

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

_____	:	
<b>IN RE: AUTOMOTIVE PARTS</b>	:	<b>Case No. 12-MD-02311</b>
<b>ANTITRUST LITIGATION</b>	:	<b>Honorable Sean F. Cox</b>
_____	:	
<b>IN RE: OXYGEN SENSORS</b>	:	
_____	:	
<b>THIS RELATES TO:</b>	:	<b>2:15-cv-03101-SFC-RSW</b>
<b>ALL DIRECT PURCHASER CASES</b>	:	<b>2:15-cv-12918-SFC-RSW</b>
_____	:	

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into this 21<sup>st</sup> day of January, 2022 (“Execution Date”) by and between Defendants NGK Spark Plug Co., Ltd., NGK Spark Plugs (U.S.A.) Holding, Inc., NGK Spark Plugs (U.S.A.), Inc., and NTK Technologies, Inc. (collectively, “NGK”), and Direct Purchaser Plaintiffs (as defined in Paragraph 7), both individually and on behalf of a proposed class of direct purchasers of Oxygen Sensors (the “Settlement Class,” as more particularly defined in Paragraph 12).

WHEREAS, Direct Purchaser Plaintiffs are prosecuting claims against NGK on their own behalf and on behalf of the Settlement Class in the *In re Oxygen Sensors Cases*, Lead Case No. 2:15-cv-03101 and Class Case No. 2:15-cv-12918 (E.D. Mich.) (collectively, the “Action”), consolidated under the Master Case, *In re Automotive Parts Antitrust Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (“MDL Litigation”);

WHEREAS, Direct Purchaser Plaintiffs allege that they were injured as a result of NGK’s participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Oxygen Sensors (as defined in Paragraph 1)

in violation of Section 1 of the Sherman Act, as set forth in Direct Purchaser Plaintiff's Second Amended Class Action Complaint, *see* Second Am. Class Action Compl., 2:15-cv-03101 (ECF No. 91), and Second Am. Class Action Compl., 2:15-cv-12918 (ECF No. 51) (collectively, the "Complaint");

WHEREAS, NGK denies Direct Purchaser Plaintiffs' allegations and has asserted defenses to Direct Purchaser Plaintiffs' claims in the Action;

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined in Paragraph 13) and counsel for NGK, and this Agreement has been reached as a result of those negotiations;

WHEREAS, Direct Purchaser Plaintiffs, through their counsel, have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving the claims against NGK, according to the terms set forth below, is in the best interests of Direct Purchaser Plaintiffs and the Settlement Class because of the payment of the Settlement Amount and the value of the Cooperation (as those terms are defined below) that NGK has agreed to provide pursuant to this Agreement;

WHEREAS, NGK, despite its belief that it is not liable for the claims asserted by Direct Purchaser Plaintiffs and its belief that it has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the release, order, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against NGK with respect to Oxygen Sensors based on the allegations in the Complaint, as more particularly set out below;

WHEREAS, NGK has agreed to provide Cooperation (as defined in Paragraph 3) and Cooperation Materials (defined in Paragraph 4) to Direct Purchaser Plaintiffs only if the DENSO Settlement does not receive final Court approval; and

WHEREAS, Direct Purchaser Plaintiffs recognize the benefits of NGK's Cooperation to the extent such Cooperation becomes necessary, and that because of joint-and-several liability, this Agreement with NGK does not impair Direct Purchaser Plaintiffs' ability to collect the full amount of damages to which they and the Settlement Class may be entitled in the Action should it become necessary for Direct Purchaser Plaintiffs to continue litigating the Action against DENSO.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Releasees and, except as hereinafter provided, without costs as to Direct Purchaser Plaintiffs, the Settlement Class, or NGK, subject to the approval of the Court, on the following terms and conditions:

A. Definitions

In addition to terms defined elsewhere in this Agreement, as used in this Agreement, the following terms shall have the respective meanings indicated below (such meanings to be applicable equally to both the singular and plural forms of such terms):

1. "Oxygen Sensors" for purposes of this Agreement are electronic sensors located before and after the catalytic converter in the exhaust system used to measure the amount of oxygen in the exhaust. Oxygen Sensors provide signals or data to the automobile's engine

management computer, which then adjusts the ratio of air/fuel injected into the engine to compensate for excess air or excess fuel.

2. “Bosch” means Robert Bosch GmbH and Robert Bosch LLC.

3. “Cooperation” refers to those provisions set forth below in Section J.

4. “Cooperation Materials” means any information, testimony, Documents (as defined in Paragraph 9) or other material provided by NGK pursuant to its Cooperation obligations under the terms of this Agreement.

5. “Defendants” means, for purposes of this Settlement Agreement only, any of the following: Bosch; DENSO Corporation; DENSO International America Inc.; DENSO Products & Services Americas, Inc. (the DENSO Defendants will collectively be referred to as “DENSO”); NGK; Hitachi, Ltd.; and their respective subsidiaries, affiliates, and joint ventures.

6. “DENSO Settlement” means the settlement agreement between DENSO and the Direct Purchaser Plaintiffs for the Direct Purchaser Plaintiffs’ claims against DENSO, *see* Am. Class Action Compl., 2:15-cv-03101 (ECF No. 40), and Am. Class Action Compl., 2:15-cv-11831 (ECF No. 37), for which the Court on April 24, 2019, granted preliminary approval and provisional certification of the settlement class. *See* ECF No. 81, *In re: Oxygen Sensors – Direct Purchaser Actions*, Order Granting Prelim. Approval of Proposed Settlements with the DENSO Defendants, 2:15-cv-03101 (ECF No. 81), as amended ECF No. 82, Am. Order Granting Prelim. Approval of Proposed Settlements with the DENSO Defendants, *In re: Oxygen Sensors – Direct Purchaser Actions*, 2:15-cv-03101 (ECF No. 82).

7. “Direct Purchaser Plaintiffs” means the plaintiffs named in the Complaint.

8. “NGK” means NGK Spark Plug Co., Ltd., NGK Spark Plugs (U.S.A.) Holding, Inc., NGK Spark Plugs (U.S.A.), Inc., and NTK Technologies, Inc.

9. “Document” is defined to be synonymous in meaning and equal in scope to the use of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including without limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term. For purposes of this Agreement, Document shall include all English translations in NGK’s custody, possession, or control.

10. “Releasees” shall refer to NGK Spark Plug Co., Ltd., NGK Spark Plugs (U.S.A.) Holding, Inc., NGK Spark Plugs (U.S.A.), Inc., and NTK Technologies, Inc. and their respective parents, subsidiaries, affiliates, divisions, predecessors, successors, and assigns and their respective past and present officers, directors, employees, insurers, agents and attorneys. “Releasees” does not include any defendant in the MDL Litigation other than NGK or any other person or entity other than those set forth in the preceding sentence in this Paragraph 10.

11. “Releasers” shall refer to Direct Purchaser Plaintiffs and the Settlement Class Members (as defined in Paragraph 14) as well as each of their parents, subsidiaries, affiliates, divisions, predecessors, successors, and assigns and their respective past and present officers, directors, employees, insurers, agents, and attorneys.

12. For purposes of this Agreement, the “Settlement Class” is defined as:

All individuals and entities who purchased Oxygen Sensors in the United States directly from one or more of the Defendants (or any of their controlled subsidiaries, affiliates, or joint ventures) between January 1, 2000, and February 4, 2019. Excluded from the Settlement Class are Defendants and their present and former parent companies, subsidiaries, and affiliates; federal governmental entities and instrumentalities of the federal government; and states and their subdivisions, agencies and instrumentalities.

13. “Settlement Class Counsel” shall refer to the following law firms: Freed Kanner London & Millen LLC, 2201 Waukegan Road, Suite 130, Bannockburn, IL 60015; Kohn, Swift & Graf, P.C., 1600 Market Street, Suite 2500, Philadelphia, PA 19103; Preti, Flaherty, Beliveau

& Pachios, LLP, One City Center, P.O. Box 9546, Portland, ME 04112-9546; and Spector Roseman & Kodroff, P.C., 2001 Market Street, Suite 3420, Philadelphia, PA 19103.

14. “Settlement Class Member” means each member of the Settlement Class who has not timely and validly elected to be excluded from the Settlement Class.

15. “Settlement Amount” shall be USD \$600,000 as specified in Paragraph 26.

16. “Settlement Fund” shall refer to the Settlement Amount plus accrued interest on said amount as set forth in Paragraph 28.

B. Approval of this Agreement and Dismissal of Claims Against NGK

17. Direct Purchaser Plaintiffs and NGK shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court’s approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the complete and final dismissal with prejudice of the Action as to the Releasees only.

18. Direct Purchaser Plaintiffs shall submit to the Court a motion seeking preliminary approval of this Agreement (the “Preliminary Approval Motion”). The Preliminary Approval Motion shall include the proposed form of an order preliminarily approving this Agreement. No less than seven (7) business days before filing, Direct Purchaser Plaintiffs shall submit a draft of the Preliminary Approval Motion and proposed order to NGK for review and comment, and Direct Purchaser Plaintiffs shall reasonably consider NGK’s comments.

19. Direct Purchaser Plaintiffs, at a time to be decided in their sole discretion, shall submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to the Settlement Class (the “Notice Motion”). The Notice Motion shall include a proposed form of, method for, and proposed dates of

dissemination of notice. Before submission, NGK shall have a reasonable opportunity to review and comment on the Notice Motion, and Direct Purchaser Plaintiff(s) shall reasonably consider NGK's comments.

20. Direct Purchaser Plaintiffs shall seek the entry of an order and final judgment, the text of which Direct Purchaser Plaintiffs and NGK shall agree upon, and such agreement will not be unreasonably withheld. The terms of that proposed order and final judgment will include, at a minimum, the substance of the following provisions:

(a) certifying the Settlement Class described in Paragraph 12, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this settlement as a settlement class for the Action;

(b) approving finally this settlement and its terms as being a fair, reasonable and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

(c) directing that all Releasers shall, by operation of law, be deemed to have released all Releasees from the Released Claims (as defined in Paragraph 23) and claims to be waived and released pursuant to Paragraph 24;

(d) directing that the Action (including the Complaint) be dismissed as to NGK with prejudice and, except as provided for in this Agreement, without costs;

(e) reserving exclusive jurisdiction over the settlement and this Agreement, including the interpretation, administration, and consummation of this settlement, as well as over NGK for its provision of Cooperation pursuant to this Agreement, to the United States District Court for the Eastern District of Michigan;

(f) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal in the Action as to NGK shall be final; and

(g) providing that (i) the Court's certification of the Settlement Class is without prejudice to, or waiver of, the rights of any defendant, including NGK, to contest certification of any other class proposed in the MDL Litigation, (ii) the Court's findings in this order and final judgment in the Action shall have no effect on the Court's ruling on any motion to certify any class in the MDL Litigation or on the Court's rulings concerning any defendant's motion; and (iii) no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any defendant's motion.

21. This Agreement shall become final and be deemed to have received "Final Court Approval" when (i) the Court has entered in the Action a final order certifying the Settlement Class described in Paragraph 12 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and has entered a final judgment dismissing the Action with prejudice as to NGK and without costs other than those provided for in this Agreement, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of the order and the final judgment as to NGK described in (i) hereof has expired in the Action or, if appealed, approval of this Agreement and the order and final judgment in the Action as to NGK have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Direct Purchaser Plaintiffs



and NGK have executed this Agreement, Direct Purchaser Plaintiffs and NGK shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraph 63.

22. Neither this Agreement (whether or not it becomes final) nor the final judgment, nor any negotiations, documents, and discussions associated with them (including Cooperation Materials produced pursuant to Section J, unless they were produced in the normal course of discovery), shall be deemed or construed to be an admission by NGK or any other Releasee, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by NGK or any other Releasee, or of the truth of any of the claims or allegations contained in any complaint or any other pleading, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the MDL Litigation, or in any other arbitration, action or proceeding whatsoever, against NGK or any other Releasee. Subject to the Protective Order (as defined in Paragraph 49) and any designations made thereunder, nothing in this Paragraph 22 shall prevent Direct Purchaser Plaintiffs from using and/or introducing into evidence Cooperation Materials produced pursuant to, and subject to the limitations of, Section J, against DENSO in the Action. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by NGK or any Releasee, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or proceeding, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, and/or claims to be waived and released pursuant to Paragraph 24, or as otherwise required by law. The parties and their respective counsel further agree that this Agreement, its terms and provisions, and any and all negotiations thereof shall be governed by

Federal Rule of Evidence 408; notwithstanding the foregoing, the Agreement may be filed with the Court and made public in conjunction with the filing of the Preliminary Approval Motion.

C. Release, Discharge, and Covenant Not to Sue

23. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 21 of this Agreement, and in consideration of payment of the Settlement Amount into the Escrow Account, as specified in Paragraph 26 of this Agreement, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, damages whenever incurred, liabilities of any nature whatsoever (including damages of any kind, penalties, attorneys' fees, and costs), causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or receives a payment from the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) under any federal, state, local, statutory, or common law of any jurisdiction in the United States, that Releasers, or each of them, ever had, now have, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to (i) any conduct, facts, occurrences, or transactions prior to the Execution Date alleged in the Complaint, (ii) any act or omission of the Releasees (or any of them) prior to the Execution Date concerning Oxygen Sensors, or (iii) any act or omission prior to the Execution Date of any of the Releasees, defendants, or co-conspirators (including without limitation DENSO and Bosch) now identified or later identified that are alleged,

described, or referred to in the Complaint, including price fixing, bid rigging, or market, customer, or supply allocation of Oxygen Sensors, or any similar activity related to Oxygen Sensors, including but not limited to any conduct alleged and causes of action alleged or asserted or that could have been alleged or asserted, in any class action or other complaint(s) filed in the Action (the "Released Claims"), provided however, that nothing herein shall release: (1) any claims based on indirect purchases of Oxygen Sensors; (2) claims relating to Oxygen Sensors and based on negligence, personal injury, breach of contract (unless such breach of contract claim alleges anticompetitive conduct or communications among competitors), bailment, failure to deliver lost goods, damaged or delayed goods, product defect, breach of product warranty, securities or other similar claim; (3) claims brought outside the United States relating to purchases of Oxygen Sensors outside the United States; (4) claims under laws other than those of the United States relating to purchases of Oxygen Sensors outside the United States; and (5) claims concerning any product other than Oxygen Sensors. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims unless this Agreement, for any reason, does not become final, or is rescinded or otherwise fails to become effective.

24. In addition to the provisions of Paragraph 23, Releasors hereby expressly waive and release, solely with respect to the Released Claims, upon this Agreement becoming final, as set out in Paragraph 21, any and all provisions, rights, and benefits, as to their claims concerning Oxygen Sensors, conferred by Section 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL  
RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO  
CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR  
SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME

OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are released pursuant to the provisions of Paragraph 23 but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that NGK and Direct Purchaser Plaintiffs have agreed to release pursuant to Paragraph 23, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

25. NGK releases any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and unknown claims (as set forth in Paragraphs 23-24), that have been or could have been asserted in the Action or in any other action or proceeding by NGK or the Releasees or any of them or the successors and assigns of any of them against the Direct Purchaser Plaintiffs, any Settlement Class Member, or their attorneys, which arise out of or relate to the institution, prosecution, or settlement of the Action (except for claims to enforce the terms of the Agreement).

D. Settlement Amount

26. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, NGK shall pay or cause to be paid the Settlement Amount of USD \$600,000.00. The Settlement Amount shall be paid into an escrow account in United States

Dollars to be administered in accordance with the provisions of Section E (“Escrow Account”) within thirty (30) days following the later of (i) entry of an order preliminarily approving this Agreement, or (ii) the date NGK is provided with the account name, account number and wire transfer information for the Escrow Account.

E. Escrow Account

27. An Escrow Account shall be maintained by Settlement Class Counsel at The Huntington National Bank. The Escrow Account shall be administered under the Court’s continuing supervision and control.

28. All payments into the Escrow Account shall, at the direction of Settlement Class Counsel, be invested in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including U.S. Treasury Bills, U.S. Treasury Money Market Funds or a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit. Any interest earned on any of the foregoing shall become part of the Settlement Fund. NGK shall have no responsibility for, or liability in connection with, the Settlement Fund or Escrow Account, including, without limitation, the investment, administration, maintenance, or distribution thereof.

29. The Settlement Fund held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as the Settlement Fund shall be distributed pursuant to this Agreement or further order(s) of the Court.

30. Subject to the limitation set forth in Paragraph 37, reasonable disbursements for expenses associated with providing notice of the settlement to the Settlement Class, expenses

for maintaining and administering the Settlement Fund, and taxes and expenses incurred in connection with taxation matters may be paid by Settlement Class Counsel without approval from the Court and shall not be refundable to NGK in the event the Agreement is disapproved, rescinded, or otherwise fails to become effective, to the extent such expenses have actually been expended or incurred. Any refund that becomes owed to NGK if this Settlement does not become final or is rescinded or otherwise fails to become effective may be paid out of the Escrow Account without approval from the Court. No other disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

31. The Escrow Account is intended by the parties hereto to be treated as a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1, and to that end the parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of NGK, a “relation back election” as described in Treas. Reg. § 1.468B-1(j) shall be made to enable the Escrow Account to be treated as a qualified settlement fund from the earliest date possible, and the parties shall take all actions as may be necessary or appropriate to this end. At the direction of Settlement Class Counsel, taxes or estimated taxes shall be paid on any income earned on the funds in the Escrow Account, whether or not final approval has occurred. In the event federal or state income tax liability is finally assessed against and paid by NGK as a result of any income earned on the funds in the Escrow Account, NGK shall be entitled to reimbursement of such payment from the funds in the Escrow Account after approval of the Court and whether or not final approval has occurred. NGK will use reasonable efforts to resist any such assessment or payment. Except as set forth in this Paragraph 31, NGK and each Releasee, and their respective counsel, shall have no responsibility to make any tax filings related to the Settlement Fund or

to pay any taxes or tax expenses with respect thereto, and neither NGK nor any Releasee nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters.

32. If this Agreement does not receive final Court approval, including final approval of the Settlement Class, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by NGK into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 30 and 37), shall be returned to NGK from the Escrow Account along with any interest accrued thereon within thirty (30) calendar days of the Court's denial of final approval of the Agreement and/or Settlement Class.

F. Exclusions

33. With respect to any potential Settlement Class Member that requests exclusion from the Settlement Class, NGK reserves all its legal rights and defenses.

34. Subject to Court approval, a request for exclusion must be in writing and state the full name, street address, telephone number, and email address of the person or entity seeking exclusion from the Settlement Class. Further, the written request for exclusion must include a statement that he, she, or it wishes to be excluded from the settlement. Subject to Court approval, a request for exclusion that does not comply with these and any other requirements set forth in the class notice will be invalid, and each person or entity submitting an invalid request shall be deemed a Settlement Class Member and shall be bound by this Agreement upon Final Court Approval.

35. NGK or Settlement Class Counsel may dispute an exclusion request, and the parties shall, if possible, resolve the disputed exclusion request by agreement and shall inform the Court of their position, and, if necessary, within thirty (30) days after the end of the period

to request exclusion from the Settlement Class, NGK or Settlement Class Counsel may move the Court to obtain a ruling thereon.

36. Within ten (10) days after the end of the period to request exclusion from the Settlement Class, Settlement Class Counsel will cause copies of all timely requests for exclusion from the Settlement Class to be provided to counsel for NGK.

G. Payment of Expenses

37. NGK agrees to permit use of a maximum of USD \$62,500.00 (which limitation is effective up to and including the date of Final Approval of this Settlement) of the Settlement Fund towards notice to the Settlement Class and the costs of administration of the Settlement Fund as set forth in Paragraph 30. The notice and administration expenses are not recoverable by NGK if this settlement does not become final or is terminated to the extent such funds have actually been expended or the expenses have been incurred for notice and administration costs. Other than as set forth in this Paragraph 37 and in Paragraph 30, NGK shall not be liable for any of the Direct Purchaser Plaintiffs' or other potential Settlement Class Members' costs or expenses of the litigation of the Action, including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court or Special Master, appeals, trials or the negotiation of other settlements, or for class administration and costs.

38. To mitigate the costs of notice and administration, the Direct Purchaser Plaintiffs shall use their best efforts, if practicable, to disseminate notice of this settlement together with notice of the DENSO Settlement and to apportion the costs of notice and administration on a pro rata basis across the applicable settlements.



39. Within ten (10) days after the Execution Date, or as soon thereafter as is practicable, NGK will supply to Settlement Class Counsel, in an electronic mailing format, the names and addresses of putative Settlement Class Members to whom NGK Spark Plug Co., Ltd., NGK Spark Plugs (U.S.A.) Holding, Inc., NGK Spark Plugs (U.S.A.), Inc., and NTK Technologies, Inc., or any one of them, or any one or more of their subsidiaries or affiliates sold Oxygen Sensors in the United States during the Settlement Class Period to the extent they are identifiable through reasonable efforts.

H. The Settlement Fund

40. Releasers shall look solely to the Settlement Fund for settlement and satisfaction, as provided herein, of all Released Claims against the Releasees, and shall have no other recovery against NGK or any other Releasee as to the Released Claims.

41. After this Agreement becomes final within the meaning of Paragraph 21, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the Court at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution, and administration except as expressly otherwise provided in Paragraphs 30 and 37.

42. Direct Purchaser Plaintiffs and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses and costs, as provided by Court Order and the provisions of Paragraphs 30 and 37. NGK and the other Releasees shall not be liable for any costs, fees, or expenses of the Direct Purchaser Plaintiffs or the Settlement Class's respective attorneys, experts, advisors, agents, or representatives. Instead, all such costs, fees,

and expenses as approved by the Court, or authorized by Paragraphs 30 and 37, shall be paid out of the Settlement Fund.

I. Settlement Class Counsel's Attorneys' Fees, Reimbursement of Expenses, and Service Awards for the Direct Purchaser Plaintiffs

43. Subject to Court approval, Direct Purchaser Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all past, current, or future litigation costs and expenses and any award of attorneys' fees incurred in connection with this Action. Service awards to the Direct Purchaser Plaintiffs, if approved by the Court, will also be paid solely out of the Settlement Fund. No such service award will be paid until after Final Court Approval. Attorneys' fees and costs and expenses awarded by the Court shall be payable from the Settlement Fund, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal or further proceedings on remand, or successful collateral attack, the fee or award of costs and expenses is reduced or reversed, or in the event the Settlement is rescinded or otherwise fails to become effective.

44. The procedure for and the allowance or disallowance by the Court of the application by Settlement Class Counsel for attorneys' fees, costs and expenses, or service awards for the Direct Purchaser Plaintiffs to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement, and any order or proceeding relating to a request for attorneys' fees and reimbursement of expenses or service awards, or

any appeal from any such order, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the judgment approving the settlement.

45. Neither NGK nor any Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel and/or Direct Purchaser Plaintiffs of any fee and expense award, or service awards, in the Action.

46. Neither NGK nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Settlement Class Counsel and/or any other person who may assert some claim thereto, of any fee and expense award that the Court may make in the Action.

J. Cooperation.

47. In return for the release and discharge provided herein, NGK agrees to pay the Settlement Amount and further agrees to use reasonable efforts to provide Cooperation, as set forth specifically in this Section J, if and only to the extent that the DENSO Settlement does not receive final approval and such Cooperation therefore becomes necessary to enable the Direct Purchaser Plaintiffs to prosecute any unsettled claims relating to Oxygen Sensors against DENSO and only until final judgment is entered on all Oxygen Sensors claims made by Direct Purchaser Plaintiffs against DENSO in the MDL Litigation or dismissal with prejudice of all Oxygen Sensors claims made by Direct Purchaser Plaintiffs against DENSO in the MDL Litigation (“Termination Orders”), whichever is earlier.<sup>1</sup> NGK shall only have to provide

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<sup>1</sup> NGK’s Cooperation obligations shall continue until the time for appeal or the time to seek permission to appeal from the Court’s Termination Orders has expired or, if appealed, the Termination Orders have been affirmed by the Court of last resort to which such appeal has been taken such that all Oxygen Sensors claims made by Direct Purchaser Plaintiffs against DENSO in the MDL Litigation are resolved and such affirmance has become no longer subject to further appeal or review.

Cooperation if the DENSO Settlement does not receive final Court approval. If NGK is required to provide Cooperation, such Cooperation will take place consistent with the timing set forth specifically in this Section J.

48. NGK shall not be required to provide Documents protected by the attorney-client privilege, the attorney work product doctrine, any applicable privilege under foreign law, or whose production or disclosure is prohibited by relevant antitrust agencies and/or by the law of the relevant foreign jurisdictions or prohibited by court order. Should NGK withhold any materials pursuant to the foregoing sentence, NGK will so inform the Direct Purchaser Plaintiffs and will describe the basis for such withholding to the extent permissible under applicable law, provided, however that NGK shall not be required to log any such materials withheld that occurred or were prepared by outside counsel after the commencement of the Action. Cooperation shall be limited to Oxygen Sensors and shall not include information relating to other products manufactured by NGK or any of the Releasees. Notwithstanding the foregoing sentence, no Document shall be withheld under a claim of privilege if produced to or seized by any government entity from NGK or its affiliates (defined as any entity in which NGK had a greater than 50% ownership interest at the time such documents were provided to or seized by the government entity) relating to their investigation into alleged competition violations with respect to Oxygen Sensors, unless clawed back from that government entity pursuant to Rule 502 or otherwise.

49. Direct Purchaser Plaintiffs shall use reasonable best efforts to coordinate Cooperation in such a manner to avoid unnecessary duplication and expenses. Settlement Class Counsel further agree that they will not use Documents or any other Cooperation Materials produced by NGK pursuant to this Section J for any purpose other than the prosecution of

Oxygen Sensor claims against DENSO in the MDL Litigation, and will use this information consistent with the protective order entered in the MDL Litigation (2:12-md-02311 Doc. No. 200) (the “Protective Order”) and will not use it beyond what is reasonably necessary for the prosecution of such claims against DENSO in the MDL Litigation or as otherwise required by law. All Documents and other Cooperation Materials provided pursuant to this Agreement shall be governed by the terms of the Protective Order in the Action. To the extent that it is reasonably determined by Settlement Class Counsel to be necessary for the prosecution of Oxygen Sensors claims against DENSO and such has not already been produced, NGK agrees to use its reasonable efforts to produce the following materials to Direct Purchaser Plaintiffs on the timetables indicated below. Nothing herein shall obligate NGK to provide Cooperation for any purpose other than to the extent necessary for Direct Purchaser Plaintiffs’ prosecution of Oxygen Sensor claims against DENSO in the MDL Litigation. Nothing herein shall obligate NGK to provide any Cooperation for any purpose if the Direct Purchaser Plaintiffs initiate or resume litigation against NGK or any Releasee. The parties will meet and confer in good faith regarding any extensions concerning the timing of the completion of any Cooperation.

50. Transactional Data. NGK will use reasonable efforts to substantially complete production of sales and cost transactional data within one hundred twenty (120) days after Settlement Class Counsel and NGK agree on the pre-existing sales and cost transactional data concerning NGK’s sales of Oxygen Sensors to customers in the United States to be provided. NGK shall consider any reasonable request by Direct Purchaser Plaintiffs to produce reasonably available transactional data from January 1, 1998 through March 12, 2018. Such request shall not require NGK to compile data from individual invoices, purchase orders, personal computers, backup recording media or devices, hard copy files, manufacturing facilities or similar sources.

NGK shall provide reasonable assistance to Settlement Class Counsel in understanding the transactional sales and cost data produced, including, if appropriate, a reasonable number of communications with Direct Purchaser Plaintiffs' experts or technical personnel. Settlement Class Counsel agree that they shall maintain all data that NGK produces as "Highly Confidential," as said designation is described in the Protective Order, subject to any successful challenge that any party may make to the Protective Order or any other orders of the Court.

51. Documents. Upon the request of Settlement Class Counsel and subject to the parties' meeting and conferring regarding the documents to be produced and any extensions concerning the timing of the completion of production, and to the extent that the following Documents have been collected and loaded into a review tool, NGK will use reasonable efforts to begin to produce Documents (including non-privileged English translations, to the extent they exist) within ninety (90) days after Settlement Class Counsel agree on the documents to be produced: (1) Documents, including any translations, provided to or seized by government entities relating to their investigation into alleged competition violations with respect to Oxygen Sensors; (2) non-privileged Documents collected as of the Execution Date that relate to or concern the allegations in the Complaint and reflect alleged collusion or attempted alleged collusion with respect to Oxygen Sensors, by any employee, officer, or director of NGK with any employee, officer, or director of another manufacturer or seller of Oxygen Sensors, but that were not provided to or seized by government entities; (3) Documents collected as of the Execution Date sufficient to show NGK's general methodology for determination of NGK's prices for Oxygen Sensors; and (4) Documents collected as of the Execution Date soliciting requests for quotation ("RFQ"), bids submitted in response to RFQs, RFQ award notifications, and post-award price adjustments for Oxygen Sensors, including any Annual Price Reduction

("APR") Documents. Subject to the meet-and-confer referenced above, NGK will use reasonable efforts to substantially complete the production of the Documents in response to such request within one hundred twenty (120) days after the parties agree on the documents to be provided.

52. NGK shall not be required to disclose to Settlement Class Counsel the specific government entities to which documents were provided or to which documents were produced.

53. If NGK produces Documents or provides declarations or written responses to discovery to any party in the Action or in any other Oxygen Sensors action within 2:15-cv-03100 (a "Relevant Production"), NGK shall produce all such Documents, declarations, or written discovery responses to Settlement Class Counsel contemporaneously with making the Relevant Production to the extent such Documents, declarations, or written discovery responses have not previously been produced by NGK to Settlement Class Counsel. In addition, NGK shall provide Direct Purchaser Plaintiffs with all cooperation concerning Oxygen Sensors that it provides pursuant to any settlement agreement with any other party in this MDL Litigation unless it relates to information that is commercially sensitive in the context of NGK's relationships with its customers. To the extent that such cooperation includes any attorney proffer, witness interviews, or depositions of witnesses in addition to those already provided for in Paragraph 54 below, Settlement Class Counsel shall be permitted to attend and/or participate in such attorney proffer, witness interviews or depositions, and shall be entitled to ask questions for a period up to three (3) hours at any interview or deposition (provided that this shall not expand the total time permitted for any deposition). All such additional Cooperation shall be coordinated, to the extent reasonably practicable, between Settlement

Class Counsel and counsel for any other party in this MDL Litigation for which NGK is providing cooperation concerning Oxygen Sensors pursuant to a settlement agreement.

54. Attorney Proffers and Witness Interviews.

(a) NGK's counsel has provided attorney proffers to Settlement Class Counsel subject to confidentiality agreements which shall continue in full force and effect. If requested by Settlement Class Counsel following the entry of an order preliminarily approving this Agreement, NGK's counsel will make themselves available by telephone or video conference in the United States to Settlement Class Counsel for reasonable follow-up conversations and will use reasonable efforts to respond to questions posed by Settlement Class Counsel relating to the Action. If requested, NGK's counsel shall provide the identity, if any, of all current and former employees, directors, and officers of NGK who: (1) were interviewed by any government entities in connection with alleged price-fixing, bid rigging, customer allocation, market allocation, and/or other unlawful anticompetitive activity with respect to NGK in regard to Oxygen Sensors; (2) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to Oxygen Sensors; or (3) were disclosed to a government entity as having knowledge or information relating to investigations into alleged antitrust violations with respect to Oxygen Sensors. Counsel for NGK shall not be required to disclose to Settlement Class Counsel the identities of any government entities to which each such current or former employee, director, or officer of NGK was identified or before which they appeared. It is understood that neither NGK nor its counsel have any obligation to seek new or additional information or documents from any current or former NGK employees, officers, or directors; however, NGK will in good faith consider requests for new or additional information or documents, and will produce such information or documents, if appropriate, in its sole discretion.



(b) Settlement Class Counsel will not seek interviews or depositions of NGK's directors, officers, or employees at this time. If, however, Settlement Class Counsel reasonably believe that testimony from NGK is necessary for use in a scheduled trial of Oxygen Sensor claims against DENSO in the MDL Litigation, then upon reasonable notice after preliminary approval of this Agreement, NGK shall use its reasonable best efforts to make available for interviews and depositions, upon at least 60 days' notice, unless extenuating circumstances exist, via video or teleconference or at a mutually agreed-upon location or locations, up to two (2) persons for interviews and depositions whom Settlement Class Counsel select, who may be current directors, officers, or employees of NGK who Settlement Class Counsel reasonably and in good faith believe possess knowledge of facts or information that would reasonably assist Direct Purchaser Plaintiffs in the prosecution of Oxygen Sensor claims against DENSO in the MDL Litigation. Interviews shall each be limited to a total of seven (7) hours over one day and should occur via video or teleconference. Should Class Counsel elect to conduct the interview(s) in person and to the extent that a person to be interviewed is not reasonably available in the United States for an interview, the interview will be conducted at a mutually agreed upon location elsewhere.

(c) It is understood and agreed that NGK may be unable to make available for interviews, trial testimony, or any other court proceedings any individual who is no longer an officer, director, or employee of NGK, and that Direct Purchaser Plaintiffs shall not assert NGK's inability to make any such former officers, directors, or employees available as a basis for claiming that NGK has failed, in whole or in part, to satisfy its Cooperation obligations under the Agreement.

(d) In addition to its Cooperation obligations set forth herein, NGK agrees to use reasonable efforts to produce through affidavit(s), declaration(s), and/or deposition testimony, in Settlement Class Counsel's discretion, representatives qualified to authenticate, establish as business records, or otherwise establish any other necessary foundation for admission into evidence of any Documents or Transactional Data produced or to be produced by NGK, and to the extent possible, any Documents produced by other parties or third-parties in this Action. Settlement Class Counsel agree to use reasonable efforts to obtain stipulations that would avoid the need to depose NGK witnesses for the purpose of obtaining such evidentiary foundations.

55. This Agreement does not restrict Settlement Class Counsel from noticing, attending, and/or participating in any deposition in the MDL Litigation. In addition to the depositions set forth in Paragraph 54, if any party in the Action or another action relating to Oxygen Sensors in the MDL Litigation other than Direct Purchaser Plaintiffs deposes a current or former employee of NGK, Settlement Class Counsel may cross-notice, attend, and/or participate in such deposition, and Settlement Class Counsel may ask questions for a combined total of three (3) hours at such deposition, provided that the total time for participation of Settlement Class Counsel shall not expand the time permitted for the deposition as may be provided by the Court, and Settlement Class Counsel will not ask the Court to enlarge the time of any deposition noticed of a NGK current or former employee. Participation by Settlement Class Counsel in the depositions discussed in this Paragraph 55 will not limit the number of depositions that may be provided under Paragraph 54. Settlement Class Counsel agree to use their best efforts to ensure that any depositions taken under Paragraph 54 are coordinated with any other deposition noticed in the Action or the MDL Litigation to avoid unnecessary duplication. In the event Direct Purchaser Plaintiffs have settled all Oxygen Sensor claims with

all defendants in the MDL Litigation, Direct Purchaser Plaintiffs will forego participating in depositions of NGK's current or former employees scheduled by other plaintiff groups in the MDL Litigation provided that if: (1) this Agreement does not receive final approval, or (2) or the DENSO Settlement does not receive final approval as set forth in Paragraph 21, then Direct Purchaser Plaintiffs may, at a later date, take depositions of any NGK current or former employees who were previously deposed concerning Oxygen Sensor claims in the MDL Litigation subject to the limitations of this Paragraph 55. Nothing herein shall alter, limit, or otherwise affect rights of Direct Purchaser Plaintiffs to take depositions of NGK employees subject to Paragraph 54 of this Agreement. Settlement Class Counsel may attend and participate in any depositions of NGK in this Action noticed by any other party.

56. To the extent reasonably practicable, any attorney proffers, witness interviews, or depositions provided by NGK pursuant to its Cooperation obligations shall be coordinated with, and occur at the same time as, the attorney proffers, witness interviews, and depositions to be provided in connection with similar settlements of Oxygen Sensors claims by NGK with the End Payor Plaintiffs and Automobile Dealership Plaintiffs in the MDL Litigation. If any witness interviews or depositions provided by NGK pursuant to its Cooperation obligations take place outside of the country of the witness's or deponent's residence, Direct Purchaser Plaintiffs shall reimburse NGK for such person's economy class fare and US \$450 per day for lodging and expenses. The maximum reimbursement to NGK for any witness shall be US \$2,250. In no event shall Direct Purchaser Plaintiffs be responsible for reimbursing such person for time or services rendered. If an interview and a deposition of an individual occur during the same trip, the above limitations will apply to that trip.

57. Notwithstanding any other provision in this Agreement, Settlement Class Counsel shall maintain all statements made by NGK's counsel as "Highly Confidential," as said designation is described in the Protective Order, and shall not use the information so received for any purpose other than the prosecution of their Oxygen Sensor claims against DENSO in the MDL Litigation, and will not attribute any information obtained from an attorney's proffer pursuant to this Agreement to NGK or its counsel. The parties and their counsel further agree that any statements made by NGK's counsel in connection with or as part of this settlement, including without limitation the proffer(s) referred to in Paragraph 54 and Paragraph 56, shall be governed by Federal Rule of Evidence 408. Notwithstanding anything herein, Settlement Class Counsel may use information contained in such statements in the prosecution of Oxygen Sensor claims in the MDL Litigation, and rely on such information to certify that, to the best of Settlement Class Counsel's knowledge, information, and belief, such information has evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

58. Direct Purchaser Plaintiffs and Settlement Class Counsel agree they will not use the information provided by NGK or the other Releasees or their representatives under this Agreement for any purpose other than the prosecution of Oxygen Sensor claims against DENSO in the MDL Litigation, and will use it consistent with the Protective Order and will not use it beyond what is reasonably necessary for the prosecution of Oxygen Sensor claims against DENSO in the MDL Litigation or as otherwise required by law. All Documents and other Cooperation Materials provided pursuant to this Agreement shall be governed by the terms of the Protective Order in the Action.

59. NGK's obligations to provide Cooperation shall not be affected by the releases set forth in this Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, NGK's obligations to provide Cooperation under this Agreement shall continue in accordance with the provisions of Section J.

60. In the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraph 21, including final approval of the Settlement Class, or in the event that it is terminated by either party under any provision herein, the parties agree that neither Direct Purchaser Plaintiffs nor Settlement Class Counsel shall be permitted to introduce into evidence against NGK, at any hearing or trial, or in support of any motion, opposition, or other filing in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action, any information provided by NGK's counsel as part of any attorney proffer, any deposition testimony, any Documents, or any other Cooperation Materials provided by NGK or any of the other Releasees, their counsel, or any individual only made available by NGK pursuant to Cooperation (as opposed to information obtained in discovery in the Action or from other sources or pursuant to a court order other than a court order enforcing the Cooperation obligations). This limitation shall not apply to any discovery of NGK in which Settlement Class Counsel participates as part of the MDL Litigation. Notwithstanding anything contained herein, Direct Purchaser Plaintiffs and the Settlement Class are not relinquishing any rights to pursue discovery against NGK in the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraph 21 hereof, including final approval of the Settlement Class, or in the event that it is terminated by either party under any provision herein.

61. NGK need not respond to discovery requests or motions made pursuant to the Federal Rules of Civil Procedure from Direct Purchaser Plaintiffs or otherwise participate in the Action during the pendency of this Agreement. This suspension of discovery and any pending motions shall be without prejudice to reviving such discovery or motions if this Agreement fails to receive final approval by the Court or in the event that it is terminated by either party under any provision herein. Other than to enforce the terms of this Agreement, neither NGK nor Direct Purchaser Plaintiffs shall file motions against the other in the Action during the pendency of this Agreement.

62. If Settlement Class Counsel believes that NGK has refused to use reasonable efforts to cooperate under the terms of this Agreement, Settlement Class Counsel shall meet and confer with NGK. Upon reaching an impasse in any meet and confer, Settlement Class Counsel may seek an Order from the Court compelling NGK to use reasonable best efforts. Nothing in this provision shall limit in any way NGK's ability to defend the level of cooperation provided or to defend compliance with the terms of the Cooperation provisions in this Agreement.

K. Rescission if this Agreement is Not Approved or Final Judgment is Not Entered

63. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify the Settlement Class in accordance with the specific Settlement Class definition set forth in Paragraph 12 of this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 21, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then NGK and Direct Purchaser Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. The provisions of Paragraphs 30 and 37 of this Agreement shall remain in effect in the event this

Agreement is rescinded. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 75. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

64. In the event that this Agreement does not become final as set forth in Paragraph 21, or this Agreement otherwise is terminated, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to NGK less only disbursements made, or the amount of obligations incurred in accordance with Paragraphs 30 and 37. NGK expressly reserves all rights and defenses if this Agreement does not become final.

65. Further, and in any event, Direct Purchaser Plaintiffs and NGK agree that this Agreement, whether or not it shall become final, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law or of any liability or wrongdoing whatsoever by NGK, or any of the other Releasees, and shall not be used against NGK or any of the Releasees, or of (ii) the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the Action, and shall not be used against NGK or the other Releasees, and evidence thereof shall not be discoverable or used in any way, whether in the Action or in any other action or proceeding, against NGK or the Releasees. Nothing in this Paragraph 65 shall prevent Direct Purchaser Plaintiffs from using Cooperation Materials produced by NGK to prosecute Oxygen Sensor claims against DENSO in the MDL Litigation to establish (i) or (ii) above.

66. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to NGK as provided in this Agreement in exchange for the payment of the Settlement Amount, as well as Cooperation if required, by NGK.

L. Miscellaneous

67. NGK, Direct Purchaser Plaintiffs, and Settlement Class Counsel agree not to disclose publicly or to any other person the terms of this Agreement until this Agreement is fully executed by all parties and Direct Purchaser Plaintiffs.

68. NGK shall submit all materials required to be sent to appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

69. This Agreement does not settle or compromise any claim by Direct Purchaser Plaintiffs or any Settlement Class Member asserted against any defendant or alleged co-conspirator other than NGK and the Releasees. All claims against such other defendants or alleged co-conspirators are specifically reserved by Direct Purchaser Plaintiffs and the Settlement Class. All claims based on the alleged illegal conduct and sales of Oxygen Sensors by any Settlement Class Member against any and all former, current, or future defendants or co-conspirators or any other person other than NGK and the Releasees are specifically reserved by Direct Purchaser Plaintiffs and Settlement Class Members. NGK's and the other Releasees' sales of Oxygen Sensors to the Settlement Class and their alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Action as a potential basis for damage claims and shall be part of any joint and several liability claims against other current or future defendants in the Action or other persons or entities other than NGK and the other Releasees. NGK and the Releasees shall not be responsible for any payment to Direct Purchaser Plaintiffs



other than the Settlement Amount and the amounts specifically agreed to in Paragraphs 30 and 37.

70. The United States District Court for the Eastern District of Michigan shall retain jurisdiction over the implementation, interpretation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Direct Purchaser Plaintiffs and NGK, including challenges to the reasonableness of any party's actions. This Agreement shall be governed by and interpreted according to the substantive laws of the state of Michigan without regard to its choice of law or conflict of laws principles. NGK will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

71. This Agreement constitutes the entire, complete and integrated agreement between Direct Purchaser Plaintiffs and NGK pertaining to the settlement of the Action against NGK, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between Direct Purchaser Plaintiffs and NGK in connection herewith. This Agreement may not be modified or amended except in writing executed by Direct Purchaser Plaintiffs and NGK, and approved by the Court.

72. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Direct Purchaser Plaintiffs and NGK. Without limiting the generality of the foregoing, upon final approval of this Agreement each and every covenant and agreement made herein by Direct Purchaser Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasors. The Releasees (other than the NGK entities, which

are parties to this Agreement) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

73. This Agreement may be executed in counterparts by Direct Purchaser Plaintiffs and NGK, and a facsimile or Portable Document Format (.pdf) image of a signature shall be deemed an original signature for purposes of executing this Agreement.

74. Neither Direct Purchaser Plaintiffs nor NGK shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

75. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication or document shall be provided by facsimile, or electronic mail (provided that the recipient acknowledges having received that email, with an automatic “read receipt” or similar notice constituting an acknowledgement of an email receipt for purposes of this Paragraph 75), or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

76. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of his or her respective client(s) subject to Court approval.

Date: January 21, 2022

*William H. London*

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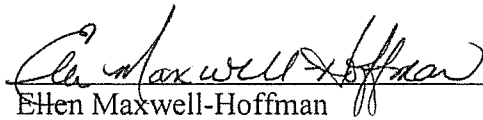
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