

# **EXHIBIT 2**

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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

1 This Settlement Agreement (“Settlement Agreement”) is made and entered into this 29<sup>th</sup> day  
2 of March, 2016 (the “Execution Date”), by and among Defendant Nitsuko Electronics Corporation  
3 (“Nitsuko”) and Indirect Purchaser Plaintiffs, both individually and on behalf of Classes in the  
4 above captioned class action. This Settlement Agreement is intended by the Settling Parties to fully,  
5 finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms  
6 and 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, Nitsuko and  
10 other Defendants and alleged co-conspirators;

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

14 WHEREAS, Nitsuko has denied and continues to deny each and all of Indirect Purchaser  
15 Plaintiffs’ claims and allegations of wrongdoing; has not conceded or admitted any liability, or that  
16 it violated or breached any law, regulation, or duty owed to the Indirect Purchaser Plaintiffs; has  
17 denied and continues to deny all charges of wrongdoing or liability against it arising out of any of  
18 the conduct, statements, acts or omissions alleged in the Actions; and further denies the allegations  
19 that the Indirect Purchaser Plaintiffs or any member of the Classes were harmed by any conduct by  
20 Nitsuko 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 Nitsuko agree that neither this Settlement  
25 Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an  
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1 admission or evidence of any violation of any statute or law or of any liability or wrongdoing by  
2 Nitsuko or of the truth of any of the claims or allegations alleged in the 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' Second 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; and

12 WHEREAS, Nitsuko 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 Nitsuko, and this Settlement Agreement, which embodies all of the  
19 terms and conditions of the Settlement between the Settling Parties, both individually and on behalf  
20 of the Classes, has been reached as a result of the Settling Parties' negotiations (subject to the  
21 approval of the Court) as provided herein and is intended to supersede any prior agreements  
22 between the Settling Parties;

23 **AGREEMENT**

24 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the  
25 Settling Parties, by and through their undersigned attorneys of record, in consideration of the  
26 covenants, agreements, and releases set forth herein and for other good and valuable consideration,

1 that the Actions and the Released Claims as against Nitsuko shall be finally and fully settled,  
2 compromised and dismissed on the merits and with prejudice, without costs as to Indirect Purchaser  
3 Plaintiffs, the Classes, or Nitsuko, upon and subject to the approval of the Court, following notice to  
4 the Class, on the following on the following terms and conditions:

5 **A. Definitions**

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

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

11 (b) "Affiliates" means entities controlling, controlled by or under common control with a  
12 Releasee or Releasor.

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

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

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

21 (f) "Class" or "Classes" is generally defined as all persons and entities in the United States  
22 who, during the period from January 1, 2003 to the Execution Date, purchased one or more  
23 Capacitor(s) from a distributor that a Defendant manufactured. Excluded from the Classes are  
24 Defendants, their parent companies, subsidiaries and Affiliates, any co-conspirators, Defendants'  
25 attorneys in this case, federal government entities and instrumentalities, states and their  
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1 subdivisions, all judges assigned to this case, all jurors in this case, and all persons and entities who  
2 directly purchased Capacitors from Defendants.

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 of 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 All parties have executed this Settlement Agreement;

25 The Court has preliminarily approved the Settlement Agreement and the motion after  
26 providing notice to the Classes as defined herein;

1 The Court has entered a Final Judgment;

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

21 (o) "Film Capacitor" means a capacitor that uses insulating plastic film and one of two  
22 conductive materials, propylene or polyester. It includes (1) film and aluminum foil capacitors, (2)  
23 film and other metal capacitors, (3) layered capacitors, and (4) surface-mount capacitors (i.e.,  
24 capacitors without leaves).

25 (p) "Escrow Agent" means the agent jointly designated by Class Counsel and Nitsuko, and  
26 any successor agent.

1 (q) "Execution Date" means the date of the last signature set forth on the signature pages  
2 below.

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

16 (s) "Gross Settlement Fund" means the Settlement Amount plus any interest that may  
17 accrue.

18 (t) "Indirect Purchaser Plaintiffs" means Michael Brooks, CAE Sound, Steve Wong, Toy-  
19 Knowlogy Inc., and Alfred H. Seigel, as well as any other Person added as an Indirect Purchaser  
20 Plaintiff in the Actions.

21 (u) "Judgment" means the order of judgment and dismissal of the Actions with prejudice.

22 (v) "Net Settlement Fund" means the Gross Settlement Fund, less the payments set forth in  
23 ¶ 20.

24 (w) "Nitsuko" means Nitsuko Electronics Corporation, and its respective past, present and  
25 future direct and indirect parents, members, subsidiaries, and Affiliates, and their past, present, and  
26 future respective officers, directors, employees, managers, members, partners, agents, shareholders



1 (in their capacity as shareholders), attorneys and legal representatives, assigns, servants, and  
2 representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of  
3 each of the foregoing.

4 (x) "Notice and Administrative Costs" means the reasonable sum of money not in excess of  
5 \$125,000.00 to be paid out of the Gross Settlement Fund to pay for notice to the Classes and related  
6 administrative costs.

7 (y) "Person(s)" means an individual, corporation, limited liability corporation, professional  
8 corporation, limited liability partnership, partnership, limited partnership, association, joint stock  
9 company, estate, legal representative, trust, unincorporated association, government or any political  
10 subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors,  
11 successors, representatives or assignees of any of the foregoing.

12 (z) "Proof of Claim and Release" means the form to be sent to the Classes, upon further  
13 order(s) of the Court, by which any member of the Classes may make claims against the Gross  
14 Settlement Fund.

15 (aa) "Released Claims" means any and all manner of claims, demands, rights, actions, suits,  
16 causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, injuries,  
17 damages whenever incurred, liabilities of any nature whatsoever, known or unknown (including,  
18 but not limited to, "Unknown Claims"), foreseen or unforeseen, suspected or unsuspected, asserted  
19 or unasserted, contingent or non-contingent, in law or in equity, under the laws of any jurisdiction,  
20 which Releasers or any of them, whether directly, representatively, derivatively, or in any other  
21 capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct  
22 prior to the Execution Date of this Settlement Agreement and arising out of or related in any way in  
23 whole or in part to any facts, circumstances, acts, or omissions arising out of or related to (1) the  
24 purchase, pricing, selling, discounting, marketing, manufacturing and/or distributing of Capacitors  
25 in the United States and its territories or for delivery in the United States and its territories; (2) any  
26 agreement, combination or conspiracy to raise, fix, maintain or stabilize the prices of film

1 capacitors or restrict, reduce, alter or allocate the supply, quantity or quality of Capacitors or  
2 concerning the development, manufacture, supply, distribution, transfer, marketing, sale or pricing  
3 of Capacitors, or any other restraint of competition alleged in the Action or that could have been or  
4 hereafter could be alleged against the Releasees relating to Capacitors, or (3) any other restraint of  
5 competition relating to Capacitors that could be asserted as a violation of the Sherman Act or any  
6 other antitrust, unjust enrichment, unfair competition, unfair practices, trade practices, price  
7 discrimination, unitary pricing, racketeering, civil conspiracy or consumer protection law, whether  
8 under federal, state, local or foreign law.

9 (bb) "Releasees" refers jointly and severally, individually and collectively to Nitsuko as  
10 defined in ¶ 1(w) above.

11 (cc) "Releasors" refers jointly and severally, individually and collectively to the Indirect  
12 Purchaser Plaintiffs and each and every member of the Classes on their own behalf and on behalf of  
13 their respective past, present, and/or future direct and indirect parents, members, subsidiaries and  
14 Affiliates, and their past, present and/or future officers, directors, employees, agents, attorneys and  
15 legal representatives, servants, and representatives, and the predecessors, successors, heirs,  
16 executors, administrators and assigns of each of the foregoing.

17 (dd) "Settlement" means the settlement of the Released Claims set forth herein.

18 (ee) "Settlement Amount" means Eight-Hundred Thousand U.S. Dollars (\$800,000).

19 (ff) "Settling Parties" means, collectively, the Indirect Purchaser Plaintiffs (on behalf of  
20 themselves and the Classes) and Nitsuko.

21 (gg) "Unknown Claims" means any Released Claim that an Indirect Purchaser Plaintiff  
22 and/or Class Member does not know or suspect to exist in his, her or its favor at the time of the  
23 release of the Releasees that if known by him, her or it, might have affected his, her or its settlement  
24 with and release of the Releasees, or might have affected his, her or its decision not to object to this  
25 Settlement. Such Unknown Claims include claims that are the subject of California Civil Code §  
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1 1542 and equivalent, similar or comparable laws or principles of law. California Civil Code § 1542  
2 provides:

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

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

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

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

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

1           5. *Claims Administrator.* Indirect Purchaser Plaintiffs shall retain a Claims Administrator,  
2 which shall be responsible for the claims administration process including distribution to Class  
3 Members pursuant to a court-approved plan of distribution. The fees and expenses of the Claims  
4 Administrator shall be paid exclusively out of the Settlement Fund. In no event shall Nitsuko be  
5 separately responsible for any fees or expenses of the Claims Administrator.

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

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

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

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

18           (d) directing that the Actions be dismissed with prejudice as to Nitsuko and, except as  
19 provided for herein, without costs;

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

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

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

1 (h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just  
2 reason for delay and directing entry of a final judgment as to Nitsuko; and

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

5 7. **Stay Order.** Upon the date that the Court enters an order preliminarily approving the  
6 Settlement, Indirect Purchaser Plaintiffs and members of the Classes shall be barred and enjoined  
7 from commencing, instituting or continuing to prosecute any action or any proceeding in any court  
8 of law or equity, arbitration tribunal, administrative forum or other forum of any kind worldwide  
9 based on the Released Claims. Nothing in this provision shall prohibit the Indirect Purchaser  
10 Plaintiffs or Class Counsel from continuing to participate in discovery in the Actions that is initiated  
11 by other plaintiffs or that is subject to and consistent with the cooperation provisions set forth in ¶¶  
12 29-33.

13 **C. Releases**

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

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

24 10. **Covenant Not to Sue.** Releasors hereby covenant not to sue the Releasees with respect  
25 to any such Released Claims. Releasors shall be permanently barred and enjoined from instituting,  
26 commencing or prosecuting against the Releasees any claims based in whole or in part on the

1 Released Claims. The Settling Parties contemplate and agree that this Settlement Agreement may  
2 be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing any action from  
3 being initiated or maintained in any case sought to be prosecuted on behalf of Indirect Purchaser  
4 Plaintiffs with respect to the Released Claims.

5       **11. Waiver of California Civil Code § 1542 and Similar Laws.** The Releasors acknowledge  
6 that, by executing this Settlement Agreement, and for the consideration received hereunder, it is  
7 their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In  
8 furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent  
9 permitted by law, any rights or benefits conferred by the provisions of California Civil Code §  
10 1542, as set forth in ¶ 1(gg), or equivalent, similar or comparable laws or principles of law. The  
11 Releasors acknowledge that they have been advised by Class Counsel of the contents and effects of  
12 California Civil Code § 1542, and hereby expressly waive and release with respect to the Released  
13 Claims any and all provisions, rights and benefits conferred by California Civil Code § 1542 or by  
14 any equivalent, similar or comparable law or principle of law in any jurisdiction. The Releasors  
15 may hereafter discover facts other than or different from those which they know or believe to be  
16 true with respect to the subject matter of the Released Claims, but the Releasors hereby expressly  
17 waive and fully, finally and forever settle and release any known or unknown, suspected or  
18 unsuspected, foreseen or unforeseen, asserted or unasserted, contingent or non-contingent, and  
19 accrued or unaccrued claim, loss or damage with respect to the Released Claims, whether or not  
20 concealed or hidden, without regard to the subsequent discovery or existence of such additional or  
21 different facts. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued  
22 losses or claims in this paragraph is not a mere recital.

23       **12. Claims Excluded from Release.** Notwithstanding the foregoing, the releases provided  
24 herein shall not release claims against Nitsuko for product liability, breach of contract, breach of  
25 warranty or personal injury, or any other claim unrelated to the allegations in the Actions of  
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1 restraint of competition or unfair competition with respect to Capacitors. Additionally, the releases  
2 provided herein shall not release any claims to enforce the terms of this Settlement Agreement.

3 **D. Settlement Fund**

4 13. **Settlement Payment.** Nitsuko shall pay by wire transfer the Settlement Amount to the  
5 Escrow Agent pursuant to mutually agreeable escrow instructions within forty [40] business days  
6 after the Execution Date. This amount constitutes the total amount of payment that Nitsuko is  
7 required to make in connection with this Settlement Agreement. This amount shall not be subject to  
8 reduction, and upon the occurrence of the Effective Date, no funds shall revert to Nitsuko except as  
9 provided herein. The Escrow Agent shall only act in accordance with the mutually agreed escrow  
10 instructions.

11 14. **Disbursements Prior to Effective Date.** No amount may be disbursed from the Gross  
12 Settlement Fund unless and until the Effective Date, except that: (a) Notice and Administrative  
13 Costs, which may not exceed \$125,000, may be paid from the Gross Settlement Fund as they  
14 become due; (b) Taxes and Tax Expenses (as defined in ¶18 below) may be paid from the Gross  
15 Settlement Fund as they become due, and (c) attorneys' fees and reimbursement of litigation costs  
16 may be paid as ordered by the Court, which may be disbursed during the pendency of any appeals,  
17 which may be taken from the judgment to be entered by the Court finally approving this Settlement.

18 15. **Refund by Escrow Agent.** If the Settlement as described herein is not finally approved  
19 by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by  
20 writ, the Gross Settlement Fund, including the Settlement Amount and all interest earned on the  
21 Settlement Amount while held in escrow, excluding only Notice and Administrative Costs and  
22 Taxes and/or Tax Expenses (as defined in below), shall be refunded, reimbursed and repaid by the  
23 Escrow Agent to Nitsuko within five (5) business days after receiving notice pursuant to ¶41 below.

24 16. **Refund by Class Counsel.** If the Settlement as described herein is not finally approved  
25 by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by  
26 writ, any attorneys' fees and costs previously paid pursuant to this Settlement Agreement (as well  
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1 as interest on such amounts) shall be refunded, reimbursed and repaid by Class Counsel to Nitsuko  
2 within thirty (30) business days after receiving notice pursuant to ¶41 below.

3       **17. No Additional Payments by Nitsuko.** Under no circumstances will Nitsuko be required  
4 to pay more or less than the Settlement Amount pursuant to this Settlement Agreement and the  
5 Settlement set forth herein. For purposes of clarification, the payment of any Fee and Expense  
6 Award (as defined in ¶26 below), the Notice and Administrative Costs, and any other costs  
7 associated with the implementation of this Settlement Agreement shall be exclusively paid from the  
8 Settlement Amount.

9       **18. Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement  
10 Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-  
11 1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the  
12 provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg.  
13 §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the  
14 procedures and requirements contained in such regulations. It shall be the responsibility of the  
15 Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature  
16 by all necessary parties, and thereafter to cause the appropriate filing to occur.

17       (a) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the  
18 regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow  
19 Agent shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2 by, e.g., (i)  
20 obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding  
21 requirements imposed on distributions from the Gross Settlement Fund, and (iii) timely and  
22 properly filing applicable federal, state and local tax returns necessary or advisable with respect to  
23 the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg.  
24 §1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election  
25 described in this paragraph) shall be consistent with the provisions of this paragraph and in all  
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1 events shall reflect that all Taxes as defined in ¶18(b) below on the income earned by the Gross  
2 Settlement Fund shall be paid out of the Gross Settlement Fund as provided in ¶18(b) hereof;

3 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any  
4 estimated taxes, interest or penalties) arising with respect to the income earned by the Gross  
5 Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed  
6 upon Nitsuko or its counsel with respect to any income earned by the Gross Settlement Fund for  
7 any period during which the Gross Settlement Fund does not qualify as a “qualified settlement  
8 fund” for federal or state income tax purposes (collectively, “Taxes”); and (ii) all expenses and  
9 costs incurred in connection with the operation and implementation of this paragraph, including,  
10 without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs  
11 and expenses relating to filing (or failing to file) the returns described in this paragraph  
12 (collectively, “Tax Expenses”). In all events neither Nitsuko nor its counsel shall have any liability  
13 or responsibility for the Taxes or the Tax Expenses. With funds from the Gross Settlement Fund,  
14 the Escrow Agent shall indemnify and hold harmless Nitsuko and its counsel for Taxes and Tax  
15 Expenses (including, without limitation, Taxes payable by reason of any such indemnification).  
16 Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration  
17 of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the Gross  
18 Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated  
19 (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized  
20 Claimants any funds necessary to pay such amounts, including the establishment of adequate  
21 reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be  
22 withheld under Treas. Reg. §1.468B-2(1)(2)); neither Nitsuko nor its counsel is responsible  
23 therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the  
24 Escrow Agent, each other, their tax attorneys and their accountants to the extent reasonably  
25 necessary to carry out the provisions of this paragraph.

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

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

5           **20. Distribution of Gross Settlement Fund.** Upon further orders of the Court, the Notice  
6 and Claims Administrator, subject to such supervision and direction of the Court and/or Class  
7 Counsel as may be necessary or as circumstances may require, shall administer the claims  
8 submitted by members of the Classes and shall oversee distribution of the Gross Settlement Fund to  
9 Authorized Claimants pursuant to the Distribution Plan. Subject to the terms of this Settlement  
10 Agreement and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:

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

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

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

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

19           (e) To distribute the balance of the “Net Settlement Fund” to Authorized Claimants as  
20 allowed by the Agreement, any Distribution Plan or order of the Court.

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

23           All Persons who fall within the definition of the Classes who do not timely and validly  
24 request to be excluded from the Classes shall be subject to and bound by the provisions of this  
25 Settlement Agreement, the releases contained herein, and the Judgment with respect to all Released  
26 Claims, regardless of whether such Persons seek or obtain by any means, including, without

1 limitation, by submitting a Proof of Claim and Release or any similar document, any distribution  
2 from the Gross Settlement Fund or the Net Settlement Fund.

3       **22. No Liability for Distribution of Settlement Funds.** Neither the Releasees nor their  
4 counsel shall have any responsibility for, interest in or liability whatsoever with respect to the  
5 distribution of the Gross Settlement Fund; the Distribution Plan; the determination, administration,  
6 or calculation of claims; the Settlement Fund’s qualification as a “qualified settlement fund”; the  
7 payment or withholding of Taxes or Tax Expenses; the distribution of the Net Settlement Fund; or  
8 any losses incurred in connection with any such matters. The Releasors hereby fully, finally and  
9 forever release, relinquish and discharge the Releasees and their counsel from any and all such  
10 liability. No Person shall have any claim against Class Counsel or the Notice and Claims  
11 Administrator based on the distributions made substantially in accordance with the Agreement and  
12 the Settlement contained herein, the Distribution Plan or further orders of the Court.

13       **23. Balance Remaining in Net Settlement Fund.** If there is any balance remaining in the  
14 Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class  
15 Counsel may reallocate such balance among Authorized Claimants in an equitable and economic  
16 fashion, distribute the remaining funds through *cy pres*, or allow the money to escheat to federal or  
17 state governments, subject to Court approval. In no event shall the Net Settlement Fund revert to  
18 Nitsuko.

19       **24. Distribution Plan Not Part of Settlement.** It is understood and agreed by the Settling  
20 Parties that any Distribution Plan, including any adjustments to any Authorized Claimant’s claim, is  
21 not a part of this Settlement Agreement and is to be considered by the Court separately from the  
22 Court’s consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this  
23 Settlement Agreement, and any order or proceedings relating to the Distribution Plan shall not  
24 operate to terminate or cancel this Settlement Agreement or affect the finality of the Judgment, the  
25 Final Approval Order, or any other orders entered pursuant to this Settlement Agreement. The time  
26 to appeal from an approval of the Settlement shall commence upon the Court’s entry of the

1 Judgment regardless of whether either the Distribution Plan or an application for attorneys' fees and  
2 expenses has been submitted to the Court or approved.

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

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

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

13 **27. Award of Fees and Expenses Not Part of Settlement.** The procedure for, and the  
14 allowance or disallowance by the Court of, the Fee and Expense Application are not part of the  
15 Settlement set forth in this Settlement Agreement, and are to be considered by the Court separately  
16 from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set  
17 forth in this Settlement Agreement. Any order or proceeding relating to the Fee and Expense  
18 Application, or any appeal from any Fee and Expense Award or any other order relating thereto or  
19 reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement,  
20 or affect or delay the finality of the Judgment and the Settlement of the Actions as set forth herein.  
21 No order of the Court or modification or reversal on appeal of any order of the Court concerning  
22 any Fee and Expense Award or Distribution Plan shall constitute grounds for cancellation or  
23 termination of this Settlement Agreement.

24 **28. No Liability for Fees and Expenses of Class Counsel.** Nitsuko shall have no  
25 responsibility for, and no liability whatsoever with respect to, any payment(s) to Class Counsel  
26 pursuant to this Settlement Agreement and/or to any other Person who may assert some claim  
27

1 thereto or any Fee and Expense Award that the Court may make in the Actions, other than as set  
2 forth in this Settlement Agreement.

3 **G. Cooperation**

4 **29. Cooperation as Consideration.** In return for the Release and Discharge provided herein,  
5 Nitsuko agrees to pay the Settlement Amount and agrees to provide cooperation to Indirect  
6 Purchaser Plaintiffs as set forth specifically below.

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

13 **31. Cooperation Subject to and Consistent with Prior Obligations.** Nitsuko and the Indirect  
14 Purchaser Plaintiffs shall not be obligated to provide cooperation that would violate an applicable  
15 court order or Nitsuko's commitments to the United States Department of Justice or any other  
16 governmental entity. Additionally, Indirect Purchaser Plaintiffs and Nitsuko will take reasonable  
17 efforts to accommodate the other's efforts to minimize duplication in the providing of any  
18 cooperation.

19 **32. Meet and Confer.** Because Nitsuko is a Defendant in related cases, should the Actions  
20 go to trial, Nitsuko will meet and confer with Class Counsel about any additional reasonable  
21 cooperation beyond that set forth in this Settlement Agreement at any such trial that is consistent  
22 with the cooperation provided pursuant to this Settlement Agreement.

23 **33. Further Cooperation.**

24 (a) Nitsuko will produce documents that it has provided to the U.S. and foreign law  
25 enforcement authorities, including all English translations of any documents, concerning  
26  
27

1 Capacitors, to the extent they exist, within fifteen (15) business days after Preliminary Approval by  
2 the Court of this Settlement Agreement.

3 (b) Nitsuko shall identify and produce documents concerning JFC meetings attended by  
4 Nitsuko or that were provided to Nitsuko by other participants, including meeting minutes and notes  
5 from attendees, and emails concerning JFC meetings within fifteen (15) business days after the  
6 Preliminary Approval by the Court of this Settlement Agreement.

7 (c) If Nitsuko produces any declarations, documents, data, or other responses to discovery  
8 to any other plaintiff in the Actions, Nitsuko will produce the same to Indirect Purchaser Plaintiffs.

9 (d) Each of the parties shall cooperate in good faith to authenticate, to the extent possible, a  
10 reasonable number of documents and/or things produced by Nitsuko in the Actions, whether by  
11 declarations, affidavits, depositions, hearings and/or trials as may be necessary for the Actions,  
12 without the need for the other party to issue any subpoenas, letters rogatory, letters of request, or  
13 formal discovery requests to the other.

14 (e) Nitsuko will make its best efforts to make up to two current or former employees  
15 reasonably available for interviews, as necessary. Such interviews shall not exceed six hours per  
16 employee, and may be conducted telephonically or by videoconference. If the interviews are  
17 conducted with the assistance of an interpreter, the interview time shall be doubled.

18 (f) Nitsuko agrees Indirect Purchaser Plaintiffs may ask questions at depositions of Nitsuko  
19 witnesses noticed by other plaintiffs in the litigation.

20 (g) Nitsuko shall produce its transactional data regarding its sales of film capacitors to its  
21 customers.

22 (h) Nitsuko agrees that it will respond in writing to reasonable requests for clarification of  
23 the transactional, production and cost data that Nitsuko produced in the Actions and also about its  
24 methods of pricing Capacitors, but only if Indirect Purchaser Plaintiffs remain a party to the  
25 Actions.

1 (i) Indirect Purchaser Plaintiffs agree to withdraw all outstanding discovery served on  
2 Nitsuko and neither Nitsuko nor Indirect Purchaser Plaintiffs shall file motions against the other  
3 during the pendency of the Agreement except to enforce the terms of this Settlement Agreement.

4 (j) Nitsuko will use its best efforts to make up to two present or former employees available  
5 to Indirect Purchaser Plaintiffs for deposition. The depositions shall be held either at mutually  
6 agreed locations in the United States or Hong Kong or, if mutually agreed, via videoconference or  
7 teleconference. Such depositions shall not exceed seven (7) and a half hours in length unless an  
8 interpreter is used, in which event the examination time shall be doubled. Indirect Purchaser  
9 Plaintiffs will reimburse Nitsuko for reasonable coach class airfare and up to two (2) nights of  
10 reasonable hotel expenses per witness (not to exceed \$300 per night per witness) for each witness  
11 who is made available for deposition in the United States.

12 (k) Nitsuko will use its best efforts to make up to two present or former employees available  
13 to Indirect Purchaser Plaintiffs at trial for testimony. Plaintiffs will reimburse Nitsuko for  
14 reasonable coach class airfare and up to three (3) nights of reasonable hotel expenses (not to exceed  
15 \$300 per night per witness) for each witness who is made available for trial testimony in the United  
16 States.

17 **34. Other Discovery.** Upon the Execution Date, neither Nitsuko nor the Indirect Purchaser  
18 Plaintiffs shall file motions against the other or initiate or participate in any discovery, motion or  
19 proceeding directly adverse to the other in connection with the Actions, except as specifically  
20 provided for herein. Nitsuko and the Indirect Purchaser Plaintiffs shall not be obligated to respond  
21 or supplement prior responses to formal discovery that has been previously propounded by the other  
22 in the Actions.

23 **35. Resolution of Disputes.** To the extent the Settling Parties disagree about the  
24 interpretation or enforcement of any terms of this Settlement Agreement relating to future  
25 cooperation by Nitsuko, they agree to submit such disputes for binding resolution by the Honorable  
26 James Donato or another mutually agreed neutral.



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

2           **36. Occurrence of Effective Date.** Upon the occurrence of all of the events required in order  
3 to trigger the Effective Date as defined in ¶1(m), any and all remaining interest or right of Nitsuko  
4 in or to the Gross Settlement Fund, if any, shall be absolutely and forever extinguished, and the  
5 Gross Settlement Fund (less any Notice and Administrative Costs, Taxes or Tax Expenses or any  
6 Fee and Expense Award paid) shall be transferred from the Escrow Agent to the Notice and Claims  
7 Administrator as successor Escrow Agent within ten (10) days after the Effective Date.

8           **37. Failure of Effective Date to Occur.** If, for whatever reason, the Effective Date does not  
9 occur or is not met, then this Settlement Agreement shall be cancelled and terminated, subject to  
10 and in accordance with ¶41, below, unless the Settling Parties mutually agree in writing to proceed  
11 with this Settlement Agreement.

12           **38. Exclusions.** Class Counsel shall cause copies of requests for exclusion from the Class to  
13 be provided to Nitsuko's counsel. No later than 14 days after the final date for mailing requests for  
14 exclusion, Class Counsel shall provide Nitsuko's counsel with a complete and final list of opt-outs.  
15 With the motion for final approval of the Settlement, Class Counsel will file with the Court a  
16 complete list of requests for exclusion from the Class, including only the name, city and state of the  
17 person or entity requesting exclusion. Nitsuko shall have the option to terminate this Settlement  
18 Agreement if the purchases of Capacitors from distributors made by members of the Class who  
19 timely and validly request exclusion from the Class equal or exceeds twenty percent (20%) of the  
20 total volume of purchases made by the Classes. After meeting and conferring with Class Counsel,  
21 Nitsuko may elect to terminate this Settlement Agreement by serving written notice on Class  
22 Counsel by email and overnight courier and by filing a copy of such notice with the Court no later  
23 than thirty (30) days before the date for the final approval hearing of this Settlement Agreement,  
24 except that Nitsuko shall have a minimum of ten (10) days in which to decide whether to terminate  
25 this Settlement Agreement after receiving the final opt out list. In the event that Nitsuko exercises  
26 its option to terminate this Settlement Agreement: (i) this Settlement Agreement shall be null and



1 void as to Nitsuko, and shall have no force or effect and shall be without prejudice to the rights and  
2 contentions of Releasees and Releasors in this or any other litigation; and (ii) the Settlement fund  
3 paid by Nitsuko, plus interest thereon, shall be refunded promptly to Nitsuko, minus such payment  
4 (as set forth in this Settlement Agreement) of Notice and Administrative Costs and Taxes and Tax  
5 Expenses, consistent with the provisions of ¶¶15 and 18.

6 **39. *Objections.*** Settlement Class members who wish to object to any aspect of the  
7 Settlement must file with the Court a written statement containing their objection by end of the  
8 period to object to the Settlement. Any award or payment of attorneys' fees made to counsel to an  
9 objector to the Settlement shall only be made by Court order and upon a showing of the benefit  
10 conferred to the class. In determining any such award of attorneys' fees to an objectors' counsel, the  
11 Court will consider the incremental value to the Class caused by any such objection. Any award of  
12 attorneys' fees by the Court will be conditioned on the objector and his or her attorney stating under  
13 penalty of perjury that no payments shall be made to the objector based on the objector's  
14 participation in the matter - other than as ordered by the Court.

15 **40. *Failure to Enter Proposed Preliminary Approval Order, Final Approval Order or***  
16 ***Judgment.*** If the Court does not enter the Preliminary Approval Order, the Final Approval Order or  
17 the Judgment, or if the Court enters the Final Approval Order and the Judgment and appellate  
18 review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated,  
19 modified or reversed, then this Settlement Agreement and the Settlement incorporated therein shall  
20 be cancelled and terminated; provided, however, the Settling Parties agree to act in good faith to  
21 secure Final Approval of this Settlement and to attempt to address in good faith concerns regarding  
22 the Settlement identified by the Court and any court of appeal. No Settling Party shall have any  
23 obligation whatsoever to proceed under any terms other than substantially in the form provided and  
24 agreed to herein; provided, however, that no order of the Court concerning any Fee and Expense  
25 Application or Distribution Plan, or any modification or reversal on appeal of such order, shall  
26 constitute grounds for cancellation or termination of this Settlement Agreement by any Settling

1 Party. Without limiting the foregoing, Nitsuko shall have, in its sole and absolute discretion, the  
2 option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming  
3 Final, does not provide for the dismissal with prejudice of all of the Actions against them.

4 **41. Termination.** Unless otherwise ordered by the Court, in the event that the Effective Date  
5 does not occur or this Settlement Agreement should terminate, or be cancelled or otherwise fail to  
6 become effective for any reason, including, without limitation, in the event that Nitsuko elects to  
7 terminate this Settlement Agreement pursuant to ¶38, the Settlement as described herein is not  
8 finally approved by the Court, or the Judgment is reversed or vacated following any appeal taken  
9 therefrom, then:

10 (a) within five (5) business days after written notification of such event is sent by counsel  
11 for Nitsuko to the Escrow Agent, the Gross Settlement Fund, including the Settlement Amount and  
12 all interest earned on the Settlement Fund while held in escrow excluding only Notice and  
13 Administrative Costs that have either been properly disbursed or are due and owing, Taxes and Tax  
14 Expenses that have been paid or that have accrued and will be payable at some later date, and  
15 attorneys' fees and costs that have been disbursed pursuant to Court order will be refunded,  
16 reimbursed and repaid by the Escrow Agent to Nitsuko; if said amount or any portion thereof is not  
17 returned within such five (5) day period, then interest shall accrue thereon at the rate of ten percent  
18 (10%) per annum until the date that said amount is returned;

19 (b) within thirty (30) business days after written notification of such event is sent by  
20 Counsel for Nitsuko to Class Counsel, all attorneys' fees and costs which have been disbursed to  
21 class counsel pursuant to Court order shall be refunded, reimbursed and repaid by Class Counsel to  
22 Nitsuko;

23 (c) the Escrow Agent or its designee shall apply for any tax refund owed to the Gross  
24 Settlement Fund and pay the proceeds to Nitsuko, after deduction of any fees or expenses  
25 reasonably incurred in connection with such application(s) for refund, pursuant to such written  
26 request;

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

4 (e) the terms and provisions of this Settlement Agreement, with the exception of ¶¶43-44  
5 (which shall continue in full force and effect), shall be null and void and shall have no further force  
6 or effect with respect to the Settling Parties, and neither the existence nor the terms of this  
7 Settlement Agreement (nor any negotiations preceding this Settlement Agreement nor any acts  
8 performed pursuant to, or in furtherance of, this Settlement Agreement) shall be used in the Actions  
9 or in any other action or proceeding for any purpose (other than to enforce the terms remaining in  
10 effect); and

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

13 ***I. No Admission of Liability***

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

19 **43. *Federal Rule of Evidence 408.*** The Settling Parties agree that this Settlement  
20 Agreement, its terms and the negotiations surrounding this Settlement Agreement shall be governed  
21 by Federal Rule of Evidence 408 and shall not be admissible or offered or received into evidence in  
22 any suit, action or other proceeding, except upon the written agreement of the Settling Parties  
23 hereto, pursuant to an order of a court of competent jurisdiction, or as shall be necessary to give  
24 effect to, declare or enforce the rights of the Settling Parties with respect to any provision of this  
25 Settlement Agreement.

1           **44. Use of Agreement as Evidence.** Neither this Settlement Agreement nor the Settlement,  
2 nor any act performed or document executed pursuant to or in furtherance of this Settlement  
3 Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or  
4 evidence of, the validity of any Released Claims, of any allegation made in the Actions, or of any  
5 wrongdoing or liability of Nitsuko; or (b) is or may be deemed to be or may be used as an  
6 admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal  
7 or administrative proceeding in any court, administrative agency or other tribunal. Neither this  
8 Settlement Agreement nor the Settlement, nor any act performed or document executed pursuant to  
9 or in furtherance of this Settlement Agreement or the Settlement shall be admissible in any  
10 proceeding for any purpose, except to enforce the terms of the Settlement, and except that the  
11 Releasees may file this Settlement Agreement and/or the Judgment in any action for any purpose,  
12 including, but not limited to, in order to support a defense or counterclaim based on principles of res  
13 judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other  
14 theory of claim preclusion or issue preclusion or similar defense or counterclaim. The limitations  
15 described in this paragraph apply whether or not the Court enters the Preliminary Approval Order,  
16 the Final Approval Order or the Judgment.

17           **J. Miscellaneous Provisions**

18           **45. Voluntary Settlement.** The Settling Parties agree that the Settlement Amount and the  
19 other terms of the Settlement as described herein were negotiated in good faith by the Settling  
20 Parties, and reflect a settlement that was reached voluntarily and after consultation with competent  
21 legal counsel.

22           **46. Consent to Jurisdiction.** Nitsuko and each Class Member hereby irrevocably submit to  
23 the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding  
24 or dispute arising out of or relating to this Settlement Agreement or the applicability of this  
25 Settlement Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent  
26 that they may effectively do so under applicable law, Nitsuko and the Class Members irrevocably

1 waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection  
2 that they are not subject to the jurisdiction of the Court or that the Court is in any way an improper  
3 venue or an inconvenient forum. Nothing herein shall be construed as a submission to jurisdiction  
4 for any purpose other than any suit, action, proceeding or dispute arising out of or relating to this  
5 Settlement Agreement or the applicability of this Settlement Agreement.

6 **47. Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes between or  
7 among Nitsuko and any Class Members concerning matters contained in this Settlement Agreement  
8 shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court  
9 shall retain exclusive jurisdiction over the implementation and enforcement of this Settlement  
10 Agreement.

11 **48. Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the  
12 benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the  
13 foregoing, each and every covenant and agreement herein by Indirect Purchaser Plaintiffs and Class  
14 Counsel shall be binding upon all Class Members.

15 **49. Authorization to Enter Settlement Agreement.** The undersigned representatives of  
16 Nitsuko represent that they are fully authorized to enter into and to execute this Settlement  
17 Agreement on behalf of Nitsuko. Class Counsel, on behalf of Indirect Purchaser Plaintiffs and the  
18 Classes, represent that they are, subject to Court approval, expressly authorized to take all action  
19 required or permitted to be taken by or on behalf of the Indirect Purchaser Plaintiffs and the Classes  
20 pursuant to this Settlement Agreement to effectuate its terms and to enter into and execute this  
21 Settlement Agreement and any modifications or amendments to the Settlement Agreement on  
22 behalf of the Classes that they deem appropriate.

23 **50. Notices.** All notices under this Settlement Agreement shall be in writing. Each such  
24 notice shall be given either by (a) e-mail; (b) hand delivery; (c) registered or certified mail, return  
25 receipt requested, postage pre-paid; (d) Federal Express or similar overnight courier; or (e)  
26 facsimile and first class mail, postage pre-paid and, if directed to any Class Member, shall be

1 addressed to Class Counsel at their addresses set forth below, and if directed to Nitsuko, shall be  
2 addressed to their attorneys at the addresses set forth below or such other addresses as Class  
3 Counsel or Nitsuko may designate, from time to time, by giving notice to all parties hereto in the  
4 manner described in this paragraph.

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

6  
7 COTCHETT, PITRE & MCCARTHY

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

9 San Francisco Airport Office Center

10 840 Malcolm Road, Suite 200

11 Burlingame, CA 94010

12 Telephone: 650-697-6000

13 Facsimile: 650-697-0577

14  
15 If directed to Nitsuko, address notice to:

16  
17 LATHAM & WATKINS LLP

18 Ashley M. Bauer (ashley.bauer@lw.com)

19 505 Montgomery Street

20 Suite 2000

21 San Francisco, CA 94111-6538

22 Telephone:(415) 391-0600

23  
24 **51. *Headings.*** The headings used in this Settlement Agreement are intended for the  
25 convenience of the reader only and shall not affect the meaning or interpretation of this Settlement  
26 Agreement.

1           **52. No Party Deemed to Be the Drafter.** None of the parties hereto shall be deemed to be  
2 the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case  
3 law or rule of interpretation or construction that would or might cause any provision to be construed  
4 against the drafter hereof.

5           **53. Choice of Law.** This Settlement Agreement shall be considered to have been negotiated,  
6 executed and delivered, and to be wholly performed, in the State of California, and the rights and  
7 obligations of the parties to this Settlement Agreement shall be construed and enforced in  
8 accordance with, and governed by, the internal, substantive laws of the State of California without  
9 giving effect to that State's choice of law principles.

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

15           **55. Execution in Counterparts.** This Settlement Agreement may be executed in one or more  
16 counterparts. All executed counterparts and each of them shall be deemed to be one and the same  
17 instrument. Counsel for the parties to this Settlement Agreement shall exchange among themselves  
18 original signed counterparts and a complete set of executed counterparts shall be filed with the  
19 Court.

20           **56. Notification of State Officials.** Nitsuko shall be responsible for providing all notices  
21 required by the Class Action Fairness Act to be provided to state attorneys general or to the United  
22 States of America.

23           **57. Integrated Agreement.** This Settlement Agreement constitutes the entire agreement  
24 between the Settling Parties and no representations, warranties or inducements have been made to  
25 any party concerning this Settlement Agreement other than the representations, warranties and  
26 covenants contained and memorialized herein. It is understood by the Settling Parties that, except



1 for the matters expressly represented herein, the facts or law with respect to which this Settlement  
2 Agreement is entered into may turn out to be other than or different from the facts now known to  
3 each party or believed by such party to be true; each party therefore expressly assumes the risk of  
4 the facts or law turning out to be so different, and agrees that this Settlement Agreement shall be in  
5 all respects effective and not subject to termination by reason of any such different facts or law.  
6 Except as otherwise provided herein, each party shall bear its own costs and attorneys' fees.

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

9  
10 INDIRECT PURCHASER PLAINTIFFS' CLASS COUNSEL, on behalf of Indirect  
11 Purchaser Plaintiffs individually and on behalf of the Classes

12  
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