

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

NO: 500-06-000720-140

4037308 CANADA INC.

Plaintiff

v.

NAVISTAR CANADA INC.
and
NAVISTAR, INC.
and
**NAVISTAR INTERNATIONAL
CORPORATION**

Defendants

SETTLEMENT AGREEMENT, TRANSACTION, AND RELEASE
Dated May 6, 2021
Art. 590 of the *Code of Civil Procedure* and Art. 2631 of the *Civil Code of Quebec*

PREAMBLE

- A. WHEREAS**, on November 28, 2014, 4037308 Canada Inc. (the “**Plaintiff**”) filed a Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative in the Superior Court of Quebec;
- B. WHEREAS**, this Proceeding involves allegations that certain Navistar Advanced Exhaust Gas Recirculation MaxxForce truck engines are defective, allegedly resulting in repeated engine failures and frequent repairs;
- C. WHEREAS**, this Proceeding has not been authorized to proceed as a class action;
- D. WHEREAS**, Navistar Canada ULC (formerly Navistar Canada Inc.), Navistar, Inc., and Navistar International Corporation (collectively, the “**Defendants**”) deny the claims in

this Proceeding, deny all allegations of wrongdoing, fault, liability, or damage of any kind to the Plaintiff or the Class, deny that they acted improperly, or wrongfully in any way, and believe that the proceeding is without merit;

- E. **WHEREAS**, the settlement set forth in this Settlement Agreement is a product of sustained arm's-length negotiations between the Plaintiff and the Defendants (the "**Settling Parties**");

NOW, THEREFORE, THE SETTLING PARTIES AGREE TO THE FOLLOWING:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.01 Preamble and Exhibits

(1) The preamble and attached exhibits form part of this Settlement Agreement, as though recited at length.

1.02 Definitions

(1) As used in this Settlement Agreement, the terms set forth in this section in boldface type will have the following meanings:

- (a) "**Approval Order and Judgment**" means a final order entered by the Court, granting approval of the Settlement and approving the form, content, and manner of delivery of the Second Class Notice. The Approval Order and Judgment shall be substantially in the same form as 0 to this Settlement Agreement, subject to Court approval.
- (b) "**Authorization and Notice Approval Motion**" means the motion for orders of the Court (1) granting leave to amend the Proceeding to reflect the definition of the Class, (2) authorizing the Proceeding for purposes of the Settlement, (3) approving the form, content, and manner of distribution of the First Class Notice, (4) setting the Opt-Out procedure, (5) fixing the Opt-Out deadline, (6) setting the procedure for any member of the Settlement Class to object to the Settlement, (7) fixing the objection deadline, (8) scheduling the Approval Hearing, (9) provisionally appointing the Settlement Administrator, and (10) granting such other relief as the Settling Parties may request.

- (c) **“Authorization and Notice Approval Order”** means the order the Settling Parties will request to be entered by the Court on the Authorization and Notice Approval Motion. The Authorization and Notice Approval Order shall be substantially in the same form as 0 to this Settlement Agreement.
- (d) **“Authorized Field Change”** means updates and changes that Navistar, Inc. has released for Class Trucks (including but not limited to Misbuild Investigation Notices).
- (e) **“Authorized Navistar Dealer”** means a dealer within Navistar, Inc.’s independent dealer network authorized by Navistar, Inc. to sell, lease, and service Navistar vehicles and MaxxForce brand diesel engines.
- (f) **“Cash Fund”** means the \$2,614,486 cash fund described in Section 4.01 that will be used to pay Settlement Fees and Expenses, any Plaintiff Indemnity, any Class Counsel’s Fees and Costs as approved by the Court, and all cash payments to be paid to members of the Settlement Class under this Settlement Agreement.
- (g) **“Class”** means, for the purposes of settlement only, all persons, entities, or organizations resident in Quebec who, on or before April 30, 2021, purchased, other than for resale, or leased for more than 30 days, Class Vehicle(s).

Excluded from the Class are: (1) all entities and natural persons that have litigated claims involving Class Vehicles’ allegedly defective EGR emissions system against the Defendants to final, nonappealable judgment (with respect to those vehicles only); (2) all entities and natural persons who, via a settlement or otherwise, delivered to Navistar releases of their claims involving Class Vehicles’ allegedly defective EGR emissions system (with respect to those vehicles only); (3) the Defendants’ employees, officers, directors, agents, and representatives, and their family members; (4) any Authorized Navistar Dealer of new or used vehicles; (5) any person or entity that purchased a Class Vehicle solely for the purposes of resale (with respect to those vehicles only); (6) any person or entity that was a lessee of a Class Vehicle for fewer than 30 days (with respect to those vehicles only); and (7) Idealease and Navistar Leasing Co. (lessees of Class Vehicles from these entities are part of the Class).

- (h) **“Class Counsel”** means Consumer Law Group Inc.
- (i) **“Class Counsel Fees and Costs”** means such funds as may be awarded by the Court to compensate Class Counsel who has assisted in conferring benefits upon the Class under this Settlement Agreement, as described in Section 9.01.
- (j) **“Class Member”** means a member of the Class.
- (k) **“Class Vehicle(s)”** means all Navistar vehicles equipped with MaxxForce 11-, 13-, or 15-litre engines certified to comply with the 2010 EPA standards, without the use of selective catalytic reduction technology. The Class Vehicles are 2011-2014 model year vehicles.
- (l) **“Court”** means the Superior Court of Quebec.
- (m) **“Covered Event”** means (1) a service event for repair or replacement of a Primary Component or (2) a service event for repair or replacement of a Secondary Component that occurs within 30 days of a service event for repair or replacement of a Primary Component. Covered Events do not include service events where the repair or replacement of a Primary Component was provided for by an Authorized Field Change or Misbuild Investigation Notice.

1. **“Primary Components”** are:

- EGR Cooler
- EGR Valve

2. **“Secondary Components”** are:

- Lambda Sensor
- Oxygen Sensor
- Oil Centrifuge
- Valve/Seat (Intake) and Valve/Seat (Exhaust)
- Valve Bridge

- Cylinder Head (when accompanied by a Valve/Seat (Intake) and Valve Bridge repair)
- Turbochargers
- Total Engine Replacement or Rebuild (must show a Turbochargers failure)
- Diesel Particulate Filter
- DOC/Pre-DOC

(n) “**Covered Costs**” means the following costs that were actually incurred as a result of a Covered Event, are established by reasonable contemporaneous or third-party documentation sufficient to establish the Covered Event and the Covered Cost, and for which the Class Member has not already been compensated:

1. Actual repair costs:
 - Parts and labor
 - Towing
2. Rental trucks
3. Lost revenue (from a particular load that the Class Vehicle was transporting at the time of a Covered Event)
4. Travel costs (hotel, airfare, meals, etc.)
5. Employee wages (limited to five days)
6. Permits
7. Loading/unloading

All costs not expressly listed above are excluded, including opportunity costs (e.g., lost opportunity due to allegedly unreliable Class Vehicles) and the cost of replacing employees.

- (o) **“Defendants’ Counsel”** means McCarthy Tétrault LLP.
- (p) **“Effective Date”** means the date at which the Approval Order and Judgment become final.
- (q) **“EGR”** means exhaust gas recirculation emissions technologies used by Navistar in connection with a MaxxForce 11-, 13-, or 15-litre diesel engine that did not also include selective catalytic reduction technology.
- (r) **“Escrow Account”** means the bank account established to hold the Cash Fund as described in Section 8.01(2).
- (s) **“First Class Notice”** means the notice of authorization and settlement approval hearing that will be provided to the Class, as set forth in Section Article 3 below, subject to Court approval.
- (t) **“First Long Form Notice”** means the notice that will be posted to the Settlement Website as described in Section 3.04(1) and in substantially the same form as 0 to this Settlement Agreement.
- (u) **“First Short Form Notice”** means the notice to be mailed and emailed to the Class as described in Sections 3.03(1) and 3.03(2) and in substantially the same form as 0 to this Settlement Agreement.
- (v) **“Fonds d’aide”** means the *Fonds d’aide aux actions collective* created pursuant to the Act respecting the Fonds d’aide aux actions collectives (CQLR c F-3.2.0.1.1).
- (w) **“Future Authorized Field Change”** means a modification to or new Primary Components or Secondary Components (or updated software related to same) released for proactive installation in Class Vehicles after the Effective Date.
- (x) **“Opt Out”** means a member of the Class who properly and timely submits a request for exclusion from the Settlement Class as set forth in Section 6.01.

- (y) **“Opt Out List”** means the list compiled by the Settlement Administrator pursuant to Section 6.01(4), identifying those members of the Class who properly and timely submit a request for exclusion from the Settlement Class.
- (z) **“Original Owner or Lessee”** means those persons or entities who either (1) purchased a Class Vehicle new from Navistar directly or from an Authorized Navistar Dealer or (2) leased a new Class Vehicle from Navistar Leasing Co. directly.
- (aa) **“Plaintiff Indemnity”** means such funds as may be awarded by the Court to the Plaintiff to indemnify it for the disbursements incurred as a result of its participation in the Proceeding, as described in Section **Erreur ! Source du renvoi introuvable.**
- (bb) **“Proceeding”** means *4037308 Canada Inc. v. Navistar Canada Inc. et al.*, commenced in Superior Court of Quebec and bearing Court File No. 500-06-000720-140.
- (cc) **“Proof of Membership in the Class”** means information sufficient to establish that the claimant is a Class Member, including
1. the VIN of the Class Vehicle for which a claim is being made;
 2. that the claimant purchased or leased the Class Vehicle;
 3. that the claimant resides in Quebec.

To simplify the ability of persons known to the Defendants to be Original Owners or Lessees to confirm their status as members of the Class, the Defendants will, to the extent reasonably possible, provide to the Settlement Administrator the records in its possession, custody, and control identifying this information for Original Owners or Lessees.

- (dd) **“Proof of Ownership or Lease”** means documentation establishing the time period during which a Class Member (as demonstrated in the manner described in Section 1.02(1)(cc)) owned or leased a Class Vehicle. Proof of Ownership or Lease shall be established through the submission of vehicle title, vehicle

purchase agreement, vehicle lease agreement, dealer invoice, insurance documentation, financing documentation, or vehicle registration documents sufficient to identify the time period that a member of the Settlement Class has been or was the owner or lessee of the Class Vehicle. To simplify the ability of persons known to the Defendants to be Original Owners or Lessees to establish Proof of Ownership or Lease, the Defendants will, to the extent reasonably possible, provide to the Settlement Administrator the records in its possession, custody, or control identifying this information for Original Owners or Lessees.

- (ee) **“Rebate Fund”** means the commitment to make available rebates with a face value in the aggregate of \$145,360 as described in Section 4.014.01(1).
- (ff) **“Released Parties”** means the Defendants 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, principals, divisions, stockholders, bondholders, shareholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, Authorized Navistar Dealers, representatives, suppliers, vendors, advertisers, service providers, distributors and sub-distributors, licensees, agents, mandataries, insurers, co-insurers, re-insurers, underwriters, attorneys, administrators, and advisors.
- (gg) **“Release”** means the release and waiver set forth in Section Article 5 of this Settlement Agreement to be incorporated in the Final Order and Final Judgment.
- (hh) **“Second Class Notice”** means the notice of the Approval Order and Judgment that will be provided to the Class, as set forth in Section 7, subject to Court approval.
- (ii) **“Second Long Form Notice”** means the notice that will be posted to the Settlement Website as described in Section 7.03(1) and in substantially the same form as 0 to this Settlement Agreement.
- (jj) **“Second Short Form Notice”** means the notice to be mailed and emailed to the Settlement Class as described in Sections 7.02(1) and 7.02(2) and in substantially the same form as 0 to this Settlement Agreement.

- (kk) **“Settlement”** means the settlement contemplated by this Settlement Agreement.
- (ll) **“Settlement Administrator”** means the firm to be selected by the Settling Parties shortly after the execution of the Settlement Agreement, which the Settling Parties will ask the Court to appoint to administer the First Class Notice and Second Class Notice, administer the Settlement in accordance with this Settlement Agreement, and engage in any other tasks directed by the Court or jointly by Class Counsel and Defendants’ Counsel.
- (mm) **“Settlement Approval Hearing”** means the final hearing, held after the Authorization and Notice Approval Order is issued, in which the Court will determine whether this Settlement Agreement should be approved and whether the proposed Approval Order and Judgment should be entered.
- (nn) **“Settlement Approval Motion”** means the motion for orders of the Court (1) granting the Approval Order and Judgment, (2) approving the form, content, and manner of distribution of the Second Class Notice, (3) approving Attorney’s Fees and Costs and (4) granting such other relief as the Settling Parties may request.
- (oo) **“Settlement Class”** means the Plaintiff and all members of the Class who are not Opt Outs.
- (pp) **“Settlement Fees and Expenses”** means the authorized costs and expenses incurred by the Settlement Administrator in providing the First Class Notice and the Second Class Notice in accordance with this Settlement Agreement and the anticipated Authorization and Notice Approval Order and all authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement Agreement, including but not limited to costs and expenses associated with assisting the Settlement Class, resolving claims made under the Individual Prove-Up Option, processing claims, escrowing funds, issuing and/or mailing awards, paying taxes and tax expenses, and other authorized fees and expenses of the Settlement Administrator.
- (qq) **“VIN”** or **“Vehicle Identification Number”** means the unique 17-character number assigned to each vehicle by Navistar. The Defendants will provide a

substantially complete list of VINs to the Settlement Administrator for all Class Vehicles.

1.03 Interpretation

(1) Other capitalized terms used in this Settlement Agreement but not defined in Section 1.02 shall have the meanings ascribed to them elsewhere in the Settlement Agreement.

(2) All terms defined in this Settlement Agreement have the definition asserted herein solely for the purposes of this Settlement Agreement.

(3) The terms “he or she” and “his or her” include “it”, “its”, “they”, “their” where applicable.

(4) The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

(5) All monetary amounts referred to in this Settlement Agreement are in Canadian Dollars.

ARTICLE 2
AUTHORIZATION AND NOTICE APPROVAL MOTION

2.01 Timing

(1) Class Counsel shall file the Authorization and Notice Approval Motion as soon as reasonably practicable after the execution of this Agreement. The Settling Parties shall seek to have the Authorization and Notice Approval Motion heard by the Court as soon as reasonably practicable and, if possible, within 21 days of the execution of this Agreement.

2.02 Class Definition, Common Issue, and Representative Status

(1) For settlement purposes only, the Settling Parties shall consent to authorization on behalf of the Class in the Authorization and Notice Approval Motion.

(2) The only common issue to be authorized in the Authorization and Notice Approval Motion shall be the following: “Did the Defendants breach their obligations to the Class?”

(3) For settlement purposes only, the Settling Parties shall consent to the appointment of (1) the Plaintiff as the representative plaintiff of the Class and (2) Class Counsel as counsel for the Class.

(4) The Defendants shall consent to the Authorization and Notice Approval Motion only for the purpose of implementing the Settlement. The Defendants' consent shall not be taken to be an admission of liability or an admission that the Proceeding is suitable for authorization.

2.03 Hearing

(1) At the Authorization and Notice Approval Hearing, the Settling Parties shall make joint representations to the Court with a view to obtaining the Authorization and Notice Approval Order.

(2) Prior to the Authorization and Notice Approval Hearing, the Fonds d'aide will be served with the Authorization and Notice Approval Motion.

2.04 Costs

(1) Each Settling Party shall bear its own costs of the Authorization and Notice Approval Motion.

2.05 Confidentiality

(1) Until the Authorization and Notice Approval Motion is filed, the Settling Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of all Settling Parties, except as required for the purposes of financial reporting, communications with insurers and auditors, and/or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms or as otherwise required by law.

ARTICLE 3 **NOTICE FOLLOWING THE AUTHORIZATION AND NOTICE APPROVAL MOTION**

3.01 Cost

(1) The cost of the First Class Notice and other Settlement Fees and Expenses, as agreed to by the Settling Parties, will be paid from the Cash Fund. Prior to the funding of the Cash Fund, the Defendants will make payments necessary to cover the costs of the First Class

Notice and other Settlement Fees and Expenses. Such pre-payments will be deducted from the amount ultimately contributed to the Cash Fund following the Effective Date.

3.02 Timing

(1) The First Class Notice will be accomplished through a combination of the First Short Form Notice, notice through the Settlement Website, and the First Long Form Notice, each of which is described below, as specified in the anticipated Authorization and Notice Approval Order and this Settlement Agreement and in order to comply with all applicable laws.

(2) As soon as practicable after the Authorization and Notice Approval Order, the Settlement Administrator will obtain the name, last known address, and email address of each potential member of the Class, to the extent such information is reasonably available in the Defendants' records and/or public records. If contact information is not available in the Defendants' records, the Settlement Administrator will seek contact and vehicle information from public records. Vehicle information includes, but is not limited to, the inferred date of purchase, lease information, new/used purchase information, and year, make, and model of the vehicle. Thereafter, the Settlement Administrator shall substantially complete initial dissemination of notice in the manner described below with the intention of substantially completing initial notice within no later than eight weeks after the entry of the Authorization and Notice Approval Order.

3.03 First Short Form Notice

(1) As soon as practicable after the Authorization and Notice Approval Order, the Settlement Administrator shall send the First Short Form Notice, by first class mail, proper postage prepaid, to members of the Class. In addition, the Settlement Administrator shall (1) re-mail any notices returned by Canada Post with a forwarding address as soon as practicable; and (2) by itself or using one or more address research firms, as soon as practicable following receipt of any returned notices that do not include a forwarding address, research such returned mail for more accurate addresses and promptly mail copies of the applicable notice to any more accurate addresses so found.

(2) As soon as practicable after the Authorization and Notice Approval Order, the Settlement Administrator shall send the First Short Form Notice by email to members of the Class for whom an email address was located.

3.04 Settlement Website and First Long Form Notice

(1) As soon as practicable after the Authorization and Notice Approval Order, the Settlement Administrator shall establish a Settlement Website that will inform members of the Class of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information. The Settlement Website shall include, in .pdf format, materials agreed upon by the Settling Parties and/or required by the Court, including the First Long Form Notice. The Settlement Website shall also allow Class Members, upon entry of their information, to receive preliminary calculations of the “up to” compensation amount they could receive under the Cash Option or the Rebate Option if the Settlement is approved and Class Members submit valid claims. Class Members would then be able to continue to submit a claim with that information online or in hard copy. The Settlement Website will “pre-populate” claims information to the extent the Settlement Administrator possesses it.

(2) The Settlement Administrator will send, via email or first-class mail, the Long Form Notice to those persons who request it.

ARTICLE 4 **SETTLEMENT CONSIDERATION AND COMPENSATION**

4.01 Consideration for Release

(1) In consideration of the Release provided for in Section Article 5 and the dismissal of the Proceeding and subject to the limits specified in this Settlement Agreement, Defendants agree to (1) make an all-inclusive common fund payment of \$2,614,486 to the Cash Fund and (2) commit to making available to the Settlement Class in the Rebate Fund rebates with a face value in the aggregate of \$145,360.

4.02 Timing of Payment to Cash Fund

(1) The Defendants shall cause \$2,614,486 (less any amounts for Settlement Fees and Expenses already paid) to be paid into the Escrow Account within 30 days of the Approval Order and Judgment.

4.03 Compensation Options

(1) Members of the Settlement Class may submit a claim for only one of the following options of compensation for each Class Vehicle that members of the Settlement Class

have owned or leased, subject to the limitations set forth in Section 4.04(2) below for Class Vehicles that one Class Member leased to another:

- (a) **Cash Option:** This option provides for a payment based on months of ownership or lease of up to \$2,500 per Class Vehicle. Each demonstrated month of ownership or lease through April 2021 is eligible (subject to the limitations set forth in Section 4.04(2)) for the following amounts:

Class Vehicle Model Year	Monetary Amount
2011	\$21.01/month
2012	\$23.36/month
2013	\$26.32/month
2014	\$30.12/month

- (b) **Rebate Option:** For each Class Vehicle owned or leased by a member of the Settlement Class, such member of the Settlement Class may select a rebate based on months of ownership or lease worth up to \$10,000 towards the purchase of a new Navistar Class 8 heavy duty truck. The rebates are deducted from the best negotiated retail purchase price (not including sales taxes or delivery fees) and in addition to any other applicable promotion, rebate, or discount then in effect at the time of purchase and for which both the purchase and the purchaser would otherwise qualify. The rebates will expire 18 months after the date that the rebate certificates are sent to the members of the Settlement Class. The rebates are not transferable and not stackable. Each member of the Settlement Class may receive up to a maximum of ten total rebates, regardless of the number of vehicles purchased or leased. Each demonstrated month of ownership/lease through April 2021 is eligible (subject to the limitations set forth in Section 4.04(2)) for the following amounts:

Class Vehicle Model Year	Monetary Amount
2011	\$84.03/month
2012	\$93.46/month
2013	\$105.26/month
2014	\$120.48/month

- (c) **Individual Prove-Up Option:** For each Class Vehicle owned or leased by a member of the Settlement Class, such member of the Settlement Class may seek to prove up to \$15,000 of Covered Costs per Class Vehicle. Whether and what amount of Covered Costs should be awarded pursuant to this provision shall be determined by the Settlement Administrator consistent with this Settlement Agreement, subject to an appeal adjudicated by the Settlement Administrator. Defendants will not be entitled to assert any legal defenses to these Covered Costs, although Defendants may demonstrate that a claimant does not meet the requirements of this Settlement Agreement. Members of the Settlement Class opting for relief under this Section may, at any time prior to a final determination of their award, opt instead to receive the payment that they would be entitled to under the Cash Option (Section 4.03(1)(a)).

Notwithstanding the definition of Covered Costs, the recoverable cost of parts and labor incurred as a result of a Covered Event that occurred when the Class Vehicle had between 800,000 kilometers and 1,600,000 kilometres are capped at \$7,500 for all Covered Events. Parts and labor incurred as a result of a Covered Event that occurred when the Class Vehicle had 1,600,001 kilometres or more are not compensated. For the avoidance of doubt, total compensation for all Covered Costs for any member of the Settlement Class for a given Class Vehicle shall not exceed \$15,000.

All costs not expressly defined above as a Covered Cost are excluded, including opportunity costs (e.g., lost opportunity due to an unreliable Class Vehicle) and the cost of replacing employees.

Members of the Settlement Class opting for relief under this Section must sign a certification stating under penalty of law: "I certify that the oil and filters were regularly changed on this vehicle within the timeframes recommended by Navistar."

4.04 Compensation in Connection with Leased Class Vehicles

- (1) Any member of the Settlement Class who leased a Class Vehicle from the Defendants, the Defendants' corporate affiliates, or an Authorized Navistar Dealer will recover on the same terms as owners of Class Vehicles.

(2) If a Class Member who owned a Class Vehicle leased that Class Vehicle for 30 days or less to another individual or entity, the owner, but not the lessee, may elect the Cash Option or the Rebate Option, or the Individual Prove-Up Option for Covered Costs paid by the owner, not the lessee, for the time period of the lease. The lessee of said lease of 30 days or less is not a Class Member. If a Class Vehicle was leased for more than 30 days, the Class Member who was the lessor and the Class Member who was the lessee of said Class Vehicle are each eligible, with sufficient Proof of Ownership or Lease, for half of the Cash Option or half the Rebate Option for the time period of the lease. Each lessor and lessee may instead independently elect the Individual Prove-Up Option. Class Counsel and Defendants' Counsel agree to work in good faith to determine appropriate cash/rebate apportionment through the claims administration process in the unlikely event that there is some lessor-lessee arrangement that is not already expressly anticipated by this Settlement Agreement.

4.05 Fonds d'aide

(1) The Settling Parties agree that the Settlement Agreement is subject to the *Act respecting the Fonds d'aide aux actions collectives*, C.Q.L.R., c. F-3.2.0.1.1, the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, C.Q.L.R., c. F-3.2.0.1.1.r.2 and the *Code of Civil Procedure*, C.Q.L.R., c. C-24.01.

4.06 Allocation of Funds in The Event of Oversubscription or Undersubscription

(1) If either the Cash Fund or the Rebate Fund is oversubscribed—i.e., more claims for that type of compensation are approved than dollars or value available in that fund—then the claims within any oversubscribed fund will be reduced *pro rata*. In the Rebate Fund, that means that each rebate will be reduced by an equal amount until the fund is no longer oversubscribed. In the Cash Fund, that means that each cash award will be reduced by an equal percentage until the fund is no longer oversubscribed.

(2) If the Cash Fund is undersubscribed, then any remaining dollars within the Cash Fund shall be allocated *pro rata* to previously-approved, valid claims within the Cash Fund.

(3) If the Rebate Fund is undersubscribed, the value of the unclaimed rebates shall revert to the Defendants.

(4) An assessment of any remainder of the Cash Fund will be determined after the expiry of at least one-hundred and eighty (180) days following payment distributions to

Settlement Class Members with approved, valid claims to capture any uncashed stale-dated cheques or payments. To the extent there is any remainder in the Cash Fund, those funds shall be first subject to the percentage payable to the Fonds d'aide under the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives* and any excess amount shall then be paid to a third-party charity to be agreed to by the Settling Parties and approved by the Court.

ARTICLE 5 **RELEASE**

5.01 Effective Date

- (1) The Release shall take effect upon the Effective Date.

5.02 Release

(1) In consideration of the Settlement, the Plaintiff and each member of the Settlement Class, 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 Proceeding, including, but not limited to, compensatory, exemplary, punitive, and expert and/or attorneys' 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 statute, regulation, code, contract, civil law, common law, or any other source, or any claim of any kind arising from, related to, connected with, and/or in any way described in the allegations of the Proceeding or involving the Class Vehicles in any manner that are defined, alleged, included, or described in the Proceeding (collectively, the "**Released Claims**").

(2) This Settlement encompasses the entire share of the Released Parties, in any solidary liability in connection with the Released Claims, which Plaintiff and every member of the Settlement Class acknowledge having received. The Plaintiff and every member of the Settlement Class consequently release the Released Parties from all solidarity pertaining to the Released Claims.

(3) In connection with this Settlement Agreement, the Plaintiff and members of the Settlement Class 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 Proceeding and/or the Release herein. Nevertheless, it is the intention of Class Counsel and the members of the Settlement Class in executing this Settlement Agreement to fully, finally, and forever settle, release, discharge, and hold harmless the Released Parties for 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 Proceeding, except as otherwise stated in the Settlement Agreement.

(4) The Defendants release the Plaintiff and Class Counsel from any potential claims, counterclaims, or other relief (including the ability to seek costs) arising from the Proceeding and that could have been asserted against the Plaintiff or Class Counsel as of the date of this Settlement Agreement.

5.03 Limitations on Release

(1) Nothing in this Agreement or Release shall be interpreted to modify or diminish the manufacturer's limited, written warranty with respect to a Class Vehicle.

(2) Nothing in this Release shall affect any lease, loan, or purchase payments due Defendants or their affiliates.

(3) Members of the Settlement Class are not releasing any entitlement to Future Authorized Field Changes.

(4) Members of the Settlement Class are not releasing any claims for personal injury or damage to property other than the Class Vehicle and Covered Costs, and such claims are not included in the Release.

5.04 Preclusion of Future Claims

(1) The Plaintiff and members of the Settlement Class expressly agree that the Approval Order and Judgment is, will be, and may be raised as a complete defense to, and will preclude any action or proceeding encompassed by this Release.

(2) The Named Plaintiffs and members of the Settlement Class 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.

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

5.05 Representations and Warranties

(1) The Plaintiff represents and warrants that it is the sole and exclusive owner of all claims that it is releasing under this Settlement Agreement. The Plaintiff further represents and warrants that it has 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 Proceeding, including without limitation, any claim for benefits, proceeds, or value under the Proceeding and that the Plaintiff is not aware of anyone other than themselves claiming any interest, in whole or in part, in the Proceeding or in any benefits, proceeds, or values under the Proceeding.

(2) Without in any way limiting its scope, and, except to the extent otherwise specified in the Settlement Agreement, this Release covers by example and without limitation, any and all claims for attorneys' fees, attorneys' liens, costs, expert fees, consultant fees, interest, litigation fees or costs, or any other fees, costs, and/or disbursements incurred by any attorneys, Class Counsel, the Plaintiff, or the Settlement Class who claim to have provided assistance or legal services to the Class or any member of the Class relating in any way to this Proceeding, the claims asserted in this Proceeding, and/or the Class Vehicles.

(3) The Plaintiff 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 Approval Order and Judgment entered by the Court.

ARTICLE 6 **SETTLEMENT APPROVAL PROCESS**

6.01 Opt Outs

(1) Any Class Member who wishes to be excluded from the Class and to become an Opt Out must submit a request for exclusion to the Settlement Administrator at the address specified in the First Class Notice by the date specified in the anticipated Authorization and

Notice Approval Order and recited in the First Class Notice. Class Members who wish to be excluded from the Settlement Class must do so with respect to all Class Vehicles they purchase(ed) or lease(d). To be effective, the request for exclusion must be sent via first class mail or email to the address specified in the First Class Notice and

- (a) include the Class Member's full name, address, and telephone number;
- (b) identify the model, model year, and VIN of the Class Member's Class Vehicle(s);
- (c) explicitly and unambiguously state his, her, their, or its desire to be excluded from the Settlement Class; and
- (d) be individually and personally signed by the Class Member. If the Class Member is an entity and not an individual, the opt out must be signed by an officer or director of the entity and include a statement that attests to that person's ability to act on behalf of that entity.

(2) Any Class Member who fails to submit a timely and complete request for exclusion sent to the proper address shall be subject to and bound by this Settlement and every order or judgment entered pursuant to this Settlement. Any purported request for exclusion or other communication sent to such address that is unclear or internally inconsistent with respect to the Class Member's desire to be excluded from the Settlement Class will be deemed invalid unless determined otherwise by the Court. Requests for exclusion can be submitted only on behalf of each Class Vehicle(s) owned or leased by a particular Class Member. For example, mass-opt outs and class requests for exclusion that are not signed by each Class Member in the manner described in Section 6.01(1) shall not be permitted. Requests for Exclusion signed only by counsel or other representative shall also not be permitted.

(3) The Settlement Administrator will receive requests for exclusion and will follow guidelines developed jointly by Class Counsel and Defendants' Counsel for determining in the first instance whether they meet the requirements for Opting Out. Any communications from Class Members (whether styled as an exclusion request, an objection, or a comment) as to which it is not readily apparent that the Class Member meant to exclude himself, herself, or itself from the Class will be evaluated jointly by Class Counsel and Defendants' Counsel, who will make a good faith evaluation, if possible, of the Class Member's intentions. Any uncertainties

about whether a Class Member is requesting exclusion from the Settlement Class will ultimately be resolved by the Court.

(4) The Settlement Administrator will maintain a list of all Opt Outs. The Settlement Administrator shall report the names and addresses of all such entities and persons requesting exclusion—the Opt Out List—to the Court, Class Counsel, and Defendants' Counsel no less than 21 days prior to the Settlement Approval Hearing.

(5) Under article 580 of the *Code of Civil Procedure of Québec*, a Class Member eligible to opt out pursuant to this section, who does not discontinue an originating application having the same subject matter as the Proceeding by the date specified in the anticipated Authorization and Notice Approval Order and recited in the First Class Notice, is deemed to have opted out.

(6) The Defendants reserve all of their legal rights and defences with respect to any Class Member who validly opts out from the Class, and no term of this Settlement Agreement shall be tendered as evidence in any subsequent litigation by any such person against the Defendants.

6.02 Objections to Settlement

(1) Any member of the Settlement Class who intends to object to this Settlement Agreement or the Settlement contained therein must, by the date specified in the anticipated Authorization and Notice Approval Order and recited in the First Class Notice, file any such objection with the Court, and provide copies of the objection to Class Counsel and Defendants' Counsel at the addresses set out in Section 10.16.

(2) Any objection to the Settlement Agreement must be individually and personally signed by the member of the Settlement Class submitting it. If the member of the Settlement Class is an entity and not an individual, the objection must be signed by an officer or director of the entity and include a statement that attests to that person's ability to act on behalf of that entity. If the member of the Settlement Class is represented by counsel, the objection must also be signed by such counsel. Any objection must include:

- (a) the objecting member of the Settlement Class' full name, address, and telephone number or email address;

- (b) the model, model year, and VIN of the objecting member of the Settlement Class' Class Vehicle(s), along with Proof of Membership in the Class;
- (c) a written statement of all grounds for the objection, accompanied by any legal support for the objection;
- (d) copies of any papers, briefs, or other documents upon which the objection is based;
- (e) the name, address, email address, and telephone number of every attorney representing or assisting the objector; and
- (f) a statement indicating whether the objector and/or his or her counsel intends to appear at the Settlement Approval Hearing and, if so, the evidence that person intends to rely on in support of the objection.

(3) Any Class Member who does not file a timely written objection to the Settlement and notice of his or her intent/non-intent to appear at the Settlement Approval Hearing, or who otherwise fails to comply with the requirements of Section 6.02(2) shall be foreclosed from seeking any adjudication or review of the Settlement by appeal or otherwise.

6.03 Settlement Approval Hearing

(1) The Settling Parties will request that the Court hold the Settlement Approval Hearing promptly after the deadline(s) for (1) Class Members to Opt Out and (2) Settlement Class Members to object.

(2) At the Settlement Approval Hearing, the Settling Parties shall make joint representations to the Court with a view to obtaining the Approval Order and Judgment.

(3) Each Settling Party shall bear its own costs of the Settlement Approval Motion.

(4) Prior to the Settlement Approval Hearing, the Fonds d'aide will be served with the Settlement Approval Motion.

6.04 Withdrawal from Settlement by Any Settling Party

(1) Any of the Settling Parties shall have the option to withdraw from this Settlement Agreement, and to render it null and void, if any of the following occurs:

- (a) Another Settling Party breaches a material term of this Agreement.
- (b) The Court, or any other court on appeal, does not authorize the Proceeding as a class action or authorizes the Proceeding with a modification that the withdrawing party deems to be material (*e.g.*, because it increases the cost of the settlement, delays approval and/or implementation of the Settlement, or deprives the withdrawing party of a benefit of the Settlement).
- (c) The Court, or any other court on appeal, does not approve the Settlement or approves the Settlement with a modification that the withdrawing party deems to be material (*e.g.*, because it increases the cost of the settlement, delays approval and/or implementation of the Settlement, or deprives the withdrawing party of a benefit of the Settlement).
- (d) Any objections to the proposed Settlement are sustained and such objection results in court-ordered changes to the Settlement Agreement that the withdrawing party deems to be material (*e.g.*, because it increases the cost of the settlement, delays approval and/or implementation of the Settlement, or deprives the withdrawing party of a benefit of the Settlement).

(2) For the purposes of this Section, any reduction in the amount of Class Counsel Fees and Costs or Plaintiff Indemnity requested shall not be deemed a material change to the Settlement Agreement.

6.05 Defendants' Withdrawal Right

(1) The Defendants shall have the option to withdraw from this Settlement Agreement and to render it null and void based on a certain number of Opt Outs. The Settling Parties have reached a separate agreement about when and how Defendants may assert such rights, which they will seek leave to file under seal.

6.06 Procedure for Withdrawal

(1) The Settling Parties must follow the following procedures in order to withdraw from the Settlement:

- (a) To withdraw from the Settlement Agreement under Section 6.04(1), the withdrawing party must provide written notice of withdrawal to the other Settling Party's lead counsel and to the Court, or to any other court on appeal.
- (b) In order to elect to withdraw from the Settlement and terminate the Settlement Agreement on the basis set forth in Section 6.05(1), the Defendants must notify Class Counsel in writing of their election to do so within ten days after the Opt Out List has been served on the Settling Parties. If the first Opt Out List circulated by the Settlement Administrator does not contain sufficient Opt Outs to trigger the Defendants' right to withdraw, but the Settlement Administrator subsequently provides an updated Opt Out List containing sufficient Opt Outs to trigger Defendants' right to withdraw, then the Defendants shall have ten days from the circulation of the updated Opt Out List to exercise that right, and the Settling Parties shall have the right at either's discretion to request that the Court postpone the Settlement Approval Hearing by the number of days between the provision of the initial and updated Opt Out Lists. In the event that the Defendants exercise their right to withdraw under Section 6.05(1), Class Counsel shall have, at their discretion, ten days or such longer period as agreed to by the Settling Parties to address the concerns of the Opt Outs. If through such efforts the total number on the Opt Out List subsequently becomes and remains fewer than the number submitted pursuant to Section 6.05(1), Defendants shall withdraw their election to withdraw from the Settlement and terminate the Settlement Agreement. In no event, however, shall Defendants have any further obligation under this Agreement to any Opt Out unless he or she withdraws his or her request for exclusion.

6.07 Effect of Withdrawal

(1) In the event any Settling Party withdraws from the Settlement, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Proceeding, and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification, or maintenance of any purported class. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Settling Parties, and shall not be deemed or construed to be an admission or confession by any party of

any fact, matter, or proposition of law, and shall not be admitted into evidence or otherwise used in any manner for any purpose, and all parties to the Proceeding shall stand in the same position as if this Settlement Agreement had not been negotiated, made, or filed with the Court. Without limiting the foregoing, this Settlement Agreement and the fact of the Settlement shall not be used or relied upon in this or any other proceeding as evidence of the suitability of the Plaintiff's claims, or any claims related to the Class Vehicles or EGR, for authorization as a class action. Upon withdrawal, the Settling Parties shall consent to setting aside or vacating any Court order(s) made in furtherance of the Settlement.

(2) Neither the Plaintiff nor Class Counsel will have any responsibility whatsoever to pay any Settlement Fees and Expenses (including the Settlement Administrators own fees), even if: (a) the Settlement Agreement is terminated in accordance with Section 6 of this Settlement Agreement; (b) the Settlement is not approved by the Court at the Settlement Approval Hearing; or (c) for any reason, there is no Effective Date.

ARTICLE 7 **NOTICE OF SETTLEMENT APPROVAL**

7.01 Second Class Notice

(1) The cost of the Second Class Notice and other Settlement Fees and Expenses, as agreed to by the Settling Parties, will be paid from the Cash Fund. Prior to the funding of the Cash Fund, the Defendants will make payments necessary to cover the costs of the Second Class Notice and other Settlement Fees and Expenses. Such pre-payments will be deducted from the amount ultimately contributed to the Cash Fund following the Effective Date.

(2) The Second Class Notice will be accomplished through a combination of the Second Short Form Notice, notice through the Settlement Website, and Second Long Form Notice, each of which is described below, as specified in the anticipated Approval Order and Judgment and this Settlement Agreement and in order to comply with all applicable laws.

7.02 Second Short Form Notice

(1) As soon as practicable after the Approval Order and Judgment, the Settlement Administrator shall send the Second Short Form Notice by first class mail, proper postage prepaid, to members of the Settlement Class. In addition, the Settlement Administrator shall (1) re-mail any notices returned by Canada Post with a forwarding address as soon as practicable; and (2) by itself or using one or more address research firms, as soon as practicable following

receipt of any returned notices that do not include a forwarding address, research such returned mail for more accurate addresses and promptly mail copies of the applicable notice to any more accurate addresses so found.

(2) As soon as practicable after the Approval Order and Judgment, the Settlement Administrator shall send the Second Short Form Notice by email to members of the Settlement Class for whom an email address was located.

7.03 Settlement Website and Second Long Form Notice

(1) As soon as practicable after the Approval Order and Judgment, the Settlement Administrator shall update the Settlement Website to reflect the Approval Order and Judgment as soon as practicable after the Approval Order and Judgment is made. Without limitation, the Second Long Form Notice will be available on the Settlement Website after the Approval Order and Judgment is made. Further, Class Members should then be able to continue to submit a claim through the Settlement Website or in hard copy. The Settlement Website will “pre-populate” claims information to the extent the Settlement Administrator possesses it.

(2) The Settlement Administrator will send, via first class mail, the Second Long Form Notice to those persons who request it.

ARTICLE 8 **SETTLEMENT ADMINISTRATION**

8.01 Cash Fund

(1) Within 30 days after the entry of the Approval Order and Judgment, Defendants shall pay the total sum of the Cash Fund (less any costs and expenses related to Settlement Fees and Expenses already paid by Defendants) into the Escrow Account to be held in escrow by the Settlement Administrator.

(2) The Cash Fund shall be held at a bank (the “**Bank**”), which financial institution shall be responsible for any and all investment-related decisions, following the Settlement Administrator’s investment policy for fiduciaries, which is based on safety of principal, no bank balance sheet exposure, and zero sweep accounts for distributions once authorized. The Bank shall be responsible for the issuance of any checks and/or wire transfers from the Cash Fund once authorized. Fees and costs for all service related to the Fund shall not exceed \$10,000 except by agreement of the Settling Parties.

(3) No portion of the Cash Fund shall be made available to the Settlement Class except as specifically set forth in this Settlement Agreement. Until such time as the Cash Fund is distributed, the Settlement Class shall not possess any rights to demand or receive any portion of the monies or the escrowed monies or to mortgage, pledge, or encumber the same in any manner. To the extent possible, the terms of the Settlement Agreement shall be construed so as to prevent the Plaintiff or others from being in constructive receipt of the Cash Fund. All expenses incurred in administering the Cash Fund, including without limitation, the fees and expenses of the Bank and Settlement Administrator, shall be paid from the Cash Fund.

(4) If this Settlement Agreement does not for any reason become final or effective or is otherwise rescinded, withdrawn, or abrogated before the Effective Date, then all amounts that have been paid by the Defendants into the Escrow Account shall be returned to the Defendants.

(5) The Settlement Administrator shall have the authority to conduct any and all activities necessary to administer the Cash Fund. The Settlement Administrator shall submit personally to the jurisdiction of the Court. The Settlement Administrator shall be indemnified and held harmless by Plaintiff and the Settlement Class from any claims made by any alleged lien holder or other person or entity that attempts to assert a right of payment, reimbursement, or garnishment against the Cash Fund.

(6) The Settlement Administrator shall pay any taxes on any interest that accrues on the funds in the Escrow Account or otherwise arises in relation to the Escrow Account from the Cash Fund. The Defendants shall have no responsibility to make any income tax filings relating to the Escrow Account or the Cash Fund and will have no responsibility to pay tax on any income earned by the Cash Fund after it has been transferred to the Escrow Account, or on the or pay any taxes on the monies in the Escrow Account, unless this Settlement Agreement is terminated, in which case the interest earned on the funds in Escrow Account, shall be paid to the Defendants, and in such case, each Defendant shall be responsible for the payment of all taxes on its proportionate share of such interest.

8.02 Duties of the Settlement Administrator

(1) Promptly after the Authorization and Notice Approval Order is made, the Settling Parties will direct the Settlement Administrator to issue the First Class Notice, receive and appropriately respond to all claims submitted by a member of the Settlement Class in both French and English, and to otherwise administer the Settlement Agreement. Promptly after the

Approval Order and Judgment, the Settling Parties will direct the Settlement Administrator to issue the Second Class Notice and to otherwise administer the Settlement Agreement. The Settlement Administrator will (1) assign personnel to manage the settlement implementation process, including the First Class Notice and the Second Class Notice, (2) provide settlement administration services to the members of the Class in both French and English, (3) establish a toll-free telephone number that members of the Class may call to obtain information in both French and English, (4) establish a mailing address to which members of the Settlement Class can send claims for reimbursement and (5) create a bilingual Settlement Website containing information about the Settlement, including claim forms for download or electronic submission. All costs and expenses related to the administration of this Settlement, whenever paid by the Defendants, will be deducted from the Cash Fund.

8.03 Submission of Claims

(1) To obtain compensation under Section 4.03(1), a member of the Settlement Class must submit a timely claim to the Settlement Administrator. Class Counsel and Defendants' Counsel will participate in the design of the claims administration process and will receive periodic information about the Settlement Administrator's handling of claims, including but not limited to information identifying the claims and claimants, sufficient to let them comment upon and/or raise objections to how it is being performed. Class Counsel will work continuously with Defendants' Counsel throughout the claims administration process to ensure that the claims process is fair and that the number of valid claims is maximized.

(2) The Settlement Administrator will not review or pay any claims for monetary compensation submitted by a member of the Settlement Class more than 180 calendar days after the delivery of the Second Class Notice. The Settling Parties reserve the right to jointly move the Court to permit late-filed claims.

(3) All claims for monetary compensation must indicate whether the claimant is submitting a claim for one of the options in Section 4.03(1), and which option is being selected. These options will be readily apparent on the Settlement Website.

(4) All claims for compensation must include Proof of Membership in the Class. Class Counsel and Defendants' Counsel will work in good faith with the Settlement Administrator when designing the claims-submission feature of the Settlement Website to simplify the ability of persons known to the Defendants to be Original Owners or Lessees of

Class Vehicles to confirm their status as Class Members without needing to independently submit all of the information otherwise required to show Proof of Membership in the Class.

(5) The Settlement Administrator may reject any claim that does not include the required information, documentation, or certification specified in Sections 8.03(3) and 8.03(4). The Settlement Administrator may investigate any claim, including by requesting from the member of the Settlement Class additional documentation to determine whether the claim is valid. If the Settlement Administrator rejects a claim, it will advise the member of the Settlement Class who submitted the claim of the reason(s) for the rejection (*e.g.*, missing information, documentation, or certification; ineligibility to submit a claim; or claim does not involve a Class Vehicle). If a claim is rejected due to missing information or documentation, the Settlement Administrator will give the member of the Settlement Class 30 days to resubmit that claim along with additional information, so long as the claim was originally submitted by the deadline to submit the claim. The Settlement Administrator will copy Class Counsel and Defendants' Counsel on all rejected claims.

(6) If a member of the Settlement Class disputes either the Settlement Administrator's rejection of a claim or the amount to be reimbursed pursuant to a claim, the member of the Settlement Class may appeal the Settlement Administrator's decision by submitting the claim, the Settlement Administrator's decision on the claim, and an explanation of the Settlement Administrator's alleged error to the Settlement Administrator within 30 days of the postmark date on the envelope, or the date of the email, in which the Settlement Administrator sent its decision to the member of the Settlement Class. The Settlement Administrator will share all appeals received with Class Counsel and Defendants' Counsel, and shall make a final, binding determination of the appeal following its receipt of the Settlement Parties' responses to the appeal

ARTICLE 9
CLASS COUNSEL FEES AND COSTS AND PLAINTIFF INDEMNITY

9.01 Class Counsel Fees and Costs

(1) Class Counsel Fees and Costs shall be paid out of the Cash Fund in an amount to be awarded by the Court. Class Counsel will apply to the Court for an award of Class Counsel Fees and Costs. Class Counsel's request for Class Counsel Fees and Costs will not exceed \$689,961.50 plus applicable taxes. Class Counsel shall be entitled to the Class Counsel Fees and Costs awarded by the Court (subject to the limitations of this Settlement Agreement)

immediately upon funding of the Escrow Account, and all such amounts will be paid from the Cash Fund.

(2) Any payment of Class Counsel Fees and Costs made pursuant to this Section shall be subject to refunds or repayments to the Cash Fund of any paid amounts, plus accrued earnings at the same net rate as is earned by the Cash Fund, if the Settlement is terminated pursuant to the terms of this Settlement Agreement or fails to become effective for any reason, or if, as a result of any appeal or further proceedings on remand or successful collateral attack, the award of Class Counsel Fees and Costs is reduced or reversed by court order. Class Counsel shall make the appropriate refund or repayment in full no later than 30 calendar days after receiving notice of the termination of the Settlement, notice from a court of appropriate jurisdiction of the disapproval of the Settlement by court order or notice of any reduction or reversal of the award of Class Counsel Fees and Costs by court order. Class Counsel, on behalf of itself and each partner and/or shareholder of the firm, agrees that (1) it and each of its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing this provision, (2) it and its partners and/or shareholders shall be jointly and severally liable for the repayment of all Class Counsel Fees and Costs awarded by the Court and paid by the Cash Fund, as well as accrued interest and (3) the Court may, upon application of Defendants or Defendants' counsel, summarily issue orders, including, without limitation, judgments and attachment orders, and may make appropriate findings of or sanctions for contempt against any law firm or any of its partners and/or shareholders should such law firm fail to timely repay Class Counsel Fees and Costs pursuant to this Section. Class Counsel further agree that in the event the full amount paid by the Cash Fund to Class Counsel plus accrued interest is not repaid within the time frame required by this paragraph, Class Counsel shall be responsible for all fees and costs incurred by Defendants in seeking and obtaining from Class Counsel such sums that remain unpaid.

9.02 Plaintiff Indemnity

(1) As part of the Settlement Approval Motion, and in recognition for the Plaintiff's disbursements on behalf of the class, Class Counsel may seek a Plaintiff Indemnity of up to \$500 for the Plaintiff. Any Plaintiff Indemnity ordered by the Court will be paid out of the Cash Fund within 45 days of the Effective Date. Any Plaintiff Indemnity is in addition to other payments under the Settlement.

ARTICLE 10
MISCELLANEOUS PROVISIONS

10.01 No Admission

(1) This Settlement Agreement is for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Proceeding or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Defendants or any admissions by the Defendants of any claim or allegation made in any action or proceeding against the Defendants. Nor shall it constitute, or be construed as, any admission or concession by Defendants that the Court's orders in the Proceeding are correctly decided. This Settlement Agreement shall not be offered or be admissible in evidence against the Defendants or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms.

10.02 Entire Agreement

(1) Except for the companion agreement referred to in Section 6.05(1), this Settlement Agreement represents the entire agreement and understanding among the Settling Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Settlement Agreement. The Settling Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement. No modification or waiver of any provisions of this Settlement Agreement shall in any event be effective unless the same shall be in writing and signed by the person against whom enforcement of the Settlement Agreement is sought.

10.03 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of the Plaintiff and the Defendants, and subject to approval by the Court where required.

10.04 Counterparts

(1) This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall be deemed a single agreement.

10.05 Arm's-Length Negotiations

(1) The Settling Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's length. All terms, conditions, and exhibits in their exact form are material and necessary to this Settlement Agreement and have been relied upon by the Settling Parties in entering into this Settlement Agreement. All Settling Parties, through counsel, have participated in the drafting of this agreement and it is not to be construed in favor of or against any of the Settling Parties.

10.06 Dispute Resolution

(1) Any dispute, challenge, question, or the like relating to this Settlement Agreement (other than those which this Settlement Agreement provides shall be resolved otherwise) shall be heard only by this Court.

10.07 Continuing Jurisdiction

(1) The Court shall retain continuing and exclusive jurisdiction over the parties to this Settlement Agreement, including all Class Members, for the purpose of the administration and enforcement of this Settlement Agreement.

10.08 Choice of Law

(1) This Settlement Agreement and any amendments thereto shall be governed by and interpreted according to the law of Quebec notwithstanding its conflict of law provisions.

10.09 Binding Effect of Settlement Agreement

(1) This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties and their representatives, heirs, successors, and assigns.

10.10 Severability

(1) In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions only if Defendants and Class Counsel mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.

10.11 Extensions of Time

(1) The Settling Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement, without further notice to Class Members (subject to Court approval as to Court dates).

10.12 Cooperation

(1) The Settling Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Settlement Agreement and to use their best efforts to effect the prompt consummation of this Settlement Agreement and the proposed Settlement.

10.13 No Waiver

(1) No waiver of any provision of this Settlement Agreement will be binding unless consented to in writing by the Settling Parties. No waiver of any provision of this Settlement Agreement will constitute a waiver of any other provision.

10.14 Public Statements

(1) In issuing public statements, including responding to any inquiries from the public media concerning the Proceeding and/or the Settlement, the Plaintiff, Class Counsel, the Defendants, and Defendants' Counsel shall limit their statements to promoting the virtues of the Settlement or other statements that comport with the First Class Notice, the Second Class Notice, and this Settlement Agreement. The Plaintiff and Class Counsel shall not engage in any conduct or make any statement, directly or indirectly, that the settlement of claims contemplated by this Settlement Agreement constitutes an admission of liability or an admission of the validity or accuracy of any of the allegations in Proceeding by the Defendants. However, nothing shall limit the ability of the Defendants or their successors to make such public disclosures as laws require or to provide information about the settlement to its advisors, government officials, or its insurers/reinsurers.

10.15 English Language

(1) The Parties acknowledge and agree that the present Settlement Agreement was drafted in the English language at the wish of the Parties thereto. In case of inconsistency between this Agreement drafted in English and any French translation thereof, the Settlement Agreement in English shall prevail. *Les parties reconnaissent et acceptent que la présente*

convention a été rédigée en langue anglaise à la demande expresse de toutes les parties y afférentes. En cas de divergence entre la présente convention rédigée en langue anglaise et toute traduction de cette convention en langue française, cette convention rédigée en langue anglaise prévaudra. Nevertheless, if required by the Court, a French translation of this Settlement Agreement, all Schedules and Appendices attached hereto, in each case for convenience only, shall be prepared and paid for by the Defendants.

10.16 Service or Notice

(1) Whenever, under the terms of this Settlement Agreement, a person is required to provide service or written notice to the Defendants, the Plaintiff, or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Settling Parties in writing:

To the Plaintiff or Class Counsel:

Consumer Law Group Inc.
1030 rue Berri, Suite 102
Montreal, QC H2L 4C3
Attention Jeff Orenstein and Andrea Grass
Phone: (514) 266-7863
Email: jorenstein@clg.org and agrass@clg.org

To the Defendants or Defendants' Counsel:

McCarthy Tétrault LLP
1000 De La Gauchetière Street West, Suite 2500
Montreal, QC H3B 0A2
Attention: Jean Lortie and Samuel Lepage
Phone: (514) 397-4100
Email: jlortie@mccarthy.ca and slepage@mccarthy.ca

10.17 Authority to Execute Settlement Agreement

(1) Each person executing this Settlement Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so.

IN WITNESS HEREOF, the Settling Parties have caused this Settlement Agreement to be executed, effective as of the date on the cover page.

4037308 Canada Inc.

Name:

Date

Class Counsel

Consumer Law Group Inc.
Per: JEFF ORENSTEIN

Date

Navistar Canada ULC

Name:

Date

Navistar, Inc.

Name:

Date

Navistar International Corporation

Name:

Date