

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC

N° : 200-06-000114-093

DATE : 26 octobre 2016

SOUS LA PRÉSIDENTE DE : L'HONORABLE CATHERINE LA ROSA, j.c.s.

CAROLE OUELLET,

Demanderesse

c.

HITACHI, LTD., HITACHI CANADA, LTD., HITACHI AMERICA, LTD. et HITACHI ASIA, LTD.

et

IRICO GROUP CORPORATION et IRICO DISPLAY DEVICES CO., LTD.

et

LG ELECTRONICS, INC., LG ELECTRONICS CANADA et LG ELECTRONICS TAIWAN TAIPEI CO., LTD.

et

LP DISPLAYS INTERNATIONAL, LTD. (autrefois connue sous LG PHILIPS DISPLAY)

et

KONINKLIJKE PHILIPS ELECTRONICS N.V.

et

PHILIPS ELECTRONICS INDUSTRIES, LTD., PHILIPS ELECTRONICS INDUSTRIES (TAIWAN), LTD., PHILIPS ELECTRONICS NORTH AMERICA CORPORATION et PHILIPS ELECTRONICS, LTD.

et

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG SDI CO., LTD. (autrefois connue sous SAMSUNG DISPLAY DEVICE CO.), SAMSUNG ELECTRONICS AMERICA, INC., SAMSUNG ELECTRONICS CANADA, INC. et SAMSUNG SDI AMERICA, INC.

et
SAMTEL COLOR, LTD.
et
**TOSHIBA CORPORATION, TOSHIBA AMERICA CONSUMER PRODUCTS, LLC et
TOSHIBA OF CANADA LIMITED**

Défenderesses
et

FONDS D'AIDE AUX RECOURS COLLECTIFS

Mis en cause

JUGEMENT

(autorisant l'exercice d'une action collective aux fins de règlement seulement et avec certaines défenderesses seulement et approuvant l'Entente Toshiba)

[1] **Considérant** que les parties sont impliquées dans un litige de la nature d'une action collective;

[2] **Considérant** qu'une entente de règlement (ci-après l'« **Entente Toshiba** ») a été conclue entre la demanderesse et les défenderesses Toshiba Corporation, Toshiba America Consumer Products, LLC et Toshiba of Canada Limited (ci-après « **Toshiba** » ou les « Défenderesses qui règlent¹ »);

[3] **Considérant** que la demanderesse demande :

- a) l'autorisation d'exercer une action collective contre les Défenderesses qui règlent seulement et aux fins de règlement seulement;
- b) de lui octroyer, aux fins de l'Entente Toshiba seulement, le statut de représentante des Membres du Groupe visé par le Règlement au Québec²; et
- c) l'approbation de l'Entente Toshiba.

¹ « *Settling Defendants* ».

² « *Quebec Class Members* ».

[4] **Considérant** les documents soumis au soutien de la demande au moyen d'un volume intitulé « *JOINT MOTION RECORD Settlement Approval - Toshiba, Hitachi and LG Settlements (Returnable October 18, 2016)* // DOSSIER DE DEMANDE CONJOINTE Approbation des Ententes Toshiba, Hitachi et LG (Audience du 18 octobre 2016) », qui comprend notamment :

- (a) la demande et la procédure analogue en Ontario (Notice of motion);
- (b) l'Entente Toshiba;
- (c) la déclaration sous serment d'Andrea DeKay, associée chez Siskinds LLP, avocats du groupe ontarien et les pièces à son soutien;
- (d) la déclaration sous serment de la demanderesse, de même que celle du requérant de l'Ontario;

[5] **Considérant** les représentations des avocats lors de l'audience qui a été tenue par voie de vidéoconférence conjointement devant cette Cour et devant le tribunal de l'Ontario dans l'affaire ci-après :

- *Fanshawe College v Hitachi, Ltd et al*, Ontario Superior Court of Justice (London) Court File No. 59044CP;

[6] **Considérant** l'expiration de l'échéance fixée pour s'opposer à l'Entente Toshiba sans qu'il y ait eu opposition écrite à l'Entente Toshiba;

[7] **Considérant** qu'aucun Membre du Groupe visé par le Règlement au Québec ne s'est présenté devant cette Cour afin de s'opposer à l'approbation de l'Entente Toshiba;

[8] **Considérant** l'article 590 du *Code de procédure civile*;

[9] **Considérant** que la demande a dûment été notifiée au Fonds d'aide aux actions collectives;

[10] **Considérant** les représentations des avocats que le *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives*, en vigueur à ce moment sera respecté dans le cadre du protocole de distribution qui sera soumis au Tribunal pour approbation;

[11] **Considérant** qu'après examen, il y a lieu de faire droit à la demande de la demanderesse;

POUR CES MOTIFS, LE TRIBUNAL :

[12] **DÉCLARE** que l'Entente Toshiba est incorporée par référence, dans son entièreté, au présent jugement et en forme donc partie intégrante et que les définitions contenues dans l'Entente Toshiba devront être utilisées afin d'interpréter le présent jugement;

[13] **AUTORISE** l'exercice d'une action collective contre les Défenderesses qui règlent seulement et aux seules fins de l'Entente Toshiba ;

[14] **ORDONNE** qu'aux fins de règlement, le Groupe du Québec soit défini ainsi :

Toutes les personnes physiques qui résident au Québec et qui ont acheté des Produits avec un tube cathodique au Canada, au cours de la Période visée par le Recours, ainsi que toute personne morale de droit privé, toute société ou toute association résidant au Québec et qui, en tout temps entre le 16 mars 2008 et le 15 mars 2009, comptait sous son contrôle ou sa direction, au plus 50 personnes liées à elle par contrat de travail ayant acheté les mêmes produits ci-haut décrits au Canada au cours de la Période visée par le recours, à l'exception des Personnes exclues.

[15] **ATTRIBUE** à la demanderesse, Carole Ouellet, aux fins d'approbation de l'Entente Toshiba, le statut de représentante des Membres du Groupe visé par le Règlement au Québec;

[16] **IDENTIFIE**, aux seules fins de l'Entente Toshiba, la question commune dans le Recours du Québec comme étant la suivante :

- Est-ce que les Défenderesses qui règlent ont comploté pour fixer, augmenter, maintenir ou stabiliser les prix pour les Tubes cathodiques³ au Canada ou ailleurs, au cours de la Période visée par le recours⁴? Le cas échéant, est-ce que les Membres du Groupe visé par le Règlement au Québec ont subi des dommages?

[17] **DÉCLARE** que le présent jugement, incluant l'autorisation d'exercer une action collective aux fins de règlement seulement et contre les Défenderesses qui règlent seulement, la définition du Groupe et la question commune, n'affectent en rien la position qu'a prise ou pourrait prendre les Défenderesses qui ne sont pas parties à l'Entente⁵ Toshiba dans les Procédures⁶, incluant à l'égard de l'autorisation et des questions communes;

³ « Cathode Ray Tubes »

⁴ « Class Period ».

⁵ « Non-Settling Defendants ».

⁶ « Proceedings ».

[18] **DÉCLARE** que l'Entente Toshiba est valable, équitable, raisonnable, dans le meilleur intérêt des Membres du Groupe visé par le Règlement au Québec et constitue une transaction au sens de l'article 2631 du *Code civil du Québec*;

[19] **APPROUVE** l'Entente Toshiba en accord avec l'article 590 du *Code de procédure civile* et **ORDONNE** qu'elle soit mise en œuvre en conformité avec ses termes;

[20] **ORDONNE** et **DÉCLARE** que l'Entente Toshiba lie toutes les parties ainsi que tous les Membres du Groupe visé par le Règlement au Québec, incluant les personnes mineures et celles qui sont inaptes;

[21] **DÉCLARE** qu'à compter de la Date d'entrée en vigueur⁷, chaque Membre du Groupe visé par le Règlement au Québec sera réputé consentir irrévocablement au rejet de ses Autres Recours⁸ contre les Parties quittancées⁹, sans frais et sans réserve;

[22] **DÉCLARE** qu'à compter de la Date d'entrée en vigueur, tout Autre Recours amorcé au Québec doit être et est, par le présent jugement, rejeté contre les Parties quittancées, sans frais et sans réserve;

[23] **ORDONNE** et **DÉCLARE** qu'à compter de la Date d'entrée en vigueur, chaque Partie donnant quittance¹⁰ sera considérée avoir donné une quittance complète, générale et finale aux Parties Quittancées eu égard aux Réclamations Quittancées¹¹;

[24] **DÉCLARE** qu'à compter de la Date d'entrée en vigueur, chaque Partie donnant quittance ne pourra directement ou indirectement, au Canada ou ailleurs, pour son propre compte ou pour le compte de tout groupe ou de toute autre personne, intenter, continuer, maintenir ou faire valoir toute poursuite, action, cause d'action, réclamation ou demande contre l'une ou l'autre des Parties Quittancées ou toute autre personne qui pourrait réclamer une contribution, une indemnité ou toute autre réclamation de n'importe laquelle des Parties Quittancées, en rapport avec les Réclamations Quittancées ou toute autre matière y étant liée, à l'exception de ce qui suit :

- a) la continuation des Procédures contre les Défenderesses qui ne sont pas parties à l'Entente Toshiba, ou tout autre coconspirateur non désigné dans les Procédures; ou

7 « *Effective Date* ».

8 « *Other Actions* ».

9 « *Releasees* ».

10 « *Releasor* ».

11 « *Released Claims* ».

- b) si les Procédures ne sont pas autorisées comme action collective, la continuation des recours sur une base individuelle contre les Défenderesses qui ne sont pas parties à l'Entente Toshiba, ou tout autre coconspirateur non désigné dans les Procédures;

[25] **DÉCLARE** que par l'Entente Toshiba, la demanderesse et les Membres du Groupe visé par le Règlement au Québec renoncent expressément au bénéfice de la solidarité envers les Défenderesses qui ne sont pas parties à l'Entente Toshiba, eu égard aux faits et gestes des Défenderesses qui règlent;

[26] **DÉCLARE** que la demanderesse et les Membres du Groupe visé par le Règlement ne pourront dorénavant réclamer et obtenir que les dommages, y incluant les dommages punitifs, les intérêts et les frais (y compris les frais d'enquête en vertu de l'article 36 de la Loi sur la concurrence), attribuables aux ventes ou aux agissements des Défenderesses qui ne sont pas parties à l'Entente Toshiba;

[27] **DÉCLARE** que tout recours en garantie ou autre mise en cause pour obtenir une contribution ou une indemnité des Parties Quittancées ou se rapportant aux Réclamations Quittancées, sera irrecevable et non avenu dans le cadre des Procédures;

[28] **DÉCLARE** que le droit des Défenderesses qui ne sont pas parties à l'Entente Toshiba d'interroger les Défenderesses qui règlent sera régi par les règles du *Code de procédure civile* et que les Défenderesses qui règlent conservent tous leurs droits de s'opposer à de tels interrogatoires en vertu du Code de procédure civile;

[29] **DÉCLARE** que les Défenderesses qui ne sont pas parties à l'Entente Toshiba pourront valablement notifier toute procédure pouvant être requise pour faire valoir leurs droits découlant des paragraphes qui précèdent aux Défenderesses qui règlent en notifiant telle procédure à l'avocat *ad litem* de cette partie, comme il est identifié dans le présent jugement;

[30] **DÉCLARE** que cette Cour conservera un rôle de surveillance continue, aux fins d'administration et d'exécution de l'Entente Toshiba et du présent jugement et **CONSTATE** que les Défenderesses qui règlent reconnaissent la compétence de cette Cour aux fins d'exécution, d'administration et de mise en œuvre de l'Entente Toshiba, sujette aux termes et conditions stipulés dans l'Entente Toshiba et le présent jugement;

[31] **DÉCLARE** que le présent jugement n'affecte en rien les droits qu'ont ou pourraient avoir les Membres du Groupe visé par le Règlement contre les Défenderesses qui ne sont pas parties à l'Entente Toshiba ou tout autre coconspirateur non désigné dans les Procédures qui n'est pas une Partie Quittancée;

[32] **DÉCLARE** que les Parties Quittancées n'ont aucune responsabilité ou obligation quelconque quant à l'administration de l'Entente Toshiba, y compris dans la gestion, le placement ou la distribution du Montant de l'Entente¹² Toshiba ou du protocole de distribution;

[33] **ORDONNE** que toute somme composant le Montant de l'Entente Toshiba soit détenue en fidéicommiss par Siskinds LLP au bénéfice des Membres du Groupe visé par le Règlement, jusqu'à ce que de futurs jugements soient rendus à ce sujet;

[34] **ORDONNE** que tout document fourni par les Défenderesses qui règlent à la demanderesse en vertu de l'Entente Toshiba puisse être identifié "*CONFIDENTIAL*" ou "*HIGHLY CONFIDENTIAL*" par les Défenderesses qui règlent (ou puisse avoir déjà été identifié ainsi dans le litige des États-Unis). Dans le cadre de cette action, incluant, mais non limitativement l'enquête, la demanderesse, les Avocats du groupe et les défenderesses doivent traiter tout document identifié comme étant "*CONFIDENTIAL*" ou "*HIGHLY CONFIDENTIAL*" de manière conforme avec la *Stipulated Protective Order* accordée dans le litige des États-Unis et annexée comme *Schedule D* à l'Entente Toshiba. Malgré ce qui précède, la demanderesse, les Avocats du groupe et les défenderesses ne sont pas requis de traiter tout document disponible publiquement de manière conforme avec la *Stipulated Protective Order* accordée dans le litige des États-Unis;

[35] **CONSTATE** que l'Entente Toshiba prévoit que son approbation est conditionnelle à l'approbation par le tribunal de l'Ontario et le tribunal de la Colombie-Britannique et que le présent jugement n'aura aucune force exécutoire et ne produira aucun effet à moins que de tels jugements ne soient obtenus en Ontario et en Colombie-Britannique et que les recours soient rejetés avec préjudice et sans frais contre les Défenderesses qui règlent; **ORDONNE** que si tels jugements ne sont pas rendus, le présent jugement sera nul et non avvenu et sans préjudice aux droits des Parties de poursuivre l'action, auquel cas, toute entente intervenue sera réputée avoir été faite sans préjudice;

[36] **ORDONNE** que le présent jugement sera nul et non avvenu s'il y est mis fin selon les termes de l'Entente Toshiba;

[37] **DÉCLARE** qu'à compter de la Date d'entrée en vigueur, par le présent jugement, le présent dossier sera réglé à l'amiable contre les Défenderesses qui règlent;

[38] **DISPENSE** la demanderesse et les Défenderesses qui règlent de publier tout avis en lien avec le présent jugement ou l'Entente Toshiba;

¹² « *Settlement Amount* ».

[39] **SANS FRAIS de justice.**


CATHERINE LA ROSA, j.c.s.

Me Karim Diallo
Siskinds Desmeules (casier 15)

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Avocate du Fonds d'aide aux recours collectifs

**CANADIAN CATHODE RAY TUBES (CRT) CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of May 12th, 2016

Between

**THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY, CURTIS
SAUNDERS, DAVE DAGG AND CAROLE OUELLET**
(the "Plaintiffs")

and

**TOSHIBA CORPORATION, TOSHIBA AMERICA ELECTRONIC COMPONENTS
INC., TOSHIBA AMERICA INFORMATION SYSTEMS INC., and TOSHIBA OF
CANADA LIMITED**
(the "Settling Defendants")

**CANADIAN CATHODE RAY TUBES (CRT) CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

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**CANADIAN CATHODE RAY TUBES (CRT) CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. WHEREAS the Proceedings were commenced by the Plaintiffs in British Columbia, Quebec and Ontario which allege that the Settling Defendants participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of CRT Products in Canada and/or to allocate markets and customers for the sale of CRT Products in Canada, contrary to Part VI of the *Competition Act* and the common law and/or the civil law;
- B. WHEREAS the deadline for Settlement Class Members to opt out of the Proceedings has passed;
- C. WHEREAS there were no opt outs from the Proceedings;
- D. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful or otherwise actionable conduct alleged in the Proceedings or otherwise;
- E. 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;
- F. 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 in the Proceedings or by the Settlement Class, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- G. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceedings and as is expressly provided in this Settlement Agreement with respect to the Proceedings;

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

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

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

K. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Settling Defendants;

L. WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in each of the Proceedings on the express understanding that such certification or authorization shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

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

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it

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is agreed by the Parties that the Ontario Action and BC Action be settled and dismissed with prejudice as to the Settling Defendants only, and the Quebec Action be settled without reservation as against the Settling Defendants, all without costs as to the Plaintiffs, the classes they represent and seek to represent or the Settling Defendants, subject to the approval of the Courts, on the following terms and conditions:

Section 1 - Definitions

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

- (1) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.
- (2) **BC Action** means the BC Action as defined in Schedule A.
- (3) **BC Counsel** means Camp Fiorante Matthews Mogerman.
- (4) **BC Court** means the Supreme Court of British Columbia.
- (5) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol as approved by the Courts, and any employees of such firm.
- (6) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel.
- (7) **Class Counsel Fees** include the fees, disbursements, costs, interest, and/or charges of Class Counsel, and any GST, HST and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members as a result of the Settlement Agreement to any other body or Person, including the Fonds d'aide aux recours collectif in Quebec.
- (8) **Class Period** means March 1, 1995 to November 25, 2007.

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- (9) **Common Issue** in each Proceeding means: Did the Settling Defendants conspire to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, CRT directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (10) **Counsel for the Settling Defendants** means Fasken Martineau DuMoulin LLP
- (11) **Courts** means the Ontario Court, the Quebec Court and the BC Court.
- (12) **CRT** means cathode ray tubes, including colour picture tubes (CPT) and colour display tubes (CDT).
- (13) **CRT Products** mean CRT and products containing CRT.
- (14) **Date of Execution** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (15) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule A, and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes the Settling Defendants and the Settled Defendants.
- (16) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as established by Class Counsel and as approved by the Courts.
- (17) **Effective Date** means the date when Final Orders have been received from all Courts approving this Settlement Agreement.
- (18) **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.
- (19) **Final Order** means the later of a final judgment entered by a Court in respect of (i) the certification or authorization of a Proceeding as a class proceeding pursuant to this Settlement Agreement, and (ii) the approval of this Settlement Agreement, in either case once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there

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has been affirmation of the certification or authorization of a Proceeding as a class proceeding and the approval of this Settlement Agreement upon a final disposition of all appeals.

(20) ***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.

(21) ***Ontario Action*** means the Ontario Action as defined in Schedule A.

(22) ***Ontario Counsel*** means Siskinds LLP.

(23) ***Ontario Court*** means the Ontario Superior Court of Justice.

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

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

(26) ***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.

(27) ***Plaintiffs*** means the individuals and entities named as plaintiffs in the Proceedings as set out in Schedule A.

(28) ***Proceedings*** means the BC Action, the Quebec Action and the Ontario Action as defined in Schedule A.

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

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(30) *Purchase Price* means the sale price paid by Settlement Class Members for CRT Products purchased during the Class Period.

(31) *Quebec Action* means the Quebec Action as defined in Schedule A.

(32) *Quebec Counsel* means Siskinds Desmeules s.e.n.c.r.l.

(33) *Quebec Court* means the Superior Court of Quebec.

(34) *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), known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, relating in any way to any conduct anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing or distributing of CRT Products or relating to any conduct alleged (or which was previously or could have been alleged) in the Proceedings 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, marketing or distributing of CRT Products in Canada, including without limitation, any claims for consequential, subsequent or follow-on harm that arises after the date hereof in respect of any agreement, combination or conduct that occurred prior to the date hereof. However, nothing herein shall be construed to release any claims that are not related to an alleged unlawful conspiracy or other unlawful agreement or combination or as a result of or in connection with any other alleged unlawful horizontal or vertical anticompetitive conduct, including any claims related to or arising from any alleged product defect, breach of contract, or similar claim between the Parties relating to CRT Products.

(35) *Releasees* means, jointly and severally, individually and collectively, the Settling Defendants and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present

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and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.

(36) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.

(37) **Settled Defendants** means Chunghwa Picture Tubes Ltd., Chunghwa Picture Tubes (Malaysia) SDN. BHD, Tatung Company, Tatung Company of America, Inc., Tatung Co. of Canada Inc., Panasonic Corporation f/k/a Matsushita Electric Industrial Co. Ltd., Panasonic Corporation of North America, Panasonic Canada Inc., MT Picture Display Co., Ltd., and Beijing Matsushita Color CRT Company, Ltd, and any Defendant, that executes its own settlement agreement after the execution of this Settlement Agreement, which settlement agreement is finally approved by the Court.

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

(39) **Settlement Amount** means USD \$2,950,000.

(40) **Settlement Class** means, in respect of each Proceeding, the settlement class defined in Schedule A.

(41) **Settlement Class Member** means a member of a Settlement Class.

(42) **Settling Defendants** means Toshiba Corporation, Toshiba America Electronic Components Inc., Toshiba America Information Systems Inc., and Toshiba of Canada Limited

(43) **Trust Account** means an interest-bearing trust account at a Canadian Schedule 1 bank or equivalent under the control of Ontario Counsel 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.

(44) **U.S. Litigation** means the class action proceedings litigated in the United States District Court for the Northern District of California, under the caption *In re Cathode Ray Tube (CRT) Antitrust Litigation*, 07-MDL-1917, and includes all actions transferred by the Judicial Panel for

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Multidistrict Litigation for coordination, all actions pending such transfer, and all actions that may be transferred in the future.

Section 2– Settlement Approval

2.1 Best Efforts

(1) The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the BC Action and Ontario Action as against the Settling Defendants, and a prompt, complete and final declaration of settlement out of court of the Quebec Action as against the Settling Defendants.

2.2 Motions Seeking Approval of Notice

(1) The Plaintiffs shall bring motions before the Courts, as soon as practicable after the Date of Execution, for orders approving the notices described in Section 11.1(1)

(2) The Ontario order approving the notices described in Section 11.1(1) shall be substantially in the form attached as Schedule B. The BC and Quebec orders approving the notices described in Section 11.1(1) shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order.

2.3 Motions Seeking Certification or Authorization and Approval of the Settlement

(1) The Plaintiffs shall bring motions before the Courts for orders certifying or authorizing the Settlement Class and approving this Settlement Agreement as soon as practicable after:

- (a) the orders referred to in Section 2.2(2) are granted,
- (b) the notices described in Section 11.1(1) have been published; and
- (c) the deadline for objecting to the Settlement Agreement has expired.

(2) The Ontario order seeking certification and approval of this Settlement Agreement shall be substantially in the form attached as Schedule C. The BC and Quebec orders seeking certification or authorization and approval of this Settlement Agreement shall be agreed upon by the Parties and shall, where possible, mirror the substance and form of the Ontario order.

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(3) The Plaintiffs can elect to request that the Courts hold joint hearings seeking certification or authorization and approval of this Settlement Agreement pursuant to the Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions. The Settling Defendants will not oppose any such request.

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

2.4 Pre-Motion Confidentiality

(1) Until the first of the motions required by 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 or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to the terms of the Settlement Agreement, or as otherwise required by law.

Section 3 - Settlement Benefits

3.1 Payment of Settlement Amount

(1) Within thirty (30) days of the Date of Execution, the Settling Defendants shall pay the Settlement Amount to Ontario Counsel for deposit into the Trust Account to be held for the benefit of Settlement Class Members. The Settlement Amount may be converted into Canadian Currency on the earlier of the Final Order being granted or August 15, 2016.

(2) Payment of the Settlement Amount shall be made by wire transfer. Prior to the Settlement Amount becoming due, Ontario Counsel 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 interest and costs.

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- (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 Proceedings.
- (6) Once a Claims Administrator has been appointed, Ontario Counsel shall transfer all funds in the Trust Account to the Claims Administrator.
- (7) Ontario Counsel and the Claims Administrator, respectively, shall maintain the Trust Account as provided for in this Settlement Agreement.
- (8) While in control of the Trust Account, each of Ontario Counsel and the Claims Administrator, respectively, shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

3.2 Taxes and Interest

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Classes and shall become and remain part of the Trust Account.
- (2) 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.
- (3) Subject to Section 3.2(5) Ontario Counsel or the Claims Administrator 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.
- (4) Subject to Section 3.2(5), 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.
- (5) Notwithstanding Section 3.2(3) and (4), if this Settlement Agreement is terminated, the interest earned on the Settlement Amount in the Trust Account shall be paid to the Settling

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Defendants in accordance with Section 6.3 who, in such case, shall be solely responsible for the payment of all taxes on such interest not previously paid.

3.3 Intervention in the U.S. Litigation

(1) The Settling Defendants and Releasees shall not oppose any application 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 protective order. However, it is understood and agreed that nothing in this Settlement Agreement shall be construed to require the Settling Defendants nor other Releasees to bring or otherwise participate in a motion requesting that the U.S. protective order be lifted.

Section 4— Cooperation

4.1 Extent of Cooperation

(1) Subject to Section 4.1(10), within ninety (90) days of certification being granted as against the Non-Settling Defendants and the conclusion of all appeals or the exhaustion of all time to appeal, or at a time mutually agreed to by the Parties, the Settling Defendants agree to:

- (a) provide to Class Counsel any transcripts or video recordings of all depositions of the Settling Defendants' current or former employees, directors or officers taken in the course of the U.S. Litigation concerning the allegations raised in the Proceedings with respect to the Class Period; and
- (b) provide any pre-existing documents (as defined in Rule 30.01 of the Ontario *Rules of Civil Procedure*) produced by the Settling Defendants in the U.S. Litigation concerning the allegations raised in the Proceedings with respect to the Class Period, including, but not limited to any documents provided to counsel for the plaintiffs in the U.S. Litigation pursuant to any settlement agreements entered into between the plaintiffs in the U.S. Litigation and the Settling Defendants, and any translations provided to the plaintiffs in the U.S. Litigation of any documents produced in the U.S. Litigation.

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(2) The obligation to provide documents pursuant to Section 4.1(1) shall be a continuing obligation to the extent additional documents are produced by the Settling Defendants in the U.S. Litigation following the initial productions pursuant to this Settlement Agreement.

(3) 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 provide affidavits for use at trial in the Proceedings for the sole purpose of authenticating any documents provided by the Settling Defendants in accordance with this Settlement Agreement and/or any documents produced by the Defendants that were created by, sent to, or received by the Settling Defendants. If a Court should determine that affidavits are inadequate for the purpose of authenticating any such documents, the Settling Defendants agree to use reasonable efforts to make available for testimony at trial a representative qualified to authenticate such documents.

(4) 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.

(5) Nothing in Section 4.1 or any other section of this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants to disclose or produce any documents or information prepared by or for Counsel for the Settling Defendants, or that is not within the Settling Defendants' possession, custody or control, 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, or any other privilege, 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 Settling Defendant.

(6) If any documents protected by any privilege and/or any privacy law or other order, regulatory directive, rule or law of this or any applicable jurisdiction, including but not limited to Canada and the U.S., 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 or protection attached to such documents.

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(7) The obligations of the Settling Defendants to cooperate as particularized in Section 4.1 shall not be affected by the release provisions contained in Section 7.1 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 shall cease at the date of final judgment in the Proceedings against all Defendants. In the event the Settling Defendants materially breach Section 4.1, Class Counsel may move before the Courts, on notice to the Settling Defendants, to enforce the terms of this Settlement Agreement, set aside the approval of this Settlement Agreement or part thereof and allow the Plaintiffs to obtain discovery or information from the Settling Defendants as if they remained parties to the action, or seek such other remedy that is available at law.

(8) Subject to Sections 4.1(7) and (9), 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. Subject to Sections 4.1(7) and (9), 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.

(9) The Plaintiffs may exercise any rights they have at law or in the Proceedings as against the officers, directors and/or employees of the Settling Defendants put forward to provide testimony at trial or otherwise pursuant to Section 4.1(2), if the current or former officer, director or employee of the Settling Defendants fails to cooperate in accordance with that Section and the provisions of this Settlement Agreement.

(10) A material factor influencing the decision by the Settling Defendants 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 and agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue, unreasonable or disproportionate burden or expense on the Settling Defendants. If Class Counsel reach a settlement with all of the Non-Settling Defendants or obtain final judgment against each of them in the Proceedings, then all obligations under this section 4 shall cease and this section 4 shall be of no force or effect.

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

4.2 Limits on Use of Documents

(1) It is understood and agreed that all documents made available or provided by the Settling Defendants to Plaintiffs and Class Counsel under this Settlement Agreement, shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the documents are publicly available. Plaintiffs and Class Counsel agree they will not publicize or disclose the information or documents provided by the Settling Defendants beyond what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law, except to the extent that the documents are publicly available. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such documents and information, and of any work product of Class Counsel that discloses such documents and information.

(2) It is further understood and agreed that any documents provided by the Settling Defendants may be confidential and may be designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" by the Settling Defendants (or may have already been so designated in the U.S. Litigation). Any documents designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" will be treated in a manner consistent with the Stipulated Protective Order granted in the U.S. Litigation and attached hereto as Schedule "D". Notwithstanding the foregoing, any publicly available documents do not have to be treated in a manner consistent with the Stipulated Protective Order granted in the U.S. Litigation.

(3) In the event that a Person applies for an order requiring the Plaintiffs to disclose or produce any documents provided by the Settling Defendants as cooperation under this Settlement Agreement, Class Counsel shall notify the Settling Defendants of such application 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.

Section 5 – Distribution of the Settlement Amount and Accrued Interest

5.1 Distribution Protocol

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

(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.

5.2 No Responsibility for Administration or Fees

(1) 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 and Class Counsel Fees.

Section 6 - Termination of Settlement Agreement

6.1 Right of Termination

(1) In the event that:

- (a) any Court declines to certify or authorize the Proceedings for the purposes of the Settlement Agreement;
- (b) any Court declines to dismiss or declare settled out of court the Proceedings as against the Settling Defendants;
- (c) any Court declines to approve this Settlement Agreement or any material part hereof;
- (d) any Court approves this Settlement Agreement in a materially modified form;

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- (e) the Parties do not reach agreement on the form and content of any order required by this Settlement Agreement, including for approval of this Settlement Agreement, certification or authorization of a Proceeding as a class proceeding pursuant to this Settlement Agreement, or dismissal of the Proceedings, or the agreed order is approved by a Court in a materially modified form; or
- (f) any orders approving this Settlement Agreement made by the Courts do not become Final Orders;

each of the Settling Defendants and the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 14.18 within thirty (30) days following an event described above.

(2) Except as provided for in Section 6.4, if the Settling Defendants or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

- (3) Any order, ruling or determination made (or rejected) by any Court with respect to:
 - (a) Class Counsel Fees;
 - (b) the Distribution Protocol; or
 - (c) documentary confidentiality as provided in Section 4.2(2) above;

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 or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;

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- (b) any order certifying or authorizing a Proceeding as a class proceeding on the basis of the Settlement Agreement, or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of a Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings or any other litigation; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other Person, shall recover and destroy such documents or information. Class Counsel shall provide the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this Section shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Settling Defendants, or received from 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 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.

6.3 Allocation of Monies in the Trust Account Following Termination

- (1) If the Settlement Agreement is terminated in accordance with its terms, then within thirty (30) business days of written notice advising that the Settlement Agreement has been terminated, Ontario Counsel shall pay to the Settling Defendants the money in the Trust Account, whether in

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\$CDN or \$USD, plus all accrued interest thereon, but less the costs of the notices required by Section 11.1(1) and actually incurred up to a maximum of \$50,000 and any translation costs incurred pursuant to Section 14.12 up to a maximum of \$7,750.

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is terminated, the provisions of Sections 3.1(7), 3.1(8), 3.2(3), 3.2(5), 4.1(6), 4.2 6.2(1), 6.3, 6.4(1), 9.1, 9.2, 12.2(3) and 14.6, and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.1(7), 3.1(8), 3.2(3), 3.2(5), 4.1(6), 4.2, 6.2(1), 6.3, 6.4(1), 9.1, 9.2, 12.2(3) and 14.6 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

Section 7- Releases and Dismissals

7.1 Release of Releasees

(1) Subject to Section 7.3, upon the Effective Date, in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release 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.

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, 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 Releasers do not release the Releasees but instead covenant and undertake not to

make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.4 No Further Claims

(1) Upon the Effective Date, the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity from any Releasee in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee.

7.5 Dismissal of the Proceedings

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

(2) Upon the Effective Date, the Quebec Action shall be declared settled without costs and without reservation as against the Settling Defendants.

7.6 Dismissal of Other Actions

(1) Upon the Effective Date, each Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.

(2) Upon the Effective Date, all Other Actions commenced in Ontario, Quebec, or British Columbia by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.

7.7 Material Term

(1) The releases contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

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**Section 8- Bar Order, Waiver of Solidarity Order
and Other Claims**

8.1 British Columbia and Ontario Bar Order

(1) Class Counsel shall seek bar orders from the Ontario Court and the BC 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 Proceedings or otherwise, by any Non-Settling Defendant, by any named or unnamed co-conspirator that is not a Releasee, or by any other Person or party, against a Releasee, or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee, 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 Proceedings);
- (b) if the Ontario Court or BC Court, as applicable, ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise,
 - (A) the Ontario and BC Plaintiffs and 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 Ontario and BC Plaintiffs and 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

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party that is not a Releasee to include, and shall be entitled 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, only 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 Ontario and BC Plaintiffs and the Settlement Class Members, if any, and, for greater certainty, the Ontario and BC Settlement Class Members shall be entitled to claim and 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, to the extent provided by law; and

- (C) the Ontario and BC Courts shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the relevant Proceeding, whether or not the Releasees remain in the relevant 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 relevant Proceeding and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceeding and shall not be binding on the Releasees in any other proceeding;
- (c) after the relevant Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, and on at least ten (10) days' notice to Counsel for the Settling Defendants, a Non-Settling Defendant may, on motion to the Ontario Court or the BC Court, as appropriate, seek orders for the following, which orders shall be determined as if the Settling Defendants remained parties to the relevant Proceeding:

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- (A) documentary discovery and an affidavit of documents (list of documents in British Columbia) from the Settling Defendants in accordance with that Court's rules of procedure;
 - (B) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
 - (C) leave to serve a request to admit (notice to admit in British Columbia) on the Settling Defendants in respect of factual matters; and/or
 - (D) 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 which the Plaintiffs shall not oppose, to maintain the 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 Ontario or BC Court, as applicable, 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 Ontario and BC Courts will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Ontario and BC Courts for these purposes; and

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

8.2 Quebec Waiver or Renunciation of Solidarity Order

(1) Class Counsel shall seek a waiver or renunciation of solidarity from the Quebec Court providing for the following:

- (a) the Quebec Petitioners and the Settlement Class Members in the Quebec Action expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees;
- (b) the Quebec Petitioners and the Settlement Class Members in the Quebec Action shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure*.

8.3 Claims Against Other Entities Reserved

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

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 Proceedings or any other pleading filed by the Plaintiffs.

9.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is terminated, 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, or as otherwise required by law.

9.3 No Further Litigation

(1) Neither the Plaintiffs or 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 which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee, subject to Section 9.3(2) of this Settlement Agreement. Moreover, subject to the other terms of this Settlement Agreement, the Plaintiffs and Class Counsel may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement

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Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court.

(2) Section 9.3(1) shall be inoperative to the extent that it is inconsistent with BC Counsel's obligations under Rule 3.2-10 of the *Code of Professional Conduct for British Columbia*.

Section 10 – Certification or Authorization for Settlement Only

(1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Parties agree that, in the motions for certification or authorization of the Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes.

(3) The Parties agree that the certification or authorization of the Proceedings as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

Section 11- Notice to Settlement Classes

11.1 Notices Required

(1) The proposed Settlement Classes shall be given notice of: (i) hearings at which the Courts will be asked to certify or authorize the Proceedings as class proceedings and approve the Settlement Agreement; and (ii) if they are brought with the hearings to approve the Settlement Agreement, the hearings to approve Class Counsel Fees and/or a Distribution Protocol

(2) If the Settlement Agreement is approved, the proposed Settlement Classes shall be given notice of the certification or authorization of the Proceedings as class proceedings, the approval of this Settlement Agreement if granted by the Courts, and the approval of the Distribution Protocol if granted by the Courts.

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(3) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Classes 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 Courts or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Courts.

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

Section 12 – Administration and Implementation

12.1 Mechanics of Administration

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

12.2 Information and Assistance

(1) The Settling Defendants will make reasonable efforts to provide to Class Counsel a list of the names and addresses of Persons, if any, in Canada who purchased CRT Products from the Settling Defendants or the Releasees during the Class Period and the Purchase Price paid by each such Person. The data shall be provided in Microsoft Excel format or such other format as agreed upon by the Parties within thirty (30) days of the Date of Execution or at a time mutually agreed by the Parties.

(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 CRT Products from the Settling Defendants during the Class Period of any subsequent settlement agreement reached in the Proceedings, any related approval hearings, and any other major steps in the Proceedings;

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- (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 Proceedings; and
- (d) as otherwise authorized in Section 4.

(3) All information provided by the Settling Defendants pursuant to Section 12.2(1) shall be dealt with in accordance with Section 4.2, except that Class Counsel may disclose all information provided by the Settling Defendants pursuant to Section 12.2(1) to any Court-appointed notice provider and/or the Claims Administrator, to the extent reasonably necessary for the purposes enumerated in Section 12.2(2). Any Court-appointed notice provider and/or the Claims Administrator shall be bound by the same confidentiality obligations set out in Section 4.2. If this Settlement Agreement is terminated, all information provided 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 shall be retained by Class Counsel in any form whatsoever.

(4) The Settling Defendants will make themselves reasonably available to respond to questions respecting the information provided pursuant to Section 12.2(1) from Class Counsel or any Court-appointed notice provider and/or the Claims Administrator.

(5) The Settling Defendants' obligations pursuant to this Section 12.2 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 Proceedings are 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.

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Section 13 – Class Counsel Fees and Administrative Expenses

- (1) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement or at such other time as they may determine in their sole discretion.
- (2) The costs of the notices referred to in Section 11.1 and the translation referred to in Section 14.12 shall be paid by Ontario Counsel out of the Trust Account, as they become due.
- (3) Except as provided in Section 13(2), Class Counsel Fees and Administration Expenses may only be paid out of the Trust Account after the Effective Date.
- (4) Class Counsel reserve the right to bring motions to the Courts for payment out of the Account for any future adverse cost awards and future disbursements.
- (5) The Settling Defendants shall not be liable for any fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members, any amounts to which the Fonds d'aide aux recours collectif in Quebec may be entitled, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

Section 14 - Miscellaneous

14.1 Motions for Directions

(1) Class Counsel or the Settling Defendants may apply to the Ontario Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Motions for directions that do not relate specifically to the matters affecting the BC Action and/or the Quebec Action shall be determined by the Ontario Court.

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

14.2 Releasees Have No Liability for Administration

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

14.3 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.

14.4 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.

14.5 Ongoing Jurisdiction

(1) Each of the Courts shall retain exclusive jurisdiction over each Proceeding commenced in its jurisdiction, the Parties thereto and the Class Counsel Fees in that Proceeding.

(2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.

(3) Notwithstanding Sections 14.5(1) and 14.5(2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the

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terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Ontario Court for such purposes. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the BC Action or the Quebec Action shall be determined by the Ontario Court.

14.6 Governing Law

(1) Subject to Section 14.6(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

(2) Notwithstanding Section 14.6(1), for matters relating specifically to the BC Action or the Quebec Action, as applicable, the BC Court or the Quebec Court, as applicable, shall apply the law of its own jurisdiction.

14.7 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.

14.8 Amendments

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

14.9 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

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each and every covenant and agreement made by the Settling Defendants shall be binding upon all of the Releasees.

14.10 Counterparts

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

14.11 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.

14.12 Language

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

14.13 Transaction

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

14.14 Recitals

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

14.15 Schedules

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

14.16 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.

14.17 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.

14.18 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

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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:

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 Fax: 418-694-0281
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For the Settling Defendants:

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 333 Bay Street, Suite 2400
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 Toronto, ON M5H 2T6

Tel: 416 865 5471
 Fax: 416 364 7813
 Email: lcooper@fasken.com
zmaladwala@fasken.com

14.19 Date of Execution

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

THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY on its own behalf and on behalf of the Settlement Class, by its counsel

Name of Authorized Signatory:

Charles Wright

Signature of Authorized Signatory:


Siskinds LLP
Ontario Counsel

CURTIS SAUNDERS and DAVE DAGG on their own behalf and on behalf of the Settlement Class, by their counsel

Name of Authorized Signatory:

Charles Wright

Signature of Authorized Signatory:

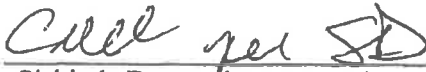

Camp Fiorante/Matthews Mogerman
BC Counsel

CAROLE OUELLET, on her own behalf and on behalf of the Settlement Class, by her counsel

Name of Authorized Signatory:

Charles Wright

Signature of Authorized Signatory:


Siskinds Desmeules s.e.n.c.r.l.
Quebec Counsel

TOSHIBA CORPORATION, TOSHIBA AMERICA ELECTRONIC COMPONENTS INC., TOSHIBA AMERICA INFORMATION SYSTEMS INC., and TOSHIBA OF CANADA LIMITED, by their counsel

Name of Authorized Signatory:

Laura F. Cooper / Fasken Martineau
DuMoulin LLP

Signature of Authorized Signatory:


Fasken Martineau DuMoulin LLP