

**CANADIAN STARTERS CLASS ACTIONS  
NATIONAL SETTLEMENT AGREEMENT**

Made as of February 19, 2019

Between

**SHERIDAN CHEVROLET CADILLAC LTD., THE PICKERING AUTO MALL LTD.,  
FADY SAMAHA, DARREN EWERT and SERGE ASSELIN**

(the “**Plaintiffs**”)

and

**MITSUBA CORPORATION and AMERICAN MITSUBA CORPORATION**

(the “**Settling Defendants**”)

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**CANADIAN STARTERS CLASS ACTIONS  
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**RECITALS**

A. WHEREAS the Proceedings were commenced by the BC Plaintiff in British Columbia, the Quebec Plaintiff in Quebec and the Ontario Plaintiffs in Ontario and the Plaintiffs claim class-wide damages allegedly caused as a result of the conduct alleged therein;

B. WHEREAS the Proceedings allege that some or all of the Releasees participated in an unlawful conspiracy with other manufacturers of Starters to rig bids for, and to raise, fix, maintain or stabilize the prices of Starters sold in Canada and elsewhere as early as January 1, 2000 until at least July 31, 2011, contrary to Part VI of the *Competition Act*, RSC 1985, c C-34, the common law and/or the civil law;

C. WHEREAS the Settlement Class Members were permitted an opportunity to opt out of the Proceedings, the deadline to opt out of the Proceedings has passed, and three Persons validly and timely exercised the right to opt out;

D. WHEREAS the Settling Defendants and Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct as alleged in the Proceedings, or in any Other Actions, and otherwise deny all liability and would have asserted a number of defences to the Proceedings and any Other Actions if the Proceedings or Other Actions had proceeded against them;

E. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiffs' allegations against the Releasees, which the Settling Defendants expressly deny;

F. WHEREAS, without limiting the generality of the foregoing, while Class Counsel has negotiated substantially similar language across the Canadian Settlement Agreements, the Settling Defendants have disputed their alleged involvement with respect to the manufacture and/or sale of various automotive parts and the Plaintiffs and the Settlement Classes acknowledge and agree that nothing in this Settlement Agreement is intended to be or can be construed or interpreted as an admission or evidence of any such manufacture and/or sale, or that any of the Settling Defendants

or Releasees have any sales, documents and/or information with respect to Starters or any automotive part;

G. WHEREAS despite their belief that they are not liable in respect of the claims as alleged in the Proceedings and have good and reasonable defences in respect of jurisdiction and the merits, the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Classes in the Proceedings and/or any Other Actions, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

H. WHEREAS the Settling Defendants do 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 they have previously done so in the Proceedings and is expressly provided in this Settlement Agreement with respect to the Proceedings;

I. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement;

J. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the Settlement Classes the Plaintiffs seek to represent, subject to approval of the Courts;

K. WHEREAS the Plaintiffs and Class Counsel, on their own behalf and on behalf of the Plaintiffs and the proposed Settlement Classes, 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, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Classes they seek to represent;

L. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, all of the Proceedings and any Other Actions as against the Releasees;

M. WHEREAS the Settling Defendants are prepared to submit to the jurisdiction of the Courts for the sole purpose of implementing this Settlement Agreement and contingent on approvals by the Courts as provided for in this Settlement Agreement, and the Settling Defendants shall reserve all of their existing procedural, substantive and jurisdictional rights and defences in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

N. WHEREAS the Parties consent to certification or authorization of the Proceedings as class proceedings and to the Settlement Classes and the Common Issue in respect 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;

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

P. WHEREAS the Parties intend to pursue the approval of this Settlement Agreement first through the Ontario Court;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the BC Action and Ontario Action be settled and dismissed with prejudice as to the Settling Defendants only, and the Quebec Action be declared settled out of court against the Settling Defendants with prejudice, all without costs as to the Plaintiffs, the Settlement Classes they seek to represent, or the Settling Defendants, 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:

- (1) **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, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (2) **Automotive Vehicle** means all automobiles, passenger cars, sport utility vehicles, vans, trucks, buses and, without limitation, any other type of vehicle containing Starters.
- (3) **BC Action** means the BC Action as defined in Schedule A.
- (4) **BC Counsel** means Camp Fiorante Matthews Mogergerman LLP.
- (5) **BC Court** means the Supreme Court of British Columbia.
- (6) **BC Plaintiff** means Darren Ewert.
- (7) **BC Settlement Class** means the settlement class in respect of the BC Action as defined in Schedule A.
- (8) **Canadian Settlement Agreements** means the settlement agreements reached between the Settling Defendants and the respective plaintiffs in the actions listed in Schedule D.
- (9) **Certification Date** means the later of the date on which an order granting certification or authorization of a Proceeding against one or more Non-Settling Defendants is issued by a Court and the time to appeal such certification or authorization has expired without any appeal being taken, or if an appeal is taken the date of the final disposition of such appeal.
- (10) **Claims Administrator** means the firm 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.
- (11) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel.



- (12) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in any of the Proceedings.
- (13) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Quebec.
- (14) ***Class Period*** means January 1, 2000 to March 20, 2017.
- (15) ***Common Issue*** means: Did the Settling Defendants conspire to fix, raise, maintain, or stabilize the prices of Starters in Canada and elsewhere during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (16) ***Counsel for the Settling Defendants*** means McMillan LLP.
- (17) ***Courts*** means the Ontario Court, the Quebec Court and the BC Court.
- (18) ***Date of Execution*** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (19) ***Defendants*** means the Persons named as defendants in any of the Proceedings as set out in Schedule A, and any Persons that are not Releasees that are added as defendants in the Proceedings in the future. For greater certainty, Defendants includes the Settling Defendants and the Settled Defendants.
- (20) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Courts.
- (21) ***DOJ*** means the United States Department of Justice.
- (22) ***Effective Date*** means the date when Final Orders have been received from the requisite Courts approving all Canadian Settlement Agreements in accordance with their terms.
- (23) ***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, and those Persons who validly and timely opted out of the Proceedings in accordance with the orders of the applicable Court.

(24) **Final Order** means a final order, judgment or equivalent decree entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals.

(25) **Non-Settling Defendant** means any Defendant that is not a Settling Defendant or a Settled Defendant.

(26) **Ontario Action** means the Ontario Action as defined in Schedule A.

(27) **Ontario Counsel** means Siskinds LLP and Sotos LLP.

(28) **Ontario Court** means the Ontario Superior Court of Justice.

(29) **Ontario Plaintiffs** means Sheridan Chevrolet Cadillac Ltd., The Pickering Auto Mall Ltd. and Fady Samaha.

(30) **Ontario Settlement Class** means the settlement class in respect of the Ontario Action as defined in Schedule A.

(31) **Other Actions** means actions or proceedings, excluding the Proceedings, relating to Released Claims and commenced by a Settlement Class Member either before or after the Effective Date, including, without limitation, the putative class action claims bearing case captions: *Dyck et al. v. Denso Corporation et al.*, S.K. Q.B. No. 500 of 2016; *Scott et al. v. Denso Corporation et al.*, M.B. Q.B. No. C116-01-00745; *Kett et al. v. Denso Corporation et al.*, B.C. S.C. No. S-1510785; *Retallick et al v Denso Corporation et al* S.K. Q.B. No. 986 of 2014.

(32) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.

(33) **Person** 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.

(34) ***Plaintiffs*** means the Persons named as plaintiffs in the Proceedings as set out in Schedule A.

(35) ***Proceedings*** means the BC Action, the Quebec Action and the Ontario Action.

(36) ***Proportionate Liability*** means the proportion of any judgment that, had the Settling Defendants not settled, the Ontario Court or BC Court, as applicable, would have apportioned to the Releasees.

(37) ***Quebec Action*** means the Quebec Action as defined in Schedule A.

(38) ***Quebec Counsel*** means Siskinds Desmeules s.e.n.c.r.l.

(39) ***Quebec Court*** means the Superior Court of Quebec.

(40) ***Quebec Plaintiff*** means Serge Asselin.

(41) ***Quebec Settlement Class*** means the settlement class in respect of the Quebec Action as defined in Schedule A.

(42) ***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 of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including without limitation Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that any of the Releasers ever had, now have or hereafter can, shall or may have, relating in any way to any conduct related to, arising from, or described in the Proceedings, prior to the Date of Execution on account of, arising out of, resulting from, or related to in any respect the purchase, sale, pricing, discounting, manufacturing, marketing, offering, or distributing of Starters or relating to any conduct alleged (or which was previously or could have been alleged) in the Proceedings

and/or *Dyck et. al. v. Denso Corporation et. al.*, S.K. Q.B. No. 500 of 2016; *Scott et. al. v. Denso Corporation et. al.*, M.B. Q.B. No. C116-01-00745; *Kett et. al. v. Denso Corporation et. al.*, B.C. S.C. No. S-1510785; *Retallick et al v Denso Corporation et al* S.K. Q.B. No. 986 of 2014, including, without limitation, any such claims which have been asserted or could have been asserted, directly or indirectly, whether in Canada or elsewhere, in respect of the purchase, sale, pricing, discounting, manufacturing, marketing, offering or distributing of Starters or the purchase or lease of new Automotive Vehicles, including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the Date of Execution in respect of any agreement, combination or conduct that occurred prior to the Date of Execution. However, the Released Claims do not include: (i) claims based on negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, or breach of product warranty, or breach of contract claims or similar claims between the Parties that relate to Starters but do not relate to alleged anti-competitive conduct; (ii) claims brought outside of Canada that relate to Starters and fall within the scope of, and were resolved by, any U.S. Settlement Agreements; or (iii) claims concerning any automotive part other than Starters, where such claims do not concern Starters.

(43) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, joint ventures, franchisees, dealers, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.

(44) **Releasers** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, joint ventures, franchisees, dealers, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, servants and representatives, members, managers and the

predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(45) ***Settled Defendants*** means:

- (a) Hitachi, Ltd., Hitachi Automotive Systems, Ltd. and Hitachi Automotive Systems Americas, Inc.; and
- (b) any Defendant that has entered into a settlement agreement with the Plaintiffs in the Proceedings and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Date of Execution.

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

(47) ***Settlement Amount*** means CAD \$1,228,599.32.

(48) ***Settlement Classes*** means, in respect of each Proceeding, the settlement class defined in Schedule A.

(49) ***Settlement Class Member*** means a member of a Settlement Class.

(50) ***Settling Defendants*** means MITSUBA Corporation and American MITSUBA Corporation.

(51) ***Starters*** means a device that powers an Automotive Vehicle's battery, causing it to "turn over" and start when the driver turns the ignition switch.

(52) ***Trust Account*** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Siskinds LLP or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

(53) ***U.S. Litigation*** means the consolidated class action proceedings, in which a plaintiff alleges that certain auto parts manufacturers rigged bids for and/or conspired to raise, fix, maintain

or stabilize the prices of Starters, in which the Settling Defendants are named as parties, currently pending in the United States District Court for the Eastern District of Michigan, Southern Division, including the actions under the captions *In re Automotive Parts Antitrust Litigation*, Starters Cases, Case No. 2:13-cv-01101 (MOB), *In re Automotive Parts Antitrust Litigation*, Starters Cases, Case No. 2:13-cv-01102 (MOB), *In re Automotive Parts Antitrust Litigation*, Starters Cases, Case No. 2:13-cv-01103 (MOB), and includes all such class actions transferred by the Judicial Panel for Multidistrict Litigation for coordination with those actions, all such class actions pending such transfer, and all such class actions that may be transferred for such coordination in the future.

(54) ***U.S. Protective Order*** means "Stipulation and Protective Order Governing the Production and Exchange of Confidential Information" issued on July 10, 2012 in *In re: Automotive Parts Antitrust Litigation*, Master File No. 12-MD-02311-MOB-MKM, Docket No. 200, and any order(s) entered that supplement, modify or supersede such order.

(55) ***U.S. Settlement Agreements*** includes any settlement reached with the Settling Defendants in the U.S. Litigation in respect of Starters.

## **SECTION 2 – SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

(1) The Parties shall use their reasonable best efforts to implement this settlement and to secure the prompt, complete and final dismissal with prejudice of the Ontario Action and BC Action as against the Settling Defendants, and a declaration of settlement out of court of the Quebec Action as against the Settling Defendants.

### **2.2 Motions Seeking Approval of Notice and Certification or Authorization**

(1) The Plaintiffs shall file motions before the Courts, as soon as practicable after the Date of Execution, for orders approving the notices described in Section 10.1(1) and certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding as against the Settling Defendants (for settlement purposes only). The Plaintiffs will make best efforts to file the aforementioned motions before the BC Court and the Quebec Court no later than thirty (30) days after the Ontario Court has granted an order approving the notices described in Section 10.1(1) and certifying the Ontario Action as a class proceeding as against the Settling Defendants (for settlement purposes only).

(2) The Ontario order approving the notices described in Section 10.1(1) and certifying the Ontario Action for settlement purposes shall be substantially in the form attached as Schedule B. The British Columbia and Quebec orders approving the notices described in Section 10.1(1) and certifying or authorizing the BC Action and the Quebec Action for settlement purposes shall be agreed upon by the Parties and shall, where possible, mirror the substance and form of the Ontario order attached as Schedule B.

### **2.3 Motions Seeking Approval of the Settlement**

(1) The Plaintiffs shall make best efforts to file motions before the Courts for orders approving this Settlement Agreement as soon as practicable after:

- (a) the orders referred to in Section 2.2(1) have been granted; and
- (b) the notices described in Section 10.1(1) have been published.

(2) The Ontario order approving this Settlement Agreement shall be substantially in the form attached as Schedule C. The British Columbia and Quebec orders approving this Settlement Agreement shall be agreed upon by the Parties and shall, where possible, mirror the substance and form of the Ontario order.

(3) The Plaintiffs can elect to request that the Courts hold joint hearings seeking approval of this Settlement Agreement pursuant to the Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions. The Settling Defendants will not oppose any such request.

(4) This Settlement Agreement shall become final only upon the Effective Date.

### **2.4 Pre-Motion Confidentiality**

(1) Until the first of the motions required by Section 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 Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

### SECTION 3 – SETTLEMENT BENEFITS

#### 3.1 Payment of Settlement Amount

- (1) Within sixty (60) days of the Date of Execution, the Settling Defendants shall pay the Settlement Amount to Siskinds LLP for deposit into the Trust Account.
- (2) Payment of the Settlement Amount shall be made by wire transfer. At least thirty (30) days prior to the Settlement Amount becoming due, Siskinds LLP will provide, in writing, the following information necessary to complete the wire transfer: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.
- (3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.
- (4) The Settlement Amount shall be all-inclusive of all amounts, including, without limitation, interest, costs, Administration Expenses, Class Counsel Fees and Class Counsel Disbursements.
- (5) 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, the Proceedings or any Other Actions.
- (6) Once a Claims Administrator has been appointed, Siskinds LLP shall transfer control of the Trust Account to the Claims Administrator.
- (7) Siskinds LLP and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.
- (8) Siskinds LLP and the Claims Administrator 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 in the Trust Account shall accrue to the benefit of the Settlement Classes and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Siskinds LLP or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount 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 by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants 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 on the Settlement Amount 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 for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Siskinds LLP or the Claims Administrator.

### **3.3 Intervention in the U.S. Litigation**

(1) The Settling Defendants shall not oppose any application that may be brought by or on behalf of the Plaintiffs following the Effective Date to intervene in the U.S. Litigation in order to gain access to discovery documents and other documents and information that are relevant to the Proceedings and Starters, provided that (a) the Plaintiffs agree to abide by the terms of the U.S. Protective Order or similar order(s) that have been issued that provide protection equivalent to that provided by the U.S. Protective Order and (b) such application is not otherwise inconsistent with the terms of this Settlement Agreement, including, without limitation, Section 4.1(13). However, it is understood and agreed that neither the Settling Defendants nor the other Releasees have any obligation to bring or otherwise participate in such an application for intervention by or on behalf of the Plaintiffs.

## SECTION 4 – COOPERATION

### 4.1 Extent of Cooperation

(1) Subject to the limitations set forth in this Settlement Agreement, the Settling Defendants agree to provide cooperation as set out in this Section of the Settlement Agreement provided, however, that neither the Settling Defendants nor any of the Releasees shall be required, and nothing in this Settlement Agreement shall be construed to require any Settling Defendant or Releasee, to perform any act, provide any cooperation, or to transmit, provide, disclose or produce any documents or information: (i) in violation of any law, regulation or rule of any jurisdiction, including without limiting the generality of the foregoing, any privacy or other laws, regulations or policies of Ontario, Quebec, British Columbia or any other Canadian or foreign jurisdiction; (ii) in contravention of the terms of any order of a court or tribunal in any jurisdiction, including without limitation the U.S. Protective Order or similar order(s) in the Proceedings; (iii) in contravention of or inconsistent with an instruction or directive from, or any obligations to, the Canadian Competition Bureau, DOJ or any regulatory authority or governmental body in Canada, the United States or any other jurisdiction; (iv) subject to and/or inconsistent with any applicable solicitor client privilege, litigation privilege, settlement privilege, joint defence privilege or any other privilege, doctrine or law; (v) that would disclose or produce any information or documents they obtained on a privileged or co-operative basis from any Person or party to any action or proceeding who is not a Releasee; (vi) with regard to conduct or matters outside the scope of the Released Claims; or (vii) that is not within the possession, custody or control of the Settling Defendants.

(2) Before the expiration of sixty (60) days from the Effective Date, or such other time period as Class Counsel and the Settling Defendants may reasonably agree, and subject to the other provisions of this Settlement Agreement, legal counsel for the Settling Defendants will meet with Class Counsel in Canada or the United States, to provide a legal counsel proffer or hypothetical attorney proffer regarding Starters. In no event shall the total proffer time for all of the Canadian Settlement Agreements, including question and answer sessions, exceed five (5) business days or thirty-five (35) hours of proffer time. One (1) of those five (5) proffer days for the Canadian Settlement Agreements may take place prior to the Effective Date and shall take place prior to February 22, 2019, or such other time period as Class Counsel and the Settling Defendants may reasonably agree, subject to the other provisions of this Settlement Agreement. Notwithstanding

any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by legal counsel for the Settling Defendants are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, except with the express consent of the Settling Defendants and their legal counsel or unless disclosure is ordered by a Court. Further, absent a Court order, Class Counsel will not attribute any information obtained from the proffer to the Settling Defendants and/or legal counsel for the Settling Defendants. Class Counsel agrees not to seek any such disclosure or attribution order and to provide advance written notice to Counsel for the Settling Defendants of any motion or application for such an order or orders. Subject to the foregoing and the other terms of this Settlement Agreement, Class Counsel may use information obtained from the proffer in the prosecution of the Proceedings, including during privileged and confidential settlement discussions for the purpose of advancing those discussions in the interests of the Settlement Classes, except the prosecution of any claims against Releasees. The Settling Defendants agree to consider any reasonable request by Class Counsel to provide to Class Counsel the source Documents or other evidence that formed the basis of the proffer in advance of when such Documents and/or evidence would otherwise be due in accordance with the terms of this Settlement Agreement. The Parties agree that the proffer itself is settlement privileged, does not constitute evidence, that there shall be no audio or video recording or written transcription or record of any statements made or information by legal counsel for the Settling Defendants or any other Person at the proffer, and that Class Counsel may only make written notes of their own thoughts and impressions at the proffer for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Classes. Class Counsel shall give Settling Defendants sufficient advance notice of any motion, petition or other request for entry of a court order allowing or compelling attribution of any information obtained from the proffer, or disclosure of any information obtained from the proffer, to allow Settling Defendants to oppose the motion, petition or other request.

(3) At the request of Class Counsel after the Effective Date, the Settling Defendants shall provide to Class Counsel the following:

- (a) within ten (10) days of receiving the request, or at a time mutually agreed upon by the Parties, the Settling Defendants shall provide to Class Counsel a list of current and former employees, directors and officers of the Settling Defendants who were

interviewed or prosecuted by the DOJ in connection with alleged price-fixing, bid rigging, and market allocation with respect to Starters, who appeared before the grand jury in the DOJ's investigation into the alleged antitrust violations with respect to Starters; and/or who were disclosed as having knowledge or information relating to the DOJ's investigation into alleged anti-trust violations with respect to Starters. If a list is provided, it may at the election of the Settling Defendants be a single list for all Canadian Settlement Agreements without separation by product(s). The Settling Defendants make no representation that they have, can or will produce a list or an accurate or complete list, and it is understood and agreed that the failure to produce a list or an accurate or complete list shall not constitute a breach or violation of this Settlement Agreement;

- (b) within ninety (90) days of receiving the request, or at a time mutually agreed upon by the Parties, sales data for the production and sale of Starters by the Settling Defendants from January 1, 1998 to December 31, 2013 produced by the Settling Defendants to the plaintiffs in the U.S. Litigation, if any, but only to the extent that it exists and is reasonably accessible in the Settling Defendants' existing live electronic databases. The Settling Defendants shall not be required to produce sales data where there is no reasonable likelihood that such sales were associated with Starters that are the subject of claims of the Settlement Classes in the Proceedings. Any sales data produced shall be delivered in electronic form (if reasonably possible, Microsoft Access or Microsoft Excel) or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel, and shall be delivered as a separate production from the documents to be delivered pursuant to Sections 4.1(3)(d)-(h) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(3). The Settling Defendants cannot, and do not, make any representation that they have, can or will produce such sales data, or a complete set of such data, and it is understood and agreed that the failure to produce such data shall not constitute a breach or violation of this Settlement Agreement;
- (c) reasonable assistance to Class Counsel in understanding any sales data produced by the Settling Defendants pursuant to Section 4.1(3)(b) above, through Counsel

for the Settling Defendants, including a reasonable number of written and/or telephonic communications with Class Counsel and/or the Plaintiffs' experts and between technical personnel;

- (d) within sixty (60) days of receiving the request, or at a time mutually agreed upon by the Parties, electronic copies of any documents (as defined in Rule 30.01 of the Ontario *Rules of Civil Procedure*) regarding Starters produced by the Settling Defendants to the plaintiffs in the U.S. Litigation, including any documents produced or made available by the Settling Defendants to the plaintiffs pursuant to the U.S. Settlement Agreements, including any pre-existing translations of those documents produced to the plaintiffs in the U.S. Litigation, and any pre-existing and non-privileged electronic coding produced to the plaintiffs in the U.S. Litigation, including where the documents previously produced in the U.S. Litigation contain bates stamps on their face the documents will be produced in the same format produced to the plaintiffs in the U.S. Litigation. The Settling Defendants cannot, and do not, make any representation that they have, can or will produce such documents, or a complete set of such documents, and it is understood and agreed that the failure to produce such documents shall not constitute a breach or violation of this Settlement Agreement.
  
- (e) within sixty (60) days of receiving the request, or at a time mutually agreed upon by the Parties, electronic copies of transcripts and video recordings of any depositions or other testimony regarding Starters of current or former employees, officers or directors of the Settling Defendants, including all exhibits, taken in the U.S. Litigation, and any pre-existing translations of those transcripts to the extent produced to the plaintiffs in the U.S. Litigation, or, if later, within thirty (30) business days of said transcripts becoming available, but only to the extent permitted under any applicable protective order, including, without limitation, the U.S. Protective Order, and only to the extent the content of the transcript or video recording is relevant to the allegations in the Proceedings. The Settling Defendants cannot, and do not, make any representation that they have, can or will produce such transcripts or recordings, or a complete set of such transcripts or recordings,

and it is understood and agreed that the failure to produce such transcripts or recordings shall not constitute a breach or violation of this Settlement Agreement;

- (f) within sixty (60) days of receiving the request, or at a time mutually agreed upon by the Parties, electronic copies of any responses to written interrogatories regarding Starters by the Settling Defendants produced to the plaintiffs in the U.S. Litigation, including all schedules thereto and any pre-existing translations of those responses produced to the plaintiffs in the U.S. Litigation, but only to the extent permitted under any applicable protective order, including, without limitation, the U.S. Protective Order. The Settling Defendants cannot, and do not, make any representation that they have, can or will produce such responses to written interrogatories, or a complete set of such responses, and it is understood and agreed that the failure to produce such responses shall not constitute a breach or violation of this Settlement Agreement;
- (g) within sixty (60) days of receiving the request, or at a time mutually agreed upon by the Parties, electronic copies of any declarations regarding Starters by the Settling Defendants produced to the plaintiffs in the U.S. Litigation, including all schedules thereto and any pre-existing translations of those declarations produced to the plaintiffs in the U.S. Litigation, but only to the extent permitted under any applicable protective order, including, without limitation, the U.S. Protective Order. The Settling Defendants cannot, and do not, make any representation that they have, can or will produce such declarations, or a complete set of such responses, and it is understood and agreed that the failure to produce such responses shall not constitute a breach or violation of this Settlement Agreement; and
- (h) within ninety (90) days of receiving the request, or at a time mutually agreed upon by the Parties, any cost information of the Settling Defendants regarding Starters produced by the Settling Defendants to the plaintiffs in the U.S. Litigation, if any, but only to the extent that it exists and is reasonably accessible in the Settling Defendants' existing live electronic databases. The Settling Defendants shall not be required to produce such information where there is no reasonable likelihood that such information is associated with Starters that are the subject of claims of the

Settlement Classes in the Proceedings. The Settling Defendants cannot, and do not, make any representation that they have, can or will produce such cost information, or a complete set of such information, and it is understood and agreed that the failure to produce such information shall not constitute a breach or violation of this Settlement Agreement.

(4) Subject to the other terms of this Settlement Agreement, the obligation to produce documents pursuant to Sections 4.1(3)(b), (d), (e), (f), (g) and (h) shall be a continuing obligation to the extent additional documents are produced by the Settling Defendants in the U.S. Litigation following the initial productions pursuant to this Settlement Agreement.

(5) All cooperation to be provided by Settling Defendants in the Proceedings, and in respect of proceedings involving products other than Starters pursuant to other Canadian Settlement Agreements, shall be coordinated in a manner such that all unnecessary duplication and expense is avoided. Notwithstanding anything to the contrary in this Settlement Agreement, in any of the Canadian Settlement Agreements, or in any settlement agreement pertaining to products other than Starters, including, without limitation, Section 4.1(8) of this Settlement Agreement, the Settling Defendants shall not be required to make available, in total for all of the Canadian Settlement Agreements, more than a total of eight (8) current or former officers, directors or employees of the Settling Defendants for personal interviews with Class Counsel and/or experts retained by Class Counsel.

(6) After the Effective Date, the Settling Defendants shall not object to the Plaintiffs' participation through Class Counsel in the portion(s) of any interviews of the Settling Defendants' representatives that occur in the U.S. Litigation pursuant to the U.S. Settlement Agreements that relate to the Proceedings, if and only to the extent such interviews relate to Starters. The Settling Defendants shall, where possible, provide notice to Class Counsel thirty (30) days before any such interview of representatives of the Settling Defendants that occurs in the U.S. Litigation pursuant to the U.S. Settlement Agreements. Nothing in this Settlement Agreement requires the Settling Defendants to provide notice to or allow the Plaintiffs, their counsel, or Class Counsel to participate in any interviews or any portion of any interviews that do not relate to the Proceedings and Starters.

(7) It is understood that the proffer described in Section 4.1(2) might take place before the Effective Date. In such event:

- (a) any documents or information provided shall be subject to the terms and protections of this Settlement Agreement; and
- (b) in the event that this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, all documents, data and information provided shall not be disclosed or used by the Plaintiffs or Class Counsel, whether directly or indirectly, in any way for any reason, including, without limitation, against the Releasees as an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by the Releasees or of the truth of any claims or allegations in the Proceedings, and such documents, data and information shall be treated as strictly confidential and privileged and shall not be discoverable by any Person or treated as evidence of any kind. Within thirty (30) days of such non-approval, termination or failure to take effect, Class Counsel shall return all copies of any documents, data or other information received during or in connection with these proffers, and destroy all copies of any notes or reports regarding documents, data or other information received during or in connection with these proffers, and shall provide written confirmation to the Settling Defendants of having done so.

(8) After the Effective Date, and subject to Section 4.1(5), in the event that any employee interviews provided for in the U.S. Settlement Agreements: (i) have already occurred; (ii) occur within six (6) months of the Effective Date, but Class Counsel is unable to attend or is not given reasonable advance notice of the time and location of the interviews; or (iii) do not occur within six (6) months of the Effective Date, the Settling Defendants shall, at the request of Class Counsel, upon at least sixty (60) days' notice, and subject to any legal restrictions, make reasonable efforts to make available at a mutually convenient time, no more than two (2) current or former officers, directors or employees of the Settling Defendants for a personal interview regarding the allegations in the Proceedings regarding Starters with Class Counsel and/or experts retained by Class Counsel. Class Counsel shall use reasonable efforts to limit this requirement to no more than a single current employee. The timing and arrangements for any such interview will be coordinated with any interviews that may be provided in respect of proceedings involving products where there is a



Canadian Settlement Agreement with any of the Settling Defendants. Such personal interviews shall take place in a location acceptable to Class Counsel, the Settling Defendants and the interviewee, and shall not exceed one (1) business day or seven (7) hours for each individual. Costs incurred by, and the expenses of, the employees of the Settling Defendants in relation to such interviews shall be the responsibility of the Settling Defendants. Other costs, including without limitation costs of meeting rooms and the costs of an interpreter or otherwise related to foreign language translation in connection with interviews, shall be the responsibility of Class Counsel. If a current employee refuses to provide information, or otherwise cooperate, the Settling Defendants shall use all reasonable efforts to make him/her available for an interview with Class Counsel and/or experts retained by Class Counsel. The failure of any one or more proposed interviewees to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement.

(9) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to produce at trial or otherwise in the Proceedings (including through affidavit evidence): (i) up to one (1) current representative qualified to establish for admission into evidence the Settling Defendants' sales data provided pursuant to Section 4.1(3)(b); (ii) up to one (1) current representative qualified to establish for admission into evidence any of the Settling Defendants' documents provided as cooperation pursuant to Section 4.1 of this Settlement Agreement that is reasonable and necessary for the prosecution of the Proceedings (with Class Counsel using its best efforts to authenticate documents for use at trial or otherwise without use of a live witness); and (iii) up to three (3) representatives qualified to establish for admission into evidence information provided in cooperation pursuant to Section 4 of this Settlement Agreement; provided that Class Counsel shall use all reasonable efforts to limit this requirement to a single witness. To the extent reasonably possible, a single witness will be used both to authenticate documents and provide the information at trial or otherwise contemplated by this Section. The Settling Defendants make no representation that they have, can or will be able to produce a qualified representative, and it is understood and agreed that the failure to do so shall not constitute a breach or violation of this Settlement Agreement. The failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement. To the extent any of the Settling Defendants' obligations under this

Section 4.1 require any witnesses to travel from their principal place of residence to another location, Class Counsel shall reimburse the Settling Defendants for half of the reasonable travel expenses incurred by such representatives in connection with fulfilling the Settling Defendants' obligations under this Section. Such reimbursement of travel expenses as set forth herein shall not exceed CDN\$5,000 per person. In no event shall Class Counsel be responsible for reimbursing such persons for time or services rendered.

(10) The Settling Defendants are not required to create a privilege log. However, if a relevant privilege log was or is produced to the plaintiffs in the U.S. Litigation in connection with Starters, the Settling Defendants, at the request of Class Counsel, will provide Class Counsel with a copy of any relevant part of such log or document.

(11) If any documents protected by any privilege, doctrine, law, regulation or rule of any jurisdiction, including without limiting the generality of the foregoing, any privacy or other laws, regulations or policies of Ontario, Quebec, British Columbia or any other Canadian or foreign jurisdiction, and/or subject to any other protection or non-disclosure obligation, including any order of a court or tribunal in any jurisdiction, are accidentally or inadvertently disclosed or produced, including without limitation if any documents are accidentally or inadvertently disclosed or produced in breach of any order or regulatory directive, such documents shall be promptly returned to the Settling Defendants 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 Defendants, and the production of such documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection in relation to such documents.

(12) The Settling Defendants' obligations to cooperate as particularized in this Section shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. The Settling Defendants' cooperation obligations pursuant to this Section 4.1 are contingent upon the continuation of the Proceedings in relation to Starters as against other Defendants, and for greater certainty shall cease upon the earlier of (i) the settlement, dismissal, discontinuance or abandonment of the Proceedings as against all Defendants; or (ii) the dismissal or withdrawal of motions to certify or authorize the Proceedings as class proceedings.

(13) Subject to Sections 4.1(14) and (15), the provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or documents from the Releasees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees, whether in Canada or elsewhere and whether under the rules or laws of Ontario, Quebec, British Columbia or any other Canadian or foreign jurisdiction.

(14) The Plaintiffs may exercise any rights they have to seek to obtain discovery in the Proceedings as against a specific current or former officer, director and/or employee of the Settling Defendants put forward to participate in employee interviews, or provide testimony at trial or otherwise pursuant to Sections 4.1(8), if that current or former officer, director or employee of the Settling Defendants fails to cooperate in accordance with that Section and the provisions of this Settlement Agreement.

(15) In the event that the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move, on thirty (30) days' notice to the Settling Defendants, before the Courts to enforce the terms of this Settlement Agreement, seek an order setting aside Section 4.1(13) and allowing the Plaintiffs to obtain discovery or information from the Settling Defendants as if the Settling Defendants remained parties to the applicable Proceeding, or seek such other remedy that is available at law.

(16) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendants.

(17) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceedings as presently filed.

(18) The Settling Defendants make no representation regarding and shall bear no liability with respect to the accuracy of any of the documents or information described in this Section 4.1, or that they have, can or will produce a complete set of any of the documents or information described

in this Section 4.1, and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.

#### **4.2 Limits on Use of Documents and Information**

(1) The Plaintiffs and Class Counsel agree they will not disclose or use the documents and information provided by the Settling Defendants and/or Counsel for the Settling Defendants except as permitted by this Settlement Agreement. It is understood and agreed that all documents and information made available or provided by the Settling Defendants and/or Counsel for the Settling Defendants 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 as against Persons who are not Releasees, and shall not be disclosed or used directly or indirectly for any other purpose, except to the extent that the documents or information are or become publicly available other than through breach of this Settlement Agreement or any applicable confidentiality or protective order. Even where disclosure is permitted by this Settlement Agreement, the Plaintiffs and Class Counsel shall not disclose such documents or information beyond what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law, except to the extent that the documents or information, are or become publicly available other than through breach of this Settlement Agreement or any applicable confidentiality or protective order. Except to the extent disclosure is expressly permitted by this Settlement Agreement, the Plaintiffs and Class Counsel shall make best efforts to ensure and maintain the confidentiality of the documents provided by the Settling Defendants and/or Counsel for the Settling Defendants, and of any work product of Class Counsel that discloses such documents and information.

(2) Class Counsel shall use best efforts to obtain confidentiality orders in each of the Proceedings in a form acceptable to the Settling Defendants, acting reasonably. Class Counsel shall use best efforts to obtain such confidentiality orders prior to the Effective Date. In the BC Action, any application for a sealing order brought pursuant to this Section 4.2(2) shall comply with Practice Direction 35—Sealing Order in Civil and Family Proceedings.

(3) If, to the extent permitted by this Settlement Agreement and any applicable confidentiality or protective order, the Plaintiffs intend to produce or file with any Court any documents or other information provided by the Settling Defendants and/or Counsel for the Settling Defendants, and there is not already a confidentiality order issued in the Proceedings that applies to the documents

and information provided as cooperation by the Settling Defendants, Class Counsel shall, at least thirty (30) days in advance of the proposed production or filing, file a motion for a confidentiality order in accordance with Section 4.2(2). The Plaintiffs and Class Counsel shall not produce or file the confidential information or documents until the motion for a confidentiality order has been decided in all of the Proceedings and all applicable appeal periods have expired, except, so as not to delay prosecution of the Proceedings Class Counsel may seek the consent of the Settling Defendants, which consent shall not be unreasonably withheld, to provide, on an interim basis, documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree and give assurances that the documents or information will remain with external counsel and will only be disclosed to independent expert(s) retained by a Party for the purposes of the Proceedings, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the Proceedings or a competitor of the Settling Defendants.

(4) In the event that a Person requests disclosure of documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants as cooperation under this Settlement Agreement which, at the time of being provided, were marked or designated by the Settling Defendants as “Confidential — Subject to Procedure Under Section 4.2(4) of 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 by the Settling Defendants, Class Counsel shall forthwith proceed with a motion for a confidentiality order in accordance with Section 4.2(2) to seek confidentiality protection over such documents and information and provide notice to the Settling Defendants promptly upon becoming aware of the request in order that the Settling Defendants may intervene 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 confidential information or documents until the motion has been decided and a final order has been issued requiring production of such documents or information, and all applicable appeal periods have expired, except: (i) to the extent such information or documents are or become otherwise publicly available except through breach of this Settlement Agreement, any applicable confidentiality order or similar obligation; (ii) as ordered to do so by a Court; and (iii) in the event that the Person making the

request is a Non-Settling Defendant who has brought a motion seeking to compel disclosure or production, so as not to delay prosecution of the Proceedings, Class Counsel may seek the consent of the Settling Defendants, which consent is not to be unreasonably withheld, to provide, on an interim basis, documents or information to counsel for the Non-Settling Defendant provided that counsel for the Non-Settling Defendant agree and give assurances that the documents or information will remain with external counsel and will only be disclosed to independent expert(s) retained by a Party for the purposes of the Proceedings, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the Proceedings or a competitor of the Settling Defendants.

(5) In addition, the Plaintiffs and Class Counsel shall treat any documents and information received from the Settling Defendants as Highly Confidential in accordance with the provisions of the U.S. Protective Order and the Plaintiffs and Class Counsel agree to abide by the terms of the U.S. Protective Order. Once a confidentiality order described in Section 4.2(2) is in place in each of the Proceedings that applies to the documents and information provided as cooperation by the Settling Defendants, that order(s) shall govern to the extent of any conflict between that order(s) and Plaintiffs' and Class Counsel's agreement in this Section 4.2(5) to abide by the terms of the U.S. Protective Order.

## **SECTION 5 – TERMINATION OF SETTLEMENT AGREEMENT**

### **5.1 Right of Termination**

- (1) In the event that:
  - (a) any Court declines to certify or authorize the relevant Proceedings for the purposes of the Settlement Agreement;
  - (b) the Ontario Court declines to dismiss the Ontario Action against the Settling Defendants;
  - (c) the BC Court declines to dismiss the BC Action against the Settling Defendants;
  - (d) the Quebec Court declines to declare settled out of court the Quebec Action against the Settling Defendants;

- (e) any Court declines to approve this Settlement Agreement or any material part hereof;
- (f) any Court approves this Settlement Agreement in a materially modified form;
- (g) any Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule C;
- (h) any orders approving this Settlement Agreement made by the Courts do not become Final Orders; or
- (i) any Court or other court whose approval or recognition is required declines to approve or enforce any of the Canadian Settlement Agreements in substantially the form in which it was executed or any material part of such settlement agreements;

the Plaintiffs and the Settling Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice in accordance with Section 14.17, within thirty (30) days following an event described above.

(2) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice in accordance with Section 14.17.

(3) Except as provided for in Section 5.4, if the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

(4) Any order, ruling or determination made or rejected by any Court with respect to:

- (a) Class Counsel Fees or Class Counsel Disbursements; or
- (b) 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.

## **5.2 If Settlement Agreement is Terminated**

(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 issued order certifying or authorizing any of the Proceedings 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 any of the Proceedings as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Classes and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings, or any Other Actions or other litigation; and
- (d) within ten (10) days of such non approval, termination or failure to take effect having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendants and/or Counsel for the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and/or Counsel for the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants to any other Person, shall recover and destroy such documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this Section 5.2 shall be construed to require



Class Counsel to destroy any of their work product. However, any documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants, or received from the Settling Defendants and/or Counsel for the Settling Defendants 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 relevant Settling Defendants. 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.

- (e) Any issued order with respect to the submission or attornment to jurisdiction of any of the Settling Defendants arising in connection with 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.

### **5.3 Allocation of Settlement Amount Following Termination**

(1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Siskinds LLP shall, within thirty (30) days of the written notice of termination issued pursuant to Sections 5.1(1) or 5.1(2) or other non-approval or failure to take effect, return to the Settling Defendants the Settlement Amount they have paid to Siskinds LLP, plus all accrued interest thereon. If the Settling Defendants have issued a notice of termination pursuant to Section 5.1(1) or the termination has occurred pursuant to Section 5.1(2) as a result of non-payment of the Settlement Amount, the amount to be returned shall be reduced by the Settling Defendants' proportional share of the costs of notices required by Section 10.1(1), up to a maximum deduction of CAD\$30,000 for all the Canadian Settlement Agreements, and any translations required by Section 14.11, up to a maximum deduction of CAD\$7,750 for all of the Canadian Settlement Agreements.

### **5.4 Survival of Provisions After Termination**

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.1(8), 3.2(3), 4.1(7)(b), 5.1(3), 5.2, 5.3, 5.4, 8.1, 8.2, 9(4), 9(5), 10.1(2) and 11.2(4), 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 Sections 3.1(8), 3.2(3), 4.1(7)(b), 5.1(3), 5.2, 5.3, 5.4, 8.1, 8.2, 9(4), 9(5), 10.1(2) and 11.2(4), 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 6 – RELEASES AND DISMISSALS**

### **6.1 Release of Releasees**

(1) Upon the Effective Date, subject to Section 6.3, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the 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.

(2) The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

(3) Notwithstanding any of the foregoing, the releases granted pursuant to the present Section shall be deemed partial for the purposes of article 1687 and following of the *Civil Code of Quebec*, shall enure only to the benefit of the Releasees and shall not preclude, foreclose or otherwise limit the rights of the Quebec Plaintiff and of the Quebec Settlement Class Members pursuant to article 1690 of the *Civil Code of Quebec* against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees.

### **6.2 Release by Releasees**

(1) Upon the Effective Date, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released Claims.

### **6.3 Covenant Not to Sue**

(1) Upon the Effective Date, and notwithstanding Section 6.1, 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 Releasors do not release the Releasees but instead the Releasors 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. For greater certainty, Section 6.1(3) continues to apply to residents of Quebec.

### **6.4 No Further Claims**

(1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in 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 proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

### **6.5 Dismissal of the Proceedings**

(1) Upon the Effective Date, the Ontario Action and BC Action shall be dismissed with prejudice and without costs as against the Settling Defendants.

(2) Upon the Effective Date, the Quebec Action shall be declared settled out of court, without costs and without reservation as against the Settling Defendants.

## **6.6 Dismissal of Other Actions**

- (1) Upon the Effective Date, each member of the Settlement Classes shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Other Actions against the Releasees, to the extent such Other Actions relate to Starters.
- (2) Upon the Effective Date, all Other Actions commenced by any Settlement Class Member, to the extent such Other Actions relate to Starters, shall be dismissed as against the Releasees, without costs, with prejudice and without reservation.

## **6.7 Material Term**

- (1) For greater certainty and without limitation, the releases, covenants, dismissals, declarations and granting of consent contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any requisite court to approve the releases, covenants, dismissals, declarations and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 5.1 of the Settlement Agreement.

## **SECTION 7 – BAR ORDER, WAIVER OF SOLIDARITY ORDER AND OTHER CLAIMS**

### **7.1 Ontario and British Columbia Bar Orders**

- (1) Class Counsel shall seek bar orders from the Ontario Court and the BC Court providing for the following:
  - (a) 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 any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Ontario Action);

- (b) if the Ontario Court or BC Court, as applicable, ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:
- (i) the Ontario and BC Plaintiffs and the Settlement Class Members 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;
  - (ii) the Ontario and BC Plaintiffs and the Settlement Class Members 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 only, and shall only seek 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, those claims for 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*) 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 and BC Plaintiffs and Settlement Class Members, if any, and, for greater certainty, the Ontario and BC Settlement Class Members shall be entitled to claim and seek to 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, if permitted by law; and

- (iii) the Ontario and BC Courts shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the relevant Proceeding, 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 Proceeding and any determination by the Ontario or BC Court, as applicable, in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceeding and shall not be binding on the Releasees in any other proceeding;
  
- (c) after the relevant Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted and on at least twenty (20) days' notice to Counsel for the Settling Defendants, a Non-Settling Defendant may, on motion to the Ontario Court or the BC Court, as appropriate, seek an Order for the following, which order shall be determined as if the Settling Defendants remained parties to the relevant Proceeding:
  - (i) documentary discovery and affidavit(s) of documents (list of documents in British Columbia) from Settling Defendant(s) in accordance with that Court's rules of procedure;
  - (ii) oral discovery of representative(s) of Settling Defendant(s), the transcript of which may be read in at trial;
  - (iii) leave to serve a request(s) to admit (notice to admit in British Columbia) on Settling Defendant(s) in respect of factual matters; and/or
  - (iv) the production of a representative(s) of Settling Defendant(s) to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
  
- (d) the Settling Defendants retain all rights to oppose any motion brought pursuant to Section 7.1(1)(c), including any such motion brought at trial seeking an order

requiring the Settling Defendants to produce a representative to testify at trial. Moreover, nothing herein restricts the Releasees 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 Section 7.1(1)(c);

- (e) on any motion brought pursuant to Section 7.1(1)(c), the Ontario Court or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all documentary discovery and the transcripts of any oral discovery shall, at the expense of Class Counsel, be provided by the Settling Defendants to Class Counsel within thirty (30) days of such discovery being provided to a Non-Settling Defendant;
- (g) the Ontario Court and BC Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Ontario and BC Courts for these purposes; and
- (h) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 7.1(1)(c) on a Settling Defendant by service on Counsel for the Settling Defendants.

## **7.2 Quebec Waiver or Renunciation of Solidarity Order**

- (1) Quebec Counsel shall seek a waiver or renunciation of solidarity by the Quebec Court providing for the following:
  - (a) the Quebec Plaintiff and the Quebec Settlement Class Members 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 Quebec Plaintiff and the Quebec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including without limitation, judicial fees pursuant to the *Code of Civil Procedure*, and investigative costs claimed pursuant to section 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 Quebec Action or any Other Action commenced in Quebec; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure*.

### **7.3 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 the Releasors against any Person other than the Releasees.

### **7.4 Material Term**

- (1) For greater certainty and without limitation, the Parties acknowledge that the bar orders, waivers, renunciations of solidarity and reservation of rights contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any requisite court to approve the bar orders, waivers, renunciations of solidarity and reservations of rights contemplated herein shall give rise to a right of termination pursuant to Section 5.1 of the Settlement Agreement.

## **SECTION 8 – EFFECT OF SETTLEMENT**

### **8.1 No Admission of Liability**

- (1) The Plaintiffs and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the 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 or evidence of (i) any violation of any statute or law, or of any wrongdoing or liability by the Settling Defendants or any of the Releasees, or of (ii) the truth of any of the claims or allegations contained in the Proceedings or any Other Actions, or any other pleading filed by the Plaintiffs, and evidence thereof shall not be discoverable or used in any way, whether in the Proceedings or in any other action or proceeding against any one or more of the Settling Defendants or other Releasees.

## **8.2 Agreement Not Evidence**

(1) The Parties agree that, whether or not it 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 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, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

## **8.3 No Further Litigation**

(1) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Settling Defendants which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendants or unnamed alleged 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 Defendant or unnamed alleged co-conspirator that is not a Releasee. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is or becomes otherwise publicly available or unless ordered to do so by a court, and subject to Section 4.2 of this Settlement Agreement.

(2) Nothing in Section 8.3(1) shall require BC Counsel to act in a manner inconsistent with BC Counsel's obligations under Rule 3.2-10 of the Code of Professional Conduct for British Columbia.

#### **SECTION 9 – CERTIFICATION AND AUTHORIZATION FOR SETTLEMENT ONLY**

(1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings for settlement purposes and for 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 Settlement Classes.

(3) The Parties agree that the certification or authorization of the Proceedings as against the Settling Defendants 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.

(4) The Parties acknowledge this Settlement Agreement does not provide for any certification or authorization of any classes for any purpose other than effectuating this Settlement Agreement, and that, if this Settlement Agreement is terminated, the agreement as to certification or authorization of the Settlement Classes becomes null and void ab initio, and this Settlement Agreement or any other settlement-related statement may not be cited in support of an argument for certifying or authorizing a class for any purpose related to the Proceedings.

(5) In the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, any submission or attornment in connection with this Settlement Agreement by the Settling Defendants shall be deemed to have no effect, the Settling Defendants shall reserve all of their existing procedural, substantive and jurisdictional rights and defences, and this Settlement Agreement or any other settlement-related statement may not be cited in support of an argument as against the Releasees.

## **SECTION 10 – NOTICE TO SETTLEMENT CLASSES**

### **10.1 Notices Required**

(1) The proposed Settlement Classes shall be given a single notice of: (i) the certification or authorization of the Proceedings as class proceedings as against the Settling Defendants for settlement purposes; (ii) the hearings at which the Courts will be asked to approve the Settlement Agreement; and (iii) if they are brought with the hearings to approve the Settlement Agreement, the hearings to approve Class Counsel Fees and Class Counsel Disbursements.

(2) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Classes shall be given notice of such event.

### **10.2 Form and Distribution of Notices**

(1) The notices shall be in a form agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Courts.

(2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Courts.

## **SECTION 11 – ADMINISTRATION AND IMPLEMENTATION**

### **11.1 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 shall be determined by the Courts on motions brought by Class Counsel.

### **11.2 Information and Assistance**

(1) The Settling Defendants will make reasonable best efforts to provide to the Court-appointed notice provider or Claims Administrator a list of names and addresses (including any relevant email addresses) of Persons in Canada who are within the definition of the Settlement Classes and who received delivery of Starters from the Settling Defendants during the Class Period, if any, if and to the extent such information exists and is reasonably available from the Settling Defendants' live electronic databases. The Settling Defendants make no representation

that any such Persons exist, or that the Settling Defendants have, can or will produce such a list, or an accurate or complete list, and it is understood and agreed that the failure to produce such a list and/or an accurate or complete list shall not constitute a breach or violation of this Settlement Agreement;

(2) The information provided under Section 11.2 shall be delivered to the Court-appointed notice provider or Claims Administrator, within thirty (30) days of the Date of Execution or at a time mutually agreed upon by the Parties.

(3) The recipient of the information provided under Section 11.2 (the Court-appointed notice provider or Claims Administrator) must hold the information in strict confidence and may use the information provided under Section 11.2 only to the extent necessary:

- (a) to facilitate the dissemination of the notices required in Section 10.1;
- (b) following the Effective Date, to advise Persons in Canada who purchased Starters from the Settling Defendants during the Class Period of any subsequent settlement agreement reached in the Proceedings, any related approval hearings, and any other major steps in the Proceedings;
- (c) following the Effective Date, to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement(s) achieved or court awards issued in the Proceedings.

(4) All information provided by the Settling Defendants pursuant to Section 11.2 may be used or disclosed only in accordance with Sections 11.2(3) and 11.2(4). If this Settlement Agreement is not approved, is terminated, or fails to take effect, the recipient of the information provided under Section 11.2 (the Court-appointed notice provider or Claims Administrator) shall, within ten (10) days of such non approval, termination or failure to take effect having occurred, destroy all documents or other materials provided by the Settling Defendants and/or Counsel for the Settling Defendants under this Section 11.2 or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and/or Counsel for the Settling Defendants and no record of the information so provided shall be retained by any Court-appointed notice provider and/or the Claims Administrator in any form whatsoever.

(5) The Settling Defendants will make themselves reasonably available, through Counsel for the Settling Defendants, to respond to questions respecting the information provided pursuant to Section 11.2(1) from the Court-appointed notice provider and/or the Claims Administrator. The Settling Defendants' obligations to make themselves reasonably available, through Counsel for the Settling Defendants, to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate pursuant to this Section 11.2 shall cease when the Proceedings are resolved as against all Defendants and all settlement funds or court awards have been distributed. The Settling Defendants make no representation that they can or will be able to respond to such questions and a failure to do so shall not constitute a violation of this Settlement Agreement.

(6) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 11.2.

## **SECTION 12 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST**

### **12.1 Distribution Protocol**

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will bring motions seeking orders from the Courts approving the Distribution Protocol. The motions can be brought before the Effective Date, but the orders approving the Distribution Protocol shall be conditional on the Effective Date occurring.

(2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

### **12.2 No Responsibility for Administration or Fees**

(1) Except as otherwise provided for in this Settlement Agreement, the Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the

administration of the Settlement Agreement or the investment, distribution or administration of monies in the Trust Account including, but not limited to Administration Expenses.

### **SECTION 13 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES**

#### **13.1 Responsibility for Fees, Disbursements and Taxes**

(1) The Settling Defendants shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members, any amounts to which the Fonds d'aide aux actions collectives in Quebec may be entitled, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

#### **13.2 Responsibility for Costs of Notices and Translation**

(1) Siskinds LLP shall pay the costs of the notices required by Section 10 and any costs of translation required by Section 14.11 from the Trust Account, as they become due. Subject to Section 5.3, the Releasees shall not have any responsibility for the costs of the notices or translation.

#### **13.3 Court Approval for Class Counsel Fees and Disbursements**

(1) Class Counsel may seek the Courts' approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date. Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date. No other Class Counsel Disbursements or Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

### **SECTION 14 – MISCELLANEOUS**

#### **14.1 Motions for Directions**

(1) Class Counsel or the Settling Defendants 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 BC Action or the Quebec Action shall be determined by the Ontario Court.

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

#### **14.2 Headings, etc.**

- (1) In this Settlement Agreement:
  - (a) the division of the Settlement Agreement into sections 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 or other portion of this Settlement Agreement.

#### **14.3 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, the number of days 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.

#### **14.4 Ongoing Jurisdiction**

- (1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, and the Class Counsel Fees and Class Counsel Disbursements in that proceeding.
- (2) No Party shall ask a Court to 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 the matter.

(3) Notwithstanding Section 14.4(1) and 14.4(2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Ontario Court for such purposes. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the BC Action or the Quebec Action shall be determined by the Ontario Court.

#### **14.5 Governing Law**

(1) Subject to Section 14.5(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

(2) Notwithstanding Section 14.5(1), for matters relating specifically to the BC Action or Quebec Action, the BC Court or Quebec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

#### **14.6 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.

#### **14.7 Amendments**

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

#### **14.8 Binding Effect**

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every



covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees. In addition, this Settlement Agreement shall be binding upon Siskinds LLP, Sotos LLP, Camp Fiorante Matthews Mogerman LLP, and Siskinds Desmeules s.e.n.c.r.l.

#### **14.9 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 electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

#### **14.10 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.

#### **14.11 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 to 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.

#### **14.12 Transaction**

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

**14.13 Recitals**

- (1) The recitals to this Settlement Agreement form part of the Settlement Agreement.

**14.14 Schedules**

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

**14.15 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 the 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 the Settlement Agreement and its effect; and
  - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

**14.16 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.

**14.17 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 email, 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 for Class Counsel in the Proceedings:**

Charles M. Wright and Linda Visser  
SISKINDS LLP  
Barristers and Solicitors  
680 Waterloo Street  
London, ON N6A 3V8  
Tel: 519.672.2121  
Fax: 519.672.6065  
Email: charles.wright@siskinds.com  
linda.visser@siskinds.com

David Sterns and Jean Marc Leclerc  
SOTOS LLP  
Barristers and Solicitors  
180 Dundas Street West, Suite 1250  
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Caroline Perrault and Karim Diallo  
SISKINDS DESMEULES s.e.n.c.r.l.  
Les promenades du Vieux-Quebec  
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Quebec City, QC GIR 4A2  
Tel: 418.694.2009  
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caroline.perrault@siskindsdesmeules.com  
karim.diallo@siskindsdesmeules.com

**For the Settling Defendants:**

Éric Vallières and Benjamin Bathgate  
McMillan LLP  
181 Bay Street  
Suite 4400, Brookfield Place  
Toronto, ON M5J 2T3  
Tel: 416.865.7000  
Fax: 416.865.7048  
Email: eric.vallieres@mcmillan.ca  
benjamin.bathgate@mcmillan.ca

**14.18 Date of Execution**

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

**FADY SAMAHA** on his own behalf and on behalf of the Ontario Settlement Class, by his counsel

Name of Authorized Signatory:

  
\_\_\_\_\_

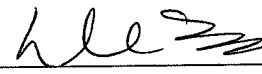
Signature of Authorized Signatory:

  
\_\_\_\_\_

Siskinds LLP  
Ontario Counsel


**SHERIDAN CHEVROLET CADILLAC LTD. and THE PICKERING AUTO MALL LTD.,** on their own behalf and on behalf of the Ontario Settlement Class, by their counsel

Name of Authorized Signatory: Linda Vissee

Signature of Authorized Signatory:   
per Sotos LLP  
Ontario Counsel


**DARREN EWERT** on his own behalf and on behalf of the BC Settlement Class, by his counsel

Name of Authorized Signatory: Linda Vissee

Signature of Authorized Signatory:   
per Camp Fiorante Matthews Mogerman LLP  
BC Counsel

**SERGE ASSELIN** on his own behalf and on behalf of the Quebec Settlement Class, by his counsel

Name of Authorized Signatory: Linda Vissee

Signature of Authorized Signatory:   
per Siskinds Desmeules s.e.n.c.r.l.  
Quebec Counsel

**MITSUBA CORPORATION and AMERICAN MITSUBA CORPORATION,** by their counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_  
McMillan LLP  
Counsel for the Settling Defendants

**SHERIDAN CHEVROLET CADILLAC LTD. and THE PICKERING AUTO MALL LTD.**, on their own behalf and on behalf of the Ontario Settlement Class, by their counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_

Sotos LLP  
Ontario Counsel

**DARREN EWERT** on his own behalf and on behalf of the BC Settlement Class, by his counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_

Camp Fiorante Matthews Mogerman LLP  
BC Counsel

**SERGE ASSELIN** on his own behalf and on behalf of the Quebec Settlement Class, by his counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_

Siskinds Desmeules s.e.n.c.r.l.  
Quebec Counsel

**MITSUBA CORPORATION and AMERICAN MITSUBA CORPORATION**, by their counsel


Name of Authorized Signatory: \_\_\_\_\_

ÉRIC VALLIÈRES


Signature of Authorized Signatory: \_\_\_\_\_

McMillan LLP  
Counsel for the Settling Defendants


**SISKINDS LLP**

Per:   
Name: Linda Visse  
Title: Partner  
I have the authority to bind the Partnership


**SOTOS LLP**

Per:   
Name: Linda Visse  
Title: per SOTOS  
I have the authority to bind the Partnership

**CAMP FIORANTE MATTHEWS MOGERMAN LLP**

Per:   
Name: Linda Visse  
Title: per CFM  
I have the authority to bind the Partnership

**SISKINDS DESMEULES S.E.N.C.R.L.**

Per:   
Name: Linda Visse  
Title: per Siskinds Desmeules  
I have the authority to bind the Partnership

**SCHEDULE “A”  
Proceedings**

<b>Court and File No.</b>	<b>Plaintiffs’ Counsel</b>	<b>Plaintiffs</b>	<b>Defendants</b>	<b>Settlement Class</b>
<b>Ontario Action</b>				
Ontario Superior Court of Justice Court File No. CV-13-478127-00CP	Siskinds LLP and Sotos LLP	Sheridan Chevrolet Cadillac Ltd., The Pickering Auto Mall Ltd., and Fady Samaha	Denso Corporation, Denso International America Inc., Denso Manufacturing Canada, Inc., Denso Sales Canada, Inc., Mitsubishi Electric Corporation, Mitsubishi Electric Automotive America, Inc., Mitsubishi Electric Sales Canada Inc., Hitachi, Ltd., Hitachi Automotive Systems, Ltd, Hitachi Automotive Systems Americas, Inc. Mitsuba Corporation, American Mitsuba Corporation, Robert Bosch GmbH, Robert Bosch LLC, and Robert Bosch Inc.	All Persons in Canada who, during the Class Period, (a) purchased, directly or indirectly, Starters; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle. Excluded Persons and Persons who are included in the Quebec Settlement Class and the BC Settlement Class are excluded from the Ontario Settlement Class.
<b>BC Action</b>				
British Columbia Supreme Court File No. S-135611 (Vancouver Registry)	Camp Fiorante Matthews Mogerman LLP	Darren Ewert	Denso Corporation, Denso International America Inc., Denso Manufacturing Canada, Inc., Denso Sales Canada, Inc., Mitsubishi Electric Corporation, Mitsubishi Electric US, Inc., Mitsubishi Electric Automotive America, Inc., Mitsubishi Electric Sales Canada Inc., Hitachi, Ltd., Hitachi Automotive Systems, Ltd., Hitachi Automotive Systems Americas, Inc., Mitsuba Corporation and American Mitsuba Corporation	All Persons in British Columbia who, during the Class Period, (a) purchased, directly or indirectly, Starters; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle. Excluded Persons are excluded from the BC Settlement Class.
<b>Quebec Action</b>				
Superior Court of Quebec (district of Québec), File No. 200-06-000163-132	Siskinds Desmeules s.e.n.c.r.l.	Serge Asselin	Denso Corporation, Denso International America, Inc., Denso Manufacturing Canada, Inc., Denso Sales Canada, Inc., Mitsubishi Electric Corporation, Mitsubishi Electric Automotive America, Inc., Mitsubishi Electric Sales Canada, Inc., Hitachi, Ltd., Hitachi Automotive Systems, Ltd., Hitachi Automotive Systems Americas, Inc., Mitsuba Corporation, American Mitsuba Corporation, Robert Bosch GmbH, Robert Bosh LLC and Robert Bosch, Inc.	All Persons in Quebec who, during the Class Period, (a) purchased, directly or indirectly, Starters; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle. Excluded Persons are excluded from the Quebec Settlement Class.

**SCHEDULE “B”**

Court File No. CV-13-478127-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
JUSTICE BELOBABA ) OF , 2019

BETWEEN:

**SHERIDAN CHEVROLET CADILLAC LTD.,  
THE PICKERING AUTO MALL LTD., and FADY SAMAHA**

Plaintiffs

- and -

**DENSO CORPORATION, DENSO INTERNATIONAL AMERICA INC., DENSO  
MANUFACTURING CANADA, INC., DENSO SALES CANADA, INC., MITSUBISHI  
ELECTRIC CORPORATION, MITSUBISHI ELECTRIC AUTOMOTIVE AMERICA,  
INC., MITSUBISHI ELECTRIC SALES CANADA INC., HITACHI, LTD., HITACHI  
AUTOMOTIVE SYSTEMS, LTD., HITACHI AUTOMOTIVE SYSTEMS AMERICAS,  
INC., MITSUBA CORPORATION, AMERICAN MITSUBA CORPORATION, ROBERT  
BOSCH GMBH, ROBERT BOSCH LLC, BOSCH ELECTRICAL DRIVES CO., LTD.,  
and ROBERT BOSCH INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

**ORDER**

**- Starters -**

**- Mitsuba Notice Approval and Consent Certification -**

**THIS MOTION** made by the Plaintiffs for an Order approving the abbreviated, publication and long-form notices of settlement approval hearings and the method of dissemination of said notices, and certifying this proceeding as a class proceeding for settlement purposes as against Mitsuba Corporation and American Mitsuba Corporation (collectively, the “Settling Defendants”) was read this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.



**ON READING** the materials filed, including the settlement agreement with the Settling Defendants dated as of ●, 2019 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on reading the submissions of counsel for the Plaintiffs and Counsel for the Settling Defendants, the Non-Settling Defendants taking no position;

**AND ON BEING ADVISED** that the Plaintiffs and the Settling Defendants consent to this Order;

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

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the abbreviated, publication and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as Schedules “B” to “D”.
3. **THIS COURT ORDERS** that the plan of dissemination for the abbreviated, publication and long-form notices of settlement approval hearing (the “Plan of Dissemination”) is hereby approved in the form attached hereto as Schedule “E” and that the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that ● is appointed to disseminate the notices of settlement approval hearing to the direct purchasers customers of the Settling Defendants, if any, as

disclosed to ● by the Settling Defendants in accordance with Section 11.2 of the Settlement Agreement.

5. **THIS COURT ORDERS** that the Ontario Action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.

6. **THIS COURT ORDERS** that the “Ontario Settlement Class” is certified as follows:

All Persons in Canada who, during the Class Period, (a) purchased, directly or indirectly, Starters; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle. Excluded Persons and Persons who are included in the Quebec Settlement Class and the BC Settlement Class are excluded from the Ontario Settlement Class.

7. **THIS COURT ORDERS** that Sheridan Chevrolet Cadillac Ltd., The Pickering Auto Mall Ltd., and Fady Samaha are appointed as the representative plaintiffs for the Ontario Settlement Class.

8. **THIS COURT ORDERS** that the following issue is common to the Ontario Settlement Class:

Did the Settling Defendants conspire to fix, raise, maintain, or stabilize the prices of Starters in Canada and elsewhere during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?

9. **THIS COURT ORDERS** that in the event that the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect, paragraphs 5-8 of this Order shall be declared null and void.

10. **THIS COURT ORDERS** that paragraphs 1 and 5-8 of this Order, including the certification of the Ontario Action as against the Settling Defendants for settlement

purposes and the definition of Ontario Settlement Class and Common Issue, and any reasons given by the Court in connection with paragraphs 1 and 5-8 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario Action, as against the Non-Settling Defendants.

11. **THIS COURT ORDERS** that paragraphs 2-7 of this Order are contingent upon parallel orders being made by the BC and Quebec Courts, and the terms of this Order shall not be effective unless and until such orders are made by the BC and Quebec Courts.

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The Honourable Justice Belobaba

**SCHEDULE “C”**

Court File No. CV-13-478127-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
JUSTICE BELOBABA ) OF , 2019

BETWEEN:

**SHERIDAN CHEVROLET CADILLAC LTD.,  
THE PICKERING AUTO MALL LTD., and FADY SAMAHA**

Plaintiffs

- and -

**DENSO CORPORATION, DENSO INTERNATIONAL AMERICA INC., DENSO  
MANUFACTURING CANADA, INC., DENSO SALES CANADA, INC., MITSUBISHI  
ELECTRIC CORPORATION, MITSUBISHI ELECTRIC AUTOMOTIVE AMERICA,  
INC., MITSUBISHI ELECTRIC SALES CANADA INC., HITACHI, LTD., HITACHI  
AUTOMOTIVE SYSTEMS, LTD., HITACHI AUTOMOTIVE SYSTEMS AMERICAS,  
INC., MITSUBA CORPORATION, AMERICAN MITSUBA CORPORATION, ROBERT  
BOSCH GMBH, ROBERT BOSCH LLC, BOSCH ELECTRICAL DRIVES CO., LTD.,  
and ROBERT BOSCH INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

**ORDER  
- Starters -  
- Mitsuba Settlement Approval -**

**THIS MOTION** made by the Plaintiffs for an Order approving the settlement agreement entered into with Mitsuba Corporation and American Mitsuba Corporation (collectively, the “Settling Defendants”) and dismissing this action as against the Settling Defendants, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

**AND ON READING** the materials filed, including the settlement agreement dated ●, 2019, attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the

submissions of counsel for the Plaintiffs and counsel for the Settling Defendants, the Non-Settling Defendants taking no position;

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

**AND ON BEING ADVISED** that the deadline for opting out of the Ontario Action has passed, and three Persons validly exercised the right to opt out;

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

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Action.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.

5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act*, 1992 and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Settlement Class shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in 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 proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified with respect

to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.

10. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Ontario Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
12. **THIS COURT ORDERS** that 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 any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings).

13. **THIS COURT ORDERS** that if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

- (a) the Ontario Plaintiffs and the Ontario Settlement Class Members 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;
- (b) the Ontario Plaintiffs and the Ontario Settlement Class Members 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 only, and shall only seek 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, those claims for 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*) 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 Plaintiffs and Ontario Settlement Class Members, if any, and, for greater certainty, the Ontario Settlement Class Members shall be entitled to claim and seek to 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, if permitted by law; and

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Action, whether or not the Releasees remain in the Ontario Action 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 and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action and shall not be binding on the Releasees in any other proceeding.

14. **THIS COURT ORDERS** that nothing in this Order 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 (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*) or judgment against them in favour of Ontario Settlement Class Members in the Ontario Action or the rights of the Ontario Plaintiffs and the Ontario Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
15. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to the Ontario Action, and on at least twenty (20) days' notice to Counsel for the Settling Defendants, and not to be brought unless and until the Ontario Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

- (a) documentary discovery and affidavit(s) of documents from Settling Defendant(s) in accordance with the *Rules of Civil Procedure*, RRO 1990, Reg. 194;
  - (b) oral discovery of representative(s) of Settling Defendant(s), the transcript of which may be read in at trial;
  - (c) leave to serve request(s) to admit on Settling Defendant(s) in respect of factual matters; and/or
  - (d) the production of representative(s) of Settling Defendant(s) to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Defendants.
16. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendants 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 paragraph 15. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 15, this Court may make such orders as to costs and other terms as it considers appropriate.
17. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 15 above by service on Counsel for the Settling Defendants.
18. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of

implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

19. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Ontario Settlement Class has or may have in the Ontario Action against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
20. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.
21. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Siskinds LLP for the benefit of Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Classes in the continued prosecution of the Proceedings against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Classes to claim such Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.
22. **THIS COURT ORDERS** that in the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administrative Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.

23. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the BC Court and the Quebec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the BC Court and the Quebec Court, the BC Action has been dismissed as against the Settling Defendants with prejudice and without costs by the BC Court, and the Quebec Action has been declared settled out of court with prejudice and without costs as against the Settling Defendants by the Quebec Court. If such orders are not secured in Quebec and British Columbia, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Action and any agreement between the Parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice to the Parties, except that nothing in this paragraph shall modify the obligations of the Parties and signatories to the Settlement Agreement that are expressly stated in the Settlement Agreement to survive the termination of the Settlement Agreement.
24. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void.
25. **THIS COURT ORDERS** that the Ontario Action be and is hereby dismissed against the Settling Defendants, without costs and with prejudice.
26. **THIS COURT ORDERS** that the approval of the Settlement Agreement and any reasons given by this Court in relation thereto, except any reasons given in connection with paragraphs 12-17 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction,

the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario Action as against the Non-Settling Defendants.

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The Honourable Justice Belobaba

**SCHEDULE “D”**  
**CANADIAN SETTLEMENTS**

Autolights	Ontario	<i>Sheridan Chevrolet et al v Koito Manufacturing Co., Ltd. et al</i> Court File No. CV-13-478642-00CP
	Quebec	<i>Serge Asselin v Koito Manufacturing Co., Ltd. et al</i> Court File No. 200-06-000174-147
Electric Powered Steering Assemblies	Ontario	<i>Sheridan Chevrolet et al v JTEKT Corporation et al</i> Court File No. CV-14-506652-00CP
Electronic Throttle Bodies	Ontario	<i>Sheridan Chevrolet et al v Hitachi, Ltd. et al</i> Court File No. CV-14-506649-00CP
	Quebec	<i>Serge Asselin v Hitachi, Ltd. et al</i> Court File No. 200-06-000199-169
Fan Motors	Ontario	<i>Sheridan Chevrolet et al v Denso Corporation et al</i> Court File No. CV-14-506635-00CP
Fuel Injection Systems	Ontario	<i>Sheridan Chevrolet et al v Hitachi, Ltd. et al</i> Court File No. CV-14-506683-00CP
	Quebec	<i>Serge Asselin et al v Hitachi, Ltd. et al</i> Court File No. 200-06-000180-144
	British Columbia	<i>Darren Ewert v Hitachi, Ltd. et al</i> Court File No. S-149988
Power Window Motors	Ontario	<i>Sheridan Chevrolet et al v Denso Corporation et al</i> Court File No. CV-14-506679-00CP
Starters	Ontario	<i>Sheridan Chevrolet et al v Denso Corporation et al</i> Court File No. CV-13-478127-00CP
	Quebec	<i>Serge Asselin v Denso Corporation et al</i> Court File No. 200-06-000163-132
	British Columbia	<i>Darren Ewert v Denso Corporation et al</i> Court File No. S-135611
Windshield Washer Systems	Ontario	<i>Sheridan Chevrolet et al v Denso Corporation et al</i> Court File No. CV-14-506669-00CP
Windshield Wiper Systems	Ontario	<i>Sheridan Chevrolet et al v Denso Corporation et al</i> Court File No. CV-13-478180-00CP
	Quebec	<i>M. Gaëtan Roy v Denso Corporation et al</i> Court File No. 200-06-000161-136
	British Columbia	<i>Darren Ewert v Denso Corporation et al</i> Court File No. S-135607