents concerning JFC meetings attended by the Settling Defendant, including meeting minutes and notes from attendees and e-mails concerning JFC meetings;
 - (ii) copies of Documents produced by the Settling Defendant to the Canadian, U.S. and foreign law enforcement authorities, including all English translations of any Documents, concerning Capacitors, to the extent they exist;
 - (iii) Canadian transactional sales data of any sales by the Settling Defendant of Film Capacitors in Canada during the Class Period, to be provided in electronic form if available, to the extent such sales data exists;
 - (iv) electronic copies of any non-privileged Documents produced by the Settling Defendant through discovery in the US Proceedings;
 - (v) the names of the Settling Defendant's ten (10) largest customers of Film Capacitors worldwide during the Class Period, to the extent the data exists to make this determination. The Settling Defendant shall make best efforts to identify which of those customers are OEMs or distributors, if such information is within their knowledge, and;
 - (vi) reasonable assistance in tracing finished products that contain Film Capacitors to Canada by making reasonable best efforts to provide, upon the Plaintiffs' request, information regarding the location of products containing the Settling Defendant's Film Capacitors during the Class Period, to the extent such information is within the Settling Defendant's knowledge and providing it is not unduly onerous or time consuming.
- (2) The obligation to produce Documents pursuant to subsection 4.1(1)(b)(ii) and (iv) shall be a continuing one to the extent that (i) additional Documents are provided by the Settling Defendant to any foreign law enforcement authorities or are

produced by the Settling Defendant through discovery in the US Proceedings and (ii) the additional documents are relevant to the Proceedings, including the allegations made in the Proceedings.

- (3) Upon reasonable notice and subject to any legal restrictions, the Settling Defendant shall make best efforts to make available up to two current or former employees of the Settling Defendant with relevant knowledge for an interview with Class Counsel and/or experts retained by Class Counsel, as necessary. The Parties agree to minimize the costs and expenses of these interviews by conducting them by videoconference, if practicable. If videoconference is not practicable, the interviews will take place in person. The interviews will take place at an agreed upon time and location and shall not exceed six (6) hours per employee. If conducted with the assistance of an interpreter, the interview time shall be doubled. The employees' and Settling Defendant's costs and expenses in relation to such interviews shall be the responsibility of the Settling Defendant. All other costs, including costs of an interpreter or expenses otherwise related to foreign language translation in connection with the interviews, shall be the responsibility of Class Counsel.
- (4) If requested by Class Counsel, and subject to the rules of evidence, any Court order regarding confidentiality, and any other provisions of this Settlement Agreement, the Settling Defendant agrees to make reasonable efforts to provide or obtain affidavits for use in the Proceedings to support the submission into evidence of any Documents or information provided by the Settling Defendant pursuant to this Settlement Agreement and, to the extent possible, any Documents produced by other Defendants in the Proceedings that were received by or originated from the Settling Defendant. If, and only if, a Court determines that affidavits are inadequate for supporting the submission into evidence of such Documents and information, the Settling Defendant agrees to use reasonable efforts to make available for oral testimony an appropriate representative of the Settling Defendant for such purpose. The costs and expenses of providing any affidavit or oral testimony under this provision shall be the responsibility of the Settling Defendant.

- (5) Before requesting an affidavit pursuant to section 4.1(4) above, the Plaintiffs and Class Counsel shall make best efforts to resolve any authentication issues by consent among the parties who remain in the Proceedings so that the burden of providing an affidavit will not be imposed on the Settling Defendant unless, and only to the extent that, it is necessary. Further, in the event that authentication issues are not resolved on consent and a Court determines that an affidavit is inadequate for supporting the submission into evidence of the Documents and information referred to in section 4.1(4) above, the Plaintiffs and Class Counsel shall make best efforts to arrange for any required oral testimony (to support the submission into evidence of the Documents and information referred to in section 4.1(4) above) to be conducted by videoconference, either on consent or by order of a Court.
- (6) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendant, or any representative or employee of the Settling Defendant, to disclose or produce any Documents or information prepared by or for counsel for the Settling Defendant or to disclose or produce any Documents or information in breach of any order, regulatory directive, commitment made to any governmental entity, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege, or to disclose or produce any information or Documents the Settling Defendant obtained on a privileged or cooperative basis from any party to any action or proceeding who is not a Releasee.
- (7) If any Documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently disclosed or produced, such Documents shall be promptly returned to the Settling Defendant and the Documents and the information contained therein shall not be disclosed or used, directly or indirectly, except with the express written permission of the Settling Defendant, and the production of such Documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such Documents.

- (8) The obligations of the Settling Defendant to cooperate as particularized in this subsection 4.1 shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. The obligations of the Settling Defendant to cooperate shall cease at the date of final judgment in the Proceedings as against all Defendants.
- (9) If the Settling Defendant materially breaches this Section 4.1, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement or set aside the approval of the Settlement Agreement or a part thereof. Additionally, if the Settling Defendant is unable to provide the cooperation referred to in subsection 4.1(3), the Plaintiffs may exercise any rights they have to seek to obtain testimony at trial from the current and former officers, directors and/or employees of the Settling Defendant or Releasees.
- (10) Subject to subsection 4.1(9), the provisions set forth in this subsection 4.1 are the exclusive means by which the Plaintiffs and Class Counsel may obtain discovery, information or Documents from the Settling Defendant and other Releasees or their current or former officers, directors or employees, and the Plaintiffs and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Settling Defendant and the other Releasees or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.
- (11) A material factor influencing the Settling Defendant's decision to execute this Settlement Agreement is its desire to limit the burden and expense of this litigation. Accordingly, the Plaintiffs and Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendant, agree not to seek information that is unnecessary, or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendant.

4.2 Limits on Use of Documents

- (1) It is understood and agreed that all Documents and information made available or provided by the Settling Defendant to the Plaintiffs and Class Counsel under this Settlement Agreement, shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are publicly available. The Plaintiffs and Class Counsel agree they will not disclose the Documents and information provided by the Settling Defendant except: (i) to experts, consultants or third-party service providers retained by them in connection with the Proceedings who have agreed to comply with the provisions of this Settlement Agreement and any confidentiality orders issued pursuant to subsection 4.2(2); (ii) to the extent that the Documents or information are publicly available; (iii) as evidence in the Proceedings; or (iv) as otherwise required by law. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such Documents and information, and of any work product of Class Counsel that discloses such Documents and information, except to the extent that the Documents and information are publicly available.
- (2) If the Plaintiffs or Class Counsel intend to produce for discovery or file in the Proceedings any Documents or other information provided by the Settling Defendant as cooperation under the Settlement Agreement (and such disclosure is not otherwise prohibited by the Settlement Agreement) and there is not already a confidentiality order issued in the Proceedings that applies to the Documents and information provided as cooperation under this Settlement Agreement, Class Counsel shall provide the Settling Defendant with an advance description of the Documents or other information sought to be produced or filed at least thirty (30) days in advance of the proposed production or filing, in order that the Settling Defendant may move to obtain a sealing or confidentiality order or similar relief. If the Settling Defendant so moves, the Plaintiffs, Settlement Class Members and Class Counsel shall not oppose the position taken by the Settling Defendant. The Plaintiffs and Class Counsel shall not produce or file the

Documents or information until the Settling Defendant's motion has been decided and all applicable appeal periods have expired, except, so as not to delay prosecution of the Proceedings, Class Counsel may provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree that they will keep the Documents or information on an external counsel only basis until the Settling Defendant's motion has been decided and all applicable appeal periods have expired.

- (3) In the event that a Person requests disclosure of any Documents or information provided by the Settling Defendant as cooperation under this Settlement Agreement and there is not already a confidentiality order issued in the Proceedings that applies to the Documents and information provided as cooperation under this Settlement Agreement, Class Counsel shall promptly notify the Settling Defendant of such request upon becoming aware of it in order that the Settling Defendant may move to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production. The Plaintiffs and Class Counsel shall not disclose the Documents or information until the motion brought by the Settling Defendant has been decided and all applicable appeal periods have expired, except (i) to the extent such information or Documents are otherwise publicly available, (ii) as ordered to do so by a Court; or (iii) in the event the Person making the request is a Non-Settling Defendant, so as not to delay the prosecution of the Proceedings, Class Counsel may provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree that they will keep the Documents or information on an external counsel only basis until the Settling Defendant's motion has been decided and all applicable appeal periods have expired.
- (4) In addition, until a confidentiality order that applies to the Documents and information provided as cooperation under this Settlement Agreement is issued in the Proceedings, Class Counsel shall treat any documents received from the

Settling Defendant as designated as Confidential or Highly Confidential in accordance with the provisions of any stipulated Protective Order granted in the U.S. Proceedings. Once such a confidentiality order(s) is issued in the Proceedings, that/those order(s) shall govern the Documents and information provided as cooperation under this Settlement Agreement.

4.3 Intervention in the U.S. Proceedings

The Settling Defendant shall not oppose any application that may be brought by or on behalf of the Plaintiffs to intervene in the U.S. Proceedings in order to gain access to discovery documents and other Documents and information subject to a protective order that are relevant to the Proceedings and is not otherwise inconsistent with the terms of this Settlement Agreement, including subsection 4.1(10). However it is understood and agreed that the Settling Defendant has no obligation to bring or otherwise participate in such an application.

SECTION 5 - DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

5.1 Distribution Protocol

- (1) After the Effective Date, at a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendant, Class Counsel will make an application seeking orders from the Courts approving the Distribution Protocol.

SECTION 6 - OPTING-OUT

6.1 Procedure

- (1) A Person may opt-out of the Proceedings 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 Certification and of Approval Hearings.
- (2) 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.

- (3) The written election to opt-out must contain the following information in order to be effective:
 - (a) the Person's full name and current address; and,
 - (b) a statement to the effect that the Person wishes to be excluded from the Proceedings.
- (4) Members of the Québec Settlement Class who have commenced proceedings or commence proceedings against any of the Defendants [named in any of the Proceedings](#) with respect to the matters at issue in the Quebec Action and fail to discontinue such proceedings by the Opt-Out Deadline shall be deemed to have opted out.

6.2 Opt-Out Report

- (1) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendant a report containing the names of each Person who has validly and timely opted-out of the Proceedings, as well as any reasons given by those Persons for opting-out.

SECTION 7 - RELEASES AND DISMISSALS

7.1 Release of Releasees

- (1) Upon the Effective Date, subject to subsection 7.2, in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasers forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

7.2 Covenant Not to Sue

- (1) Notwithstanding subsection 7.1, upon the Effective Date, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees, but instead covenant and undertake not to make any claim in any

way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.3 No Further Claims

- (1) The Releasers and Class Counsel shall not now or hereafter institute, continue, provide assistance for or 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 Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendants or unnamed co-conspirator that is not a Releasee. For the purposes of this subsection 7.3(1), Class Counsel includes anyone currently or hereafter employed by or a partner with Class Counsel.
- (2) Subsection 7.3 shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia*.

7.4 Dismissal of the Proceedings

- (1) Upon the Effective Date, the Ontario Action and the BC Action shall be dismissed, with prejudice and without costs, as against the Settling Defendant in the Ontario Action and the BC Action.
- (2) Upon the Effective Date, the Québec Action shall be settled, without costs and without reservation as against the Settling Defendant in the Québec Action, and the Parties shall sign and file a declaration of settlement out of court in the Québec Court in respect of the Québec Action.

7.5 Dismissal of Other Actions

- (1) Upon the Effective Date, each member of the Ontario Settlement Class and BC Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (2) Upon the Effective Date, all Other Actions commenced in British Columbia or Ontario by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.
- (3) Each member of the Québec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Releasees.
- (4) Each Other Action commenced in Québec by a member of the Québec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against the Releasees, without costs and without reservation.

SECTION 8 - BAR ORDER AND WAIVER OF SOLIDARITY

8.1 Ontario and British Columbia Bar Order

- (1) The Plaintiffs and the Settling Defendant agree that the Ontario and British Columbia orders approving this Settlement Agreement must include a bar order in respect of the Ontario Action and the BC Action which includes the following terms:
 - (a) a provision that if the Ontario Court or BC Court, as applicable, ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
 - (i) all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Claims, which were or could have been brought in the Proceedings,

or otherwise by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee, are barred, prohibited and enjoined in accordance with the terms of this subsection;

- (ii) the Ontario or BC Plaintiffs, as applicable, and the Ontario or BC Settlement Class Members, as applicable, shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (iii) the Ontario or BC Plaintiffs, as applicable, and the Ontario or BC Settlement Class Members, as applicable, shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Ontario or BC Plaintiffs, as applicable, and the Ontario or BC Settlement Class Members, as applicable, if any, and, for greater certainty, the Ontario or BC Settlement Class Members shall be entitled to claim and recover on a joint and several basis as

between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, to the extent provided by law; and,

- (iv) the Ontario Court and the BC Court, as applicable, shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Action or BC Action, as applicable, whether or not the Releasees remain in the relevant Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Action or BC Action, as applicable, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action or BC Action, as applicable, and shall not be binding on the Releasees in any other proceeding.
- (b) A provision that if the Ontario Court or BC Court, as applicable, ultimately determines that the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in the British Columbia and Ontario orders approving this Settlement Agreement, as applicable, is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of members of the Ontario or BC Settlement Class, as applicable, in the Ontario or BC Action, as applicable;
- (c) A provision that a Non-Settling Defendant may, on motion to the Ontario or BC Court, as applicable, determined as if the Settling Defendant remained party to the Ontario or BC Action, as applicable, and on at least ten (10) days' notice to counsel for the Settling Defendant, and not to be brought unless and until the Ontario Action or BC Action, as applicable,

against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following:

- (i) documentary discovery and an affidavit of documents (list of documents in British Columbia) from the Settling Defendant in accordance with the relevant rules of civil procedure;
 - (ii) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
 - (iii) leave to serve a request to admit (notice to admit in British Columbia) on the Settling Defendant in respect of factual matters; and/or,
 - (iv) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (d) A provision that the Settling Defendant retains all rights to oppose such motion(s) brought pursuant to subsection 8.1(1)(c). Moreover, nothing herein restricts the Settling Defendant from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with subsection 8.1(1)(c). Notwithstanding any provision in the Ontario and British Columbia orders approving this Settlement Agreement, on any motion brought pursuant to subsection 8.1(1)(c), the Ontario or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.
- (e) A provision that a Non-Settling Defendant may serve the motion(s) referred to in subsection 8.1(1)(c) on the Settling Defendant by service on counsel for the Settling Defendant in the relevant Proceeding.
- (2) To the extent that such an order is granted pursuant to subsection 8.1(1)(c) and discovery is provided to the Non-Settling Defendants, a copy of all discovery

provided, whether oral or documentary in nature, shall be provided by the Settling Defendant to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant(s).

8.2 Québec Waiver or Renunciation of Solidarity Order

- (1) The Plaintiffs and the Settling Defendant agree that the Québec order approving this Settlement Agreement must include a waiver or renunciation of solidarity in respect of the Québec action which includes the following:
 - (a) the Québec Plaintiff and Members of the Québec Settlement Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees;
 - (b) the Québec Plaintiff and the Members of the Québec Settlement Class shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
 - (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Québec Action; and,
 - (d) the ability of the Non-Settling Defendants to seek discovery from the Settling Defendant shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendant shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure*.

8.3 Claims Against Other Entities Reserved

- (1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any Person other than the Releasees.

SECTION 9 - EFFECT OF SETTLEMENT

9.1 No Admission of Liability

- (1) The Plaintiffs and the Releasees expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Plaintiffs and the Releasees further agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, 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 of the claims or allegations contained in the Proceedings, or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

9.2 Agreement Not Evidence

- (1) The Plaintiffs and the Releasees agree whether or not it is not approved, is terminated or otherwise fails to take effect for any reason, 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 proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

SECTION 10 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

- (1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Settling Defendant solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts, and such certification or authorization shall not be used or relied on as against the Settling Defendant for any other purpose or in any other proceeding.
- (2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Ontario Settlement Class, the Québec Settlement Class and the BC Settlement Class.
- (3) The Parties agree that the certification or authorization of the Proceedings as against the Settling Defendant for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

SECTION 11 - NOTICE TO SETTLEMENT CLASS

11.1 Notices Required

- (1) The proposed Settlement Class shall be given the following notice: (i) Notice of Certification and of Approval Hearings; and (ii) notice of termination (if the Settlement Agreement is terminated or otherwise fails to take effect).

11.2 Form and Distribution of Notices

- (1) The form of the notices referred to in subsection 11.1 and how and where they are published and distributed shall be as agreed to by the Plaintiffs and the Settling Defendant and, failing agreement, as ordered by the Courts.
- (2) The Plaintiffs shall bring and seek to schedule motions before the Courts seeking orders from the Courts approving the notices described in subsection 11.1. The Plaintiffs may determine the time of these motions in their full and complete

discretion, after consultation with the Settling Defendant, and subject to subsection 2.2.

SECTION 12 - ADMINISTRATION AND IMPLEMENTATION

12.1 Mechanics of Administration

- (1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel at a time within the discretion of Class Counsel, except that the timing of the motions to approve the Settlement Agreement shall be determined after consultation with the Settling Defendant and subject to subsection 2.3.

SECTION 13 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

- (1) The Releasees shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.
- (2) Class Counsel shall pay the costs of the notices required by subsection 11.1 and any costs of translation required by subsection 15.12 from the Trust Account, as they become due.
- (3) Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneously with seeking approval of this Settlement Agreement. Class Counsel's court-approved fees shall be paid after the Effective Date.
- (4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

SECTION 14 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

14.1 Right of Termination

- (1) In the event that:
 - (a) any Court declines to certify or authorize the Settlement Class;

- (b) the Ontario Court or the BC Court declines to dismiss the Proceedings against the Settling Defendant or the Québec Action is not fully settled out of court as against the Settling Defendant;
- (c) any Court declines to approve this Settlement Agreement or any material term, and the Parties agree that the releases, bar orders, waiver or renunciation of solidarity and covenants not to sue contemplated by this Settlement Agreement are all material terms;
- (d) any Court approves this Settlement Agreement in a materially modified form;
- (e) the Parties acting reasonably do not reach agreement on the form and content of any order required by this Settlement Agreement, or the order agreed by the Parties is approved by a Court in a materially modified form; or,
- (f) any order approving this Settlement Agreement made by the Courts does not become Final Orders;

the Settling Defendant, Class Counsel, and the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to subsection 15.18, within thirty (30) days following the event described above. Except as provided for in subsection 14.4, if the Settling Defendant, Class Counsel or the Plaintiffs exercise their right to terminate, the Settlement Agreement 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 in any litigation.

- (2) Any order, ruling or determination made by any Court with respect to Class Counsel Fees, or the Distribution Protocol, shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

14.2 Effect of Non-Approval or Termination of Settlement Agreement

- (1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:
 - (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
 - (b) any order certifying or authorizing a Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
 - (c) any prior certification or authorization of a Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation; and,
 - (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all Documents or other materials provided by the Settling Defendant under this Settlement Agreement or containing or reflecting information derived from such Documents or other materials received from the Settling Defendant and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendant to any other Person, shall recover and destroy such Documents or information. Class Counsel shall provide counsel to the Settling Defendant with a written certification by Class Counsel of such destruction. Nothing contained in this subsection 14.2 shall be construed to require Class Counsel to destroy any of their work product. However, any Documents or information provided by the Settling Defendant or received from the Settling Defendant in connection with this Settlement Agreement, may not be

disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendant. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such Documents, information and any work product of Class Counsel derived from such Documents or information.

14.3 Allocation of Settlement Amount Following Termination

- (1) If the Settlement Agreement is terminated, Ontario Counsel shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendant the Settlement Amount, plus all accrued interest thereon and less taxes paid on interest, any costs incurred with respect to the notices required by subsection 11.1, and any costs of translation required by subsection 15.12.

14.4 Survival of Provisions After Termination

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of subsections 3.2(3), 9.1, 9.2, 11.1, 11.2, 14.2 and 14.3, and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of subsections 3.2(3), 9.1, 9.2, 11.1, 11.2, 14.2 and 14.3, within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 15 - MISCELLANEOUS

15.1 Motions for Directions

- (1) Class Counsel or the Settling Defendant may apply to the Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate specifically to matters affecting the Québec Action or the BC Action shall be determined by the Ontario Court.

- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

15.2 Releasees Have No Liability for Administration

- (1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

15.3 Headings, etc.

- (1) In this Settlement Agreement:
 - (a) the division of the Settlement Agreement into sections and subsections 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 section, subsection, or other portion of this Settlement Agreement.

15.4 Computation of Time

- (1) 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, 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; and,
 - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

15.5 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the action commenced in its jurisdiction and the Parties thereto.
- (2) The Parties agree that no Court shall make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding subsections 15.5(1) and 15.5(2) the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a Québec Settlement Class member in the Québec Action or a BC Settlement Class member in the BC Action shall be determined by the Ontario Court.

15.6 Governing Law

- (1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

15.7 Entire Agreement

- (1) 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 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.

15.8 Amendments

- (1) This Settlement 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 Courts with jurisdiction over the matter to which the amendment relates.

15.9 Binding Effect

- (1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendant, the Releasers, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasers and every covenant and agreement made by the Settling Defendant shall be binding upon all of the Releasees.

15.10 Counterparts

- (1) 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.

15.11 Negotiated Agreement

- (1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, 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.

15.12 Language

- (1) 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, if required by the

Courts, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

15.13 Transaction

- (1) This Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Québec*, and the Parties are hereby renouncing any errors of fact, of law, and/or of calculation.

15.14 Recitals

- (1) The Recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

15.15 Schedules

- (1) The Schedules annexed hereto form part of this Settlement Agreement.

15.16 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she 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 this Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she or the Party's representative fully understands each term of this 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, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

15.17 Authorized Signatures

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

15.18 Notice

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by e-mail, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

FOR THE PLAINTIFFS AND CLASS COUNSEL:

Jonathan Foreman
Harrison Pensa ^{LLP}
450 Talbot Street
London, ON N6A 4K3

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FOR THE SETTLING DEFENDANT:

SCHEDULE "A" PROCEEDINGS

Proceeding	Plaintiff(s)	Defendants	Settlement Class
<p>Ontario Superior Court of Justice (London) Court File No. 1272/16 CP (the "Ontario Action")</p>	<p>Sean Allott</p>	<p>AVX Corporation; Elna Co., Ltd.; Elna America Inc.; Hitachi Chemical Co., Ltd.; Hitachi Chemical Company America, Ltd.; Hitachi Canada; Hitachi AIC Inc.; KEMET Corporation; KEMET Electronics Corporation; Matsuo Electric Co., Ltd.; Nichicon Corporation; Nichicon (America) Corporation; Nippon Chemi-Con Corporation; United Chemi-Con Corporation; Nissei Electric Co. Ltd.; Nitsuko Electronics Corporation; Okaya Electric Industries Co. Ltd.; Okaya Electric America, Inc.; Panasonic Corporation; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd., Sanyo Electronic Device (U.S.A.) Corp., Sanyo North American Corporation, ROHM Co., Ltd.; ROHM Semiconductor U.S.A., LLC f/k/a/ ROHM Electronics U.S.A., LLC; Rubycon Corporation; Rubycon America Inc.; Shinyei Kaisha; Shinyei Technology Co., Ltd.; Shinyei Capacitor Co., Ltd.; Shinyei Corporation of America; Shizuki Electric Co., Ltd.; American Shizuki Corporation; Soshin Electric Co., Ltd.; Soshin Electronics of America Inc.; Taitso Corporation; Taitso America, Inc.; Toshin Kogyo Co., Ltd.; Holy Stone Enterprises Co., Ltd.; Milestone Global Technology Inc. d/b/a Holystone International; Vishay Intertechnology, Inc.; Vishay Polytech Co., Ltd. f/k/a/ Holystone Polytech Co., Ltd.</p>	<p>All Persons in Canada who purchased Film Capacitors or a product containing a Film Capacitor during the Class Period other than (1) all BC Settlement Class members and (2) all Québec Settlement Class members.</p>

Proceeding	Plaintiff(s)	Defendants	Settlement Class
<p>British Columbia Supreme Court (Vancouver Registry) Court File No. S-156006 (the “BC Action”)</p>	<p>Sara Ramsay</p>	<p>Okaya Electric Industries Co., Ltd.; Okaya Electric America Inc.; Taitso Corporation; Taitso America, Inc.; Shinyei Kaisha; Shinyei Technology Co., Ltd.; Shinyei Capacitor Co., Ltd.; Shinyei Corporation of America, Inc.; Nitsuko Electronics Corporation; Nissei Electric Co. Ltd.; Soshin Electric Co., Ltd.; Soshin Electronics of America Inc.; Shizuki Electric Co., Ltd.; American Shizuki Corporation; Toshin Kogyo Co., Ltd.</p>	<p>All Persons in British Columbia who purchased a Film Capacitors or a product containing a Film Capacitor during the Class Period.</p>
<p>Québec Superior Court (District of Montreal), File No. File No. 500-06-000704-144 (the “Québec Action”)</p>	<p>Option Consommateurs</p>	<p>Panasonic Corporation; Sanyo Electric Group Ltd.; KEMET Corporation; NEC Tokin Corporation; Taiyo Yuden Co., Ltd.; Nippon Chemi-Con Corporation; Hitachi Chemical Co. Ltd.; Nichicon Corporation; Hitachi AIC Inc.; Elna Co. Ltd.; Holy Stone Enterprise Co., Ltd.; Matsuo Electric Co., Ltd.; Rohm Co., Ltd.; Rubycon Corporation; Toshin Kogyo Co., Ltd.; Holy Stone Holdings Co. Ltd.</p>	<p>All Persons in Québec who purchased a Film Capacitor or a product containing a Film Capacitor during the Class Period.</p>