

**ELECTROLYTIC CAPACITORS CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Between:

**CYGNUS ELECTRONICS CORPORATION, SEAN ALLOTT, SARA RAMSAY and OPTION
CONSOUMMATEURS**
(the "Plaintiffs")

and

TOKIN CORPORATION and TOKIN AMERICA INC.
(formerly known as **NEC TOKIN CORPORATION and NEC TOKIN AMERICA INC.**)
(the "Settling Defendants")

Executed May 30, 2018

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TABLE OF CONTENTS

	Page
RECITALS	1
SECTION 1 - DEFINITIONS	4
SECTION 2 - SETTLEMENT APPROVAL	10
2.1 Best Efforts	10
2.2 Motions Seeking Approval of Notice and Certification or Authorization	10
2.3 Motions Seeking Approval of the Settlement.....	11
2.4 Pre-Motion Confidentiality	11
SECTION 3 - SETTLEMENT BENEFITS	11
3.1 Payment of Settlement Amount.....	11
3.2 Taxes and Interest	12
SECTION 4 - COOPERATION	12
4.1 Extent of Cooperation	12
4.2 Limits on Use of Documents	16
4.3 Intervention in the U.S. Litigation	17
SECTION 5 - Distribution of the Settlement Amount and Accrued Interest	18
5.1 Distribution Protocol.....	18
SECTION 6 - Opting-Out	18
6.1 Procedure	18
6.2 Opt-Out Report	19
SECTION 7 - RELEASES AND DISMISSALS	19
7.1 Release of Releasees.....	19
7.2 Covenant Not to Sue.....	19

TABLE OF CONTENTS
(continued)

7.3	No Further Claims.....	19
7.4	Dismissal of the Proceedings.....	20
7.5	Dismissal of Other Actions.....	20
7.6	Obligation of Class Counsel Regarding Released Claims and Other Actions.....	21
SECTION 8 - BAR ORDER AND WAIVER OF SOLIDARITY		21
8.1	Ontario and British Columbia Bar Order.....	21
8.2	Québec Waiver or Renunciation of Solidarity Order.....	24
8.3	Claims Against Other Entities Reserved	25
SECTION 9 - EFFECT OF SETTLEMENT.....		25
9.1	No Admission of Liability	25
9.2	Agreement Not Evidence	26
SECTION 10 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY		26
SECTION 11 - NOTICE TO SETTLEMENT CLASS		27
11.1	Notices Required	27
11.2	Form and Distribution of Notices.....	27
SECTION 12 - ADMINISTRATION AND IMPLEMENTATION.....		27
12.1	Mechanics of Administration	27
SECTION 13 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES		27
SECTION 14 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT.....		28
14.1	Right of Termination.....	28
14.2	Effect of Non-Approval or Termination of Settlement Agreement	29
14.3	Allocation of Settlement Amount Following Termination.....	30
14.4	Survival of Provisions After Termination.....	30
SECTION 15 - MISCELLANEOUS		31

TABLE OF CONTENTS

(continued)

15.1	Motions for Directions	31
15.2	Releasees Have No Liability for Administration	31
15.3	Headings, etc.	31
15.4	Computation of Time	31
15.5	Ongoing Jurisdiction	32
15.6	Governing Law	32
15.7	Entire Agreement	32
15.8	Amendments	33
15.9	Binding Effect	33
15.10	Counterparts	33
15.11	Negotiated Agreement	33
15.12	Language	33
15.13	Transaction	34
15.14	Recitals	34
15.15	Schedules	34
15.16	Acknowledgements	34
15.17	Authorized Signatures	35
15.18	Notice	35
15.19	Date of Execution	36

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RECITALS

- A. WHEREAS the Proceedings were commenced by the Ontario Plaintiffs in London, Ontario, the BC Plaintiff in Vancouver, British Columbia and the Québec Plaintiffs in Montreal, Québec;
- B. WHEREAS the Plaintiffs allege in the Proceedings that certain companies, including one or both of the Settling Defendants, participated in an unlawful conspiracy to fix, raise, maintain or stabilize the price of Electrolytic Capacitors in Canada, contrary to Part VI of the *Competition Act* and the common law and/or civil law;
- C. 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;
- D. 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;
- E. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nationwide resolution of all Released Claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- F. WHEREAS the Settling Defendants are the first to settle in these Proceedings, and have agreed to provide meaningful early cooperation to Plaintiffs in addition to the Settlement Amount, which cooperation is a material factor to the Plaintiffs in the formulation of the terms of this Settlement Agreement;
- G. 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 expressly provided in this Settlement Agreement with respect to the Proceedings;

- H. WHEREAS the Settling Defendants have advised that the primary Settling Defendant employees who have direct, firsthand knowledge of the alleged conspiratorial activities are no longer employed by the Settling Defendants or within their control;
- I. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in extensive arm's-length settlement discussions and negotiations, lasting more than a year, resulting in this Settlement Agreement relating to Canada;
- 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 classes they represent or 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 classes they represent or 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 who are named as Defendants in the Proceedings;
- M. WHEREAS the Settling Defendants are affiliates of KEMET Corporation and KEMET Electronics Corporation, and, as a result of transaction that was completed on or about April 19, 2017, KEMET Corporation acquired all of the outstanding shares of NEC TOKIN Corporation it did not already own through its wholly-owned subsidiary KEMET Electronics Corporation, resulting in NEC TOKIN Corporation changing its name to TOKIN Corporation and NEC TOKIN America Inc. changing its name to TOKIN America Inc. at or about that time;

- N. WHEREAS it is the Parties' intention in resolving the Proceedings as against the Settling Defendants to release and bar claims relating to Electrolytic Capacitors against KEMET Corporation and KEMET Electronics Corporation, but only insofar as it relates to those claims attributable to the acts and omissions of the Settling Defendants for which KEMET Corporation and KEMET Electronics Corporation may be held liable in law or equity, it being understood that nothing in this Settlement Agreement shall be construed as an admission of wrongdoing or liability by anyone and that nothing in this Settlement Agreement shall be construed as a release of any right to initiate or continue any action or to seek any amounts in respect of claims against KEMET Corporation and KEMET Electronics Corporation that are not attributable to the acts and omissions of the Settling Defendants;
- O. WHEREAS for the purposes of settlement only, the Parties now consent to certification or authorization of the Proceedings as class proceedings and to the Settlement Classes and a Common Issue in respect of each of the Proceedings solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and
- P. WHEREAS the Plaintiffs assert that they are adequate class representatives for the classes they seek to represent and will seek to be appointed representative plaintiffs in their respective Proceedings;

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

SECTION 1 - DEFINITIONS

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

- (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 and the costs of claims administration, but excluding Class Counsel Fees.
- (2) **Approval Hearings** mean the hearings to approve the motions brought by Class Counsel for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (3) **BC Action** means the proceeding commenced by the BC Plaintiff before the BC Court that is identified in Schedule "A" to this Settlement Agreement.
- (4) **BC Counsel** means Camp Fiorante Matthews Mogerman ^{LLP}.
- (5) **BC Court** means the Supreme Court of British Columbia.
- (6) **BC Plaintiff** means Sara Ramsay.
- (7) **BC Settlement Class** means the settlement class in respect of the BC Action that is defined in Schedule "A" to this Settlement Agreement.
- (8) **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.
- (9) **Class Counsel** means Ontario Counsel, Québec Counsel and BC Counsel.
- (10) **Class Counsel Fees** include the fees, disbursements, costs, interest, GST or HST (as the case may be) and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or Person as a result of the Settlement Agreement, including the Fonds d'aide aux actions collectives in Québec.
- (11) **Class Period** means September 1, 1997 to December 31, 2014.

- (12) **Common Issue** means: Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Electrolytic Capacitors directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (13) **Confidential Addendum** means the confidential addendum to this Settlement Agreement referred to in sections 14.1(2) and 15.15(1).
- (14) **Counsel for the Settling Defendants** means Lax O'Sullivan Lisus Gottlieb ^{LLP}.
- (15) **Courts** means the Ontario Court, the Québec Court and the BC Court.
- (16) **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.
- (17) **Distribution Protocol** means the plan to be developed by Class Counsel for distributing the Settlement Amount, plus accrued interest and less approved Administration Expenses and Class Counsel Fees, to Settlement Class Members, as approved by the Courts.
- (18) **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.
- (19) **Effective Date** means the date when the Final Orders have been received from all Courts approving this Settlement Agreement.
- (20) **Electrolytic Capacitors** means aluminum and tantalum electrolytic capacitors.
- (21) **Execution Date** means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and the Settling Defendants.
- (22) **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.

- (23) **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.
- (24) **Non-Settling Defendant** means any Defendant that is not a Settling Defendant 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. For greater certainty, KEMET Corporation and KEMET Electronics Corporation are Non-Settling Defendants.
- (25) **Notice of Certification and of Approval Hearings** 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 certification or authorization of the Proceedings as class proceedings for settlement purposes; (ii) the right to opt-out of the certified or authorized Proceedings and the process for doing so; (iii) the dates and locations of the Approval Hearings; and, (iiii) the process by which a Settlement Class Member may object to the settlement.
- (26) **Ontario Action** means the proceeding commenced by the Ontario Plaintiffs before the Ontario Court as identified in Schedule "A" to this Settlement Agreement.
- (27) **Ontario Counsel** means Harrison Pensa ^{LLP}.
- (28) **Ontario Court** means the Ontario Superior Court of Justice.
- (29) **Ontario Plaintiffs** means Cygnus Electronics Corporation and Sean Allott.
- (30) **Ontario Settlement Class** means the settlement class in respect of the Ontario Action that is defined in Schedule "A" to this Settlement Agreement.
- (31) **Opt-Out Deadline** means the date which is sixty (60) days after the date on which the Notice of Certification and of Settlement Approval Hearings is first published.

- (32) **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.
- (33) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (34) **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.
- (35) **Plaintiffs** means the Ontario Plaintiffs, the Québec Plaintiffs and the BC Plaintiff.
- (36) **Proceedings** means the Ontario Action, the Québec Action, and the BC Action as defined in Schedule “A” to this Settlement Agreement.
- (37) **Proportionate Liability** means the proportion of any judgment that, had the Settling Defendants not settled, the Ontario or the BC Court, as applicable, would have apportioned to the Settling Defendants and the other Releasees in respect of the Released Claims.
- (38) **Québec Action** means the proceeding commenced by the Québec Plaintiffs before the Québec Court identified in Schedule “A” to this Settlement Agreement.
- (39) **Québec Counsel** means Belleau Lapointe s.e.n.c.r.l.
- (40) **Québec Court** means the Superior Court of Québec.
- (41) **Québec Plaintiff** means Option Consommateurs.
- (42) **Québec Settlement Class** means the settlement class in respect of the Québec Action that is defined in Schedule “A” to this Settlement Agreement.
- (43) **Recitals** means the recitals to this Settlement Agreement.

- (44) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "Claims" or, individually, a "Claim"), that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, relating in any way to any conduct that is alleged or that could have been alleged in the Proceedings or that is arising from their factual predicate, from the beginning of time until the Effective Date, including, without limitation, any Claims, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or any other horizontal or vertical, or unilateral or coordinated, anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) in connection with the purchase, sale, pricing, discounting, marketing or distributing of Electrolytic Capacitors in Canada during the Class Period, including, without limitation, any claims for consequential, subsequent or follow on harm that arise after the Effective Date in respect of any agreement or conduct arising from the factual predicate of the Proceedings, or any amended complaint or pleading therein, that occurred prior to the Effective Date. For greater certainty, nothing herein shall be construed to release any Claims: (1) 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 Electrolytic Capacitors; or (2) against KEMET Corporation and/or KEMET Electronics Corporation relating to Electrolytic Capacitors to the extent that KEMET Corporation and/or KEMET Electronics Corporation may be liable to the Plaintiffs and the Settlement Class Members for acts and omissions that are not attributable to the conduct of Settling Defendants that is alleged or that could have been alleged in the Proceedings or that arises from their factual predicate, from the beginning of time until the Effective Date.
- (45) **Releasee(s)** 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. For greater certainty, KEMET Corporation and KEMET Electronics Corporation are Releasees, but only in their limited capacity as affiliates of the Settling Defendants and only with respect of the liability of the Settling Defendants to the Plaintiffs and any vicarious or other liability that may be attributable to KEMET Corporation or KEMET Electronics Corporation for the acts or omissions of the Settling Defendants. No other Defendants are Releasees.

- (46) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a present or former, direct or indirect, parent, subsidiary, affiliate, division or department, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, trustee, servant, contractor or representative of any kind.
- (47) **Schedules** mean the schedules to this Settlement Agreement.
- (48) **Settlement Agreement** means this agreement, including the Recitals, Schedules and Confidential Addendum.
- (49) **Settlement Amount** means the sum of two million nine hundred thousand Canadian dollars (CAD \$2,900,000.00).
- (50) **Settlement Class(es)** means all Persons included in the Ontario Settlement Class, the Québec Settlement Class and the BC Settlement Class.
- (51) **Settlement Class Member(s)** means a member of a Settlement Class.
- (52) **Settling Defendants** mean TOKIN Corporation and TOKIN America Inc., which are named variously as NEC TOKIN Corporation, NEC TOKIN America Inc. and NEC TOKIN America, Inc. in the Proceedings.
- (53) **Trust Account** means an interest-bearing trust account at a Canadian Schedule 1 bank under the control of Ontario Counsel, for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

- (54) **U.S. Litigation** means the direct and indirect purchaser class proceedings in the United States which pertain to film, aluminum and tantalum electrolytic capacitors which have been consolidated and are proceeding as class actions litigation under the general style of cause, for both direct and indirect purchaser class proceedings, *In re: Capacitors Antitrust Litigation*, case number 3:14-cv-03264-JD, U.S. District Court for the Northern District of California.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

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

2.2 Motions Seeking Approval of Notice and Certification or Authorization

- (1) Subject to subsection 2.2(2), the Plaintiffs shall bring motions before the Courts, as soon as practicable after the Execution Date, but no later than one hundred and eighty (180) days after the Execution Date, for orders approving the Notice of Certification and of Approval Hearings and certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding as against the Settling Defendants (for settlement purposes only).
- (2) The Ontario order approving the Notice of Certification and of Approval Hearings described in subsection 2.2(1) and certifying the Ontario Action for settlement purposes shall be proposed to the Ontario Court substantially in the form attached as Schedule "B". The form and content of the Québec and BC orders approving the Notice of Certification and of Approval Hearings described in subsection 2.2(1) and authorizing or certifying the Québec and BC Actions for settlement purposes shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "B", as may be modified by the Ontario Court.

2.3 Motions Seeking Approval of the Settlement

- (1) As soon as practicable after the orders referred to in subsection 2.2(1) have been granted and the Notice of Certification and of Approval Hearings has been published and no later than sixty (60) days after the Opt-Out Deadline, the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.
- (2) The Ontario order approving this Settlement Agreement shall be proposed to the Ontario Court substantially in the form attached as Schedule "C". The Québec and BC orders approving this Settlement Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "C", as may be modified by the Ontario Court.
- (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 consent of Counsel for the Settling Defendants and Class Counsel, as the case may be, except to legal counsel or as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to the terms of this Settlement Agreement, or as otherwise required by law.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (1) Within thirty (30) days of the Execution Date, the Settling 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 in respect to the Released Claims, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.

- (4) Ontario Counsel or its duly appointed agent shall maintain the Trust Account as provided for in this Settlement Agreement.
- (5) Ontario Counsel or its duly appointed agent shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

3.2 Taxes and Interest

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

SECTION 4 - COOPERATION

4.1 Extent of Cooperation

- (1) Within thirty (30) days after the Execution Date, or at a time mutually agreed upon by the Parties acting reasonably, 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, including their U.S. Litigation counsel, which will set out the Settling Defendants' relevant and non-privileged information derived from their investigation and factual inquiries in respect of the matters at issue in the Proceedings, including information derived from business records, testimonial transcripts and employee or witness interviews (if applicable), including, without limitation:
 - (i) their knowledge of how the alleged conspiracy was formed, implemented and enforced;
 - (ii) the identification of "key" documents relevant to the alleged conspiracy and to the conduct of specific Defendants as requested and to the extent known, and, to the extent in the Settling Defendants' possession, the provision of copies of those documents to Class Counsel;
 - (iii) answers to Class Counsel's questions concerning the conduct and involvement of specific Defendants, to the extent known, in the alleged conspiracy; and
 - (iv) disclose to Class Counsel the identities and any known particulars of the Settling Defendants' key former officers, directors and employees who witnessed and/or participated in the alleged conspiracy.
 - (b) The location of the oral evidentiary proffer shall be San Francisco, California.
- (2) Within sixty (60) days after the Execution Date, or at a time mutually agreed upon by the Parties acting reasonably, the Settling Defendants shall provide to Class Counsel:
- (a) copies of all Documents, together with any pre-existing translations of those Documents, produced by the Settling Defendants to the Canadian Competition Bureau, the U.S. Department of Justice and/or in the U.S. Litigation, all to be provided in electronic form if available. Such documents will include transaction data produced in the U.S. Litigation, which includes transaction data that has "bill to" and "ship to" addresses of customers including those in Canada, as well as evidence concerning the alleged conspiracy as among the defendants;

- (b) all deposition transcripts for depositions given by the Settling Defendants in the U.S. Litigation, including deposition transcripts of any future depositions given by the Settling Defendants in the U.S. Litigation, all to be provided in electronic form if available;
 - (c) U.S. Litigation Documents will, to the extent possible, be produced with the same document numbers utilized in the U.S. Litigation;
- (3) Within (90) days after the Effective Date, or at a time mutually agreed upon by the Parties acting reasonably, the Settling Defendants shall:
 - (a) make available, upon reasonable notice and subject to any legal restrictions, a current employee of TOKIN Corporation with relevant knowledge, with a translator, if necessary, for a personal interview with Class Counsel and/or experts retained by Class Counsel at a mutually convenient time for two full days. The witness will make reasonable efforts to inform him or herself about the alleged conspiracy, and the Settling Defendants will make reasonable efforts to extensively prepare and educate the witness about the alleged conspiracy and relevant facts, including how the overall alleged conspiracy worked, the identity of the Settling Defendants' core Electrolytic Capacitor customers (globally and in Canada), and those downstream product(s) to which Electrolytic Capacitors were incorporated. The interview may be recorded by a court reporter under oath, provided the Plaintiffs so elect, and provided reasonable advanced notice of no less than thirty (30) days is given to the Settling Defendants. The witness shall be made available at a location to be mutually agreed upon having respect for the cost to the Settling Defendants. Costs incurred by, and the expenses of, the employees of the Settling Defendants in relation to such interviews, including any cost for a translator and/or court reporter, shall be the responsibility of the Settling Defendants; and,
- (4) The Settling Defendants agree to authenticate any of their documents produced in accordance with subsection 4.1(2) to the extent the Settling Defendants can establish their authenticity and that the Plaintiffs require their authentication for their admission and use at any point in the Proceedings.
- (5) The obligation to produce and authenticate Documents produced pursuant to subsection 4.1(2) shall be a continuing one to the extent that additional Documents are provided by

the Settling Defendants to the Canadian Competition Bureau, the U.S. Department of Justice or in the context of the U.S. Litigation regarding Electrolytic Capacitors which is at issue in the Proceedings. Class Counsel and the Plaintiffs shall, in reference to this continuing obligation, consult with Counsel for the Settling Defendants and seek to utilize the least burdensome, costly and intrusive means for the Settling Defendants to discharge their obligation under this provision.

- (6) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants, or any representative or employee of the Settling Defendants, to disclose or produce any Documents or information that is legally privileged or to disclose or produce any Documents or information in breach of any order, non-disclosure or confidentiality obligation, regulatory directive, rule or law of this or any jurisdiction, it being understood and agreed that no non-disclosure or confidentiality obligation applies or shall apply to prevent the productions contemplated by section 4.1(2).
- (7) If any of the Documents referenced in 4.1(6) are accidentally or inadvertently disclosed or produced, 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.
- (8) The obligations of the Settling Defendants to cooperate as particularized in this 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.
- (9) If the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement or set aside the approval of the Settlement Agreement or a part thereof, and may exercise any rights they have to seek or obtain testimony, discovery, information or Documents from current officers, directors and/or employees of the Settling Defendants.
- (10) Subject to subsection 4.1(9), the provisions set forth in this subsection 4.1 are the exclusive means by which the Plaintiffs and Class Counsel may obtain discovery, information or Documents from the Settling Defendants and other Releasees, including

the officers, directors or employees of the Settling Defendants and other Releasees as at the Effective Date, and the Plaintiffs and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Settling Defendants and the other Releasees or their current officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

- (11) For greater clarity, the Plaintiffs do not in any case waive any rights they have to seek or obtain testimony, discovery, information or Documents from those officers, directors and/or employees of the Settling Defendants and other Releasees who, as at the Effective Date, are former officers, directors and/or employees of the Settling Defendants and other Releasees, and for the purpose of subsection 4.1(10), the term "Releasees" does not include KEMET Corporation, KEMET Electronics Corporation and the former officers, directors and/or employees of the Settling Defendants.
- (12) 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 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 and other Releasees.

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 under this Settlement Agreement, shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are publicly available. The Plaintiffs and Class Counsel agree they will not disclose the Documents and information provided by the Settling Defendants except: (i) to experts, consultants or third-party service providers retained by them in connection with the Proceedings who have agreed to comply with the provisions of this Settlement Agreement and any confidentiality orders issued pursuant to subsection 4.2(2); (ii) to the extent that the documents or information are publicly available; (iii) as evidence in the Proceedings; or (iv) as otherwise required by law. Subject to the foregoing, the Plaintiffs and Class Counsel shall take reasonable precautions to ensure and maintain

the confidentiality of such Documents and information, and of any work product of Class Counsel that discloses such Documents and information, except to the extent that the Documents and information are publicly available.

- (2) If the Plaintiffs intend to produce for discovery or file in the Proceedings any Documents or other information provided by the Settling Defendants as cooperation under the Settlement Agreement, the Plaintiffs 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 the Settling Defendants so move, the Plaintiffs shall not oppose the position taken by the Settling Defendants. The Plaintiffs and Class Counsel shall not disclose the confidential Documents or information until the Settling Defendants' motion has been decided and all applicable appeal periods have expired, except, so as not to delay prosecution of the Proceedings, Class Counsel may provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree that they will keep the Documents or information on an external counsel only basis as appropriate until the Settling Defendants' motion has been decided and all applicable appeal periods have expired.
- (3) In the event that a Person applies for an order requiring the Plaintiffs to disclose or produce any Documents or information provided by the Settling Defendants as cooperation under this Settlement Agreement, the Plaintiffs shall notify the Settling Defendants of such application promptly upon becoming aware of it and no later than ten (10) days after disclosure or production is sought, in order that the Settling Defendants may move to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production.

4.3 Intervention in the U.S. Litigation

- (1) In the event that the Settling Defendants receive notice of further depositions of their current or former employees in the U.S. Litigation, the Settling Defendants will notify the Plaintiffs of the dates of these depositions being scheduled. The Settling Defendants and other Releasees shall not oppose any application that may be brought by or on behalf of the Plaintiffs to intervene in the U.S. Litigation in order to gain access to discovery, depositions, documents and other Documents and information subject to a protective

order that are relevant to the Proceedings and is not otherwise inconsistent with the terms of this Settlement Agreement, including subsection 4.1(10). However it is understood and agreed that neither the Settling Defendants nor the other Releasees have any obligation to bring or otherwise participate in such an application. For greater certainty, for the purpose of this subsection 4.3(1), the term "Releasees" does not include KEMET Corporation or KEMET Electronics Corporation.

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 of Certification and of Approval Hearings.
- (2) An election to opt-out will only be effective if it is received by Class Counsel or their duly appointed agent on or before the Opt-Out Deadline.
- (3) Notwithstanding subsections 6.1(1) and 6.1(2), members of the Québec Settlement Class who wish to opt-out may also do so by informing the clerk of the Québec 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; and
 - (b) a statement to the effect that the Person wishes to be excluded from the Proceedings.

- (5) Members of the Québec Settlement Class who have commenced or commence proceedings against any of the Defendants with respect to the matters at issue in the Québec 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 Releasers forever and absolutely release and forever discharge the Releasees from the Released Claims.

7.2 Covenant Not to Sue

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

7.3 No Further Claims

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

Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendants or unnamed co-conspirator that is not a Releasee. For greater certainty, nothing in this subsection limits the Plaintiffs' or Class Counsel's right to institute any action or continue the Proceedings against KEMET Corporation and KEMET Electronics Corporation for claims that are not Released Claims in this Settlement Agreement. For the purposes of this subsection 7.3(1), Class Counsel includes anyone currently employed by or a partner with Class Counsel.

- (2) Subsection 7.3 shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia* by refraining from participation or involvement in any claim or action in a British Columbia court.

7.4 Dismissal of the Proceedings

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

7.5 Dismissal of Other Actions

- (1) Upon the Effective Date, each member of the Ontario Settlement Class and BC Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (2) Upon the Effective Date, all Other Actions commenced in British Columbia or Ontario by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.
- (3) Each person who would have been a member of the Québec 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 Québec by a person who would have been a member of the Québec 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.
- (5) For greater certainty, the consents and dismissals referred to in subsections 7.5(1) to 7.5(4) apply to KEMET Corporation and KEMET Electronics Corporation only in respect of Released Claims advanced in Other Actions.

7.6 Obligation of Class Counsel Regarding Released Claims and Other Actions

- (1) If, at any time after the Effective Date, Class Counsel becomes aware of any steps being taken in any Other Actions to advance, prosecute or litigate Released Claims against one or more of the Releasees, Class Counsel shall, on notice to the Settling Defendants seek prompt and appropriate case management steps in order to uphold this Settlement Agreement and to otherwise prevent interference with the progress of the Proceedings.

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

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

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

- (iv) the Ontario Court and the BC Court, as applicable, shall have full authority to determine the Proportionate Liability relating to the Released Claims of the Releasees at the trial or other disposition of the Ontario Action or BC Action, as applicable, and the Proportionate Liability relating to the Released Claims of the Releasees shall be determined as if the Releasees are parties to the Ontario Action or BC Action, as applicable, against whom claims for contribution and indemnity or other claims over were made on a timely basis, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action or BC Action, as applicable, and shall not be binding on the Releasees in any other proceeding.

- (b) A provision that if the Ontario Court or BC Court, as applicable, ultimately determines that the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees in respect of the Released Claims, 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 Settlement Class or BC Settlement Class, as applicable, in the Ontario Action or BC Action, as applicable.

- (c) A provision that a Non-Settling Defendant may, on motion to the Ontario Court or BC Court, as applicable, determined as if the Settling Defendants remained party to the Ontario Action 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 certified and all appeals or times to appeal have been exhausted, seek Orders for the following:

 - (i) documentary discovery and an affidavit of documents (list of documents in British Columbia) from the Settling 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.
- (d) A provision that the Settling Defendants retain all rights to oppose such motion(s) brought pursuant to subsection 8.1(1)(c). 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)(c). Notwithstanding any provision in the Ontario and British Columbia orders approving this Settlement Agreement, on any motion brought pursuant to subsection 8.1(1)(c), the Ontario Court or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.
- (e) A provision that a Non-Settling Defendant may serve the motion(s) referred to in subsection 8.1(1)(c) on the Settling Defendants by service on Counsel for the Settling Defendants in the relevant Proceeding.
- (2) To the extent that such an order is granted pursuant to subsection 8.1(1)(c) and discovery is provided to the Non-Settling Defendants, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendants(s).

8.2 Québec Waiver or Renunciation of Solidarity Order

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

- (a) the Québec Plaintiff and the Québec Settlement Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees relating to the Released Claims;
- (b) the Québec Plaintiff and the Québec Settlement Class shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to 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. Notwithstanding the fact that KEMET Corporation and KEMET Electronic Corporation are Non-Settling Defendants, the Québec Plaintiff and the Québec Settlement Class are not entitled to claim and recover damages in respect of the Released Claims of KEMET Corporation and KEMET Electronics Corporation;
- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees relating to the Released Claims shall be inadmissible and void in the context of the Québec Action; 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*.

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 Releasees, or of the truth of any of the claims or allegations contained in the Proceedings, or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

9.2 Agreement Not Evidence

- (1) The 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 OR 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, and such certification or authorization shall not be used or relied on as against the Defendants for any other purpose or in any other proceeding.
- (2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Ontario Settlement Class, the Québec Settlement Class and the BC Settlement Class.
- (3) The Parties agree that the certification or authorization of the Proceedings as against the Settling 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) Notice of Certification and of Approval Hearings; and (ii) notice of termination (if the Settlement Agreement is terminated or otherwise fails to take effect).

11.2 Form and Distribution of Notices

- (1) The form of the notices referred to in subsection 11.1 and how and where they are published and distributed shall be as agreed to by the Plaintiffs and the Settling 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. This subsection does not apply to KEMET Corporation and KEMET Electronics Corporation in respect of fees, disbursements or

taxes incurred in the pursuit of any claims that are not Released Claims in the Settlement Agreement.

- (2) Class Counsel shall pay the costs of the notices required by subsection 11.1 and any costs of translation required by subsection 15.12 from the Trust Account, as they become due.
- (3) Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneously with seeking approval of this Settlement Agreement. Class Counsel's court-approved fees shall be paid after the Effective Date.
- (4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

SECTION 14 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

14.1 Right of Termination

- (1) In the event that:
 - (a) any Court declines to certify or authorize the Settlement Class;
 - (b) the Ontario Court or the BC Court declines to dismiss the Proceedings against the Settling Defendants who are named as Defendants or the Québec Action is not fully settled out of court as against the Settling Defendants who are named as Defendants;
 - (c) any Court declines to approve this Settlement Agreement or any material term thereof, and the Parties agree that the releases, bar orders, waiver or renunciation of solidarity and covenants not to sue contemplated by this Settlement Agreement are all material terms;
 - (d) any Court approves this Settlement Agreement in a materially modified form;
 - (e) the Parties acting reasonably do not reach agreement on the form and content of any order required by this Settlement Agreement, or the order agreed by the Parties is approved by a Court in a materially modified form; or

- (f) any order approving this Settlement Agreement made by the Courts do not become Final Orders;

the Settling Defendants and the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to subsection 15.18, within thirty (30) days following the event described above. Except as provided for in subsection 14.4, if the Settling Defendants or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

- (2) The Settling Defendants may also elect to terminate this Settlement Agreement in accordance with the terms of the Confidential Addendum, a copy of which will be provided by Class Counsel in a sealed envelope to the Ontario Court, BC Court and Québec Court at the Approval Hearings. If production or disclosure of the Confidential Addendum is sought prior to the Effective Date, Class Counsel will take all reasonably necessary and appropriate steps to resist production or disclosure of the Addendum, including seeking a sealing order that prevents the Confidential Addendum from forming part of the public record.
- (3) Any order, ruling or determination made by any Court with respect to Class Counsel Fees or the Distribution Protocol, shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

14.2 Effect of Non-Approval or Termination of Settlement Agreement

- (1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:
 - (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
 - (b) any order certifying or authorizing a Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;

- (c) any prior certification or authorization of a Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all Documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such Documents or other materials received from the Settling Defendants, including any notes or work product of Class Counsel, and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendants or related notes or work product of Class Counsel to any other Person, shall recover and destroy such Documents or material. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction within ten (10) days of termination.

14.3 Allocation of Settlement Amount Following Termination

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

14.4 Survival of Provisions After Termination

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of subsections 3.2(3), 9.1, 9.2, 11.1, 11.2, 14.2, 14.3, 14.4 15.5 and 15.6 and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of subsections 3.2(3), 9.1, 9.2, 11.1, 11.2, 14.2, 14.3, 14.4, 15.5 and 15.6 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 as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate specifically to matters affecting the Québec Action or the BC Action shall be determined by the Ontario Court.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties 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, the act may be done on the next day that is not a holiday.

15.5 Ongoing Jurisdiction

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

15.6 Governing Law

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

15.7 Entire Agreement

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

15.8 Amendments

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

15.9 Binding Effect

- (1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling 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 the Courts, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement

Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

15.13 Transaction

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

15.14 Recitals

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

15.15 Schedules and Confidential Addendum

- (1) The Schedules annexed hereto, together with the Confidential Addendum, 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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**SCHEDULE “A”
PROCEEDINGS**

Proceeding	Plaintiff(s)	Defendants	Settlement Class
<p>Ontario Superior Court of Justice Court File No. 3795/14 CP (the “Ontario Action”)</p>	<p>Cygnus Electronics Corporation and Sean Allott</p>	<p>Panasonic Corporation; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd.; NEC Tokin Corporation; NEC Tokin America Inc.; KEMET Corporation; KEMET Electronics Corporation; Nippon Chemi-Con Corporation; United Chemi-Con Corporation; Hitachi Chemical Co., Ltd.; Hitachi Chemical Company America, Ltd.; Hitachi Chemical Co., Ltd.; Hitachi Canada; Nichicon Corporation; Nichicon (America) Corporation; AVX Corporation; Rubycon Corporation; Rubycon America Inc.; Elna Co., Ltd.; Elna America Inc.; Matsuo Electric Co., Ltd.; Toshin Kogyo Co., Ltd.; Samsung Electro-Mechanics; Samsung Electro-Mechanics America Inc.; Samsung Electronics Canada Inc.; ROHM Co., Ltd.; ROHM Semiconductor U.S.A., LLC; Hitachi AIC Inc.; Hitachi Chemical Electronics Co., Ltd.; FPCAP Electronics (Suzhou) Co., Ltd.; Fujitsu Ltd.; Fujitsu Canada, Inc.; Holy Stone Enterprise Co., Ltd.; Vishay Polytech Co., Ltd. f/k/a Holystone Polytech Co., Ltd.; Milestone Global Technology, Inc. d/b/a Holystone International; Holy Stone Holdings Co., Ltd.</p>	<p>All Persons in Canada who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Class Period other than (1) all BC Settlement Class members (2) all Québec Settlement Class members and (3) Excluded Persons.</p>
<p>Québec Superior Court (District of Montreal), File No. 500-06-000704-144 (the “Québec Action”)</p>	<p>Option consommateurs and Louis-Alexandre LeClaire</p>	<p>Panasonic Corporation; Sanyo Electric Group Ltd.; KEMET Corporation; NEC Tokin Corporation; Taiyo Yuden Co., Ltd.; Nippon Chemi-Con Corporation; Hitachi Chemical Co. Ltd.; Nichicon Corporation; Hitachi AIC Inc.; Elna Co. Ltd.; Holy Stone Enterprise Co., Ltd.; Matsuo Electric Co., Ltd.; Rohm Co., Ltd.; Rubycon Corporation; Toshin Kogyo Co., Ltd.</p>	<p>All Persons in Québec who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Class Period except Excluded Persons.</p>

Proceeding	Plaintiff(s)	Defendants	Settlement Class
<p>British Columbia Supreme Court (Vancouver Registry) Court File No. S-146293 (the "BC Action")</p>	<p>Sara Ramsay</p>	<p>Panasonic Corporation f/k/a/ Matsushita Electric Industrial Co., Ltd.; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd.; Sanyo Electronic Device (U.S.A.) Corp.; Sanyo North America Corporation; Taiyo Yuden Co., Ltd.; Taiyo Yuden (USA) Inc.; NEC Tokin Corporation; NEC Tokin America, Inc.; KEMET Electronics Corporation; Nippon Chemi-Con Corporation; United Chemi-Con, Inc.; Hitachi Chemical Co., Ltd.; Hitachi AIC Inc.; Hitachi Chemical Co. America, Ltd.; Hitachi Canada; Fujitsu Ltd.; Fujitsu Canada, Inc.; Nichicon Corporation; FPCAP Electronics (Suzhou) Co., Ltd.; Nichicon (America) Corporation; AVX Corporation; Rubycon Corporation; Rubycon America Inc.; Elna Co., Ltd.; Elna America Inc.; Matsuo Electric Co., Ltd.; Toshin Kogyo Co., Ltd.; Holy Stone Enterprise Co., Ltd.; Milestone Global Technology, Inc. d.b.a Holystone International; Vishay Intertechnology, Inc.; Vishay Polytech Co., Ltd. f/k/a/ Holy Stone Polytech Co., Ltd.; Samsung Electro-Mechanics; Samsung Electro-Mechanics America Inc.; Samsung Electronics Canada Inc.; ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC</p>	<p>All Persons in British Columbia who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Class Period except Excluded Persons.</p>