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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE LITHIUM ION BATTERIES
ANTITRUST LITIGATION,

Case No. 13-MD-02420 YGR (DMR)
MDL No. 2420

This Documents Relates to:
ALL INDIRECT PURCHASER ACTIONS

NEC SETTLEMENT AGREEMENT

DATE ACTION FILED: Oct. 3, 2012

1 This Settlement Agreement (hereinafter, "Agreement") is made and entered into as of the
2 31st day of December, 2016 by and between Defendant NEC Corporation ("NEC"), and Indirect
3 Purchaser Plaintiffs, both individually and on behalf of Classes in the above-captioned class action.
4 This Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and
5 settle the Released Claims, upon and subject to the terms and conditions hereof.

6 R E C I T A L S

7 WHEREAS, Indirect Purchaser Plaintiffs are prosecuting the above-captioned litigation on
8 their own behalf and on behalf of Classes against, among others, NEC;

9 WHEREAS, Indirect Purchaser Plaintiffs allege, among other things, that NEC violated the
10 antitrust laws by conspiring to fix, raise, maintain or stabilize the prices of Lithium Ion Batteries, and
11 these acts caused the Classes to incur significant damages;

12 WHEREAS, NEC has denied and continues to deny each and all of the claims and allegations
13 of wrongdoing made by the Indirect Purchaser Plaintiffs in the Actions; all charges of wrongdoing or
14 liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that
15 could have been alleged, in the Actions; and the allegations that the Indirect Purchaser Plaintiffs or
16 any member of Classes were harmed by any conduct by NEC alleged in the Actions or otherwise;

17 WHEREAS, Indirect Purchaser Plaintiffs and NEC agree that neither this Agreement nor any
18 statement made in the negotiation thereof shall be deemed or construed to be an admission or
19 evidence of any violation of any statute or law or of any liability or wrongdoing by NEC or of the
20 truth of any of the claims or allegations alleged in the Actions;

21 WHEREAS, arm's length settlement negotiations have taken place between NEC and
22 Indirect Purchaser Plaintiffs' Class Counsel, and this Agreement, which embodies all of the terms
23 and conditions of the Settlement between the Settling Parties, has been reached (subject to the
24 approval of the Court) as provided herein and is intended to supersede any prior agreements between
25 the Settling Parties;

26 WHEREAS, Indirect Purchaser Plaintiffs' Class Counsel have concluded, after due
27 investigation and after carefully considering the relevant circumstances, including, without
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1 limitation, the claims asserted in the Indirect Purchaser Plaintiffs' Fourth Consolidated Amended
2 Class Action Complaint filed in MDL Docket No. 2420, the legal and factual defenses thereto and
3 the applicable law, that it is in the best interests of the Indirect Purchaser Plaintiffs and the Classes to
4 enter into this Agreement to avoid the uncertainties of litigation and to assure that the benefits
5 reflected herein are obtained for the Indirect Purchaser Plaintiffs and the Classes, and, further, that
6 Indirect Purchaser Plaintiffs' Class Counsel consider the Settlement set forth herein to be fair,
7 reasonable and adequate and in the best interests of the Indirect Purchaser Plaintiffs and the Classes;
8 and

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

14 A G R E E M E N T

15 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
16 Settling Parties, by and through their attorneys of record, that, subject to the approval of the Court,
17 the Actions and the Released Claims as against NEC shall be finally and fully settled, compromised
18 and dismissed on the merits and with prejudice upon and subject to the terms and conditions of this
19 Agreement, as follows:

20 A. Definitions

21 1. As used in this Agreement the following terms have the meanings specified below:

- 22 (a) "Actions" means *In re Lithium Ion Batteries Antitrust Litigation – All Indirect*
23 *Purchaser Actions*, Case No. 13-MD-02420 YGR (DMR), and each of the
24 cases brought on behalf of indirect purchasers previously consolidated and/or
25 included as part of MDL Docket No. 2420.
26 (b) "Affiliates" means entities controlling, controlled by or under common
27 control with a Releasee or Releasor.

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- (c) "Authorized Claimant" means any Indirect Plaintiff Purchaser who, in accordance with the terms of this Agreement, is entitled to a distribution consistent with any Distribution Plan or order of the Court.
- (d) "Class" or "Classes" are generally defined as all persons and entities who, as residents of the United States and during the period from January 1, 2000 through May 31, 2011, indirectly purchased new for their own use and not for resale one of the following products which contained a lithium-ion cylindrical battery manufactured by one or more defendants or their co-conspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or (iv) a replacement battery for any of these products. Excluded from the class are any purchases of Panasonic-branded computers. Also excluded from the class are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action, but included are all non-federal and non-state governmental entities in California.
- (e) "Class Counsel" means the law firms of Cotchett, Pitre & McCarthy, LLP; Hagens Berman Sobol Shapiro LLP; and Lieff Cabraser Heimann & Bernstein, LLP.
- (f) "Class Member" means a Person who or California government entity that falls within the definition of the Classes and does not timely and validly elect to be excluded from the Classes in accordance with the procedure to be established by the Court.
- (g) "Court" means the United States District Court for the Northern District of California.
- (h) "Distribution Plan" means any plan or formula of allocation of the Gross Settlement Fund, to be approved by the Court, whereby the Net Settlement

1 Fund shall in the future be distributed to Authorized Claimants. Any
2 Distribution Plan is not part of this Agreement.

3 (i) "Effective Date" means the first date by which all of the events and conditions
4 specified in ¶ 35 of this Agreement have occurred and have been met.

5 (j) "Escrow Agent" means the agent jointly designated by Class Counsel and
6 NEC, and any successor agent.

7 (k) "Execution Date" means the date of the last signature set forth on the
8 signature pages below.

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

25 (m) "Finished Product" means any product and/or electronic device that contains a
26 Lithium Ion Battery or Lithium Ion Battery Pack, including but not limited to
27 laptop PCs, notebook PCs, netbook computers, tablet computers, mobile
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phones, smart phones, cameras, camcorders, digital video cameras, digital audio players and power tools.

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

(o) “Indirect Purchaser Plaintiffs” means Christopher Hunt, Piya Robert Rojanasathit, Steve Bugge, Tom Pham, Bradley Seldin, Patrick McGuinness, John Kopp, Drew Fennelly, Jason Ames, William Cabral, Donna Shawn, Joseph O’Daniel, Cindy Booze, Matthew Ence, David Tolchin, Matt Bryant, Sheri Harmon, Christopher Bessette, Caleb Batey, Linda Lincoln, Bradley Van Patten, the City of Palo Alto, and the City of Richmond, as well as any other Person added as an Indirect Purchaser Plaintiff in the Actions.

(p) “Judgment” means the order of judgment and dismissal of the Actions with prejudice as to NEC.

(q) “Lithium Ion Battery” means a Lithium Ion Battery Cell or Lithium Ion Battery Pack.

(r) “Lithium Ion Battery Cell” means cylindrical, prismatic or polymer cell used for the storage of power that is rechargeable and uses lithium ion technology.

(s) “Lithium Ion Battery Pack” means Lithium Ion Cells that have been assembled into a pack, regardless of the number of Lithium Ion Cells contained in such packs.

(t) “MDL Defendants” means LG Chem, Ltd.; LG Chem America, Inc.; Samsung SDI Co. Ltd.; Samsung SDI America, Inc.; Panasonic Corporation; Panasonic Corporation of North America; Sanyo Electric Co., Ltd.; Sanyo North America Corporation; Sanyo GS Soft Energy Co. Ltd.; LG Chem Corporation; LG Chem Energy Devices Corporation; LG Chem Electronics Inc.; Hitachi Maxell, Ltd.; Maxell Corporation of America; GS Yuasa Corporation; NEC Corporation; NEC Tokin Corporation; Toshiba

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Corporation; A&T Battery Corporation; and Toshiba America Electronic Components Inc.

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

(v) “Notice and Administrative Costs” means the reasonable sum of money not in excess of seven hundred fifty thousand U.S. Dollars (\$750,000.00) to be paid out of the Gross Settlement Fund to pay for notice to the Classes and related administrative costs.

(w) “Notice and Claims Administrator” means the claims administrator(s) to be selected by Class Counsel and approved by the Court.

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

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

(z) “Released Claims” means any and all manner of claims, demands, rights, actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, injuries, damages whenever incurred and liabilities of any nature whatsoever, known or unknown (including, but not limited to, “Unknown Claims”), foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, in law or in equity, under the laws of any jurisdiction, which Releasers or any of them, whether directly, representatively, derivatively, or in any other capacity, ever

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had, now have or hereafter can, shall or may have, relating in any way to any conduct prior to the Execution Date of this Agreement and arising out of or related in any way in whole or in part to any facts, circumstances, acts or omissions arising out of or related to (1) any purchase or sale of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) up through May 31, 2011; or (2) any agreement, combination or conspiracy to raise, fix, maintain or stabilize the prices of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) or restrict, reduce, alter or allocate the supply, quantity or quality of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) or concerning the development, manufacture, supply, distribution, transfer, marketing, sale or pricing of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products), or any other conduct alleged in the Actions or relating to restraint of competition that could have been or hereafter could be alleged against the Releasees relating to Lithium Ion Batteries; or (3) any other restraint of competition relating to Lithium Ion Batteries that could be asserted as a violation of the Sherman Act or any other antitrust, unjust enrichment, unfair competition, unfair practices, trade practices, price discrimination, unitary pricing, racketeering, contract, civil conspiracy or consumer protection law, whether under federal, state, local or foreign law.

(aa) "Releasees" means NEC and their former, present and future direct and indirect parents, subsidiaries and Affiliates, and their respective former, present and future officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. "Releasees" does not include any defendant in the Actions other than NEC.

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(bb) "Releasers" means the Indirect Purchaser Plaintiffs and each and every Class Member on their own behalf and on behalf of their respective direct and indirect parents, subsidiaries and Affiliates, their former, present or future officers, directors, employees, agents and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

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

(dd) "Settlement Amount" means Two Million Five Hundred Thousand U.S. Dollars (\$2,500,000).

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

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

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

B. Preliminary Approval Order, Notice Order and Settlement Hearing

2. Reasonable Best Efforts to Effectuate This Settlement. The Settling Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the

1 extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement
2 and to exercise their best efforts to accomplish the terms and conditions of this Agreement.

3 **3. Motion for Preliminary Approval.** At a time to be determined by Class Counsel,
4 and subject to prior notice of ten (10) days to NEC, Class Counsel shall submit this Agreement to the
5 Court and shall apply for entry of a preliminary approval order (“Preliminary Approval Order”),
6 requesting, *inter alia*, preliminary approval (“Preliminary Approval”) of the Settlement. The motion
7 shall include (a) the proposed Preliminary Approval Order, and (b) a definition of the proposed
8 settlement classes pursuant to Federal Rule of Civil Procedure 23. The text of the foregoing items
9 (a)-(b) shall be agreed upon by the Settling Parties.

10 **4. Proposed Form of Notice.** At a time to be determined in their sole discretion but no
11 later than any other class settlement entered into by Class Counsel, Class Counsel shall submit to the
12 Court for approval a proposed form of, method for and schedule for dissemination of notice to the
13 Classes. To the extent practicable and to the extent consistent with this paragraph, Class Counsel
14 may seek to coordinate this notice program with other settlements that may be reached in the Actions
15 in order to reduce the expense of notice. This motion shall recite and ask the Court to find that the
16 proposed form of and method for dissemination of notice to the Classes constitutes valid, due and
17 sufficient notice to the Classes, constitutes the best notice practicable under the circumstances, and
18 complies fully with the requirements of Federal Rule of Civil Procedure 23. Class Counsel shall
19 provide NEC with seven days advance notice of the text of the notice(s) to be provided to the
20 Classes, and shall consider in good faith any concerns or suggestions expressed by NEC. NEC shall
21 be responsible for providing all notices required by the Class Action Fairness Act of 2005 to be
22 provided to state attorneys general or to the United States of America.

23 **5. Motion for Final Approval and Entry of Final Judgment.** Not less than thirty-five
24 (35) days prior to the date set by the Court to consider whether this Settlement should be finally
25 approved, Class Counsel shall submit a motion for final approval (“Final Approval”) of the
26 Settlement by the Court. The Settling Parties shall jointly seek entry of the final approval order
27 (“Final Approval Order”) and Judgment:

- 1 (a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely
2 for purposes of this Settlement;
- 3 (b) fully and finally approving the Settlement contemplated by this Agreement
4 and its terms as being fair, reasonable and adequate within the meaning of
5 Federal Rule of Civil Procedure 23 and directing its consummation pursuant
6 to its terms and conditions;
- 7 (c) finding that the notice given to the Class Members constituted the best notice
8 practicable under the circumstances and complies in all respects with the
9 requirements of Federal Rule of Civil Procedure 23 and due process;
- 10 (d) directing that the Actions be dismissed with prejudice as to NEC and, except
11 as provided for herein, without costs;
- 12 (e) discharging and releasing the Releasees from all Released Claims;
- 13 (f) permanently barring and enjoining the institution and prosecution, by Indirect
14 Purchaser Plaintiffs and Class Members, of any other action against the
15 Releasees in any court asserting any claims related in any way to the Released
16 Claims;
- 17 (g) reserving continuing and exclusive jurisdiction over the Settlement, including
18 all future proceedings concerning the administration, consummation and
19 enforcement of this Agreement;
- 20 (h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no
21 just reason for delay and directing entry of a final judgment as to NEC; and
- 22 (i) containing such other and further provisions consistent with the terms of this
23 Agreement to which the parties expressly consent in writing.

24 Class Counsel also will request that the Court approve the proposed Distribution Plan,
25 application for attorneys' fees and reimbursement of expenses, and application for service awards (as
26 described below).

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1 **6. Stay Order.** Upon the date that the Court enters an order preliminarily approving the
2 Settlement, Indirect Purchaser Plaintiffs and members of the Classes shall be barred and enjoined
3 from commencing, instituting or continuing to prosecute any action or any proceeding in any court of
4 law or equity, arbitration tribunal, administrative forum or other forum of any kind worldwide based
5 on the Released Claims. Nothing in this provision shall prohibit the Indirect Purchaser Plaintiffs or
6 Class Counsel from continuing to participate in discovery in the Actions that is initiated by other
7 plaintiffs or that is subject to and consistent with the cooperation provisions set forth in ¶¶ 28-34.

8 **C. Releases**

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

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

19 **9. Covenant Not to Sue.** Releasors hereby covenant not to sue the Releasees with
20 respect to any such Released Claims. Releasors shall be permanently barred and enjoined from
21 instituting, commencing or prosecuting against the Releasees any claims based in whole or in part on
22 the Released Claims. The parties contemplate and agree that this Agreement may be pleaded as a bar
23 to a lawsuit, and an injunction may be obtained, preventing any action from being initiated or
24 maintained in any case sought to be prosecuted on behalf of any Releasors with respect to the
25 Released Claims.

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

17 **11. Claims Excluded from Release.** Notwithstanding the foregoing, the releases
18 provided herein shall not release claims against NEC for product liability, breach of contract, breach
19 of warranty or personal injury, or any other claim unrelated to the allegations in the Actions. For
20 avoidance of doubt, this Agreement does not release claims arising from restraints of competition
21 directed at goods other than (a) Lithium Ion Batteries, or (b) Lithium Ion Batteries contained in
22 Finished Products. Additionally, the releases provided herein shall not release any claims to enforce
23 the terms of this Agreement.

24 **D. Settlement Fund**

25 **12. Settlement Payment.** NEC shall pay by wire transfer the Settlement Amount to the
26 Escrow Agent pursuant to mutually agreeable escrow instructions within no more than thirty (30)
27 business days after having received the appropriate instructions for making payment to the Escrow
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1 Agent. This amount constitutes the total amount of payment that NEC is required to make in
2 connection with this Settlement Agreement. This amount shall not be subject to reduction, and upon
3 the occurrence of the Effective Date, no funds may be returned to NEC. The Escrow Agent shall
4 only act in accordance with the mutually agreed escrow instructions.

5 **13. Disbursements Prior to Effective Date.** No amount may be disbursed from the
6 Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and
7 Administrative Costs, which may not exceed seven hundred fifty thousand U.S. Dollars
8 (\$750,000.00), may be paid from the Gross Settlement Fund as they become due; (b) Taxes and Tax
9 Expenses (as defined in ¶ 17(b) below) may be paid from the Gross Settlement Fund as they become
10 due; and (c) attorneys' fees and reimbursement of litigation costs and expenses, as may be ordered by
11 the Court, may be disbursed during the pendency of any appeals which may be taken from the
12 judgment to be entered by the Court finally approving this Settlement. Class Counsel will attempt in
13 good faith to minimize the amount of Notice and Administrative Costs and may seek to coordinate
14 the notice described herein with other settlements in these Actions.

15 **14. Refund by Escrow Agent.** If the Settlement as described herein is finally
16 disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on
17 appeal or by writ, the Gross Settlement Fund, including the Settlement Amount and all interest
18 earned on the Settlement Amount while held in escrow, excluding only Notice and Administrative
19 Costs, Taxes and Tax Expenses (as defined herein), shall be refunded, reimbursed and repaid by the
20 Escrow Agent to NEC within five (5) business days after receiving notice pursuant to ¶42 below.

21 **15. Refund by Class Counsel.** If the Settlement as described herein is finally
22 disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on
23 appeal or by writ, any attorneys' fees and costs previously paid pursuant to this Agreement (as well
24 as interest on such amounts) shall be refunded, reimbursed and repaid by Class Counsel to NEC
25 within thirty (30) business days after receiving notice pursuant to ¶ 42 below.

26 **16. No Additional Payments by NEC.** Under no circumstances will NEC be required to
27 pay more or less than the Settlement Amount pursuant to this Agreement and the Settlement set forth

1 herein. For purposes of clarification, the payment of any Fee, Expense, and Service Awards (as
2 defined in ¶ 25 below), the Notice and Administrative Costs, and any other costs associated with the
3 implementation of this Settlement Agreement shall be exclusively paid from the Settlement Amount.

4 **17. Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement
5 Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg.
6 §1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry
7 out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg.
8 §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the
9 procedures and requirements contained in such regulations. It shall be the responsibility of the
10 Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature
11 by all necessary parties, and thereafter to cause the appropriate filing to occur.

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

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

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

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

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

- 12 (a) To pay all costs and expenses reasonably and actually incurred in connection
13 with providing notice to the Classes in connection with administering and
14 distributing the Net Settlement Fund to Authorized Claimants, and in
15 connection with paying escrow fees and costs, if any;
- 16 (b) To pay all costs and expenses, if any, reasonably and actually incurred in
17 soliciting claims and assisting with the filing and processing of such claims;
- 18 (c) To pay the Taxes and Tax Expenses as defined herein;
- 19 (d) To pay any Fee, Expense, and Service Awards that are allowed by the Court,
20 subject to and in accordance with the Agreement; and
- 21 (e) To distribute the balance of the Net Settlement Fund to Authorized Claimants
22 as allowed by the Agreement, any Distribution Plan or order of the Court.
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1 **20. Distribution of Net Settlement Fund.** Upon the Effective Date and thereafter, and
2 in accordance with the terms of this Agreement, the Distribution Plan and such further approval and
3 further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement
4 Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following:

5 (a) Each member of the Classes who claims to be an Authorized Claimant shall
6 be required to submit to the Notice and Claims Administrator a completed
7 Proof of Claim and Release in such form as shall be approved by the Court;

8 (b) Except as otherwise ordered by the Court, each member of the Classes who
9 fails to submit a Proof of Claim and Release within such period as may be
10 ordered by the Court, or otherwise allowed, shall be forever barred from
11 receiving any payments pursuant to this Agreement and the Settlement set
12 forth herein;

13 (c) The Net Settlement Fund shall be distributed to Authorized Claimants
14 substantially in accordance with a Distribution Plan to be approved by the
15 Court. Any such Distribution Plan is not a part of this Agreement. No funds
16 from the Net Settlement Fund shall be distributed to Authorized Claimants
17 until after the Effective Date; and

18 (d) All Persons who fall within the definition of the Classes who do not timely
19 and validly request to be excluded from the Classes shall be subject to and
20 bound by the provisions of this Agreement, the releases contained herein, and
21 the Judgment with respect to all Released Claims, regardless of whether such
22 Persons seek or obtain by any means, including, without limitation, by
23 submitting a Proof of Claim and Release or any similar document, any
24 distribution from the Gross Settlement Fund or the Net Settlement Fund.

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

8 **22. Balance Remaining in Net Settlement Fund.** If there is any balance remaining in
9 the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class
10 Counsel may reallocate such balance among Authorized Claimants in an equitable and economic
11 fashion, distribute remaining funds through *cy pres*, or allow the money to escheat to federal or state
12 governments, subject to Court approval. Except as provided in Paragraphs 41-42, in no event shall
13 any unclaimed funds remaining in the Net Settlement Fund revert to NEC.

14 **23. Distribution Plan Not Part of Settlement.** It is understood and agreed by the
15 Settling Parties that any Distribution Plan, including any adjustments to any Authorized Claimant's
16 claim, is not a part of this Agreement and is to be considered by the Court separately from the Court's
17 consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this
18 Agreement, and any order or proceedings relating to the Distribution Plan shall not operate to
19 terminate or cancel this Agreement or affect the finality of the Judgment, the Final Approval Order,
20 or any other orders entered pursuant to this Agreement. The time to appeal from an approval of the
21 Settlement shall commence upon the Court's entry of the Judgment regardless of whether the
22 Distribution Plan, an application for attorneys' fees and expenses, or an application for service
23 awards has been submitted to the Court or approved.

24 **F. Attorneys' Fees, Reimbursement of Expenses, Service Awards**

25 **24. Fee and Expense Application, and Service Award Application.** Class Counsel
26 may submit an application or applications (the "Fee and Expense Application") for distributions
27 from the Gross Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of
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1 expenses incurred in connection with prosecuting the Actions; plus (c) any interest on such
2 attorneys' fees and expenses (until paid) at the same rate and for the same periods as earned by the
3 Settlement Fund, as appropriate, and as may be awarded by the Court. Class Counsel also may
4 submit an application or applications (the "Service Award Application") for distributions from the
5 Gross Settlement Fund for service awards for the Indirect Purchaser Plaintiffs in an amount up to
6 \$1,500 each.

7 **25. Payment of Fee and Expense Award.** Any amounts that are awarded by the Court
8 pursuant to the above paragraph (the "Fee, Expense, and Service Awards") shall be paid from the
9 Gross Settlement Fund consistent with the provisions of this Agreement.

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

22 **27. No Liability for Fees and Expenses of Class Counsel.** Neither the Releasees nor
23 their counsel shall have any responsibility for or liability whatsoever with respect to any payment(s)
24 to Class Counsel pursuant to this Agreement and/or to any other Person who may assert some claim
25 thereto or any Fee and Expense Award or Service Award that the Court may make in the Actions,
26 other than as set forth in this Agreement.

1 **G. Cooperation**

2 **28. Cooperation as Consideration.** In return for the Release and Discharge provided
3 herein, NEC agrees to pay the Settlement Amount and agrees to provide cooperation to Indirect
4 Purchaser Plaintiffs as set forth specifically below. Except as otherwise specified herein, all
5 cooperation shall commence within ten (10) business days after Preliminary Approval by the Court
6 of this Agreement.

7 **29. Cooperation Subject to and Consistent with Prior Obligations.** NEC and the
8 Indirect Purchaser Plaintiffs shall not be obligated to provide cooperation that would violate an
9 applicable court order or NEC's commitments to the United States Department of Justice or any
10 other governmental entity. Additionally, Indirect Purchaser Plaintiffs and NEC will take reasonable
11 efforts to accommodate the other's efforts to minimize duplication in the providing of any
12 cooperation.

13 **30. Cooperation.**

14 (a) Within a reasonable period of time (but no more than thirty (30) days) after
15 submission by Class Counsel to the Court of a proposed form of notice to the
16 Classes, NEC's counsel shall meet with Class Counsel for the purpose of
17 identifying any NEC documents that have been produced as of that time that
18 relate to and/or support the allegations in the Fourth Consolidated Amended
19 Class Action Complaint or that show NEC Lithium Ion Battery sales, pricing,
20 capacity or production; provided, however, that such obligation shall not
21 require NEC to provide information protected by the attorney-client privilege,
22 attorney work-product doctrine and/or other similar privileges and shall not
23 waive any such protections or privileges. Further, such communications shall
24 be considered privileged settlement discussions pursuant to Federal Rule of
25 Evidence 408 and similar provisions.

26 (b) NEC will produce all English translations of any documents that it provided to
27 the United States Department of Justice in connection with its investigation of
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potential collusion concerning Lithium Ion Batteries, to the extent they exist, within fifteen (15) business days after Preliminary Approval by the Court of this Agreement.

(c) NEC agrees that Class Counsel may notice up to three depositions and also may ask questions at depositions of NEC witnesses noticed by other plaintiffs in the Actions.

(d) If NEC produces any declarations, documents, data or other responses to discovery to any other plaintiff in the Actions, NEC will produce the same to Class Counsel.

(e) Each of the Settling Parties shall cooperate in good faith to authenticate, to the extent possible, documents and/or things produced in the Actions, whether by declarations, affidavits, depositions, hearings and/or trials as may be necessary for the Actions, without the need for the other party to issue any subpoenas, letters rogatory, letters of request or formal discovery requests to the other.

(f) NEC will respond to reasonable requests (including, if necessary, by providing reasonable telephonic access to appropriate employees through outside counsel for NEC) for clarification of the transactional, production and cost data that NEC produced in the Actions prior to the Execution Date.

(g) NEC will continue to comply with the terms of paragraph I(C) in the Court's Order re Deposition Protocol (ECF No. 593) ("Deposition Protocol") relating to employee "watchlists" for as long as these terms are in effect. NEC will inform Class Counsel under the terms of that paragraph if NEC becomes aware that a person on Plaintiffs' (as defined in the Deposition Protocol) watchlist intends to leave, or does leave, his or her employment at NEC, to the extent reasonably possible.

(h) Upon reasonable notice after Preliminary Approval of this Agreement, NEC

1 shall use its best efforts to make available up to two (2) of its employees
2 identified by Indirect Purchaser Plaintiffs for interviews, depositions and/or
3 testimony at trial, via videoconference or at a mutually agreed upon location
4 or locations (except for testimony at trial, which shall be at the United States
5 District Court for the Northern District of California). Unless mutually agreed
6 to by the parties, any such interviews shall not exceed one six-hour day.
7 Except as specifically provided for herein, any such depositions shall be
8 conducted in accordance with the procedures set forth in the Deposition
9 Protocol and shall count toward the maximum of twelve (12) depositions for
10 NEC as a defendant group as set forth in the Deposition Protocol.

11 **31. Confidentiality.** Indirect Purchaser Plaintiffs and Class Counsel agree that they will
12 not use the information provided by NEC or its representatives for any purpose other than pursuit of
13 the Actions, and will not publicize the information beyond what is reasonably necessary for the
14 prosecution of the Actions. Any information provided pursuant to this Agreement shall be subject to
15 the Stipulated Protective Order entered in the Actions on May 17, 2013 (ECF No. 193) (“Protective
16 Order”) as if produced in response to discovery requests and so designated.

17 **32. Other Discovery.** Upon the Execution Date, NEC and Releasees need not respond to
18 formal discovery from Indirect Purchaser Plaintiffs or otherwise participate in the Actions. Further,
19 neither NEC nor the Indirect Purchaser Plaintiffs shall file motions against the other or initiate or
20 participate in any discovery, motion or proceeding directly adverse to the other in connection with
21 the Actions, except as specifically provided for herein, and NEC and the Indirect Purchaser Plaintiffs
22 shall not be obligated to respond to or supplement prior responses to formal discovery that has been
23 previously propounded by the other in the Actions or otherwise participate in the Actions. Indirect
24 Purchaser Plaintiffs and NEC agree to withdraw all outstanding discovery served on the other.

25 **33. Resolution of Disputes.** To the extent the Settling Parties disagree about the
26 interpretation or enforcement of any terms of this Agreement relating to future cooperation by NEC,
27 they agree to submit such disputes for binding resolution by a mutually agreed neutral.

1 **34. Final Approval.** In the event that this Agreement fails to receive Final Approval by
2 the Court as contemplated herein or in the event that it is terminated by either of the Settling Parties
3 under any provision herein, the parties agree that neither Indirect Purchaser Plaintiffs nor Class
4 Counsel shall be permitted to introduce in evidence, at any hearing, or in support of any motion,
5 opposition or other pleading in the Actions or in any other federal or state or foreign action alleging a
6 violation of any law relating to the subject matter of the Actions, any information provided by NEC
7 or its counsel pursuant to ¶ 30(a) or ¶ 30(f) or any information obtained during interviews provided
8 pursuant to ¶ 30(h). Further, in such event, NEC and Indirect Purchaser Plaintiffs will each be bound
9 by and have the benefit of any rulings made in the Actions to the extent they would have been
10 applicable to NEC or Indirect Purchaser Plaintiffs had NEC been participating in the Actions.

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

12 **35. Effective Date.** The Effective Date of this Agreement shall be conditioned on the
13 occurrence of all of the following events:

- 14 (a) NEC no longer has any right under ¶¶ 40-41 to terminate this Agreement or, if
15 NEC does have such right, they have given written notice to Class Counsel
16 that they will not exercise such right;
- 17 (b) the Court has finally approved the Settlement as described herein, following
18 notice to the Classes and a hearing, as prescribed by Rule 23 of the Federal
19 Rules of Civil Procedure, and has entered the Judgment; and
- 20 (c) the Judgment has become Final.

21 **36. Occurrence of Effective Date.** Upon the occurrence of all of the events referenced
22 in the above paragraph, any and all remaining interest or right of NEC in or to the Gross Settlement
23 Fund, if any, shall be absolutely and forever extinguished, and the Gross Settlement Fund (less any
24 Notice and Administrative Costs, Taxes, Tax Expenses, Fee and Expense Award paid, or Service
25 Awards paid) shall be transferred from the Escrow Agent to the Notice and Claims Administrator as
26 successor Escrow Agent within ten (10) days after the Effective Date.
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1 **37. Failure of Effective Date to Occur.** If all of the conditions specified in ¶¶ 35 are not
2 met, then this Agreement shall be cancelled and terminated, subject to and in accordance with ¶¶
3 41-42 unless the Settling Parties mutually agree in writing to proceed with this Agreement.

4 **38. Exclusions.** Class Counsel shall cause copies of requests for exclusion from the
5 Classes to be provided to NEC's counsel. No later than fourteen (14) days after the final date for
6 mailing requests for exclusion, Class Counsel shall provide NEC's counsel with a complete and final
7 list of opt-outs. With the motion for final approval of the Settlement, Class Counsel will file with the
8 Court a complete list of requests for exclusion from the Classes, including only the name, city and
9 state of the person or entity requesting exclusion. With respect to any member of the Class who
10 requests exclusion from the Classes, NEC reserves all of its legal rights and defenses, including, but
11 not limited to, any defenses relating to whether the member of the Class is an indirect purchaser of
12 the allegedly price-fixed product and/or has standing to bring any claim. NEC shall have the option
13 to terminate this Agreement if the purchases of Lithium Ion Batteries, Lithium Ion Packs and/or
14 Finished Products made by members of the Classes who timely and validly request exclusion from
15 the Classes equal or exceed five percent (5%) of the total volume of purchases made by the Classes.
16 After meeting and conferring with Class Counsel, NEC may elect to terminate this Agreement by
17 serving written notice on Class Counsel by email and overnight courier and by filing a copy of such
18 notice with the Court no later than thirty (30) days before the date for the final approval hearing of
19 this Agreement, except that NEC shall have a minimum of ten (10) days in which to decide whether
20 to terminate this Agreement after receiving the final opt-out list. In the event that NEC exercises its
21 option to terminate this Agreement: (i) this Agreement shall be null and void as to NEC, and shall
22 have no force or effect and shall be without prejudice to the rights and contentions of Releasees and
23 Releasors in this or any other litigation; and (ii) the Settlement fund paid by NEC, plus interest
24 thereon, shall be refunded promptly to NEC, minus such payment (as set forth in this Agreement) of
25 Notice and Administrative Costs and Taxes and Tax Expenses, consistent with the provisions of ¶¶
26 41-42.

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

11 **40. Failure to Enter Proposed Preliminary Approval Order, Final Approval Order**
12 **or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final Approval Order
13 or the Judgment, or if the Court enters the Final Approval Order and the Judgment and appellate
14 review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated,
15 modified or reversed, then this Agreement and the Settlement incorporated therein shall be cancelled
16 and terminated; provided, however, the Settling Parties agree to act in good faith to secure Final
17 Approval of this Settlement and to attempt to address in good faith concerns regarding the Settlement
18 identified by the Court and any court of appeal.

19 **41.** No Settling Party shall have any obligation whatsoever to proceed under any terms
20 other than substantially in the form provided and agreed to herein; provided, however, that no order
21 of the Court concerning any Fee and Expense Application, Service Award Application, or
22 Distribution Plan, or any modification or reversal on appeal of such order, shall constitute grounds
23 for cancellation or termination of this Agreement by any Settling Party. Without limiting the
24 foregoing, NEC shall have, in its sole and absolute discretion, the option to terminate the Settlement
25 in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal
26 with prejudice of all of the Actions against it.

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

- 6 (a) within five (5) business days after written notification of such event is sent by
7 counsel for NEC to the Escrow Agent, the Gross Settlement Fund—including
8 the Settlement Amount and all interest earned on the Settlement Fund while
9 held in escrow excluding only Notice and Administrative Costs that have
10 either been properly disbursed or are due and owing, Taxes and Tax Expenses
11 that have been paid or that have accrued and will be payable at some later
12 date, and attorneys' fees and costs that have been disbursed pursuant to Court
13 order—will be refunded, reimbursed and repaid by the Escrow Agent to NEC;
14 if said amount or any portion thereof is not returned within such five (5) day
15 period, then interest shall accrue thereon at the rate of ten percent (10%) per
16 annum until the date that said amount is returned;
- 17 (b) within thirty (30) business days after written notification of such event is sent
18 by counsel for NEC to Class Counsel, all attorneys' fees and costs which have
19 been disbursed to Class Counsel pursuant to Court order shall be refunded,
20 reimbursed and repaid by Class Counsel to NEC;
- 21 (c) the Escrow Agent or its designee shall apply for any tax refund owed to the
22 Gross Settlement Fund and pay the proceeds to NEC, after deduction of any
23 fees or expenses reasonably incurred in connection with such application(s)
24 for refund, pursuant to such written request;
- 25 (d) the Settling Parties shall be restored to their respective positions in the Actions
26 as of the Execution Date, with all of their respective claims and defenses
27 preserved as they existed on that date;
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- 1 (e) the terms and provisions of this Agreement, with the exception of ¶¶ 13-15,
2 17, 27, 31, 33-35, 37, 40-41, 43-44, 46-47, 49-56 (which shall continue in full
3 force and effect), shall be null and void and shall have no further force or
4 effect with respect to the Settling Parties, and neither the existence nor the
5 terms of this Agreement (nor any negotiations preceding this Agreement nor
6 any acts performed pursuant to, or in furtherance of, this Agreement) shall be
7 used in the Actions or in any other action or proceeding for any purpose (other
8 than to enforce the terms remaining in effect); and
9 (f) any judgment or order entered by the Court in accordance with the terms of
10 this Agreement shall be treated as vacated, *nunc pro tunc*.

11 **I. No Admission of Liability**

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

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

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

11 **J. Miscellaneous Provisions**

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

16 **47. Consent to Jurisdiction.** NEC and each Class Member hereby irrevocably submit to
17 the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or
18 dispute arising out of or relating to this Agreement or the applicability of this Agreement. Solely for
19 purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under
20 applicable law, NEC and the Class Members irrevocably waive and agree not to assert, by way of
21 motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction
22 of the Court or that the Court is in any way an improper venue or an inconvenient forum. Without
23 limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions
24 of ¶¶ 7-11 hereof, including but not limited to any suit, action or proceeding in which the provisions
25 of ¶¶ 7-11 hereof are asserted as a defense in whole or in part to any claim or cause of action or
26 otherwise raised as an objection, constitutes a suit, action or proceeding arising out of or relating to
27 this Agreement. In the event that the provisions of ¶¶ 7-11 hereof are asserted by any Releasee as a
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1 defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any
2 suit, action or proceeding, it is hereby agreed that such Releasee shall be entitled to a stay of that suit,
3 action or proceeding until the Court has entered a final judgment no longer subject to any appeal or
4 review determining any issues relating to the defense or objection based on the provisions of §§ 7-11.
5 Nothing herein shall be construed as a submission to jurisdiction for any purpose other than any suit,
6 action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this
7 Agreement.

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

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

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

23 **51. Notices.** All notices under this Agreement shall be in writing. Each such notice shall
24 be given either by (a) e-mail; (b) hand delivery; (c) registered or certified mail, return receipt
25 requested, postage pre-paid; (d) FedEx or similar overnight courier; or (e) facsimile and first class
26 mail, postage pre-paid and, if directed to any Class Member, shall be addressed to Class Counsel at
27 their addresses set forth below, and if directed to NEC, shall be addressed to their attorneys at the
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1 addresses set forth below or such other addresses as Class Counsel or NEC may designate, from time
2 to time, by giving notice to all parties hereto in the manner described in this paragraph.

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

4 COTCHETT, PITRE & MCCARTHY, LLP
5 Steven N. Williams (swilliams@cmplegal.com)
6 San Francisco Airport Office Center
7 840 Malcolm Road, Suite 200
8 Burlingame, CA 94010
9 Telephone: 650-697-6000
10 Facsimile: 650-697-0577

11 HAGENS BERMAN SOBOL SHAPIRO LLP
12 Jeff Friedman (jefff@hbsslaw.com)
13 715 Hearst Avenue, Suite 202
14 Berkley, CA 94710
15 Telephone: 510-725-3000
16 Facsimile: 510-725-3001

17 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
18 Brendan P. Glackin (bglackin@lchb.com)
19 275 Battery Street, 29th Floor
20 San Francisco, CA 94111-3339
21 Telephone: 415-956-1000
22 Facsimile: 415-956-1008

23 If directed to NEC, address notice to:

24 Robert B Pringle
25 Paul R. Griffin
26 Sean D. Meenan
27 Jeanifer E. Parsigian
28 Dana L. Cook-Milligan
WINSTON & STRAWN LLP
101 California Street
San Francisco, CA 94111-5802
Telephone: (415) 591-1000
Facsimile: (415) 591-1400
rpringle@winston.com
pgriffin@winston.com
smeen@winston.com
jparsigian@winston.com
dlcook@winston.com

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

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

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

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

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

19 **57. Integrated Agreement.** This Agreement constitutes the entire agreement between
20 the Settling Parties and no representations, warranties or inducements have been made to any party
21 concerning this Agreement other than the representations, warranties and covenants contained and
22 memorialized herein. It is understood by the Settling Parties that, except for the matters expressly
23 represented herein, the facts or law with respect to which this Agreement is entered into may turn out
24 to be other than or different from the facts now known to each party or believed by such party to be
25 true. Each party therefore expressly assumes the risk of the facts or law turning out to be so different,
26 and agrees that this Agreement shall be in all respects effective and not subject to termination by
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1 reason of any such different facts or law. Except as otherwise provided herein, each party shall bear
2 its own costs and attorneys' fees.

3 58. Return or Destruction of Confidential Materials. The Settling Parties agree to
4 comply with ¶ 11 of the Protective Order entered in these Actions at the conclusion of these Actions.

5 IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives,
6 have executed this Agreement as of the Execution Date.

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9 DATED: January 18, 2017

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

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19 DATED: January 18, 2017

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DATED: January 18, 2017

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DEFENDANT NEC CORP.

DATED: January 20, 2017

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