

**CLASS SETTLEMENT AGREEMENT AND RELEASE**

This Class Settlement Agreement and Release (“Agreement”) is made and entered into as of this 21st day of August, 2009, by and between defendant Toshiba America Information Systems, Inc. (“TAIS”) and the Settlement Class (as defined below), acting by and through plaintiffs Paul Atherton (“Atherton”), Joe O’Brien (“O’Brien”), Mike Williams (“Williams”), Gordon Petrash (“Petrash”), Gerhard Guevarra (“Guevarra”), and David O’Shaughnessy (“O’Shaughnessy”) (collectively, “Plaintiffs” and together with TAIS, the “Parties”).

**BACKGROUND**

WHEREAS, on March 31, 2008, Atherton, O’Brien, Williams, Petrash, and Guevarra, individually and on behalf of a nationwide putative class of all persons or entities who purchased or acquired Toshiba Satellite brand (“Satellite”) model number 1000, 1005, 1100, 1105, 1110, 1115, 1130, 1135, 1200, 1715, 1730, 1735, 1750, 1755, 1955, 3000, and 3005 notebook computers, filed a Complaint captioned *Paul Atherton, et al. v. Toshiba America Information Systems, Inc. and Does 1-20*, Case No. CV 08-02141 (C.D. Cal.), alleging, *inter alia*, that TAIS engaged in false and deceptive trade practices in violation of the California Consumer Legal Remedies Act, Cal. Civ. Code. § 1750 *et seq.*, California Civ. Code §§ 1709-1710, the California False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.* (“FAL”), and the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17500 *et seq.*, breached express and implied warranties, and engaged in certain other acts entitling them to injunctive relief, damages and an award of attorneys’ fees for selling Satellite notebook computers that contained a manufacturing or design defect that rendered the computers unduly prone to cracking on the plastic housing surrounding the hinges, and that they, and other consumers, suffered damages as a result of purchasing the subject Satellite models (the “Lawsuit”); and

WHEREAS, on June 16, 2008, TAIS filed a motion to dismiss the FAL claim for failure to state a claim upon which relief can be granted, which the Court granted on August 19, 2008; and

WHEREAS, on November 19, 2008, Plaintiffs filed a Second Amended Complaint, *inter alia*, adding O'Shaughnessy as an additional named plaintiff and omitting the dismissed FAL claim; and

WHEREAS, TAIS and the other Released Parties (as defined below) deny any wrongdoing of any kind whatsoever, and, without admitting liability, nevertheless have agreed to enter into this Agreement to avoid further expense, as well as the burdens and risks of litigation; and

WHEREAS, Plaintiffs have agreed to serve as representatives of the Settlement Class, have been informed by their counsel of the duties and obligations of a class representative, are familiar with the pleadings and discovery in the Lawsuit and the results of the factual investigation undertaken by their counsel, and have been fully advised by such counsel as to the terms and effects of this Agreement, including the nature of the claims released, the potential for success if the Lawsuit were to be litigated to its conclusion, and the relief obtained by the settlement; and

WHEREAS, in evaluating the settlement set forth in this Agreement, Plaintiffs' counsel The Sturdevant Law Firm, a Professional Corporation, Lamar, Archer & Cofrin, LLP ("Plaintiffs' Lead Counsel"), and Bondurant, Mixon & Elmore, LLP (collectively, "Plaintiffs' Counsel") have concluded that the benefits provided to the Settlement Class under this Agreement make a settlement with TAIS and the other Released Parties pursuant to such terms and conditions in the best interests of the Settlement Class in light of, among other

considerations, (1) the substantial benefits afforded to the Settlement Class under the terms of this Agreement; (2) the attendant risks and uncertainties of litigation, especially in complex litigation such as this action; (3) the expense and length of time necessary to prosecute this action through trial; and (4) the desirability of consummating this Agreement promptly to provide effective monetary and other relief to the Settlement Class (as defined below); and

WHEREAS, the Parties desire to compromise and settle all issues and claims relating to the allegations made in the Lawsuit or that could have been made under the facts alleged in the Lawsuit, by or on behalf of all persons included in the Settlement Class; and

WHEREAS, the Parties, through their respective counsel, have engaged in extensive arm's length negotiations in reaching this Agreement; and

WHEREAS, the Parties, and their respective counsel, believe that the terms of the settlement set forth in this Agreement are fair, reasonable and adequate; and

WHEREAS, the Parties desire and intend to seek Court approval of the settlement as set forth in this Agreement;

NOW, THEREFORE, it is agreed that in consideration of the promises and mutual covenants set forth in this Agreement and the entry by the Court of a Final Order and Judgment (as defined below), the Lawsuit shall be settled and compromised on the terms and conditions set forth below. It is further agreed that each of the recitals stated above is true and accurate, and is hereby made a part of this Agreement.

### **DEFINITIONS**

In addition to any definitions set forth above or elsewhere in this Agreement, the following terms, as used in the Agreement, shall have the meanings set forth below:

A. The phrase "Subject Model Notebooks" shall refer to the following Satellite models: 1000, 1005, 1100, 1105, 1110, 1115, 1130, 1135, 1200, 1715, 1730, 1735, 1750, 1755, 1955, 3000, and 3005.

B. The phrase "Non-Covered Models" shall refer to all other notebook computers sold by TAIS at any time that are not included in the above definition of Subject Model Notebooks.

C. The phrase "Claims Submission Period" shall mean the period beginning on the date of the Notice described in Section 4 below and ending 120 days thereafter.

D. The term "Complaint" shall refer collectively to the Complaint, the Amended Complaint and the Second Amended Complaint filed in the Lawsuit.

E. The term "Court" shall refer to the United States District Court for the Central District of California.

F. The phrase "Subject Symptom" shall refer to allegations of cracking on the plastic housing surrounding the hinges, including cracking of the hinges themselves, on a notebook computer.

G. The phrase "Remediation Program" refers to the Voluntary Hinge Remediation Program offered by TAIS from November 8, 2007 to March 31, 2008.

H. The phrase "Released Parties" means individually and collectively, as appropriate, to TAIS and to all of its predecessors and successors-in-interest, including but not limited to, all of its respective past and present parents, subsidiaries, joint ventures, partnerships, related companies, affiliates, controlled entities, assignees, distributors, retailers, unincorporated entities,

divisions, groups, present or former directors, officers, members, agents, employees, representatives, administrators, insurers, indemnitees, and attorneys.

I. The term “Persons” shall refer to persons and entities, including, without limitation, any individuals, sole proprietorships, associations, companies, partnerships, joint ventures, corporations, trusts, estates, or any other persons or entities.

J. The phrase “Released Claims” shall refer to any and all claims, damages, suits, demands, liabilities, judgments, losses, and causes of action relating to the Subject Symptom experienced on Subject Model Notebooks that were purchased or acquired by Persons as new notebooks from April 1, 2000 through the date of the entry of the Order of Preliminary Approval (defined in Section 3 below), of any kind or character, whether known or unknown, matured or unmatured, sounding in law or equity, seeking damages or any other relief (including attorneys’ fees), that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, based upon any federal or state statutory or common law, including but not limited to, claims sounding in tort, contract, and the consumer protection laws of the United States or of any state or other jurisdiction within the United States, and all claims, damages, suits, demands, liabilities, judgments, losses, or causes of action which have been, might have been, are now, or could be asserted by any Plaintiff or any Settlement Class Member arising out of, based upon, or related to, in whole or in part, the facts and circumstances underlying the claims and causes of action set forth in the Lawsuit.

K. The phrase “Settlement Class” shall refer to all Persons who, at any time from April 1, 2000 through the date of the entry of the Order of Preliminary Approval, purchased or acquired a Subject Model notebook as new in the United States. The Settlement Class does not include any owner of a Subject Model Notebook who submitted a claim to TAIS as part of the

Remediation Program, whose claim was accepted by TAIS, and who deposited, cashed, redeemed, or otherwise used a check or a credit voucher issued by TAIS under the Remediation Program. The Released Parties, and their respective officers, directors, employees, and counsel, and Plaintiffs' Counsel, are also not included in the Settlement Class, nor are any federal judges or members of their families within the first degree of consanguinity. Lessees of Subject Model Notebooks are members of the Settlement Class, but are not entitled to a recovery pursuant to this Settlement if the lessor of the Subject Model Notebook has previously asserted a claim for benefits under this Settlement.

L. The phrase "Settlement Class Member" shall refer to any Person included within the Settlement Class, which includes any Person who does not timely exercise his or her right to opt out of the Settlement Class pursuant to Section 10 below.

M. The phrase "Settlement Effective Date" shall mean the later of the date upon which all appeals, if any, from the Final Order and Judgment (defined below) have been finally concluded and exhausted, or the date upon which the time to seek any appellate remedy (including rehearing or writ of *certiorari* to the United States Supreme Court) from the Final Order and Judgment has expired.

N. The phrase "Final Order and Judgment" shall mean a final judgment and order of dismissal entered by the Court in the Lawsuit dismissing the claims asserted in the Lawsuit, granting final approval of the terms and conditions of the settlement, as set forth in this Agreement (including, without limitation, Plaintiffs' Counsel's request for attorneys' fees, costs and other expenses and service awards), pursuant to Fed. R. Civ. P. 23(a) and (b)(3), and entering judgment according to the terms set forth in this Agreement.

O. The phrase “Best Efforts” shall mean the efforts that a reasonable person in the position of the Party would use to fulfill an obligation as diligently and expeditiously as possible under the circumstances.

P. The phrase “Claims Administrator” shall refer to the Garden City Group, Inc., an independent service provider whose function shall be the administration of the claims process, as set forth in this Agreement, including without limitation, the analysis and processing of hard copy claims by Settlement Class Members.

### **TERMS OF AGREEMENT**

1. **Non-Admission of Liability.** This Agreement is made for settlement purposes only, and neither the fact of, nor any specific provision contained in, this Agreement nor any action taken hereunder shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged by Plaintiffs or by any other Person included within the Settlement Class of any wrongdoing, fault, violation of law, or liability of any kind on the part of TAIS. This Agreement constitutes a compromise pursuant to Fed. R. Evid. 408(a) and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction that may be applicable. It shall not be offered or be admissible, either in whole or in part, as evidence against TAIS, except in any action or proceeding to enforce its terms.

2. **Settlement Class.** For purposes of settlement only, and not for purposes of liability, and subject to Court approval, the Lawsuit will be certified as a nationwide class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), with the members of the certified class to comprise only those Persons defined above as the Settlement Class. Subject to the terms and conditions of this Agreement, the Parties agree not to oppose any efforts to certify such a class. Any certification pursuant to this Section shall not constitute, in this or any other proceeding, an admission,

finding or evidence that any requirement for class certification is otherwise satisfied, except for the expressly enumerated purposes in this Agreement.

**3. Preliminary Approval.** No later than 30 business days from the date of full execution of this Agreement (unless such time is extended by mutual agreement of the Parties), Plaintiffs shall present this Agreement to the Court by way of motion or otherwise, seeking certification of the Settlement Class and preliminary approval of this Agreement (the “Submission for Preliminary Approval”). TAIS shall join in Plaintiffs’ request for preliminary approval of this Agreement and certification of the Settlement Class. In connection with the Submission for Preliminary Approval, Plaintiffs shall apply for an order substantially in the form of Exhibit A to this Agreement (“Order of Preliminary Approval”). The Submission for Preliminary Approval shall request:

- a. Preliminary approval of this Agreement;
- b. Certification for settlement purposes of the Settlement Class, pursuant to Fed.

R. Civ. P. 23(b)(3);

- c. Appointment of Plaintiffs’ Counsel as counsel for the Settlement Class;
- d. Appointment of Plaintiffs as class representatives for the Settlement Class; and
- e. Approval of the notices proposed in this Agreement in forms substantially

similar to those attached as Exhibits B, C, D and F.

**4. Notice to Settlement Class.** No later than 20 days after the entry of the Order of Preliminary Approval (unless otherwise specifically modified below), TAIS shall cause notice to be disseminated as directed in the Order of Preliminary Approval in a form substantially similar to that attached as Exhibit B to this Agreement (the “Settlement Notice”), as follows:



a. Through publication of a settlement website, which shall be made available through a link on [www.toshibadirect.com](http://www.toshibadirect.com), and shall contain a copy of the notice in a form substantially similar to that set forth in Exhibit B to this Agreement.

b. In addition, TAIS shall publish a summary form of the Notice (the "Summary Notice"), in a form substantially similar to that attached as Exhibit C to this Agreement, as follows: once in a 1/6 page advertisement in a weekday edition of USA Today, and once in a 1/6 page advertisement in the weekday "National Science Times" section of the New York Times.

c. In addition, TAIS shall instruct the Claims Administrator to bid on placements of an advertisement, in a form substantially similar to that attached as Exhibit D to this Agreement, within the banners on third party websites that participate with [www.google.com](http://www.google.com) ("Google Banner Ads"). Through the Claims Administrator, TAIS agrees to pay for such Google Banner Ads on a cost per thousand basis, up to but not exceeding \$12,500.

d. TAIS will provide direct notice, through the Claims Administrator, to the members of the Settlement Class to all Settlement Class Members for whom it has records of such Persons' mailing and/or e-mail addresses. To the extent that TAIS has an operative e-mail address for a Settlement Class Member, it will send e-mail notification to that Settlement Class Member solely by means of providing, within the body of the e-mail, direct links to the specific web pages on the settlement website referenced in subparagraph (a) which contain copies of the notice and a claim form, in forms substantially similar to those set forth in Exhibits B and F to this Agreement, as such forms are approved by the Court in its Preliminary Approval Order. Otherwise, TAIS will send direct mail notice and a claim form to those Settlement Class Members for whom it has a mailing address by first class mail, postage prepaid, enclosing hard

copies of forms substantially similar to those set forth in Exhibits B and F to this Agreement, as such forms are approved by the Court in its Preliminary Approval Order.

e. The Parties agree that the methods of notice set forth in this Section constitute the best form of notice to the Settlement Class that is practicable under the circumstances. TAIS shall pay all costs associated with disseminating and publishing the Settlement Notice and all associated expenses, which shall be in addition to and not deducted from the settlement compensation described in Section 6 below or the amount of attorneys' fees and expenses described in Section 12 below.

## **5. Final Approval**

a. The Parties shall request that the Court hold a fairness hearing no later than 75 days from entry of the Order of Preliminary Approval. At the fairness hearing, the Parties shall jointly request that the Court enter an order and judgment pursuant to Fed. R. Civ. P. 54(a) in the form of Exhibit E to this Agreement (the "Final Order and Judgment"), which shall finally approve the terms of this Agreement, dismiss the Lawsuit (with claims concerning the Subject Model Notebooks to be dismissed with prejudice and claims concerning Non-Covered Models to be dismissed without prejudice), discharge the Released Parties of and from all further liability to Plaintiffs and Settlement Class Members with respect to the Released Claims (but not as to any obligations created or owed pursuant to this Agreement), and permanently bar and enjoin Plaintiffs and Settlement Class Members from bringing, filing, commencing, prosecuting (or further prosecuting), maintaining, intervening in, participating in, assisting in any way, formally or informally, except as required by law, or receiving any benefits from, any other lawsuit, arbitration, or administrative, regulatory or other proceeding or cause of action in law or equity that asserts, arises from, concerns, or is in any way related to the Released Claims. The actual

form of Final Judgment and Order entered by the Court may include additional provisions as to which the Parties may subsequently agree, or which the Court may direct, that are not inconsistent with any of the express terms or conditions of this Agreement.

b. Following entry by the Court of the Final Order and Judgment, no default by any Person in the performance of any covenant or any obligation arising under this Agreement, or any order of judgment entered in connection therewith, shall affect the dismissal of the Lawsuit, the discharge and release of the Released Parties, or any other provision of this Agreement. The above notwithstanding, nothing in this sub-section shall prevent a Party from seeking enforcement of or compliance with the terms of this Agreement, or the intervention of the Court to compel any such default to be cured.

6. **Settlement Consideration.** In consideration for the dismissal of the Lawsuit and covenants hereunder under the terms of this Agreement, the Parties agree as follows:

a. **Category 1 Relief.** Settlement Class Members who meet the following requirements (i) and (ii) shall be eligible to receive reimbursement for monies expended to repair the Subject Symptom on Subject Model Notebooks of up to \$225, per repair. Such amounts shall be paid within 90 days of the last day for the submission of valid claims.

i. **Proof of Purchase or Possession.** Settlement Class Members shall fall within one of the following categories:

(1) If the Settlement Class Member registered the Subject Model Notebook with TAIS, he or she does not need to submit any proof of purchase or possession.

(2) If the Settlement Class Member's Subject Model Notebook was repaired by TAIS at any time and for any reason under the original one-year warranty that accompanied the purchase of the Subject Model Notebook, or under any Extended Service Plan

purchased from TAIS by the Settlement Class Member, he or she does not need to submit any proof of purchase or possession, subject to verification by TAIS or the Claims Administrator.

(3) If the Settlement Class Member does not fall into one of the two immediately preceding categories, he or she must provide either a receipt or other similar documentation showing the purchase of the Subject Model Notebook, or a photograph of the nameplate of the Subject Model Notebook, the model name and the serial number of the Subject Model Notebook, provided that such proof is not inconsistent with any existing registration or claims data maintained by TAIS.

(ii) **Proof of Repair**. Settlement Class Members shall fall within one of the following categories:

(1) If the Settlement Class Member's Subject Model Notebook was repaired by TAIS at any time for the Subject Symptom, he or she does not need to submit any proof of repair.

(2) If the Settlement Class Member's Subject Model Notebook was repaired for the Subject Symptom by a Toshiba Authorized Service Provider ("ASP") during the coverage period of the original one-year warranty that accompanied the purchase of the Subject Model Notebook, or under any Extended Service Plan purchased from TAIS by the Settlement Class Member, he or she does not need to submit any proof of repair, subject to verification by TAIS or the Claims Administrator that an appropriate record exists with respect to that repair.

(3) If the Settlement Class Member's Subject Model Notebook was repaired for the Subject Symptom by an ASP beyond the coverage period of the original one-year warranty that accompanied the purchase of the Subject Model Notebook, or under any Extended Service Plan purchased from TAIS by the Settlement Class Member, he or she shall

provide a receipt for the repair or other similar documentation that the Subject Model Notebook was repaired, showing the amount of the repair.

(iii) Settlement Class Members whose Subject Model Notebooks were repaired for the Subject Symptom by an entity other than TAIS or one of its ASPs shall be ineligible to receive Category 1 relief, but may receive Category 2 relief if the Settlement Class Member is able to satisfy the proof requirements for such relief set forth in sub-paragraph (b)(i) and (ii) below.

b. **Category 2 Relief.** Settlement Class Members who meet the following requirements (i) and (ii) shall be eligible to receive their choice of either \$50 cash, or a \$150 credit voucher to be used for future purchases made on [www.toshibadirect.com](http://www.toshibadirect.com). The credit vouchers shall be disseminated to eligible members of the Settlement Class within 90 days of the last day for the submission of valid claims, are non-transferable at all times, and will no longer be valid, and will indicate on their faces that they will expire, nine months from the date that they are mailed to the Settlement Class Member. Settlement Class Members may only use a credit voucher on a single occasion, and are not permitted to purchase more than two separate items on such occasion. In addition, Settlement Class Members who meet the following requirements may request from TAIS, on a claim form, in a form substantially similar to that set forth in Exhibit F to this Agreement, a free replacement cover for a Subject Model Notebook. Plaintiffs and the members of the Settlement Class understand and acknowledge that TAIS has a limited inventory of such replacement covers, and will honor such requests on a first-come, first-served basis. TAIS will not cover any other costs associated with the provision of such replacement covers, including without limitation, shipping costs and labor costs associated with installing such covers on the Subject Model Notebooks.

i. **Proof of Purchase or Possession.** Settlement Class Members shall fall within one of the following categories:

(1) If the Settlement Class Member registered the Subject Model Notebook with TAIS, he or she does not need to submit any proof of purchase or possession.

(2) If the Settlement Class Member's Subject Model Notebook was repaired by TAIS at any time and for any reason under the original one-year warranty that accompanied the purchase of the Subject Model Notebook, or under any Extended Service Plan purchased from TAIS by the Settlement Class Member, he or she does not need to submit any proof of purchase or possession, subject to verification by TAIS or the Claims Administrator that an appropriate record exists with respect to that repair.

(3) If the Settlement Class Member attempted to have the Subject Model Notebook repaired for the Subject Symptom by an ASP during the coverage period of the original one-year warranty that accompanied the purchase of the Subject Model Notebook, or under any Extended Service Plan purchased from TAIS by the Settlement Class Member, but did not have the Subject Model Notebook repaired, he or she does not need to submit proof of purchase or possession, subject to verification by TAIS or the Claims Administrator that an appropriate record exists with respect to that attempted repair.

(4) If the Settlement Class Member does not fall into one of the three immediately preceding categories, he or she must provide either a receipt or other similar documentation showing the purchase of the Subject Model Notebook, or a photograph of the nameplate of the Subject Model Notebook, the model name and the serial number of the Subject Model Notebook, provided that such proof is not inconsistent with any existing registration or claims data maintained by TAIS.

ii. **Proof of Subject Symptom.** Settlement Class Members shall fall within one of the following categories:

(1) If the Settlement Class Member attempted to have the Subject Model Notebook repaired for the Subject Symptom by an ASP during the coverage period of the original one-year warranty that accompanied the purchase of the Subject Model Notebook, or under any Extended Service Plan purchased from TAIS by the Settlement Class Member, but did not have the Subject Model Notebook repaired, he or she does not need to submit proof of the subject symptom, subject to verification by TAIS or the Claims Administrator that an appropriate record exists with respect to that attempted repair.

(2) If the Settlement Class Member does not fall into the immediately preceding category, he or she shall submit a claim form, in a form substantially similar to that set forth in Exhibit F to this Agreement, stating under penalty of perjury that he or she experienced the Subject Symptom, and did not have the Subject Model Notebook repaired for the Subject Symptom by an ASP, and shall also submit a photograph of the Subject Symptom as it appears on the Subject Notebook.

(3) If the Settlement Class Member wishes to seek both Category 1 relief, as described in sub-section (a) above, and Category 2 relief, as described in this sub-section (*i.e.*, the Settlement Class Member's Subject Model Notebook was repaired for the Subject Symptom, and the replacement cover subsequently manifested the Subject Symptom), and does not fall within sub-paragraph (b)(ii)(1) above, the Settlement Class Member shall furnish proof of the Subject Symptom consistent with sub-paragraph (b)(ii)(2) above, and shall also submit an affidavit, certification, declaration, or similar written statement, attesting under

penalty of perjury that any photograph submitted as proof of the Subject Symptom was taken of the Subject Model Notebook after the initial repair took place.

c. TAIS shall only be obligated to pay claims pursuant to the terms of this Agreement. Eligibility for the benefits described in this Section will be determined by the Claims Administrator. In the event that any of the Parties disagrees with the manner in which the Claims Administrator is processing, handling or paying claims by Settlement Class Members, that Party shall be responsible for arranging a conference call among the Claims Administrator and the Parties to discuss and resolve any such dispute. If necessary, the dispute shall be resolved by a majority vote among the Claims Administrator and the Parties.

7. **Best Efforts of Parties.** The Parties agree to undertake their respective Best Efforts to effectuate the Settlement described in this Agreement. The Parties shall encourage the Court to approve the Agreement, and shall not encourage Persons included within the Settlement Class to object to the Court's approval of the Agreement or to opt out of the Settlement Class.

8. **Objections to Settlement.**

a. Any Settlement Class Member who has not timely filed a written request for exclusion from the Settlement Class pursuant to Section 10 below may object to the fairness, reasonableness or adequacy of the proposed Settlement. Each Settlement Class Member who wishes to object to any term of this Agreement must do so in writing by filing a written objection with the Clerk of the Court and mailing it to the Parties' respective counsel at the addresses set forth in Section 24 below. Any such objection must be filed with the Clerk of the Court and received by the Parties' respective counsel no later than 30 days from the date of the Notice of Settlement described in Section 4 above. Any such objection must (a) identify the Subject Model Notebook purchased or acquired as new by the Settlement Class Member (by model



number and either by serial number, or by the date or approximate date of the Settlement Class Member's purchase or receipt of the Subject Model Notebook and the City and State in which the Subject Model Notebook was purchased), (b) attach copies of any materials that will be submitted to the Court or presented at the fairness hearing, (c) be signed by the Settlement Class Member, and (d) clearly state in detail (i) the legal and factual ground(s) for the objection, and (ii) the Settlement Class Member's name and address.

b. Settlement Class Members may so object either on their own or through an attorney hired at their own expense. If an objecting Settlement Class Member hires an attorney to represent him or her, that attorney must file with the Court and serve upon the Parties' respective counsel at the addresses set forth at Section 24 below, a notice of appearance no later than 20 days before the Fairness Hearing.

c. Any objection that fails to satisfy the requirements of this Section, or that is not properly and timely submitted, may be deemed ineffective, and will be deemed by the Parties to have been waived, and the Parties will argue that the Settlement Class Member asserting such objection may not have his or her objection heard or otherwise considered by the Court.

**9. Requests to Appear at Fairness Hearing.** Settlement Class Members or their counsel who wish to appear at the fairness hearing must make such request by notifying the Clerk of Court and the Parties' respective counsel in writing at the addresses set forth in Section 24 below. Any such request must be filed with the Clerk of the Court and received by the Parties' respective counsel no later than 20 days before the date of the fairness hearing, and must state the name, address and telephone number of the Settlement Class Member, as well as the name, address and telephone number of the person who will appear on his or her behalf. Any such request must further indicate that the Settlement Class Member has previously or

contemporaneously objected to the Settlement in compliance with the requirements of Section 8 of this Agreement. Any request for appearance that fails to satisfy the requirements of this section or of Section 8 above, or that has not been properly or timely submitted, may be deemed ineffective, and shall be deemed to constitute a waiver of such Settlement Class Member's rights to appear and to comment on the settlement at the fairness hearing.

**10. Requests for Exclusion (Opt Out) from Settlement Class Membership.**

a. Any Person included within the Settlement Class who wishes to be excluded from membership in the Settlement Class must do so in writing by mailing a written request for exclusion to the Claims Administrator at P.O. Box 9219, Dublin, Ohio 43017, Attn: Toshiba Satellite Hinge Class Settlement. Such request must be postmarked no later than 45 days from the date of the Notice described in paragraph 4 above. The request must (i) be signed by the Settlement Class Member, and (ii) identify the Subject Model Notebook purchased or acquired as new by the Settlement Class Member (by model number and either by serial number, or by the date or approximate date of the Settlement Class Member's purchase or receipt of the Subject Model Notebook and the City and State in which the Subject Model Notebook was purchased), (iii) clearly express the Settlement Class Member's desire to be excluded (or to "opt out") from the Settlement Class, and (iv) include the Settlement Class Member's name, address and telephone number, and, if represented by counsel, counsel's name, address and telephone number.

b. Any Person within the Settlement Class who wishes to be excluded from the Settlement Class can only opt out for himself or herself and, except for minors, cannot opt out for any other Person. Nor can any Person within the Settlement Class authorize any other Person to opt out on his or her behalf.

c. Any Settlement Class Member who has filed an objection to the fairness, reasonableness or adequacy of the proposed Settlement pursuant to Section 8 above shall be deemed not to have opted out of the Settlement Class pursuant to this Section. In the event that a Settlement Class Member makes a submission to the Court and the Parties which appears to assert both an objection to the fairness, reasonableness or adequacy of the proposed Settlement, and a statement of intent to opt out of the Settlement Class, the Parties shall advise the Court that the Settlement Class Member has objected to the Settlement, and shall object to any proposed opt out of the Settlement by that Settlement Class Member.

**11. Failure of Court to Approve this Settlement Agreement.**

a. If (i) preliminary or final approval of this Agreement and the Settlement is not obtained from the Court, (ii) the Final Order and Judgment in the form attached as Exhibit E to this Agreement is materially modified by the Court, and any of the Parties objects to such modification, or (iii) any objector appeals from the Court's entry of the Final Order and Judgment and such order is reversed in whole or in part by a final decision of an appellate court (in the event of a partial reversal, the Parties shall have the right to elect to be bound by this Agreement as modified by the appellate court), and (iv) any Party provides written notice to the other Parties within 20 business days of one of the occurrences described in this sub-sections (i) through (iii) above, then this Agreement shall be null and void, shall have no further force and effect with respect to any Party, and shall not be offered in evidence or used in the Lawsuit (or in any other matter) for any purpose, including that relating to the existence, certification or maintenance of any purported class of plaintiffs.

b. In such event, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Parties or

the Settlement Class Members, shall not be deemed or construed to be an admission or confession by any Party of any fact, matter or proposition of law, and shall not be used in any matter for any purpose, and all Parties shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court. Any Party may then move the Court to vacate any and all orders entered by the Court pursuant to the provisions of this Agreement, and no Party shall object thereto. To the extent feasible, the Parties shall be returned to their respective positions in the Lawsuit as of March 25, 2009. The Lawsuit shall then proceed in all material respects as if this Agreement and any related orders had never been executed.

**12. Attorneys' Fees and Expenses, and Service Awards.**

a. Within five business days of the Fairness Hearing, Plaintiffs shall submit their application for an award of attorneys' fees and expenses.

b. Plaintiffs agree that they will not seek payment from TAIS of attorneys' fees and expenses that exceed \$900,000, and TAIS agrees not to contest an award of attorneys' fees and expenses to Plaintiffs for any amount up to \$900,000. The Parties understand and acknowledge that the award of attorneys' fees and expenses is within the Court's discretion, and that there is no presumption as to the appropriate amount for a reasonable reimbursement for the legal services rendered by Plaintiffs' Counsel in the Litigation. The Parties agree that the Remediation Program was responsive to Settlement Class Members' earlier demands for relief.

c. The reasonable attorneys' fees and expenses pursuant to this Section, as awarded by the Court, shall be paid within ten days of the Settlement Effective Date. TAIS will pay the amount awarded by the Court directly to Plaintiffs' Lead Counsel, who shall be responsible for allocating the fees and expenses among Plaintiffs' Counsel as agreed by Plaintiffs' Counsel.

d. TAIS further agrees not to oppose the payment of a \$2,500 service award to each Plaintiff. Plaintiffs' application for service awards pursuant to this subsection shall be made no later than five business days before the Fairness Hearing. Such application will be heard at the time of the Fairness Hearing or as soon thereafter as may be determined by the Court. The reasonable service awards pursuant to this subsection, as awarded by the Court, shall be paid within ten days of the entry of the Final Order and Judgment.

e. The Parties' negotiation of and agreement to the foregoing attorneys' fees, expenses and service awards did not occur until after the substantive terms of this Agreement had been negotiated and agreed upon.

f. If and to the extent that counsel other than those counsel identified in this Agreement apply for an award of attorneys' fees and expenses, TAIS reserves the right to oppose all such applications on any grounds, including, but not limited to, that TAIS has not agreed to pay such fees and expenses and that they are unreasonable or duplicative. Plaintiffs' Counsel hereby warrant and represent that, as of the date of this Agreement, they are unaware of any other counsel who intend to apply for an award of attorneys' fees and expenses in addition to that by the undersigned.

g. If this Agreement is terminated pursuant to any of its provisions, TAIS's obligations under this Section, including the obligation to pay any amount of attorneys' fees, expenses or service awards, shall likewise be terminated.

h. After the Settlement Effective Date and after receipt by Plaintiffs' Lead Counsel of payment by TAIS of attorneys' fees and expenses as awarded by the Court, Plaintiffs' Lead Counsel shall coordinate with Plaintiffs' Counsel to either destroy or return to TAIS all copies of discovery materials designated as "confidential" under the January 9, 2009 Protective

Order entered in the Litigation within 30 business days, and shall provide a certification to TAIS that such has been done.

i. Payment by TAIS of any attorneys' fee and expense award pursuant to this Section, as approved by the Court, will completely satisfy any and all obligations on their part or on the part of the other Released Parties to pay attorneys' fees, costs and expenses under this Agreement. The Released Parties shall have no responsibility or liability whatsoever regarding the payment of attorneys' fees, costs and expenses other than as set forth in this Section.

j. Any application for an award of attorneys' fees and expenses or service awards is to be considered separate from the approval of this Settlement, and any challenges thereto shall not terminate or delay the Settlement.

**13. Release, Waiver and Covenant Not to Sue.**

a. Effective as of the Settlement Effective Date, and in consideration of this Agreement and the benefits extended to the Settlement Class, Plaintiffs, on behalf of themselves and the Settlement Class Members, and each Settlement Class Member, on behalf of himself or herself and his or her respective successors, assigns, past, present, and future parents, subsidiaries, joint venturers, partnerships, related companies, affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees, agents, representatives, servants, partners, executors, administrators, assigns, predecessors, successors, descendants, dependents, and heirs, fully release and forever discharge the Released Parties from the Released Claims.

b. Plaintiffs, on behalf of themselves and the Settlement Class Members, fully understand that if any fact relating to any matter covered by this Agreement is later found to be other than or different from the facts now believed by Plaintiffs to be true, Plaintiffs, on behalf of themselves and the Settlement Class Members, expressly accept and assume the risk of such

possible differences in fact and agree and acknowledge that this Agreement shall nevertheless remain fully binding and effective.

c. Plaintiffs expressly understand and acknowledge that certain state statutes and principles of common law (*e.g.*, Cal. Civ. Code § 1542) provide that a “general” release does not extend to claims that a creditor does not know or suspect to exist in his, her or its favor at the time of executing the release and which, if known, must have materially affected the settlement with the debtor. To the extent that any Settlement Class Member may argue that such statutes or principles of common law are applicable here, Plaintiffs, on behalf of themselves and the Settlement Class Members, agree that any such statutes, principles of common law or other sources of legal authority of any and all jurisdictions that may be applicable are hereby knowingly and voluntarily waived and relinquished as they relate to Released Claims by the Settlement Class Members, and further agree and acknowledge that this is a material term of this Agreement.

d. Upon entry of the Final Order and Judgment, Plaintiffs shall have, and each and every Settlement Class Member shall be deemed to have, on behalf of the Settlement Class Member and the Settlement Class Member’s respective successors, assigns, past, present, and future parents, subsidiaries, joint venturers, partnerships, related companies, affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees, agents, representatives, servants, partners, executors, administrators, assigns, predecessors, successors, descendants, dependents, and heirs, covenanted and agreed to:

i. forever refrain from instituting, maintaining, or proceeding in any action against the Released Parties with respect to any Released Claims;

ii. release and forever discharge the Released Parties from each and every such Released Claim; and

e. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for a temporary restraining order or preliminary or permanent injunction against, any action, suit or other proceeding, which has been or may be instituted, prosecuted, continued to be prosecuted, or attempted, asserting any Released Claim.

**14. Entire Agreement.** This Agreement shall constitute the entire agreement between the Parties, on behalf of themselves and the Settlement Class, and supersedes and replaces any prior agreements and understandings, whether oral or written, between and among them, with respect to such matters. This Agreement shall not be subject to any change, modification, amendment, or addition, without the express written consent of all Parties, and may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

**15. Binding, Severable Agreement.** This Agreement shall benefit and bind the Parties, as well as their representatives, heirs and successors, and shall be construed as a whole, according to its plain meaning. If for any reason any provision of this Agreement other than Sections 6 or 13 shall be determined by a court of competent jurisdiction to be invalid, inoperative, illegal, unenforceable, or void, the validity and effect of the other provisions shall not be affected thereby, and this Agreement shall continue in full force and effect without said provision.

**16. Continuing Jurisdiction.** The Court shall retain continuing and exclusive jurisdiction over the Parties, including all Settlement Class Members, over the administration and enforcement of the Settlement and this Agreement, and over the distribution of benefits to the



Settlement Class. The Court also shall retain continuing and exclusive jurisdiction in connection with the injunction set forth in Section 5(a) above. The Court also shall retain continuing and exclusive jurisdiction in connection with any Person included within the Settlement Class who wishes to opt out, as set forth in Section 10 above. Any disputes or controversies arising with respect to the interpretation, enforcement or implementation of the settlement or this Agreement must be submitted by formal and proper motion to the Court.

17. **No Assignment.** The Parties each represent and warrant that they have not assigned, transferred or purported to assign or transfer, in whole or in part, any interest in any of the rights and claims that are the subject of this Agreement.

18. **Choice of Law.** The validity, construction, interpretation, performance, and enforcement of this Agreement shall be governed by the internal, substantive laws of California without giving effect to California choice of law principles.

19. **Counterparts.** This Agreement may be executed in one or more counterparts, either manually or by telecopy. All executed counterparts, and each of them, shall be deemed to be one and the same original instrument. This Agreement shall be deemed executed as of March 31, 2009. The Parties shall exchange among themselves original, signed counterparts, and a complete set of such counterparts shall be filed with the Court as an exhibit to the Submission for Preliminary Approval.

20. **Advice of Counsel.** Each of the Parties has had the benefit of the advice of counsel in the negotiation, drafting and execution of this Agreement, and the language in all parts of this Agreement is the product of the efforts of such counsel.

21. **Authority.** The Parties each represent and warrant that they have authority to enter into this Agreement, subject to certification of the Settlement Class and approval of this Agreement by the Court.

22. **CAFA Notice.** TAIS shall serve notice of this Settlement, in a form that meets the requirements of 28 U.S.C. § 1715, on the appropriate federal and state officials no later than ten days after the motion for Preliminary Approval described in Section 3 of this Agreement has been filed with the Court.

23. **No Party is Drafter.** None of the Parties to this Agreement shall be considered to be the primary drafter of this Agreement, or of any of its provisions, for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

24. **Notification.** Except as otherwise described in the Settlement Notice attached as Exhibit B to this Agreement, all notices and other communications referenced in this Agreement shall be addressed to the Parties' counsel at their respective addresses as set forth below:

Notices to Plaintiffs or the Settlement Class Members

Robert C. Lamar, Esq.  
Lamar, Archer & Cofrin, LLP  
50 Hurt Plaza, Suite 900  
Atlanta, Georgia 30303

Notices to TAIS

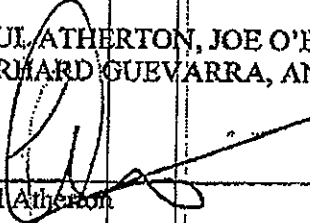
Philip R. Sellinger, Esq.  
Greenberg Traurig, LLP  
200 Park Avenue  
Florham Park, New Jersey 07932

25. **Time for Compliance.** If the date for performance of any act required by or under this Agreement to be performed on a particular day or within a specified period of time falls on a

Saturday, Sunday or legal or Court holiday, such act may be performed upon the next business day, with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

IN WITNESS WHEREOF, the Parties have signed and delivered originals of this Agreement as of August \_\_\_\_, 2009, but actually signed this Agreement on the dates set forth below.

PAUL ATHERTON, JOE O'BRIEN, MIKE WILLIAMS, GORDON PETRASH, GERHARD GUEVARRA, AND DAVID O'SHAUGHNESSY

  
\_\_\_\_\_  
Paul Atherton

\_\_\_\_\_  
Joe O'Brien

\_\_\_\_\_  
Mike Williams

\_\_\_\_\_  
Gordon Petrash

\_\_\_\_\_  
Gerhard Guevarra

\_\_\_\_\_  
David O'Shaughnessy

Approved By \_\_\_\_\_  
Robert C. Lamar  
Attorney In Fact

Dated: August \_\_\_\_, 2009

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GERHARD GUEVARRA, AND DAVID O'SHAUGHNESSY

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Paul Atherton

  
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Joe O'Brien

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Mike Williams

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Gordon Petrash

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Gerhard Guevarra

\_\_\_\_\_  
David O'Shaughnessy

Approved By: \_\_\_\_\_

Robert C. Lamar  
Attorney In Fact

Dated: August \_\_\_, 2009

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IN WITNESS WHEREOF, the Parties have signed and delivered originals of this Agreement as of September 10, 2009, but actually signed this Agreement on the dates set forth below.

PAUL ATHERTON, JOE O'BRIEN, MIKE WILLIAMS, GORDON PETRASH,  
GERHARD GUEVARRA, AND DAVID O'SHAUGHNESSY

\_\_\_\_\_  
Paul Atherton

\_\_\_\_\_  
Joe O'Brien

*Mike Williams*  
\_\_\_\_\_  
Mike Williams

\_\_\_\_\_  
Gordon Petrash

\_\_\_\_\_  
Gerhard Guevarra

\_\_\_\_\_  
David O'Shaughnessy

Approved By: \_\_\_\_\_  
Robert C. Lamar  
Attorney In Fact

Dated: September \_\_, 2009

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GERHARD GUEVARRA, AND DAVID O'SHAUGHNESSY

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Joe O'Brien

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Mike Williams

  
\_\_\_\_\_  
Gordon Petrash

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Gerhard Guevarra

\_\_\_\_\_  
David O'Shaughnessy

Approved By: \_\_\_\_\_  
Robert C. Lamar  
Attorney In Fact

Dated: August \_\_, 2009

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GERHARD GUEVARRA, AND DAVID O'SHAUGHNESSY

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Gordon Petrash

  
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Gerhard Guevarra

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David O'Shaughnessy

Approved By: \_\_\_\_\_  
Robert C. Lamar  
Attorney In Fact

Dated: September \_\_, 2009

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GERHARD GUEVARRA, AND DAVID O'SHAUGHNESSY

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Mike Williams

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Gordon Petrash

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Gerhard Guevarra

  
\_\_\_\_\_  
David O'Shaughnessy

Approved By: \_\_\_\_\_  
Robert C. Lamar  
Attorney In Fact

Dated: August \_\_\_, 2009



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GERHARD GUEVARRA, AND DAVID O'SHAUGHNESSY

\_\_\_\_\_  
Paul Atherton

\_\_\_\_\_  
Joe O'Brien

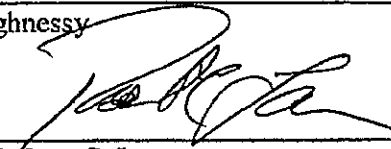
\_\_\_\_\_  
Mike Williams

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Gordon Petrash

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Gerhard Guevarra

\_\_\_\_\_  
David O'Shaughnessy

Approved By: \_\_\_\_\_

  
Robert C. Lamar  
Attorney In Fact

Dated: September 30, 2009

TOSHIBA AMERICA INFORMATION SYSTEMS, INC.

By: David J. Harshman  
David J. Harshman  
Assistant General Counsel

Approved By: Philip R. Sellinger  
Philip R. Sellinger  
Attorney In Fact

Dated: September 28, 2009