

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

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IN RE TYCO INTERNATIONAL LTD.,  
SECURITIES LITIGATION

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) MDL Docket No. 02-1335-PB  
)  
) This document relates to:  
) Securities Action  
) Civil Action No. 02-266-PB  
)

**STIPULATION OF SETTLEMENT WITH TYCO INTERNATIONAL  
LTD., MICHAEL A. ASHCROFT, MARK A. BELNICK AND  
PRICEWATERHOUSECOOPERS LLP**

This Stipulation of Settlement with Tyco International Ltd. (“Tyco”), Michael A. Ashcroft (“Ashcroft”), Mark A. Belnick (“Belnick”) and PricewaterhouseCoopers LLP (“PwC”), is an agreement between the Class Representatives, on behalf of themselves and the Class (all as defined below) on the one hand, and defendants Tyco, PwC, Ashcroft and Belnick (collectively, the “Settling Defendants”) on the other hand (the “Settlement Agreement”). The Class Representatives and the Settling Defendants are collectively referred to as the “Settling Parties.”

WHEREAS, starting in February 2002, over twenty putative class actions alleging securities law violations were filed against Tyco and certain of its current and former officers, directors and employees in multiple federal courts;

WHEREAS, by various orders, the Judicial Panel on Multidistrict Litigation centralized all of these actions in the United States District Court for the District of New Hampshire, before the Honorable Paul Barbadoro, for coordinated or consolidated pretrial proceedings;

WHEREAS, by order dated November 20, 2002 (Practice and Procedure Order No. 3), Judge Barbadoro appointed Lead Plaintiffs to pursue claims for alleged violations of the federal securities laws;

WHEREAS, by the same November 20, 2002 order, Judge Barbadoro approved Lead Plaintiffs' choice of counsel – the firms Grant & Eisenhofer P.A., Milberg Weiss & Bershad, LLP and Schiffrin Barroway Topaz & Kessler, LLP, as Co-Lead Counsel;<sup>1</sup>

WHEREAS, pursuant to Practice and Procedure Order No. 3, on January 28, 2003, Lead Plaintiffs filed a Consolidated Securities Class Action Complaint alleging violations of federal securities laws against Tyco, PwC, Ashcroft, Belnick, L. Dennis Kozlowski, Mark H. Swartz and Frank E. Walsh, Jr. in the MDL Securities Action (the “Complaint”);

WHEREAS, in March and April, 2003, the Settling Defendants and other defendants filed motions to dismiss the Complaint;

WHEREAS, on October 14, 2004, Judge Barbadoro denied the motions to dismiss the Complaint (granting Tyco's motion only with respect to the claims under Section 14(a) and granting Ashcroft's motion with respect to all claims other than claims brought under Section 11 and Section 12(a)(2));

WHEREAS, the Settling Defendants thereafter filed answers to the Complaint denying the material allegations of the Complaint;

WHEREAS, in the course of this litigation, Tyco produced and made available to Co-Lead Counsel for review and Co-Lead Counsel analyzed over eighty million pages of documents and PwC produced and made available to Co-Lead Counsel for review and Co-Lead Counsel reviewed over two million five hundred thousand pages of documents;

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<sup>1</sup> Two of the appointed Co-Lead Counsel, Schiffrin & Barroway, LLP and Milberg Weiss Bershad Hynes & Lerach LLP, have changed their names, and are now known as Schiffrin Barroway Topaz & Kessler, LLP and Milberg Weiss & Bershad LLP, respectively.

WHEREAS, Co-Lead Counsel have monitored the two criminal trials of Kozlowski and Swartz, and the criminal trial of Belnick and additional proceedings and enforcement actions;

WHEREAS, Co-Lead Counsel have issued over 75 subpoenas to non-parties and reviewed the resulting productions;

WHEREAS, Co-Lead Counsel have consulted with forensic accountants, investment bankers, economists and other experts and located and interviewed former Tyco employees to develop the case and evidence;

WHEREAS, in the course of this litigation, the Settling Parties have deposed over 215 witnesses in over 20 states;

WHEREAS, after briefing and argument on Class Representatives' motion for class certification, on June 12, 2006, Judge Barbadoro certified a class consisting of all persons and entities who purchased or otherwise acquired Tyco securities during the Class Period, and who were damaged thereby, excluding defendants, all of the officers, directors and partners thereof, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which any of the foregoing have or had a controlling interest;

WHEREAS, on September 22, 2006, after the parties filed appellate briefs, the United States Court of Appeals for the First Circuit denied Tyco's Rule 23(f) request for leave to appeal the class certification decision;

WHEREAS, the Settling Parties have participated in over 40 hearings with the Court in the MDL Securities Action and additional hearings in the Related Actions;

WHEREAS, for more than five years following the filing of the initial putative class actions, the Settling Parties have been vigorously litigating this action;

WHEREAS, the litigation has resulted in numerous rulings by both the trial and appellate courts;

WHEREAS, the Settling Defendants expressly deny that they have committed any act or omission giving rise to any liability and/or violation of law, and state that they are entering into this settlement solely to eliminate the uncertainties, burden and expense of further protracted litigation; and

WHEREAS, without admitting the strengths or weaknesses of any claims or defenses, the Settling Parties have agreed to a settlement of the Action as set forth herein (the "Settlement");

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Class Representatives and the Settling Defendants, by and through their duly authorized counsel, that the MDL Securities Action (as defined herein) and the Released Claims (as defined herein) hereby are settled and compromised with respect to the Settling Defendants, and that the MDL Securities Action will be dismissed as against the Settling Defendants only, on the merits and with prejudice, and that the Released Claims will be released as against the Tyco Settling Defendants' Releasees and the PwC Releasees based upon the terms and conditions set forth in this Settlement Agreement, subject to, with respect to the Tyco Settling Defendants, the occurrence of the Tyco Settlement Effective Date and with respect to PwC, the occurrence of the PwC Settlement Effective Date. In addition, this Settlement, as described herein, will be expressly conditioned upon the dismissal with prejudice of all the Related Actions (as defined herein) as to the Settling Defendants only.

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## **I. DEFINITIONS**

A. As used in this Settlement Agreement, the following terms have the following meanings:

1. “Actions” means the MDL Securities Action and the Related Actions (both as defined herein).
2. “Administrator” means The Garden City Group, Inc., or such other entity as shall be appointed by the Court in the Hearing Order to assist in implementing this Settlement Agreement.
3. “Alternative Judgment” means a form of final judgment that may be entered by the Court herein but in a form other than the form of Final Judgment provided for in this Settlement Agreement and where none of the parties hereto elect to terminate this Settlement by reason of such variance.
4. “Ashcroft” means Defendant Michael A. Ashcroft. Ashcroft is one of the Settling Defendants.
5. “Attorneys’ Fees and Expenses Application” means the application for fees and expenses to be made by Co-Lead Counsel pursuant to Section VII below.
6. “Attorneys’ Fees and Expenses Award” means the amounts awarded to Co-Lead Counsel to compensate them for their fees and expenses in connection with investigating, prosecuting and/or settling the MDL Securities Action and Related Actions as provided for in Section VII below.
7. “Authorized Claimant” means a Claimant whose Proof of Claim is allowed by the Court.
8. “Belnick” means Defendant Mark A. Belnick. Belnick is one of the Settling Defendants.

9. “Cash Settlement Accounts” means segregated interest-bearing escrow accounts established pursuant to the terms of escrow agreements dated May 30, 2007 or any successor escrow agreements entered into by the Class Representatives on behalf of themselves and the Class and Tyco (collectively the “Tyco Escrow Agreements”) and segregated interest-bearing escrow accounts to be established pursuant to the terms of an escrow agreement to be entered into by the Class Representatives on behalf of themselves and the Class and PwC (the “PwC Escrow Agreements” and collectively along with the Tyco Escrow Agreements, the “Settlement Escrow Agreements”). All disbursements from the Cash Settlement Accounts shall be pursuant to the terms of the Settlement Escrow Agreements. Each of the Cash Settlement Accounts shall be maintained as a Qualified Settlement Fund, as defined below. All monies in the Cash Settlement Accounts, including all interest accruing thereon, shall be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court until such time as they are paid out as: (i) Notice and Administrative Expenses, (ii) Attorneys’ Fees and Expense Award, (iii) Tax Expenses on the Cash Settlement Accounts or (iv) distributions to Authorized Claimants after the Effective Date of this Settlement.

10. “Claim” or “Claims” (together “Claims”) means any and all legal and equitable actions, causes of action, proceedings, adjustments, executions, offsets, contracts, judgments, obligations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, variances, covenants, trespasses, damages, demands (whether written or oral), agreements, promises, liabilities, controversies, costs, expenses, attorneys’ fees and losses whatsoever, whether in law, in admiralty or in equity and whether based on any federal law, state law, foreign law or common law right of action or otherwise, foreseen or unforeseen, matured or

unmatured, known or unknown, accrued or not accrued, existing now or to be created in the future. Claims include Unknown Claims.

11. “Claimant” means any Class Member (or the representative of such Class Member including, without limitation, agents, administrators, executors, heirs, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns) who submits a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

12. “Class” means the Class certified by the Court for litigation purposes consisting of all Persons who purchased or otherwise acquired Tyco Securities during the Class Period and who were damaged thereby, excluding all of the Defendants, all the officers, directors and partners thereof, members of their immediate families (parents, spouses, siblings, and children) and their legal representatives, heirs, successors and assigns, and any entity in which any of the foregoing have or had a Controlling Interest. Also excluded from the Class are Edward Federman, Richard J. Heger, Richard D. Power and Raymond Scott Stevenson. Also excluded from the Settlement will be any Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice.

13. “Class Member” means a member of the Class.

14. “Class Period” means the period of time from December 13, 1999 through June 7, 2002, inclusive.

15. “Class Representatives” mean the Plumbers and Pipefitters National Pension Fund, United Association General Officers Pension Plan, United Association Office Employees Pension Plan, United Association Local Union Officers & Employees Pension Fund, Teachers’ Retirement System of Louisiana, and Louisiana State Employees’ Retirement System, in their individual capacity and in their capacity as representatives of the Class.



16. “Co-Lead Counsel” mean the law firms of Grant & Eisenhofer P.A., Milberg Weiss & Bershad LLP, and Schiffrin Barroway Topaz & Kessler, LLP.

17. “Complaint” means the Consolidated Securities Class Action Complaint filed in the Action on January 28, 2003.

18. “Controlling Interest” means a legal or beneficial ownership interest, directly or indirectly, in more than Fifty Percent (50%) of the outstanding voting power of any class or classes of capital stock that entitle the holders thereof to vote in the election of the Board of Directors of such entity (or equivalent decision-making authority in a non-corporate entity). For purposes of this Settlement, without limitation, at least the following Persons are considered to be subject to a “Controlling Interest” by Persons excluded from the Class, and are also excluded from the Class: K&D Trust, Kozlowski Family Partnership, L.P., Kozlowski Family 1998 Trust, Kozlowski Family Foundation, L. Dennis Kozlowski 1997 Foundation Trust, KMS Partnership, L.P., KMS Family Partnership L.P., KMS Family 1999 Trust, KMS Trust, KMS Family Corp., SFFP Trust, Swartz Family Foundation, Swartz Family Partnership, Mayo Realty Trust LLC, K Corp. LLC, DCS Family Partnership L.P., Endeavour Forever Corp., KFT Family Partnership, L.P., KFT Trust, Kozma Ltd., KD Nominee Trust, Whitehall Street Real Estate Ltd. Partnership, SEA, SEA Holdings LLC, 850 Lake Drive, LLC, 2365 South Ocean Blvd. Realty Trust, 447 Primavera Way, LLC, 24 Straw’s Point Realty Trust, and GV Realty Trust.

19. “Court” means the United States District Court for the District of New Hampshire.

20. “Defendants” means the Settling Defendants and the Non-Settling Defendants (defined below).

21. “Distribution Amount” means the Total Cash Settlement Amount, plus all interest or other income earned thereon, less any Tax Expenses, less all Notice and Administrative Expenses, less the Attorneys’ Fees and Expense Award, and less any other payment authorized by the Court to be paid from those funds.

22. “Execution Date” means the date on which this Settlement Agreement has been executed by all of the Settling Parties.

23. “Fairness Hearing” means the hearing to be held by the Court to make a final decision pursuant to Fed. R. Civ. P. 23 as to whether this Settlement Agreement is fair, reasonable and adequate and, therefore, should be approved by the Court.

24. “Final Judgment” means the order and the judgment to be entered by the Court pursuant to Fed. R. Civ. Pro. 58(a) (substantially in the form attached hereto as Exhibit B or an Alternate Judgment which reflects any Partial Termination) finally approving this Settlement and the Settlement Agreement, and dismissing the MDL Securities Action and such of the Related Actions as are before the Court, as to the Settling Defendants on the merits and with prejudice as contemplated by Section VI.A.1.g. of this Settlement Agreement.

25. “Hearing Order” means the proposed order preliminarily approving the Settlement and directing notice thereof to the Class substantially in the form attached hereto as Exhibit A.

26. “Initial Payment” means the amount of Sixteen Million One Hundred Thirty-Four Thousand, Four Hundred and Fifty-Three Dollars (\$16,134,453), of which Fifteen Million Dollars (\$15,000,000) was paid into a Cash Settlement Account by Tyco on or about May 30, 2007, and of which One Million One Hundred Thirty-Four Thousand, Four Hundred

and Fifty-Three Dollars (\$1,134,453)<sup>1</sup> will be paid into a Cash Settlement Account by PwC on or before July 20, 2007, and which payment may be used by Co-Lead Counsel to pay Notice and Administrative Expenses. Notice and Administrative Expenses not covered by the Initial Payment shall be paid out of the Net Cash Settlement Amount, after receiving authorization from Tyco and PwC, such authorization not to be unreasonably withheld.

27. “Kozlowski” means Defendant L. Dennis Kozlowski. Kozlowski is a Non-Settling Defendant.

28. “MDL Securities Action” means *In re Tyco International Ltd. Securities Litigation*, Case No. 02-1335-B.

29. “Net Cash Settlement Amount” means the Total Cash Settlement Amount (Two Billion Nine Hundred Seventy Five Million Dollars (\$2,975,000,000) of which was paid into the Cash Settlement Accounts by Tyco on or about May 30, 2007 and Two Hundred Twenty Five Million Dollars (\$225,000,000) of which will be paid into the Cash Settlement Accounts by PwC on or before July 20, 2007) less the Initial Payment.

30. “Non-Settling Defendants” means Kozlowski, Swartz and Walsh.

31. “Notice” means the Notice of Proposed Settlement, Motion for Attorneys’ Fees and Fairness Hearing, which is to be sent to Class Members substantially in the form attached hereto as Exhibit A-1.

32. “Notice and Administrative Expenses” means all expenses associated with giving notice to Class Members and the administration of the Settlement contemplated by this

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<sup>1</sup> PwC’s portion of the Initial Payment Amount represents approximately 0.5042% of the Two Hundred Twenty Five Million Dollars (\$225,000,000) to be contributed by PwC to the Settlement on or before July 20, 2007, which approximates the division of the Total Cash Settlement Amount paid by Tyco between Initial Payment and Cash Settlement Amount.

Settlement Agreement, including, but not limited to, the expenses associated with: printing and mailing the Notice to Class Members; publishing the Summary Notice; reimbursements to brokers and other nominees for identifying and forwarding notice to beneficial owners, and assisting Class Members with filing Proofs of Claim; processing Proofs of Claim; setting up and maintaining the toll-free telephone number; *provided however*, that Notice and Administrative Expenses shall not include the amount of the Attorneys' Fees and Expenses Award.

33. "Person" or "Persons" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability corporation, association, joint stock company, state, legal representative, trust, trustee, unincorporated association, any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

34. "Plaintiff-Related Releasees" means the Lead Plaintiffs, the Class Representatives and all other Class Members, and plaintiffs' counsel and each of their heirs, executors, administrators, predecessors, successors and assigns.

35. "Plan of Allocation" means the terms and procedures for allocating the Distribution Amount among, and distributing the Distribution Amount to, Authorized Claimants, as proposed in the Notice, or such other Plan of Allocation as the Court shall approve.

36. "Preliminary Approval Hearing" means the hearing at which the Court will consider preliminarily approving this Settlement Agreement. At the discretion of the Court, the Preliminary Approval Hearing may be held in person or by telephone.

37. "Proof of Claim" means the form which is to be sent to Class Members substantially in the form attached hereto as Exhibit A-2.

38. "PSLRA" means the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, *et seq.*, as amended.

39. “PwC Related Actions” means the following cases: Jim Myers v. Tyco International, CA 02-15009 AF (Palm Beach Co. Circuit Court, Fla.); Ray Rappold v. Tyco International, CA 02-15008 AI (Palm Beach Co. Circuit Court, Fla.); and H. George Mandel v. Tyco International, CA 03-0295 AB (Palm Beach Co. Circuit Court, Fla.).

40. “PwC Releasees” means PwC, its present and former parents, subsidiaries, divisions and affiliates; PricewaterhouseCoopers International Limited, any member firm of PricewaterhouseCoopers International Limited, and any other entity or partnership (whether or not incorporated) which carries on business under a name which includes all or part of the PricewaterhouseCoopers name or is otherwise within (or associated or connected with an entity within) the worldwide network of PricewaterhouseCoopers firms (including, without limitation, the Bermuda firm of PricewaterhouseCoopers); the present and former employees, members, partners (including, without limitation, Richard P. Scalzo), principals, officers and directors, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents of each of them; the predecessors, estates, heirs, executors, trusts, trustees, administrators, successors and assigns of each of them, and any Person which is or was related to or affiliated with any of the foregoing or in which any of them has or had a Controlling Interest, *provided however*, that the PwC Releasees do not include any or all of the Non-Settling Defendants.

41. “PwC Settlement Effective Date” means, with respect to PwC, the day on which all of the following conditions shall have occurred:

- a. payment of PwC’s portion of the Cash Settlement Amount;

b. entry of the Final Judgment, except that in the event the Settlement is terminated with respect to the Tyco Settling Defendants, the Final Judgment shall not release or dismiss the Tyco Settling Defendants' Releasees;

c. dismissal with prejudice of the PwC Related Actions as against PwC; and

d. the expiration of the time for appeal from the Final Judgment or the orders or judgments dismissing the PwC Related Actions as against PwC, or, if any such appeal is taken, after final affirmance of the Final Judgment or judgment in the PwC Related Actions, and expiration of the time for further review, appeal or petition for rehearing, of any such appeal by the highest court before which appellate review is or could be sought as against PwC. For purposes of this Settlement Agreement, "appeal" includes a petition for writ of certiorari filed with the United States Supreme Court that seeks review of any order entered in connection with the Settlement, any further proceedings in the Supreme Court, and any valid procedure by which appellate review of the United States District Court for the District of New Hampshire entered in connection with this Settlement may be sought.

42. "Qualified Settlement Fund" means a fund within the meaning of Treasury Regulations § 1.468B-1.

43. "Related Actions" means the Tyco Related Actions and the PwC Related Actions.

44. "Release" means the releases and waivers set forth in Section VI of this Settlement Agreement.

45. "Released Claims" means any and all Claims, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or

contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, including both known claims and Unknown Claims, (i) that have been asserted in the MDL Securities Action by Class Representatives or any or all Class Members against any of the Tyco Settling Defendants' Releasees or PwC Releasees; and (ii) that could have been asserted in the MDL Securities Action or in any other forum by Class Representatives or any or all Class Members against any of the Tyco Settling Defendants' Releasees or PwC Releasees which arise out of, relate to, or are based upon the subject matter, allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, or referred to in the Complaint and which relate to the purchase, acquisition, sale or retention of Tyco Securities. "Released Claims" includes Claims that relate in any way to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences or oral or written statements or representations in connection with, or directly or indirectly relating to, the prosecution, defense or settlement of the Actions, except claims to enforce the Settlement. "Released Claims" does not mean or include claims, if any, against the Tyco Settling Defendants' Releasees or PwC Releasees arising under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* ("ERISA") which are not common to all Class Members. Claims brought against the Settling Defendants, the Tyco Settling Defendants' Releasees and the PwC Releasees in any other actions filed prior to the Execution Date other than the Actions (as defined herein) are specifically carved out from the Settlement and shall not be released by this Settlement.

46. "Released PwC Claims" means all Claims of PwC against any or all Class Representatives, Co-Lead Counsel or any or all Class Members, including both known and Unknown Claims, that relate in any way to any or all acts, omissions, nondisclosures, facts,

matters, transactions, occurrences or oral or written statements or representations in connection with or directly or indirectly relating to the institution, prosecution, or settlement of the Actions, except claims to enforce the Settlement.

47. “Released Settling Defendants’ Claims” means Released PwC Claims and Released Tyco Settling Defendants’ Claims.

48. “Released Tyco Settling Defendants’ Claims” means all Claims of the Tyco Settling Defendants against any or all Class Representatives, Co-Lead Counsel or any or all Class Members, including both known and Unknown Claims, that relate in any way to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences or oral or written statements or representations in connection with or directly or indirectly relating to the institution, prosecution, or settlement of the Actions, except claims to enforce the Settlement.

49. “Releasee” means each and any of the Tyco Settling Defendants’ Releasees, the PwC Releasees and the Plaintiff-Related Releasees.

50. “Releasees” means, collectively, all of the Tyco Settling Defendants’ Releasees, the PwC Releasees and the Plaintiff-Related Releasees.

51. “Settlement Agreement” means this Stipulation of Settlement with Tyco International Ltd., Michael A. Ashcroft, Mark A. Belnick, and PricewaterhouseCoopers LLP and the exhibits hereto, including any subsequent amendments thereto and any exhibits to such amendments.

52. “Settlement Amount” means the Initial Payment and the Net Cash Settlement Amount.

53. “Summary Notice” means the summary notice of proposed Settlement and hearing for publication substantially in the form attached as Exhibit A-3.



54. “Swartz” means Defendant Mark H. Swartz. Swartz is a Non-Settling Defendant.

55. “Tax Expenses” means (i) all taxes on the income earned in the Cash Settlement Accounts, and (ii) expenses and costs incurred in connection with such taxation (including, without limitation, expenses of tax attorneys and accountants).

56. “Total Cash Settlement Amount” means the Initial Payment and Net Cash Settlement Amount, both inclusive of any interest earned thereon.

57. “Tyco” means Defendant Tyco International Ltd. and each and all of Tyco’s and any or all of its respective predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), divisions, business units, subsidiaries and entities in which it has or had a Controlling Interest. As used herein, Tyco does not mean or include the Non-Settling Defendants. Tyco specifically includes Covidien Ltd. and Tyco Electronics Ltd. which were spun off from Tyco pursuant to a plan of separation approved by the Board of Directors of Tyco International Ltd. on January 13, 2006 (“Spun-Off Companies”). Each of the Spun-Off Companies shall be jointly and severally liable for each of Tyco’s obligations and liabilities under this Settlement Agreement.

58. “Tyco Related Actions” means the following cases: Williams, et al. v. Tyco International, et al., 1:02-cv-00266-PB (D.N.H.); Brazen v. Tyco International, et al., 02-CH-11837 (Cook County, Ill.); Philip Cirella v. Tyco International, 1:03-cv-01348-PB (D.N.H.); Jim Myers v. Tyco International, CA 02-015009 AB (Palm Beach Co. Circuit Court, Fla.); Irving Goldfarb v. Tyco International, CA 02-015007 AB (Palm Beach Co. Circuit Court, Fla.); Ray Rappold v. Tyco International, CA 02-015008 AB (Palm Beach Co. Circuit Court, Fla.); H. George Mandel v. Tyco International, CA 03-000295 AB (Palm Beach Co. Circuit Court, Fla.);

Schuldt Ltd. Partnership v. Tyco International, CA 02-013887 AB (Palm Beach Co. Circuit Court, Fla.); Abowitz v. Tyco International; 02-CV-1033 (S.D.N.Y.); Ament v. Tyco International, 02-CV-3402 (S.D.N.Y.); Brody v. Tyco International, 02-CV-2190 (S.D.N.Y.); Carlin v. Tyco International, 02-CV-0878 (S.D.N.Y.); Casey v. Tyco International, 02-80164 (S.D. Fla.); Chambers v. Tyco International, 02-CV-2607 (S.D.N.Y.); Danforth v. Tyco International, 02-1365-B (S.D. Fla.); Engel v. Tyco International, 02-CV-1150 (S.D.N.Y.); Fagan v. Tyco International, 02-80118 (S.D. Fla.); Fink v. Tyco International, 02-CV-2260 (S.D.N.Y.); Fischbein v. Tyco International, 02-1364-B (S.D. Fla.); Garcia v. Tyco International, 02-CV-1464 (S.D.N.Y.); Goldstein v. Tyco International, 02-1034 (S.D.N.Y.); Hoyt v. Tyco International, 02-780152 (S.D. Fla.); Jaffee v. Tyco International, 02-21048 (S.D. Fla.); Kelley v. Tyco International, 02-80120 (S.D. Fla.); Leone v. Tyco International, 02-CV-2056 (S.D.N.Y.); Lock v. Tyco International, 02-CV-2080 (S.D.N.Y.); Meran v. Tyco International, 02-80189 (S.D. Fla.); Murphy v. Tyco International, 02-CV-2356 (S.D.N.Y.); Rappaport v. Tyco International, 02-CV-1393 (S.D.N.Y.); Smith v. Tyco International, 02-CV-1288 (S.D.N.Y.); and Sved v. Tyco International, 02-CV-1293 (S.D.N.Y.).

59. “Tyco Securities” means any securities (*i*) issued by Tyco, including, but not limited to, stock, bonds, notes or (*ii*) that trade in whole or in part based on the price or value of any security issued by Tyco, including, but not limited to, put and call options.

60. “Tyco Settlement Effective Date” means, with respect to Tyco, Ashcroft and Belnick, the day on which all of the following conditions shall have occurred:

(a) entry of the Final Judgment, except that in the event the Settlement is terminated with respect to PwC, the Final Judgment shall not release or dismiss the PwC Releasees;

(b) dismissal with prejudice of all Tyco Related Actions as against the Tyco Settling Defendants; and

(c) the expiration of the time for appeal from the Final Judgment or the orders or judgments dismissing the Tyco Related Actions as against the Tyco Settling Defendants, or, if any such appeal is taken, after final affirmance of the Final Judgment or judgment in the Tyco Related Actions, and expiration of the time for further review, appeal or petition for rehearing, of any such appeal by the highest court before which appellate review is or could be sought as against the Tyco Settling Defendants. For purposes of this Settlement Agreement, “appeal” includes a petition for writ of certiorari filed with the United States Supreme Court that seeks review of any order entered in connection with the Settlement, any further proceedings in the Supreme Court, and any valid procedure by which appellate review of the United States District Court for the District of New Hampshire entered in connection with this Settlement may be sought.

61. “Tyco Settling Defendants” means Tyco, Ashcroft and Belnick.

62. “Tyco Settling Defendants’ Releasees” means Tyco, Ashcroft and Belnick, their respective present and former parents, subsidiaries, divisions and affiliates; the Spun-Off Companies; the present and former employees, members, partners, principals, officers and directors, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors (except PwC), insurers, and agents of each of them; the predecessors, estates, heirs, executors, trusts, trustees, administrators, successors and assigns of each of them, and any Person which is or was related to or affiliated with any of the foregoing or in which any of them has or had a Controlling Interest, *provided however*, that the Tyco Settling Defendants’ Releasees does not include any or all of the Non-Settling Defendants. The Tyco

Settling Defendants' Releasees specifically include Joshua M. Berman, Richard S. Bodman, John F. Fort, III, Stephen W. Foss, Richard Gilleland, Philip M. Hampton, Wendy E. Lane, James S. Pasman, Jr., W. Peter Slusser and Joseph F. Welch.

63. "Unknown Claims" means any and all Released Claims that any Class Member does not know or suspect to exist in his, her or its favor at any time on or before the date that such Class Member's release becomes effective, including any Released Claims for new or additional damages or injuries, and that, if known by him, her or it, might have affected his, her or its settlement with any of the Tyco Settling Defendants' Releasees or PwC Releasees or might have affected his, her or its decision not to request exclusion from the Settlement or not to object to this Settlement Agreement, including any Released Claims for new or additional damages or injuries, and any and all Released Settling Defendants' Claims that any Tyco Settling Defendants' Releasees or any PwC Releasees does not know or suspect to exist in his, her or its favor at any time on or before the date that such Tyco Settling Defendants' Releasees' or PwC Releasees' release becomes effective, including any Released Settling Defendants' Claims for new or additional damages or injuries, that, if known by him, her or it, might have affected his, her or its decision to enter this Settlement Agreement. The Class and every Class Member, and the Settling Defendants and every Tyco Settling Defendants' Releasee and PwC Releasee, relinquishes and waives, to the full extent permitted by law, including pursuant to §3268 of the California Civil Code (to the extent state law is applicable), the provisions, rights and benefits of §1542 of the California Civil Code which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**

**AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Class Representatives and Settling Defendants shall expressly, and each of the Class Members and each of the Tyco Settling Defendants' Releasees and PwC Releasees shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. The Class Representatives and Class Members, and Settling Defendants and the Tyco Settling Defendants' Releasees and PwC Releasees, may hereafter discover facts in addition to or different from those that he, she, or it, or they now know or believe to exist or to be true with respect to the subject matter of the Released Claims or Released Settling Defendants' Claims, but the Class Representatives and Settling Defendants, shall have, and each Class Member and each of the Tyco Settling Defendants' Releasees and PwC Releasees, with respect to the Tyco Settling Defendants, upon the occurrence of the Tyco Settlement Effective Date and with respect to PwC, upon the occurrence of the PwC Settlement Effective Date, and by operation of the Final Judgment, shall be deemed to have, fully, finally, and forever settled and released any and all Released Claims and Released Settling Defendants' Claims, respectively, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Representatives and Settling Defendants acknowledge, and the Class Members and the Tyco Settling Defendants' Releasees

and the PwC Releasees shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the Settlement Agreement of which this release of Unknown Claims is a part.

64. “Walsh” means Defendant Frank E. Walsh, Jr. Walsh is a Non-Settling Defendant.

## **II. TERMS AND CONDITIONS OF THE SETTLEMENT**

### **A. Payments:**

#### **1. Initial Payment and Net Cash Settlement Amount**

a. On or about May 30, 2007, Tyco paid its portion of the Initial Payment (Fifteen Million Dollars (\$15,000,000)) and the Net Cash Settlement Amount (Two Billion Nine Hundred Sixty Million Dollars (\$2,960,000,000)) into Cash Settlement Accounts designated by Co-Lead Counsel pursuant to the Escrow Agreements.

b. On or before July 20, 2007, PwC shall pay its portion of the Initial Payment (One Million One Hundred Thirty-Four Thousand, Four Hundred and Fifty-Three Dollars (\$1,134,453)) and the Net Cash Settlement Amount (Two Hundred Twenty Three Million Eight Hundred Sixty Five Thousand Five Hundred Forty Seven Dollars (\$223,865,547)) into the Cash Settlement Accounts designated by Co-Lead Counsel.

2. It is expressly understood that any payment contemplated by this Settlement Agreement paid by either Tyco or PwC into a Cash Settlement Account held at a particular financial institution may thereafter be transferred to one or more other financial institutions in accordance with the terms of the respective Escrow Agreements.

3. If the Class Representatives, on the one hand, or Tyco and PwC jointly on the other hand, exercise the option to Completely Terminate this Settlement Agreement, as such term is defined in accordance with Section X.B.1.a. hereof then (i) the Two Billion Nine

Hundred Seventy Five Million Dollars (\$2,975,000,000) paid by Tyco, less 92.96875%<sup>2</sup> of the Notice and Administrative Expenses paid or incurred prior to such Partial Termination, plus any accrued interest earned in any Cash Settlement Accounts funded by Tyco, less any Tax Expenses relating to such Cash Settlement Accounts funded by Tyco, shall be returned promptly to Tyco, and (ii) presuming that PwC has already paid its share of the Total Cash Settlement Amount, the Two Hundred Twenty Five Million Dollars (\$225,000,000) paid by PwC, less 7.03125%<sup>3</sup> of the Notice and Administrative Expenses paid or incurred prior to such Partial Termination, plus any accrued interest earned in any Cash Settlement Accounts funded by PwC, less any Tax Expenses relating to such Cash Settlement Accounts funded by PwC, shall be returned promptly to PwC.

4. If Tyco exercises its option to Partially Terminate this Settlement Agreement (as such term is defined in accordance with Sections X.B.1. and X.B.2. hereof), the Two Billion Nine Hundred Seventy Five Million Dollars (\$2,975,000,000) paid by Tyco, less 92.96875% of the Notice and Administrative Expenses paid or incurred prior to such Partial Termination, plus any accrued interest earned in any Cash Settlement Accounts funded by Tyco, less any Tax Expenses related to such Cash Settlement Accounts funded by Tyco, shall be returned promptly to Tyco and the Tyco Settling Defendants shall be treated as Non-Settling Defendants for all purposes of this Settlement Agreement, the Tyco Settling Defendants' Releasees shall not receive the Release contemplated herein and the remainder of the Settlement Agreement shall survive and be operable with respect to the Class Representatives, the Class, PwC and the PwC Releasees.

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<sup>2</sup>  $\$2,975,000,000 / \$3,200,000,000 = 92.96875\%$

<sup>3</sup>  $\$225,000,000 / \$3,200,000,000 = 7.03125\%$

5. If, after PwC has paid its share of the Total Cash Settlement Amount, PwC exercises its option to Partially Terminate this Settlement Agreement (as such term is defined in accordance with Sections X.B.1. and X.B.2. hereof), the Two Hundred Twenty Five Million Dollars (\$225,000,000) paid by PwC, less 7.03125% of the Notice and Administrative Expenses, paid or incurred prior to such Partial Termination, plus any accrued interest earned in any Cash Settlement Accounts funded by PwC, less any Tax Expenses related to such Cash Settlement Accounts funded by PwC shall be returned promptly to PwC and PwC shall be treated as a Non-Settling Defendant for all purposes of this Settlement Agreement, the PwC Releasees shall not receive the Release contemplated herein and the remainder of the Settlement Agreement shall survive and be operable with respect to the Class Representatives, the Class, the Tyco Settling Defendants and the Tyco Settling Defendants' Releasees.

**B. Qualified Settlement Fund**

1. The parties hereto agree that the Cash Settlement Accounts are intended to be a single Qualified Settlement Fund within the meaning of Treasury Regulation §1.468B-1 and that the Administrator shall be the "administrator" of the Cash Settlement Accounts within the meaning of Treasury Regulation § 1.468B-2(k)(3), and shall be responsible for filing tax returns for the Cash Settlement Accounts and paying from the Cash Settlement Accounts any Taxes owed with respect to the Cash Settlement Accounts. The parties hereto agree that each of the Cash Settlement Accounts shall all be treated as a single Qualified Settlement Fund from the earliest date possible, and agree to any relation-back election required to treat any and all of the Cash Settlement Accounts as a Qualified Settlement Fund from the earliest date possible. Counsel for Tyco and Counsel for PwC agree to provide promptly to the Administrator the statement described in Treasury Regulation § 1.468B-3(e).



**C. Distribution of the Net Cash Settlement Amount**

1. In the event that neither Tyco nor PwC exercises its right of Partial Termination of this Settlement Agreement, the entire Distribution Amount shall be distributed pursuant to the Plan of Allocation, as described below, provided, however, that no amounts shall be distributed to the Class prior to the later of the Tyco Settlement Effective Date or the PwC Settlement Effective Date. In the event that either Tyco or PwC, but not both, exercises its right of Partial Termination of this Settlement Agreement, and funds are required to be returned to the Terminating Defendant under Section II.A.4. or II.A.5. above, then the Distribution Amount shall be the amounts remaining in the Cash Settlement Accounts after the payment of all Notice and Administrative Expenses, and the Tax Expenses and the Attorneys' Fees and Expense Award applicable to the surviving Settlement.

2. In the event that a Tyco Settlement Effective Date does not occur due to the failure of any of the Tyco Related Actions to be dismissed with prejudice as to the Tyco Settling Defendants, the Tyco Settling Defendants and the Class Representatives, on behalf of themselves and the Class, may return to the Court with a proposal if the distribution is being unduly delayed.

3. In the event that a PwC Settlement Effective Date does not occur due to the failure of any of the PwC Related Actions to be dismissed with prejudice as to PwC, PwC and the Class Representatives, on behalf of themselves and the Class, may return to the Court with a proposal if the distribution is being unduly delayed.

4. No Person shall have any claim against Class Representatives, Co-Lead Counsel, the Administrator or any of their agents, or against the Settling Defendants, the Tyco Settling Defendants' Releasees, the PwC Releasees and/or their respective counsel, with respect to

or arising out of any distributions or lack thereof made under the Plan of Allocation, this Settlement Agreement or orders of the Court.

5. It is understood and agreed to by the Settling Parties that, notwithstanding any other provision of this Settlement Agreement, the proposed Plan of Allocation is not a part of this Settlement Agreement, no order or proceedings relating to the Plan of Allocation shall operate to modify, terminate or cancel this Settlement Agreement or affect the finality of the Final Judgment and in the event of either Complete Termination or Partial Termination of this Settlement, the Class Representatives shall not be bound by the Estimated Inflation Amounts used in connection with the Plan of Allocation.

6. The Settling Defendants and/or their respective counsel shall have no role in, responsibility for, or liability with respect to the Plan of Allocation, the form, substance, method or manner of allocation, administration, or distribution of the Distribution Amount, any tax liability that a Class Member may incur as a result of this Settlement Agreement or as a result of any action taken pursuant to this Settlement Agreement, the administration or processing of claims, including, without limitation, determinations as to the validity of any Proof of Claim, the amounts of claims or distribution of the Distribution Amount, or the maintenance of the Cash Settlement Accounts as a Qualified Settlement Fund.

7. In the event that neither Tyco nor PwC exercises its right of Partial Termination of this Settlement Agreement, Class Members shall look solely to the Distribution Amount for settlement and satisfaction of all Released Claims. Except as expressly provided by this Settlement Agreement, the Plan of Allocation, or an order of the Court, no Class Member shall have any interest in the Cash Settlement Accounts.

8. To the extent that any monies remain in the Net Cash Settlement Accounts after the Administrator has caused distributions to be made to all Authorized Claimants, whether by reason of un-cashed distributions or otherwise, then, after the Administrator has made reasonable and diligent efforts to have Authorized Claimants cash their distributions, any balance remaining in the Net Cash Settlement Accounts one (1) year after the initial distribution of such funds shall be re-distributed to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution, after payment of any unpaid costs or fees incurred in administering the Net Cash Settlement Accounts for such re-distribution. If six months after such re-distribution, funds shall remain in the Net Cash Settlement Accounts, then such funds shall be further re-distributed to Authorized Claimants who have cashed their most recent re-distribution and who would receive at least \$10.00 from such further re-distribution, after payment of any unpaid costs or fees incurred in administering the Net Cash Settlement Accounts for such re-distribution. The redistributions shall continue until such a small amount, in Co-Lead Counsel's discretion, remains in the Net Cash Settlement Account such that redistribution would be too costly to execute, after which such balance shall be contributed to a non-sectarian, not-for-profit 501(c)(3) organization(s), to be designated by Co-Lead Counsel with the consent of Tyco and PwC, such consent not to be unreasonably withheld.

**D. Plan of Allocation**

1. Class Representatives shall propose in the Notice a Plan of Allocation pursuant to which the Distribution Amount shall be distributed to Authorized Claimants, and shall seek approval of the Court for such Plan of Allocation at the Fairness Hearing. Approval of the proposed Plan of Allocation set forth in the Notice is not a condition to either the Tyco Settlement Effective Date or the PwC Settlement Effective Date.

2. All cash distributions to Authorized Claimants shall be from the Distribution Amount pursuant to an approved Plan of Allocation.
3. To receive a cash distribution from the Distribution Amount, a Class Member must be an Authorized Claimant.
4. Each Class Member who wishes to receive a distribution from the Distribution Amount must complete and submit a Proof of Claim (i) by first-class mail, such that it is postmarked no later than the date set forth in the Notice, or (ii) so that it is actually received at the address on the Proof of Claim form by the date stated in the Notice, unless that date is extended by order of the Court. The address to which the Proof of Claim must be mailed shall be stated in the Proof of Claim form itself and shall also be printed in the Notice.
5. Co-Lead Counsel shall have the right, but not the obligation, to advise the Administrator to waive what Co-Lead Counsel deem to be *de minimis* or formal or technical defects in any Proofs of Claim submitted. All Proof of Claim forms must be supported by such documents and other information as called for in the Proof of Claim, unless this requirement is waived as to specific Proof of Claims by the Claims Administrator in consultation with Co-Lead Counsel.
6. The Proof of Claim shall be substantially in the form of [Exhibit 2 to Exhibit A] hereto and shall include an individual release in favor of the Settling Defendants which must be executed by all Authorized Claimants who purchased One Thousand shares (1,000) or more shares of Tyco common stock during the Class Period in order to receive a distribution in accordance with the Plan of Allocation. Any Class Member who fails to execute the individual release referred to herein shall nevertheless be bound by the Release.

7. The validity of each Proof of Claim filed will be initially determined by the Administrator in accordance with the Plan of Allocation approved by the Court. The Administrator shall promptly advise the claimant in writing if it determines to reject the claim. Neither Co-Lead Counsel, nor its designees or agents, Class Representatives, the Settling Defendants, and/or their respective counsel shall have any liability arising out of such determination. If any claimant whose claim has been rejected in whole or in part desires to contest such rejection, the claimant must, within twenty (20) days after the date of the Administrator's mailing of the writing rejecting the claimant's claim, serve upon the Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Co-Lead Counsel shall thereafter present the request for review to the Court for summary resolution, without any right of appeal or review. Any such claimant shall be responsible for his, her or its own costs, including, without limitation, attorneys' fees, incurred in pursuing any dispute.

8. All initial determinations as to the validity of a Proof of Claim, the amount of any claims and the calculation of the extent to which each Authorized Claimant will participate in the Distribution Amount, the preparation and mailing of distributions to Authorized Claimants, and the distribution of the Distribution Amount shall be made by the Administrator. The administration of the Distribution Amount, and decisions on all disputed questions of law and fact with respect to the validity of any Proof of Claim or regarding the rejection or amount of any claim, shall remain under the jurisdiction of the Court. All Class Members and Settling Parties expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

9. Unless otherwise ordered by the Court, any Class Member who fails to submit a valid and timely Proof of Claim shall be barred from receiving a distribution from the Distribution Amount. Any Class Member who fails to submit a valid and timely Proof of Claim shall nevertheless be bound by the Release and by all proceedings, orders and judgments in the Actions even if he, she or it does not receive a distribution from the Distribution Amount and/or has pending, or subsequently initiates, any litigation, arbitration or other proceeding, or has any Claim, against any or all of the Tyco Settling Defendants' Releasees or the PwC Releasees that is, or relates in any way to, any Released Claim.

**E. Additional Consideration**

1. As of the Execution Date, all claims which have been brought or could have been brought by Class Representatives or the Class against Kozlowski, Swartz and Walsh belonging to the Class arising out of or relating in any way to the facts alleged in the Complaint or are in any way related to the claims asserted in the Complaint (the "Officer Assigned Claims") are assigned to Tyco. The Class shall have no interest in the prosecution or outcome of the Officer Assigned Claims other than the payment by Tyco to the Class of Fifty Percent (50%) of any Net Recovery (defined below) Tyco collects on the Officer Assigned Claims resulting from any litigation pursued by Tyco in connection with this paragraph. Tyco shall have sole discretion to conduct such litigation and to compromise or discontinue the prosecution of the Officer Assigned Claims as it sees fit provided it acts in good faith. Net Recovery shall mean the amount which Tyco actually collects from Kozlowski, Swartz, or Walsh ("Recovery") after deduction of: (i) the Tyco Attorney Fee Credit as hereinafter defined; (ii) any recovery of Kozlowski, Swartz, and Walsh on claims, cross-claims or counterclaims against Tyco, including any costs and offsets. Any amounts recovered by Tyco from Kozlowski, Swartz, and Walsh

prior to May 15, 2007 are not the subject of this assignment and shall be excluded from any recovery shared with the Class.

a. The Settling Parties agree that any actual attorneys' fees and expenses incurred by Tyco in pursuing the Officer Assigned Claims, in an amount not to exceed Twenty Percent (20%) of the overall Recovery, shall be deducted from the recovery prior to applying the sharing percentage referenced in the preceding paragraph ("Tyco Attorney Fee Credit"). Tyco has made a representation regarding the estimated amount of fees and expenses incurred to date in litigating these claims which is satisfactory to Co-Lead Counsel. Unless clearly unreasonable, Tyco's allocation of any fees or expenses paid or to be paid as being related to or incurred in connection with the pursuit of claims against Kozlowski, Swartz or Walsh shall be credited towards the Tyco Attorney Fee Credit without any further documentation or proof.

b. Any payment owed to the Class of the Net Recovery resulting from the Officer Assigned Claims shall be made within fifteen (15) days of Tyco's receiving such Recovery and shall be paid into the Settlement Fund if distribution in accordance with the Plan of Allocation has yet to be made, or in accordance with written instructions by Co-Lead Counsel establishing a new escrow account on behalf of the Class if distribution has already taken place, provided however, that there shall be no distributions of the proceeds from the Officer Assigned Claims while any claims, counter-claims or cross-claims of Kozlowski, Swartz, and Walsh against Tyco remain pending.

c. The Officer Assigned Claims shall revert to the Class Representatives and the Class in the event that the Settlement is Completely Terminated in accordance with the provisions set forth herein at Section X.B.1. or in the event that Tyco

exercises its option to Partially Terminate the Settlement in accordance with the provisions set forth herein as Section X.B.2.

2. Tyco believes it has claims against PwC which could have been brought by Tyco arising out of or relating in any way to the facts alleged in the Complaint or which are in any way related to the claims asserted in the Complaint (“Tyco Claims”). To the extent the Tyco Claims are assignable, Tyco shall undertake to take all steps within its control necessary to preserve the Tyco Claims until the Tyco Settlement Effective Date and in the event that there is a Partial Termination of this Agreement by PwC, Tyco assigns the Tyco Claims, net of any recoveries of PwC on cross-claims or counterclaims against Tyco, including any costs and offsets, to the Class. Tyco hereby makes no warranties to the Class Representatives or the Class regarding the assignability of the Tyco Claims or the value of any such claims and PwC affirmatively denies that Tyco either has Tyco Claims that now can be brought or has the ability to assign any such claims.

### **III. NOTICE TO THE CLASS**

#### **A. Mailing of the Notice**

1. Subject to the requirements of the Hearing Order, Co-Lead Counsel shall cause the Administrator to mail, by first-class mail, postage prepaid, a copy of the Notice and Proof of Claim to each Person in the Class who can be identified by reasonable effort. Tyco shall cause Tyco’s transfer records and shareholder information for all securities covered by this Settlement to be made available to the Administrator for the purpose of identifying and giving notice to the Class. The Administrator shall also use any database established by the Administrator to identify brokers and other nominees and to request them to identify their beneficiaries. Counsel for the Settling Defendants shall notify the Administrator within Twenty Days (20) following the Execution Date of the names and addresses of all legal counsel known



by Co-Lead Counsel or counsel for the Settling Defendants to represent any Class Member in any cases of pending litigation, arbitration or other proceeding, or any other Claim, against Tyco that is, or relates in any way to, any Released Claims.

2. Subject to the requirements of the Hearing Order, Co-Lead Counsel and the Administrator shall cause the Notice to be published on their respective websites.

3. The Notice shall be substantially in the form attached hereto as [Exhibit 1 to Exhibit A],

4. Subject to the requirements of the Hearing Order, Co-Lead Counsel shall submit to the Court affidavits demonstrating the adequacy of its efforts to provide Notice to the Class.

**B. Summary Notice**

Subject to the requirements of the Hearing Order, Co-Lead Counsel shall cause the Summary Notice, substantially in the form attached hereto as Exhibit A-3, to be published on at least one occasion in *USA Today*, *The New York Times*, *The Wall Street Journal*, *The Financial Times*, *The Sun Sentinel*, *Palm Beach Post*, *Chicago Tribune*, the *Union Leader* (New Hampshire) and *PR Newswire*.

**IV. RETENTION OF ADMINISTRATOR**

A. Co-Lead Counsel shall request that the Court appoint The Garden City Group, Inc., as the Administrator to help implement the Settlement contemplated by this Settlement Agreement.

B. The Administrator appointed by the Court shall perform the following functions in furtherance of the Settlement: (i) mailing or arranging for the mailing of the Notice to Class Members; (ii) arranging for publication of the Summary Notice; (iii) publication of the Notice on the Administrator's website; (iv) answering written inquiries from Class Members and/or

forwarding such inquiries to Co-Lead Counsel or its designee(s), which shall be forwarded to counsel for the Settling Defendants as appropriate; (v) providing additional copies of the Notice, upon request, to nominees or Class Members, with respect to which the Administrator shall separately record the number of Notices sent to Class Members (or nominees); (vi) receiving and maintaining on behalf of the Court any requests for exclusion from the Settlement received from potential Class Members; (vii) receiving and processing Proofs of Claim from Class Members; (viii) mailing or causing to be mailed to Authorized Claimants their distributions under the Plan of Allocation; and (ix) otherwise assisting the Court and Co-Lead Counsel with administration and implementation of this Settlement Agreement.

C. Subject to the provisions of the Hearing Order, the Administrator shall establish and staff with representatives knowledgeable about this Settlement Agreement and the Plan of Allocation a toll-free telephone number and website for responding to inquiries from Class Members about this Settlement Agreement and any issues relating to the Action. The Settling Defendants, their counsel, the Tyco Settling Defendants' Releasees and the PwC Releasees shall have no responsibility with respect to the tasks enumerated or described in this Section IV.

## **V. REQUESTS FOR EXCLUSION**

A. The Administrator shall be the designated recipient for all requests for exclusion. The Administrator shall scan and send electronically copies of all requests for exclusion in PDF format (or such other format as shall be agreed) to counsel for the Settling Defendants and to Co-Lead Counsel no later than the close of business on the next business day after the Administrator receives any request(s) for exclusion. A list of the Persons who have requested exclusion from the Class shall be provided by the Administrator to the Court at or before the Fairness Hearing.

B. Class Members requesting exclusion shall be requested to provide the following information to the Administrator subject to the requirements of the Hearing Order as specified

below: (i) name, (ii) address, (iii) telephone number, (iv) number and type of Tyco Securities purchased or otherwise acquired during the Class Period, (v) prices or other consideration paid or received for such Tyco Securities, and (vi) the date of each transaction.

C. Unless otherwise ordered by the Court, any Class Member who does not submit a timely written request for exclusion as provided by this Section shall nevertheless be bound by the Release and by all proceedings, orders and judgments in the Actions, even if he, she or it has pending, or subsequently initiates, litigation, arbitration or any other proceeding, or has any Claim, against any or all of the Tyco Settling Defendants' Releasees or the PwC Releasees relating to any of the Released Claims.

## **VI. RELEASE AND WAIVER, AND ORDER OF DISMISSAL**

### **A. Release and Waiver**

1. In the event that neither Tyco nor PwC exercises its right of Partial Termination of this Settlement Agreement:

a. the Final Judgment shall provide that, without further action by anyone, and subject to Section VI.A.1.f. below, with respect to the Tyco Settling Defendants, on the Tyco Settlement Effective Date and with respect to PwC, on the PwC Settlement Effective Date, Class Representatives, and any and all Class Members (including those Class Members who are parties to any other litigation, arbitration or other proceedings against, or have any Claim against any of the Tyco Settling Defendants' Releasees or the PwC Releasees that is a Released Claim with respect to the Tyco Settling Defendants, on the Tyco Settlement Effective Date and with respect to PwC, on the PwC Settlement Effective Date), on behalf of themselves, their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), assigns, and any Person claiming by or through any of the Class Members, for good and sufficient consideration, the receipt and adequacy of which are

hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged:

(1) all Released Claims against any and all of the Tyco Settling Defendants' Releasees and the PwC Releasees, whether or not a Proof of Claim has been executed and/or delivered by, or on behalf of, any such Class Member;

(2) all Claims against Co-Lead Counsel or any or all Class Representatives, the Settling Defendants, Tyco Settling Defendants' Releasees and the PwC Releasees and/or their respective counsel, that relate in any way to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences or oral or written statements or representations in connection with or directly or indirectly relating to the prosecution, defense or settlement of the Actions or to this Settlement Agreement, or to attorneys' fees, costs or disbursements incurred by Co-Lead Counsel or other counsel representing Class Representatives, or the Class Members in the Actions.

b. The Final Judgment shall provide that, without further action by anyone, and subject to Section VI.A.1.f. below, with respect to the Tyco Settling Defendants, on the Tyco Settlement Effective Date and with respect to PwC, on the PwC Settlement Effective Date, all Settling Defendants on behalf of themselves and the Tyco Settling Defendants' Releasees and the PwC Releasees, their heirs, executors, administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), assigns, any Person claiming by or through any of the Tyco Settling Defendants' Releasees or the PwC Releasees and any Person representing any of the Tyco Settling Defendants' Releasees or the PwC Releasees, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and

forever released, relinquished, settled, and discharged Co-Lead Counsel and any or all Class Representatives and members of the Class or their attorneys from any and all Released Settling Defendants' Claims.

c. The Final Judgment shall provide that, without further action by anyone, and subject to Section VI.A.1.f. below, upon the later of the Tyco Settlement Effective Date or the PwC Settlement Effective Date, the Tyco Settling Defendants' Releasees on the one hand, and the PwC Releasees on the other hand, shall be deemed to have, and by operation of law and of the Final Judgment, shall have fully, finally and forever released, relinquished and forever discharged any and all claims (both known claims and Unknown Claims), rights or causes of action (whether based on federal, state or any other law, rule or regulation), including the Tyco Claims, that they could have asserted against each other, which arise out of, relate to, or are based upon, directly or indirectly, the Settlement of the Actions, this Settlement Agreement, or the subject matter, allegations, transactions, including financial statements and audit opinions, facts, matters, occurrences, representations or omissions involved, set forth, or referred to in the Complaint.

d. Nothing in this section or this Settlement Agreement shall in any way limit or restrain the ability of the Tyco Settling Defendants, the Tyco Settling Defendants' Releasees, PwC or the PwC Releasees to raise or assert defenses or affirmative defenses to any allegations of liability or damages in pending non-settled actions or actions brought in the future related to, arising out of, or based on the subject matter, allegations, transactions, facts, occurrences, representations or omissions, involved, set forth or referred to in the Complaint, the MDL Securities Action or the Related Actions.

e. The Final Judgment shall provide that, without further action by anyone, and subject to Section VI.A.1.f. below, with respect to the Tyco Settling Defendants, on the Tyco Settlement Effective Date and with respect to PwC, on the PwC Settlement Effective Date, Co-Lead Counsel, and any or all Class Representatives, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), assigns, any Person claiming by or through any of them and any Person representing any or all Class Representatives, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged the Tyco Settling Defendants' Releasees and the PwC Releasees from any and all Released Claims.

f. Notwithstanding Sections VI.A.1.a., VI.A.1.b., VI.A.1.c. and VI.A.1.e. above, nothing in the Final Judgment shall bar any action or claim by any of the Settling Parties to enforce or effectuate the terms of this Settlement Agreement or the Final Judgment.

g. The Actions shall be dismissed as against each and all of the Settling Defendants on the merits and with prejudice, without costs to any party, upon entry of the Final Judgment.

2. In the event that Tyco exercises its right of Partial Termination of this Settlement Agreement, but PwC does not:

a. the Final Judgment shall provide that, without further action by anyone, and subject to Section VI.A.2.d. below, with respect to PwC, on the PwC Settlement Effective Date, Class Representatives, and any and all Class Members (including those Class

Members who are parties to any other litigation, arbitration or other proceedings against, or have any Claim against the PwC Releasees that is a Released Claim, and with respect to PwC, on the PwC Settlement Effective Date), on behalf of themselves, their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), assigns, and any Person claiming by or through any of the Class Members, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged:

(1) all Released Claims against any and all of the PwC Releasees, whether or not a Proof of Claim has been executed and/or delivered by, or on behalf of, any such Class Member;

(2) all Claims against Co-Lead Counsel or any or all Class Representatives, PwC and the PwC Releasees and/or their respective counsel, that relate in any way to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences or oral or written statements or representations in connection with or directly or indirectly relating to the prosecution, defense or settlement of the Actions or to this Settlement Agreement, or to attorneys' fees, costs or disbursements incurred by Co-Lead Counsel or other counsel representing Class Representatives, or the Class Members in the Actions.

b. The Final Judgment shall provide that, without further action by anyone, and subject to Section VI.A.2.d. below, with respect to PwC, on the PwC Settlement Effective Date, PwC and the PwC Releasees, their heirs, executors, administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), assigns, any Person claiming by or through any of the PwC Releasees and any Person representing any of the PwC Releasees, for

good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged Co-Lead Counsel and any or all Class Representatives and members of the Class or their attorneys from any and all Released PwC Claims.

c. The Final Judgment shall provide that, without further action by anyone, and subject to Section VI.A.2.d. below, with respect to PwC, on the PwC Settlement Effective Date, Co-Lead Counsel, and any or all Class Representatives, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), assigns, any Person claiming by or through any of them and any Person representing any or all Class Representatives, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged the PwC Releasees from any and all Released Claims.

d. Notwithstanding Sections VI.A.2.a., VI.A.2.b., and VI.A.2.c. above, nothing in the Final Judgment shall bar any action or claim by either PwC or the Class to enforce or effectuate the terms of this Settlement Agreement or the Final Judgment.

e. The Actions shall be dismissed as against PwC on the merits and with prejudice, without costs to any party, upon entry of the Final Judgment.

3. In the event that PwC exercises its right of Partial Termination of this Settlement Agreement, but Tyco does not:

a. the Final Judgment shall provide that, without further action by anyone, and subject to Section VI.A.3.d. below, with respect to the Tyco Settling Defendants, on



the Tyco Settlement Effective Date , Class Representatives, and any and all Class Members (including those Class Members who are parties to any other litigation, arbitration or other proceedings against, or have any Claim against the Tyco Settling Defendants' Releasees that is a Released Claim with respect to the Tyco Settling Defendants, on the Tyco Settlement Effective Date), on behalf of themselves, their heirs, executors, administrators, beneficiaries, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), assigns, and any Person claiming by or through any of the Class Members, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged:

(1) all Released Claims against any and all of the Tyco Settling Defendants' Releasees, whether or not a Proof of Claim has been executed and/or delivered by, or on behalf of, any such Class Member;

(2) all Claims against Co-Lead Counsel or any or all Class Representatives, the Tyco Settling Defendants and Tyco Settling Defendants' Releasees and/or their respective counsel, that relate in any way to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences or oral or written statements or representations in connection with or directly or indirectly relating to the prosecution, defense or settlement of the Actions or to this Settlement Agreement, or to attorneys' fees, costs or disbursements incurred by Co-Lead Counsel or other counsel representing Class Representatives, or the Class Members in the Actions.

b. The Final Judgment shall provide that, without further action by anyone, and subject to Section VI.A.3.d. below, with respect to the Tyco Settling Defendants, on

the Tyco Settlement Effective Date, the Tyco Settling Defendants and the Tyco Settling Defendants' Releasees, their heirs, executors, administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), assigns, any Person claiming by or through any of the Tyco Settling Defendants' Releasees and any Person representing any of the Tyco Settling Defendants' Releasees, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged Co-Lead Counsel and any or all Class Representatives and members of the Class or their attorneys from any and all Released Tyco Settling Defendants' Claims.

c. The Final Judgment shall provide that, without further action by anyone, and subject to Section VI.A.3.d. below, with respect to the Tyco Settling Defendants, on the Tyco Settlement Effective Date, Co-Lead Counsel, and any or all Class Representatives, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), assigns, any Person claiming by or through any of them and any Person representing any or all Class Representatives, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of the Final Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged the Tyco Settling Defendants' Releasees from any and all Released Claims.

d. Notwithstanding Sections VI.A.3.a., VI.A.3.b., and VI.A.3.c. above, nothing in the Final Judgment shall bar any action or claim by either the Tyco Settling Defendants or the Class to enforce or effectuate the terms of this Settlement Agreement or the Final Judgment.

e. The Actions shall be dismissed as against the Tyco Settling Defendants on the merits and with prejudice, without costs to any party, upon entry of the Final Judgment.

**B. Limitations on Subsequent Claims against Released Parties**

Bar Order - (i) As provided in Section 21D-4(f)(7)(A) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4(f)(7)(A) and to the maximum extent permissible under law, (a) the Non-Settling Defendants are hereby permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any claim for or otherwise seeking contribution against any Tyco Settling Defendants' Releasees or PwC Releasees based upon, relating to, or arising out of the Released Claims; (b) the Tyco Settling Defendants' Releasees and the PwC Releasees are hereby permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any claim for or otherwise seeking contribution against any of the Non-Settling Defendants, based upon, relating to, or arising out of the Released Claims and (ii) the Tyco Settling Defendants' Releasees on the one hand, and the PwC Releasees on the other hand, are hereby permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any claim for or otherwise seeking contribution, indemnification or otherwise against each other based upon, relating to, or arising out of the Released Claims. For the purposes of this Settlement and the Final Judgment, (i) and (ii) above are collectively referred to as the Bar Order. For purposes of this paragraph only, Non-Settling Defendants shall include any person whom the Class Representatives may hereafter sue, on behalf of the Class based upon, relating to, or arising out of the Released Claims. Inclusion of the Bar Order in the Final Judgment is material to Settling Defendants' decision to participate in this Settlement Agreement.

## **VII. ATTORNEYS' FEES AND EXPENSES**

A. Co-Lead Counsel will apply to the Court for an award of attorneys' fees and reimbursement of expenses for plaintiffs' counsel to be paid out of the Cash Settlement Accounts. Notwithstanding the existence of any timely-filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, such amounts as are awarded by the Court shall be payable from the Cash Settlement Accounts to Co-Lead Counsel immediately upon entry of an order of the Court approving the Settlement and awarding such fees and expenses. If the attorney fee or expense reimbursement award is to be paid with respect to the Tyco Settling Defendants, prior to the Tyco Settlement Effective Date and with respect to PwC, prior to the PwC Settlement Effective Date, payment shall be subject to Co-Lead Counsel and each firm receiving payment of such fees or expenses posting standby letters of credit issued by a first-class bank in favor of the Escrow Agreements to secure each counsel's obligation to pay back such amount received, plus accrued interest at the same rate as is earned by the Cash Settlement Accounts, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the Settlement is terminated or the attorney fee or expense award is reduced or reversed. Solely with respect to the expense award, Tyco and PwC shall have the option of requiring any of the Co-Lead Counsel firms to execute a promissory note with individual guarantees in lieu of such standby letters of credit. The Attorneys' Fees and Expenses Application may also include reimbursement of the reasonable time and expenses of the Class Representatives subject to the approval of the Court. The apportionment and distribution among plaintiffs' counsel of the Attorneys' Fees and Expenses Award shall be within the sole discretion of Co-Lead Counsel, subject to the continuing jurisdiction of this Court over any fee disputes. In the event that subsequent recoveries are made in connection with the Officer Assigned Claims and paid to the Class in accordance with this Settlement Agreement,

either before or after distribution of the Settlement Fund, Co-Lead Counsel reserves the right to seek the Court's approval of a fee award in connection with such recoveries.

**B.** If this Settlement Agreement is terminated and the Attorneys' Fees and Expenses Award (or any portion thereof) has been paid, then each Co-Lead Counsel and any plaintiffs' counsel or firm which has received such fees and expenses, shall, within five (5) business days following receipt of notice of such termination, return to the Cash Settlement Accounts the amount they received, plus interest on such amount at the same rate as is earned by the Cash Settlement Accounts from the date of such counsel's receipt to the date of repayment to the Cash Settlement Accounts. Tyco and PwC, on behalf of the Cash Settlement Accounts shall be entitled to draw down any standby letters of credit if the counsel posting such standby letter of credit fails to repay such fees and expenses within the time set forth above. Time shall be deemed of the essence for this purpose. Co-Lead Counsel, any plaintiffs' counsel receiving fees or expenses under this Section, and any bank issuing a standby letter of credit contemplated herein, submit to the personal jurisdiction of the Court for the purposes of the enforcement of their obligations under this Paragraph.

**C.** If the Attorneys' Fees and Expenses Award is reduced, then each Co-Lead Counsel shall within five (5) business days following receipt of notice of such reduction, return to the Cash Settlement Accounts, the proportionate difference between the Attorneys' Fees and Expenses Award and the reduced amount, plus interest on such amount at the same rate as is earned by the Cash Settlement Accounts from the date of such counsel's receipt to the date of repayment to the Cash Settlement Accounts. Tyco and PwC, on behalf of the Cash Settlement Accounts, shall be entitled to draw down any standby letter of credit if the counsel posting such

standby letter of credit fails to repay such fees and expenses within the time set forth above. Time shall be deemed of the essence for this purpose.

**D.** Each of the Co-Lead Counsel and any plaintiffs' counsel receiving fees or expenses under this Section agrees to summary enforcement of any repayment obligation and consents that the Court may, upon application by Tyco and PwC, on behalf of the Cash Settlement Accounts, summarily issue orders including, without limitation, judgments and attachment orders and may make appropriate findings of or sanctions for contempt, against them or any of them should such law firm or counsel fail to timely repay such fees and expenses and any applicable interest.

**E.** Any plaintiffs' counsel's attorneys' fees or expenses relating to the Actions shall be payable solely from the Total Cash Settlement Amount. The Tyco Settling Defendants' Releasees and the PwC Releasees shall have no other or further obligation to pay any Class Member or any plaintiffs' counsel for fees or expenses in connection with the Actions or this Settlement Agreement, except as expressly provided for in this Settlement Agreement.

### **VIII. PRELIMINARY APPROVAL HEARING AND HEARING ORDER**

Unless otherwise agreed to by the Settling Parties or ordered by the Court, by July 6, 2007, the Settling Parties shall submit to the Court this Settlement Agreement, and shall move for the entry of the Hearing Order.

### **IX. FINAL APPROVAL AND FINAL JUDGMENT**

After the Fairness Hearing, and upon the Court's approval of this Settlement Agreement, the Settling Parties shall seek and obtain from the Court a Final Judgment substantially in the form annexed as Exhibit B. In the event of a Partial Termination by PwC, the form of Final Judgment shall be revised to delete PwC as a Settling Defendant. In the event of a Partial

Termination by Tyco, the form of Final Judgment shall be revised to delete Tyco, Ashcroft and Belnick as Settling Defendants.

#### **X. MODIFICATION OR TERMINATION OF THIS SETTLEMENT AGREEMENT**

A. The terms and provisions of this Settlement Agreement may be amended, modified or expanded by agreement of the Settling Parties, with approval of the Court.

B. This Settlement Agreement may be completely or partially terminated as follows:

1. The Settling Defendants or the Class Representatives shall each, in their separate discretions, have the right to terminate the Settlement Agreement by providing written notice of their election to do so (“Termination Notice”) to all other parties hereto within thirty (30) days of: (a) the Court’s declining to enter the Hearing Order in any material respect; (b) the Court’s refusal to approve this Settlement Agreement or any material part of it; (c) the Court’s declining to enter the Final Judgment in any material respect; (d) the date upon which the Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; (e) the date upon which an Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

a. If the Settlement is terminated by the Class Representatives or Tyco and PwC in accordance with this paragraph (“Complete Termination”): (i) the Settlement shall be without force and effect upon the rights of the parties hereto, and none of its terms (other than this and Section X.B.4. *infra*) shall be effective or enforceable; (ii) the Settling Parties and the litigants in the Related Actions that are not presently pending in the United States District Court for the District of New Hampshire shall revert to their litigation positions immediately prior to the execution of this Settlement Agreement; and (iii) Class Representatives shall return (or cause to be returned) to Tyco and PwC in proportion to their respective payments of the Total

Cash Settlement Amount, any monies remaining in the Cash Settlement Accounts in accordance with Section II.A.3. within fifteen (15) days from the date of such termination.

b. The Settling Parties recognize and agree that this termination provision is severable such that if Tyco but not PwC, elects to terminate the Settlement (“Partial Termination”), the Settlement can proceed with respect to PwC, and then the Tyco Settling Defendants shall be treated as Non-Settling Defendants and, solely with respect to the Tyco Settling Defendants, the following provisions shall apply: (i) the Settlement shall be without force and effect upon the rights of the Class Representatives and the Class and the Tyco Settling Defendants, and none of its terms (other than this) shall be effective or enforceable; (ii) the Class Representatives and the Class and the Tyco Settling Defendants, as well as the litigants in the Tyco Related Actions that are not presently pending in the United States District Court for the District of New Hampshire, shall revert to their litigation positions immediately prior to the execution of this Settlement Agreement with respect to the Tyco Settling Defendants; (iii) Class Representatives shall return (or cause to be returned) to Tyco its respective payments of the Total Cash Settlement Amount as provided in Section II.A.4. within fifteen (15) days from the date of such Partial Termination; and (iv) the Class Representatives and PwC shall submit an Alternate Judgment reflecting Partial Termination by the Tyco Settling Defendants.

c. The Settling Parties recognize and agree that this termination provision is severable such that if PwC, but not Tyco elects to terminate the Settlement (“Partial Termination”), the Settlement can proceed with respect to the Tyco Settling Defendants and then PwC shall be treated as a Non-Settling Defendant and, solely with respect to PwC, the following provisions shall apply: (i) the Settlement shall be without force and effect upon the rights of the Class Representatives and the Class and PwC, and none of its terms (other than this) shall be



effective or enforceable; (ii) the Class Representatives and the Class and PwC, as well as the litigants in the PwC Related Actions that are not presently pending in the United States District Court for the District of New Hampshire, shall revert to their litigation positions immediately prior to the execution of this Settlement Agreement with respect to PwC; (iii) Class Representatives shall return (or cause to be returned) to PwC its respective payments of the Total Cash Settlement Amount in accordance with Section II.A.5. within fifteen (15) days from the date of such Partial Termination; and (iv) the Class Representatives and the Tyco Settling Defendants shall submit an Alternate Judgment reflecting Partial Termination by PwC.

2. The Settlement may be terminated at the option and in the sole discretion of either Tyco or PwC in the event that Class Members who have purchased or otherwise acquired shares of Tyco common stock during the Class Period, timely and validly request exclusion and either the Termination Threshold or the Threshold Amount, as such terms are respectively defined in the Tyco Supplemental Agreement or the PwC Supplemental Agreement executed simultaneously herewith (collectively, the “Supplemental Agreements”), are met. The total number of shares of Tyco common stock purchased or otherwise acquired for such Class Members requesting exclusion and the Recognized Claim calculations for such Class Members shall be calculated using the information provided by such Class Members in their requests for exclusion.

3. If either the Termination Threshold or the Threshold Amount is reached or exceeded, Tyco and/or PwC may each exercise such option to terminate the Settlement as to themselves (and in the case of Tyco, the Tyco Settling Defendants) by written notice delivered to Co-Lead Counsel at any time prior to eleven (11) days prior to the Fairness Hearing, *provided however*, that if Tyco or PwC so elects to terminate the Settlement, Co-Lead Counsel may,

within ten (10) calendar days of receipt of such notice of termination (or such longer period as shall be agreed upon in writing between Co-Lead Counsel and counsel for Tyco or PwC), review the validity of any request for exclusion and may attempt to cause retraction of any request for exclusion. If, within the ten (10) day period (or longer period agreed upon in writing), Co-Lead Counsel succeed in causing the filing of retractions of a sufficient number of requests for exclusion such that neither the Termination Threshold nor the Termination Amount is triggered as specified above, then any termination of the Settlement by Tyco or PwC shall automatically be deemed to be a nullity. To retract a request for exclusion, a Class Member must file a written notice with the Court stating the Class Member's desire to retract his, her or its request for exclusion and that Class Member's desire to be bound by any judgment or Settlement in this action; *provided further*, that the filing of such written notice may be effected by Co-Lead Counsel. The Settling Parties recognize and agree that this termination provision is severable such that if Tyco but not PwC, elects to terminate the Settlement, the provisions of Section X.B.1.b. above shall apply and if PwC, but not Tyco, elects to terminate the Settlement, the provisions of Section X.B.1.c. above shall apply.

4. In the event of Complete Termination, no claims, rights or defenses, whether legal or equitable, of the Tyco Settling Defendants, PwC, the Class Representatives or the Class that existed prior to executing the Settlement Agreement shall be diminished or prejudiced in any way. (If both PwC and Tyco exercise Partial Termination rights, it will be considered a Complete Termination.) In the event of Partial Termination by Tyco, PwC or the Class Representatives, no claims, rights or defenses, whether legal or equitable, of the Tyco Settling Defendants, PwC, the Class Representatives or the Class that existed prior to executing

the Settlement Agreement shall be diminished or prejudiced in any way, subject to the contribution bar provisions under Section VI.B.

## **XI. GENERAL MATTERS AND RESERVATIONS**

A. Co-Lead Counsel each represents that they are authorized to enter into this Settlement Agreement on behalf of their Class Representatives and the Class Members.

B. Tyco's Counsel represents that they are authorized to enter into this Settlement Agreement on behalf of Tyco.

C. PwC's Counsel represents that they are authorized to enter into this Settlement Agreement on behalf of PwC.

D. Ashcroft's Counsel represents that they are authorized to enter into this Settlement Agreement on behalf of Ashcroft.

E. Belnick's counsel represents that they are authorized to enter into this Settlement Agreement on behalf of Belnick.

F. This Settlement Agreement, including the exhibits hereto, and the Supplemental Agreements, set forth the entire agreement among the Settling Parties with respect to its subject matter and may not be altered or modified except by a written instrument executed by each of Co-Lead Counsel and counsel for the Settling Defendants. The Settling Parties expressly acknowledge that there are no agreements, arrangements or understandings concerning this Settlement other than those expressed or referred to in this Settlement Agreement and the Supplemental Agreements among or between them. In entering into this Settlement Agreement, no Settling Party has relied upon any representation or warranty not set forth expressly herein.

G. This Settlement Agreement, including the exhibits hereto, shall be governed by and interpreted according to the laws of the State of New Hampshire, excluding its conflict of laws provisions.

H. Except as expressly set forth herein, each Settling Party shall bear its own costs.

I. Any action arising under or to enforce this Settlement Agreement, including any disputes arising with respect to the Settlement Agreement and the Settlement, shall be commenced and maintained only in this Court. For the sake of clarity, actions that are not brought to enforce this Settlement Agreement or the Final Judgment or otherwise do not arise under this Settlement Agreement, such as the Officer Assigned Claims or the Tyco Claims, or matters related to either a Tyco Related Action or a PwC Related Action currently pending in state court in Florida or Illinois, are not subject to the jurisdictional limitation cited in this provision.

J. Whenever this Settlement Agreement requires or contemplates that a Settling Party shall or may give notice to the other, notice shall be provided by both (i) facsimile or email and (ii) next-business-day (excluding Saturdays, Sundays and Holidays) express delivery service as follows and shall be deemed effective upon such facsimile/email transmission, and express delivery, to the facsimile number or address, as the case may be, below:

1. If to Tyco, then to:

Ann M. Galvani, Esq.  
Marilyn C. Kunstler, Esq.  
Boies, Schiller & Flexner, LLP  
575 Lexington Avenue, 7<sup>th</sup> Floor  
New York, NY 10022  
Telephone: 212-446-2300  
Facsimile: 212-446-2350  
E-mail: [agalvani@bsfllp.com](mailto:agalvani@bsfllp.com)  
E-mail: [mkunstler@bsfllp.com](mailto:mkunstler@bsfllp.com)

Jeffrey A. Hall, Esq.  
Bartlit Beck Herman Palenchar & Scott LLP  
Courthouse Place, Suite 300  
54 W. Hubbard  
Chicago, IL 60610  
Telephone: (312) 494-4424  
Facsimile: (312) 494-4440  
E-mail: [jeff.hall@bartlit-beck.com](mailto:jeff.hall@bartlit-beck.com)

2. If to PwC, then to:

Michael P. Carroll, Esq.  
Davis Polk & Wardwell  
450 Lexington Ave.  
New York, NY 10017  
Telephone: 212-450-4000  
Facsimile: 212-450-3800  
E-mail: [michael.carroll@dpw.com](mailto:michael.carroll@dpw.com)

3. If to Ashcroft, then to:

Gregory A. Markel, Esq.  
Douglas Koff, Esq.  
Cadwalader Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Telephone: (212) 504-6000  
Facsimile: (212) 504-6666  
E-mail: [Greg.Markel@cwt.com](mailto:Greg.Markel@cwt.com)  
E-mail: [Douglas.Koff@cwt.com](mailto:Douglas.Koff@cwt.com)

4. If to Belnick, then to:

William T. Hassler, Esq.  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
Telephone: 202-429-6469  
Facsimile: 202-261-7558  
E-mail: [whassler@steptoe.com](mailto:whassler@steptoe.com)

5. If to Class Representatives, then to:

Jay W. Eisenhofer, Esq.  
Sidney S. Liebesman, Esq.  
Grant & Eisenhofer P.A.  
Chase Manhattan Centre  
1201 North Market Street  
Wilmington, DE 19801  
Telephone: 302-622-7000  
Facsimile: 302-622-7100  
E-mail: [jeisenhofer@gelaw.com](mailto:jeisenhofer@gelaw.com)  
E-mail: [sliebesman@gelaw.com](mailto:sliebesman@gelaw.com)

Melvyn I. Weiss, Esq.

Sanford P. Dumain, Esq.  
Milberg Weiss & Bershad LLP  
One Pennsylvania Plaza  
New York, NY 10119  
Telephone: 212-594-5300  
Facsimile: 212-868-1229  
E-mail: [mweiss@milbergweiss.com](mailto:mweiss@milbergweiss.com)  
E-mail: [sdumain@milbergweiss.com](mailto:sdumain@milbergweiss.com)

and

Richard S. Schiffrin, Esq.  
Katharine M. Ryan, Esq.  
Schiffrin Barroway Topaz & Kessler, LLP  
280 King of Prussia Road  
Radnor, PA 19087  
Telephone: 610-667-7706  
Facsimile: 610-667-7056  
E-mail: [rschiffrin@sbtclaw.com](mailto:rschiffrin@sbtclaw.com)  
E-mail: [kryan@sbtclaw.com](mailto:kryan@sbtclaw.com)

K. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a paper in Court, a day on which weather or other conditions have made the office of the Clerk of the Court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Section, "legal holiday" includes New Year's Day, the observance of the birthday of Martin Luther King, Jr., Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a federal holiday or state holiday in New York or New Hampshire.

L. The Settling Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

M. All Settling Parties agree that this Settlement Agreement was drafted by counsel for the Settling Parties at arm's length and that there shall be no presumption for or against any Settling Party that drafted all or any portion of this Settlement Agreement.

N. This Settlement Agreement, offer of this Settlement Agreement and compliance with this Settlement Agreement shall not constitute or be construed as an admission by any of the Tyco Settling Defendants' Releasees or the PwC Releasees of any wrongdoing or liability. This Settlement Agreement is to be construed solely as a reflection of the Settling Parties' desire to facilitate a resolution of the claims being released hereunder. The Settling Parties agree that no party was or is a "prevailing party" in this case. In no event (even if this Settlement Agreement is terminated) shall this Settlement Agreement, any of its provisions, or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as or deemed to be evidence of any kind in the Actions, any other action, or any judicial, administrative, regulatory or other proceeding, except a proceeding to enforce this Settlement Agreement. Without limiting the foregoing, neither this Settlement Agreement nor any related negotiations, statements or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, any of the Settling Defendants, or as a waiver by the Settling Defendants of any applicable defense or as a waiver by Class Representatives or the Class of any claims, causes of action or remedies.

O. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Class Members is being given or will be given by Co-Lead Counsel or counsel for the Settling Defendants; nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. The Notice will direct Class Members to consult their own tax advisors regarding the tax consequences of the proposed Settlement and any tax reporting obligations they may have with respect thereto. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

P. The Settling Parties, their successors and assigns, and their attorneys undertake to implement the terms of this Settlement Agreement in good faith and to use good faith in attempting to resolve any disputes that may arise in the implementation of the terms of this Settlement Agreement.

Q. The Settling Parties, their successors and assigns, and their attorneys agree to cooperate fully with one another in seeking Court approval of this Settlement Agreement and to use all reasonable efforts to effect the prompt consummation of this Settlement Agreement and the proposed Settlement.

R. Plaintiffs and Tyco, their attorneys, successors and assigns agree to cooperate fully in the prosecution of the Officer Assigned Claims as well as the defense of any counterclaims or cross-claims asserted in these actions against Tyco, and to use generally their best efforts to assist Tyco in the resolution of any outstanding claims and actions related to the matters at issue in the MDL Securities Action which are beyond the scope of this Settlement,



provided, however, that such cooperation shall not require the Settling Parties to waive any attorney-client or work product privilege.

S. In accordance with the provisions of the Confidentiality Order entered into on March 11, 2005, Co-Lead Counsel shall arrange to return all documents to the Settling Defendants which were produced by the Settling Defendants during the course of the Actions or to destroy such documents as permitted by the Confidentiality Order upon the conclusion of the litigation against all Non-Settling Defendants.


T. In the event any one or more of the provisions contained in the Settlement Agreement should be held invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The invalid, illegal, or unenforceable provision shall be considered to be severable and shall be given no effect and the agreement shall not be deemed null and void thereby. To the extent that the invalid, illegal, or unenforceable provision is material to the Settlement Agreement, the parties shall, subject to the review and approval of this Court, endeavor in good-faith to replace the invalid, illegal, or unenforceable provision with valid provisions, the effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

U. This Settlement Agreement may be signed in counterparts, each of which shall constitute a duplicate original. Execution by facsimile shall be fully and legally binding on a Settling Party.

V. All Releasees who are not Settling Parties are intended third-party beneficiaries who are entitled to enforce the terms of the Releases when those Releases become effective.

**SIGNATURE PAGE TO FOLLOW**

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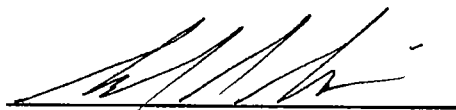
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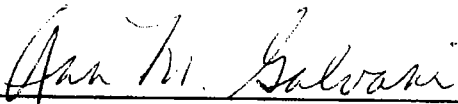
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