

# CANADIAN TOYOTA UNINTENDED ACCELERATION MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

This Document Relates to:

ALL ECONOMIC LOSS CLAIMS/ACTIONS (**Excluding Personal Injury Claims**)

<p>STEVEN HAMILTON</p> <p style="text-align: center;">- and -</p> <p style="text-align: center;">-</p> <p>TOYOTA MOTOR SALES, USA INC., et al.</p>	<p>Plaintiff</p>       <p>Defendants</p>	<p>ONTARIO SUPERIOR COURT OF JUSTICE</p>   <p>Court File No.: CV-10-396029-00CP</p>
<p>EDWARD SELMANI, et al,</p> <p style="text-align: center;">- and -</p> <p>TOYOTA MOTOR CORPORATION. et al.</p>	<p>Plaintiffs</p>    <p>Defendants</p>	<p>ONTARIO SUPERIOR COURT OF JUSTICE</p>   <p>Court File No. CV- 10-401396-00CP</p>
<p>CLAIRE VALLIERE</p> <p style="text-align: center;">- and -</p> <p>TOYOTA CANADA INC. et al.</p>	<p>Plaintiff</p>    <p>Defendants</p>	<p>ONTARIO SUPERIOR COURT OF JUSTICE</p>   <p>Court File No.:10-47583</p>
<p>RYAN SCHACHTER</p> <p style="text-align: center;">- and -</p> <p>TOYOTA CANADA INC. et al..</p>	<p>Petitioner</p>    <p>Respondents</p>	<p>QUÉBEC SUPERIOR COURT PROVINCE DE QUÉBEC, DISTRICT OF MONTREAL</p>  <p>NO. 500-06-000490-090</p>
<p>KENDRA COLE</p> <p style="text-align: center;">- and -</p> <p>TOYOTA CANADA INC. et al.</p>	<p>Plaintiff</p>    <p>Defendants</p>	<p>IN THE QUEEN’S BENCH JUDICIAL CENTRE OF REGINA</p>  <p>Q.B. No. 231 of 2010</p>

CHARLES VIGNEAU	Plaintiff	SUPREME COURT OF NOVA SCOTIA
- and -		
TOYOTA CANADA INC. et al.	Defendants	No. 3250116

## MINUTES OF SETTLEMENT

Counsel for the Parties hereto have agreed to a resolution of the above-noted actions as they relate to pure economic loss claims and excluding personal injury claims, as reflected in the terms and conditions set out in the attached Settlement Agreement, subject to the following terms and conditions:

1. The Settlement Agreement will not become effective until the Parties finalize the form and content of the Exhibits referenced in the Settlement Agreement;
2. The Settlement Agreement is subject to the approval of the Executive Committee of Toyota Canada Inc.; and
3. The Settlement Agreement is subject to Board Approval by Toyota Motor Corporation.

ALL OF WHICH IS AGREED TO this 6th day of August, 2013.

Date:

6 August 2013

ROCHON GENOVA LLP

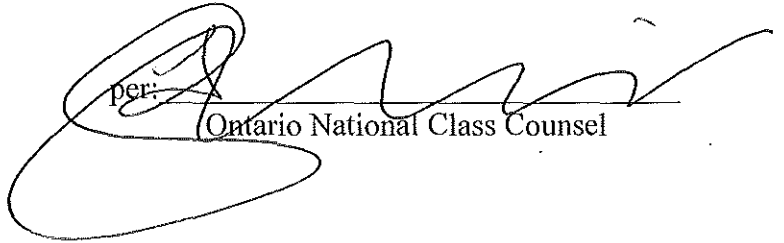
per:



Ontario National Class Counsel

Date: Aug 6/13

Kim Orr Barristers PC

per:  Ontario National Class Counsel

Date:

MERCHANT LAW GROUP

per: \_\_\_\_\_

Nova Scotia/Ontario/Saskatchewan National Class Counsel

Date:

Consumer Law Group Inc.

per: \_\_\_\_\_

Québec Class Counsel

Date:

LAVERY, DE BILLY LLP

per: \_\_\_\_\_

Toyota/CTS' Counsel

Date:

CASSELS BROCK & BLACKWELL LLP

per: \_\_\_\_\_

Toyota/CTS' Counsel

Date:

Kim Orr Barristers PC

per: \_\_\_\_\_  
Ontario National Class Counsel

Date: *August 6, 2013*

MERCHANT LAW GROUP LLP

per: *[Signature]*  
Nova Scotia/Ontario/Saskatchewan National Class Counsel

Date:

Consumer Law Group Inc.

per: \_\_\_\_\_  
Québec Class Counsel

Date:

LAVERY, DE BILLY LLP

per: \_\_\_\_\_  
Toyota/CTS' Counsel

Date:

CASSELS BROCK & BLACKWELL LLP

per: \_\_\_\_\_  
Toyota/CTS' Counsel

Date:

Kim Orr Barristers PC

per: \_\_\_\_\_

Ontario National Class Counsel

Date:

MERCHANT LAW GROUP

per: \_\_\_\_\_

Nova Scotia/Ontario/Saskatchewan National Class Counsel

Date:

~~Consumer Law Group Inc.~~

per:  \_\_\_\_\_

Québec Class Counsel

Date:

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Toyota/CTS' Counsel

Date:

CASSELS BROCK & BLACKWELL LLP

per: \_\_\_\_\_

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Date:

MERCHANT LAW GROUP

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Nova Scotia/Ontario/Saskatchewan National Class Counsel

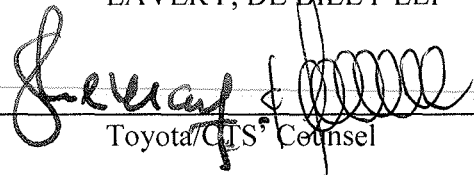
Date:

Consumer Law Group Inc.

per: \_\_\_\_\_  
Québec Class Counsel

Date:

LAVERY, DE BILLY LLP

per:  \_\_\_\_\_  
Toyota/CTS' Counsel

Date:

CASELS BROCK & BLACKWELL LLP

per: \_\_\_\_\_  
Toyota/CTS' Counsel

Date:

Kim Orr Barristers PC

per: \_\_\_\_\_  
Ontario National Class Counsel

Date:

MERCHANT LAW GROUP

per: \_\_\_\_\_  
Nova Scotia/Ontario/Saskatchewan National Class Counsel

Date:

Consumer Law Group Inc.

per: \_\_\_\_\_  
Québec Class Counsel

Date:

LAVERY, DE BILLY LLP

per: \_\_\_\_\_  
Toyota/CTS' Counsel

Date:

CASELS BROCK & BLACKWELL LLP

per:    \_\_\_\_\_  
Toyota/CTS' Counsel

## CANADIAN TOYOTA UNINTENDED ACCELERATION MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION SETTLEMENT AGREEMENT

This Document Relates to:

ALL ECONOMIC LOSS CLAIMS/ACTIONS **(Excluding Personal Injury Claims)**

STEVEN HAMILTON  - and - - TOYOTA MOTOR SALES, USA INC., et al.	Plaintiff   Defendants	ONTARIO SUPERIOR COURT OF JUSTICE  Court File No.: CV-10- 396029-00CP
EDWARD SELMANI, et al,  - and -  TOYOTA MOTOR CORPORATION. et al.	Plaintiffs   Defendants	ONTARIO SUPERIOR COURT OF JUSTICE  Court File No. CV- 10- 401396-00CP
CLAIRE VALLIERE  - and - TOYOTA CANADA INC. et al.	Plaintiff   Defendants	ONTARIO SUPERIOR COURT OF JUSTICE  Court File No.:10-47583
RYAN SCHACHTER  - and -  TOYOTA CANADA INC. et al..	Petitioner   Respondents	QUÉBEC SUPERIOR COURT PROVINCE DE QUÉBEC, DISTRICT OF MONTREAL  NO. 500-06-000490-090
KENDRA COLE  - and -  TOYOTA CANADA INC. et al.	Plaintiff   Defendants	IN THE QUEEN’S BENCH JUDICIAL CENTRE OF REGINA  Q.B. No. 231 of 2010



CHARLES VIGNEAU	Plaintiff	SUPREME COURT OF NOVA SCOTIA
- and -		
TOYOTA CANADA INC. et al.	Defendants	No. 3250116

## 1. PREAMBLE AND RECITALS

This Settlement Agreement is made and entered into this 6th day of August, 2013, by, and among the Plaintiffs in the Nova Scotia, Ontario and Saskatchewan Actions and the Petitioner in the Québec Action (as defined below) on behalf of themselves and in their capacity as designated representatives of the Classes (as defined below), by and through their counsel, and Toyota Canada Inc, Toyota Motor Corporation, Toyota Motor North America Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America Engineering & Manufacturing Inc, and Toyota Motor Manufacturing Canada Inc., (all hereinafter “Toyota”) and CTS of Canada Limited, CTS of Canada Holding Co., CTS of Canada GP, Ltd., CTS of Canada Co. and CTS Corporation, (all hereinafter “CTS”) by and through their counsel providing for the settlement of all claims in Canada (including the Territories) for Alleged Economic Loss (as defined in this Agreement) arising from, without limitation, the design, manufacture, marketing, sale and distribution of Toyota and Lexus vehicles equipped with Electronic Throttle Control (“ETCS”) pursuant to the terms and conditions set forth herein, subject to the approval of the courts as set forth herein;

**WHEREAS**, the Parties intend by this Settlement Agreement to resolve all past, present, and future claims for Alleged Economic Loss of the Class Members (as defined below) in any way arising out of or relating to the ownership, purchase, acquisition and/or finance, and/or lease of Toyota and Lexus vehicles equipped with ETCS for residents of Canada;

**WHEREAS**, the Parties shall seek concurrent or consecutive consent certification/authorization and Settlement Agreement approval of the Nova Scotia, Ontario, Saskatchewan and Québec Actions (as defined herein) as class proceedings for the purpose of approving the Settlement Agreement;

**WHEREAS**, the Parties shall, on consent, seek Orders from the Newfoundland, Ontario, Manitoba, Alberta and British Columbia Courts permanently dismissing or discontinuing, without costs, the Other Actions (as defined in this Agreement) in those provinces, failing which Orders, this Settlement Agreement shall be void;

**WHEREAS**, Toyota and CTS deny any liability or wrongdoing and further deny that the Plaintiffs or the Class Members have any justifiable claim for relief or that they have any liability to the Plaintiffs or the Class Members. Toyota and CTS further assert that they have numerous meritorious affirmative defences to the claims advanced by the Plaintiffs and the Class Members;

**WHEREAS**, the Parties agree that Class Members have the right to exclude themselves from the Nova Scotia, Ontario, Saskatchewan and Québec Actions by exercising the right to Opt Out pursuant to Articles 1007 and 1008 of the *Code of Civil Procedure*, R.S.Q. c. C-25, under section 18 of *The Class Actions Act*, Chapter C-12.01 of the Statutes of Saskatchewan, 2001, under section 9 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 and under section 19 of the *Class Proceedings Act, 2007*, S.N.S 2007, c.28 (Nova Scotia) in the manner provided herein;

**WHEREAS**, Toyota has agreed to pay the amounts stipulated herein to settle all claims made by the Class Members in accordance with the eligibility criteria described herein and all administrative, adjudicative and notice costs associated with the implementation of this Settlement Agreement and all Class Counsel fees, disbursements and applicable taxes;

**WHEREAS**, the Parties agree that neither this Settlement Agreement nor any document relating thereto, nor any action taken to carry out this Settlement Agreement, shall be offered in evidence in any action or proceeding against Toyota and/or CTS or in any court, administrative agency or other tribunal in Canada or elsewhere in the world for any purpose whatsoever other than to give effect to and enforce the provisions of this Settlement Agreement or to seek court approvals of the Settlement Agreement;

**WHEREAS**, Toyota and CTS intend that this Settlement Agreement shall be binding on all persons resident in Canada (including the Territories) who owned, purchased, acquired and/or financed, and/or leased any Toyota and Lexus vehicles equipped with ETCS, and that all claims of such persons for Alleged Economic Loss will be satisfied by this Settlement Agreement, subject to those individual Class Members who may Opt Out in a timely manner in compliance with the procedures as set out in this Settlement Agreement for so doing. This Settlement Agreement shall not include any person(s) who may have previously settled and/or otherwise resolved his/her Toyota and/or Lexus Economic Loss related claim against any one of Toyota and/or CTS. It is expressly acknowledged and agreed that Toyota and CTS would not have entered into this Settlement Agreement were it not for the foregoing;

**WHEREAS**, arm's length settlement negotiations have taken place between Class Counsel and Counsel for Toyota and CTS and this Settlement Agreement embodies all the terms and conditions of the settlement between Toyota, CTS and

the Plaintiffs and Petitioner, subject to final approval of the Nova Scotia, Ontario, Saskatchewan and Québec Courts;

**WHEREAS**, the Plaintiffs, the Petitioner and their Class Counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and is fair, reasonable, and in the best interests of the Class Members based on an analysis of the facts and the law as applied to the claims of the Class Members, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted litigation, trials and appeals, as well as the fair, cost-effective and assured method provided in the Settlement Agreement of resolving the claims of Class Members;

**WHEREAS**, Class Counsel represent and warrant that they are fully authorized to enter into this Agreement on behalf of Class Representatives, Petitioner and the Class, and that Class Counsel have consulted with and confirmed that all Class Representatives fully support and have no objection to this Agreement;

**WHEREAS**, Toyota and CTS have similarly concluded that this Settlement Agreement is desirable in order to avoid the time, risks and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of the Class Members anywhere in Canada (including the Territories) for Economic Loss;

**NOW THEREFORE**, subject to Court approval, this Settlement Agreement embodies the terms of the resolution of the Nova Scotia, Ontario, Saskatchewan and Québec Actions, including past, present and future claims against Toyota and CTS for Economic Loss in any way arising out of or relating to the purchase, acquisition and/or finance and/or lease of Toyota and Lexus vehicles equipped with ETCS by the Class Members. Nothing in this Settlement Agreement shall in any way impact upon or compromise claims for personal injury in relation to alleged sudden unintended acceleration;

THE PREAMBLE AND RECITALS set out herein are incorporated with and form part of this Settlement Agreement;

**IN CONSIDERATION** of the covenants, agreements and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, by their respective counsel, AGREE AS FOLLOWS:

## 2. DEFINITIONS

Unless a particular section of this Settlement Agreement explicitly provides for another definition, the following terms, as used in this Settlement Agreement and its Exhibits, shall have the definitions set forth below. Terms used in the singular

shall be deemed to include the plural, and vice versa. Feminine pronouns and female references shall be deemed to include masculine, and vice versa, where appropriate.

- 2.1. **“Accelerator Pedal Assembly”** means the two accelerator pedal position sensors which communicate with the ECM to provide information about the position of the accelerator pedal. This information is utilized by the ECM to continuously calculate the throttle position. For linked ETCS models, the two accelerator pedal position sensors are located on the throttle body, not within the pedal assembly itself;
- 2.2. **“Action”** or **“Actions”** means the Nova Scotia, Ontario, Saskatchewan and Québec Actions defined below;
- 2.3. **“Agreement”** means this Settlement Agreement and the exhibits attached hereto or incorporated herein, including any subsequent amendments and any exhibits to such amendments, which are to form part of the settlement (the “Settlement”);
- 2.4. **“Alleged Economic Loss”** means the alleged basis for relief as provided in Section 9 of this Settlement Agreement and shall include any and all claims for pure economic loss, including the claims as set out in the Actions and Other Actions arising out of or in connection with the purchase, acquisition and/or finance and/or lease and/or resale of Toyota and Lexus vehicles equipped with ETCS as listed in Exhibit “A”;
- 2.5. **“Approval Orders”** means the Orders of the Québec Court, the Saskatchewan Court, the Ontario Court and the Nova Scotia Court which Authorize/Certify the Actions and which approve this Settlement Agreement, as more particularly described in Section 4 herein and which are attached as Exhibits “G”, “H”, “I” and “J” hereto, respectively;
- 2.6. **“Approved Claims”** shall mean the Claims of the Class Members which have been approved for payment(s) pursuant to this Settlement Agreement;
- 2.7. **“Authorization/Certification and Settlement Agreement Approval Orders”** means the Orders of the Québec Court, the Saskatchewan Court, the Ontario Court and the Nova Scotia Court which authorize in Québec the institution of a class action and which in Saskatchewan, Ontario and Nova Scotia certify the Saskatchewan, Ontario and Nova Scotia Actions, respectively, as class proceedings, approve the Settlement Agreement herein, appoint the Claims Administrator, and approve the Notice and Notice Plan as more particularly described in Sections 3 and 4 herein and which are attached as Exhibits “G”, “H”, “I” and “J” hereto, respectively;

- 2.8. **“BOS”** means a brake override system;
- 2.9. **“BOS-Eligible Vehicles”** means those Subject Vehicles that are eligible to receive the benefit described in Sections 9.1 and 9.2, specifically all non-hybrid Subject Vehicles that have been the subject of Floor Mat Entrapment Recalls and those Subject Vehicles for which Toyota previously offered the installation of BOS and that have not yet received BOS, a list of which is attached hereto as Exhibit “R”;
- 2.10. **“CAA”** means *The Class Actions Act*, Chapter C-12.01 of the Statutes of Saskatchewan, 2001;
- 2.11. **“Claim”** means the claim of a Class Member or his or her or its representative submitted on a Claim Form;
- 2.12. **“Claimant”** means a Class Member who has not opted out and who has submitted a timely Claim Form as set forth herein;
- 2.13. **“Claim Determination Form”** means the form to be completed by an Administrator following his/her review of a Claim Form which sets out his/her determination on the eligibility or non-eligibility of a claim and shall be in the form attached hereto as Exhibit “P”;
- 2.14. **“Claim Determination Letter”** means the letter the Claims Administrator shall send to Claimants following determination of the Claim’s eligibility for compensation and shall be in the form attached hereto as Exhibit “Q”;
- 2.15. **“Claim Form”** means the form required to be submitted in order for a claim for benefits under this Settlement Agreement to be considered, as defined and described more particularly in Exhibit “O” hereto;
- 2.16. **“Claim Period”** means the period beginning on the Notice Date through and including one hundred and twenty (120) days following the Effective Date;
- 2.17. **“Claims Administration Procedures”** means the procedures to be followed in processing Claims under the Settlement Agreement, as more particularly detailed in Exhibit “N” hereto;
- 2.18. **“Claims Administrator”** means Crawford Class Action Services, whose appointment is subject to approval by the Nova Scotia, Ontario, Saskatchewan and Québec Courts as provided for in Sections 4.1(h) and 10 herein, along with its agents and employees and/or its successors or replacement(s) as may be appointed by the Courts;

- 2.19. **“Class” or “Class Members”** includes Nova Scotia National Class Members, Ontario National Class Members, Saskatchewan National Class Members and Québec Class Members, as defined herein;
- 2.20. **“Class Counsel”** means the firms Rochon Genova LLP, Kim Orr Barristers PC, Merchant Law Group LLP, and Consumer Law Group Inc. and has the same meaning as “Plaintiffs’ Counsel”;
- 2.21. **“Class Representatives”** means Charles Vigneau, Steven Hamilton, Edward Selmani, Nevila Celaj, Claire Valliere, Kendra Cole and Ryan Schachter;
- 2.22. **“CPA”** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- 2.23. **“CPA 2007”** means the *Class Proceedings Act, 2007*, S.N.S. 2007, c. 28;
- 2.24. **“Cruise Control Switch”** means the switch that acts to turn on, off, set, cancel and resume cruise control;
- 2.25. **“CTS”** means CTS of Canada Limited, CTS of Canada Holding Co., CTS of Canada GP, Ltd., CTS of Canada Co. and CTS Corporation;
- 2.26. **“Due Diligence”** means the documentary review conducted by Class Counsel to satisfy their obligations with respect to ensuring the fairness and appropriateness of the terms of the Settlement Agreement to the Class Members in relation to the factual basis for the Action and in order to conduct a rigorous analysis of issues related to both liability and damages;
- 2.27. **“Economic Loss”** means the same as Alleged Economic Loss as defined in this Agreement.
- 2.28. **“Effective Date”** means the date ten (10) days following the date of Final Court Approval;
- 2.29. **“Engine Control Module” or “ECM”** means the computer with software and hardware that controls the engine and contains diagnostic logic to validate continuously the throttle position as received from the accelerator pedal position sensors;
- 2.30. **“ETCS”** means the various electronic throttle control systems in the Subject Vehicles;
- 2.31. **“Final Court Approval”** means the later of: a) the date when any applicable appeal period(s) arising from the Approval Orders expire(s) or, if an appeal is made or appeals are made, the date of the final disposition of all such appeals; b) the date on which all necessary Orders in the Other Actions are

obtained, as described in Section 8 herein; and c) 21 days after the delivery of the Opt Out documentation by the Claims Administrator to the Parties or 21 days after the Opt Out Deadline (whichever is later) pursuant to Section 6.4;

- 2.32. **“Floor Mat Entrapment Recalls”** mean the recalls that were assigned the following numbers by Transport Canada: 2009–290, 2011–082, 2011–083, and 2012-192;
- 2.33. **“Notice”** means the court-approved notices pursuant to the Notice Plan as approved by the Nova Scotia, Ontario, Saskatchewan and Québec Courts;
- 2.34. **“Notice Date”** means the date on which the Notice is first published pursuant to Section 4.1(i) of this Settlement Agreement;
- 2.35. **“Notice Plan”** means the plan for disseminating the Notice of the Authorization/Certification and Settlement Agreement Approval Hearings, Notice of the Authorization/Certification and Settlement Agreement Approval or such other Notice, which shall be pursuant to the protocols outlined in Exhibit “K” hereto or in such other form as may be approved by the Nova Scotia, Ontario, Saskatchewan and Québec Courts;
- 2.36. **“Nova Scotia Action”** means Court File No. 325016, commenced in the Supreme Court of Nova Scotia;
- 2.37. **“Nova Scotia Court”** means the Supreme Court of Nova Scotia;
- 2.38. **“Nova Scotia National Class” or “Nova Scotia National Class Members”** means for settlement purposes only, all persons, entities or organizations resident in Canada, excluding the members of the Québec Class and those persons, entities or organizations resident in Québec, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia and the Territories who, at any time as of or before the entry of the Approval Order, own or owned, purchase(d), acquire(d) and/or lease(d), or has or had any legal or equitable interest in, or any interest in the value of, any of the Subject Vehicles equipped or installed with an ETCS (as listed in Exhibit “A”) distributed for sale or lease in Canada (including the Territories) and who do not properly and timely Opt Out of the Settlement. Excluded from the Class are: (a) Toyota as defined herein, their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; and Toyota Dealers and Toyota Dealers’ officers and directors; (b) CTS as defined herein, their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; (c) Class Counsel, and their employees; and (d) judicial officers and their immediate family members and

associated court staff assigned to the Actions, subject to the further exclusions above with respect to the definition of Class or Class Members;

- 2.39. **“Nova Scotia National Class Counsel”** means the firm of Merchant Law Group LLP;
- 2.40. **“Ontario Actions”** means Court File No. CV-10-296029-00CP, Court File No. CV-10-401396-00CP and Court File No. 10-47583, all commenced in the Ontario Superior Court of Justice;
- 2.41. **“Ontario Court”** means the Ontario Superior Court of Justice;
- 2.42. **“Ontario National Class” or “Ontario National Class Members”** means, for settlement purposes only, all persons, entities or organizations resident in Canada (including the Territories), excluding the members of the Québec Class and those persons, entities or organizations resident in Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Saskatchewan, Alberta and British Columbia who, at any time as of or before the entry of the Approval Order, own or owned, purchase(d), acquire(d) and/or lease(d), or has or had any legal or equitable interest in, or any interest in the value of, any of the Subject Vehicles equipped or installed with an ETCS (as listed in Exhibit “A”) distributed for sale or lease in Canada (including the Territories) and who do not properly and timely Opt Out of the Settlement. Excluded from the Class are: (a) Toyota as defined herein, their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; and Toyota Dealers and Toyota Dealers’ officers and directors; (b) CTS as defined herein, their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; (c) Class Counsel, and their employees; and (d) judicial officers and their immediate family members and associated court staff assigned to the Actions, subject to the further exclusions above with respect to the definition of Class or Class Members;
- 2.43. **“Ontario National Class Counsel”** means the firms Rochon Genova LLP, Kim Orr Barristers PC and Merchant Law Group LLP;
- 2.44. **“Opt Out”** means the procedure by which a Class Member may be excluded from the application of the terms of this Settlement Agreement in accordance with the provisions of Section 6 herein;
- 2.45. **“Opt Out Deadline”** means the date forty-five (45) days following the Notice Date;



- 2.46. **“Opt Out Form”** means the written notice of a Class Member’s intention to Opt Out of this Settlement Agreement which shall be in the form attached hereto as Exhibit “M”;
- 2.47. **“Other Actions”** means the following proposed class actions relating to claims for Economic Loss arising from, without limitation, the design, manufacture, marketing, sale and distribution of Toyota and Lexus vehicles equipped with ETCS which have been commenced in Canada and which will be dismissed and/or discontinued, failing which the Settlement Agreement shall be void: Court File No. 01T1036-CP, commenced in the Supreme Court of Newfoundland and Labrador, Trial Division, Court File No. MC010110 commenced in the Court of Queen’s Bench of New Brunswick, Court File No. CV-10-402007-00CP commenced in the Ontario Superior Court of Justice, Court File No. CI10-01-64911 commenced in Manitoba Queen’s Bench, Winnipeg Centre, Court File No. 1001-91605, commenced in the Court of Queen’s Bench of Alberta, Judicial District of Calgary, Court File No. 10 0444 commenced in the Victoria Registry Office of the Supreme Court of British Columbia, and Court File No. 125961 commenced in the New Westminster Registry Office of the Supreme Court of British Columbia;
- 2.48. **“Other Plaintiffs’ Counsel”** means the firms of Hilborn & Konduros, and Hanson Wirsig Matheos;
- 2.49. **“Party”** means any one of the Plaintiffs in the Nova Scotia, Ontario and Saskatchewan Actions, the Petitioner in the Québec Action and Toyota and CTS and may be referred to herein collectively as “the Parties”;
- 2.50. **“Parts Protection Logic”** means a system on hybrid Subject Vehicles that, among other things, performs a similar function as BOS;
- 2.51. **“Petitioner”** where used in this Agreement means Ryan Schachter, the Petitioner in the Quebec Action;
- 2.52. **“Plaintiff”** or **“Plaintiffs”** has the same meaning as “Class Representatives”;
- 2.53. **“Plaintiffs’ Counsel”** has the same meaning as “Class Counsel”;
- 2.54. **“Québec Action”** means Court File No.500-06-000490-090 commenced in the Québec Superior Court, District of Montreal;
- 2.55. **“Québec Class”** or **“Québec Class Members”** means, for settlement purposes only, all natural persons as well as all legal persons established for a private interest, partnerships and associations having no more than fifty (50) persons bound to it by a contract of employment under its direction or control

during the twelve (12) month period preceding November 30, 2009 resident in Québec that, at any time as of or before the entry of the Approval Order, own or owned, purchase(d), acquire(d) and/or lease(d), or has or had any legal or equitable interest in, or any interest in the value of, any of the Subject Vehicles equipped or installed with an ETCS (as listed in Exhibit “A”) distributed for sale or lease in Canada (including the Territories) and who do not properly and timely Opt Out of the Settlement. Excluded from the Class are: (a) Toyota as defined herein, their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; and Toyota Dealers and Toyota Dealers’ officers and directors; (b) CTS as defined herein, their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; (c) Class Counsel, and their employees; and (d) judicial officers and their immediate family members and associated court staff assigned to the Actions, subject to the further exclusions above with respect to the definition of Class or Class Members;

- 2.56. **“Québec Class Counsel”** means the firm of Consumer Law Group Inc.;
- 2.57. **“Québec Court”** means the Québec Superior Court;
- 2.58. **“Release”** means the release and waiver set forth in Section 11 of this Agreement and in the Approval Orders;
- 2.59. **“Released Claims”** means the Claims as released in accordance with Section 11 of this Agreement;
- 2.60. **“Released Parties”** means (whether by Release or Undertaking Not To Sue);
- (i) Toyota, and each of their past, present and future parents, predecessors, successors, spin-offs, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, shareholders, stockholders, bondholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, dealers, representatives, suppliers, vendors, advertisers, service providers, distributors and sub-distributors, agents, attorneys, administrators and advisors. The Parties expressly acknowledge that each of the foregoing is included as a Released Party even though not identified by name herein;
  - (ii) CTS, and each of their past, present and future parents, predecessors, successors, spin-offs, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries,

related companies, affiliates, officers, directors, employees, associates, dealers, representatives, suppliers, vendors, advertisers, service providers, distributors and sub-distributors, agents, attorneys, administrators and advisors. The Parties expressly acknowledge that each of the foregoing is included as a Released Party even though not identified by name herein;

- (iii) Toyota Dealers (as defined herein);

Released Parties includes all persons/entities/organizations described above, even if not referenced by name in this Agreement;

- 2.61. **“Representative Plaintiffs”** means the following individuals: Steven Hamilton, Edward Selmani, Nevila Celaj, Claire Valliere, Kendra Cole, Brian Anstey, Charles Vigneau, Donald Saunders, Coreana Marburg, Tommy Gnutel, Paul Bains, Michelle O’Doherty, Germain Vigneault, Rhonda Lee and Ryan Schachter;
- 2.62. **“Saskatchewan Action”** means Court File No. 231 of 2010, commenced in the Saskatchewan Court of Queen’s Bench, Judicial Centre of Regina;
- 2.63. **“Saskatchewan National Class Counsel”** means the firm of Merchant Law Group LLP;
- 2.64. **“Saskatchewan Court”** means the Saskatchewan Court of Queen’s Bench, Judicial Centre of Regina;
- 2.65. **“Saskatchewan National Class” or “Saskatchewan National Class Members”** means, for settlement purposes only, all persons, entities or organizations resident in Canada, excluding the members of the Québec Class and those persons, entities or organizations resident in Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and the Territories who, at any time as of or before the entry of the Approval Order, own or owned, purchase(d), acquire(d) and/or lease(d), or has or had any legal or equitable interest in, or any interest in the value of, any of the Subject Vehicles equipped or installed with an ETCS (as listed in Exhibit “A”) distributed for sale or lease in Canada (including the Territories) and who do not properly and timely Opt Out of the Settlement. Excluded from the Class are: (a) Toyota as defined herein, their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; and Toyota Dealers and Toyota Dealers’ officers and directors; (b) CTS as defined herein, their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; (c) Class Counsel, and their employees; and (d) judicial officers and their immediate

family members and associated court staff assigned to the Actions, subject to the further exclusions above with respect to the definition of Class or Class Members;

- 2.66. **“Settlement”** means the proposed settlement of the Nova Scotia, Ontario, Saskatchewan and Québec Actions and the discontinuance and/or dismissal of the Other Actions, as defined herein, pursuant to the terms set forth in this Settlement Agreement;
- 2.67. **“Settlement Agreement”** means this agreement, including all Exhibits hereto;
- 2.68. **“Settlement Approval Hearings”** means the hearings at which the Parties to the Nova Scotia, Ontario, Saskatchewan and Québec Actions will seek the approval by the Québec Court of the Settlement Agreement pursuant to Article 1025 of the Code of Civil Procedure, R.S.Q. c. C-25, the approval by the Saskatchewan Court of the Settlement Agreement pursuant to s.38 of the CAA, the approval by the Ontario Court of the Settlement Agreement pursuant to section 29(2) of the CPA, and the approval by the Nova Scotia Court of the Settlement Agreement pursuant to section 38 of the CPA 2007 ;
- 2.69. **“Stop Lamp Switch”** means the switch that activates brake lights and informs the ECM when the brake pedal is depressed. This information is also used by the ECM for cruise control operation and BOS operation;
- 2.70. **“Subject Vehicles”** means those Toyota and Lexus vehicles that are listed in Exhibit “A”;
- 2.71. **“Throttle Body Assembly”** means the system that controls the amount of air entering the engine. It contains a throttle control motor and two throttle position sensors;
- 2.72. **“Toyota”** means Toyota Canada Inc, Toyota Motor Corporation, Toyota Motor North America Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America Engineering & Manufacturing Inc, and Toyota Motor Manufacturing Canada Inc.; and
- 2.73. **“Toyota Dealers”** means authorized Toyota and/or Lexus dealers in Canada.

### **3. NOTICE OF HEARINGS AUTHORIZING/CERTIFYING THE PROCEEDINGS AND APPROVING THE SETTLEMENT AGREEMENT**

- 3.1. Upon execution of this Settlement Agreement, the Petitioner in the Québec Action, the Plaintiffs in the Saskatchewan Action, Ontario Actions and Nova Scotia Action and Toyota and CTS shall jointly move for Orders from the Nova Scotia Court, Ontario Court, Saskatchewan Court and Québec Court, in the form attached hereto as Exhibits “B”, “C”, “D” and ”E”, respectively (the “Notice Orders”), which will, among other things:
- (a) order that Crawford Class Action Services be appointed as Claims Administrator for the coordination of Notice of the Authorization/Certification and Settlement Agreement Approval Hearings, administration of objections and related tasks;
  - (b) approve the form and content of the Notice of the Authorization/Certification and Settlement Approval Hearings in substantially the form attached hereto as Exhibit ”F”; and
  - (c) order the implementation of the Notice Plan as it relates to the giving of Notice of the Authorization/Certification and Settlement Agreement Approval Hearings as set out in Exhibit “K” hereto.
- 3.2. The cost of the Notice Plan, including Notice of the Authorization/Certification and Settlement Approval Hearings to Class Members and the cost of publicizing the Notice, shall be paid by Toyota pursuant to the provisions of Section 12.

#### **4. ORDERS AUTHORIZING/CERTIFYING THE ACTIONS AND APPROVING THE SETTLEMENT AGREEMENT**

4.1. Following publication of the Notice of the Authorization/Certification and Settlement Approval Hearings, the Petitioner in the Québec Action, the Plaintiffs in the Nova Scotia, Ontario and Saskatchewan Actions and Toyota and CTS shall jointly move for Orders from the Nova Scotia Court, Ontario Court, Saskatchewan Court and Québec Court, in the form attached hereto as Exhibits "G", "H", "I" and "J", respectively (the "Approval Orders"), which will, among other things:

- a) In Quebec, authorize the institution of the Québec Action as a class proceeding on behalf of the following class for the sole purpose of giving effect to the within Settlement Agreement:

All natural persons, as well as all legal persons established for a private interest, partnerships and associations having no more than fifty (50) persons bound to it by contract of employment under its direction or control during the twelve (12) month period preceding November 30, 2009 resident in Québec that, at any time as of or before the entry of the Approval Order, own or owned, purchase(d), acquire(d) and/or lease(d), or has or had any legal or equitable interest in, or any interest in the value of, any Toyota or Lexus vehicle equipped or installed with an ETCS as set out in Exhibit "A" distributed for sale or lease in Canada (including the Territories) (the "Québec Class" or "Québec Class Members") but shall not include:

(a) Toyota Canada Inc, Toyota Motor Corporation, Toyota Motor North America Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America Engineering & Manufacturing Inc, and Toyota Motor Manufacturing Canada Inc., their officers, directors and employees; their affiliates and affiliates' officers, directors and employees; their distributors and distributors' officers, directors and employees; and Toyota Dealers and Toyota Dealers' officers and directors; (b) CTS of Canada Limited, CTS of Canada Holding Co., CTS of Canada GP, Ltd., CTS of Canada Co. and CTS

Corporation, their officers, directors and employees; their affiliates and affiliates' officers, directors and employees; their distributors and distributors' officers, directors and employees; (c) Class Counsel, and their employees; (d) judicial officers and their immediate family members and associated court staff assigned to the Actions; and (e) persons or entities who or which timely and properly exclude themselves from the Class; and

- b) In Saskatchewan, certify the Saskatchewan Action as a class proceeding pursuant to the CAA on behalf of the following class for the sole purpose of giving effect to the within Settlement Agreement:

All persons, entities or organizations resident in Canada, excluding the members of the Québec Class and those persons, entities or organizations resident in Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and the Territories, who, at any time as of or before the entry of the Approval Order, own or owned, purchase(d), acquire(d) and/or lease(d), or has or had any legal or equitable interest in, or any interest in the value of, any Toyota or Lexus vehicle equipped or installed with an ETCS as set out in Exhibit "A" distributed for sale or lease in Canada (including the Territories) (the "Saskatchewan National Class" or "Saskatchewan National Class Members") but shall not include:

(a) Toyota Canada Inc, Toyota Motor Corporation, Toyota Motor North America Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America Engineering & Manufacturing Inc, and Toyota Motor Manufacturing Canada Inc., their officers, directors and employees; their affiliates and affiliates' officers, directors and employees; their distributors and distributors' officers, directors and employees; and Toyota Dealers and Toyota Dealers' officers and directors; (b) CTS of Canada Limited, CTS of Canada Holding Co., CTS of Canada GP, Ltd., CTS of Canada Co. and CTS Corporation, their officers, directors and employees; their affiliates and affiliates' officers, directors and employees; their distributors and distributors' officers, directors and employees; (c) Class Counsel, and their employees; (d) judicial officers and their immediate family members and associated court staff assigned to the Actions; and (e) persons or entities who or which timely and properly exclude themselves from the Class; and

- c) In Ontario, certify the Ontario Actions as a single class proceeding pursuant to the CPA on behalf of the following class for the sole purpose of giving effect to the within Settlement Agreement:

All persons, entities or organizations resident in Canada, excluding the members of the Québec Class and those persons, entities or organizations resident in, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Saskatchewan, Alberta and British Columbia, who, at any time as of or before the entry of the Approval Order, own or owned, purchase(d), acquire(d) and/or lease(d), or has or had any legal or equitable interest in, or any interest in the value of, any Toyota or Lexus vehicle equipped or installed with an ETCS as set out in Exhibit “A” distributed for sale or lease in Canada (including the Territories) (the “Ontario National Class” or “Ontario National Class Members”) but shall not include:

(a) Toyota Canada Inc, Toyota Motor Corporation, Toyota Motor North America Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America Engineering & Manufacturing Inc, and Toyota Motor Manufacturing Canada Inc., their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; and Toyota Dealers and Toyota Dealers’ officers and directors; (b) CTS of Canada Limited, CTS of Canada Holding Co., CTS of Canada GP, Ltd., CTS of Canada Co. and CTS Corporation, their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; (c) Class Counsel, and their employees; (d) judicial officers and their immediate family members and associated court staff assigned to the Actions; and (e) persons or entities who or which timely and properly exclude themselves from the Class; and

- d) In Nova Scotia, certify the Nova Scotia Action as a class proceeding pursuant to the CPA 2007 on behalf of the following class for the sole purpose of giving effect to the within Settlement Agreement:

All persons, entities or organizations resident in Canada, excluding the members of the Québec Class and those persons, entities or organizations resident in Québec, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia and the Territories, who,



at any time as of or before the entry of the Approval Order, own or owned, purchase(d), acquire(d) and/or lease(d), or has or had any legal or equitable interest in, or any interest in the value of, any Toyota or Lexus vehicle equipped or installed with an ETCS as set out in Exhibit “A” distributed for sale or lease in Canada (including the Territories) (the “Nova Scotia National Class” or “Nova Scotia National Class Members”) but shall not include: (a) Toyota Canada Inc, Toyota Motor Corporation, Toyota Motor North America Inc., Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America Engineering & Manufacturing Inc, and Toyota Motor Manufacturing Canada Inc., their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; and Toyota Dealers and Toyota Dealers’ officers and directors; (b) CTS of Canada Limited, CTS of Canada Holding Co., CTS of Canada GP, Ltd., CTS of Canada Co. and CTS Corporation, their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; (c) Class Counsel, and their employees; (d) judicial officers and their immediate family members and associated court staff assigned to the Actions; and (e) persons or entities who or which timely and properly exclude themselves from the Class; and

- e) approve the Settlement Agreement and all Exhibits thereto;
- f) declare that this Settlement Agreement is fair, reasonable and in the best interests of the Class Members;
- g) order that the Settlement Relief set forth in this Settlement Agreement be provided in full satisfaction of the obligations of Toyota and CTS under this Settlement Agreement;
- h) order that Crawford Class Action Services be appointed as Claims Administrator for the Settlement;
- i) approve the Notice Plan and the form of notice therein;
- j) order that any Party may bring a motion to any case management judge appointed to supervise the Nova Scotia, Ontario, Saskatchewan and Québec

Actions at any time for directions with respect to the implementation or interpretation of this Settlement Agreement, such motion to be on notice to all other Parties;

- k) provide that if either case-management judge in the Nova Scotia, Ontario, Saskatchewan and Québec Actions is, for any reason, unable to fulfill any of the duties set out in this Settlement Agreement and the Exhibits hereto, another Justice of the Québec Court or, where applicable, the Saskatchewan Court or, where applicable, the Ontario Court, or where applicable, the Nova Scotia Court shall be appointed;
- l) dismiss all claims, without costs or enter judgment as appropriate consistent with the terms herein;
- m) provide for releases and waivers in favour of Toyota and CTS as set out in Section 11.1 of this Settlement Agreement.

## **5. EFFECT OF NON-APPROVAL OR AMENDMENT OF SETTLEMENT AGREEMENT**

5.1. In the event that any of the Nova Scotia, Ontario, Saskatchewan or Québec Courts fail to approve the Settlement Agreement in its entirety, the Parties reserve for themselves the right to amend this Settlement Agreement and any such amendment shall be in writing.

5.2. If this Settlement Agreement is not approved by all of the Nova Scotia, Ontario, Saskatchewan and Québec Courts:

- (a) this Settlement Agreement shall be null and void and shall have no force or effect and no party to this Settlement Agreement shall be bound by any of its terms except those of this paragraph; and
  - (b) this Settlement Agreement, and all negotiations, statements and proceedings relating to this Settlement Agreement shall be without prejudice to the rights of all Parties, all of whom shall be restored to their respective positions existing immediately before this Settlement Agreement; and
  - (c) the Petitioner in the Québec Action and the Plaintiffs in the Nova Scotia, Ontario and Saskatchewan Actions agree to consent to an Order setting aside the Authorization/Certification and Notice Orders to the extent those Orders authorize and certify class actions. Such consents are without prejudice to the Parties' right to bring a motion to authorize or certify those actions as class proceedings on a contested basis.
- 5.3 The Parties agree that whether or not it is approved by the Nova Scotia, Ontario, Saskatchewan and Québec Courts this Settlement Agreement and the fact of its negotiation and execution shall not constitute any admission by Toyota and CTS or be used against Toyota and CTS for any purpose in this or any other proceeding in Canada or elsewhere in the world and, without limiting the generality of the foregoing, this Settlement Agreement and the fact of its negotiation and execution shall not constitute an admission or be used by anyone (whether or not a party to these proceedings) in an effort to establish any of the

alleged facts, the jurisdiction of the Canadian courts over any foreign party or the certification of these or other proceedings in any province. Toyota and CTS further specifically reject that this Settlement Agreement constitutes an admission that the definition of a class or classes contained herein constitutes a class or classes appropriate for litigation purposes, and the Parties will enter into a Consent Order to that effect.

## **6. OPTING OUT**

- 6.1. Class Members shall have until the Opt Out Deadline to Opt Out of the Settlement by filing with the Claims Administrator an Opt Out Form in the form attached at Exhibit “M” hereto.
- 6.2. Any Class Member who does not Opt Out before the Opt-Out Deadline is bound by all subsequent proceedings, orders and judgments, including, but not limited to, the Release and Approval Orders in the Actions, even if he, she or it has litigation pending. Furthermore, any Class Members who have not Opted Out before the Opt-Out Deadline, are barred from commencing or continuing an action against Toyota and/or CTS, related to claims for Alleged Economic Loss arising out of or in connection with, without limitation, the design, manufacture, marketing, sale and distribution of Toyota and Lexus vehicles equipped with ETCS as listed in Exhibit “A” to this Settlement Agreement, at a later date.
- 6.3. The Claims Administrator shall aggregate all Opt Outs received by it and shall immediately deliver all documents related to such Opt Outs to Counsel for the Parties upon receipt.

6.4. If two-thousand one hundred (2,100) or more Class Members Opt Out, Toyota and CTS may at their sole discretion terminate this Settlement Agreement, notwithstanding any order made pursuant to the Settlement Approval Hearings, by giving notice to Class Counsel within 21 days of delivery of the Opt Out Forms to the Parties by the Claims Administrator or 21 days after the Opt Out Deadline, whichever is later. In such event, the provisions of Section 5.2 will apply. This number shall not include any Opt Out Forms submitted by individuals who have already entered into settlements that relate to claims for Economic Loss arising out of or in connection with, without limitation, the design, manufacture, marketing, sale and distribution of Toyota and Lexus vehicles equipped with ETCS as listed in Exhibit “A” to this Settlement Agreement.

6.5. Except in those jurisdictions in which this paragraph runs contrary to the applicable Rules of Professional Conduct, Class Counsel and Other Plaintiffs’ Counsel shall not act for a person who submits an Opt Out Form in any claim against Toyota and/or CTS that relate to claims for Alleged Economic Loss arising out of or in connection with, without limitation, the design, manufacture, marketing, sale and distribution of Toyota and Lexus vehicles equipped with ETCS as listed in Exhibit “A” to this Settlement Agreement.

## **7. SETTLEMENT AGREEMENT EFFECTIVE**

7.1 Within twenty-one (21) days of the issuance of the Authorization/Certification and Approval Orders or at such earlier time as may be

agreed upon by the Parties, motions shall be brought by Class Counsel with respect to the Other Actions, seeking Orders dismissing and /or discontinuing the Other Actions. Where applicable, Other Plaintiffs' Counsel shall bring motions seeking Orders dismissing and/or discontinuing the Other Actions.

7.2 Counsel for Toyota and CTS shall provide such assistance as may be necessary in order to secure the Orders required by this Section.

7.3 This Settlement Agreement shall become effective on the Effective Date.

## **8. WAIVER OF LIMITATION DEFENCE**

8.1 For the purposes of making a claim under this Settlement Agreement, no Claimant shall be considered ineligible to receive any compensation set forth in this Settlement Agreement on the basis of any statute of limitation, prescription period or any other limitation or prescription defence. With respect to Class Members who Opt Out, any such limitation periods otherwise applicable shall be deemed to commence, or re-commence, running as of the Opt Out Deadline.

## **9. SETTLEMENT RELIEF**

### **A. Relief Provided to Eligible Class Members**

In consideration of the dismissal of the Other Actions with prejudice, as contemplated in this Agreement, and for the full and complete Release as set out in Section 11, the Authorization/Certification and the Settlement Agreement Approval Orders provided below, Toyota agrees to provide the following:

- 9.1. **BOS for BOS-Eligible Vehicles** – Beginning on the Effective Date, Class Members who, as of the date of Final Court Approval, own or lease BOS-Eligible Vehicles as listed in Exhibit “R” may have BOS installed by Toyota at Toyota or Lexus Dealers at no cost and which option shall be transferable with the Subject Vehicle. It is estimated that over three hundred and ninety-two thousand (392,000) Subject Vehicles are eligible for BOS pursuant to this Section, which Subject Vehicles have not previously been offered BOS. The Vehicle Identification Numbers (“VINs”) for all eligible Subject Vehicles shall be identified in Toyota’s systems so that an eligible Subject Vehicle taken to Toyota or Lexus Dealers can be identified and have BOS installed. Toyota will begin to offer this benefit over time, beginning after the Effective Date, and will be provided for two years from the date Toyota gives notice on the Settlement website that BOS is available for that Subject Vehicle.
- 9.2. Toyota already has offered the installation of BOS with respect to certain vehicle models, and pursuant to this Agreement, Toyota will continue to offer to install BOS on those BOS-Eligible Vehicles that have not yet received BOS and Toyota shall send, in a format in Toyota’s discretion, those Class Members a reminder of this benefit<sup>1</sup>. Beginning in 2010, Toyota offered BOS to approximately one hundred and ninety-seven thousand (197,000) Subject Vehicles and, to the extent not previously installed, Toyota will continue to make BOS available for at least two years from the date of Final Court Approval.

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<sup>1</sup> Toyota will continue to install BOS on 2008 through 2010 model year Toyota Sequoia vehicles that have not yet received BOS, up to the end-date of the current Sequoia limited customer satisfaction campaign (TCI CSC 089) of October 31, 2013.

9.3. In addition, hybrid Subject Vehicles already have Parts Protection Logic that, among other things, performs a similar function as BOS and are therefore not eligible for the benefits in Sections 9.1 and 9.2. Inoperable vehicles and vehicles with a salvaged, rebuilt or flood-damaged title are not eligible for the benefits in Sections 9.1 and 9.2.

9.4. **Cash Payment in Lieu of BOS** – Class Members who own or lease a Subject Vehicle as of the date Final Court Approval, are eligible to make a claim for payment of sixty- two dollars and fifty cents (\$62.50) under this Section 9.4 if they comply with the Claims requirements of the Settlement, unless: (a) their Subject Vehicle is a hybrid vehicle; (b) they already actually received BOS on their Subject Vehicle; and/or (c) they are eligible to receive BOS on their Subject Vehicle as described in Sections 9.1 or were previously offered BOS on their Subject Vehicle. The claims of the Québec class members shall be subject to the regulation respecting the percentage withheld by the Fonds d’Aide aux recours collectifs. Inoperable vehicles and vehicles with a salvaged, rebuilt or flood-damaged title are not eligible for this benefit.

9.5. **Customer Support Program** – Beginning on the Effective Date, Toyota will offer a Customer Support Program to all Class Members who own or lease their Subject Vehicles as of the date of Final Court Approval. The Customer Support Program will stand behind the reliability of the Subject Vehicles by providing prospective coverage for repairs and adjustments needed to correct defects, if any, in materials or workmanship in any of the following components in each Subject Vehicle following the date of Final Court Approval: (i) Engine



Control Module; (ii) Cruise Control Switch; (iii) Accelerator Pedal Assembly; (iv) Stop Lamp Switch; and (v) Throttle Body Assembly. The duration of prospective coverage will begin following the date of Final Court Approval and will be calculated based on 10 years from the expiration of the existing warranty for each of these parts, with a maximum limit of 240,000 kilometers from the vehicle's in-service date, which is the first date the vehicle is either delivered to an ultimate purchaser, leased, or used as a company car or demonstrator. Regardless of mileage or warranty expiration, each eligible Subject Vehicle will receive no less than 3 years of coverage from the date of Final Court Approval. It is estimated that approximately 1.4 million Subject Vehicles are eligible for this benefit. Inoperable vehicles and vehicles with a salvaged, rebuilt or flood-damaged title are not eligible for this benefit.

9.6. **Communication of the Customer Support Program** - The VIN numbers for the Subject Vehicles shall be identified in Toyota's systems so that the eligible Subject Vehicles taken to Toyota Dealers can be identified. In addition, the Notice that will be sent to Class Members shall summarize this benefit. The Settlement website will also provide a summary of this benefit.

9.7. **Automobile Safety and Education Program** – Toyota will make the results of the research program under the U.S. Economic Loss Settlement available to or disseminated within Canada where relevant or applicable. Toyota has also already expended approximately \$687,000 on a floor mat safety education (mailing and poster campaign). Within 30 days of the Effective Date Toyota will further allocate six hundred thousand dollars (\$600,000) to fund four

(4) fixed term or endowed student scholarships for Canadian engineering faculties which shall be agreed upon by the Parties, acting reasonably.

**B. Claim Form Submission and Review**

- 9.8. In order to be eligible for payment pursuant to Section 9.4, Class Members must submit a valid Claim pursuant to the Claims Administration Procedures during the Claim Period, and the Claims Administrator shall review and evaluate the Claim. As part of the Claims Administration Procedures, Class Members will be eligible for the relief provided in this Agreement, provided Class Members timely complete and submit the Claim Form to the Claims Administrator. The Claim Form shall be made available on the Settlement website.
- 9.9. The Claim Form shall advise Class Members that the Claims Administrator has the right to request verification of eligibility, including verification of the purchase, acquisition, ownership, lease or resale of Subject Vehicles. If the Class Member does not timely comply and/or is unable to timely produce documents to substantiate and/or verify the information on the Claim Form and the Claim is otherwise not approved, the Claim shall be disqualified. In no event shall a Class Member or affiliate or representative of the Class Member receive more than one payment per Subject Vehicle.
- 9.10. Qualifying Class Members must complete and file the Claim Form (using the Claim Form attached as Exhibit "O") for claims filed under Section 9.4, in a timely fashion indicating that they wish to and are eligible to receive a payment pursuant to Section 9.4.

## **10. APPOINTMENT AND ROLE OF CLAIMS ADMINISTRATOR**

- 10.1. Subject to the approval of the Nova Scotia, Ontario, Saskatchewan and Québec Courts, the Parties hereto agree that Crawford Class Action Services shall be appointed as the Claims Administrator for the purpose of administering the Settlement.
- 10.2. The Claims Administrator and any person appointed by the Claims Administrator to assist in the administration or adjudication of the settlement must sign and adhere to a confidentiality statement, in a form satisfactory to the Parties, by which it agrees to keep confidential any information concerning Class Members or Toyota and CTS, and the Claims Administrator shall institute and maintain procedures to ensure that the identity of all Class Members and Parties, and all information regarding their claims and submissions will be kept strictly confidential and will not be provided to any person except as may be provided for in this Settlement Agreement or as may be required by law.
- 10.3. The Claims Administrator shall administer the claim relief specified in this Settlement Agreement pursuant to the terms of the Settlement Agreement and the Exhibits hereto.
- 10.4. The Claims Administrator shall invest all funds in its possession under this Settlement Agreement pursuant to the Investment Standards and authorized investments provided for in Section 27 of the *Trustee Act*, R.S.O. 1990, c. T.23 with a Chartered Canadian Bank.
- 10.5. The Claims Administrator shall offer services in both French and English.

- 10.6. In order to preserve the integrity of the Settlement and mitigate against potential abuses, the Parties hereto shall provide to the Claims Administrator all information known to them, and reasonably required by the Claims Administrator, relating to the identity of any Class Member who has not Opted Out and who has settled a claim for Economic Loss as against Toyota and/or CTS in Canada. This information shall be held in confidence by the Claims Administrator unless a Class Member identified by a Party pursuant to this section submits a Claim Package.
- 10.7. Subject to its duties herein, the Claims Administrator shall report to the Parties the number of Claim Forms received, as well as the name, address, telephone number, fax number (if any) and e-mail address (if any) of all Class Members who have filed claims.
- 10.8. The Claims Administrator shall provide periodic updates at least every month to the Parties regarding Claim Form submissions beginning not later than two weeks following the latest of the Authorization/Certification and Settlement Approval Hearing dates and continuing on a monthly basis thereafter.
- 10.9. The Claims Administrator shall use its best efforts to begin to process timely, valid and approved Claims as they are received. Not later than one hundred and twenty (120) days after the end of the Claim Period, the Claims Administrator shall use its best efforts to have completed the determination of required payments to Class Members who have submitted timely, valid and approved Claims pursuant to the Claims Administration Procedures. Once the Claims Administrator reports to the Parties as to the required payments, Toyota

- shall within 60 days provide sufficient funds to the Claims Administrator so as to enable the Claims Administrator to commence making payments to Class Members in accordance with the determinations of the Claims Administrator. The determinations of the Claims Administrator shall be final and binding and shall not be subject to any challenge, appeal, or revision.
- 10.10. The Claims Administrator shall establish a Settlement website that will inform Class Members of the terms of this Agreement, their rights, dates and deadlines and related information. The website shall include, in .pdf format, materials agreed upon by the Parties and/or required by the Courts.
- 10.11. The Settlement website shall include the Claim Form, which shall be in a form substantially similar to the document attached to this Agreement as Exhibit “O” and which shall inform the Class Member that he or she must fully complete and timely return the Claim Form within the Claim Period to be eligible to obtain relief pursuant to this Agreement.
- 10.12. The Claims Administrator shall establish a toll-free telephone number that will provide settlement-related information to Class Members.
- 10.13. The Claims Administrator shall be responsible for, without limitation: (a) printing, mailing or arranging for the mailing of the Notices as required under the Notice Plan; (b) handling returned mail not delivered to Class Members; (c) attempting to obtain updated address information for any Notices returned without a forwarding address; (d) making any additional mailings required under the terms of this Agreement; (e) responding to requests for Notice; (f) receiving and maintaining on behalf of the Court any Class Member correspondence

regarding requests for exclusion and/or objections to the Settlement;

(g) forwarding written inquiries to Class Counsel and/or Counsel for Toyota and CTS or their designee for a response, if warranted; (h) establishing a post-office box for the receipt of any correspondence; (i) responding to requests from Plaintiffs' Class Counsel and/or Counsel for Toyota and CTS; (j) establishing a website and toll-free voice response unit with message capabilities to which Class Members may refer for information about the Actions and the Settlement; (k) fulfilling any escheatment obligations that may arise; and otherwise implementing and/or assisting with the dissemination of the notice of the Settlement; (l) making payment of approved claims to Class Members. The Claims Administrator shall also be responsible for, without limitation, implementing the Claims Administration Procedures. All such administration shall be provided in both English and French.

10.14. If the Claims Administrator fails to perform adequately on behalf of Toyota, CTS or the Class, the Parties may agree to remove the Claims Administrator, subject to the approval of the Courts. Under such circumstances, the other Party shall not unreasonably withhold consent to remove the Claims Administrator, but this event shall occur only after Counsel for Toyota and CTS and Class Counsel have attempted to resolve any disputes regarding the retention or dismissal of the Claims Administrator in good faith, and, if they are unable to do so, after the matter has been referred to the Courts for resolution.

- 10.15. The Claims Administrator shall be subject to removal by the Nova Scotia, Ontario, Saskatchewan and Québec Courts for cause, on a motion by a Party on reasonable notice to the other Parties and the Claims Administrator.
- 10.16. In the event that the Claims Administrator is unable to continue to act for any reason, the Parties may propose a substitute Claims Administrator, subject to the approval of the Nova Scotia, Ontario, Saskatchewan and Québec Courts.
- 10.17. All reasonable costs associated with the administration of this Settlement Agreement shall be paid in accordance with the payment mechanism described in Section 12, as they come due and are payable following the submission of quarterly invoices for services rendered.
- 10.18. If a Party disputes the nature or amount of any such fees or disbursements charged by the Administrator, a motion can be made to the Nova Scotia, Ontario, Saskatchewan or Québec Court on notice to Class Counsel and to the Claims Administrator. In the event of a challenge to the fees and expenses of the Claims Administrator, the Court shall fix the amounts properly due and payable to the Claims Administrator.
- 10.19. The Claims Administrator shall communicate regularly with Counsel for the Parties and hold regular administrative conference calls to advise of the progress of the administration of the Settlement and shall circulate to Counsel for the Parties in advance of such conference calls a report and an agenda. In addition, when deemed necessary by the Claims Administrator or Counsel for the Parties, special meetings may be called, on reasonable notice to all Parties.

## **11. RELEASE AND WAIVER**

11.1. The Parties agree to the following release and waiver which shall be included in the Authorization/Certification and Settlement Agreement Approval Orders, which shall take effect upon court approval of the Authorization/Certification and Settlement Agreement Approval Orders:

11.1.1. In consideration for the covenants, agreements and releases set forth herein and in consideration for the Settlement, Class Representatives, Petitioner, Plaintiffs and each Class Member, including their heirs, successors and assigns, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, agree to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, and damages of any kind and/or type regarding the subject matter of the Actions, including, but not limited to, compensatory, exemplary, punitive, expert and/or legal fees or by multipliers, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or un-asserted, whether based on federal, provincial or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim of any kind related arising from, related to, connected with, and/or in any way



involving the Actions, the Subject Vehicles, any and all claims involving the ETCS, any and all claims of unintended acceleration in any manner that are, or could have been, defined, alleged or described in the Actions or any amendments of the Actions, including, but not limited to the design, manufacturing, distribution, advertising, testing, marketing, functionality, servicing, sale, lease or resale of the Subject Vehicles.

11.1.2. Notwithstanding the foregoing, Class Representatives, Petitioner, Plaintiffs and Class Members are not releasing claims for personal injury, wrongful death or actual physical property damage arising from an accident involving a Subject Vehicle.

11.1.3. Class Representatives, Petitioner, Plaintiffs and Class Members expressly agree that this Release, the Authorization/Certification and Settlement Agreement Approval Orders are, will be, and may be raised as a complete defense to, and will preclude any action or proceeding encompassed by, this Release.

11.1.4. Class Representatives, Petitioner, Plaintiffs and Class Members shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action, and/or proceeding, against the Released Parties, either directly or indirectly, on their own behalf, on behalf of a class or on behalf of any other person or entity with

respect to the claims, causes of action and/or any other matters released through this Settlement.

11.2. In connection with this Agreement, Class Representatives, Petitioner, Plaintiffs and Class Members acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Actions and/or the Release herein. Nevertheless, it is the intention of Class Counsel, Class Representatives, Petitioner, Plaintiffs and Class Members in executing this Agreement fully, finally and forever to settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the subject matter of the Actions and Other Actions, except as otherwise stated in this Agreement.

11.3. Class Representatives, Petitioner, Plaintiffs and Class Members represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under this Agreement. Class Representatives, Petitioner, Plaintiffs and Class Members further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Actions, including without limitation, any claim for benefits, proceeds or value under the Actions, and that Class Representatives, Petitioner, Plaintiffs and Class Members are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Actions or in any benefits,

proceeds or values under the Actions. Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Actions, including without limitation, any claim for benefits, proceeds or value under the Actions, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Actions or in any benefits, proceeds or values under the Actions.

11.4. Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release covers by example and without limitation, any and all claims for legal fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by any legal counsel, Class Counsel, Other Plaintiffs' Counsel, Class Representatives, Petitioner, Plaintiffs or Class Members who claim to have assisted in conferring the benefits under this Settlement upon the Class.

11.5. Class Representatives, Petitioner, Class Counsel, Other Plaintiffs' Counsel and any other legal counsel who receive legal fees and disbursements from this Settlement acknowledge that they have conducted sufficient independent investigation to enter into this Settlement Agreement and, by executing this Settlement Agreement, state that they have not relied upon any statements or representations made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement.

11.6. Nothing in this Release shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed herein.

11.7. Class Representatives, Petitioner and Class Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Authorization/Certification and Settlement Approval Orders entered by the Court.

**12. COSTS OF NOTICE, SETTLEMENT ADMINISTRATION, COUNSEL FEES AND EXPENSES AND CLASS REPRESENTATIVE AWARDS**

12.1. After agreeing to the principal terms set forth in this Settlement Agreement, Class Counsel and Counsel for Toyota and CTS negotiated the amount to be paid for the costs to implement the Notice Plan, the Claims Administration Procedures, and all other settlement administration, the honouraria payments to be made to individual Plaintiffs and Class Representatives, Counsel

Fees and disbursements and all applicable taxes that, following application to the Courts and subject to the Courts' approval, would be paid by Toyota.

12.2. As a result of negotiations, Class Counsel agree to make, and Toyota and CTS agree not to oppose, an application for a fixed, all inclusive, amount representing all expenses, fees and taxes payable with respect to the categories enumerated in enumerated in s.12.1 above, up to a maximum of eleven million, nine hundred thousand dollars CAD (\$11,900,000.00). The amount awarded by the Courts (up to the eleven million, nine hundred thousand dollars CAD (\$11,900,000.00) all inclusive cap) shall be the limit of liability of Toyota and CTS for payment of the costs, expenses, fees and taxes enumerated in s.12.1 and represent the sole amounts paid by Released Parties to Class Counsel and Other Plaintiffs' Counsel in the Actions and Other Actions and/or for work incurred that inured to the benefit of the Classes.

12.3. Subject to s. 12.4 Toyota shall pay to Class Counsel the amount awarded by the Courts in relation to the costs, expenses, fees and taxes enumerated in s.12.1 not later than 30 days after the later of the Effective Date or the expiration of any appeal period or the resolution of any and all appeals relating to the Counsel Fees and disbursements award.

12.4. To the extent that any of the third party costs to implement the Notice Plan, the Claims Administration Procedures, and all other settlement administration are incurred prior to the date for payment of the section 12.1 costs, expenses, fees and taxes as determined in section 12.3, Toyota agrees to pay those third party costs as they are incurred and become payable. Any such amounts

paid by Toyota shall be deducted from the amount approved by the Court pursuant to section 12.2, and paid pursuant to section 12.3.

- 12.5. The Counsel Fees and disbursements paid by Toyota as provided for in this Agreement shall be allocated by Class Counsel among themselves and Other Plaintiffs' Counsel in a manner that Class Counsel in good faith believes reflects the contributions of Class Counsel and Other Plaintiffs' Counsel to the prosecution and settlement of the claims against Toyota and CTS in the Actions. The Release herein shall not be in any way affected by, nor shall any of the Released Parties have any liability for, any dispute that exists or later arises with respect to the distribution or allocation of the amount awarded in Section 12.2.
- 12.6. The proceedings for the Court to determine and award the amount of Counsel Fees and disbursements are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. The Counsel Fees and disbursements awarded shall be set forth in a fee and disbursement award separate from the Authorization/Certification and Settlement Approval Orders so that any appeal of one shall not constitute an appeal of the other. Any order or proceedings relating to the Counsel Fees and disbursements application, or any appeal from any order related thereto, or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the Effective Date.
- 12.7. Class Counsel may ask the Courts for an honorarium payment of \$2,000.00 per Class Representative for their time in connection with the Actions. The purpose of such awards shall be to compensate the Class Representatives for

efforts undertaken by them on behalf of the Class. Any honorarium payment awards made by the Courts shall be paid by Toyota, as directed by the Courts, within 30 days of the later of the Effective Date or the expiration of any appeal period or the resolution of any and all appeals relating to the Counsel Fees and disbursements awards.

12.8. Released Parties shall not be liable for, or obligated to pay, any fees, expenses, costs, or disbursements to any person or entity, either directly or indirectly, in connection with the Actions or the Agreement, other than as set forth in this Settlement Agreement.

**13. GENERAL MATTERS AND RESERVATIONS**

13.1. Toyota and CTS have denied and continue to deny each and all of the claims and contentions alleged in the Actions, and have denied and continue to deny that they have committed any violation of law or engaged in any wrongful act that was alleged, or that could have been alleged, in the Actions. Toyota and CTS believe that they have valid and complete defenses to the claims asserted against them in the Actions and deny that they committed any violations of law, engaged in any unlawful act or conduct, or that there is any basis for liability for any of the claims that have been, are, or might have been alleged in, or related to the subject matter of, the Actions/Other Actions. Without in any way limiting the scope of this denial, Toyota and CTS deny that there is any defect in the ETCS employed in Toyota and Lexus vehicles. Nonetheless, Toyota and CTS have concluded that it is desirable that the Actions be fully and finally settled in the matter and upon the terms and conditions set forth in this Agreement.

- 13.2. Although the Parties to this Settlement Agreement have not yet conducted oral or documentary discovery, Class Counsel has conducted significant documentary review and consultation with experts in order to undertake a meaningful analysis of the issues relating to the terms of the Settlement Agreement with respect to an analysis of both liability issues and appropriate damage assessments.
- 13.3. Class Counsel will continue to conduct further Due Diligence by way of document review to confirm that the factual representations made during settlement negotiations are accurate and are sufficient to justify the benefits proposed by the Settlement Agreement and to support any compromise of the legal rights of Class Members that may be reflected in the Settlement Agreement. Toyota will co-operate with and facilitate this continuing due diligence.
- 13.4. The obligation of the Parties to conclude the proposed Settlement is and shall be contingent upon each of the following:
- 13.4.1. Entry by the Court of the Authorization/Certification and Settlement Approval Orders, from which the time to appeal has expired or which have remained unmodified after any appeal(s); and
- 13.4.2. Any other conditions stated in this Agreement.
- 13.5. The Parties and their counsel agree to keep the existence and contents of this Agreement confidential until the date on which this Settlement Agreement is approved by the Board of Directors of Toyota Motor Corporation; provided, however, that this Section shall not prevent Toyota and CTS from disclosing such information, prior to the dates on which motions seeking



Authorization/Certification and Settlement Agreement Approval Orders are filed, to federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers or counsel, nor shall it prevent Toyota and CTS from disclosing such information based on the substance of this Agreement. Nor shall it prevent the Parties and their counsel from disclosing such information to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Agreement.

13.6. Class Representatives, Petitioner and Class Counsel agree that the confidential information made available to them solely through the settlement process was made available, as agreed to, on the condition that neither Class Representatives, Petitioner, nor Class Counsel may disclose it to third parties (other than experts or consultants retained by Class Representatives and/or Petitioner in connection with the Actions or this Settlement Agreement); that it not be the subject of public comment; that it not be used by Class Representatives, Petitioner or Class Counsel in any way in this litigation or otherwise should the Settlement not be achieved, and that it is to be returned if a Settlement is not concluded; provided, however, that nothing contained herein shall prohibit Class Representatives and Petitioner from seeking such information to which they might be entitled through formal discovery.

13.7. Within 90 days after the Effective Date (unless the time is extended by agreement of the Parties), Class Counsel, and any expert or other consultant employed by them in such capacity or any other individual with access to

documents provided by Toyota and CTS, to Class Counsel shall either: (i) return to Toyota's and CTS' Counsel, all such documents and materials (and all copies of such documents in whatever form made or maintained) produced during the settlement process by Toyota and CTS and any and all handwritten notes summarizing, describing or referring to such documents; or (ii) certify to Toyota's and CTS' Counsel that all such documents and materials (and all copies of such documents in whatever form made or maintained) produced by Toyota and CTS and any and all notes summarizing, describing or referring to such documents have been destroyed, provided, however, that this Section shall not apply to any documents made part of the record in connection with a Claim, nor to any documents made part of a Court filing, nor to Class Counsel's work product. Six months after the distribution of the settlement funds to Class Members who submitted valid Claim Forms, the Claims Administrator shall return or destroy all documents and materials to Toyota's and CTS' Counsel and/or Class Counsel that produced the documents and materials, except that it shall not destroy any and all Claim Forms, including any and all information and/or documentation submitted by Class Members. Nothing in this Agreement shall affect any confidentiality agreement, confidentiality order or protective order in the Actions.

- 13.8. Toyota's and CTS' execution of this Agreement shall not be construed to release – and Toyota and CTS expressly do not intend to release – any claim Toyota and/or CTS may have or make against any insurer for any cost or expense incurred in connection with this Settlement, including, without limitation, for legal fees and expenses.

- 13.9. Class Counsel represent that: (1) they are authorized by the Class Representatives, Petitioner and Other Plaintiffs' Counsel to enter into this Agreement with respect to the claims in these Actions; and (2) they are seeking to protect the interests of the Class.
- 13.10. Class Counsel further represent that the Class Representatives and Petitioner: (1) have agreed to serve as representatives of the Class proposed to be certified herein; (2) are willing, able, and ready to perform all of the duties and obligations of representatives of the Class, including, but not limited to, being involved in discovery and fact finding; (3) have read the pleadings in the Actions or have had the contents of such pleadings described to them; (4) are familiar with the results of the fact-finding undertaken by Class Counsel; (5) have been kept apprised of settlement negotiations among the Parties, and have either read this Agreement, including the exhibits annexed hereto, or have received a detailed description of it from Class Counsel and they have agreed to its terms; (6) have consulted with Class Counsel about the Actions and this Agreement and the obligations imposed on representatives of the Class; (7) have authorized Class Counsel to execute this Agreement on their behalf; and (8) shall remain and serve as representatives of the Class until the terms of this Agreement are effectuated, this Agreement is terminated in accordance with its terms, or the Court at any time determines that said Class Representatives and Petitioner cannot represent the Class.
- 13.11. The Parties acknowledge and agree that no opinion concerning the tax consequences of the proposed Settlement to Class Members is given or will be

- given by the Parties, nor are any representations or warranties in this regard made by virtue of this Agreement. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.
- 13.12. Toyota and CTS each represent and warrant that the individual(s) executing this Agreement is authorized to enter into this Agreement on behalf of Toyota and CTS.
- 13.13. This Agreement, complete with its exhibits, sets forth the sole and entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument executed by Class Counsel and Toyota's and CTS' Counsel. The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Agreement exist among or between them, and that in deciding to enter into this Agreement, they rely solely upon their judgment and knowledge. This Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Agreement.
- 13.14. This Agreement and any amendments thereto shall be governed by and interpreted according to the law of the Province of Ontario notwithstanding its conflict of laws provisions.
- 13.15. Whenever this Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or

next-day (excluding Saturdays, Sundays and Statutory Holidays) express delivery service as follows:

**If to Class Counsel:**

ROCHON GENOVA LLP  
Barristers – Avocats  
Suite 900  
121 Richmond Street West  
Toronto, Ontario M5H 2K1  
Attention: Joel Rochon

- and -

KIM ORR Barristers PC  
19 Mercer Street  
4th Floor  
Toronto, Ontario, M5V 1H2  
Attention: Won Kim

-and-

MERCHANT LAW GROUP  
Suite 100  
2401 Saskatchewan Drive  
Regina, Saskatchewan S4P 4H8  
Attention: E.F. Anthony Merchant, Q.C.

- and –

CONSUMER LAW GROUP INC.  
4150 Saint-Catherine St. West, Suite 330  
Montréal, Québec H3Z 2Y5  
Attention: Me. Jeff Orenstein

**If to Toyota/CTS' Counsel:**

LAVERY, DE BILLY LLP  
Lawyers  
Suite 4000, 1 Place Ville Marie  
Montréal, Québec H3B 4M4  
Attention: Me. Guy Lemay/ Me. Jean Saint-Onge

- and -

CASSELS BROCK & BLACKWELL LLP  
Lawyers  
Suite 2100  
40 King Street East  
Toronto, Ontario M5H 3C2  
Attention: Glenn M. Zakaib/ Timothy Pinos

- 13.16. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Statutory Holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Section "Statutory Holiday" includes New Year's Day, Canada Day, Family Day, Victoria Day, Labour Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the Provinces of Nova Scotia, Ontario, Saskatchewan and Québec.
- 13.17. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

- 13.18. The Class, Representative Plaintiffs, Class Counsel, Toyota's and/or CTS' Counsel shall not be deemed to be the drafter of this Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree that this Agreement was drafted by counsel for the Parties during extensive arm's length negotiations. No parole or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.
- 13.19. The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise. In no event shall this Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Actions, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce this Agreement or the rights of the Parties or their counsel. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, Plaintiffs, or the Class or as a waiver by the Released Parties, Plaintiffs or the Class of any applicable privileges, claims or defenses.

- 13.20. Representative Plaintiffs and Petitioner expressly affirm that the allegations contained in the Actions and Other Actions were made in good faith, but consider it desirable for the Actions to be settled and dismissed because of the substantial benefits that the proposed settlement will provide to Class Members.
- 13.21. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Agreement.
- 13.22. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Agreement.
- 13.23. If one Party to this Agreement considers another Party to be in breach of its obligations under this Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Agreement.
- 13.24. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Agreement and to use their best efforts to effect the prompt consummation of this Agreement and the proposed Settlement.
- 13.25. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any



other provision if Toyota and CTS, on behalf of Defendants, and Class Counsel, on behalf of Class Representatives, Petitioner and Class Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

13.26. Amendments to the Settlement Agreement

- (a) Where Class Counsel and Counsel for Toyota and CTS have reason to believe that an amendment is necessary to the Settlement Agreement a motion may be brought on consent to the Nova Scotia and/or the Ontario and/or the Saskatchewan and/or the Québec Courts for the purpose of approving said amendment to the terms of this Settlement Agreement.
- (b) In the event that either or both of the Nova Scotia, Ontario, Saskatchewan or Québec Courts authorize/certify a Class different than contemplated by this Settlement Agreement, the Parties reserve for themselves the right to modify this Settlement Agreement accordingly to reflect such authorization/certification.

13.27. Construction of Agreement

- (a) This Settlement Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

- (b) The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.
- (c) Class Representatives, Petitioner, Plaintiffs, Class Members and Class Counsel and Toyota and CTS and Counsel for Toyota and CTS agree that the intent of this Settlement Agreement is to maximize the breadth of the definition of, and the protection and benefit to, the Released Parties, and that the Settlement Agreement should be interpreted with the policy of finality of settlements and ending any and all litigation, past, present and future, arising out of or in any way relating to the Released Claims.

13.28. Ongoing Authority

- (a) The Nova Scotia, Ontario, Saskatchewan and Québec Courts will retain exclusive jurisdiction over the respective Nova Scotia, Ontario, Saskatchewan and Québec Actions, and over all Parties named or described herein, as well as all Class Members.
- (b) The Nova Scotia, Ontario, Saskatchewan and Québec Courts will also retain exclusive jurisdiction over this Settlement Agreement to ensure that all payments and disbursements are properly made, and to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

13.29. Communications with Class Members

- (a) All communications from the Claims Administrator to Class Members shall be made by regular mail to such Class Member's last mailing address provided by the Class Member to the Claims Administrator. Class Members shall keep the Claims Administrator apprised of their current mailing address.

13.30. Confidentiality of and Access to Class Member Information

- (a) Any information provided by or regarding a Class Member or otherwise obtained pursuant to this Settlement Agreement shall be kept strictly confidential and shall not be disclosed, except to appropriate persons to the extent necessary to process claims, and/or to provide benefits under this Settlement Agreement, or as otherwise expressly provided in this Settlement Agreement. All Class Members shall be deemed to have consented to the disclosure of all this information for these purposes.
- (b) Class Counsel shall have access to all information maintained by the Claims Administrator regarding Class Members, and the processing and payment of claims.

13.31. French Translation

- (a) A French translation of this Settlement Agreement and all attached Exhibits shall be prepared by Toyota and CTS, and both versions shall be official and shall have equal weight.

13.32. Canadian Dollars

- (a) All dollar amounts set forth in this Settlement Agreement are expressed in Canadian dollars.


13.33. Execution and Processing of Settlement Agreement

- (a) The Parties and their respective counsel shall expeditiously do all things as may be reasonably required to give effect to this Settlement Agreement.
- (b) The Parties agree that this Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original for all purposes and executed counterparts taken together shall constitute the complete Settlement Agreement.

13.34. Publicity

- (a) The Parties agree that when commenting publicly on the cases settled pursuant to this Settlement Agreement, they shall, among other things:
  - (i) State that the cases settled pursuant to this Settlement Agreement have been settled to the satisfaction of all parties;
  - (ii) State that the settlement of the cases subject to this Settlement Agreement is fair, reasonable and in the best interests of the Class; and

- (iii) Decline to comment in a manner that casts the conduct of any Party in a negative light or reveals anything said during the settlement negotiations.

Date: 6 August 2013 ROCHON GENOVA LLP  
per:   
Ontario National Class Counsel

Date: Kim Orr Barristers PC  
per: \_\_\_\_\_  
Ontario National Class Counsel

Date: MERCHANT LAW GROUP  
per: \_\_\_\_\_  
Nova Scotia/Ontario/Saskatchewan National Class Counsel

Date : Consumer Law Group Inc.  
per: \_\_\_\_\_  
Québec Class Counsel

Date: LAVERY, DE BILLY LLP  
per: \_\_\_\_\_  
Toyota/CTS' Counsel

Date: CASSELS BROCK & BLACKWELL LLP  
per: \_\_\_\_\_  
Toyota/CTS' Counsel

- (iii) Decline to comment in a manner that casts the conduct of any Party in a negative light or reveals anything said during the settlement negotiations.

Date: ROCHON GENOVA LLP  
per: \_\_\_\_\_  
Ontario National Class Counsel

Date: Aug 6/13 Kim Orr Barristers PC  
per: \_\_\_\_\_  
Ontario National Class Counsel

Date: \_\_\_\_\_  
MERCHANT LAW GROUP  
per: \_\_\_\_\_  
Nova Scotia/Ontario/Saskatchewan National Class Counsel

Date : Consumer Law Group Inc.  
per: \_\_\_\_\_  
Québec Class Counsel


Date: LAVERY, DE BILLY LLP  
per: \_\_\_\_\_  
Toyota/CTS' Counsel

Date: CASSELS BROCK & BLACKWELL LLP  
per: \_\_\_\_\_  
Toyota/CTS' Counsel

- (iii) Decline to comment in a manner that casts the conduct of any Party in a negative light or reveals anything said during the settlement negotiations.

Date: ROCHON GENOVA LLP  
per: \_\_\_\_\_  
Ontario National Class Counsel

Date: Kim Orr Barristers PC  
per: \_\_\_\_\_  
Ontario National Class Counsel

Date: *August 6, 2013* MERCHANT LAW GROUP LLP  
per:  \_\_\_\_\_  
Nova Scotia/Ontario/Saskatchewan National Class Counsel

Date : Consumer Law Group Inc.  
per: \_\_\_\_\_  
Québec Class Counsel

Date: LAVERY, DE BILLY LLP  
per: \_\_\_\_\_  
Toyota/CTS' Counsel

Date: CASSELS BROCK & BLACKWELL LLP  
per: \_\_\_\_\_  
Toyota/CTS' Counsel

- (iii) Decline to comment in a manner that casts the conduct of any Party in a negative light or reveals anything said during the settlement negotiations.

Date: ROCHON GENOVA LLP

per: \_\_\_\_\_  
Ontario National Class Counsel

Date: Kim Orr Barristers PC

per: \_\_\_\_\_  
Ontario National Class Counsel

Date: MERCHANT LAW GROUP

per: \_\_\_\_\_  
Nova Scotia/Ontario/Saskatchewan National Class Counsel

Date : Consumer Law Group Inc.

per:  \_\_\_\_\_  
Québec Class Counsel

Date: LAVERY, DE BILLY LLP

per: \_\_\_\_\_  
Toyota/CTS' Counsel

Date: CASSELS BROCK & BLACKWELL LLP

per: \_\_\_\_\_  
Toyota/CTS' Counsel



- (iii) Decline to comment in a manner that casts the conduct of any Party in a negative light or reveals anything said during the settlement negotiations.

Date: ROCHON GENOVA LLP

per: \_\_\_\_\_  
Ontario National Class Counsel

Date: Kim Orr Barristers PC

per: \_\_\_\_\_  
Ontario National Class Counsel

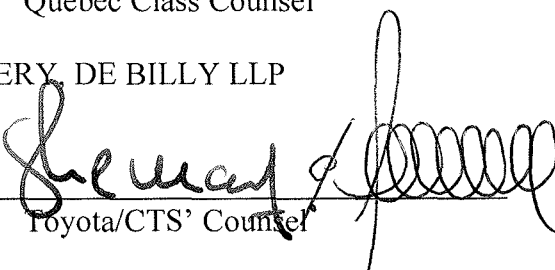
Date: MERCHANT LAW GROUP

per: \_\_\_\_\_  
Nova Scotia/Ontario/Saskatchewan National Class Counsel

Date : Consumer Law Group Inc.

per: \_\_\_\_\_  
Québec Class Counsel

Date: LAVERY DE BILLY LLP

per:  \_\_\_\_\_  
Toyota/CTS' Counsel

Date: CASSELS BROCK & BLACKWELL LLP

per: \_\_\_\_\_  
Toyota/CTS' Counsel

- (iii) Decline to comment in a manner that casts the conduct of any Party in a negative light or reveals anything said during the settlement negotiations.

Date: ROCHON GENOVA LLP

per: \_\_\_\_\_  
Ontario National Class Counsel

Date: Kim Orr Barristers PC

per: \_\_\_\_\_  
Ontario National Class Counsel

Date: MERCHANT LAW GROUP

per: \_\_\_\_\_  
Nova Scotia/Ontario/Saskatchewan National Class Counsel

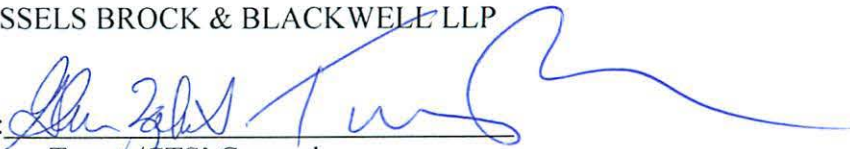
Date : Consumer Law Group Inc.

per: \_\_\_\_\_  
Québec Class Counsel

Date: LAVERY, DE BILLY LLP

per: \_\_\_\_\_  
Toyota/CTS' Counsel

Date: CASSELS BROCK & BLACKWELL LLP

per:  \_\_\_\_\_  
Toyota/CTS' Counsel