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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE CAPACITORS ANTITRUST
LITIGATION**

Case No. 3:14-cv-03264-JD

SETTLEMENT AGREEMENT

This Document Relates to:
Indirect Purchaser Actions

Settlement Agreement; Case No. 3:14-cv-03264-JD

1 This Settlement Agreement (“Settlement Agreement”) is made and entered into this 15th
2 day of July, 2016, by and among Defendant NEC TOKIN Corp. and NEC TOKIN America, Inc.
3 and Indirect Purchaser Plaintiffs, both individually and on behalf of Classes in the above captioned
4 class action. This Settlement Agreement is intended by the Settling Parties to fully, finally and
5 forever resolve, discharge and settle the Released Claims, upon and subject to the terms and
6 conditions hereof.

7 **RECITALS**

8 WHEREAS, Indirect Purchaser Plaintiffs are prosecuting the above-captioned action (the
9 “Class Action”) on their own behalf and on behalf of Classes against, among others, NEC TOKIN
10 and other Defendants and alleged co-conspirators;

11 WHEREAS, Indirect Purchaser Plaintiffs allege, among other things, that NEC TOKIN
12 violated the antitrust and consumer protection laws by conspiring to fix, raise, maintain or stabilize
13 the prices of Electrolytic Capacitors; and these acts caused the Classes to incur damages;

14 WHEREAS, NEC TOKIN has denied and continues to deny each and all of Indirect
15 Purchaser Plaintiffs’ claims and allegations of wrongdoing; has not conceded or admitted any
16 liability, or that it violated or breached any law, regulation, or duty owed to the Indirect Purchaser
17 Plaintiffs; has denied and continues to deny all charges of wrongdoing or liability against it arising
18 out of any of the conduct, statements, acts or omissions alleged in the Actions; and further denies
19 the allegations that the Indirect Purchaser Plaintiffs or any member of the Classes were harmed by
20 any conduct by NEC TOKIN alleged in the Actions or otherwise;

21 WHEREAS, Indirect Purchaser Plaintiffs and Defendants have engaged in extensive
22 discovery regarding the facts pertaining to Indirect Purchaser Plaintiffs’ claims and Defendants’
23 defenses;

24 WHEREAS, Indirect Purchaser Plaintiffs and NEC TOKIN agree that neither this
25 Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or
26 construed to be an admission or evidence of any violation of any statute or law or of any liability or

1 wrongdoing by NEC TOKIN or of the truth of any of the claims or allegations alleged in the
2 Actions;

3 WHEREAS, Indirect Purchaser Plaintiffs' Class Counsel have concluded, after due
4 investigation and after carefully considering the relevant circumstances, including, without
5 limitation, the claims asserted in the Indirect Purchaser Plaintiffs' Fourth Consolidated Complaint
6 filed in Docket No. 3:14-cv-03263-JD, the legal and factual defenses thereto and the applicable law,
7 that it is in the best interests of the Indirect Purchaser Plaintiffs and the Classes to enter into this
8 Settlement Agreement to avoid the uncertainties of litigation and to assure that the benefits reflected
9 herein are obtained for the Indirect Purchaser Plaintiffs and the Classes, and, further, that Indirect
10 Purchaser Plaintiffs' Class Counsel consider the Settlement set forth herein to be fair, reasonable
11 and adequate and in the best interests of the Indirect Purchaser Plaintiffs and the Classes;

12 WHEREAS, NEC TOKIN has concluded, despite its belief that it is not liable for the claims
13 asserted against it in the Actions and that it has good defenses thereto, that it will enter into this
14 Settlement Agreement in order to avoid further expense, inconvenience, and the distraction of
15 burdensome and protracted litigation, and thereby to put to rest this controversy with respect to the
16 Indirect Purchaser Plaintiffs and the Classes and avoid the risks inherent in complex litigation; and

17 WHEREAS, arm's length settlement negotiations have taken place between counsel for
18 Indirect Purchaser Plaintiffs and NEC TOKIN, including with the assistance of a nationally-
19 recognized neutral third party mediator (Hon. Ret. Judge Layn Phillips), and this Settlement
20 Agreement, which embodies all of the terms and conditions of the Settlement between the Settling
21 Parties, both individually and on behalf of the Classes, has been reached as a result of the Settling
22 Parties' negotiations (subject to the approval of the Court) as provided herein and is intended to
23 supersede any prior agreements between the Settling Parties.

24 **AGREEMENT**

25 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
26 Settling Parties, by and through their undersigned attorneys of record, in consideration of the

1 covenants, agreements, and releases set forth herein and for other good and valuable consideration,
2 that the Actions and the Released Claims as against NEC TOKIN shall be finally and fully settled,
3 compromised and dismissed on the merits and with prejudice, without costs as to Indirect Purchaser
4 Plaintiffs, the Classes, or NEC TOKIN, upon and subject to the approval of the Court, following
5 notice to the Class, on the following terms and conditions:

6 **A. Definitions**

7 1. As used in this Settlement Agreement the following terms shall have the meanings
8 specified below:

9 (a) "Action" or "Actions" means *In re Capacitors Antitrust Litigation* – All Indirect
10 Purchaser Actions, Case No. 3:14-cv-03264-JD, and each of the cases brought on behalf of indirect
11 purchasers that have been consolidated and/or included as part of Docket No. 3:14-cv-03264-JD.

12 (b) "Affiliates" means entities controlling, controlled by or under common control with any
13 Person.

14 (c) "Authorized Claimant" means any Indirect Plaintiff Purchaser who, in accordance with
15 the terms of this Settlement Agreement, is entitled to a distribution consistent with any Distribution
16 Plan or order of the Court ordering distribution to the Classes.

17 (d) "Capacitors" means electronic components that store electric charges between one or
18 more pairs of conductors separated by an insulator. It includes electrolytic, aluminum, tantalum, and
19 film capacitors.

20 (e) "Claims Administrator" means the claims administrator(s) to be selected by Class
21 Counsel.

22 (f) "Class" or "Classes" is generally defined as all persons and entities in the United States
23 who, during the period from April 1, 2002 to the Execution Date, purchased directly from a
24 distributor one or more Capacitor(s) that a Defendant manufactured. Excluded from the Classes are
25 Defendants, their parent companies, subsidiaries and Affiliates, any co-conspirators, Defendants'

1 attorneys in this case, federal government entities and instrumentalities, states and their
2 subdivisions, all judges assigned to this case, and all jurors in this case.

3 (g) "Class Counsel" means the law firm of Cotchett, Pitre & McCarthy, LLP.

4 (h) "Class Member" means a Person who falls within the definition of the Classes and who
5 does not timely and validly elect to be excluded from the Classes in accordance with the procedure
6 to be established by the Court.

7 (i) "Court" means the United States District Court for the Northern District of California.

8 (j) "Defendants" means Hitachi Chemical Co., Ltd., Hitachi AIC Inc., Hitachi Chemical
9 Co. America, Ltd., Nippon Chemi-Con Corp., United Chemi-Con, Inc., Rubycon Corp., Rubycon
10 America Inc., Panasonic Corp., Panasonic Corp. of North America, SANYO Electric Co., Ltd.,
11 SANYO Electronic Device (U.S.A.) Corp., Elna Co., Ltd. and Elna America Inc., Matsuo Electric
12 Co., Ltd., NEC TOKIN Corp., NEC TOKIN America Inc., Nichicon Corp., Nichicon America
13 Corp., Fujitsu Media Devices, Ltd., Nissei Electric Co., Ltd., Nitsuko Electronics Corp., Okaya
14 Electric Industries Co., Ltd., Shinyei Technology Co., Ltd., Shinyei Capacitor Co., Ltd., Soshin
15 Electric Co., Ltd., Taitso Corp., and Toshin Kogyo Co., Ltd.

16 (k) "Distribution Plan" means any plan or formula of allocation of the Gross Settlement
17 Fund, to be approved by the Court, whereby the Net Settlement Fund shall in the future be
18 distributed to Authorized Claimants.

19 (l) "Document" is synonymous in meaning and equal in scope to the usage of this term in
20 Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A
21 draft or non-identical copy is a separate document within the meaning of this term.

22 (m) "Effective Date" means the first date by which all of the following events and
23 conditions have been met or have occurred:

- 24 (i) All parties have executed this Settlement Agreement;
- 25 (ii) The Court has preliminarily approved this Settlement Agreement;
- 26 (iii) Notice has been provided to the Classes in a manner approved by the Court;

1 (iii) The Court has entered a Final Judgment; and
2 (iv) The Final Judgment has become final, with the occurrence of the following:
3 (a) the entry by the Court of a final order approving this Settlement Agreement under Rule 23(e) of
4 the Federal Rules of Civil Procedure together with entry of a final judgment dismissing the Class
5 Action and all claims therein against NEC TOKIN with prejudice as to Indirect Purchaser Plaintiffs
6 and all Class Members (the "Final Judgment"), and (b) the expiration of the time for appeal or to
7 seek permission to appeal from the Court's approval of this Settlement Agreement and entry of the
8 Final Judgment or, if an appeal from an approval and Final Judgment is taken, the affirmance of
9 such Final Judgment in its entirety, without modification, by the court of last resort to which an
10 appeal of such Final Judgment may be taken, provided, however, a modification or reversal on
11 appeal of any amount of Class Counsel's fees and expenses awarded by the Court from the Gross
12 Settlement Fund or any plan of allocation or distribution of the Gross Settlement Fund shall not be
13 deemed a modification of all or part of the terms of this Settlement Agreement or the Final
14 Judgment. Neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All
15 Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

16 (n) "Electrolytic Capacitor" means a capacitor that uses an electrolyte (an ionic conducting
17 liquid) as one of its plates to achieve a relatively larger capacitance per volume. It includes the
18 following: circular polymer aluminum electrolytic capacitors, rectangular polymer aluminum
19 capacitors, manganese tantalum capacitors, rectangular polymer tantalum capacitors, non-polymer
20 aluminum electrolytic capacitors, and non-polymer electrolytic double-layer capacitors.

21 (o) "Escrow Agent" means the agent jointly designated by Class Counsel and NEC TOKIN,
22 and any successor agent.

23 (p) "Execution Date" means July 15, 2016, the date by which all parties have executed this
24 Settlement Agreement.

25 (q) "Final" means, with respect to any order of court, including, without limitation, the
26 Judgment, that such order represents a final and binding determination of all issues within its scope
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1 and is not subject to further review on appeal or otherwise. Without limitation, an order becomes
2 “Final” when: (a) no appeal has been filed and the prescribed time for commencing any appeal has
3 expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the
4 prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been
5 affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has
6 expired. For purposes of this Settlement Agreement, an “appeal” includes appeals as of right,
7 discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus,
8 and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any
9 order adopting or approving a Distribution Plan, and/or to any order issued in respect of an
10 application for attorneys’ fees and expenses consistent with this Settlement Agreement, shall not in
11 any way delay or preclude the Judgment from becoming Final.

12 (r) “Gross Settlement Fund” means the Settlement Amount plus any interest that may
13 accrue.

14 (s) “Indirect Purchaser Plaintiffs” means the Plaintiffs listed in the Indirect Purchasers’
15 Fourth Consolidated Complaint ¶¶ 29-39.

16 (t) “Judgment” means the order of judgment and dismissal of the Actions with prejudice
17 against NEC TOKIN.

18 (u) “Net Settlement Fund” means the Gross Settlement Fund, less the payments set forth in
19 ¶ 20.

20 (v) “NEC TOKIN” means NEC TOKIN Corporation and NEC TOKIN America, Inc.

21 (w) “Notice and Administrative Costs” means the reasonable sum of money not in excess of
22 \$350,000.00 to be paid out of the Gross Settlement Fund to pay for notice to the Classes and related
23 administrative costs.

24 (x) “Person(s)” means an individual, corporation, limited liability corporation, professional
25 corporation, limited liability partnership, partnership, limited partnership, association, joint stock
26 company, estate, legal representative, trust, unincorporated association, government or any political
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1 subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors,
2 successors, representatives or assignees of any of the foregoing.

3 (y) "Proof of Claim and Release" means the form, to be approved by further order(s) of the
4 Court, by which any member of the Classes may make claims against the Gross Settlement Fund.

5 (z) "Released Claims" means any and all manner of claims, demands, rights, actions, suits,
6 causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, injuries,
7 damages whenever incurred, liabilities of any nature whatsoever, known or unknown (including,
8 but not limited to, Unknown Claims), foreseen or unforeseen, suspected or unsuspected, asserted or
9 unasserted, contingent or non-contingent, in law or in equity, under the laws of any jurisdiction,
10 which Releasors or any of them, whether directly, representatively, derivatively, or in any other
11 capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct
12 prior to the Execution Date and arising out of or related in any way in whole or in part to any facts,
13 circumstances, acts, or omissions arising out of or related to (1) the purchase, pricing, selling,
14 discounting, marketing, manufacturing and/or distributing of Capacitors in the United States and its
15 territories or for delivery in the United States and its territories; (2) any agreement, combination or
16 conspiracy to raise, fix, maintain or stabilize the prices of Capacitors or restrict, reduce, alter or
17 allocate the supply, quantity or quality of Capacitors or concerning the development, manufacture,
18 supply, distribution, transfer, marketing, sale or pricing of Capacitors, or any other restraint of
19 competition alleged in the Action or that could have been or hereafter could be alleged against the
20 Releasees relating to Capacitors, or (3) any other restraint of competition relating to Capacitors that
21 could be asserted as a violation of the Sherman Act or any other antitrust, unjust enrichment, unfair
22 competition, unfair practices, trade practices, price discrimination, unitary pricing, racketeering,
23 civil conspiracy or consumer protection law, whether under federal, state, local or foreign law.

24 (aa) "Releasees" refers jointly and severally, individually and collectively to NEC TOKIN
25 Corporation and NEC TOKIN America, Inc., their Affiliates and joint ventures (other than the
26 shareholders of NEC TOKIN Corporation and the parents of the shareholders of NEC TOKIN

1 Corporation), their respective past and present officers, directors, employees, managers, members,
2 partners, agents, attorneys and legal representatives, assigns, servants, and representatives, and the
3 predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, but
4 excluding Defendants other than NEC TOKIN Corporation and NEC TOKIN America, Inc. and
5 any current or former NEC TOKIN officer, director, employee, agent, affiliate or joint venture that
6 fails to cooperate with Indirect Purchaser Plaintiffs.

7 (bb) "Releasers" refers jointly and severally, individually and collectively to the Indirect
8 Purchaser Plaintiffs and each and every member of the Settlement Class on their own behalf and on
9 behalf of their respective past, present, and/or future direct and indirect parents, members,
10 subsidiaries and Affiliates, and their past, present and/or future officers, directors, employees,
11 agents, attorneys and legal representatives, servants, and representatives, and the predecessors,
12 successors, heirs, executors, administrators and assigns of each of the foregoing.

13 (cc) "Settlement" means the settlement of the Released Claims set forth herein.

14 (dd) "Settlement Amount" means Thirteen Million and Two Hundred Fifty Thousand U.S.
15 Dollars (\$13,250,000).

16 (ee) "Settlement Class" means all persons and entities in the United States who from
17 April 1, 2002 through the Execution Date purchased directly from a distributor one or more
18 Electrolytic Capacitor(s) manufactured by a defendant (or the current or former subsidiary of any
19 such defendant) alleged to have participated in a conspiracy described in the Indirect Purchaser
20 Plaintiffs' Fourth Consolidated Complaint (Dkt. 1111-4) with respect to Electrolytic Capacitors.

21 (ff) "Settling Parties" means, collectively, the Indirect Purchaser Plaintiffs (on behalf of
22 themselves and the Classes) and NEC TOKIN.

23 (gg) "Unknown Claims" means any Released Claim that an Indirect Purchaser Plaintiff
24 and/or Class Member does not know or suspect to exist in his, her or its favor at the time of the
25 release of the Releasees that if known by him, her or it, might have affected his, her or its settlement
26 with and release of the Releasees, or might have affected his, her or its decision not to object to this

1 Settlement. Such Unknown Claims include claims that are the subject of California Civil Code
2 § 1542 and equivalent, similar or comparable laws or principles of law. California Civil Code
3 § 1542 provides:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
5 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
6 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
7 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

8 **B. Preliminary Approval Order, Notice Order and Settlement Hearing**

9 2. *Reasonable Best Efforts to Effectuate this Settlement.* The Settling Parties: (a)
10 acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree to
11 cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions
12 of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms
13 and conditions of this Settlement Agreement.

14 3. *Motion for Preliminary Approval.* At a time to be determined by Class Counsel, Class
15 Counsel shall submit this Settlement Agreement to the Court and shall apply for entry of a
16 Preliminary Approval Order, requesting, inter alia, preliminary approval of the Settlement. The
17 motion shall include (a) the proposed Preliminary Approval Order, and (b) a definition of the
18 proposed Settlement Classes, defined at §A (1) (ee) *supra*, pursuant to Federal Rule of Civil
19 Procedure 23.

20 4. *Proposed Notice.* At a time to be determined in their sole discretion, Class Counsel
21 shall submit to the Court for approval a proposed form of, method for and schedule for
22 dissemination of notice to the Classes. To the extent practicable and to the extent consistent with
23 this paragraph, Class Counsel may seek to coordinate this notice program with other settlements
24 that may be reached in the Action in order to reduce the expense of notice. This motion shall recite
25 and ask the Court to find that the proposed form of and method for dissemination of the notice to
26 the Class constitutes valid, due and sufficient notice to the Class, constitutes the best notice

1 practicable under the circumstances, and complies fully with the requirements of Federal Rule of
2 Civil Procedure 23. Except for as provided in §A (1) (w), Counsel for the Settlement Class shall be
3 responsible for arranging and paying for class notice, claims administration, and distribution of
4 settlement funds, and for obtaining any needed court approvals.

5 **5. *Claims Administrator.*** Indirect Purchaser Plaintiffs shall retain a Claims Administrator,
6 which shall be responsible for the claims administration process including distribution of the Gross
7 Settlement Fund to Class Members pursuant to a court-approved plan of distribution. The fees and
8 expenses of the Claims Administrator shall be paid exclusively out of the Gross Settlement Fund. In
9 no event shall NEC TOKIN be separately responsible for any fees or expenses of the Claims
10 Administrator.

11 **6. *Motion for Final Approval and Entry of Final Judgment.*** Not less than thirty five (35)
12 days prior to the date set by the Court to consider whether this Settlement should be finally
13 approved, Class Counsel shall submit a motion for final approval of the Settlement by the Court.
14 The Settling Parties shall jointly seek entry of the Final Approval Order and Judgment:

15 (a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely for
16 purposes of this Settlement;

17 (b) fully and finally approving the Settlement contemplated by this Settlement Agreement
18 and its terms as being fair, reasonable and adequate within the meaning of Federal Rule of Civil
19 Procedure 23 and directing its consummation pursuant to its terms and conditions;

20 (c) finding that the notice given to the Class Members constituted the best notice practicable
21 under the circumstances and complies in all respects with the requirements of Federal Rule of Civil
22 Procedure 23 and due process;

23 (d) directing that the Actions be dismissed with prejudice as to NEC TOKIN and, except as
24 provided for herein, without costs;

25 (e) discharging and releasing the Releasees from all Released Claims;

1 (f) permanently barring and enjoining the institution and prosecution, by Indirect Purchaser
2 Plaintiffs and Class Members, of any other action against the Releasees in any court asserting any
3 claims related in any way to the Released Claims;

4 (g) reserving continuing and exclusive jurisdiction over the Settlement, including all future
5 proceedings concerning the administration, consummation and enforcement of this Settlement
6 Agreement;

7 (h) expressly determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no
8 just reason for delay and directing entry of a Final Judgment as to NEC TOKIN; and

9 (i) containing such other and further provisions consistent with the terms of this Settlement
10 Agreement to which the parties expressly consent in writing.

11 **7. Stay Order.** Upon the date that the Court enters an order preliminarily approving the
12 Settlement, Indirect Purchaser Plaintiffs and members of the Classes shall be barred and enjoined
13 from commencing, instituting or continuing to prosecute any action or any proceeding in any court
14 of law or equity, arbitration tribunal, administrative forum or other forum of any kind worldwide
15 based on the Released Claims. Nothing in this provision shall prohibit the Indirect Purchaser
16 Plaintiffs or Class Counsel from continuing to participate in discovery in the Actions that is initiated
17 by other plaintiffs or that is subject to and consistent with the cooperation provisions set forth in
18 ¶¶30-36, *infra*.

19 **C. Releases**

20 **8. Released Claims.** Upon the Effective Date, the Releasors (regardless of whether any
21 such Releasor ever seeks or obtains any recovery by any means, including, without limitation, by
22 submitting a Proof of Claim and Release, any distribution from the Gross Settlement Fund) shall be
23 deemed to have, and by operation of the Judgment shall have fully, finally and forever released,
24 relinquished and discharged all Released Claims against all Releasees.

25 **9. No Future Actions Following Release.** The Releasors shall not, after the Effective Date,
26 seek (directly or indirectly) to commence, institute, maintain or prosecute any suit, action or
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1 complaint or collect from or proceed against NEC TOKIN or any other Releasee (including
2 pursuant to the Actions) based on the Released Claims in any forum worldwide, whether on his, her
3 or its own behalf or as part of any putative, purported or certified class of purchasers or consumers.

4 **10. *Covenant Not to Sue.*** Releasors hereby covenant not to sue the Releasees with respect
5 to any such Released Claims. Releasors shall be permanently barred and enjoined from instituting,
6 commencing or prosecuting against the Releasees any claims based in whole or in part on the
7 Released Claims. The Settling Parties contemplate and agree that this Settlement Agreement may
8 be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing any action from
9 being initiated or maintained in any case sought to be prosecuted on behalf of Indirect Purchaser
10 Plaintiffs with respect to the Released Claims.

11 **11. *Waiver of California Civil Code § 1542 and Similar Laws.*** The Releasors acknowledge
12 that, by executing this Settlement Agreement, and for the consideration received hereunder, it is
13 their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In
14 furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent
15 permitted by law, any rights or benefits conferred by the provisions of California Civil Code § 1542
16 or equivalent, similar or comparable laws or principles of law. The Releasors acknowledge that they
17 have been advised by Class Counsel of the contents and effects of California Civil Code § 1542,
18 and hereby expressly waive and release with respect to the Released Claims any and all provisions,
19 rights and benefits conferred by California Civil Code § 1542 or by any equivalent, similar or
20 comparable law or principle of law in any jurisdiction. The Releasors may hereafter discover facts
21 other than or different from those which they know or believe to be true with respect to the subject
22 matter of the Released Claims, but the Releasors hereby expressly waive and fully, finally and
23 forever settle and release any known or unknown, suspected or unsuspected, foreseen or
24 unforeseen, asserted or unasserted, contingent or non-contingent, and accrued or unaccrued claim,
25 loss or damage with respect to the Released Claims, whether or not concealed or hidden, without
26 regard to the subsequent discovery or existence of such additional or different facts. The release of

1 unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims in this paragraph
2 is not a mere recital.

3 **12. *Claims Excluded from Release.*** Notwithstanding the foregoing, the releases provided
4 herein shall not release claims against NEC TOKIN for product liability, breach of contract, breach
5 of warranty or personal injury, or any other claim unrelated to the allegations in the Actions of
6 restraint of competition or unfair competition with respect to Capacitors. Additionally, the releases
7 provided herein shall not release any claims to enforce the terms of this Settlement Agreement.

8 **D. Settlement Fund**

9 **13. *Settlement Payment.*** NEC TOKIN shall pay by wire transfer the Settlement Amount to
10 the Escrow Agent pursuant to mutually agreeable escrow instructions in four installments. The first
11 installment shall be paid on or before July 29, 2016, in the amount of \$5 million. The second
12 installment shall be paid on or before May 15, 2017, in the amount of \$2.75 million. The third
13 installment shall be paid on or before May 15, 2018, in the amount of \$2.75 million. The fourth
14 installment shall be paid on or before May 15, 2019, in the amount of \$2.75 million. This amount
15 constitutes the total amount of payment that NEC TOKIN is required to make in connection with
16 this Settlement Agreement. This amount shall not be subject to reduction, and upon the occurrence
17 of the Effective Date, no funds shall revert to NEC TOKIN except as provided herein. The Escrow
18 Agent shall only act in accordance with the mutually agreed escrow instructions.

19 **14. *Disbursements Prior to Effective Date.*** No amount may be disbursed from the Gross
20 Settlement Fund unless and until the Effective Date, except that: (a) Notice and Administrative
21 Costs, which may not exceed \$350,000, may be paid from the Gross Settlement Fund as they
22 become due; (b) Taxes and Tax Expenses (as defined in ¶18 below) may be paid from the Gross
23 Settlement Fund as they become due, and (c) attorneys' fees and reimbursement of litigation costs
24 may be paid as ordered by the Court, which may be disbursed during the pendency of any appeals
25 that may be taken from the judgment to be entered by the Court finally approving this Settlement.

1 **15. Refund by Escrow Agent.** If the Settlement as described herein is not finally approved
2 by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by
3 writ, the Gross Settlement Fund, including the Settlement Amount and all interest earned on the
4 Settlement Amount while held in escrow, excluding only Notice and Administrative Costs and
5 Taxes and/or Tax Expenses (as defined in ¶18 below), shall be refunded, reimbursed and repaid by
6 the Escrow Agent to NEC TOKIN within five (5) business days after receiving notice pursuant to
7 ¶42 below.

8 **16. Refund by Class Counsel.** If the Settlement as described herein is not finally approved
9 by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by
10 writ, any attorneys' fees and costs previously paid pursuant to this Settlement Agreement (as well
11 as interest on such amounts) shall be refunded, reimbursed and repaid by Class Counsel to NEC
12 TOKIN within thirty (30) business days after receiving notice pursuant to ¶42 below.

13 **17. No Additional Payments by NEC TOKIN.** Under no circumstances will NEC TOKIN
14 be required to pay more or less than the Settlement Amount pursuant to this Settlement Agreement
15 and the Settlement set forth herein. For purposes of clarification, the payment of any Fee and
16 Expense Award (as defined in ¶27 below), the Notice and Administrative Costs, and any other costs
17 associated with the implementation of this Settlement Agreement shall be exclusively paid from the
18 Settlement Amount.

19 **18. Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement
20 Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-
21 1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the
22 provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg.
23 §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the
24 procedures and requirements contained in such regulations. It shall be the responsibility of the
25 Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature
26 by all necessary parties, and thereafter to cause the appropriate filing to occur.

1 (a) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the
2 regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow
3 Agent shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2 by, e.g., (i)
4 obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding
5 requirements imposed on distributions from the Gross Settlement Fund, and (iii) timely and
6 properly filing applicable federal, state and local tax returns necessary or advisable with respect to
7 the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg.
8 §1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election
9 described in this paragraph) shall be consistent with the provisions of this paragraph and in all
10 events shall reflect that all Taxes as defined in ¶18(b) below on the income earned by the Gross
11 Settlement Fund shall be paid out of the Gross Settlement Fund as provided in ¶18(b) hereof;

12 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any
13 estimated taxes, interest or penalties) arising with respect to the income earned by the Gross
14 Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed
15 upon NEC TOKIN or its counsel with respect to any income earned by the Gross Settlement Fund
16 for any period during which the Gross Settlement Fund does not qualify as a “qualified settlement
17 fund” for federal or state income tax purposes (collectively, “Taxes”); and (ii) all expenses and
18 costs incurred in connection with the operation and implementation of this paragraph, including,
19 without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs
20 and expenses relating to filing (or failing to file) the returns described in this paragraph
21 (collectively, “Tax Expenses”). In all events neither NEC TOKIN nor its counsel shall have any
22 liability or responsibility for the Taxes or the Tax Expenses. With funds from the Gross Settlement
23 Fund, the Escrow Agent shall indemnify and hold harmless NEC TOKIN and its counsel for Taxes
24 and Tax Expenses (including, without limitation, Taxes payable by reason of any such
25 indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost
26 of administration of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of

1 the Gross Settlement Fund without prior order from the Court and the Escrow Agent shall be
2 obligated (notwithstanding anything herein to the contrary) to withhold from distribution to
3 Authorized Claimants any funds necessary to pay such amounts, including the establishment of
4 adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to
5 be withheld under Treas. Reg. §1.468B-2(1)(2)); neither NEC TOKIN nor its counsel is responsible
6 therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the
7 Escrow Agent, each other, their tax attorneys and their accountants to the extent reasonably
8 necessary to carry out the provisions of this paragraph.

9 **E. Administration and Distribution of Gross Settlement Fund**

10 19. *Time to Appeal.* The time to appeal from an approval of the Settlement shall commence
11 upon the Court's entry of the Judgment regardless of whether or not either the Distribution Plan or
12 an application for attorneys' fees and expenses has been submitted to the Court or resolved.

13 20. *Distribution of Gross Settlement Fund.* Upon further orders of the Court, the Claims
14 Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may
15 be necessary or as circumstances may require, shall administer the claims submitted by members of
16 the Classes and shall oversee distribution of the Gross Settlement Fund to Authorized Claimants
17 pursuant to the Distribution Plan. Subject to the terms of this Settlement Agreement and any
18 order(s) of the Court, except for the \$350,000 of the Gross Settlement Fund which may be used
19 towards notice to the class and the costs of administration on a non-refundable basis, Class Counsel
20 shall be responsible for the following:

21 (a) To pay all costs and expenses reasonably and actually incurred in connection with
22 providing notice to the Classes, administering and distributing the Gross Settlement Fund to
23 Authorized Claimants, and paying escrow fees and costs, if any;

24 (b) To pay all costs and expenses, if any, reasonably and actually incurred in soliciting
25 claims and assisting with the filing and processing of such claims;

26 (c) To pay the Taxes and Tax Expenses as defined herein;

1 (d) To pay any Attorney Fee and Expense Award that is allowed by the Court, subject to and
2 in accordance with this Settlement Agreement; and

3 (e) To distribute the balance of the Net Settlement Fund to Authorized Claimants as allowed
4 by this Settlement Agreement, any Distribution Plan or order of the Court.

5 **21. *Distribution of Net Settlement Fund.*** The Net Settlement Fund shall be distributed in
6 accordance with the Distribution Plan that is approved by the Court.

7 **22.** All Persons who fall within the definition of the Classes who do not timely and validly
8 request to be excluded from the Classes shall be subject to and bound by the provisions of this
9 Settlement Agreement, the releases contained herein, and the Judgment with respect to all Released
10 Claims, regardless of whether such Persons seek or obtain by any means, including, without
11 limitation, by submitting a Proof of Claim and Release or any similar document, any distribution
12 from the Gross Settlement Fund or the Net Settlement Fund.

13 **23. *No Liability for Distribution of Settlement Funds.*** Neither the Releasees nor their
14 counsel shall have any responsibility for, interest in or liability whatsoever with respect to the
15 distribution of the Gross Settlement Fund; the Distribution Plan; the determination, administration,
16 or calculation of claims; the Gross Settlement Fund's qualification as a "qualified settlement fund";
17 the payment or withholding of Taxes or Tax Expenses; the distribution of the Net Settlement Fund;
18 or any losses incurred in connection with any such matters. The Releasors hereby fully, finally and
19 forever release, relinquish and discharge the Releasees and their counsel from any and all such
20 liability. No Person shall have any claim against Class Counsel or the Claims Administrator based
21 on the distributions made substantially in accordance with this Settlement Agreement and the
22 Settlement contained herein, the Distribution Plan or further orders of the Court.

23 **24. *Balance Remaining in Net Settlement Fund.*** If after the Distribution Plan is executed
24 there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds,
25 uncashed checks or otherwise), Class Counsel may reallocate such a balance among Authorized
26 Claimants in an equitable and economic fashion, distribute the remaining funds through *cy pres*, or

1 allow the money to escheat to federal or state governments, subject to Court approval. In no event
2 shall the Net Settlement Fund revert to NEC TOKIN.

3 **25. *Distribution Plan Not Part of Settlement.*** It is understood and agreed by the Settling
4 Parties that any Distribution Plan, including any adjustments to any Authorized Claimant's claim, is
5 not a part of this Settlement Agreement and is to be considered by the Court separately from the
6 Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this
7 Settlement Agreement, and any order or proceedings relating to the Distribution Plan shall not
8 operate to terminate or cancel this Settlement Agreement or affect the finality of the Judgment, the
9 Final Approval Order, or any other orders entered pursuant to this Settlement Agreement. The time
10 to appeal from an approval of the Settlement shall commence upon the Court's entry of the
11 Judgment regardless of whether either the Distribution Plan or an application for attorneys' fees and
12 expenses has been submitted to the Court or approved.

13 **F. Attorneys' Fees and Reimbursement of Expenses**

14 **26. *Fee and Expense Application.*** Class Counsel may submit an application or applications
15 (the "Fee and Expense Application") for distributions from the Gross Settlement Fund, for: (a) an
16 award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection with
17 prosecuting the Actions; plus (c) any interest on such attorneys' fees and expenses (until paid) at the
18 same rate and for the same periods as earned by the Gross Settlement Fund, as appropriate, and as
19 may be awarded by the Court.

20 **27. *Payment of Fee and Expense Award.*** Any amounts that are awarded by the Court
21 pursuant to the above paragraph (the "Fee and Expense Award") shall be paid from the Gross
22 Settlement Fund consistent with the provisions of this Settlement Agreement.

23 **28. *Award of Fees and Expenses Not Part of Settlement.*** The procedure for, and the
24 allowance or disallowance by the Court of, the Fee and Expense Application are not part of the
25 Settlement set forth in this Settlement Agreement, and are to be considered by the Court separately
26 from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set

1 forth in this Settlement Agreement. Any order or proceeding relating to the Fee and Expense
2 Application, or any appeal from any Fee and Expense Award or any other order relating thereto or
3 reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement,
4 or affect or delay the finality of the Judgment and the Settlement of the Actions as set forth herein.
5 No order of the Court or modification or reversal on appeal of any order of the Court concerning
6 any Fee and Expense Award or Distribution Plan shall constitute grounds for cancellation or
7 termination of this Settlement Agreement.

8 **29. No Liability for Fees and Expenses of Class Counsel.** NEC TOKIN shall have no
9 responsibility for, and no liability whatsoever with respect to, any payment(s) to Class Counsel
10 pursuant to this Settlement Agreement and/or to any other Person who may assert some claim
11 thereto or any Fee and Expense Award that the Court may make in the Actions, other than to make
12 the Settlement Payment as set forth in ¶13 of this Settlement Agreement.

13 **G. Cooperation**

14 **30. Cooperation as Consideration.** In return for the Release provided herein, NEC TOKIN
15 agrees to pay the Settlement Amount and agrees to provide cooperation to Indirect Purchaser
16 Plaintiffs as set forth specifically below.

17 **31. Attorney Proffer.** Within thirty (30) business days after Preliminary Approval by the
18 Court of this Settlement Agreement or such time as mutually agreed by the Settling Parties, counsel
19 for NEC TOKIN shall provide Class Counsel with an oral proffer of facts known to them about
20 meetings or communications between competitors in the Capacitors industry. Should the attorney
21 proffer required by this paragraph not occur within the 30 business days after Preliminary Approval,
22 Indirect Purchaser Plaintiffs do not waive their right to an attorney proffer.

23 **32. Cooperation Subject to and Consistent with Prior Obligations.** NEC TOKIN and the
24 Indirect Purchaser Plaintiffs shall not be obligated to provide cooperation, including but not limited
25 to the further cooperation described in ¶33 below, that would violate an applicable court order or
26 NEC TOKIN's commitments to the United States Department of Justice ("DOJ") or any other

1 governmental entity. With the exception of DOJ's objection discussed in ¶13, below, NEC TOKIN
2 represents that it is not presently aware of any court order prohibiting, or any objection from an
3 enforcement authority to NEC TOKIN providing the cooperation contemplated by this section.
4 Additionally, Indirect Purchaser Plaintiffs and NEC TOKIN will take reasonable efforts to
5 accommodate the other's efforts to minimize duplication in the providing of any cooperation.

6 **33. Further Cooperation.**

7 (a) NEC TOKIN shall extend to Indirect Purchaser Plaintiffs a Most Favored Nations
8 Provision, with respect to cooperation. To the extent that NEC TOKIN enters into settlement
9 agreements regarding civil claims with other parties, Indirect Purchaser Plaintiffs shall obtain at
10 least as much cooperation as those other parties.

11 (b) NEC TOKIN shall, to the extent it has not done so already, produce ordinary course of
12 business documents that it has provided to the U.S. and foreign law enforcement authorities,
13 concerning Capacitors, to the extent they exist, within fifteen (15) business days after Preliminary
14 Approval by the Court of this Settlement Agreement. NEC TOKIN represents that DOJ continues
15 to object to a production of English translations to the Indirect Purchaser Plaintiffs as part of this
16 Settlement Agreement and its cooperation obligations thereto. Accordingly, NEC TOKIN shall not
17 be required to produce such English translations unless the DOJ formally or informally withdraws
18 its objection thereto, or the Indirect Purchaser Plaintiffs obtain an order of the Court permitting
19 production of such documents. The Indirect Purchaser Plaintiffs expressly reserve their right to
20 move the Court for an order permitting production of such documents.

21 (c) NEC TOKIN shall make up to six current employees available for interviews by
22 Plaintiffs, deposition, and testimony at hearings or trial. To the extent feasible, the employees shall
23 be made available, at NEC TOKIN's expense, at a location in the United States.

24 (d) NEC TOKIN shall encourage up to six former employees to make themselves available
25 for interviews by Plaintiffs, deposition, and testimony at hearings or trials. To the extent that the
26
27

1 former employees agree to be available at a location in the United States, NEC TOKIN shall cover
2 the costs of their travel expenses.

3 (e) NEC TOKIN shall continue to assist Indirect Purchaser Plaintiffs in understanding and
4 using the transactional data NEC TOKIN has produced.

5 (f) NEC TOKIN shall provide cooperation that it represented it could provide in settlement
6 discussions with the Indirect Purchaser Plaintiffs, as memorialized by the parties' writings. Such
7 information shall not be filed with the Court, absent an Order of the Court requiring disclosure of
8 such information. If the Court orders disclosure of such information, the information shall be filed
9 under seal with the Court, unless the Court orders otherwise.

10 (g) NEC TOKIN will engage in reasonable efforts to provide evidence in admissible form to
11 help establish these facts of the conspiracy, including declarations authenticating evidence, and
12 laying the business records foundation under the Federal Rules of Evidence.

13 (h) NEC TOKIN agrees to provide assistance reasonably necessary to establish the
14 foundation for and admissibility of documents it has produced in the Actions or pursuant to this
15 Settlement Agreement, including, as reasonably necessary, producing at trial in person, by
16 deposition or by declaration or affidavit (Federal Rules of Evidence 902(11) and (12)), whichever is
17 legally required, one current employee to testify as to the genuineness, status as business records,
18 and/or authenticity any documents produced by NEC TOKIN in these Actions, including NEC
19 TOKIN's transactional data, as necessary for use in briefing on class certification, dispositive
20 motion practice or trial.

21 **34. *Minimizing burden.*** Indirect Purchaser Plaintiffs and Class Counsel shall coordinate
22 with Direct Purchaser Plaintiffs and any other parties with whom NEC TOKIN has agreed to
23 provide cooperation so as to minimize NEC TOKIN's burden and costs in providing cooperation.

24 **35. *Other Discovery.*** Upon the Execution Date, neither NEC TOKIN nor the Indirect
25 Purchaser Plaintiffs shall file motions against the other or initiate or participate in any discovery,
26 motion or proceeding directly adverse to the other in connection with the Actions, except as
27

1 specifically provided for herein. NEC TOKIN and the Indirect Purchaser Plaintiffs shall not be
2 obligated to respond or supplement prior responses to formal discovery that has been previously
3 propounded by the other in the Actions.

4 **36. Resolution of Disputes.** To the extent the Settling Parties disagree about the
5 interpretation or enforcement of any terms of this Settlement Agreement relating to future
6 cooperation by NEC TOKIN, or about the triggering of the threshold specified in the Confidential
7 Termination Agreement described in ¶39(b), they agree to submit such disputes for binding
8 resolution by former United States District Judge Layn Phillips or another mutually agreed neutral.

9 **H. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

10 **37. Occurrence of Effective Date.** Upon the occurrence of all of the events required in order
11 to trigger the Effective Date as defined in ¶1(m), *supra*, any and all remaining interest or right of
12 NEC TOKIN in or to the Gross Settlement Fund, if any, shall be absolutely and forever
13 extinguished, and the Gross Settlement Fund (less any Notice and Administrative Costs, Taxes or
14 Tax Expenses or any Fee and Expense Award paid) shall be transferred from the Escrow Agent to
15 the Claims Administrator as successor Escrow Agent within ten (10) days after the Effective Date.

16 **38. Failure of Effective Date to Occur.** If, for whatever reason, the Effective Date does not
17 occur or is not met, then this Settlement Agreement shall be cancelled and terminated, subject to
18 and in accordance with ¶42, below, unless the Settling Parties mutually agree in writing to proceed
19 with this Settlement Agreement.

20 **39. Exclusions.**

21 a. Any Class Member that wishes to seek exclusion from the Settlement Class by “opting
22 out” must timely submit a written request for exclusion to the Claims Administrator. Class Counsel
23 shall cause copies of requests for exclusion to be provided to NEC TOKIN’s counsel. No later than
24 fourteen (14) days after the final date for mailing requests for exclusion, as determined by the Court
25 as part of the Motion for Preliminary Approval, Class Counsel shall provide NEC TOKIN’s counsel
26 with a complete and final list of opt-outs. With the Motion for Final Approval of the Settlement,

1 Class Counsel will file with the Court a complete list of requests for exclusion from the Class,
2 including only the name, city and state of the person or entity requesting exclusion.

3 b. NEC TOKIN shall have the option to rescind and terminate this Settlement Agreement in
4 its entirety and without liability of any kind if based on available data, the aggregate purchases of
5 Electrolytic Capacitors purchased from distributors by Class Members that opt out pursuant to
6 Paragraph 39(a) of this Settlement Agreement exceeds a threshold agreed to by Indirect Purchaser
7 Plaintiffs and NEC TOKIN in the Confidential Termination Agreement that has been executed
8 separately by Indirect Purchaser Plaintiffs and NEC TOKIN. NEC TOKIN shall exercise this
9 option to rescind and terminate this Settlement Agreement by providing ten (10) business days
10 written notice to Class Counsel. Upon such rescission and termination, Indirect Purchaser Plaintiffs
11 and NEC TOKIN will notify the Court immediately and withdraw all pending motions filed to
12 effectuate this Settlement. Indirect Purchaser Plaintiffs and NEC TOKIN will also, as may be
13 required by the Court, submit the Confidential Termination Agreement to the Court for in camera
14 review. In the event that NEC TOKIN exercises its option to rescind and terminate this Settlement
15 Agreement: (i) this Settlement Agreement shall be null and void as to NEC TOKIN, and shall have
16 no force or effect and shall be without prejudice to the rights and contentions of Releasees and
17 Releasors in this or any other litigation; and (ii) the Gross Settlement fund shall be refunded
18 promptly to NEC TOKIN, minus such payment (as set forth in this Settlement Agreement) of
19 Notice and Administrative Costs and Taxes and Tax Expenses, consistent with the provisions of
20 ¶¶14 and 18, respectively.

21 40. **Objections.** Settlement Class members who wish to object to any aspect of the
22 Settlement must file with the Court a written statement containing their objection by end of the
23 period to object to the Settlement. Any award or payment of attorneys' fees made to counsel to an
24 objector to the Settlement shall only be made by Court order and upon a showing of the benefit
25 conferred to the class. In determining any such award of attorneys' fees to an objectors' counsel, the
26 Court will consider the incremental value to the Class caused by any such objection. Any award of

1 attorneys' fees by the Court will be conditioned on the objector and his or her attorney stating under
2 penalty of perjury that no payments shall be made to the objector or the objector's counsel based on
3 the objector's participation in the matter - other than as ordered by the Court.

4 **41. Failure to Enter Proposed Preliminary Approval Order, Final Approval Order or**
5 **Judgment.** If the Court does not enter the Preliminary Approval Order, the Final Approval Order or
6 the Judgment, or if the Court enters the Final Approval Order and the Judgment and appellate
7 review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated,
8 modified or reversed in a material way, then this Settlement Agreement and the Settlement
9 incorporated therein shall be cancelled and terminated; provided, however, the Settling Parties
10 agree to act in good faith to secure Final Approval of this Settlement and to attempt to address in
11 good faith concerns regarding the Settlement identified by the Court and any court of appeal. No
12 Settling Party shall have any obligation whatsoever to proceed under any terms other than
13 substantially in the form provided and agreed to herein; provided, however, that no order of the
14 Court concerning any Fee and Expense Application or Distribution Plan, or any modification or
15 reversal on appeal of such order, shall constitute grounds for cancellation or termination of this
16 Settlement Agreement by any Settling Party. Without limiting the foregoing, NEC TOKIN shall
17 have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the
18 event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of
19 all of the Actions against them.

20 **42. Termination.** Unless otherwise ordered by the Court, in the event that the Effective Date
21 does not occur or this Settlement Agreement should terminate, or be cancelled or otherwise fail to
22 become effective for any reason, including, without limitation, in the event that NEC TOKIN elects
23 to terminate this Settlement Agreement pursuant to ¶39(b), the Settlement as described herein is not
24 finally approved by the Court, or the Judgment is reversed or vacated following any appeal taken
25 therefrom, then:

1 (a) within fifteen (15) business days after written notification of such event is sent by
2 counsel for NEC TOKIN to the Escrow Agent, the Gross Settlement Fund excluding only Notice
3 and Administrative Costs that have either been properly disbursed or are due and owing, Taxes and
4 Tax Expenses that have been paid or that have accrued and will be payable at some later date, and
5 attorneys' fees and costs that have been disbursed pursuant to Court order will be refunded,
6 reimbursed and repaid by the Escrow Agent to NEC TOKIN; if said amount or any portion thereof
7 is not returned within such fifteen (15) day period, then interest shall accrue thereon at the rate of
8 ten percent (10%) per annum until the date that said amount is returned;

9 (b) within thirty (30) business days after written notification of such event is sent by
10 Counsel for NEC TOKIN to Class Counsel, all attorneys' fees and costs which have been disbursed
11 to class counsel pursuant to Court order shall be refunded, reimbursed and repaid by Class Counsel
12 to NEC TOKIN;

13 (c) the Escrow Agent or its designee shall apply for any tax refund owed to the Gross
14 Settlement Fund and pay the proceeds to NEC TOKIN, after deduction of any fees or expenses
15 reasonably incurred in connection with such application(s) for refund, pursuant to such written
16 request;

17 (d) the Settling Parties shall be restored to their respective positions in the Actions as of the
18 Execution Date, with all of their respective claims and defenses, preserved as they existed on that
19 date;

20 (e) the terms and provisions of this Settlement Agreement, with the exception of ¶¶43-45
21 (which shall continue in full force and effect), shall be null and void and shall have no further force
22 or effect with respect to the Settling Parties, and neither the existence nor the terms of this
23 Settlement Agreement (nor any negotiations preceding this Settlement Agreement nor any acts
24 performed pursuant to, or in furtherance of, this Settlement Agreement) shall be used in the Actions
25 or in any other action or proceeding for any purpose (other than to enforce the terms remaining in
26 effect); and

1 (f) any judgment or order entered by the Court in accordance with the terms of this
2 Settlement Agreement shall be treated as vacated, nunc pro tunc.

3 ***I. No Admission of Liability***

4 **43. *Final and Complete Resolution.*** The Settling Parties intend the Settlement as described
5 herein to be a final and complete resolution of all disputes between them with respect to the Actions
6 and Released Claims and to compromise claims that are contested, and it shall not be deemed an
7 admission by any Settling Party as to the merits of any claim or defense or any allegation made in
8 the Actions.

9 **44. *Federal Rule of Evidence 408.*** The Settling Parties agree that this Settlement
10 Agreement, its terms and the negotiations surrounding this Settlement Agreement shall be governed
11 by Federal Rule of Evidence 408 and shall not be admissible or offered or received into evidence in
12 any suit, action or other proceeding, except upon the written agreement of the Settling Parties
13 hereto, pursuant to an order of a court of competent jurisdiction, or as shall be necessary to give
14 effect to, declare or enforce the rights of the Settling Parties with respect to any provision of this
15 Settlement Agreement.

16 **45. *Use of Agreement as Evidence.*** Neither this Settlement Agreement nor the Settlement,
17 nor any act performed or document executed pursuant to or in furtherance of this Settlement
18 Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or
19 evidence of, the validity of any Released Claims, of any allegation made in the Actions, or of any
20 wrongdoing or liability of NEC TOKIN; or (b) is or may be deemed to be or may be used as an
21 admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal
22 or administrative proceeding in any court, administrative agency or other tribunal. Neither this
23 Settlement Agreement nor the Settlement, nor any act performed or document executed pursuant to
24 or in furtherance of this Settlement Agreement or the Settlement shall be admissible in any
25 proceeding for any purpose, except to enforce the terms of the Settlement, and except that the
26 Releasees may file this Settlement Agreement and/or the Judgment in any action for any purpose,

1 including, but not limited to, in order to support a defense or counterclaim based on principles of res
2 judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other
3 theory of claim preclusion or issue preclusion or similar defense or counterclaim. The limitations
4 described in this paragraph apply whether or not the Court enters the Preliminary Approval Order,
5 the Final Approval Order or the Judgment.

6 **J. Miscellaneous Provisions**

7 46. *Voluntary Settlement.* The Settling Parties agree that the Settlement Amount and the
8 other terms of the Settlement as described herein were negotiated in good faith by the Settling
9 Parties, and reflect a settlement that was reached voluntarily and after consultation with competent
10 legal counsel.

11 47. *Consent to Jurisdiction.* NEC TOKIN and each Class Member hereby irrevocably
12 submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action,
13 proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of
14 this Settlement Agreement. Solely for purposes of such suit, action or proceeding, to the fullest
15 extent that they may effectively do so under applicable law, NEC TOKIN and the Class Members
16 irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or
17 objection that they are not subject to the jurisdiction of the Court or that the Court is in any way an
18 improper venue or an inconvenient forum. Nothing herein shall be construed as a submission to
19 jurisdiction for any purpose other than any suit, action, proceeding or dispute arising out of or
20 relating to this Settlement Agreement or the applicability of this Settlement Agreement.

21 48. *Resolution of Disputes; Retention of Exclusive Jurisdiction.* Subject to ¶36, *supra*, and
22 the Confidential Termination Agreement referenced in Paragraph 39(b) of this Settlement
23 Agreement, the Court shall retain exclusive jurisdiction over the implementation and enforcement
24 of this Settlement Agreement.

25 49. *Binding Effect.* This Settlement Agreement shall be binding upon, and inure to the
26 benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the

1 foregoing, each and every covenant and agreement herein by Indirect Purchaser Plaintiffs and Class
2 Counsel shall be binding upon all Class Members.

3 **50. Authorization to Enter Settlement Agreement.** The undersigned representatives of NEC
4 TOKIN represent that they are fully authorized to enter into and to execute this Settlement
5 Agreement on behalf of NEC TOKIN. Class Counsel, on behalf of Indirect Purchaser Plaintiffs and
6 the Classes, represent that they are, subject to Court approval, expressly authorized to take all action
7 required or permitted to be taken by or on behalf of the Indirect Purchaser Plaintiffs and the Classes
8 pursuant to this Settlement Agreement to effectuate its terms and to enter into and execute this
9 Settlement Agreement and any modifications or amendments to this Settlement Agreement on
10 behalf of the Classes that they deem appropriate.

11 **51. Notices.** All notices under this Settlement Agreement shall be in writing. Each such
12 notice shall be given either by (a) e-mail; (b) hand delivery; (c) registered or certified mail, return
13 receipt requested, postage pre-paid; (d) Federal Express or similar overnight courier; or (e)
14 facsimile and first class mail, postage pre-paid and, if directed to any Class Member, shall be
15 addressed to Class Counsel at their addresses set forth below, and if directed to NEC TOKIN, shall
16 be addressed to their attorneys at the addresses set forth below or such other addresses as Class
17 Counsel or NEC TOKIN may designate, from time to time, by giving notice to all parties hereto in
18 the manner described in this paragraph.

19 If directed to the Indirect Purchaser Plaintiffs, address notice to:

20 COTCHETT, PITRE & MCCARTHY

21 Steven N. Williams (swilliams@cpmlegal.com)

22 San Francisco Airport Office Center

23 840 Malcolm Road, Suite 200

24 Burlingame, CA 94010

25 Telephone: 650-697-6000

26 Facsimile: 650-697-0577

1 If directed to NEC TOKIN, address notice to:

2
3 GIBSON, DUNN & CRUTCHER LLP

4 George A. Nicoud III (tnicoud@gibsondunn.com)

5 555 Mission Street

6 San Francisco, CA 94105

7 Telephone:415-393-8200

8 Facsimile: 415-393-8306

9
10 **52. Headings.** The headings used in this Settlement Agreement are intended for the
11 convenience of the reader only and shall not affect the meaning or interpretation of this Settlement
12 Agreement.

13 **53. No Party Deemed to Be the Drafter.** None of the parties hereto shall be deemed to be
14 the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case
15 law or rule of interpretation or construction that would or might cause any provision to be construed
16 against the drafter hereof.

17 **54. Choice of Law.** This Settlement Agreement shall be considered to have been negotiated,
18 executed and delivered, and to be wholly performed, in the State of California, and the rights and
19 obligations of the parties to this Settlement Agreement shall be construed and enforced in
20 accordance with, and governed by, the internal, substantive laws of the State of California without
21 giving effect to that State's choice of law principles.

22 **55. Amendment; Waiver.** This Settlement Agreement shall not be modified in any respect
23 except by a writing executed by all the parties hereto, and the waiver of any rights conferred
24 hereunder shall be effective only if made by written instrument of the waiving party. The waiver by
25 any party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver
26 of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement.

1 **56. Execution in Counterparts.** This Settlement Agreement may be executed in one or more
2 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
3 instrument. Counsel for the parties to this Settlement Agreement shall exchange among themselves
4 original signed counterparts and a complete set of executed counterparts shall be filed with the
5 Court.

6 **57. Notification of State Officials.** NEC TOKIN shall be responsible for providing all
7 notices required by the Class Action Fairness Act to be provided to state attorneys general or to the
8 United States of America.

9 **58. Entire Agreement.** This Settlement Agreement and the Confidential Termination
10 Agreement referenced in Paragraph 39(b) of this Settlement Agreement constitute the entire
11 agreement between the Settling Parties and no representations, warranties or inducements have been
12 made to any party concerning this Settlement Agreement and the Confidential Termination
13 Agreement other than the representations, warranties and covenants contained and memorialized in
14 them. It is understood by the Settling Parties that, except for the matters expressly represented in
15 them, the facts or law with respect to which this Settlement Agreement and the Confidential
16 Termination Agreement are entered into may turn out to be other than or different from the facts
17 now known to each party or believed by such party to be true; each party therefore expressly
18 assumes the risk of the facts or law turning out to be so different, and agrees that this Settlement
19 Agreement and the Confidential Termination Agreement shall be in all respects effective and not
20 subject to termination by reason of any such different facts or law.

21 **59.** Except as otherwise provided herein, each party shall bear its own costs and attorneys'
22 fees.

23 IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives,
24 have executed this Settlement Agreement as of the date first herein above written.

1 INDIRECT PURCHASER PLAINTIFFS' CLASS COUNSEL, on behalf of Indirect
2 Purchaser Plaintiffs individually and on behalf of the Classes

3
4 By: 

5 Steven N. Williams

6 COTCHETT, PITRE & MCCARTHY

7 San Francisco Airport Office Center

8 840 Malcolm Road, Suite 200

9 Burlingame, CA 94010

10 Telephone: 650-697-6000

11 Facsimile: 650-697-0577

12 swilliams@cpmlegal.com

13
14 DEFENDANTS NEC TOKIN CORP. AND NEC TOKIN AMERICA INC.

15
16 By: 

17 George A. Nicoud III

18 GIBSON, DUNN & CRUTCHER LLP

19 555 Mission Street

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