

**SMALL-SIZE BALL BEARINGS CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Between:

**OPTION CONSOMMATEURS, STEPHANIE ANN CATHERINE ASQUITH AND
SHARON CLARK**
(the "Plaintiffs")

AND

**MINEBEAMITSUMI INC. (FORMERLY MINEBEA CO. LTD.), NMB KOREA, NMB
(USA) INC., AND NMB TECHNOLOGIES CORPORATION**
(the "Settling Defendants")

Executed March 2, 2018

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**BALL BEARINGS CLASS ACTION
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RECITALS

- A. WHEREAS the Proceedings were commenced by the Quebec Plaintiff in Montreal, Quebec, the BC Plaintiff in Vancouver, British Columbia, and the Ontario Plaintiff in London, Ontario;
- B. WHEREAS the Plaintiffs allege that certain companies, including the Settling Defendants, participated in an unlawful conspiracy to fix, raise, maintain or stabilize the price of Ball Bearings in Canada between June 1, 2003 and October 31, 2011, contrary to Part VI of the *Competition Act* and the common law and/or civil law;
- C. WHEREAS the Quebec Action was authorized by the Superior Court on August 4, 2016;
- D. WHEREAS the BC Action and the Ontario Action have not been certified yet;
- E. WHEREAS the Settling Defendants have represented that the defendant New Hampshire Ball Bearings Inc. ("NHBB") played no role whatsoever in the alleged conspiracy and that none of the Ball Bearings affected by the alleged conspiracy were manufactured or sold by NHBB;
- F. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings, or otherwise;
- G. 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 Settling Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which allegations are expressly denied by the Settling Defendants;

- H. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nationwide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- 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 Class they seek to represent, subject to approval of the Courts;
- K. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Class they seek to represent;
- L. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceedings as against the Settling Defendants;
- M. WHEREAS for the purposes of settlement only, the Parties now consent to certification of the Ontario Action and BC Action as class proceedings, to the authorization of the Quebec Action, to their respective Settlement Class and to the Common Issue in respect of each of the Proceedings solely for the purposes

of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and

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

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

SECTION 1 - DEFINITIONS

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

- (a) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and the costs of claims administration, but excluding Class Counsel Fees.
- (b) **Approval Hearings** means the hearings to approve the motions brought by Class Counsel for the Courts' approval of the settlement provided for in this Settlement Agreement.

- (c) **Ball Bearings** means small sized bearings with an outside diameter of 26 millimetres or less.
- (d) **Ball Bearings Products** means any and all products that contain Ball Bearings.
- (e) **BC Action** means the proceeding commenced by the BC Plaintiff before the BC Court that is identified in Schedule "A" to this Settlement Agreement.
- (f) **BC Counsel** means Camp Fiorante Matthews Mogerman.
- (g) **BC Court** means the Supreme Court of British Columbia.
- (h) **BC Plaintiff** means Stephanie Ann Catherine Asquith.
- (i) **BC Settlement Class** means the settlement class in respect of the BC Action that is defined in Schedule "A" to this Settlement Agreement.
- (j) **Claims Administrator** means the firm to be proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (k) **Class Counsel** means Quebec Counsel, BC Counsel and Ontario Counsel.
- (l) **Class Counsel Fees** include the fees, disbursements, costs, interest and/or charges of Class Counsel, and GST or HST (as the case may be) and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Quebec.
- (m) **Class Period** means June 1, 2003 to October 31, 2011.
- (n) **Common Issue** means: Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Ball Bearings directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?

- (o) **Courts** means the Quebec Court, the BC Court and the Ontario Court.
- (p) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule "A" to this Settlement Agreement, and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes, without limitation, the Settling Defendants.
- (q) **Distribution Protocol** means the plan to be developed by Class Counsel for distributing the Settlement Amount, plus accrued interest and less approved Administration Expenses and Class Counsel Fees, as approved by the Courts.
- (r) **Documents** mean all papers, computer or electronic records, or other materials within the scope of *Rule 1.03(1)* and *Rule 30.01(1)* of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (s) **Effective Date** means the date when the Final Orders have been received from all Courts approving this Settlement Agreement.
- (t) **Execution Date** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement.
- (u) **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.
- (v) **Final Order(s)** means the later of a final judgment entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.

- (w) **Non-Settling Defendant** means any Defendant that is not a Releasee and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Execution Date.
- (x) **Notice** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendants, or such other form or forms of notice as may be approved by the Courts, which informs the Settlement Class of: (i) the authorization of the Quebec Action and the certification of the Ontario Action and BC Action as class proceedings for settlement purposes; (ii) the right to opt-out of the authorized or certified Proceedings and the process for doing so; (iii) the dates and locations of the Approval Hearings; and, (iiii) the process by which a Settlement Class Member may object to the settlement.
- (y) **Ontario Action** means the proceeding commenced by the Ontario Plaintiff before the Ontario Court as identified in Schedule "A" to this Settlement Agreement.
- (z) **Ontario Counsel** means Harrison Pensa LLP.
- (aa) **Ontario Court** means the Ontario Superior Court of Justice.
- (bb) **Ontario Plaintiff** means Sharon Clark.
- (cc) **Ontario Settlement Class** means the settlement class in respect of the Ontario Action that is defined in Schedule "A" to this Settlement Agreement.
- (dd) **Opt-Out Deadline** means the date which is sixty (60) days after the date on which the Notice is first published.
- (ee) **Other Actions** means any other actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

- (ff) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (gg) **Person(s)** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (hh) **Plaintiffs** means the Quebec Plaintiff, the BC Plaintiff and the Ontario Plaintiff.
- (ii) **Proceedings** means the Quebec Action, the BC Action and the Ontario Action as defined in Schedule "A" to this Settlement Agreement.
- (jj) **Proportionate Liability** means the proportion of any judgment that, had the Settling Defendants not settled, the BC Court or the Ontario Court, as applicable, would have apportioned to the Settling Defendants and the other Releasees.
- (kk) **Quebec Action** means the proceeding commenced by the Quebec Plaintiff before the Quebec Court identified in Schedule "A" to this Settlement Agreement.
- (ll) **Quebec Counsel** means Belleau Lapointe s.e.n.c.r.l.
- (mm) **Quebec Court** means the Superior Court of Québec.
- (nn) **Quebec Plaintiff** means Option Consommateurs.
- (oo) **Quebec Settlement Class** means means the settlement class in respect of the Quebec Action that is defined in Schedule "A" to this Settlement Agreement.
- (pp) **Recitals** means the recitals to this Settlement Agreement.
- (qq) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses

(including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity (all of the foregoing, collectively, "Claims" or, individually, a "Claim"), that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, relating in any way to any conduct anywhere, in respect of the purchase, sale, pricing, discounting, marketing or distributing of, whether directly or indirectly, or compensation for, Ball Bearings in Canada, or relating to any conduct alleged in the Proceedings including, without limitation, any such claims which have been asserted or could have been asserted, whether in Canada or elsewhere. For greater certainty, nothing herein shall be construed to release any claims arising from, breach of contract, for negligence, bailment, failure to deliver, lost goods, delayed or damaged goods or similar claim between the Releasees and Releasors relating to Ball Bearings.

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

(ss) **Releasors** means jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person claiming by or through them as a present or former, direct or indirect, parent, subsidiary, affiliate, division or department, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, trustee, servant, contractor or representative of any kind.

- (tt) **Schedules** mean the schedules to this Settlement Agreement.
- (uu) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (vv) **Settlement Amount** means the sum of one million five hundred thousand Canadian dollars (CDN \$1, 500,000.00).
- (ww) **Settlement Class** means all Persons included in the Quebec Settlement Class, the BC Settlement Class or the Ontario Settlement Class.
- (xx) **Settlement Class Member(s)** means a member of the Settlement Class.
- (yy) **Settling Defendants** mean MinebeaMitsumi Inc., NMB Korea, NMB (USA) Inc., and NMB Technologies Corporation.
- (zz) **Trust Account** means an interest-bearing trust account at a Canadian Schedule 1 bank under the control of BC Counsel, for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal, with prejudice and without costs, of the BC Action and Ontario Action as against the Settling Defendants, and a prompt, complete notice of settlement out of court of the Quebec Action, without costs and without reservation, in the Quebec Action.

2.2 Motions Seeking Authorization/Certification and Approval of Notice

- (1) Subject to subsection 2.2(2), the Plaintiffs shall bring motions before the Courts, as soon as practicable after the Execution Date, for orders approving the Notice 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.;

- (2) The Parties shall agree on the substance and form of the orders approving the Notice and certifying or authorizing each of the Proceedings for settlement purposes described in subsection 2.2(1).

2.3 Motions Seeking Approval of the Settlement

- (1) As soon as practicable after the orders referred to in subsection 2.2 have been granted and the Notice has been published, and subject to subsection 2.3(2), the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.

- (2) The Parties shall agree on the substance and form of the orders approving this Settlement Agreement described in subsection 2.3(1).

- (3) This Settlement Agreement shall only become final on the Effective Date.

2.4 Pre-Motion Confidentiality

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

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

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

- (2) The Settlement Amount shall be inclusive of all amounts, including interest and costs, and shall be paid in full satisfaction of the Released Claims against the Releasees.
- (3) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.
- (4) BC Counsel or its duly appointed agent shall maintain the Trust Account as provided for in this Settlement Agreement.
- (5) BC Counsel or its duly appointed agent shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.
- (6) The cost of disseminating the notices contemplated in Section 11 of this Settlement Agreement shall be paid out of the Settlement Amount in the Trust Account.

3.2 Taxes and Interest

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.
- (2) Subject to subsection 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account shall be the responsibility of the Settlement Class. BC Counsel or its duly appointed agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the monies in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the monies in the Trust Account shall be paid from the Trust Account.

- (3) The Settling 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 by the monies in the Trust Account or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect, in which case the interest earned on the Settlement Amount in the Trust Account shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by BC Counsel or its duly appointed agent.

SECTION 4 - COOPERATION

4.1 Extent of Cooperation

- (1) Within thirty (30) days after the Effective Date, or at a time mutually agreed upon by the Parties, the Settling Defendants shall provide to Class Counsel:
- (a) an oral evidentiary proffer, through a meeting between Class Counsel and counsel for the Settling Defendants, which will set out the Settling Defendants' relevant information derived from their investigation and factual inquiries in respect of the matters at issue in the Proceedings, including, without limitation, information derived from business records, testimonial transcripts and employee or witness interviews (if applicable), including, without limitation, their knowledge of how the alleged conspiracy was formed, implemented and enforced. Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by Counsel for the Settling Defendants are privileged, will be kept strictly confidential, may not be directly or indirectly disclosed to any other Person, and will not be used by Class Counsel for any purpose other than for their own internal use in connection with the prosecution of the Proceedings; and,
 - (b) the timing and location of the oral evidentiary proffer shall be determined based on a reasonable agreement between the Settling Defendants, the Plaintiffs and the Parties' Counsel.

- (2) Within forty-five (45) days after the Effective Date, or at a time mutually agreed upon by the Parties, the Settling Defendants shall:
- (a) provide to Class Counsel transactional sales data that are kept in centralized electronic databases of the Settling Defendants related to Ball Bearings for the period of January 1, 2000 to December 31, 2012, sold in Canada, the United States or elsewhere, if and to the extent such sales relate to Ball Bearings that are known or expected to have been resold into Canada. The transactional sales data will be provided in Excel or such other format as agreed upon by the Parties, and shall be delivered as a separate production from the other Documents to be delivered pursuant to subsection 4.1(2);
 - (b) provide to Class Counsel transactional costs data that are kept in centralized electronic databases of the Settling Defendants related to Ball Bearings for the period of January 1, 2000 to December 31, 2012, sold in Canada, the United States or elsewhere, if and to the extent such sales relate to Ball Bearings that are known or expected to have been resold into Canada. The transactional costs data will be provided in Excel or such other format as agreed upon by the Parties, and shall be delivered as a separate production from the other Documents to be delivered pursuant to subsection 4.1(2);
 - (c) provide reasonable assistance to Class Counsel in understanding the transactional sales and cost data produced by 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) provide to Class Counsel electronic copies of any Documents produced by the Settling Defendants to the United States Department of Justice concerning the allegations raised in the Proceedings, including any pre-existing translations of those Documents;

- (e) provide to Class Counsel electronic copies of any Documents produced by the Settling Defendants to the Canadian Competition Bureau, the Korean Fair Trade Commission, the European Commission, and/or any other antitrust authority concerning the allegations raised in the Proceedings, including any pre-existing translations of those Documents, to the extent that any Documents falling into this category are not already disclosed pursuant to subsection 4.1(2)(d);
- (f) answer any questions or requests for information from Class Counsel that arise from the Documents provided to Class Counsel by the Settling Defendants, including information originating with the Settling Defendants and being within their possession relating to the allegations in the Proceedings including, without limitation, information with respect to dates, locations, subject matter, and identities of participants in any meetings or discussions between competitors relating to the purchase, sale, pricing, discounting, marketing or distributing of Ball Bearings for the period of January 1, 2000 to December 31, 2012 it being understood by the Parties that such questions and requests will be reasonable and narrowly-tailored and that Settling Defendants shall not be required to undertake a broad search or review of Documents or to search within its document production for Documents responsive to specific requests; and
- (g) provide to Class Counsel a list of the Settling Defendants' major customers for Ball Bearings if and to the extent such sales relate to Ball Bearings or Ball Bearings Products that are known or expected to have been resold into Canada, broken out by original equipment manufacturers and distributors, along with information, to the extent the Settling Defendants have it, that shows what types of Ball Bearing Products the customers make that incorporate the Settling Defendants' Ball Bearings and, to the extent the Settling Defendants know, where such products are re-sold.

- (3) Documents provided to Class Counsel in accordance with subsection 4.1(2) will be provided in the format in which they were to the Canadian Competition Bureau, the United States Department of Justice, the Korean Fair Trade Commission, the European Commission and/or any other antitrust authority, and will include any pre-existing and electronic metadata.
- (4) The obligation to produce Documents pursuant to subsections 4.1(2)(d) and (e) shall be a continuing one to the extent that additional Documents are provided by the Settling Defendants to the United States Department of Justice, the Canadian Competition Bureau, the Korean Fair Trade Commission, the European Commission and/or any other antitrust authority relevant to the alleged conspiracy regarding Ball Bearings which is at issue in the Proceedings.
- (5) To the extent reasonably necessary to assist the Plaintiffs in the prosecution of the case against the Non-Settling Defendants, the Settling Defendants shall, at the request of Class Counsel, upon reasonable notice, make available up to two current or former directors, officers or employees of the Settling Defendants who have relevant knowledge of the allegations in the Proceedings to provide information regarding the allegations in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel at a mutually convenient time; provided, however, that the Settling Defendants are not obliged to make available their former directors, officers or employees for such purposes as long as the Settling Defendants have used reasonable best efforts to do so. The employees shall be made available at a location to be mutually agreed upon. 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. All other costs, including costs of an interpreter or expenses otherwise related to foreign language translation in connection with the interviews, shall be the responsibility of Class Counsel.
- (6) To the extent reasonably necessary to assist the Plaintiffs in the prosecution of the case against the Non-Settling Defendants, the Settling Defendants shall make up to two current or former directors, officers or employees of the Settling

Defendants who have relevant knowledge of the allegations in the Proceedings available at certification and at trial to support the submission into evidence of any information provided by the Settling Defendants pursuant to this Settlement Agreement and to provide authentication and foundation for documents to be used in connection with the prosecution of the case against the Non-Settling Defendants; provided, however, that the Settling Defendants are not obliged to make available their former directors, officers or employees for such purposes as long as the Settling Defendants have used reasonable best efforts to do so. Costs incurred by, and the expenses of, the employee of the Settling Defendants in relation to such testimony shall be the responsibility of the Settling Defendants.

- (7) Subject to the rules of evidence and any other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to authenticate for use at trial, discovery, summary judgment motions and/or certification motions, any of the Documents and information provided as cooperation pursuant to section 4.1 of this Settlement Agreement and, to the extent possible, any Documents produced by other Defendants in connection with the Proceedings that were received by or originated from the Settling Defendants.
- (8) Nothing in this Settlement Agreement shall be construed to require the Settling Defendants to perform any act, including the transmittal or disclosure of any Documents or information, which would violate the law of this or any jurisdiction or an agreement in writing with an antitrust authority.
- (9) Except as regards the data described at subsections 4.1(2)(a)(b) and (g) of this Settlement Agreement and Documents or information that are publicly available, nothing in this Section shall require, or shall be construed to require, the Settling Defendants to disclose or produce any Documents or information prepared by or for counsel for the Settling Defendants or to disclose or produce any Documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, work product doctrine, common interest privilege or attorney-client privilege.

- (10) If any of the types of Documents referenced in subsections 4.1(8) or (9) are accidentally or inadvertently disclosed or produced by the Settling Defendants to the Plaintiffs or Class Counsel, 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 attached to such Documents.
- (11) The obligations of the Settling Defendants to cooperate as particularized in subsection 4.1 shall not be affected by the release provisions contained in Section 7 of this Settlement Agreement. The obligations of the Settling Defendants to cooperate shall cease at the date of final judgment in the Proceedings as against all Defendants.
- (12) If the Settling Defendants materially breach subsection 4.1, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement or set aside the approval of the Settlement Agreement or a part thereof. Additionally, if the Settling Defendants are unable to provide the cooperation referred to in subsections 4.1(5) and (6), the Plaintiffs may exercise any rights they have to seek to obtain testimony at trial from the current and former officers, directors and/or employees of the Settling Defendants and Releasees.
- (13) 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, the Plaintiffs and Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is unnecessary, or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendants.

4.2 Limits on Use of Documents

- (1) It is understood and agreed that all Documents and information made available or provided by the Settling 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 against the Non-Settling Defendants, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are publicly available. The Plaintiffs and Class Counsel agree they will not disclose the Documents and information provided by the Settling Defendants and/or Counsel for the Settling Defendants 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. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such Documents and information, and of any work product of Class Counsel that discloses such Documents and information.

- (2) If 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 as cooperation under the Settlement Agreement (and such disclosure is not otherwise prohibited by the 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(2) 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 provide the Settling Defendants with an advance description of the Documents or other information sought to be produced or filed at least thirty (30) days in advance of the proposed production or filing, in order that the Settling Defendants may move to obtain a sealing or confidentiality order or similar relief. If, within that thirty (30) day period, a Settling Defendant so moves, the Plaintiffs and Class Counsel shall not produce or file the confidential information or Documents until the Settling Defendant's motion has been decided and all applicable appeal periods have

expired, except as follows. Pending resolution of the motion, the Plaintiffs and Class Counsel may, so as not to delay prosecution of the Proceedings (i) file such Documents or Information with the relevant Court in sealed envelopes or other appropriate containers, segregated from the public record, endorsed with the title of the action and the following statement: "This envelope/box/container containing documents which are filed by [name of Party] and subject to a pending confidentiality motion is not to be opened nor the contents thereof to be displayed or revealed to any non-Court personnel except by order of the Court" and such records shall not form part of the public record in the relevant Proceeding except upon order of the Court or by agreement of all Parties and/or the Settling Defendant whose confidential information is contained therein; and (ii) 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 Non-Settling Defendant 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 Non-Settling Defendant in the Proceedings, or a competitor of the Settling Defendants.

- (3) If a Settling Defendant moves to obtain a sealing or confidentiality order, the Plaintiffs and Class Counsel shall not oppose the Settling Defendant's motion.
- (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(2) of the Settlement Agreement", whether or not the Person applies for an order requiring the Plaintiffs to disclose or produce any Documents or other information, 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 provide notice to the Settling Defendants promptly upon becoming aware of it 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 Settling Defendants' motion has been decided and all applicable appeal periods have expired, except: (i) to the extent such information or Documents are or become otherwise publicly available; (ii) as ordered to do so by a Court; or (iii) in the event that the Person making the request is a Non-Settling Defendant, so as not to delay prosecution of the Proceedings, Class Counsel may provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendant provided that counsel for the Non-Settling Defendant agree and give assurances that the Documents or information will remain confidential and will only be disclosed to external counsel or independent expert(s) retained by a Non-Settling Defendant 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 until the Settling Defendants' motion has been decided and all applicable appeal periods have expired. An independent expert may not be an employee of a Plaintiff or Non-Settling Defendant in the Proceedings or a competitor of the Settling Defendants.

SECTION 5 - DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

5.1 Distribution Protocol

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

SECTION 6 - OPTING-OUT

6.1 Procedure

- (1) A Person may opt-out of the Proceedings by sending a written election to opt-out, signed by the Person or the Person's designee, by pre-paid mail, courier, fax, or e-mail to Class Counsel or their duly appointed agent at an address to be identified in the Notice.
- (2) An election to opt-out will only be effective if it is received by Class Counsel or their duly appointed agent on or before the Opt-Out Deadline.
- (3) Notwithstanding subsections 6.1(1) and 6.1(2), members of the Quebec Settlement Class who wish to opt-out may also do so by informing the clerk of the Quebec Court on or before the Opt-Out Deadline;
- (4) The written election to opt-out must contain the following information in order to be effective:
 - (a) the Person's full name and current address;
 - (b) a statement to the effect that the Person wishes to be excluded from the Proceedings.
- (5) Members of the Quebec Settlement Class who have commenced or commence proceedings against any of the Defendants with respect to the matters at issue in the Quebec Action, and fail to discontinue such proceedings by the Opt-Out Deadline, shall be deemed to have opted out.

6.2 Opt-Out Report

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

SECTION 7 - RELEASES AND DISMISSALS

7.1 Release of Releasees

- (1) Upon the Effective Date, subject to subsection 7.2, in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims.
- (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 different facts.

7.2 Covenant Not to Sue

- (1) Notwithstanding subsection 7.1, upon the Effective Date, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees, but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.3 No Further Claims

- (1) The Releasors shall not now or hereafter institute, continue, provide assistance for or maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action suit, cause of action, claim or demand against any Releasee, or against any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed 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 Defendants or unnamed alleged co-conspirator that is not a Releasee.

7.4 Settlement or Dismissal of the Proceedings

- (1) Upon the Effective Date, the Quebec Action shall be settled, without costs and without reservation as against the Settling Defendants, and the Parties shall sign and file a notice of settlement out of court in the Quebec Court in respect of the Quebec Action.
- (2) Upon the Effective Date, the BC Action and the Ontario Action shall be dismissed, with prejudice and without costs, as against the Settling Defendants and the Parties shall endorse a form of Consent Dismissal Order with their approval as to form and consent for entry in the applicable registry.

7.5 Dismissal of Other Actions

- (1) Upon the Effective Date, each member of the Ontario Settlement Class and BC Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (2) Upon the Effective Date, all Other Actions commenced in British Columbia or Ontario by, or on behalf of, any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.
- (3) Each person who would have been a member of the Quebec Settlement Class but who is deemed to have opted out in accordance with section 6.1(5) and who makes a claim and receives benefits under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Releasees.
- (4) Each Other Action commenced in Quebec by a person who would have been a member of the Quebec Settlement Class but who is deemed to have opted out in accordance with section 6.1(5) and who makes a claim and receives benefits

under this Settlement Agreement shall be dismissed as against the Releasees, without costs and without reservation.

SECTION 8 - BAR ORDER AND WAIVER OF SOLIDARITY

8.1 Ontario and British Columbia Bar Order

- (1) The Plaintiffs and the Settling Defendants agree that the Ontario and British Columbia orders approving this Settlement Agreement must include a bar order in respect of the Ontario Action and the BC Action which includes the following terms:
 - (a) 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 Ontario Action and BC Action or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Ontario Action and BC Action or otherwise, by any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee or any other Person or party against a Releasee are barred, prohibited and enjoined in accordance with the terms of this subsection;
 - (b) a provision that if the Ontario Court or BC Court, as applicable, ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
 - (i) the Ontario or BC Plaintiffs, as applicable, and the Ontario or BC Settlement Class Members, as applicable, shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed alleged 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 or BC Plaintiffs, as applicable, and the Ontario or BC Settlement Class Members, as applicable, shall limit their claims against the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee to the Ontario or BC Plaintiffs, as applicable, and the Ontario or BC Settlement Class Members, as applicable, if any, and, for greater certainty, the Ontario or BC Settlement Class Members shall be entitled to claim and recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to the extent provided by law; and,
- (iii) the Ontario Court and the BC Court, as applicable, shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Action or BC Action, as applicable, whether or not the Releasees appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Action or BC Action, as applicable, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall

only apply in the Ontario Action or BC Action, as applicable, and shall not be binding on the Releasees in any other proceeding.

- (c) A provision that if the Ontario Court or BC Court, as applicable, ultimately determines that the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in the British Columbia and Ontario orders approving this Settlement Agreement, as applicable, is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of members of the Ontario or BC Settlement Class, as applicable, in the Ontario or BC Action, as applicable;
- (d) A provision that a Non-Settling Defendants may, on motion to the Ontario or BC Court, as applicable, determined as if the Settling Defendants remained party to the Ontario or BC Action, as applicable, and on at least ten (10) days' notice to counsel for the Settling Defendants, and not to be brought unless and until the Ontario Action or BC Action, as applicable, against the Non-Settling Defendants has been fully certified as a class proceeding (as opposed to being certified for settlement purposes) and all appeals or times to appeal have been exhausted, seek Orders for the following:
 - (i) documentary discovery and an affidavit of documents (list of documents in British Columbia) from the Settling Defendants in accordance with the relevant rules of civil procedure;
 - (ii) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;

- (iii) leave to serve a request to admit (notice to admit in British Columbia) on the Settling Defendants in respect of factual matters; and/or,
 - (iv) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (e) A provision that the Settling Defendants retain all rights to oppose such motion(s) brought pursuant to subsection 8.1(1)(d). 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 subsection 8.1(1)(d). Notwithstanding any provision in the Ontario and British Columbia orders approving this Settlement Agreement, on any motion brought pursuant to subsection 8.1(1)(c), the Ontario or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.
- (f) A provision that a Non-Settling Defendants may serve the motion(s) referred to in subsection 8.1(1)(d) on the Settling Defendants by service on counsel for the Settling Defendants in the relevant Ontario Action or BC Action.
- (2) To the extent that such an order is granted pursuant to subsection 8.1(1)(d) and discovery is provided to the Non-Settling Defendants, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendants(s).

8.2 Quebec Waiver or Renunciation of Solidarity Order

- (1) The Plaintiffs and the Settling Defendants agree that the Quebec order approving this Settlement Agreement must include a waiver or renunciation of solidarity in respect of the Quebec action which includes the following:

- (a) the Quebec Plaintiff and members of the Quebec Settlement Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees;
- (b) the Quebec Plaintiff and the members of the Quebec Settlement Class shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action; and,
- (d) the ability of the 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*.

8.3 Claims Against Other Entities Reserved

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

SECTION 9 - EFFECT OF SETTLEMENT

9.1 No Admission of Liability

- (1) The Parties expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The

Parties further agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Settling Defendants, or of the truth of any of the claims or allegations contained in the Proceedings, or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

9.2 Agreement Not Evidence

- (1) The Parties agree that, whether or not it is not approved, is terminated or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

SECTION 10 - CERTIFICATION AND AUTHORIZATION FOR SETTLEMENT ONLY

- (1) The Settling Defendants and the Plaintiffs agree that the BC Action and Ontario Action shall be certified as class proceedings and that the Quebec Action shall be authorized against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts, and such certification/authorization shall not be used or relied on as against the Settling Defendants for any other purpose or in any other proceeding.
- (2) The Plaintiffs agree that, in the motions for certification of the BC Action and Ontario Action as class proceedings for settlement purposes and for approval of

this Settlement Agreement and in the motion for authorization of the Quebec Action for settlement purposes and approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Ontario Settlement Class, the BC Settlement Class and the Quebec Settlement Class.

- (3) The Parties agree that the certification 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.

SECTION 11 - NOTICE TO SETTLEMENT CLASS

11.1 Notices Required

(1) The proposed Settlement Class shall be given the following notice: (i) the Notice; and (ii) a notice of termination (if the Settlement Agreement is terminated or otherwise fails to take effect after the first of the motions required by subsection 2.2 is brought).

11.2 Form and Distribution of Notices

- (1) The form of the notices referred to in subsection 11.1 and how and where they are published and distributed shall be as agreed to by the Plaintiffs and the Settling Defendants and, failing agreement, as ordered by the Courts.
- (2) The Plaintiffs shall bring and seek to schedule motions before the Courts seeking orders from the Courts approving the notices described in subsection 11.1. The Plaintiffs may determine the time of these motions in their full and complete discretion, after consultation with the Settling Defendants, and subject to subsection 2.2.

SECTION 12 - ADMINISTRATION AND IMPLEMENTATION

12.1 Mechanics of Administration

- (1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the

Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel at a time within the discretion of Class Counsel, except that the timing of the motions to approve the Settlement Agreement shall be determined after consultation with the Settling Defendants and subject to subsection 2.3.

**SECTION 13 - CLASS COUNSEL FEES, DISBURSEMENTS AND
ADMINISTRATION EXPENSES**

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

SECTION 14 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

14.1 Right of Termination

(1) In the event that:

- (a) the BC Court or the Ontario Court declines to certify the BC Settlement Class or Ontario Settlement Class, or that the Quebec Court declines to authorize the Quebec Action on behalf of the Quebec Settlement Class;
- (b) the BC Court or the Ontario Court declines to dismiss the BC Action or Ontario Action, with prejudice and without costs, against the Settling Defendants or the Quebec Action is not fully settled out of court, without costs and without reservation;
- (c) any Court declines to approve this Settlement Agreement or any material term, and the Parties agree that, without limiting the foregoing, the releases, bar orders, waiver or renunciation of solidarity and covenants not to sue contemplated by this Settlement Agreement are all material terms;
- (d) any Court approves this Settlement Agreement in a materially modified form;
- (e) the Parties acting reasonably do not reach agreement on the form and content of any order required by this Settlement Agreement, or the order agreed to by the Parties is approved by a Court in a materially modified form; or,
- (f) any orders approving this Settlement Agreement made by the Courts do not become Final Orders;

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

Counsel or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any civil, criminal or administrative action or proceeding.

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

14.2 Effect of Non-Approval or Termination of Settlement Agreement

- (1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:
 - (a) no motion to certify the BC Action and Ontario Action as a class proceeding or to authorize the Quebec Action on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
 - (b) any order certifying the BC Action and the Ontario Action as a class proceeding or authorizing the Quebec Action 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) within ten (10) days following the event(s) described in subsection 14.2(1), Class Counsel shall destroy all Documents or other materials provided by 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, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendants to any other Person, shall recover and destroy such Documents or information. Class Counsel shall provide counsel to the Settling Defendants with a written certification by Class Counsel of such

destruction. Nothing contained in this subsection 14.2 shall be construed to require Class Counsel to destroy any of their work product.

14.3 Allocation of Settlement Amount Following Termination

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

14.4 Survival of Provisions After Termination

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of subsections 3.1(4), 3.1(5), 3.1(6), 3.2(3), 9.1, 9.2, 11.1, 11.2, 14.2, 14.3, this subsection 14.4, 15.1, 15.6 and 15.7, and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of subsections 3.1(4), 3.1(5), 3.1(6), 3.2(3), 9.1, 9.2, 11.1, 11.2, 14.2, 14.3, this subsection 14.4, 15.1, 15.6 and 15.7, within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 15 - MISCELLANEOUS

15.1 Motions for Directions

- (1) Class Counsel or the Settling Defendants may apply to the Courts 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 Ontario Action shall be determined by the Quebec Court.

- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

15.2 Releasees Have No Liability for Administration

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

15.3 Headings, etc.

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

15.4 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and,
 - (b) only in the case where the time for doing an act expires on a holiday as "holiday" is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194 and in the *Interpretation Act*, CQLR, c. I-16, the act may be done on the next day that is not a holiday.

15.5 Ongoing Jurisdiction

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

15.6 Governing Law

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

15.7 Entire Agreement

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

15.8 Amendments

- (1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties, and any such modification or amendment must be

approved by the Courts with jurisdiction over the matter to which the amendment relates.

15.9 Binding Effect

- (1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling 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 by the Plaintiffs shall be binding upon all Releasors and every covenant and agreement made by the Settling Defendants shall be binding upon all of the Releasees.

15.10 Counterparts

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

15.11 Negotiated Agreement

- (1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

15.12 Language

- (1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related Documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by law

or by the Courts, the Settling Defendants shall prepare a French translation of the Settlement Agreement including the Schedules at their own expense. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

15.13 Transaction

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

15.14 Recitals

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

15.15 Schedules

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

15.16 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect; and,
 - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other

Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

15.17 Authorized Signatures

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

15.18 Notice

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

FOR THE PLAINTIFFS AND CLASS COUNSEL:

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FOR THE SETTLING DEFENDANTS:

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15.19 Date of Execution

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

Sharon Clark, by her counsel

Name of Authorized Signatory:

Reidar Mogerma

Signature of Authorized Signatory:

[Signature]
by permission
Harrison Pensa LLP
Ontario Counsel

Stephanie Ann Catherine Asquith, by her counsel

Name of Authorized Signatory:

Reidar Mogerma

Signature of Authorized Signatory:

[Signature]
Camp Fiorante Matthews Mogerma LLP
BC Counsel

Option Consommateurs, by its counsel

Name of Authorized Signatory:

Maxime Nasr

Signature of Authorized Signatory:

[Signature]
Belleau Lapointe s.e.n.c.r.l.
Quebec Counsel

MinebeaMitsumi Inc. (formerly, Minebea Co. Ltd.) NMB Korea, NMB (USA) Inc., and NMB Technologies Corporation by their counsel

Name of Authorized Signatory

ROBERT E CHARBONNEAU

Signature of Authorized Signatory:


Borden Ladner Gervais, s.e.n.c.r.l., s.r.l.
Settling Defendant Counsel

**SCHEDULE "A"
PROCEEDINGS**

Proceeding	Plaintiff(s)	Defendants	Settlement Class
Quebec Superior Court (District of Montreal), File No. 500-06-000730-156 (the "Quebec Action")	Option Consommateurs	MinebeaMitsumi Inc. (formerly Minebea Co. Ltd.), NSK Ltd., NSK Canada	All Persons in Quebec who purchased Ball Bearings or Ball Bearings Products during the Class Period, except for Excluded Persons.
British Columbia Supreme Court (Vancouver Registry) Court File No. S-151049 (the "BC Action")	Stephanie Ann Catherine Asquith	MinebeaMitsumi Inc. (formerly Minebea Co. Ltd.), NMB Korea, NMB (USA) Inc., NMB Technologies Corporation, NSK Ltd. And NSK Canada Inc.	All Persons in British Columbia who purchased Ball Bearings or Ball Bearings Products during the Class Period, except for Excluded Persons.
Ontario Superior Court of Justice (London) Court File No. 852/16 CP (the "Ontario Action")	Sharon Clark	MinebeaMitsumi Inc. (formerly Minebea Co. Ltd.), NMB Korea, NMB (USA) Inc., NMB Technologies Corporation, NSK Ltd. and NSK Canada Inc.	All Persons in Canada who purchased Ball Bearings or Ball Bearings Products during the Class Period other than (1) all Quebec Settlement Class members, (2) all BC Settlement Class members, and (3) Excluded Persons.