

THIS AGREEMENT is made the 10th day of July, 2018

BETWEEN:

Kristina Essa and Natalie Bickert

and

Whirlpool Corporation, Sears Holdings Management Corporation, Sears Roebuck and Co., Inc., Sears Canada Inc., Whirlpool Canada Co., and Whirlpool Canada LP

WHEREAS on September 6, 2013, the plaintiff Natalie Bickert commenced British Columbia Supreme Court Action No. VLC-S-S-136688 against the defendants Whirlpool Corporation, Whirlpool Canada Co., Whirlpool Canada LP, Sears Canada Inc., Sears, Roebuck and Co. and Sears Holdings Management Corporation (collectively the “Defendants”) alleging negligence and breaches of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 and the *Sale of Goods Act*, RSBC 1996, c 410;

WHEREAS on June 8, 2016, the plaintiff Kristina Essa commenced Alberta Court of Queen’s Bench Action No. 1603-10241 against the Defendants alleging negligence and breaches of the *Fair Trading Act*, RSA 2000, c F-2 and the *Sale of Goods Act*, RSA 2000, c S-2;

WHEREAS Ms. Bickert and Ms. Essa (“the Plaintiffs”) and the Defendants (together with the Plaintiffs, the “Parties”) engaged in extensive settlement negotiations, including three days of negotiations in Chicago and a full day mediation in Vancouver with the Honourable Kenneth J. Smith acting as mediator;

WHEREAS the Parties now wish to settle, fully and finally, all of the claims that have been or could have been brought in the BC and Alberta Actions on behalf of the Settlement Class against the Defendants relating to the Class Dishwashers, save and except only claims for personal injury or damage to property other than the Class Dishwashers;

WHEREAS the Parties understand, acknowledge and agree that this Agreement constitutes the compromise of disputed claims, liability for which is denied by the Defendants on the basis that the Dishwashers are safe and reliable, and that it is their mutual desire and intention that the claims in the Actions be settled and dismissed or discontinued, subject to and according to the below terms and conditions.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, representations and warranties set out in this Agreement, the Parties agree as follows:

I. DEFINITIONS

1. In this Agreement, in addition to the terms defined in the recitals above, the following definitions will apply:

a. “Actions” or “Lawsuits” mean collectively (1) the BC Action, and (2) the Alberta Action;

b. “Administration and Notice Expenses” means reasonable fees, costs and expenses incurred for the (1) preparation and distribution of the Notice, the TCO Repair Notice, the Prequalified Notices and the notices sent to NewGen and Raptor Owners, including the identification of Prequalified Class Members and Prequalified NewGen and Raptor Owners, and the compilation of related information with respect to those Prequalified claimants, (2) costs of Publication Notice, (3) receipt and adjudication of claims submitted by Settlement Class Members and NewGen and Raptor Owners for compensation or rebates under the Settlement, including the costs of administering a Settlement Website for the review of the Notice and the submission of claims, (4) receipt and processing of Objections to the Settlement and Opt-out forms submitted by Settlement Class Members who wish to exclude themselves from the Settlement Class, (5) preparation of status reports to the Parties, (6) preparation of tax returns for any Settlement bank accounts, (7) distribution of Settlement payments or other benefits to Dishwasher owners or Class Members who submit timely Valid Claims, and (8) other costs of notice and administration of the Settlement.

- c. “Agreement” or “Settlement Agreement” means this Agreement, including any appendices.
- d. “Alberta Action” means the putative class action lawsuit pending, as of the date of this Agreement, in the Alberta Court of Queen’s Bench as Action No. 1603-10241 with the style of cause *Essa v. Whirlpool Corporation et al.*
- e. “BC Action” means the putative class action lawsuit pending, as of the date of this Agreement, in the British Columbia Supreme Court as Action No. VLC-S-S-136688 with the style of cause *Bickert v. Whirlpool Corporation et al.*
- f. “Claims Deadline” means 180 days after the Notice Date for all claims except future claims for Overheating Events. For these future claims, the Claims Deadline is as set out in this Agreement.
- g. “Claim Form” means the proposed form attached as Appendix A to this Agreement, to be submitted to the Settlement Administrator by Settlement Class Members who wish to make a claim and for NewGen and Raptor Owners means a claim form in substantially the form of Appendix A, with necessary modifications.
- h. “Class Counsel” means Klein Lawyers LLP, James H. Brown & Associates and Higgerty Law.
- i. “Class Counsels’ Fees and Disbursements” means the amount to be paid by the Defendants to Class Counsel pursuant to this Agreement for class counsel fees and for the reimbursement of Class Counsel’s reasonable disbursements, subject to Court approval.
- j. “Class Dishwashers” means all KitchenAid®, Kenmore® and Whirlpool® brand automatic dishwashers manufactured by Whirlpool between October 2000 and January 2006 that contained either a “Rushmore” or “Rush” electronic control board. A list of

model and serial numbers by which Rushmore and Rush Dishwashers can be identified is attached as Appendix B, and will be published on the Settlement Website. Dishwashers equipped with “NewGen” or “Raptor” electronic control boards are not Class Dishwashers.

k. “Class Member” or “Settlement Class Member” means all Persons who are members of the Settlement Class who have not excluded themselves from the Settlement Class by submitting an Opt Out Form during the Opt Out Period as prescribed by the Court in the Preliminary Approval Order.

l. “Class Representative” or “Plaintiff” means each of Kristina Essa and Natalie Bickert.

m. “Court” means the Alberta Court of Queen’s Bench.

n. “Dishwasher” means all KitchenAid®, Kenmore® and Whirlpool® brand automatic dishwashers manufactured by Whirlpool between February 1998 and March 2012 with full electronic controls and an electronic control board, as opposed to any dishwasher manufactured with electromechanical controls. As distinct from Class Dishwashers, which refer only to dishwashers that contain a Rushmore or Rush electronic control board, Dishwashers include dishwashers with NewGen or Raptor electronic control boards.

o. “Effective Date” means the first date that is three business days after all of the following have occurred: (1) the Court has issued the Final Approval Order, (2) the time during which the Parties and Class Members may appeal or seek leave to appeal the Final Approval Order has elapsed, and (3) the Settlement has become final, either because no timely appeal was taken or because any appeal has been finally adjudicated and dismissed. For the purposes of this paragraph, an “appeal” does not include any appeal that concerns solely the issue of Class Counsels’ Fees and Disbursements.

p. “Electronic Control Board” or “ECB” means the electronic control board of a Dishwasher. The relevant ECBs were built on four different engineering platforms: Rushmore, Rush, NewGen and Raptor.

q. “Final Approval Hearing” means the final hearing, to be held after the Notice has been provided to the Settlement Class in accordance with this Agreement, to determine whether to grant the Final Approval Order, and to determine whether to grant approval of Class Counsels’ Fees and Disbursements.

r. “Final Approval Order” means the proposed Order granting final approval of the Settlement as fair and reasonable and in the best interests of the Settlement Class Members pursuant to the *Class Proceedings Act*, S.A. 2003, c. C-16.5, dismissing Released Claims and approving discontinuance of claims other than Released Claims, with the terms and substantially in the form of Appendix C to this Agreement.

s. “Future Overheating Subclass” means all Settlement Class Members who, within 10 years after the Purchase of the Class Dishwasher or within 2 years after the Notice Date, whichever is later, experience an Overheating Event.

t. “NewGen and Raptor Owners” means Dishwasher owners who own or owned Dishwashers equipped with either a NewGen or a Raptor platform Electronic Control Board. A list of model and serial numbers by which NewGen and Raptor Dishwashers can be identified is attached as Appendix D, and will be published on the Settlement Website.

u. “Notice” or “Notice of Certification and Settlement” means the proposed Notice of Certification and Settlement attached as Appendix E, to be approved by the Court and to be distributed in accordance with the Notice Plan.

v. “Notice Date” means 45 days after the grant of the Preliminary Approval Order, by which date the Settlement Administrator will have completed the mailing of the

Notice, the Prequalified Notices and the TCO Repair Notice, the Publication Notice will have been published, the Settlement Website and any toll-free telephone numbers will be operational and purchase of internet banners will have commenced in accordance with the Notice Plan.

w. “Notice of Claim Denial” means the form that the Settlement Administrator will send, by Canada Post mail, to each Person who has submitted a Claim Form that the Settlement Administrator has determined, subject to review and approval by Class Counsel, to not be a Valid Claim.

x. “Notice Plan” means the prescribed notices and manner of distribution and publication set forth in Section VII of this Agreement.

y. “Opt Out” means submission by a Settlement Class Member of a completed Opt Out Form before the expiry of the Opt Out Period.

z. “Opt Out Form” means the Form attached as Appendix F.

aa. “Opt Out Period” means the 60 day period following the Notice Date.

bb. “Overheating Event” means the overheating of the Dishwasher’s Electronic Control Board such that the Class Member or another Person observed or experienced smoke, flames, fumes, sparks or electrical arcing from the control console area of their Dishwasher.

cc. “Paid Qualifying Repair” means a Qualifying Repair for which the Class Member paid some amount out-of-pocket, including but not limited to out-of-pocket costs for parts or labour or both.

dd. “Paid Qualifying Replacement” means a Qualifying Replacement for which the Class Member paid some amount out-of-pocket for a replacement dishwasher.

ee. “Past Overheating Subclass” means all Settlement Class Members who experienced an Overheating Event within 12 years after the Purchase of the Class Dishwasher but before the Notice Date.

ff. “Person” means any natural person, and includes Class Members as well as all Persons entitled to benefits pursuant to the terms of the Settlement.

gg. “PHM Methodology” means a methodology that is consistent with the 2007-2008 Product Hazard Management analysis by Whirlpool and includes using key word logic and keyword filters of multiple data sources available from Whirlpool and Sears, including claims data, call center data, and other data sources, to identify individuals with a Dishwasher that experienced an Overheating Event.

hh. “Preliminary Approval Order” means the proposed Order granting conditional certification of the Alberta Action, to the extent consistent with this Agreement and for settlement purposes, appointing the Plaintiff Essa as representative of the Settlement Class, granting preliminary approval of the Settlement as fair and reasonable and in the best interests of the Settlement Class, appointing the Settlement Administrator, establishing the manner in which Settlement Class Members may Opt Out to exclude themselves from the Settlement Class, establishing procedures for the receipt of objections to the Settlement, and approving the Notice Plan and the form of the Notice, the Publication Notice, the Pre-qualified Notices and the TCO Repair Notice, with the terms and substantially in the form of Appendix G to this Agreement.

ii. “Prequalified Settlement Class Members” means Settlement Class Members who can be identified in databases maintained by Whirlpool or Sears, to the extent such databases are available and reasonably accessible, as having paid some amount for a Qualifying Repair, or Qualifying Replacement. The PHM Methodology will be used to identify Prequalified Settlement Class Members. The Defendants will provide the Settlement Administrator with all information and assistance, reasonably available and

necessary, to identify Prequalified Settlement Class Members and compile information to process their claims.

jj. “Prequalified Notices” means the proposed Prequalified Notice attached as Appendix H, and the Tailored Prequalified Notice attached as Appendix K, to be sent as applicable, along with the Notice to Prequalified Settlement Class Members in accordance with the Notice Plan.

kk. “Publication Notice” means the proposed notice, with the terms and form of Appendix I attached to this Agreement, to be approved by the Court and to be published in accordance with the Notice Plan,

ll. “Purchase” means the date of the initial purchase of a new Dishwasher.

mm. “Qualifying Repair” means within 12 years after Purchase: (1) an ECB repair or replacement by a Service Technician, or (2) other documented out-of-pocket costs, including but not limited to out-of-pocket costs for parts or labour or both, to repair a Dishwasher due to an Overheating Event.

nn. “Qualifying Replacement” means within 12 years after Purchase, the replacement of a Dishwasher or otherwise taking a Dishwasher out of service, rather than repairing the Dishwasher, after contacting Whirlpool, Sears or a Service Technician about an Overheating Event.

oo. “Rebate Vendor” means the firm paid for and selected by Whirlpool, in consultation with Class Counsel, to administer the Whirlpool-Sponsored Rebate Program in accordance with this Agreement. The Rebate Vendor may be, but is not required to be, the Settlement Administrator.

pp. “Released Claims” means all claims released by the Plaintiffs and the Settlement Class Members pursuant to the release and waiver set out in Section VIII of this Agreement.

qq. “Releasees” means (1) the Defendants, together with their respective predecessors and successors in interest, parents, subsidiaries, affiliates, receivers, receiver-managers, trustees and assigns, (2) each of the Defendants’ respective past, present and future officers, directors, agents, representatives, servants, employees, lawyers and insurers, and (3) all distributors, retailers, suppliers and other entities who were or are in the chain of design, testing, manufacture, assembly, distribution, marketing, sale, installation or servicing of the Class Dishwashers

rr. “Sears” means Sears Canada Inc. and its successors, predecessors, assigns, affiliates, parent companies, subsidiaries, shareholders, officers, directors, agents, insurers, lawyers and employees.

ss. “Service Technician” means a Sears authorized, Whirlpool authorized, other manufacturer authorized or other factory service technician.

tt. “Settlement” means the settlement provided for in this Agreement.

uu. “Settlement Administrator” means a sufficiently qualified firm selected by Whirlpool, approved by Class Counsel and appointed by the Court to administer the Settlement.

vv. “Settlement Website” means a website created by the Settlement Administrator to facilitate notice, the making of claims and other administrative components of the Settlement, as detailed in Section VII of this Agreement.

ww. “Settlement Class” and “Settlement Class Members” means all residents in Canada who (1) purchased a new Class Dishwasher, (2) acquired a Class Dishwasher as

part of the purchase or remodel of a home, or (3) received as a gift, from a donor meeting those requirements, a new Class Dishwasher not used by the donor or by anyone else after the donor purchased the Class Dishwasher and before the donor gave the Class Dishwasher to the claimant and who do not Opt Out. The Settlement Class consists of two subclasses, the Past Overheating Subclass and the Future Overheating Subclass (each defined above). Excluded from the Settlement Class are (1) officers, directors and employees of the Defendants or their parents or subsidiaries, (2) insurers of Settlement Class Members, (3) subrogees or all entities claiming to be subrogated to the rights of Settlement Class Members, and (4) issuers or providers of extended warranties or service contracts for Class Dishwashers.

xx. “TCO” means the thermal cut-off device found on certain Dishwashers’ Electronic Control Boards.

yy. “TCO Repair Notice” means the proposed TCO Repair Notice attached as Appendix J, to be sent, along with the Notice and in accordance with the Notice Plan, to those Settlement Class Members whom the Defendants identify as having experienced a TCO repair.

zz. “Valid Claim” means a Claim Form that (1) is submitted in a timely fashion by a claimant in accordance with the requirements of this Agreement and the Final Approval Order, (2) is signed with a certification that the information is true and correct to the best of the claimant’s knowledge and recollection, and (3) contains all of the information and documentation required for that claimant to be eligible to receive one or more of the benefits provided in this Agreement.

aaa. “Whirlpool” means Whirlpool Corporation and its consolidated subsidiaries and related entities, including without limitation Whirlpool Canada Co. and Whirlpool Canada LP and their successors, predecessors, assigns, affiliates, subsidiaries, shareholders, partners, officers, directors, agents, insurers, lawyers and employees.

bbb. “Whirlpool-Sponsored Rebate Program” or “Rebate Program” means the cash rebate program that is being offered to all Settlement Class Members as described in this Agreement.

II. CONDITIONAL CERTIFICATION OF NATIONWIDE SETTLEMENT CLASS

Consent Certification

2. For the purposes of implementing this Agreement, and for no other purpose, the Defendants consent to the conditional certification of the nationwide Settlement Class, the Past Overheating Subclass and the Future Overheating Subclass.

Alberta Court

3. The Parties agree to seek the Preliminary Approval Order and the Final Approval Order in the Court of Queen’s Bench of Alberta.

4. If, for any reason, the Settlement is not approved by the Court or otherwise fails to become effective, the Defendants’ consent to certification of the nationwide Settlement Class, the Past Overheating Subclass and the Future Overheating Subclass will be null and void, and the Parties will return to their prior positions in the Actions.

III. PROCEDURES FOR SETTLEMENT APPROVAL AND IMPLEMENTATION

Assignment of a Judge

5. As soon as practicable after the execution of this Agreement, the Plaintiff Essa will contact the Court, in the manner required by the *Alberta Rules of Court* and any applicable practice directions or other similar requirements, and request that a Justice be assigned to the Alberta Action.

6. At the same time or as soon thereafter as is reasonably practicable, the Plaintiff Essa will request a date, before the assigned Justice, for a hearing to seek the Preliminary Approval Order.

The Preliminary Approval Hearing

7. The Plaintiff Essa will bring an application in the Alberta Action for, and the Defendants will consent to, the granting of the Preliminary Approval Order.

8. The Plaintiff Essa will seek orders, by consent, that:

a. For the purposes of the Settlement, the Alberta Action is certified as a national class proceeding against the Defendants;

b. The Settlement and this Agreement, including its Appendices, are granted preliminary approval as fair and reasonable and in the best interests of Settlement Class Members;

c. If the Court does not grant final approval of the Settlement Agreement at the Final Approval Hearing or final approval is reversed on appeal, the Alberta Action will be decertified, by consent, and the Plaintiffs are at liberty to continue the Actions and the Defendants retain the right to oppose certification and defend the Actions.

d. The Settlement Class is defined as:

Settlement Class Members: All residents in Canada who (1) purchased a new KitchenAid®, Kenmore® or Whirlpool® brand automatic dishwasher manufactured by Whirlpool between October 2000 and January 2006 that contained either a Rushmore or Rush electronic control board (“Class Dishwasher”), (2) acquired a Class Dishwasher as part of the purchase or remodel of a home, or (3) received as a gift, from a donor meeting those requirements, a new Class Dishwasher not used by the donor or by anyone else after the donor purchased the Class Dishwasher and before the donor gave the Class Dishwasher to the claimant.

Excluded from the Settlement Class are (1) officers, directors and employees of the Defendants or their parents or subsidiaries, (2) insurers of Settlement Class Members, (3) subrogees or all entities claiming to be subrogated to the rights of

Settlement Class Members, and (4) issuers or providers of extended warranties or service contracts for Class Dishwashers.

e. The subclasses are defined as:

Past Overheating Subclass: All Settlement Class Members whose Class Dishwashers' electronic control boards overheated within 12 years after the Purchase of the Class Dishwasher but before the Notice Date.

Future Overheating Subclass: All Settlement Class Members whose Class Dishwashers' electronic control boards overheat within 10 years after the Purchase of the Class Dishwasher or within 2 years after the Notice Date whichever is later.

f. The plaintiff Essa is appointed as the representative plaintiff for the Settlement Class, the Past Overheating Subclass and the Future Overheating Subclass;

g. Klein Lawyers LLP, Higgerty Law and James H. Brown & Associates are appointed as Class Counsel;

h. The representative plaintiff alleges, on behalf of the Class, that the Defendants were negligent and in breach of the *Fair Trading Act*, RSA 2000, c F-2 and the *Sale of Goods Act*, RSA 2000, c S-2, and comparable legislation in other jurisdictions;

i. The Class claims damages from the Defendants and statutory remedies pursuant to the *Fair Trading Act* and the *Sale of Goods Act*; and comparable legislation in other jurisdictions;

j. The following is certified as the common issue:

i. Are the Defendants liable to the Class?

k. The Notice of Certification and Settlement and the Publication Notice are approved and are to be distributed by the Settlement Administrator substantially in the manner set out in the Notice Plan;

l. The Prequalified Notices are approved and are to be sent, as applicable, with the Notice of Certification and Settlement to Prequalified Settlement Class Members substantially in the manner set out in the Notice Plan;

m. The TCO Repair Notice is approved and is to be sent, with the Notice of Certification and Settlement and substantially in the manner set out in the Notice Plan, to Settlement Class Members whom the Defendants identify as having experienced a TCO repair;

n. The Defendants will pay the amounts required under the Settlement Agreement, including the cost of publication of the Publication Notice and mailing of the Notice of Certification and Settlement, the Prequalified Notices and the TCO Repair Notice in accordance with the Notice Plan;

o. The Opt Out Form is approved;

p. Class Members may opt out of the Alberta Action by delivering a complete, signed Opt Out Form to the Settlement Administrator during the Opt Out Period;

q. Objections to the approval of the Settlement Agreement or Class Counsel Fees and Disbursements must be made in writing and must contain: (1) the name of this lawsuit (*Essa v. Whirlpool Corporation*, Court of Queen's Bench of Alberta, Action No. 1603-10241); (2) the objector's full name and current address; (3) whether the objector bought, owns or owned a KitchenAid®, Kenmore® or Whirlpool® brand Dishwasher manufactured between October 2000 and January 2006; (4) the serial number and model number of the Dishwasher; (5) the specific reasons for objection; (6) any evidence and supporting papers (including, but not limited to, all briefs, written evidence, and

declarations) that the objector wants the Court to consider in support of the objection; (6) the objector's signature; (7) the date of signature; and (8) if the objector plans to appear and speak at the Final Approval Hearing, on his or her own or through a lawyer, a statement indicating that intention. The written objection shall be mailed to the Settlement Administrator with a postmark no later than the end of the Opt Out Period. The Settlement Administrator shall provide all written objections so received to Class Counsel and to the Defendants for filing with the Court before the Final Approval Hearing.

r. The Parties may make non-substantive amendments to the Settlement Agreement, including its Appendices, provided that each Party to the Settlement Agreement agrees in writing to any such amendments; and

s. The Settlement Administrator is appointed as the administrator to administer the Settlement and fulfill its functions in accordance with and as required by the Settlement Agreement and the Preliminary Approval Order.

The Final Approval Hearing

9. On the date set by the Court for the Final Approval Hearing, the Plaintiff Essa will bring an application for, and the Defendants will consent to, the granting of the Final Approval Order.

10. The Plaintiff Essa will seek orders, by consent, that:

- a. The Settlement is fair and reasonable and in the best interests of Settlement Class Members and the Settlement and the Final Approval Order are binding on the Parties and on every Settlement Class Member, including persons under disability, whether or not the Settlement Class Member claims or receives monetary compensation or other value under the Settlement, unless the Settlement Class Member opted out before the expiry of the Opt Out Period;
- b. Upon issuance of the Final Approval Order, the Releasees are forever and absolutely released by the Settlement Class Members from the Released Claims;

- c. Settlement Class Members are barred from making any claim or taking or continuing any proceeding arising out of, or relating to, the Released Claims, except as expressly provided for in the Settlement Agreement, against any Releasee or other person, corporation or entity that might claim damages and/or contribution and indemnity or other relief against any of the Defendants;
- d. The Court will retain continuing jurisdiction over the Settlement and its implementation, interpretation and enforcement.
- e. A payment by the Defendants to Class Counsel for Class Counsel fees, in the amount of \$600,000 plus applicable taxes, is approved and is to be paid by the Defendants to Class Counsel within 30 days after the Effective Date; and
- f. A payment by the Defendants to Class Counsel for reasonable disbursements incurred by Class Counsel, in the amount of \$90,000, is approved and is to be paid by the Defendants to Class Counsel within 30 days after the Effective Date;

11. The Parties will cooperate and take all reasonable actions to accomplish the above, obtain the Final Approval Order and effect the Settlement. If the Court fails to issue the Final Approval Order, the Parties will use all reasonable efforts that are consistent with this Agreement to cure any defect identified by the Court. If, despite such efforts, the Court does not issue the Final Approval Order, the Parties will return to their positions in the Actions as they were immediately before the execution of the Settlement Agreement.

12. If the Court fails to approve Class Counsels' Fees and Disbursements as sought, the Defendants' obligation will be to pay only the amount of any approved Class Counsels' Fees and Disbursements and the Settlement Agreement and Final Approval Order will be otherwise unaffected.

IV. SETTLEMENT BENEFITS

Benefits Available to All Settlement Class Members

Rebate Program

Whirlpool-Sponsored New Dishwasher Rebate Program

13. All Settlement Class Members who do not Opt Out of the Alberta Action before the expiry of the Opt Out Period will be eligible to receive a cash rebate from Whirlpool on the purchase of a new KitchenAid®, Kenmore® or Whirlpool® brand dishwasher of the Settlement Class Member's choice.

14. The rebate for the purchase of new Kenmore® and Whirlpool® brand dishwashers will be 10% off the retail purchase price (not to include sales taxes, delivery fees and installation charges). The rebate for the purchase of new KitchenAid® brand dishwashers will be 15% off the retail purchase price (not to include sales taxes, delivery fees and installation charges). These rebates will be in addition to any other sales promotion that Whirlpool, Sears or any retailer or seller offers towards a new KitchenAid®, Kenmore® or Whirlpool® brand dishwasher.

15. Settlement Class Members will be able to electronically submit their Claim Forms for the rebates through the Settlement Website. Each Settlement Class Member will be required to register his or her name, address, telephone number, email address and his or her Class Dishwasher's model and serial number to establish eligibility for this rebate; however, if Whirlpool or Sears has the model and serial number of the Settlement Class Member's Class Dishwasher in one of its databases, that information will automatically prepopulate any online Claim Form completed by the Settlement Class Member.

16. Each Settlement Class Member will be entitled to a single rebate for each Class Dishwasher he or she purchased or acquired. For example, if a Settlement Class Member bought and registered two Class Dishwashers, the Settlement Class Member would be eligible to receive two rebates.

17. To qualify for the rebate, the Settlement Class Member need not currently own a Class Dishwasher; the rebate is available to all qualified Settlement Class Members who ever owned a Class Dishwasher.

Enhanced Rebate Offer for Settlement Class Members Who Experienced TCO Repairs

18. Whirlpool and Sears will search their databases and identify Settlement Class Members who experienced a TCO repair and provide the Settlement Administrator with the names of these Settlement Class Members and any associated information.

19. The Settlement Administrator will mail and/or email (in cases where both postal and email addresses are available, the Settlement Administrator will both mail and email) a TCO Repair Notice to these Settlement Class Members offering them an enhanced rebate of 15% off the retail purchase price (not to include sales taxes, delivery fees, and installation charges) of a new Kenmore® or Whirlpool® brand dishwasher or a 20% discount off the retail purchase price (not to include sales taxes, delivery fees, and installation changes) of a new KitchenAid® brand dishwasher. These rebates will be in addition to any other sales promotion that Whirlpool, Sears or any retailer or seller offers towards a new KitchenAid®, Kenmore® or Whirlpool® brand dishwasher.

20. Each Settlement Class member will be required to register his or her name, address, telephone number and email address as well as his or her Class Dishwasher's model and serial number to establish eligibility for this enhanced rebate; however, if Whirlpool or Sears has the model and serial number of the Settlement Class Member's Class Dishwasher in one of its databases, that information will automatically prepopulate any online Claim Form completed by the Settlement Class Member.

21. Each Settlement Class Member will be entitled to a single rebate for each Class Dishwasher he or she purchased that experienced a TCO repair regardless of the number of TCO repairs experienced. For example, if a Settlement Class Member bought and registered two Class Dishwashers, each of which experienced a TCO repair, the Settlement Class Member would be eligible to receive two enhanced rebates.

22. If a Class Member experienced a TCO repair but such repair is not reflected in Sears' or Whirlpool's databases, the Class Member may qualify for the enhanced rebate by providing documentary evidence of the TCO repair.

Administration of the Rebate Program

Rebate Vendor

23. Whirlpool will hire the Rebate Vendor to establish a website to promote and administer the Rebate Program, to allow Settlement Class Members to file Claim Forms for rebates, to disseminate rebate forms to eligible Settlement Class Members who submitted Valid Claims and to mail rebate cheques to qualifying Settlement Class Members.

Deadline to Submit Claims for Rebate Program

24. A Settlement Class Member who wishes to apply for one or more rebates must submit a Claim Form by the Claims Deadline.

Deadline to Redeem Rebates

25. The Rebate Vendor will disseminate rebate forms to eligible Settlement Class Members who submitted Valid Claims within 30 days after the Claims Deadline or the Effective Date, whichever is later. Settlement Class Members will be required to mail or email to the Settlement Administrator or the Rebate Vendor their completed rebate form and proof of purchase no later than 150 days after the Claims Deadline or the Effective Date, whichever is later, thereby giving Settlement Class Members five months to make an eligible purchase and submit their rebate form and proof of purchase.

Payment of Redeemed Rebates

26. The Settlement Administrator or the Rebate Vendor will mail rebate cheques to qualifying Class Members within 12 weeks after the completed and valid rebate form and proof of purchase has been submitted to the Settlement Administrator or the Rebate Vendor.

27. The Rebate Vendor will provide Class Counsel and Whirlpool with periodic status reports regarding claims, rebates paid and any rebate claims that have been rejected.

Compensation to Past Overheating Subclass Members

Proof of Claim

28. To qualify for any compensation described in this section, a Past Overheating Subclass Member who does not Opt Out must either be a Prequalified Settlement Class Member or must provide sufficient documentary proof that within 12 years after the Purchase of the Class Dishwasher but before the Notice Date: (1) the claimant's Class Dishwasher experienced an Overheating Event, and (2) the claimant had a Qualifying Repair or Qualifying Replacement of the Class Dishwasher.

29. Sufficient documentary proof of an Overheating Event includes, but is not limited to:

a. For claims to receive reimbursements for Paid Qualifying Repairs, a Claim Form declaration that the claimant experienced, within 12 years after the Purchase of the Class Dishwasher, an Overheating Event.

b. For claims to receive reimbursements for Paid Qualifying Replacements, service tickets, service receipts, entries in Whirlpool's or Sears's databases or service company records.

30. Sufficient documentary proof that the claimant experienced a Qualifying Repair or Qualifying Replacement includes, but is not limited to, cancelled cheques, credit card statements, invoices, receipts, identification in Whirlpool's or Sears' databases and service company records.

Prequalified Settlement Class Members

Proof of Claim

31. Prequalified Settlement Class Members will not be required to submit documentation to support their claim unless they dispute the prequalified amount to be paid in satisfaction of their claim. Prequalified Settlement Class Members will be required only to enter or confirm their current name and address, check the eligibility boxes on the Claim Form and sign the Claim Form certifying that the statements are true and correct. Where an online Claim Form is used, the claimant will electronically sign the Claim Form certifying that the statements are true and correct.

32. The PHM Methodology will be used to identify Prequalified Settlement Class Members.

Prequalified Notice

33. The Prequalified Notice in the form attached hereto as Appendix H will be sent, along with the Notice, via mail and also email (if an email address is available) to applicable Prequalified Settlement Class Members and will include a pre-printed unique claim identification number for the Prequalified Settlement Class Member that he or she will enter into the online Claim Form or print on his or her hardcopy of the Claim Form. The unique claim identification number will be used by the Settlement Administrator to identify and differentiate between those Settlement Class Members who have been identified in Whirlpool's or Sears' databases as a Prequalified Settlement Class Member and those who have not.

Compensation to Prequalified Settlement Class Members

34. If Whirlpool's or Sears' databases reflect that the Prequalified Settlement Class Member experienced an Overheating Event, and if the database records reflect the amount paid by the claimant for a Qualifying Repair or Qualifying Replacement, the prequalified amount offered to the Class Member will be his or her out-of-pocket cost for the Qualifying Repair or Qualifying Replacement, subject to paragraph 41 below.

35. If Whirlpool's or Sears' databases reflect that the Prequalified Settlement Class Member experienced an Overheating Event, and if the database records reflect that the Prequalified Settlement Class Member received a repair or replacement that was not paid for in its entirety by Whirlpool or Sears but the amount paid for a Qualifying Repair or Qualifying Replacement is not reflected, the prequalified amount offered to the Class Member will be \$200.

36. If Whirlpool's or Sears' databases reflect that the Prequalified Class Member experienced an Overheating Event, and if the database records reflect a likelihood that a free repair or replacement occurred, the Prequalified Settlement Class Member will be mailed or emailed (or both), the Tailored Prequalified Notice in the form attached hereto as Appendix K, along with the Notice, advising the Prequalified Class Member that he or she received a free repair or replacement and will not be offered any additional compensation under the Settlement. The Tailored Prequalified Notice will also advise the Prequalified Class Member of his or her right to file a claim and dispute that assertion.

37. If a Prequalified Settlement Class Member wishes to dispute the prequalified amount of his or her claim, the Prequalified Settlement Class Member must submit supporting documentation showing the amount that he or she paid for the Qualifying Repair or Qualifying Replacement for a determination by the Settlement Administrator.

38. If a claimant cannot provide the supporting documentation described above, the Settlement Administrator will search Sears' and Whirlpool's databases for proof of the claimed Qualifying Repair or Qualifying Replacement. To the extent that the databases provide such proof, the supporting documentation requirement will be satisfied.

39. To establish eligibility for a cash settlement payment, a Past Overheating Subclass Member who does not Opt Out will be required to check an eligibility box on the Claim Form stating that they did not receive either a full refund of the purchase price paid for the Class Dishwasher or a free exchange of the Class Dishwasher for a new dishwasher.

40. No Settlement Class Member who received from Whirlpool or Sears either a full refund of the purchase price he or she paid for the Class Dishwasher or a free exchange of the Class Dishwasher for a new dishwasher of any model will be entitled to any payment or other compensation, unless (1) the claimant received a free exchange of the Class Dishwasher for a new Dishwasher, and (2) the claimant's experiences with the second Dishwasher qualifies the claimant for compensation for that second Dishwasher under the terms of this Agreement.

41. The compensation to be paid to claimants who satisfy the above requirements for Past Overheating Subclass Members will be:

a) Reimbursement for Paid Qualifying Repairs: If the claimant is a Prequalified Settlement Class Member, or if the claimant provides sufficient documentary proof that the claimant meets the threshold requirements described above and that the claimant actually paid some out-of-pocket cost for a Qualifying Repair, the claimant will be reimbursed for the amount that sufficient documentary proof shows the claimant actually paid for parts and labour, up to the full cost of the Qualifying Repair. If the claimant can provide sufficient documentary proof of the Qualifying Repair but that documentary

proof does not show the amount paid for the Qualifying Repair, the claimant's settlement payment will be \$200.

b) Reimbursement for Paid Qualifying Replacements: If the claimant is a Prequalified Settlement Class Member, or if the claimant provides sufficient documentary proof that the claimant meets the threshold requirements described above and that the claimant actually paid some out-of-pocket cost for a Qualifying Replacement, Whirlpool will reimburse the out-of-pocket costs paid by the claimant for the new dishwasher up to \$300 for a Whirlpool®-built replacement dishwasher (including a Whirlpool®-built KitchenAid® or Kenmore® brand dishwasher) and up to \$200 for a non- Whirlpool®-built replacement dishwasher.

c) All Settlement Class Members who can be identified as having experienced Overheating Events will be sent the Notice and will have an opportunity to submit a Claim Form, regardless of what Whirlpool's or Sears' databases show regarding voluntary benefits previously provided to those Class Members. If the claimant provides sufficient documentary proof that the claimant meets the threshold requirements described above and that the claimant actually paid some out-of-pocket cost for a Qualifying Repair or Qualifying Replacement, the claimant will be reimbursed for the amount of any previously unreimbursed expenses as described in paragraphs (a) and (b) above. Settlement Class Members who already received compensation or received a voluntary benefit will not receive double payment; only previously unreimbursed expenses will be reimbursed.

d) If the claimant previously received from Sears or Whirlpool any form of compensation for an Overheating Event (e.g., a policy-adjust cash payment, a partial refund, a discount off the regular price of a new dishwasher or a coupon applicable to the purchase of a new dishwasher that was redeemed), any compensation to which the claimant would otherwise be entitled under this section will be reduced as follows:

- i. For any policy-adjust cash payment, cash refund, or other cash payment, the amount of that payment;

- ii. For any specified dollar-discount off the price of any new dishwasher, the specified dollar amount;
- iii. For any specified percentage-discount off the price of any new dishwasher, the dollar amount determined by applying that percentage to the regular, then-prevailing price of that dishwasher; and
- iv. For any coupon redeemed for the purchase of a new dishwasher, the dollar amount specified on the face of the coupon redeemed.

All other claimants will be required to check an eligibility box on their Claim Form stating that they did not receive any of these customer-satisfaction benefits from Whirlpool or Sears relating to an Overheating Event with their Class Dishwasher.

Deadline to Submit a Claim Form for Reimbursement for a Past Overheating Event

42. Settlement Class members will have up to the Claims Deadline to submit a Claim Form for a settlement payment for a past Overheating Event.

Compensation to Future Overheating Subclass Members

Cash or Rebate Option

43. Future Overheating Subclass Members who do not Opt Out and who contact the Settlement Administrator, Whirlpool or Sears to report an Overheating Event that occurs within 10 years after the Purchase of the Class Dishwasher or within 2 years after the Notice Date, whichever is later, will be eligible to receive either a \$100 cash payment or a 30% rebate off the purchase price of a new Whirlpool®, Kenmore® or KitchenAid® brand dishwasher, at their option.

44. For Future Overheating Subclass Members who desire a cash payment or to purchase a new dishwasher using the rebate, the Settlement Administrator or Sears will refer the subclass member to a designated Whirlpool telephone number that the Class Member can call to discuss

his or her options. Future Overheating Subclass Members will be required to sign a short, one-page release before they receive their cash payment or rebate form, a copy of which is attached as Appendix L to this Agreement.

45. At its sole discretion, Whirlpool has the option to buy back or replace the Class Dishwasher for an appropriate price so that Whirlpool can obtain the Class Dishwasher as part of its ongoing field safety monitoring processes.

Sticker Program for Replacement Rushmore and Rush ECB Parts

46. As of the Effective Date, Whirlpool will affix a sticker to the individual parts boxes containing replacement service parts for Rushmore and Rush Electronic Control Boards, excluding replacement parts in the inventories of Service Technicians. The text of the sticker is as attached in Appendix M.

47. The sticker will advise Whirlpool-authorized and Sears-authorized Service Technicians and Settlement Class Members who have experienced an Overheating Event that the Class Member may be entitled to a cash payment or rebate upon verification, and that the Service Technician should contact Whirlpool in that regard for authorization. The Service Technician must take custody of the replaced part and return it to Whirlpool for confirmation that the cash payment/rebate terms of this Settlement apply to that Settlement Class Member.

Deadline to Submit a Claim for Future Overheating Events

48. All claims for future Overheating Events must be submitted within 120 days after the Overheating Event occurs, and the Overheating Event must itself occur within 10 years after the Purchase of the Class Dishwasher or within 2 years after the Notice Date, whichever is later.

Benefits Available to Non-Class NewGen and Raptor Owners

Non-Class Compensation for Past Overheating Events

NewGen and Raptor Owners Are Not Included in Class Settlement

49. For avoidance of all doubt, the Settlement releases only the claims of Settlement Class Members related to the Class Dishwashers as set out in Section VIII of this Agreement. The Settlement does not release the claims of NewGen and Raptor Owners.

Notice Mailings to NewGen and Raptor Owners Who Reported an Overheating Event

50. The Settlement Administrator will mail a notice of this offer and send the notice by email to any NewGen or Raptor Owner identified in Whirlpool's or Sears' databases by the PHM Methodology, identified on dishwasherfires.ca or who otherwise contacted Class Counsel, where the documentation shows that within 12 years after Purchase the claimant's Dishwasher's NewGen or Raptor ECB experienced an Overheating Event. A copy of the Notice to NewGen or Raptor Owners is attached as Appendix N.

Compensation for Past Overheating Events

51. NewGen and Raptor Owners who have experienced a documented Overheating Event within 12 years after the Purchase of the Dishwasher but before the Notice Date will be entitled to reimbursement of certain out-of-pocket expenses incurred as a result of that Overheating Event, including the amount of any Paid Qualifying Repair or Paid Qualifying Replacement in consideration for their individual execution of a one page release releasing their claims against Whirlpool, Sears, and any other entity in the chain of manufacture or distribution of their Dishwashers. A copy of the release is attached as Appendix O.

52. The requirements and conditions set out in the Compensation to Past Overheating Subclass Members section of this Agreement will apply, as applicable and with any necessary modifications, to each NewGen and Raptor Owner who has experienced an Overheating Event and makes a claim for reimbursement of the amount of any Paid Qualifying Repair or Paid Qualifying Replacement.

Prequalified Owners

53. NewGen and Raptor Owners who can be identified in Whirlpool's or Sears' databases as having paid for a Qualifying Repair ("Prequalified Owners") will not be required to submit

documentation to support their claim unless they dispute the prequalified amount to be paid in satisfaction of their claim. The PHM Methodology will be used to identify Prequalified Owners.

54. The mailed notice and email notice will include a pre-printed unique claim identification number for each Prequalified Owner that the claimant will enter into the online Claim Form or print on his or her hardcopy of the Claim Form. The unique claim identification number will be used by the Settlement Administrator to identify those claimants who have been identified as Prequalified Owners. Prequalified Owners will be required only to enter or confirm their current name and address, check the eligibility boxes on the Claim Form and sign the claim form certifying that the statements are true and correct. Where an online Claim Form is used, the claimant will electronically sign the Claim Form certifying that those statements are true and correct.

Compensation to Prequalified Owners

55. If Whirlpool's or Sears' databases reflect that the Prequalified Owner experienced an Overheating Event, and if the database records reflect the amount paid by the claimant for a Qualifying Repair or Qualifying Replacement, the prequalified amount offered to the Prequalified Owner will be his or her out-of-pocket cost for the Qualifying Repair or Qualifying Replacement, subject to paragraphs 59-61 below.

56. If Whirlpool's or Sears' databases reflect that the Prequalified Owner experienced an Overheating Event, and if the database records reflect that the Prequalified Owner received a repair or replacement that was not paid for in its entirety by Whirlpool or Sears but the amount paid for a Qualifying Repair or Qualifying Replacement is not reflected, the prequalified amount offered to the claimant will be \$200.

57. If Whirlpool's or Sears' databases reflect that the Prequalified Owner experienced an Overheating Event, and if the database records reflect a likelihood that a free repair or replacement occurred, the Prequalified Owner will be mailed or emailed (or both), along with the Notice, a Tailored Prequalified Notice to NewGen and Raptor Owners in the form attached as

Appendix P advising the Prequalified Owner that he or she received a free repair or replacement and will not be offered any additional compensation under the Settlement. The Tailored Prequalified Notice to NewGen and Raptor Owners will also advise the Prequalified Owner of his or her right to file a claim and dispute that assertion.

58. If a Prequalified Owner wishes to dispute the prequalified amount of his or her claim, the Prequalified Owner must submit supporting documentation showing the amount that he or she paid for the Qualifying Repair or Qualifying Replacement for a determination by the Settlement Administrator.

Reimbursement for Paid Qualifying Repairs

59. If the claimant is a Prequalified Owner, or if the claimant provides sufficient documentary proof, in accordance with paragraphs 29-30 of this Agreement, that the claimant meets the threshold requirements and that the claimant actually paid some out-of-pocket cost for a Qualifying Repair by a service technician or by the owner within 12 years after Purchase due to the Dishwasher's Overheating Event, the claimant will be reimbursed for the amount that sufficient documentary proof shows the claimant actually paid for parts and labour, up to the full cost of the Qualifying Repair. If the claimant can provide sufficient documentary proof of the Qualifying Repair but that documentary proof does not show the amount paid for the Qualifying Repair, the claimant's settlement payment will be \$200.

Reimbursement for Paid Qualifying Replacements

60. If the claimant is a Prequalified Owner, or if the claimant provides sufficient documentary proof, in accordance with paragraphs 29-30 of this Agreement, that the claimant meets the threshold requirements described above and that the claimant actually paid some out-of-pocket cost for a Qualifying Replacement, Whirlpool will reimburse the out-of-pocket costs paid by the customer for the new dishwasher up to \$300 for a Whirlpool® built replacement dishwasher (including KitchenAid® and Kenmore® brand dishwashers built by Whirlpool) and up to \$200 for a non-Whirlpool®-built replacement dishwasher.

61. No NewGen or Raptor Owner who received from Whirlpool or Sears either a full refund of the purchase price he or she paid for the Dishwasher or a free exchange of the Dishwasher for a new dishwasher of any model will be entitled to any payment or other compensation, unless (1) the claimant received a free exchange of the Dishwasher for a new Dishwasher, and (2) the claimant's experiences with the second Dishwasher qualifies the claimant for compensation for that second Dishwasher under the terms of this Agreement.

62. To establish their eligibility for a cash settlement payment, claimants will be required to check an eligibility box on the Claim Form stating that they did not receive either a full refund of the purchase price paid for the Dishwasher or a free exchange of the Dishwasher for a new dishwasher.

Deadline to Submit a Claim Form for Reimbursement for a Past Overheating Event

63. NewGen and Raptor Owners will have up to the Claims Deadline to submit a Claim Form for a settlement payment for a past Overheating Event.

Non-Class Compensation for Future Overheating Events

Cash or Rebate Option

64. NewGen and Raptor Owners who contact the Settlement Administrator, Whirlpool or Sears to report a future Overheating Event that occurs within 10 years after Purchase or within 2 years after the Notice Date, whichever is later, in consideration of the execution of the release attached as Appendix L, will be eligible to receive either a \$100 cash payment or a 30% rebate off the purchase price of a new Whirlpool® or KitchenAid® brand dishwasher, at their option.

65. At its sole discretion, Whirlpool has the option to buy back or replace the Dishwasher for an appropriate price so that Whirlpool can obtain the Dishwasher as part of its ongoing field safety monitoring processes.

Deadline to Submit a Claim for Future Overheating Events

66. All claims for future Overheating Events must be submitted within 120 days after the Overheating Event occurs, and the Overheating Event itself must occur within 10 years after the Purchase of the Dishwasher or within 2 years after the Notice Date, whichever is later.

Sticker Program for Replacement NewGen and Raptor ECB Parts

67. As of the Effective Date and for two years after the Notice Date, Whirlpool will affix a sticker to the individual parts boxes containing replacement service parts for NewGen and Raptor Electronic Control Boards, excluding replacement parts in the inventories of Service Technicians.

68. The sticker will advise Whirlpool-authorized and Sears-authorized Service Technicians and Persons who have experienced an Overheating Event that the Person may be entitled to a cash benefit or rebate upon verification, and that the Service Technician should contact Whirlpool in that regard for authorization. The Service Technician must take custody of the part and return it to Whirlpool for confirmation that the cash payment/rebate terms of this Settlement apply to that Person.

V. OPTING OUT

69. Any Settlement Class Member may opt out of this Agreement by delivering to the Settlement Administrator an executed Opt Out Form, attached as Appendix F, within the Opt Out Period.

70. To be valid, the Opt Out Form must be postmarked no later than the last day of the Opt Out Period.

71. The Settlement Administrator will provide to Class Counsel and to the Defendants, within 10 business days after the expiry of the Opt Out Period, copies of all of the Opt Out Forms received.

VI. SETTLEMENT PUBLICITY

Publication

72. As more fully detailed in the Notice Plan, the Settlement Administrator will cause the Publication Notice to be published in various newspapers and will place banner advertisements online.

73. Class Counsel may publish information about the Settlement and the claims process, and a link to the Settlement Website on their respective law firm websites and on dishwasherfires.ca.

Designated Phone Number

74. The Plaintiffs will direct Settlement Class Members and NewGen and Raptor Owners who contact them to contact Whirlpool directly at a designated telephone number or email address to be provided by Whirlpool.

Media Inquiries

75. The Plaintiffs agree to direct to Class Counsel all media inquiries regarding the Lawsuits or the Settlement.

VII. SETTLEMENT ADMINISTRATION AND NOTICE EXPENSES

The Settlement Administrator

Appointment of Settlement Administrator

76. All decisions regarding notice and settlement administration will be made jointly between the Defendants and Class Counsel, subject to any required Court approval.

77. Whirlpool will propose a Settlement Administrator to Class Counsel, who will not unreasonably object to that appointment. The appointment of the Settlement Administrator will be subject to Court approval.

78. Class Counsel and counsel for Defendants will have the ability to communicate directly with the Settlement Administrator without the need to include each other in each of those communications. Disputes, if any, will be resolved by the Court.

Settlement Administration

79. The Settlement Administrator will perform the following functions in accordance with the terms of the Settlement Agreement, the Preliminary Approval Order and the Final Approval Order:

- a. Receive Opt Out Forms and any objections to the Settlement, evaluate, and either approve completed Claim Forms sent before the Claims Deadline by Persons seeking to receive compensation or rebates as meeting the requirements of the Agreement or disapprove them as failing to meet those requirements;
- b. Establish the Settlement Website that will post information that the Parties jointly agree to post concerning the nature of the case and the status of the Settlement, including the Preliminary Approval Order, the Final Approval Order and the Notice;
- c. Provide to Whirlpool and Class Counsel, thirty days before mailing a Notice or Notices of Claim Denial, (1) a list of the names and addresses of any Settlement Class Members who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined to be Valid Claims, by category of benefit, and (2) a separate list of the names and addresses of all Persons who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined not to be Valid Claims, by category of benefit. Class Counsel will have an opportunity to review the Notices of Claim Denial and request a meet and confer with counsel for Whirlpool should they decide to challenge any of the Notices of Claim Denial. In the event Class Counsel challenges a Notice of Claim Denial, that Notice will not be sent to the Person until Class Counsel and counsel for Whirlpool meet and confer and arrive at a resolution as to whether the claim was properly denied;
- d. Send, by Canada Post mail, to each Person who has submitted a Claim Form that the Settlement Administrator has determined not to be a Valid Claim, and which has not been challenged by Class Counsel, a Notice of Claim Denial; and

e. Within 30 days after the payment of any Valid Claims for monetary compensation by the Settlement Administrator, provide to Whirlpool and Class Counsel a statement of the total number of claims submitted (in total and by category of benefit), the total number of claims adjudicated as Valid Claims (in total and by category of benefit) and the total dollar amount paid to Class Members (in total and by category of benefit).

The Notice Plan

Notice by Mail and Email

80. Whirlpool and Sears will search, to the extent reasonably available, their respective warranty registration databases, call centre databases, and other relevant databases to identify Settlement Class Members.

81. The Settlement Administrator, within 45 days of the grant of the Preliminary Approval Order, will mail the Notice, along with the Prequalified Notices or the TCO Repair Notice where applicable, to each mailing address of record for members of the Settlement Class and will email the Notice, along with the Prequalified Notices or the TCO Repair Notice where applicable, to all members of the Settlement Class for whom valid email addresses are known to Whirlpool or Sears. Quebec addresses will receive the Notice, and the Prequalified Notices or the TCO Repair Notice where applicable, in both French and English.

82. The Prequalified Notice in the form attached hereto Appendix H will advise applicable Prequalified Settlement Class Members that they prequalify for compensation under the Settlement and will state that most Prequalified Settlement Class Members will receive at least \$100 if they enter or confirm their current name and address, check the necessary eligibility boxes on the Claim Form for Prequalified Settlement Class Members and sign the Claim Form certifying that the statements are true and correct.

83. While a Claim Form can be completed online, the Settlement Administrator will mail a copy of the Claim Form to Settlement Class Members who request a hardcopy of the Claim Form.

84. The Settlement Administrator also will perform a national change of address search and will forward Notice packages that are returned by Canada Post with a forwarding address.

Newspaper Advertisements

85. The Publication Notice will, within 45 days of the grant of the Preliminary Approval Order, be published once in the weekend edition of Canada's leading mainstream newspapers. The papers will include 2 national papers and 12 leading local dailies within the highest populated Census Metropolitan Areas.

86. The Publication Notice will be approximately quarter-page ads. It will be in French in the French language newspapers.

87. The Publication Notice will be published in the following papers: *The Globe and Mail*, *The National Post*, the *Calgary Herald*, the *Edmonton Journal*, the *Vancouver Sun*, the *Winnipeg Free Press*, the *Halifax Chronicle-Herald*, the *Saint John Telegraph Journal*, the *Charlottetown Guardian*, *St. John's Telegram*, *Le Journal de Montreal*, *Montreal La Presse*, the *Saskatoon Star Phoenix* and the *Regina Leader Post*.

Internet Banners

88. English and French internet banners (targeting 1,940,000 English-language and 525,000 French-language impressions) will be purchased commencing within 45 days of the grant of the Preliminary Approval Order and continuing over a one-month period on a variety of websites and on the social media site Facebook.

89. The internet banners will be targeted to adults age 25 and older and will include an embedded link to the Settlement Website. The Facebook banners will be further targeted to adults who own a dishwasher, home appliance and/or a home.

The Settlement Website

90. The Settlement Administrator will within 45 days of the grant of the Preliminary Approval Order create a Settlement Website that will include all necessary and pertinent

information for Settlement Class Members and NewGen and Raptor Owners, including the Notice, Claim Form, information about deadlines and a link to Whirlpool's own website relating to dishwasher safety.

91. The Settlement Website will permit Settlement Class Members to submit claims online, including uploading any necessary documentation.

92. The Settlement Website will include information that the Parties jointly agree to post concerning the nature of the case and the status of the Settlement, including relevant pleadings such as the Statement of Claim in the Alberta Action, the materials filed in support of the application for the Preliminary Approval Order and in support of the application for the Final Approval Order.

93. The Settlement Administrator will take steps to ensure that the Settlement Website is optimized for searching and that it is mobile-friendly. The Settlement Website will remain active at least until 90 days after the last date on which a claim for any benefits under the Settlement may be submitted.

Submission of Claim Forms

94. The Settlement Administrator will accept online as well as paper Claim Forms.

95. The Settlement Administrator will allow Settlement Class Members to electronically submit documents supporting their Claim Forms.

96. The Settlement Administrator will provide Class Counsel and Whirlpool with periodic status reports regarding claims.

97. The Parties agree that the Notice, the Prequalified Notices, the TCO Repair Notice, the Claim Form and the Settlement Website will provide information sufficient to inform Settlement Class Members of the essential terms of this Agreement, where additional information about the

Settlement and the Actions can be obtained, how Class Members can Opt Out of the Alberta Action or object to the Settlement and how Class Members and other Persons can submit claims for compensation or rebates pursuant to the Settlement.

Administration and Notice Expenses

98. Whirlpool agrees to pay for all Administration and Notice Expenses.

99. Whirlpool will not be responsible for any cost that may be incurred by the Plaintiffs or Class Counsel in (1) responding to inquiries about this Agreement, the Settlement, or the Actions, or (2) defending this Agreement or the Settlement against any objection to it, except for the costs incurred by the Settlement Administrator to prepare affidavits or status reports at the request of the Parties or for the Court for the purpose of obtaining the Final Approval Order or for staying informed of developments in the Settlement.

100. Whirlpool will be required to pay the reasonable costs, if any, billed by the Settlement Administrator with respect to work performed by the Settlement Administrator to provide information to the Court to address any objections to this Agreement or the Settlement.

VIII. RELEASES

Released Claims

101. Except as otherwise expressly provided for in this Agreement, the Plaintiffs and all Settlement Class Members who do not Opt Out of the Alberta Action prior to the expiry of the Opt Out Period forever release, acquit and discharge the Releasees from all manner of actions, causes of action, administrative claims, demands, debts, damages, costs, lawyers' fees, obligations, judgments, expenses or liabilities for economic loss, in law or in equity, whether now known or unknown, contingent or absolute, that the Plaintiffs or Settlement Class Members now have or, absent this Agreement, may in the future have had against the Releasees by reason of any act, omission, harm, matter, cause or event whatsoever that has occurred at any time up to and including the Effective Date of this Agreement, that relates to any of the defects,

malfunctions or inadequacies of the Class Dishwashers themselves that are alleged or could have been alleged in the Actions or to any act, omission, damage, matter, cause or event whatsoever arising out of the initiation, defence or settlement of the Actions or the claims or defences asserted in the Actions in so far as they relate to the Class Dishwashers (the “Released Claims”). This release will not extinguish, and the Released Claims do not include, claims for personal injury or for damage to property other than to the Class Dishwasher itself. For example, if a Settlement Class Member were to experience a flood or fire related to his or her Class Dishwasher, the Settlement Class Member would retain his or her right to pursue claims against the Releasees for damage to his or her property other than to the Class Dishwasher itself. And, for greater certainty, Ms. Bickert retains her right to litigate the BC Action so far as that action relates to claims for personal injury and for damage to property other than to the Class Dishwasher itself.

102. On the Effective Date, all Released Claims will be conclusively settled, compromised, satisfied and released as against the Releasees. The Plaintiff Bickert will amend the Notice of Civil Claim in the BC Action accordingly. The Plaintiff Essa will consent to dismissal of the Alberta Action as to the Released Claims and will discontinue all other claims in the Alberta Action.

103. Each Party expressly accepts and assumes the risk that if facts with respect to matters covered by this Agreement are later found to be other than or different from the facts now believed or assumed to be true, this Agreement will nevertheless remain effective. It is understood and agreed that this Agreement will constitute a general release and will be effective as a full and final accord and satisfaction and is a bar, except as otherwise expressly provided for in this Agreement, to all actions, causes of action, costs, expenses, lawyers’ fees, damages, claims and liabilities whatsoever, whether or not now known, suspected, claimed or concealed, pertaining to the Released Claims.

104. Except as otherwise expressly provided for in this Agreement, as additional consideration for the Settlement and the benefits provided by this Agreement, each Plaintiff agrees to take all reasonable actions to support any of the Releasees’ efforts to obtain dismissal of any claims or

causes of action brought against them, including any action for contribution or indemnity, that may hereafter at any time be asserted against any of the Releasees by either of the Plaintiffs, or by anyone subrogated to any of the Plaintiffs' rights in any capacity, and that arise from any Released Claims.

Future or Unknown Harm and Waiver of Rights

105. It is possible, although unlikely, that other injuries, damages, losses or future consequences or results of the sale, purchase, use, non-use, need for repair or repair of the Class Dishwashers are not currently known by the Plaintiffs and the Settlement Class Members and will develop or be discovered in the future.

106. Except as otherwise expressly provided for in this Agreement, the release in this Agreement, and the compromise on which it is based, are expressly intended to and do cover and include a release by each Plaintiff and Settlement Class Member of all such future damages, losses or future consequences or results, excluding any future injury to person or to property other than the Class Dishwasher itself, and including a release and waiver of all rights, causes of actions, claims and lawsuits against the Releasees that may exist or arise in the future because of such future damages, losses or future consequences or results of known or unknown damages that relate to or arise out of the sale of the Class Dishwasher to or its use by each Plaintiff and Settlement Class Member.

107. Each Plaintiff and Settlement Class Member expressly consents that the release will be given full force and effect according to each of its terms and provisions, including those relating to unknown and unspecified claims, demands, rights, lawsuits or causes of action as referenced above.

108. Each Plaintiff and Settlement Class Member acknowledges and agrees that this waiver is an essential and material term of the release and the compromise Settlement that led to it, and that without this waiver the compromise Settlement would not have been accomplished. Each Plaintiff has been advised by his or her lawyer with respect to this waiver and, being of competent mind, understands and acknowledges its significance.

IX. COVENANT NOT TO SUE

109. Except as otherwise expressly provided for in this Agreement, each Plaintiff (1) covenants and agrees that neither she, nor anyone authorized to act on her behalf, will commence any judicial or administrative action or proceeding, or authorize or accept any benefit from any judicial or administrative action or proceeding against the Releasees or any of them with respect to any claim, matter or issue that in any way arises from, is based on or relates to any alleged loss, harm or damages allegedly caused by the Releasees or any of them in connection with the Released Claims, (2) waives and disclaims any right to any form of recovery, compensation or other remedy in any such action or proceeding brought by or on behalf of her or any putative Class Member or Dishwasher owner, and (3) agrees that this Agreement will be a complete bar to any such action or proceeding.

X. REPRESENTATIONS AND WARRANTIES

110. Each of the Parties to this Agreement represents and warrants to, and agrees with, each of the other Parties as follows:

a. The Plaintiffs represent and warrant that no portion of any claim, right or cause of action against any of the Releasees that the Plaintiffs in any capacity have or may have, and no portion of any recovery or settlement to which the Plaintiffs in any capacity may be entitled, has been assigned or transferred by or for the Plaintiffs, in any capacity and in any manner, except for the portion of the global Settlement sum that has been assigned, transferred or conveyed to Class Counsel to pay Class Counsel's Fees and Disbursements.

b. Each Party has received legal advice from his, her or its lawyers on the advisability of making the Settlement and executing this Agreement.

c. No Party relies or has relied on any statement, representation, omission, inducement or promise of or by any other Party (or any officer, agent, employee,

representative or lawyer of any other Party) in making the Settlement or in executing this Agreement, except as expressly stated in this Agreement.

d. Each Party to this Agreement has investigated the facts pertaining to the Settlement, this Agreement and all matters pertaining to them, to the full extent that the Party deems necessary.

e. Each Party has carefully read and reviewed with his, her or its lawyers, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Agreement upon the advice of his, her or its lawyers.

f. Each term of this Agreement is contractual and not merely a recital.

XI. NO ADMISSION OF LIABILITY

111. It is understood and agreed that the Settlement sums and the benefits provided in this Agreement, the Settlement and the release are for the compromise of disputed claims and are not to be construed as or deemed to be an admission of any liability, fault or responsibility on the part of any of the Releasees who expressly deny, and have always expressly denied, any defect, liability, fault or responsibility.

XII. NON-DISPARAGEMENT

112. The Parties and their respective counsel agree not to disparage any other Party with respect to the Dishwashers, the ECBs, the litigation of the Actions, or the Settlement.

113. The Plaintiffs and Class Counsel agree not to create, establish or assist in the development of any website or “gripe” site that criticizes any Defendant with respect to the Dishwashers, the ECBs, the litigation of the Actions, or the Settlement. Class Counsel will on the Effective Date take steps to take down the website dishwasherfires.ca and any Facebook,

YouTube or other internet postings made or maintained by Class Counsel in relation to the BC Action or the Alberta Action or the allegations made therein.

XIII. CLASS COUNSEL'S FEES AND DISBURSEMENTS

Generally

114. As part of this Settlement, the Defendants have agreed that, in addition to the amount of money that Whirlpool (on behalf of Whirlpool and Sears) has agreed to make available to pay Valid Claims submitted by Settlement Class Members and NewGen and Raptor owners, and the amount of money to be paid for the cost of Notice and work performed by the Settlement Administrator, Whirlpool (on behalf of Whirlpool and Sears) will also pay Class Counsel's Fees and Disbursements, as set out below, to compensate Class Counsel for their work in prosecuting the Actions and obtaining the benefits in this Agreement, including work for and benefits obtained on behalf of Class Members and NewGen and Raptor Owners and based on both the Class and non-Class benefits created by the Settlement.

Legal Fees

115. The Defendants will pay Class Counsel \$600,000 plus applicable taxes (GST and PST) for Class Counsel fees.

116. These fees will be paid to Class Counsel by wire transfer within 30 days after the Effective Date.

117. Class Counsel will provide the Defendants' counsel with all wiring and account information necessary to enable Whirlpool to make the transfer within the required timeline.

118. Class Counsel will allocate, as between themselves, each firm's proportionate share of the Class Counsel fees. Any disputes regarding such allocation will be resolved by the Court.

Disbursements

119. The Defendants will pay Class Counsel \$90,000 as reimbursement for reasonable disbursements paid by Class Counsel for the purpose of prosecuting the Actions.

120. These Disbursements will be paid to Class Counsel by wire transfer within 30 days after the Effective Date.

121. Class Counsel will allocate, as between themselves, each firm's proportionate share of the disbursements paid by the Defendants. Any disputes regarding such allocation will be resolved by the Court.

Court Approval

122. Class Counsel's Fees and Disbursements, as set out above, are subject to approval by the Court.

123. The Court's or an appellate court's failure to approve, in whole or in part, Class Counsel's Fees and Disbursements will not affect the validity or finality of the Settlement, nor will such non-approval be grounds for rescission of this Agreement. In the event the Court declines to approve, in whole or in part, the payment of Class Counsel's Fees and Disbursements, the remaining provisions of this Agreement will remain in full force and effect.

XIV. ADDITIONAL TERMS

Extensions of Time

124. Unless otherwise ordered by the Court, the Parties may agree to reasonable extensions of time to carry out any of the terms of this Agreement and the Settlement.

Day for Action

125. Where the time on or by which any action required to be taken under this Agreement expires or falls on a day that is not a business day, the action may be taken on the next succeeding day that is a business day.

Amendments

126. The Parties may make non-substantive amendments to the Settlement Agreement, including its Appendices, provided that each Party to the Settlement Agreement agrees in writing to any such amendments.

127. No substantive amendments or supplements may be made to the provisions of this Agreement and no restatement of this Agreement may be made unless agreed to by the Parties in writing and unless approved by the Court without any material differences.

Cooperation

128. The Parties agree that they will abide by and act in accordance with this Agreement and prepare, execute, and deliver all documents that are reasonably required to carry out this Agreement.

Headings

129. The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

No *Contra Proferentem*

130. Each Party has participated in the negotiation and drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider with his, her, or its own counsel the effect of the language of this Agreement, and has agreed to its terms. Accordingly, the legal maxim that “ambiguity will be interpreted against the drafter” has no relevance to the interpretation or construction of this Agreement.

Extended Meanings

131. In this Agreement, words importing the singular number include the plural and vice versa. The term “including” means “including without limiting the generality of the foregoing”.

Conditional Nature of Agreement

132. If the Preliminary Approval Order is not granted by the Court on substantially the same terms and conditions contemplated in this Agreement, this Agreement will be terminated, no obligation on the part of any of the Parties will accrue and none of the Parties will be liable to any of the other Parties under this Agreement. If the Final Approval Order is not granted or is reversed on appeal, no obligation on the part of any of the Parties will accrue, save and except in respect of Administration and Notice Expenses incurred pursuant to the Preliminary Approval Order.

Severance/Severability

133. With the exception of the provisions for payment of the Class Counsel Fees and Disbursements, none of the terms of this Agreement is severable from the others. If the Court or a court of appeals should rule that any term is void, illegal, or unenforceable for any reason, however, Defendants, in their sole discretion, and Plaintiffs, in their sole discretion (but acting in accord with their duties and obligations as representatives of the Settlement Class), may elect to waive any such deficiency and proceed with the Settlement under the terms and conditions ultimately approved by the Court.

Governing Law

134. This Agreement will for all purposes be deemed to have been negotiated, executed, and delivered within the province of Alberta, and the rights and obligations of the Parties will be construed and enforced in accordance with, and governed by, the laws of the province of Alberta.

135. The Court will retain continuing jurisdiction over this Agreement, the Settlement and its implementation.

Entire Agreement of the Parties

136. This Agreement, including all Appendices, constitutes the entire agreement between the Parties with respect to the subject matter herein and cancels and supersedes all prior and contemporaneous oral and written agreements and discussions between the Parties.

137. This Agreement may be amended only by agreement in writing, signed by the Parties.

Binding on Agents, Successors, and Assigns

138. This Agreement is binding on, and will inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, subsidiaries, assigns, heirs, executors, administrators, insurers and predecessors and successors in interest.

139. This Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled.

No Extension of Whirlpool's or Sears' Written Warranties

140. In connection with this Agreement and the Settlement, Whirlpool and Sears have not agreed to any extension of their written warranties for the Class Dishwashers or other Dishwashers.

141. The only Settlement benefits are those payments or rebates to eligible Dishwasher owners described in this Agreement.

Counterparts

142. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same agreement.

Dated: July 10, 2018

David A. Klein
KLEIN LAWYERS LLP

Richard J. Mallett
JAMES H. BROWN & ASSOCIATES

Clint G. Docken, Q.C.
GUARDIAN LAW GROUP LLP

FOR THEMSELVES AND AS COUNSEL
FOR AND ON BEHALF OF THE
PLAINTIFFS, KRISTINA ESSA AND
NATALIE BICKERT

Brad W. Dixon
BORDEN LADNER GERVAIS LLP
AS COUNSEL FOR AND ON BEHALF
OF THE DEFENDANTS