

**CANADIAN AUTOMATIC TRANSMISSION FLUID WARMERS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Made as of July 20<sup>th</sup>, 2017

Between

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

(the "Plaintiffs")

and

**T.RAD CO., LTD., and T.RAD NORTH AMERICA, INC.**

(the "Settling Defendants")

**CANADIAN AUTOMATIC TRANSMISSION FLUID WARMERS CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

**TABLE OF CONTENTS**

<b>RECITALS</b> .....	<b>1</b>
<b>SECTION 1 - DEFINITIONS</b> .....	<b>3</b>
<b>SECTION 2 - SETTLEMENT APPROVAL</b> .....	<b>8</b>
<b>2.1</b> Best Efforts .....	<b>8</b>
<b>2.2</b> Motion Seeking Approval of Notice and Certification.....	<b>9</b>
<b>2.3</b> Motion Seeking Approval of the Settlement .....	<b>9</b>
<b>2.4</b> Pre-Motion Confidentiality.....	<b>9</b>
<b>SECTION 3 - SETTLEMENT BENEFITS</b> .....	<b>9</b>
<b>3.1</b> Payment of Settlement Amount.....	<b>9</b>
<b>3.2</b> Taxes and Interest.....	<b>10</b>
<b>3.3</b> Intervention in the U.S. Litigation.....	<b>11</b>
<b>SECTION 4 - COOPERATION</b> .....	<b>11</b>
<b>4.1</b> Extent of Cooperation.....	<b>11</b>
<b>4.2</b> Limits on Use of Documents .....	<b>19</b>
<b>SECTION 5 - OPTING OUT</b> .....	<b>20</b>
<b>5.1</b> Procedure .....	<b>20</b>
<b>SECTION 6 - TERMINATION OF SETTLEMENT AGREEMENT</b> .....	<b>22</b>
<b>6.1</b> Right of Termination .....	<b>22</b>
<b>6.2</b> If Settlement Agreement is Terminated.....	<b>23</b>
<b>6.3</b> Allocation of Settlement Amount Following Termination.....	<b>24</b>
<b>6.4</b> Survival of Provisions After Termination .....	<b>24</b>
<b>SECTION 7 - RELEASES AND DISMISSALS</b> .....	<b>25</b>
<b>7.1</b> Release of Releasees.....	<b>25</b>
<b>7.2</b> Release by Releasees .....	<b>25</b>
<b>7.3</b> Covenant Not to Sue.....	<b>25</b>
<b>7.4</b> No Further Claims .....	<b>26</b>
<b>7.5</b> Dismissal of the Proceeding .....	<b>26</b>
<b>7.6</b> Dismissal of Other Actions.....	<b>26</b>
<b>7.7</b> Material Term .....	<b>26</b>
<b>SECTION 8 - BAR ORDER AND OTHER CLAIMS</b> .....	<b>27</b>

8.1	Bar Order .....	27
8.2	Claims Against Other Entities Reserved .....	30
8.3	Material Term .....	30
<b>SECTION 9 - EFFECT OF SETTLEMENT .....</b>		<b>30</b>
9.1	No Admission of Liability .....	30
9.2	Agreement Not Evidence.....	30
9.3	No Further Litigation .....	31
<b>SECTION 10 - CERTIFICATION FOR SETTLEMENT ONLY.....</b>		<b>31</b>
<b>SECTION 11 - NOTICE TO SETTLEMENT CLASS .....</b>		<b>32</b>
11.1	Notices Required.....	32
11.2	Form and Distribution of Notices .....	32
<b>SECTION 12 - ADMINISTRATION AND IMPLEMENTATION.....</b>		<b>32</b>
12.1	Mechanics of Administration.....	32
12.2	Information and Assistance .....	32
<b>SECTION 13 - DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST .....</b>		<b>34</b>
13.1	Distribution Protocol.....	34
13.2	No Responsibility for Administration or Fees.....	34
<b>SECTION 14 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES.....</b>		<b>35</b>
14.1	Responsibility for Fees, Disbursements and Taxes .....	35
14.2	Responsibility for Costs of Notices and Translation .....	35
14.3	Court Approval for Class Counsel Fees and Disbursements.....	35
<b>SECTION 15 - MISCELLANEOUS.....</b>		<b>35</b>
15.1	Motions for Directions.....	35
15.2	Releasees Have No Liability for Administration.....	36
15.3	Headings, etc.....	36
15.4	Computation of Time.....	36
15.5	Ongoing Jurisdiction.....	36
15.6	Governing Law .....	37
15.7	Entire Agreement.....	37
15.8	Amendments .....	37
15.9	Binding Effect.....	37
15.10	Counterparts .....	37

<b>15.11</b>	<b>Negotiated Agreement</b> .....	<b>38</b>
<b>15.12</b>	<b>Language</b> .....	<b>38</b>
<b>15.13</b>	<b>Transaction</b> .....	<b>38</b>
<b>15.14</b>	<b>Recitals</b> .....	<b>38</b>
<b>15.15</b>	<b>Schedules</b> .....	<b>38</b>
<b>15.16</b>	<b>Acknowledgements</b> .....	<b>39</b>
<b>15.17</b>	<b>Authorized Signatures</b> .....	<b>39</b>
<b>15.18</b>	<b>Notice</b> .....	<b>39</b>
<b>15.19</b>	<b>Date of Execution</b> .....	<b>40</b>

**CANADIAN AUTOMATIC TRANSMISSION FLUID WARMERS CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

A. WHEREAS the Proceeding was commenced by the Plaintiffs in Ontario and the Plaintiffs claim class-wide damages allegedly caused as a result of the conduct alleged therein;

B. WHEREAS the Proceeding alleges that some or all of the Releasees participated in an unlawful conspiracy with other manufacturers of Automatic Transmission Fluid Warmers to rig bids for, and to raise, fix, maintain or stabilize the prices of Automatic Transmission Fluid Warmers sold in Canada and elsewhere as early as November 1, 2002 until at least March 1, 2010, contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 and the common law and/or the civil law;

C. WHEREAS the Settling Defendants and Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceeding, or in any Other Actions, and otherwise deny all liability and assert that they have complete defenses in respect of the merits of the Proceeding and any Other Actions or otherwise;

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

E. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class in the Proceeding and any Other Actions, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

F. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Court or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceeding and as is expressly provided in this Settlement Agreement with respect to the Proceeding;

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

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

I. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the class they seek to represent;

J. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceeding and any Other Actions as against the Settling Defendants;

K. WHEREAS the Parties consent to certification as against the Settling Defendants, of the Proceeding as a class proceeding and to the Settlement Class and a Common Issue in respect of the Proceeding solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Court as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

L. WHEREAS the Plaintiffs assert that they are adequate class representatives for the class they seek to represent and will seek to be appointed representative plaintiffs in the Proceeding; and

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceeding be settled and dismissed with prejudice as to the Settling Defendants only, without costs as to the Plaintiffs, the class they seek to represent, or the Settling Defendants, subject to the approval of the Court, on the following terms and conditions:

#### SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

- (1) *Administration Expenses* means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (2) *Automatic Transmission Fluid Warmers* means devices located within an Automotive Vehicle's engine that improve fuel economy by warming transmission fluid to lower its viscosity, allowing the transmission fluid to flow more easily.
- (3) *Automotive Vehicle* means all automobiles, passenger cars, sports utility vehicles, vans, trucks, buses, and (without limitation) any other type of vehicle containing an Automatic Transmission Fluid Warmer.
- (4) *Certification Date* means the later of the date on which an order granting certification of the Proceeding against a Non-Settling Defendant(s) is issued by the Court and the time to appeal such certification has expired without any appeal being taken or if an appeal is taken, the date of the final disposition of such appeal.
- (5) *Claims Administrator* means the firm proposed by Class Counsel and appointed by the Court to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (6) *Class Counsel* means Siskinds LLP and Sotos LLP.

- (7) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceeding, as well as any adverse costs awards issued against the Plaintiffs in the Proceeding.
- (8) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person.
- (9) ***Class Period*** means November 1, 2002 to the date of the order certifying the Proceeding as against the Settling Defendants for settlement purposes.
- (10) ***Common Issue*** means: Did the Settling Defendants conspire to fix, raise, maintain, or stabilize the prices of Automatic Transmission Fluid Warmers in Canada and elsewhere during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (11) ***Counsel for the Settling Defendants*** means DLA Piper (Canada) LLP.
- (12) ***Court*** means the Ontario Superior Court of Justice.
- (13) ***Date of Execution*** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (14) ***Defendants*** means the entities named as defendants in the Proceeding and any Persons added as defendants in the Proceeding in the future. For greater certainty, Defendants includes the Settling Defendants.
- (15) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Court.
- (16) ***Effective Date*** means the date when a Final Order has been received from the Court approving this Settlement Agreement.
- (17) ***Excluded Person*** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives,

heirs, successors and assigns of each of the foregoing, and those Persons who validly and timely opt-out of the Proceeding in accordance with the order of the Court.

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

(19) **Non-Settling Defendant** means any Defendant that is not a Settling Defendant or a Settled Defendant, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Date of Execution.

(20) **Opt-Out Deadline** means the date which is sixty (60) days after the date in the notice described in Section 11.1(1) is first published.

(21) **Opt-Out Threshold** means that threshold agreed upon by the Parties in Schedule C hereto, delivered to the Court under seal and kept confidential by the Parties and the Court.

(22) **Other Actions** means actions or proceedings, excluding the Proceeding, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

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

(24) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

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

(26) ***Proceeding*** means the action commenced in the Court bearing Court File No. CV-14-506644-00CP.

(27) ***Proportionate Liability*** means the proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to the Releasees.

(28) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that any of the Releasers ever had, now have or hereafter can, shall or may have, relating in any way to any conduct related to, arising from, or described in the Proceeding between November 1, 2002 and the date hereof on account of, arising out of, resulting from, or related to in any respect the purchase, sale, pricing, discounting, manufacturing, offering, marketing or distributing of Automatic Transmission Fluid Warmers or relating to any conduct alleged (or which was previously or could have been alleged) in the Proceeding including, without limitation, any such claims which have been asserted or could have been asserted, directly or indirectly, whether in Canada or elsewhere, in respect of the purchase, sale, pricing, discounting, manufacturing, marketing, offering or distributing of Automatic Transmission Fluid Warmers or the purchase or lease of new Automotive Vehicles, including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the Class Period in respect of any agreement, combination or conduct that occurred between November 1, 2002 and the date hereof. However, the Released Claims do not include (1) claims based on negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, or breach of product warranty, or breach of contract claims or similar claim between the Parties that relates to Automatic Transmission Fluid Warmers but does not relate to alleged anti-competitive conduct; (2) claims brought (whether before or after the Effective Date) outside of Canada relating to purchases of Automatic Transmission Fluid Warmers outside of Canada; (3) claims brought (whether before or after the Effective Date) under laws other than those of Canada relating to purchases of Automatic Transmission Fluid Warmers outside of Canada; or (4) claims

concerning any automotive part other than Automatic Transmission Fluid Warmers, where such claims do not concern Automatic Transmission Fluid Warmers.

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

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

(31) **Settled Defendants** means any Defendant that executes its own settlement agreement, whether before or after the execution of this Settlement Agreement, which settlement agreement is finally approved by the requisite Courts and becomes effective in accordance with its terms.

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

(33) **Settlement Amount** means CDN\$113,476.33.

(34) **Settlement Class** means all Persons in Canada who, during the Class Period, (a) purchased, directly or indirectly, an Automatic Transmission Fluid Warmer in Canada; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle in Canada; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle. Excluded Persons are excluded from the Settlement Class.

- (35) **Settlement Class Member** means a member of a Settlement Class.
- (36) **Settling Defendants** means T.RAD Co., Ltd., and T.RAD North America, Inc.
- (37) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution under the control of Siskinds LLP or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.
- (38) **U.S. Litigation** means the consolidated class action proceedings, in which a plaintiff alleges that certain auto parts manufacturers rig bids for, and to raise, fix, maintain or stabilize the prices of Automatic Transmission Fluid Warmers, in which the Settling Defendants are named as parties, currently pending in the United States District Court for the Eastern District of Michigan, Southern Division, including the actions under the captions *In re Automotive Parts Antitrust Litigation*, Automatic Transmission Fluid Warmers Cases, Case No. 2:13-cv-02401 (MOB), *In re Automotive Parts Antitrust Litigation*, Automatic Transmission Fluid Warmers Cases, Case No. 2:13-cv-02402 (MOB), *In re Automotive Parts Antitrust Litigation*, Automatic Transmission Fluid Warmers Cases, Case No. 2:13-cv-02403 (MOB), and includes all class actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all class actions pending such transfer, all class actions that may be transferred in the future and all class proceedings alleging price-fixing of Automatic Transmission Fluid Warmers, to the extent that the Settling Defendants are named as parties.
- (39) **U.S. Settlement Agreements** includes any settlement reached with the Settling Defendants in the U.S. Litigation in respect of Automatic Transmission Fluid Warmers.

## SECTION 2 - SETTLEMENT APPROVAL

### 2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this settlement and to secure the prompt, complete and final dismissal with prejudice of the Proceeding as against the Settling Defendants.

## **2.2 Motion Seeking Approval of Notice and Certification**

- (1) The Plaintiffs shall file a motion before the Court, as soon as practicable after the Date of Execution, for an order approving the notices described in Section 11.1(1) and certifying the Proceeding as a class proceeding as against the Settling Defendants (for settlement purposes only).
- (2) The order approving the notices described in Section 11.1(1) and certifying the Proceeding for settlement purposes shall be substantially in the form attached as Schedule A.

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

- (1) The Plaintiffs shall make best efforts to file a motion before the Court for an order approving this Settlement Agreement as soon as practicable after:
  - (a) the order referred to in Section 2.2(1) has been granted; and
  - (b) the notices described in Section 11.1(1) have been published.
- (2) The order approving this Settlement Agreement shall be substantially in the form attached as Schedule B.
- (3) This Settlement Agreement shall only become final on the Effective Date.

## **2.4 Pre-Motion Confidentiality**

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

# **SECTION 3 - SETTLEMENT BENEFITS**

## **3.1 Payment of Settlement Amount**

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

- (2) Payment of the Settlement Amount shall be made by wire transfer. Prior to the Settlement Amount becoming due, Siskinds LLP will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.
- (3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.
- (4) The Settlement Amount shall be all-inclusive of all amounts, including without limitation, interest, costs, Class Counsel Fees and Class Counsel Disbursements.
- (5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceeding or any Other Actions.
- (6) Once a Claims Administrator has been appointed, Siskinds LLP shall transfer control of the Trust Account to the Claims Administrator.
- (7) Siskinds LLP and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.
- (8) Siskinds LLP and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

### **3.2 Taxes and Interest**

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.
- (2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Siskinds LLP or the Claims Administrator, as appropriate, shall

be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Siskinds LLP or the Claims Administrator.

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

(1) The Settling Defendants and other Releasees shall not oppose any application that may be brought by or on behalf of the Plaintiffs to intervene in the U.S. Litigation in order to gain access to discovery documents and other documents and information subject to a protective order that are relevant to the Proceeding and is not otherwise inconsistent with the terms of this Settlement Agreement, including Section 4.1(16). However it is understood and agreed that neither the Settling Defendants nor the other Releasees have any obligation to bring or otherwise participate in such an application.

(2) To the extent that the Plaintiffs receive documents or information originating with the Settling Defendants as a result of any application to intervene in the U.S. Litigation, such documents and information shall be treated in accordance with Section 4.2.

## **SECTION 4 – COOPERATION**

### **4.1 Extent of Cooperation**

(1) Within ninety (90) days from the Date of Execution, or such other time period as Class Counsel and the Settling Defendants may reasonably agree, subject to the other provisions of this Settlement Agreement, Counsel for the Settling Defendants will meet with Class Counsel at a location mutually agreed to by the Parties, to provide an oral evidentiary proffer which will include information originating with the Settling Defendants that is not covered by privilege

relating to the allegations in the Proceeding. The proffer shall not be provided in writing and shall not exceed seven (7) hours. Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by Counsel for the Settling Defendants are privileged, will be kept strictly confidential, may not be directly or indirectly disclosed to any other Person, and will not be used by Class Counsel for any purpose other than for their own internal use in connection with the prosecution of the Proceeding, except that such information can be disclosed to Camp Fiorante Matthews Mogergerman LLP, to the extent that Camp Fiorante Matthews Mogergerman LLP is assisting Class Counsel in the prosecution of the Proceeding and they agree to keep such information confidential and only use it for the purpose of providing such assistance.

(2) Within thirty (30) days from the Effective Date, or such other time period as Class Counsel and the Settling Defendants may reasonably agree, the Settling Defendants shall:

- (a) provide to Class Counsel transactional sales data, which shall be compiled and produced in the form in which it is kept in the ordinary course of the Settling Defendants' business, reflecting the Settling Defendants' sales of Automatic Transmission Fluid Warmers sold directly in Canada, the United States and Japan between November 1, 2002 and March 1, 2013, to the extent such data has already been collected by the Settling Defendants, and to the extent such data relates to items known or expected to be included in Automotive Vehicles that were sold in Canada. The transactional sales data will be provided in Excel or such other format in which the data currently exists;
- (b) provide to Class Counsel transactional cost data, which shall be compiled and produced in the form in which it is kept in the ordinary course of the Settling Defendants' business, for the production and sale of Automatic Transmission Fluid Warmers in Canada, the United States and Japan between November 1, 2002 and March 1, 2013, to the extent such data has already been collected by the Settling Defendants, and to the extent such data relates to items known or expected to be included in Automotive Vehicles that were sold in Canada. The transactional cost data will be provided in Excel or such other format in which the data currently exists; and

- (c) provide reasonable assistance to the Plaintiffs in understanding the transactional sales and cost data made accessible by the Settling Defendants, including a reasonable number of written and/or telephonic communications with Class Counsel and/or the Plaintiffs' experts and between technical personnel.

(3) Within thirty (30) days from the Effective Date, or such other time period as Class Counsel and the Settling Defendants may reasonably agree, the Settling Defendants shall, through a third party that provides document management hosting using document management software:

- (a) provide access to electronic copies of any documents (as defined in Rule 30.01 of the Ontario *Rules of Civil Procedure*) regarding Automatic Transmission Fluid Warmers produced by the Settling Defendants in the U.S. Litigation, including any documents (whether copies of originals or pre-existing translations into English of original documents) produced by the Settling Defendants pursuant to the U.S. Settlements, to the extent relevant to the allegations in the Proceeding. It being understood that the documents made accessible by the Settling Defendants pursuant to this Settlement Agreement shall not include any documents produced to them (or any of them) by any third parties whether or not those third party productions were shared with other parties who are not Releasees to the U.S. Litigation;
- (b) provide access to electronic copies of transcripts and video recordings of all depositions of current or former employees, officers or directors of the Releasees, including all exhibits thereto, taken in the U.S. Litigation and any pre-existing translations of those transcripts, to the extent such transcripts and video recordings are in the possession of the Settling Defendants, to the extent permitted by the Protective Order in the U.S. Litigation, and to the extent relevant to the allegations in the Proceeding; and
- (c) provide access to electronic copies of any documents (as defined in Rule 30.01 of the Ontario *Rules of Civil Procedure*) produced by the Settling Defendants to the Canadian Competition Bureau, the United States Department of Justice and the Japanese Fair Trade Commission (whether the documents so produced were

copies of original documents or pre-existing translations into English of original documents) to the extent relevant to the allegations in the Proceeding.

(4) The cost of hosting the documents and information pursuant to Section 4.1(3) is the responsibility of the Settling Defendants.

(5) The obligation to produce or provide access to documents and information pursuant to Sections 4.1(2) and (3) shall be a continuing obligation to the extent documents are identified by the Settling Defendants following the initial disclosure pursuant to this Settlement Agreement.

(6) Documents made accessible to Class Counsel in accordance with Sections 4.1(2) and (3) will be accessible in the format in which they were produced in the U.S. Litigation, to the Canadian Competition Bureau, the United States Department of Justice and/or the Japanese Fair Trade Commission, and will include any pre-existing and non-privileged electronic coding, to the extent permitted by the Protective Order in the U.S. Litigation. In addition, where the documents previously produced in the U.S. Litigation contain bates stamps on their face, a field containing the corresponding bates stamps of the first page of each document will be made accessible to Class Counsel.

(7) The Settling Defendants may, on thirty (30) days' notice or such other time period as Class Counsel and the Settling Defendants may reasonably agree, provide to the Plaintiffs copies of the documents and information listed in Section 4.1(3) and revoke access to the documents being hosted using document management software pursuant to Section 4.1(3). Upon receipt of the documents and information listed in Section 4.1(3), Section 4.2(2) shall no longer apply to the Plaintiffs' use of such documents and information.

(8) The Settling Defendants shall not object to the Plaintiffs' participation in any evidentiary proffers and/or interviews of the Settling Defendants' representatives that occur in the U.S. Litigation pursuant to the U.S. Settlement Agreements. The Settling Defendants shall, where possible, provide notice to Class Counsel thirty (30) days before any evidentiary proffer or interview of representatives of the Settling Defendants that occur in the U.S. Litigation pursuant to the U.S. Settlement Agreements.

(9) It is understood that the evidentiary proffers described in Section 4.1(1) and the evidentiary proffers and/or interviews of witnesses described in Section 4.1(8) might take place before the Effective Date. In such event:

- (a) any documents or information disclosed in the course of those evidentiary proffers and/or interviews shall be subject to the terms and protections of this Settlement Agreement; and
- (b) in the event that this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, the documents and information disclosed during the evidentiary proffers and/or interviews shall not be used by the Plaintiffs or Class Counsel, whether directly or indirectly, in any way for any reason, including, without limitation, against the Settling Defendants as an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by the Settling Defendants or of the truth of any claims or allegations in the Proceeding, and such information shall not be discoverable by any Person or treated as evidence of any kind, unless otherwise ordered by a Court. In order to give effect to this agreement, Class Counsel agrees to return all copies of any documents received during, and destroy all copies of any notes taken during (or subsequent reports provided about), these evidentiary proffers and/or interviews and to provide written confirmation to the Settling Defendants of having done so.

(10) In the event that Class Counsel are unable to participate in the interviews that occur in the U.S. Litigation pursuant to the U.S. Settlement Agreements and/or no interviews occur within one (1) month of the Certification Date, the Settling Defendants shall, at the request of Class Counsel, upon reasonable notice, and subject to any legal restrictions, make reasonable efforts to make available at a mutually convenient time, two (2) current or former officers, directors or employees of the Settling Defendants who have knowledge about the allegations in the Proceeding to provide information regarding the allegations raised in the Proceeding in a personal interview with Class Counsel and/or experts retained by Class Counsel. Such personal interviews shall not exceed one (1) business day or seven (7) hours for each individual. The employees shall be made available at a location as agreed to by Counsel for the Settling Defendants and Class Counsel. Costs incurred by, and the expenses of, the employees of the

Settling Defendants in relation to such interviews shall be the responsibility of the Settling Defendants. Costs of an interpreter or otherwise related to foreign language translation in connection with interviews shall be the responsibility of Class Counsel. If an employee refuses to provide information, or otherwise cooperate, the Settling Defendants shall use reasonable efforts to make him/her available for an interview with Class Counsel and/or experts retained by Class Counsel, where "reasonable efforts" shall not include disciplining or terminating the employee. The failure of an employee to agree to make him or herself available to, or otherwise cooperate with, the Plaintiffs shall not constitute a violation of this Settlement Agreement.

(11) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts (which shall not include disciplining or terminating the employee) to produce at trial or through acceptable affidavits (i) a current representative qualified to establish for admission into evidence the Settling Defendants' transactional data and cost information provided pursuant to Sections 4.1(2)(a) and 4.1(2)(b); (ii) a representative qualified to establish for admission into evidence any of the Settling Defendants' documents provided as cooperation pursuant to Section 4.1(2) of this Settlement Agreement that is reasonable and necessary for the prosecution of the Proceeding (with Class Counsel using its best efforts to authenticate documents for use at trial or otherwise without use of a live witness); and (iii) a maximum of three (3) representatives qualified to establish for admission into evidence information provided in cooperation pursuant to Section 4 of this Settlement Agreement, provided that Class Counsel shall use all reasonable efforts to limit this requirement to a single witness, and alternatively to one witness each on behalf of T.RAD Co., Ltd. and T.RAD North America, Inc., and only if considered necessary a total of three (3) witnesses. To the extent reasonably possible, a single witness will be used both to authenticate documents and provide the information at trial or otherwise contemplated by this Section. The failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement. To the extent any of the Settling Defendants' cooperation obligations require any current or former employees of the Settling Defendants to travel from their principal place of business to another location, Class Counsel shall reimburse the Settling Defendants for half of the reasonable travel expenses incurred by any such person in connection with fulfilling the Settling Defendants' cooperation obligations. Such reimbursement of travel expenses as set

forth herein shall not exceed \$5,000 CAD per Person. In no event shall Class Counsel be responsible for reimbursing such Persons for time or services rendered.

(12) Nothing in this Settlement Agreement shall be construed to require the Settling Defendants to perform any act, including the transmittal or disclosure of any information, which would violate the law of this or any jurisdiction.

(13) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants or any representative or employee of the Settling Defendants to disclose or produce any documents or information prepared by or for Counsel for the Settling Defendants, or that is not within the possession, custody or control of the Settling Defendants, or to disclose or produce any documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, joint defence privilege or any other privilege, doctrine, or law, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee. The Settling Defendants are not required to create a privilege log. However, if a relevant privilege log was created in the context of the U.S. Litigation, Counsel for the Settling Defendants have created a relevant privilege log, or there is some other pre-existing document containing identifying information regarding the withheld documents, the Settling Defendants will provide Class Counsel with a copy of such log or document.

(14) If any documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently disclosed or produced, such documents shall be promptly returned to the Settling Defendants and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such documents.

(15) The Settling Defendants' obligations to cooperate as particularized in this Section shall not be affected by the release provisions contained in Section 7 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason or all Defendants in the Proceeding settle with the Plaintiffs and those settlements

become effective in accordance with their terms, the Settling Defendants' obligations to cooperate shall cease at the date of final judgment in the Proceeding against all Defendants.

(16) Subject to Sections 4.1(17) and (18), the provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or documents from the Releasees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(17) The Plaintiffs may exercise any rights they have to seek to obtain discovery in the Proceeding as against an officer, director and/or employee of the Settling Defendants put forward to participate in employee interviews, or provide testimony at trial or otherwise pursuant to Sections 4.1(10) and 4.1(11), if the current or former officer, director or employee of the Settling Defendants fails to cooperate in accordance with those Sections and the provisions of this Settlement Agreement.

(18) In the event that the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Court to enforce the terms of this Settlement Agreement.

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

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

(21) The Settling Defendants make no representation regarding and shall bear no liability with respect to the accuracy of any of the documents or information described in this Section 4.1, or that they have, can or will produce a complete set of any of the documents or information described in this Section 4.1, and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.

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

(1) It is understood and agreed that all documents and information made accessible or provided by the Settling Defendants and/or Counsel for the Settling Defendants to the Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Proceeding, and shall not be used directly or indirectly for any other purpose, except to the extent that the documents or information are or become publicly available. The Plaintiffs and Class Counsel agree they will not disclose the documents and information made accessible or provided by the Settling Defendants and/or Counsel for the Settling Defendants beyond what is reasonably necessary for the prosecution of the Proceeding or as otherwise required by law, except to the extent that the documents or information are or become publicly available. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such documents and information, and of any work product of Class Counsel that discloses such documents and information. Notwithstanding the foregoing, Class Counsel may disclose such information and documents to Camp Fiorante Matthews Mogergerman LLP, to the extent that Camp Fiorante Matthews Mogergerman LLP is assisting Class Counsel in the prosecution of the Proceeding and they agree to keep such information confidential and only use it for the purpose of providing such assistance.

(2) Subject to Section 4.1(7) and except to the extent documents made accessible pursuant to Section 4.1(3) are or become otherwise publicly available, Class Counsel shall only download, print or save such documents if they determine, acting reasonably and in good faith, that such documents are, at that time, required to be produced and used in the Proceeding as an exhibit for an affidavit of a witness for the Plaintiffs, relied on by an expert in a report filed in the Proceeding, for use in cross-examinations, an exhibit for trial, or otherwise necessary for prosecution of the Proceeding. Prior to downloading, printing or saving such documents, Class Counsel shall provide the Settling Defendants with an advance description of the documents at least ten (10) business days in advance.

(3) If the Plaintiffs intend to produce or file in the Proceeding any documents or other information made accessible or provided by the Settling Defendants and/or Counsel for the Settling Defendants as cooperation under the Settlement Agreement (and such disclosure is not otherwise prohibited by the Settlement Agreement), Class Counsel shall provide the Settling Defendants with an advance description of the documents or other information sought to be

produced or filed at least thirty (30) days in advance of the proposed production or filing and Class Counsel will bring a motion, in consultation with the Settling Defendants, seeking a sealing or confidentiality order or similar relief from the Court, similar in content to the order issued by the Court in the Ontario Superior Court of Justice Court File No. CV-12-44673700CP, dated July 15, 2015. Subject to further agreement by the Parties, the Plaintiffs and Class Counsel shall not produce or file the information or documents until the Plaintiffs' motion has been decided and all applicable appeal periods have expired.

(4) In the event that a Person requests disclosure of documents or information made accessible or provided by the Settling Defendants and/or Counsel for the Settling Defendants as cooperation under this Settlement Agreement, whether or not the Person applies for an order requiring the Plaintiffs to disclose or produce any documents or other information, Class Counsel shall provide notice to the Settling Defendants promptly upon becoming aware of it in order that the Settling Defendants may intervene to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production. The Plaintiffs and Class Counsel shall not disclose the confidential information or documents until the Settling Defendants' motion has been decided and all applicable appeal periods have expired, except: (i) to the extent such information or documents are or become otherwise publicly available; or (ii) as ordered to do so by a Court.

(5) In addition, Class Counsel shall treat any documents received from or made accessible by the Settling Defendants and designated as Confidential or Highly Confidential in accordance with the provisions of the "Stipulation and Protective Order Governing the Production and Exchange of Confidential Information" issued in the U.S. Litigation on July 10, 2012 (the "U.S. Protective Order"). Notwithstanding the foregoing, to the extent that there is a conflict between the U.S. Protective Order and any confidentiality or protective order issued in the Proceeding, the order(s) issued in the Proceeding shall prevail.

## **SECTION 5 - OPTING OUT**

### **5.1 Procedure**

(1) Persons seeking to opt-out of the Proceeding must do so by sending a written election to opt-out, signed by the Person or the Person's designee, by pre-paid mail, courier, fax or email to Class Counsel at an address to be identified in the notice described in Section 11.1(1).

(2) Any potential Settlement Class Member who validly opts out of the Proceeding shall not be able to participate in the Proceeding and no further right to opt out of the Proceeding will be provided.

(3) An election to opt-out sent by mail or courier will only be valid if it is postmarked on or before the Opt-Out Deadline to the designated address in the notice described in Section 11.1(1). Where the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.

(4) The written election to opt-out must contain the following information in order to be valid:

- (a) the Person's full name, current address and telephone number;
- (b) if the Person seeking to opt-out is a corporation, the name of the corporation and the position of the Person submitting the request to opt-out on behalf of the corporation;
- (c) a statement to the effect that the Person wishes to be excluded from the Proceeding;
- (d) the aggregate number of Automotive Vehicles purchased by the Person in Canada during the Class Period; and
- (e) the reason(s) for opting out.

(5) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendants a report containing the names of each Person who has validly and timely opted out of the Proceeding, the reasons for the opt-out, if known, and a summary of the information delivered by such Persons pursuant to this Section 5.1.

(6) With respect to any potential Settlement Class Member who validly opts-out from the Proceeding, the Settling Defendants reserve all of their legal rights and defences.

(7) The Plaintiffs through Class Counsel expressly waive their right to opt-out of the Proceeding.

## SECTION 6 - TERMINATION OF SETTLEMENT AGREEMENT

### 6.1 Right of Termination

- (1) In the event that:
  - (a) the Court declines to certify the Proceeding as against any Settling Defendant for the purposes of the Settlement Agreement;
  - (b) the Court declines to dismiss the Proceeding as against any Settling Defendant;
  - (c) the Court declines to approve this Settlement Agreement or any material part hereof;
  - (d) the Court approves this Settlement Agreement in a materially modified form;
  - (e) the Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule B;
  - (f) any order approving this Settlement Agreement made by the Court does not become a Final Order; or
  - (g) the Settlement Amount is not paid in accordance with Section 3.1(1).

the Plaintiffs and the Settling Defendants shall each have the right to terminate this Settlement Agreement (except with respect to (g)), in which case only the Plaintiffs shall have the right to terminate this Settlement Agreement) by delivering a written notice pursuant to Section 15.18, within thirty (30) days following an event described above.

(2) If an event articulated in the Opt-Out Threshold occurs, the Settling Defendants or the Plaintiffs, as applicable, shall have the right to terminate this Settlement Agreement by delivering a written notice to Class Counsel or Counsel for the Settling Defendants, as applicable, pursuant to Section 15.18, within thirty (30) days after Class Counsel has delivered to the Settling Defendants the opt-out report required by Section 5.1(5).

(3) Except as provided for in Section 6.4, if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be

binding on the terminating Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

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

- (a) Class Counsel Fees or Class Counsel Disbursements;
- (b) the opt-out process; or
- (c) the Distribution Protocol.

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

## **6.2 If Settlement Agreement is Terminated**

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to certify the Proceeding as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying the Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
- (c) any prior certification of the Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceeding or any Other Actions or other litigation; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendants and/or Counsel for the Settling Defendants under this Settlement Agreement or

containing or reflecting information derived from such documents or other materials received from the Settling Defendants and/or Counsel for the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided or made accessible by the Settling Defendants and/or Counsel for the Settling Defendants to any other Person, shall recover and destroy such documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this Section 6.2 shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided or made accessible by the Settling Defendants and/or Counsel for the Settling Defendants, or received from the Settling Defendants and/or Counsel for the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the relevant Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

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

(1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Siskinds LLP shall, within thirty (30) days of the written notice pursuant to Section 6.1(1), return to the Settling Defendants the amount they have paid to Siskinds LLP, plus all accrued interest thereon, but less the Settling Defendants' proportional share of the costs of notices required by Section 11.1(1), up to a maximum of \$30,000 and, for any translations required by Section 15.12, up to a maximum of \$7,750.

### **6.4 Survival of Provisions After Termination**

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.1(8), 3.2(3), 4.1(9)(b), 6.1(2), 6.1(3), 6.2, 6.3, 6.4, 9.1, 9.2, 11.1(2), 12.2(4), 13.2 and 15.2, and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules

shall survive only for the limited purpose of the interpretation of Sections 3.1(8), 3.2(3), 4.1(9)(b), 6.1(2), 6.1(3), 6.2, 6.3, 6.4, 9.1, 9.2, 11.1(2), 12.2(4), 13.2 and 15.2 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

## **SECTION 7 - RELEASES AND DISMISSALS**

### **7.1 Release of Releasees**

(1) Upon the Effective Date, subject to Section 7.3, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

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

### **7.2 Release by Releasees**

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

### **7.3 Covenant Not to Sue**

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

#### **7.4 No Further Claims**

(1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity, in respect of any Released Claim, except for the continuation of the Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceeding is not certified with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

#### **7.5 Dismissal of the Proceeding**

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

#### **7.6 Dismissal of Other Actions**

(1) Upon the Effective Date, each member of the Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Other Actions against the Releasees, to the extent such Other Actions relate to Automatic Transmission Fluid Warmers.

(2) Upon the Effective Date, all Other Actions commenced by any Settlement Class Member in Ontario, to the extent such Other Actions relate to Automatic Transmission Fluid Warmers, shall be dismissed as against the Releasees, without costs, with prejudice and without reservation.

#### **7.7 Material Term**

(1) The releases, covenants, dismissals, and granting of consent contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to

approve the releases, covenants, dismissals, and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

## SECTION 8 - BAR ORDER AND OTHER CLAIMS

### 8.1 Bar Order

- (1) Class Counsel shall obtain a bar order from the Court providing for the following:
  - (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceeding or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Proceeding);
  - (b) if the Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:
    - (i) the Plaintiffs and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (ii) the Plaintiffs and the Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Plaintiffs and Settlement Class Members, if any, and, for greater certainty, Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and
  - (iii) the Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceeding, whether or not the Releasees remain in the Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceeding and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Proceeding and shall not be binding on the Releasees in any other proceeding;
- (c) after the Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, and on at least twenty (20) days' notice to Counsel for the Settling Defendants, a Non-Settling Defendant may, on motion to the Court, seeking an order for the following, which order shall be determined as if the Settling Defendants remained parties to the Proceeding:

- (i) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the Ontario *Rules of Civil Procedure*;
  - (ii) oral discovery of a representative of the Settling Defendants, the transcripts of which may be read in at trial;
  - (iii) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
  - (iv) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (d) the Settling Defendants retain all rights to oppose any motion brought pursuant to Section 8.1(1)(c), including any such motion brought at trial seeking an order requiring the Settling Defendants to produce a representative to testify at trial. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with Section 8.1(1)(c);
- (e) on any motion brought pursuant to Section 8.1(1)(c), the Court may make such orders as to costs and other terms as it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;
- (g) the Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Court for these purposes; and

- (h) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 8.1(1)(c) by service on Counsel for the Settling Defendants in the Proceeding.

## **8.2 Claims Against Other Entities Reserved**

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

## **8.3 Material Term**

- (1) The Parties acknowledge that the bar order and reservation of rights contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the bar order and reservation of rights contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

# **SECTION 9 - EFFECT OF SETTLEMENT**

## **9.1 No Admission of Liability**

- (1) The Plaintiffs and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceeding or any Other Actions, or any other pleading filed by the Plaintiffs.

## **9.2 Agreement Not Evidence**

- (1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to,

offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

### **9.3 No Further Litigation**

(1) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Settling Defendants which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceeding against any Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceeding is not certified, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Proceeding or the negotiation and preparation of this Settlement Agreement, except to the extent such information is or becomes otherwise publicly available or unless ordered to do so by a court, and subject to Section 4.2 of this Settlement Agreement, except that such information can be disclosed to Camp Fiorante Matthews Mogeran LLP, to the extent that Camp Fiorante Matthews Mogeran LLP is assisting Class Counsel in the prosecution of the Proceeding and they agree to keep such information confidential and only use it for the purpose of providing such assistance.

### **SECTION 10 - CERTIFICATION FOR SETTLEMENT ONLY**

(1) The Parties agree that the Proceeding shall be certified as a class proceeding as against the Settling Defendants solely for purposes of settlement of the Proceeding as against the Settling Defendants and the approval of this Settlement Agreement by the Court.

(2) The Plaintiffs agree that, in the motion for certification of the Proceeding as a class proceeding for settlement purposes, the only common issue that they will seek to define is the Common Issue and the only class that they will assert is the Settlement Class.

(3) The Parties agree that the certification of the Proceeding as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any

way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

## **SECTION 11 - NOTICE TO SETTLEMENT CLASS**

### **11.1 Notices Required**

(1) The proposed Settlement Class shall be given a single notice of (i) the certification of the Proceeding as a class proceeding as against the Settling Defendants for settlement purposes; (ii) the right to opt-out of the Proceeding; (iii) the hearing at which the Court will be asked to approve the Settlement Agreement; and (iv) if brought with the hearing to approve the Settlement Agreement, the hearing to approve Class Counsel Fees and Class Counsel Disbursements.

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

### **11.2 Form and Distribution of Notices**

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

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

## **SECTION 12 - ADMINISTRATION AND IMPLEMENTATION**

### **12.1 Mechanics of Administration**

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Court on motions brought by Class Counsel.

### **12.2 Information and Assistance**

(1) Within thirty (30) days after the Date of Execution, the Settling Defendants will make best efforts to provide or make accessible to Class Counsel a list of the names and addresses of

Persons in Canada who purchased Automatic Transmission Fluid Warmers directly from the Settling Defendants during the Class Period. Where applicable, the Settling Defendants will make reasonable efforts to provide or make accessible the name of the corporate contact person for each Person in Canada who purchased Automatic Transmission Fluid Warmers directly from the Settling Defendants during the Class Period. The information shall be delivered or made accessible in Microsoft Excel or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel.

- (2) Class Counsel may use the information provided under Section 12.2(1):
  - (a) to facilitate the dissemination of the notices required in Section 11.1;
  - (b) to advise Persons in Canada who purchased Automatic Transmission Fluid Warmers from the Releasees during the Class Period of any subsequent settlement agreement reached in the Proceeding, any related approval hearings, and any other major steps in the Proceeding;
  - (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement(s) achieved or court awards issued in the Proceeding; and
  - (d) as otherwise authorized in Section 4.
- (3) All information provided or made accessible by the Settling Defendants pursuant to Section 12.2(1) shall be dealt with in accordance with Section 4, except that Class Counsel may disclose all information provided or made available by the Settling Defendants pursuant to Section 12.2(1) to any Court-appointed notice provider and/or any Claims Administrator, to the extent reasonably necessary for the purposes enumerated in Section 12.2(2). Any Court-appointed notice provider and/or any Claims Administrator shall be bound by the same confidentiality obligations set out in Section 4.
- (4) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, all information provided or made accessible by the Settling Defendants pursuant to Section 12.2(1) shall be dealt with in accordance with Section 6.2(1)(d) and no

record of the information so provided or made accessible shall be retained by Class Counsel in any form whatsoever.

(5) The Settling Defendants will make themselves reasonably available to respond to questions respecting the information provided or made accessible pursuant to Section 12.2(1) from Class Counsel or any Court-appointed notice provider and/or Claims Administrator. The Settling Defendants' obligations to make themselves reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 7 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate pursuant to this Section 12.2 shall cease when the Proceeding is resolved as against all Defendants and all settlement funds or court awards have been distributed.

(6) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 12.2.

### **SECTION 13 - DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST**

#### **13.1 Distribution Protocol**

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

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

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

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

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

**SECTION 14 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES**

**14.1 Responsibility for Fees, Disbursements and Taxes**

(1) The Settling Defendants shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

**14.2 Responsibility for Costs of Notices and Translation**

(1) Siskinds LLP shall pay the costs of the notices required by Section 11 and any costs of translation required by Section 15.12 from the Trust Account, as they become due. Subject to Section 6.3, the Releasees shall not have any responsibility for the costs of the notices or translation.

**14.3 Court Approval for Class Counsel Fees and Disbursements**

(1) Class Counsel may seek the Court's approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date.

(2) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date. No other Class Counsel Disbursements or Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

**SECTION 15 - MISCELLANEOUS**

**15.1 Motions for Directions**

(1) Class Counsel or the Settling Defendants may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

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

**15.2 Releasees Have No Liability for Administration**

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

**15.3 Headings, etc.**

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

**15.4 Computation of Time**

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

**15.5 Ongoing Jurisdiction**

- (1) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs,

Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Court for such purposes.

**15.6 Governing Law**

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

**15.7 Entire Agreement**

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

**15.8 Amendments**

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of the Parties, and any such modification or amendment must be approved by the Court.

**15.9 Binding Effect**

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

**15.10 Counterparts**

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

**15.11 Negotiated Agreement**

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

**15.12 Language**

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required to by the Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

**15.13 Transaction**

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

**15.14 Recitals**

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

**15.15 Schedules**

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

**15.16 Acknowledgements**

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

**15.17 Authorized Signatures**

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

**15.18 Notice**

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

**For the Plaintiffs and for Class Counsel in the Proceeding:**

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

David Sterns and Jean Marc Leclerc  
SOTOS LLP  
Barristers and Solicitors  
180 Dundas Street West, Suite 1250  
Toronto, ON M5G 1Z8  
Tel: 416.977.0007  
Fax: 416.977.0717  
Email: dsterns@sotosllp.com  
jleclerc@sotosllp.com

**For the Settling Defendants:**

Kevin Wright  
DLA Piper (Canada) LLP  
Suite 2800, Park Place  
666 Burrard Street  
Vancouver BC V6C 2Z7  
Tel: 604.687.9444  
Fax: 604.687.1612  
Email: kevin.wright@dlapiper.com

**15.19 Date of Execution**

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

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

Name of Authorized Signatory:

*Kerry McGladdery Dent for Charles Wright*

Signature of Authorized Signatory:

*Kerry McGladdery Dent*  
Siskinds LLP  
Ontario Counsel

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

Name of Authorized Signatory:

*Kerry McGladdery Dent for David Sterns*

Signature of Authorized Signatory:

*Kerry McGladdery Dent*  
Sotos LLP  
Ontario Counsel

**T.RAD CO., LTD. and T.RAD NORTH AMERICA, INC.**

Per: H. Kano 07/13/2017

Name: Mr. Hiromi Kano

Title: President and Representative  
Director of T.RAD Co., Ltd.

I have the authority to sign on behalf of T.RAD Co., Ltd. and  
T.RAD North America, Inc.

Per: J. Kevin Wright

Name: J. Kevin Wright

Title: Counsel for T.RAD Co., Ltd. and  
T.RAD North America, Inc.

**SCHEDULE "A"**

Court File No. CV-14-506644-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
JUSTICE BELOBABA ) \_\_\_\_\_, THE \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 2017

BETWEEN:

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

Plaintiffs

- and -

**T.RAD CO., LTD. and T.RAD NORTH AMERICA INC., DENSO CORPORATION,  
DENSO INTERNATIONAL AMERICA INC., DENSO MANUFACTURING CANADA,  
INC., DENSO SALES CANADA, INC., CALSONIC KANSEI CORPORATION, and  
CALSONIC KANSEI NORTH AMERICA, INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**- Automatic Transmission Fluid Warmers -**

**THIS MOTION** made by the Plaintiffs for an Order approving the abbreviated, publication, and long-form notices of settlement approval hearings and the method of dissemination of said notices, and certifying this proceeding as a class proceeding for settlement purposes as against T.RAD Co., Ltd. and T.RAD North America Inc. (collectively the "Settling Defendants") was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

**ON READING** the materials filed, including the settlement agreement with the Settling Defendants dated as of ●, 2017 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiffs and Counsel for the Settling Defendants, the Non-Settling Defendants taking no position;

1. **THIS COURT ORDERS** that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the abbreviated, publication, and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as Schedules "B" to "D".
3. **THIS COURT ORDERS** that the plan of dissemination for the abbreviated, publication, and long-form notices of settlement approval hearing (the "Plan of Dissemination") is hereby approved in the form attached hereto as Schedule "E" and that the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that the Proceeding is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
5. **THIS COURT ORDERS** that the "Settlement Class" is certified as follows:

All Persons in Canada who, during the Class Period, (a) purchased, directly or indirectly, an Automatic Transmission Fluid Warmer in Canada; and/or (b) purchased or leased, directly or indirectly, a new or used Automotive Vehicle in Canada; and/or (c) purchased for import into Canada, a new or used Automotive Vehicle.  
Excluded Persons are excluded from the Settlement Class.
6. **THIS COURT ORDERS** that Sheridan Chevrolet Cadillac Ltd., Pickering Auto Mall Ltd., and Fady Samaha are appointed as the representative plaintiffs for the Settlement Class.

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

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

8. **THIS COURT ORDERS** that paragraphs 1 and 4-7 of this Order, including the certification of the Proceeding as against the Settling Defendants for settlement purposes and the definition of Settlement Class and Common Issue, and any reasons given by the Court in connection with paragraphs 1 and 4-7 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Proceeding and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Proceeding, as against the Non-Settling Defendants.

9. **THIS COURT ORDERS** that putative members of the Settlement Class can opt out of the Proceeding by sending a written request to opt out to Class Counsel, postmarked on or before the Opt-Out Deadline. The written election to opt out must include the following:

- (a) the Person's full name, current address and telephone number;
- (b) if the Person seeking to opt-out is a corporation, the name of the corporation and the position of the Person submitting the request to opt-out on behalf of the corporation;
- (c) a statement to the effect that the Person wishes to be excluded from the Proceeding;
- (d) the aggregate number of Automotive Vehicles purchased by the Person in Canada during the Class Period; and
- (e) the reason(s) for opting out.

10. **THIS COURT ORDERS** that where the postmark is not visible or legible, the election to opt out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.
11. **THIS COURT ORDERS** that any putative member of the Settlement Class who validly opts out of the Proceeding shall not be able to participate in the Proceeding or to share in the distribution of any funds received as a result of a judgment or settlement, and no further right to opt out of the Proceeding will be provided.
12. **THIS COURT ORDERS** that, within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendants a report containing the names of each Person who has validly and timely opted out of the Proceeding, the reasons for the opt-out, if known and a summary of the information delivered by such Persons pursuant to paragraph 9 above.

---

The Honourable Justice Belobaba

**SCHEDULE "B"**

Court File No. CV-14-506644-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) \_\_\_\_\_, THE \_\_\_\_\_ DAY  
JUSTICE BELOBABA ) OF \_\_\_\_\_, 2017

BETWEEN:

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

Plaintiffs

- and -

**T.RAD CO., LTD. and T.RAD NORTH AMERICA INC., DENSO CORPORATION,  
DENSO INTERNATIONAL AMERICA INC., DENSO MANUFACTURING CANADA,  
INC., DENSO SALES CANADA, INC., CALSONIC KANSEI CORPORATION, and  
CALSONIC KANSEI NORTH AMERICA, INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**- Automatic Transmission Fluid Warmers -**

**THIS MOTION** made by the Plaintiffs for an Order approving the settlement agreement entered into with the Defendants T.RAD Co., Ltd. and T.RAD North America Inc. (collectively the "Settling Defendants") and dismissing this action as against the Settling Defendants, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

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

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

**AND ON BEING ADVISED** that the deadline for opting out of the Proceeding has passed, and there were ● Persons who validly and timely exercised the right to opt out;

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

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Proceeding.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee whether pursuant to the *Negligence Act*, RSO 1990, c. N.1 or other legislation or at common law or equity, in respect of any Released Claim, except for the continuation of the Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceeding is not certified or authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.
10. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceeding or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any Person or party, are barred, prohibited and enjoined in accordance with

the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceeding).

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

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

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceeding, whether or not the Releasees remain in the Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Proceeding and shall not be binding on the Releasees in any other proceeding.
14. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of Settlement Class Members in the Proceeding or the rights of the Plaintiffs and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
15. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to the Proceeding, and on at least twenty (20) days' notice to Counsel for the Settling Defendants, and not to be brought unless and until the Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
- (a) documentary discovery and an affidavit of documents from a Settling Defendant(s) in accordance with the *Rules of Civil Procedure*, RRO 1990, Reg. 194;
  - (b) oral discovery of a representative of a Settling Defendant(s), the transcript of which may be read in at trial;
  - (c) leave to serve a request to admit on a Settling Defendant(s) in respect of factual matters; and/or
  - (d) the production of a representative of a Settling Defendant(s) to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

16. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 15. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 15, the Court may make such orders as to costs and other terms as it considers appropriate.
17. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 15 above by service on Counsel for the Settling Defendants.
18. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
19. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class has or may have in the Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
20. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; administration, investment, or distribution of the Trust Account; or the Distribution Protocol.
21. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Siskinds LLP for the benefit of Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Classes in the continued prosecution of the litigation against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Class to claim such Class Counsel Disbursements in the

context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.

22. **THIS COURT ORDERS** that in the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administrative Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.
23. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.
24. **THIS COURT ORDERS** that, except as aforesaid, this action be and is hereby dismissed as against the Settling Defendants, without costs and with prejudice.
25. **THIS COURT ORDERS** that the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except any reasons given in connection with paragraphs 12-17 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Proceeding and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Proceeding as against the Non-Settling Defendants.

---

The Honourable Justice Belobaba