

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JEANNINE PALMER, JANET COOK,  
LAURA BEVAN, JEREMY TEPLINSKY, AARON CHENEY, VLADIMIR LOUIS  
JACQUES, DAGMAWI SELASSIE, AMADON N'DIAYE, NOAH FIRESTONE,  
DEVIN GOWLING and JARROD PACHOLKO

Plaintiffs

- and -

SONY BMG MUSIC ENTERTAINMENT, SONY CORPORATION OF AMERICA, SONY  
BMG MUSIC (CANADA) INC./SONY BMG MUSIQUE (CANADA) INC., SONY MUSIC  
ENTERTAINMENT (CANADA) INC., SONY OF CANADA LTD./SONY DU CANADA  
LTD., BERTELSMANN, INC. and FIRST 4 INTERNET LTD.

Defendants

Court File No. 06-0044

**BRITISH COLUMBIA  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

VLADIMIR LOUIS JACQUES, DAGMAWI SELASSIE, AMADON N'DIAYE, NOAH  
FIRESTONE, DEVIN GOWLING, JARROD PACHOLKO, and JOHN DOE LTD. I

Plaintiffs

- and -

SONY OF CANADA LIMITED, SONY MUSIC ENTERTAINMENT (CANADA) INC.,  
SONY BMG MUSIC (CANADA) INC., SONY BMG MUSIC INC., SONY BMG MUSIC  
ENTERTAINMENT, SONY CORPORATION OF AMERICA, BERTELSMANN, INC., and  
FIRST 4 INTERNET LTD.

Defendants

**QUÉBEC  
SUPERIOR COURT**

BETWEEN:

PHILIPPE GUILBERT

Plaintiffs

- vs. -

SONY BMG MUSIQUE (CANADA) INC.

- and -

SONY BMG MUSIC ENTERTAINMENT

- and -

FIRST 4 INTERNET LTD.

- and -

SUNNCOMM INTERNATIONAL INC.

Defendants

**SETTLEMENT AGREEMENT**

This Settlement Agreement is made by and among individual and representative plaintiffs Jeannine Palmer, Janet Cook, Laura Bevan, Jeremy Teplinsky, Aaron Cheney, Vladimir Louis Jacques, Dagmawi Selassie, Amadon N'Diaye, Noah Firestone, Devin Gowling, Jerrod Pacholko and Philippe Guilbert ("**Plaintiffs**"), on behalf of themselves and, on the terms set forth herein, the Settlement Class as defined herein; and SONY BMG Music Entertainment ("**SONY BMG US**"), a Delaware general partnership, and SONY BMG MUSIC (CANADA) INC./SONY BMG MUSIQUE (CANADA) INC., a corporation existing under the laws of the Province of Ontario ("**SONY BMG Canada**"); SONY BMG US and SONY BMG Canada being collectively

referred to herein as "**SONY BMG**"; and Plaintiffs and SONY BMG being collectively referred to herein as the "**Parties**"), by and through their respective counsel and representatives, as of the 14th day of August 2006, to settle and compromise the claims of Plaintiffs and the Settlement Class on the terms and conditions set forth below:

I. CLAIMS OF THE PLAINTIFFS

A. SONY BMG markets and sells, among other things, compact discs ("**CDs**") containing music. From August 1, 2003 through the present some, but not all, of the CD titles marketed and sold by SONY BMG contained, in addition to music, software (referred to herein as "**Content Protection Software**"). When the CDs so equipped are inserted into computers with CD drives, the Content Protection Software enables consumers to transfer the music to their computers, authorizes the number of copies that the consumer can make of the CDs, and authorizes certain uses (including transferring the music to portable devices and copying the music on to no more than three blank CDs).

B. SONY BMG used two types of Content Protection Software on CDs during the Class Period (as defined below), "**MediaMax**" and "**XCP**". Two versions of "**MediaMax**" — **MediaMax 3.0** and **MediaMax 5.0** — were designed and licensed to SONY BMG by SunnComm. The **MediaMax 3.0** and **MediaMax 5.0** software included on SONY BMG CDs sold in Canada to consumers during the Class Period will be referred to as the "**MediaMax Software**", and a SONY BMG CD or copy thereof containing such **MediaMax Software** will be referred to herein as a "**MediaMax CD**".

C. Various versions of "**XCP**" were designed and licensed to SONY BMG by F4I. The **XCP** versions included on SONY BMG CDs sold in Canada to consumers during the Class

Period will be referred to herein as the "**XCP Software**", and a SONY BMG CD or copy thereof containing XCP Software will be referred to herein as an "**XCP CD**". Lists of the CDs containing MediaMax 3.0, MediaMax 5.0 and XCP are attached as Exhibit "A" to this Settlement Agreement.

D. The Plaintiffs have filed four Statements of Claim (collectively, the "**Claims**", each individually a "**Claim**"): *Cheney et al. v. Sony of Canada Limited et al.*, No. 06-CV-033329 (Ont. Sup. Ct. J. January 4, 2006); *Jacques et al. v. Sony of Canada Limited et al.*, No. 06-0044 (B.C.S.C. January 4, 2006); *Palmer v. First 4 Internet Ltd.*, No. 06-CV-304178 CP (Ont. Sup. Ct. J. January 16, 2006), and since consolidated with No. 06-CV-033329, above; and *Guilbert et al. v. SONY BMG Musique (Canada) Inc. et al.*, No. 500-06-000318-051 (Qué. Sup. Ct. November 14, 2005) (collectively, the "**Actions**").

E. Additionally, as of the date of this Settlement Agreement, the following complaint raising substantially identical claims (the "**Subsequent Claim**") has been filed: *Amarasekera v. SONY BMG Music Entertainment et al.*, No. 500-06-000320-057 (Qué. Sup. Ct. November 15, 2005) (the "**Subsequent Action**"). Although several of the Statements of Claim in the Actions and the Subsequent Action misidentify the proper corporate entity or the name of the defendants, it is understood that SONY BMG US and SONY BMG Canada are the defendants meant to have been named in each such complaint.

F. The Claims and the Subsequent Claims allege that, when and if an XCP CD is inserted into a computer, an End User License Agreement (the "**XCP EULA**") appears automatically on the screen and the XCP Software installs itself on the user's computer. The Claims and the Subsequent Claims assert that the XCP Software contains a potentially harmful

"rootkit" which renders the user's computer more vulnerable to "malware" promulgated by third parties, including "viruses", "Trojan Horses" and "spyware," than the computers would have been had the XCP Software not been installed. Plaintiffs also allege that the XCP Software interferes with the user's ability to access the music via non-XCP Software. Plaintiffs also allege that the XCP Software consumes excess computer resources and causes system errors. According to Plaintiffs, SONY BMG also uses the XCP Software to collect and store information over the Internet from CD users, including Internet Protocol ("**IP**") addresses.

G. The Claims and the Subsequent Claims also allege that SONY BMG misrepresented, or did not fully or adequately disclose, the true nature of the XCP Software, and that the XCP EULA contained terms that are unconscionable or otherwise unenforceable. Plaintiffs further allege that, once installed, the XCP Software is difficult to locate and remove, and that SONY BMG did not make available a ready means to uninstall the XCP Software. Plaintiffs allege that when SONY BMG made an uninstaller program available to remove the XCP Software, this program also created a security risk.

H. The Claims and the Subsequent Claims further claim that when a MediaMax CD is inserted into a computer, an EULA appears automatically on the screen (for CDs containing MediaMax 3.0, the "**MediaMax 3.0 EULA**"; for CDs containing MediaMax 5.0, the "**MediaMax 5.0 EULA**"; each, a "**MediaMax EULA**", and collectively, the "**MediaMax EULAs**"), and that certain software files are immediately loaded onto the computer even before the user of the MediaMax CD has an opportunity to accept or reject a MediaMax EULA. Plaintiffs allege that the MediaMax Software remains on the computer even if the MediaMax EULA is rejected, and further allege that SONY BMG uses the MediaMax Software to collect and store information over the Internet from CD users, including IP addresses.

I. The Claims and the Subsequent Claims also allege that SONY BMG misrepresented, or did not fully or adequately disclose, the true nature of the MediaMax Software, and that the MediaMax EULAs contained terms that are unconscionable or otherwise unenforceable. Plaintiffs also allege that MediaMax 5.0 causes a file folder to be installed on a user's computer that renders the user's computer more vulnerable to security breaches by third parties by allowing these third parties to gain enhanced permissions over the user's computer running the Windows operating system. Plaintiffs further allege that SONY BMG did not make available a ready means to uninstall the MediaMax Software. Plaintiffs allege that when SONY BMG made a program available to uninstall the MediaMax Software, this program also created a security risk.

J. The Claims and the Subsequent Claims allege that SONY BMG and F4I, by disseminating the XCP Software on XCP CDs, and that SONY BMG, by disseminating the MediaMax Software on MediaMax CDs, violated, among other things, the *Competition Act*, R.S.C. 1985, c. C-34; the *Personal Information Protection and Electronic Document Act*, S.C. 2000, c. 5; the consumer fraud, false advertising, and/or deceptive trade practices laws of the several provinces, as well as the *Quebec Charter of Human Rights and Freedoms*, R.S.Q. c. C-12; and the common and civil law pertaining to breach of contract, duty to inform, warranty, deceit, misrepresentation, negligence and wrongful act and omissions. The Claims seek equitable relief, restitution, and general, economic, aggravated, punitive and exemplary damages on behalf of a class of consumers who purchased any of the MediaMax CDs and/or the XCP CDs. The plaintiffs in the Subsequent Actions seek essentially the same relief.

K. Plaintiffs, through their counsel, have conducted an investigation of the facts and analyzed the relevant legal issues. Although Plaintiffs and their counsel believe that the causes

of action asserted in the Claims have substantial merit, they also have examined the benefits to be obtained under the proposed Settlement, including the prompt removal of XCP CDs from the market, and patches, uninstallers and disclosures with respect to the MediaMax Software, and have considered the risks, costs and delays associated with the continued prosecution of this litigation and the likely appeals of any rulings in favor of either Plaintiffs or SONY BMG.

L. SONY BMG has conducted an investigation of the facts and analyzed the relevant legal issues. SONY BMG denies all liability with respect to any and all facts or claims alleged in the Claims and the Subsequent Claims, and believes that its defenses, including but not limited to, lack of jurisdiction, lack of personal service, and all other defenses available at law or equity to the claims asserted in the Claims and Subsequent Claims have substantial merit. SONY BMG also has weighed the potential risks, costs and delays associated with continued litigation of the Actions against the benefits of the proposed Settlement.

M. This Settlement Agreement is modeled after a similar agreement entered into between SONY BMG US and plaintiffs in class actions filed in the United States and consolidated in the United States District Court for the Southern District of New York as *In re SONY BMG CD Technologies Litig.*, No. 05 CV 9575 (hereafter the "**U.S. Litigation**"). The settlement agreement in the U.S. Litigation (hereinafter the "**U.S. Settlement Agreement**"), was submitted to a competent U.S. Court for final approval at a fairness hearing (hereinafter the "**U.S. Fairness Hearing**"), which was conducted on May 22, 2006. No one appeared at the U.S. Fairness Hearing to oppose the settlement. On May 25, 2006 the U.S. Court entered an order granting final approval to the settlement.

N. The Parties also acknowledge that SONY BMG is subject to one lawsuit brought by the U.S. Attorney General of the State of Texas (*Texas v. SONY BMG Music Entertainment*, Dist. Ct., Travis Co, Tex.), an inquiry by the U.S. Federal Trade Commission, and numerous investigations by U.S. state attorneys general and other U.S. governmental authorities in various U.S. jurisdictions (together, the "**Government Inquiries**", however, the term "**Government Inquiries**" expressly excludes actions brought by private citizens of any jurisdiction under a private U.S. attorney general statute). The Government Inquiries cover materially the same subject matter as the Claims. It is the intention of SONY BMG to seek, to the maximum extent possible, to resolve the Government Inquiries on an agreed basis, with settlement term(s) to be disclosed to Plaintiffs' Class Counsel, the Court and the public. It is the intention of the Parties that the terms of this Settlement Agreement be complementary to the terms of the anticipated settlement(s) of the Government Inquiries.

O. Each of the Parties and counsel believes, in consideration of all the circumstances and after substantial arms' length settlement negotiations between counsel, that its interests are best served by entering into the proposed Settlement set forth in this Settlement Agreement. Each of the representative plaintiffs in the Actions and their counsel believe that this proposed Settlement is fair, reasonable, adequate and in the best interests of the Settlement Class.

P. The Parties intend that the proposed Settlement embodied in this Settlement Agreement will resolve all Released Claims (as defined below).

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties, that:

- (a) the Actions be settled and compromised as between Plaintiffs (on behalf of themselves and all Settlement Class Members) and SONY BMG,

subject to approval of the Courts of the respective provinces in which the claims were instituted, after hearings as provided for in this Settlement Agreement (the "**Court(s)**");

- (b) Upon Court approval of the Settlement and compromise of the Actions, final Orders for each of Ontario, Québec and British Columbia, in forms to be agreed by the Parties or settled by the Courts (the "**Approval Orders**") be entered: (1) dismissing the Actions with prejudice (except in Québec); and (2) barring and enjoining the prosecution by Settlement Class Members of all Released Claims against the Released Parties (all as defined below) with prejudice; and
- (c) All of the foregoing shall be subject to the following terms and conditions:

## II. DEFINITIONS

In addition to the foregoing defined terms, for purposes of the Settlement Agreement and all Exhibits thereto, the following terms shall have the meanings given to them below:

- A. "**Class Period**" means the period from August 1, 2003 through August 10, 2006.
- B. The "**Effective Date**" is the date on which the Approval Orders are Final in each of the Courts.
- C. "**Final**", when used in connection with any court order or judgment, means that the relevant order or judgment will be final:
  - (a) if no appeal is taken therefrom, on the date on which the time to appeal therefrom (including any potential extension of time) has expired; or

- (b) if any appeal is taken therefrom, on the date on which all appeals therefrom, including motions for rehearing or reargument and motions or applications for leave to appeal or any other form of review, have been finally disposed of, such that the time to appeal therefrom (including any potential extension of time) has expired, in a manner resulting in an affirmance of the relevant order or judgment.

D. **"Security Vulnerability"** means a weakness in a computer system, which may result from bugs or design flaws, allowing an attacker to violate the integrity, confidentiality, access control, availability, consistency or audit mechanism of the system or the data and applications it hosts. For purposes of illustration, Security Vulnerabilities are of significant interest when the program containing the Security Vulnerabilities operates with special privileges, performs authentication, or provides easy access to user data or facilities.

E. **"Confirmed Security Vulnerability"** means a Security Vulnerability associated with installation or use of Content Protection Software, or an update or patch thereto, that, after the Effective Date, is confirmed by an independent, qualified expert (the **"Security Expert"**) selected by SONY BMG, such as (without limitation) Next Generation Security Software Ltd. or Cloakware, Inc., to be a Security Vulnerability that poses a significant threat to the security of a computer system.

F. **"Suspected Security Vulnerability"** means a replicable Security Vulnerability associated with installation or use of Content Protection Software, other than the XCP Software, XCP Update, XP Uninstaller or an update or patch thereto, that, after the Effective Date, has been found by the SONY BMG personnel responsible for Content Protection Software, or

identified and described to such personnel by a reputable computer security firm, consultant, or other person with expertise in computer security.

G. **"Personal Data"** means information stored on a computer that itself discloses the identity of the individual using that computer or that discloses websites, other than the SONY BMG and SunnComm websites, that the user has visited using the browser on such computer, but does not include the IP address of the computer's Internet connection or any information with respect to an album title, artists and tracks, or other non-personally identifiable information, which is routinely logged by SONY BMG in connection with CDs containing Content Protection Software.

H. **"Plaintiffs' Class Counsel"** means the firms of Kugler Kandestin, LLP, Merchant Law Group LLP, Hotz Lawyers, and Sutts Strosberg, LLP. Plaintiffs' Class Counsel may, at their sole option, delegate certain responsibilities under this Settlement Agreement, including, without limitation, those responsibilities described in Sections III.I-M and III.Q.

I. The **"Notice Approval Date"** is the date one business day after the Courts have approved the form of notice to be sent to Settlement Class Members on the terms specified herein.

J. **"Released Parties"** means each and all of the defendants and each and all of defendants' direct and indirect parent companies including, in the case of SONY BMG and without limitation, Sony Corporation and Bertelsmann AG, and each and all of each of Sony Corporation's, Bertelsmann AG's and defendants' respective divisions and direct and indirect subsidiaries (including without limitation Sony of Canada Limited), affiliates, partners, joint ventures, predecessors and successor corporations and business entities, and each and all of their

past and present officers, directors, servants, licensees, joint ventures, sureties, attorneys, agents, consultants, advisors, contractors, employees, controlling or principal shareholders, general or limited partners or partnerships, divisions, insurers, designated management companies, and each and all of their successors or predecessors in interest, assigns, or legal representatives, and any persons or entities that have designed, developed, programmed, manufactured, supplied, advertised, marketed, distributed or sold MediaMax CDs and/or XCP CDs or software thereon.

K. "**Settlement Agreement**" refers to this Settlement Agreement and "**Settlement**" refers to the terms of the settlement described herein.

L. "**Settlement Class**" means all natural persons (except for current employees of the Released Parties) in Canada who purchased, received, came into possession of or otherwise used one or more MediaMax CDs and/or XCP CDs from August 1, 2003 through August 10, 2003 excluding Released Parties; SONY BMG resellers or distributors of the XCP CDs and MediaMax CDs; and any persons or entities that have previously executed releases discharging SONY BMG from liability concerning or encompassing any or all claims that are the subject of the Claims and the Subsequent Claims. SONY BMG shall provide to Plaintiffs' Class Counsel, prior to the Approval Hearing, an affidavit or other confirmatory evidence verifying that no MediaMax CDs or XCP CDs were sold or issued in Canada before August 1, 2003, and, to the best of SONY BMG's knowledge, the total number of MediaMax CDs and XCP CDs manufactured and sold in Canada as of the date of Approval Hearing.

M. "**Settlement Class Member**" means any person who falls within the definition of the Settlement Class and who does not validly opt out of the Settlement Class within 60 days of

any Opt-Out Notice under the conditions and procedures for opt-out as determined by the Courts and described in any Opt-Out Notice approved by the Court.

N. **"Released Claims"** means any and all claims, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, liens, contracts, liabilities, agreements, costs, or expenses, of any nature whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including Unknown Claims, of any and all Plaintiffs and/or Settlement Class Members arising out of any purchase or use by them of an XCP CD or a MediaMax CD, the XCP Update (as defined below), the XCP Uninstaller (as defined below), the MediaMax Update (as defined below), or the MediaMax Uninstaller (as defined below) or any installation or de-installation of XCP Software or MediaMax Software at any time, to the extent that such claims: (a) arise out of the Actions or the Subsequent Action; (b) relate to any allegations that either were or could have been asserted in the Actions or the Subsequent Action; or (c) which might in the future be asserted by any Plaintiff or Settlement Class Member, against any of the Released Parties that would arise out of, or relate to in any manner, directly or indirectly, any acts, facts, transactions, occurrences, conduct, representations or omissions alleged in the Actions or the Subsequent Action, including, without limitation, claims respecting any disclosure, advertising or other descriptions of, or claims relating to (i) the nature, quality, value, and/or functionality of the MediaMax CDs, the XCP CDs, the MediaMax Software, MediaMax Update, MediaMax Uninstaller, XCP Software, XCP Update or XCP Uninstaller, and/or (ii) the EULAs, and/or (iii) the alleged collection by SONY BMG of Personal Data or IP addresses. Released Claims also include claims for abuse of process, malicious prosecution or any other claim arising out of, relating to, or in connection with the defense or resolution of the Action. For avoidance of doubt, Released Claims include

claims relating to (i) the asserted costs of removing XCP Software and/or MediaMax Software from a computer or network; (ii) damages caused by negligent removal of XCP Software and/or MediaMax Software; and (iii) damages caused by inadequate, incomplete or otherwise improper labeling of the MediaMax CDs or the XCP CDs. Released Claims do not include claims for consequential damage to a computer or network that may or are alleged to have resulted from interactions between the XCP Software or the MediaMax Software and other software or hardware installed on such computer or network. (For avoidance of doubt, Released Claims also do not include copyright, trademark or other claims concerning the ownership of intellectual property rights in the MediaMax Software or the XCP Software, or any uninstallers or updates thereto, which were not alleged.)

O. **"Unknown Claims"** means all claims arising out of facts relating to any matter covered by the Released Claims which all persons or entities providing releases under this Settlement Agreement, including all Settlement Class Members, do not know or suspect to exist in their favour at the time of the release of the Released Parties and which, if known by them, might have affected their decision to settle with SONY BMG and release the Released Parties or to take any other action including, but not limited to, objecting or not objecting to the Settlement. All persons or entities providing releases under this Settlement Agreement may hereafter discover facts other than or different from those which such persons now know or believe to be true with respect to the subject matter of the Released Claims. Upon the Effective Date, each person or entity providing releases under this Settlement Agreement, including all Settlement Class Members, shall be deemed to have waived any and all rights that he, she, it or they may have under any statute, regulation, administrative adjudication or common or civil law principle

that would otherwise limit the effect of the foregoing releases to those claims actually known or suspected to exist at the time of execution of this Settlement Agreement.

### III. TERMS AND CONDITIONS OF THE SETTLEMENT BENEFITS

A. In exchange for the dismissal of the Action (except in Québec where such a requirement is not requested) and for entry of the judgment as provided for in this Settlement Agreement (the "Judgment"), on the Preliminary Approval Date, SONY BMG shall make available to Settlement Class Members the benefits described in this Section III (the "**Settlement Benefits**"), in accordance with the procedures set forth below.

#### B. **XCP Exchange Program.**

1. SONY BMG offered to all persons possessing any XCP CD the opportunity to exchange such XCP CD for an identical CD title that does not contain any Content Protection Software. SONY BMG also has offered any such person the opportunity to download non-content protected MP3 versions of the music contained on any such XCP CD that he or she is exchanging. Those offers are hereby incorporated into this Settlement Agreement as terms of the Settlement and are subject to the terms and conditions of this Settlement Agreement.
2. In addition to the exchange described in Section III.B.1, SONY BMG also shall offer the additional incentives specified below in Section C (the "**Incentives**") to induce Settlement Class Members to exchange their XCP CDs for CDs that do not contain Content Protection Software.
3. SONY BMG will use commercially reasonable efforts to advise its resellers that SONY BMG will accept returns from that reseller of XCP CDs in any condition, and SONY BMG will provide full refunds to the reseller for those returned XCP CDs. Although SONY BMG cannot compel its resellers to accept such returns from consumers, or dictate the consideration (i.e., refunds, store credit or exchanges) that its resellers will offer upon the return of XCP CDs, SONY BMG will use commercially reasonable efforts to encourage resellers to provide at least an even exchange of that XCP CD, and to provide a receipt for the exchange so that

Settlement Class Members may readily claim the Incentives by sending the receipt to SONY BMG.

4. If a Settlement Class Member returns an XCP CD to a reseller, and wishes to claim the Incentives, he or she may do so by filling out a Claim Form, and by sending that Claim Form and the exchange receipt by mail or electronic mail to the address specified on the Claim Form.
5. SONY BMG also will offer Settlement Class Members the option of returning their XCP CDs to SONY BMG by UPS, or another shipping method, at no charge to the Settlement Class Member. SONY BMG may administer this exchange program itself or it may, at its option, engage a vendor of its choosing to administer the exchange program.
6. If a Settlement Class Member returns an XCP CD to SONY BMG using the procedure specified above in Section III.B(5), that Settlement Class Member may claim the Incentives by completing the Claim Form.

C. Settlement Class Members who exchange XCP CDs purchased before August 10, 2006, shall be entitled, by submitting the Claim Form, to claim either of the following Incentives from SONY BMG:

1. *Incentive #1.* For each XCP CD returned by a Settlement Class Member, the Settlement Class Member may elect to receive a cash payment of seven dollars and fifty cents Canadian (\$7.50) plus an amount equal to 12% of \$7.50 representing the GST and provincial sales tax, payable by SONY BMG by cheque, and a promotional code allowing the holder of the code to download the contents of any one (1) of the albums specified on the list attached hereto as Exhibit "B".
2. *Incentive #2.* For each XCP CD returned by a Settlement Class Member, the Settlement Class Member may elect to receive a promotional code allowing the holder of the code to download the contents of any three (3) of the albums specified on the list attached hereto as Exhibit "B".
3. For both Incentive #1 and Incentive #2, Settlement Class Members will be able to select promotional codes usable to download the specified album contents from an FTP website. The promotional

codes will be fully transferable, and will expire no less than 180 days after they are issued.

D. To claim entitlement to the Incentives, a Settlement Class Member shall (i) return one or more XCP CDs to SONY BMG, or provide SONY BMG with a receipt indicating the return or exchange of an XCP CD at the place of purchase after November 14, 2005; and (ii) complete an on-line or hard-copy Claim Form, which shall include an unsworn affirmation that, if the Settlement Class Member has installed the XCP Software, he or she has run the XCP Uninstaller or the XCP Update. If a Settlement Class Member who returns the XCP CD to the place of purchase elects to send the Claim Form by any means other than electronic mail, the Settlement Class Member shall be responsible for the costs of postage for that Claim Form.

E. **MediaMax 3.0 Compensation.** A Settlement Class Member who purchased one or more MediaMax CDs containing MediaMax 3.0 before August 10, 2006, and who provides proof of such purchase, under the terms specified below in Section III.H., will be entitled to receive, for each such CD purchased, the opportunity to download non-content protected MP3 versions of the music contained on such MediaMax 3.0 CD.

F. **MediaMax 5.0 Compensation.** A Settlement Class Member who purchased one or more MediaMax CDs containing MediaMax 5.0 before August 10, 2006, and who provides proof of such purchase under the terms specified below in Section III.H., will be entitled to receive, for each such CD purchased, (i) the opportunity to download non-content protected MP3 versions of the music contained on such MediaMax 5.0 CD; and (ii) a transferable promotional code allowing the holder of the code to download, from the FTP website referred to in Section III.C.3, the contents of any one (1) of the albums specified on the list attached hereto as Exhibit

"B". The promotional code described in clause (ii), above, will expire no less than 180 days after it is issued.

G. The benefits to MediaMax CD purchasers described above in paragraphs III.E. and III.F. shall be referred to collectively herein as the "**MediaMax Compensation**".

H. To claim entitlement to the MediaMax Compensation, a Settlement Class Member shall complete the on-line or hard-copy Claim Form, which shall include an affirmation that, if the Settlement Class Member installed the MediaMax Software, he or she has run the MediaMax Update or the MediaMax Uninstaller, and submit with the Claim Form one of the following proofs of purchase for each MediaMax CD for which compensation is sought: (i) the original UPC code, cut out from the cover artwork of the MediaMax CD; (ii) a purchase receipt (including but not limited to an electronic purchase confirmation of a MediaMax CD from any on-line retailer), credit card or bank statement reflecting the purchase, or cancelled cheque reflecting the purchase, or (iii) the MediaMax CD itself (in which case, SONY BMG will not be required to return the MediaMax CD to the Settlement Class Member). If the Settlement Class Member sends the Claim Form and requisite proof of purchase specified in clause (ii), above, by means other than electronic mail, the Settlement Class Member shall be responsible for the costs of postage or shipment for that Claim Form and proof of purchase. The proof of purchase specified in clauses (i) and (iii), above, must be sent by Canada Post or other method of shipment, and the Settlement Class Member shall be responsible for the costs of postage or shipment for the Claim Form and proof of purchase.

I. Plaintiffs' Class Counsel shall have the right to periodically monitor the XCP Exchange Program and ensure that SONY BMG is (itself or through the vendor it selects)

providing the appropriate replacement CDs (under Section II.B(1)), Incentives and MediaMax Compensation to Settlement Class Members within a reasonable time after receiving such claims. Additionally, by December 31, 2006, SONY BMG will, to the best of its abilities, provide to Plaintiffs' Class Counsel information about the total number of Settlement Class Members who (i) downloaded the XCP Update, XCP Uninstaller, MediaMax Update and MediaMax Uninstaller, and (ii) submitted claims for the Incentives and/or MediaMax Compensation. Plaintiffs' Class Counsel and SONY BMG's Attorneys shall treat this information as Confidential under the terms of an appropriate Confidentiality Agreement to be negotiated.

J. This Agreement is reached on the basis that the Settlement does not attract any sales tax (including G.S.T., P.S.T., H.S.T., and similar form of taxation), or domestic or international duty, duties, levy, or levies.

K. **XCP Update.** SONY BMG commits to continue making available, through its Internet website, a software utility (the "**XCP Update**"), downloadable by Settlement Class Members, that will remove the cloaking portion of the XCP Software that hid or "cloaked" filenames, including directories or registry keys with the prefix of \$sys\$, so that the XCP Software's Content Protection Software is visible to users through an ordinary directory search. Settlement Class Members will not need to provide SONY BMG with any Personal Data in order to obtain the XCP Update. The XCP Update also will offer Settlement Class Members the opportunity to completely remove the XCP Software from their computer or network. Plaintiffs' Class Counsel has had and will have an opportunity to review all instructions provided to Settlement Class Members on how to use the XCP Update. SONY BMG shall verify, subject to confirmation by Plaintiffs' Class Counsel, that it has obtained the opinion of an independent,

qualified expert that the XCP Update is effective, and that installation of the XCP Update would create no known Security Vulnerabilities that would be considered Confirmed Security Vulnerabilities.

L. **XCP Uninstaller.** SONY BMG commits to continue making available, through its Internet website, a software utility (the "**XCP Uninstaller**"), downloadable by Settlement Class Members, that will remove the installed XCP Software from the hard disk drive of a Settlement Class Member's computer. Settlement Class Members will not need to provide SONY BMG with any Personal Data in order to obtain the XCP Uninstaller. Plaintiffs' Class Counsel will have an opportunity to review and comment on all instructions provided to Settlement Class Members on how to use the XCP Uninstaller. SONY BMG shall verify, subject to confirmatory discovery by Plaintiffs' Class Counsel, that it has obtained the opinion of an independent, qualified expert that the XCP Uninstaller is effective, and that use of the XCP Uninstaller would create no known Security Vulnerabilities that would be considered Confirmed Security Vulnerabilities.

M. **MediaMax Update.** SONY BMG commits to exercise its best efforts to continue making available, through its Internet website and SunnComm's website, software utilities (collectively, the "**MediaMax Update**"), downloadable by Settlement Class Members, that eliminate all currently-known Security Vulnerabilities associated with the MediaMax Software that would be Confirmed Security Vulnerabilities post-Effective Date. Settlement Class Members will not need to provide any Personal Data in order to obtain the MediaMax Update. Plaintiffs' Class Counsel will have an opportunity to review all instructions provided to Settlement Class Members on how to use the MediaMax Update. SONY BMG shall verify, subject to confirmatory discovery by Plaintiffs' Class Counsel, that it has obtained the opinion of

an independent, qualified expert that the MediaMax Update is effective, and that installation of the MediaMax Update would create no known Security Vulnerabilities that would be considered Confirmed Security Vulnerabilities.

N. **MediaMax Uninstaller.** SONY BMG commits to exercise its best efforts to continue making available, through its website, a software utility (the "**MediaMax Uninstaller**") available through SunnComm's website, downloadable by Settlement Class Members, that will remove the MediaMax Software from the hard disk drive of a Settlement Class Member's computer. Settlement Class Members will not need to provide any Personal Data in order to obtain the MediaMax Uninstaller. Plaintiffs' Class Counsel has had and will have an opportunity to review and comment on all instructions provided to Settlement Class Members on how to use the MediaMax Uninstaller. SONY BMG shall verify, subject to confirmation by Plaintiffs' Class Counsel, that it has obtained the opinion of an independent, qualified expert that the MediaMax Uninstaller is effective, and that use of the MediaMax Uninstaller would create no known Security Vulnerabilities that would be considered Confirmed Security Vulnerabilities.

O. The XCP Update, the XCP Uninstaller, the MediaMax Update and the MediaMax Uninstaller shall be available continuously on or through SONY BMG's website until December 31, 2007.

P. In the website locations where SONY BMG makes available the XCP Update, the XCP Uninstaller, the MediaMax Update and the MediaMax Uninstaller, SONY BMG also shall provide links to the websites of at least two providers of anti-virus/anti-spyware software, at least one of which companies provides its software at no charge, and will include language encouraging users to visit those websites and learn more about the anti-virus/anti-spyware

offerings of such vendors, provided such providers of anti-virus/anti-spyware software consent to such links. SONY BMG shall not, by so doing, incur any liability or responsibility for the functionality or performance of such vendors' offerings, and may so state on its website, unless SONY BMG is itself negligent in that regard, being aware of a functionality or performance problem concerning such vendors' offerings.

Q. SONY BMG will begin making the Incentives and the MediaMax Compensation available to Settlement Class Members upon the provision of notice of this Settlement to Settlement Class Members. If the Effective Date does not occur and/or this Settlement Agreement is terminated pursuant to its terms, Settlement Class Members who have received Settlement Benefits prior to such termination will not have any obligation to return those Settlement Benefits to SONY BMG.

R. Between the Preliminary Approval Date and the Effective Date, SONY BMG agrees to explore and to discuss with Plaintiffs' Class Counsel other methods for publicizing and disseminating the XCP Update, MediaMax Update, XCP Uninstaller and MediaMax Uninstaller.

S. SONY BMG agrees not to object if any operating system manufacturer, provider of computer security or anti-virus software plans to disseminate the XCP Update, the XCP Uninstaller, the MediaMax Update or the MediaMax Uninstaller, to such provider's customers.

T. **No Collection of Personal Data.** SONY BMG asserts that it has not used the MediaMax or XCP Software, or any of the enhanced content on XCP CDs or MediaMax CDs, to collect, aggregate or retain Personal Data about persons who listened to XCP CDs or MediaMax CDs on computers, without such persons' express consent. SONY BMG further asserts that it has only collected information necessary to provide enhanced CD functionality. SONY BMG

believes and, on that basis, asserts that such functionality requires that the album title, artist, IP address, and certain non-personally identifiable information be collected. Beginning after the date on which the Approval Order is first granted in Québec or Ontario, SONY BMG will take commercially reasonable steps to destroy the information it collects to provide enhanced CD functionality, including logs of IP addresses, within ten (10) days after the collection of such data, except as required by law, regulation, litigation discovery rule or court order. SONY BMG shall, however, be permitted to compile aggregate, non-personally identifiable data about hits to its servers from enhanced CDs.

U. **Third Party Verification.** SONY BMG has caused an independent third party to investigate whether SONY BMG has collected, aggregated or retained Personal Data or IP addresses in a manner inconsistent with the above representations. The results of this first privacy audit have been posted on SONY BMG's internet website, and confirm that SONY BMG has not collected personal data without consent. SONY BMG will similarly engage an independent third party to repeat this review once during the calendar years 2006 and 2007. SONY BMG will provide the third party's conclusions to Plaintiffs' Class Counsel no further than thirty (30) days after receiving them and post the third party's conclusions on its website no more than thirty (30) days after receiving those conclusions.

V. **SONY BMG's Waiver of Certain Provisions Of the XCP EULA and the MediaMax EULAs.** As of the Effective Date, SONY BMG shall waive all of its rights to enforce the following provisions of the XCP EULA and the MediaMax 5.0 EULA (which are identical):

1. **Article 2**, to the extent such provision could be construed as precluding consumers from transferring music they purchased to

media players and portable devices that are not "APPROVED MEDIA PLAYERS" and "APPROVED PORTABLE DEVICES" (as those terms are defined in the EULA);

2. **Article 2.3;**
3. **Article 3.1(a)**, to the extent such provision could be construed to prevent copying or reproducing the "DIGITAL CONTENT" otherwise permitted by applicable laws;
4. **Article 3.1(b)**, to the extent such provision could be construed to prevent resale of the physical XCP CD on which the "DIGITAL CONTENT" is embodied;
5. **Article 3.1(c)**, to the extent such provision could be construed as giving SONY BMG an affirmative right to preclude uninstallation of the XCP Software or MediaMax Software, or other non-negligent efforts to remedy the Security Vulnerabilities allegedly associated with such software;
6. **Article 3.1(f)**, to the extent anything in such provision is inconsistent with SONY BMG's waiver of rights under this Paragraph U;
7. **Articles 7 and 8;**
8. **Article 9(1);** and
9. **Article 9.2(ii)-(iii).**

As of the Effective Date, SONY BMG also shall waive all of their rights to enforce the following provisions of the MediaMax 3.0 EULA:

1. **Paragraph III**, to the extent anything in such provision is inconsistent with SONY BMG's waiver of rights under this Paragraph U;
2. **Article 1.1**, to the extent such provision could be construed as precluding consumers from transferring music they purchased to a media player or portable device that is not a "Digital Content System" (as that term is defined in the MediaMax 3.0 EULA);
3. **Article 1.2;**
4. **Article 1.3**, to the extent such provision could be construed as (i) preventing copying or reproducing otherwise permitted by

applicable laws, (ii) preventing the resale of the physical CD on which the "Digital Content" is embodied, or (iii) giving SONY BMG or SunnComm an affirmative right to preclude uninstallation of the MediaMax software, or other non-negligent efforts to remedy the Security Vulnerabilities allegedly associated with such software; and

5. **Article 1.4**, to the extent such provision could be construed to prevent copying or reproducing otherwise permitted by applicable laws.

SONY BMG agrees to waive the limitation of liability provisions (Article 6 of each of the XCP EULA and the MediaMax 5.0 EULA; Article 4.1 of the MediaMax 3.0 EULA), and the New York forum selection clauses (Article 10 of each of the XCP EULA and the MediaMax 5.0 EULA; Article 6.1 of the MediaMax 3.0 EULA) of the EULAs only in cases where a Settlement Class Member alleges non-Released Claims on his or her own behalf only. For greater clarity, SONY BMG does not waive the aforementioned limitation of liability provisions and the New York forum selection clauses where a Settlement Class Member alleges non-Released Claims in a putative class action or representative action.

W. If, after the date on which this Settlement Agreement is executed, SONY BMG enters into any settlement agreement, consent decree, assurance of discontinuance or other, similar pre-trial resolution in connection with any of the Government Inquiries in which SONY BMG undertakes to provide additional benefits directly to all U.S. Settlement Class Members in connection with Released Claims, SONY BMG agrees to offer the same benefits to all Settlement Class Members on the same terms and, to the extent necessary, these additional benefits shall be determined or dealt with on a motion for directions. For avoidance of doubt, the payment of civil or criminal penalties, fines or investigative costs by SONY BMG in connection with any of the Government Inquiries would not constitute the provision of additional benefits directly to U.S. Settlement Class Members under this Section.

X. Settlement Class Members who are entitled to receive promotional codes usable to download one or more of the albums from the list attached to Exhibit "B", and who do not use those promotional codes by their expiration date (*i.e.*, no less than 180 days after issuance), because, for example, they do not have access to a broadband internet connection and do not wish to download music over a dial-up connection, may, within 60 days after the expiration of the codes, return the codes to the Settlement Administrator, and receive in exchange a payment of two (2) dollars Canadian (\$2.00), payable by cheque, for each unused code.

Y. If, in particular instances, SONY BMG cannot within a reasonable time provide (i) a non-content protected replacement for an XCP CD returned pursuant to Section III.B.1, or (ii) MP3 downloads of the music on an XCP CD or a MediaMax CD pursuant to Sections III.B.1, III.E or III.F, then SONY BMG will provide an alternate benefit of equivalent or greater value (with the understanding that one such alternative will be a refund of the demonstrated purchase price of the affected CD or \$15.00), in a form acceptable to Class Counsel, and in consultation with the affected class member(s). If the total number of Settlement Class Members who have filed claims and who are affected by this provision exceeds 500, SONY BMG will be required to certify to Class Counsel that it cannot provide the requisite replacement CDs or MP3 downloads to these Settlement Class Members, or that the cost of doing so would substantially exceed the cost of providing the alternative benefit. If the total number of Settlement Class Members who have filed claims and who are affected by this provision exceeds 5,000, then Class Counsel will be entitled to receive reasonable documentary evidence in support of SONY BMG's certification. Under no circumstances may SONY BMG provide such an alternative benefit to more than 6,000 Settlement Class Members who file claims that seek solely MediaMax Compensation.

Z. **Future Conduct by SONY BMG.** SONY BMG agrees not to manufacture audio CDs with XCP Software, MediaMax 3.0 or MediaMax 5.0, and not to distribute audio CDs with XCP Software. As an explanation for the absence in this agreement of injunctive relief equivalent to that provided in the U.S. settlement agreement, SONY BMG provides the affidavit attached hereto as Exhibit "C".

#### IV. CERTIFICATION OF SETTLEMENT CLASS

A. For settlement purposes only, the Parties will jointly request, as part of the Approval Order, that the Court make findings and enter an Order granting conditional certification of the Settlement Class, and appointing Plaintiffs and Plaintiffs' Class Counsel as representatives of the Settlement Class.

B. SONY BMG does not consent to certification of the Settlement Class for any purpose other than to effectuate the settlement of the Action. If this Settlement Agreement is terminated pursuant to its terms, or if the Effective Date for any reason does not occur, the order certifying the Settlement Class and all preliminary and/or final findings regarding the Court's class certification order shall be automatically vacated upon notice to the Court of the termination of the Settlement Agreement or the failure of the Effective Date to occur, and the Action shall proceed as though the Settlement Class had never been certified and such findings had never been made, without prejudice to the ability of any Party thereafter to request or oppose class certification on any basis.

V. ENTRY OF SETTLEMENT NOTICE AND HEARING ORDER AND NOTICES TO THE SETTLEMENT CLASS

A. The Parties shall use their best efforts to effectuate this Settlement and to secure the prompt, complete and final dismissal with prejudice (except in Québec) of the Actions as against SONY BMG.

B. As soon as practicable after execution of this Settlement Agreement and by no later than August 31, 2006, the Plaintiffs shall file motions before the Courts:

- (a) for orders in the forms to be agreed by the Parties or settled by the Courts scheduling an approval hearing in each of the Actions (the "**Hearing Orders**"); and
- (b) for the Approval Orders.

C. The Settlement Class shall be given notice of the proposed Settlement (the "Notice") as set forth below, subject to the approval of the Courts:

1. To the extent reasonably possible, SONY BMG shall cause the Settlement Notice (in form to be agreed by the parties or settled by the Court) to be sent to electronic mail, on or before a date to be set forth in the Hearing Order, to all Settlement Class Members whose email addresses SONY BMG possesses.
2. SONY BMG shall post the Settlement Notice on its website. The Full Settlement Notice will remain posted on that website until December 31, 2006 or until this Settlement Agreement is terminated by its terms, whichever is earlier.
3. When a user inserts certain XCP CDs and MediaMax CDs into a computer with an active connection to the Internet, the computer queries SONY BMG's website and SunnComm's website (for XCP CDs and MediaMax CDs, respectively) for content, hereafter referred to as the "**Banner**", specific to the artist whose work appears on the XCP CD or MediaMax CD. SONY BMG will ensure that, on or before a date to be set forth in the Hearing Order,

the Banner on MediaMax CDs and XCP CDs so equipped will, in addition to its regular artist-specific content, display a clear and conspicuous link to the Full Settlement Notice.

4. SONY BMG shall work with (and, if necessary, compensate) Google and other search engine firms (which should include "La toile du Québec") to ensure that, to the extent reasonably possible, a link (for Google, both in its French and English version) to the Full Settlement Notice is displayed prominently when users of those search engines search for words such as "XCP," "MediaMax" and "SONY BMG Settlement."
5. SONY BMG shall cause the Settlement Notice (in form to be agreed by the parties or settled by the Court) to be published, on or before a date to be set forth in the Hearing Order in (i) the *Globe & Mail*; (ii) *MacLean's* magazine, or another, similar publication of national circulation; (iii) *The Montreal Gazette*; and (iv) *La Presse*. With respect to the daily publications listed above, the advertisements containing the Settlement Notice shall be published on any single Monday, Tuesday, Wednesday or Thursday, and shall not be required to be more than an eighth-page in size.
6. Plaintiffs' Class Counsel may continuously post the Settlement Notice on their firm websites, beginning two (2) business days prior to the date set forth in the Hearing Order for transmission of the Settlement Notice, and ending on December 31, 2006. Plaintiffs' Class Counsel will, additionally, cause the joint press release described below in Section XI.F, which will contain the information included in the Settlement Notice, to be issued over Canada Newswire, or another similar national business wire service, on any one date on or after the date two (2) business days prior to the date set forth in the Hearing Order for transmission and publication of the Settlement Notice.

D. The date by which any Settlement Class Member must seek to receive one or more of the Settlement Benefits is December 31, 2006. The Parties agree that if, for any reason, the Notice is not or cannot be first provided by August 31, 2006, the Parties will confer in good faith and recommend to the Court that the date by which any Settlement Class Member must seek to receive one or more of the Settlement Benefits be extended correspondingly.

E. The Parties also agree that, if the Settlement Benefits available to Settlement Class Members change, no new notice need issue to Settlement Class Members.

VI. RELEASES

A. In accordance with the provisions of the Judgment, for good and sufficient consideration, the receipt of which is hereby acknowledged, on the Effective Date, each Plaintiff and each Settlement Class Member that did not legally opt out shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of the Released Claims against each and all of the Released Parties, in the manner(s) set forth above.

B. In accordance with the provisions of the Judgment, for good and sufficient consideration, the receipt of which is hereby acknowledged, on the Effective Date, SONY BMG shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged all of the Plaintiffs, Plaintiffs' Class Counsel and all agents of and expert witnesses retained by Plaintiffs' Class Counsel from any claims (including Unknown Claims) for abuse of process, malicious prosecution or any other claim arising out of, relating to, or in connection with the institution, prosecution, assertion or resolution of the Actions.

VII. CLASS COUNSELS' FEES AND DISBURSEMENTS

A. As of the date this Settlement Agreement was executed, the Parties have not substantially discussed either the amount of class counsel fees or disbursements that Plaintiffs' Class Counsel may ask the Court to award to them. It is, however, the understanding of the Parties that this is an issue to be resolved following settlement of other issues, and that Plaintiffs'

Class Counsel will apply for an award of class counsel fees, reimbursable disbursements and applicable taxes in accordance with legal principles, that any fees and costs applied for and ultimately awarded by the Court will be paid by SONY BMG, and that SONY BMG's payment of Plaintiffs' Class Counsel fees and reimbursable expenses will not affect the Settlement Benefits provided to Settlement Class Members in any way.

B. The Parties will try to reach agreement on the amount of class counsel fees, reimbursable disbursements and applicable taxes. If the Parties reach agreement on the subject of fees and/or costs to be awarded to Plaintiffs' Class Counsel before sending of notice to Settlement Class Members, the Full Settlement Notice will reflect that agreement.

C. In the absence of an agreement as contemplated above in paragraph VII.B, (a) the Québec Court will fix class counsel fees, reimbursable disbursements, and applicable taxes for the Québec class action, and; (b) the Ontario Court will fix class counsel fees, reimbursable disbursements and applicable taxes for the Ontario and British Columbia class actions, including all counsel other than Québec counsel, in a summary manner, as set out in Exhibit "D", and SONY BMG shall pay these fixed fees, reimbursable disbursements and applicable taxes instead of the members of the class.

#### VIII. COSTS OF NOTICE AND ADMINISTRATION

A. SONY BMG agrees to disseminate the Settlement Notice, and to pay all costs of doing so, in accordance with the terms of this Settlement Agreement. In the event this Settlement Agreement does not become final or the Effective Date does not occur for any reason, other than a breach by Plaintiffs or Plaintiffs' Class Counsel of one or more provisions of this

Settlement Agreement, Plaintiffs shall have no obligation to reimburse SONY BMG for any costs or expenses paid, incurred or obligated for notice of this Settlement to the Settlement Class.

B. SONY BMG agrees to be responsible for paying all costs incurred in connection with providing the Settlement Benefits and otherwise complying with the procedures set forth in the Judgment and this Settlement Agreement. All procedures followed to provide the Notice to the Settlement Class shall be subject to approval by Plaintiffs' Class Counsel and subject to review for completeness and compliance with the Hearing Order by Plaintiffs' Class Counsel.

C. Plaintiffs' Class Counsel will have the right to monitor the fulfillment and payment of Settlement Benefits to Settlement Class Members and, pursuant to the terms and conditions included in this Settlement Agreement, may act on behalf of Settlement Class Members to assist in their receipt of the Settlement Benefits. SONY BMG shall cooperate in such effort consistent with the provisions of this Settlement Agreement.

#### IX. OTHER PROVISIONS

A. Upon execution of this Settlement Agreement, the Parties agree to cooperate and use all reasonable efforts to achieve approval of the Settlement in accordance with the terms of this Settlement Agreement, and to implement the Settlement and comply with, confirm the bases for and effectuate the terms of this Settlement Agreement.

B. Plaintiffs' Class Counsel shall, upon execution of an appropriate confidentiality agreement, be entitled to get access to all confirmatory discovery perform by U.S. Plaintiffs' Class Counsel from SONY BMG, F4I and SunnComm, as specified in this or the U.S. Settlement Agreement or as may be agreed between the Parties. SONY BMG's Attorneys will provide to Plaintiffs' Class Counsel as soon as they become available a copy of all confirmatory

discovery performed by U.S. Plaintiffs' Class Counsel together with any document given during this confirmatory discovery. Any confidential documents given to Plaintiffs' Class Counsel during confirmatory discovery shall be returned to SONY BMG prior to the Fairness Hearing, or immediately upon termination of this Settlement Agreement pursuant to its terms. Plaintiffs' Class Counsel's return of such documents shall be without prejudice to its ability to demand document production through party discovery if the Effective Date does not occur and/or this Settlement Agreement is terminated pursuant to its terms.

C. Whether the Effective Date does or does not occur, this Settlement Agreement, all negotiations and papers related to it, and any proceedings in connection with the Settlement: (1) are not and shall not be construed as evidence of an admission or concession of wrongdoing or liability by SONY BMG or any other Released Party as to any claim or allegation asserted in the Actions and the Subsequent Actions; and (2) are not and shall not be construed as evidence or an admission or concession by Plaintiffs that claims or allegations asserted in the Actions and the Subsequent Actions against SONY BMG or any other Released Party lack merit.

D. The Parties agree that the terms of this Settlement Agreement were not based solely on the amount of consideration to be paid, but were based on (1) vigorous arm's-length negotiations between counsel for the Parties; (2) the assessment of the signatories to this Settlement Agreement of the strengths and weaknesses of the various claims asserted in the Actions and the Subsequent Actions against defendants, based on the various claims asserted or which could be asserted; and (3) the expense and risks of ongoing litigation. Moreover, the amount of damages that Plaintiffs could prove is a matter of serious and genuine dispute, and the terms of the Settlement do not constitute a finding, admission or concession with respect to the measure of damages that could be proved at trial.

E. At all times during the course of this litigation, SONY BMG has denied and continues to deny any liability to Plaintiffs and Settlement Class Members, and has denied and continues to deny that Plaintiffs or any Settlement Class Members were damaged by any alleged wrongful conduct, or that, even if damaged, any compensable damages could be measured or recovered.

F. In order to ensure that all information provided to the Settlement Class Members regarding the terms and conditions of this Settlement is neutral in terms of content and consistent with what has been submitted for approval of, or has been approved by, the Court, SONY BMG and Plaintiffs' Class Counsel agree jointly to draft a press release, subject to the approval of both counsel to SONY BMG and Plaintiffs' Class Counsel (which approval shall not be unreasonably withheld), that describes this Settlement Agreement (including SONY BMG's denial of liability and Plaintiffs' assertion that their claims were meritorious) and includes substantially all the information contained in the Settlement Notice. The signatories to this Settlement Agreement agree that they shall not issue or cause others to issue any statements for publication or otherwise disseminate statements regarding the terms and conditions of the Settlement that are inconsistent with those included in this Settlement Agreement and/or the joint press release. Notwithstanding the foregoing agreement, SONY BMG retains its right to deny liability.

G. Within five (5) business days after the deadline established by the Court in the Approval Order for members of the Settlement Class to request exclusion from the Settlement Class, Plaintiffs' Class Counsel shall furnish to SONY BMG's counsel a complete list of all timely and valid requests for exclusion they have received (the "**Opt-Out List**").

H. SONY BMG shall have the option to withdraw from this Settlement Agreement if the number of timely and valid requests for exclusion exceeds one thousand. SONY BMG shall have thirty (30) days from their receipt of the Opt-Out List in which to exercise their right of withdrawal pursuant to this paragraph. Withdrawal shall be accomplished by filing with the Court a notice of withdrawal (the "**Withdrawal Notice**"), which notice shall, if SONY BMG withdraws pursuant to this Section XI.G, be served on Plaintiffs' Class Counsel.

I. This Settlement Agreement is conditioned upon the Approval Order in the Actions becoming Final. If any of the Approval Orders is reversed or vacated, or if the Effective Date does not occur for any other reason, SONY BMG or any Plaintiffs shall have the right to terminate this Settlement Agreement. If any of the Approval Orders is modified in any manner that limits the scope of releases given to the Released Parties as provided in Section VIII of this Settlement Agreement, or does not include the findings identified above in Section VII(5), or if the Hearing Order imposes obligations on SONY BMG substantially different from those stated above in Section V, each of Plaintiffs and SONY BMG or any Plaintiffs shall separately have the right either to affirm this Settlement Agreement as modified, or to terminate this Settlement Agreement by filing and serving a Withdrawal Notice on all the other non-withdrawing Parties.

J. The signatories to this Settlement Agreement agree to assist SONY BMG in seeking and obtaining the dismissal of all other actions, including the Subsequent Actions, alleging Released Claims.

K. If the Effective Date does not occur or this Settlement Agreement is otherwise terminated in accordance with its provisions, the Parties shall be restored to their respective positions as of December 1, 2005, except that any extensions of time granted since that date by

one Party to the other shall continue to have force and effect, and neither Party shall seek an order of default against any other Party for actions not taken while approval of the Settlement was pending. The terms and provisions of the Settlement Agreement shall at that time have no further force and effect with respect to the Parties and, to the extent permitted by law, shall not be used in any action or proceeding for any purpose. Any Approval Order entered in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

L. The Parties agree that, to the fullest extent permitted by law, neither the Settlement Agreement nor the fact of the Settlement, nor any act performed nor document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement, is or may be deemed to be or may be used as an admission of, or evidence of: (1) the validity of any claim of any Settlement Class Member, or (2) any wrongdoing, fault, omission, or liability of SONY BMG in any proceeding in any court, administrative agency or other tribunal. Nothing in this Section XI.K shall preclude any Party from using the Settlement Agreement, the Approval Orders, or any act performed or document executed pursuant thereto in a proceeding to consummate, monitor or enforce the Settlement Agreement, the terms of the Settlement or the Approval Orders.

M. All of the Exhibits to this Settlement Agreement are material and integral parts hereof.

N. The undersigned signatories represent that they are fully authorized to execute and enter into the terms and conditions of this Settlement Agreement on behalf of the respective persons or entities for whom they have signed this Settlement Agreement.

O. This Settlement Agreement contains the entire agreement among the Parties hereto and supersedes any prior agreements or understandings between them. All terms of this Settlement Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties. All provisions of this Settlement Agreement are and shall be binding upon each of the Parties hereto, their agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the Parties hereto, including Plaintiffs and any Settlement Class Member who does not validly opt out of membership in the Settlement Class.

P. The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all affected Parties or their successors-in-interest.

Q. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties to the Settlement Agreement shall exchange among themselves copies of the original signed counterparts, and a complete set of original signed counterparts shall be filed with the Court.

R. The Parties agree that the Courts shall have exclusive and continuing jurisdiction over the Parties for all purposes relating to the implementation, effectuation, interpretation, administration, monitoring and enforcement of this Settlement Agreement and all provisions thereof with respect to all Parties hereto and all beneficiaries hereof, including all Plaintiffs, Plaintiffs' Class Counsel, SONY BMG, Settlement Class Members and Released Parties. The Parties agree that the Courts also shall retain continuing jurisdiction to determine whether, in the event an appeal is taken from any aspect of the Approval Orders approving the Settlement or any

award of attorneys' fees and/or costs, notice should be given at the appellant's expense to some or all Settlement Class Members apprising them of the pendency of the appeal and such other matters as the Court may order. Any and all disputes, requests or petitions regarding or arising out of the enforcement, construction, administration or interpretation of the Settlement Agreement, any provisions of the Settlement Agreement or the Judgments, must be made, if at all, by motion to the Courts.

S. A French version of this Settlement Agreement will be made forthwith and both the French and the English versions will have legal standing, however, in the event of any discrepancy between the French and English versions of this Settlement Agreement, the English version shall predominate.

T. The Parties acknowledge that this Settlement Agreement constitutes a transaction within the meaning of article 2631 *Quebec Civil Code*, and the Settlement Class Members waive any recourse for annulment of this Settlement in case of mistake of fact or law, any errors of calculation and any aggravation of any and all damages of any nature whatsoever in connection with any Released Claims.

**DATED: August 14 2006**

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Laura Bevan.

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Jeremy Teplinsky

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Noah Firestone

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Devin Gowling

**SUTTS STROSBURG LLP**

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Harvey T. Strosberg, Q.C.

**HOTZ LAWYERS**

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Glyn Hotz

**MERCHANT LAW GROUP**

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Evatt F. A. Merchant

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Jane Ann Summers

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William G. Slater

*Plaintiffs' Co-Lead Counsel and Interim  
Class Counsel*

**KUGLER KANDESTIN**

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Gordon Kugler

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Pierre Boivin

*Plaintiffs' Co-Lead Counsel and Interim  
Class Counsel*

**SONY BMG MUSIC  
ENTERTAINMENT**

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Daniel M. Mandil

*Defendant SONY BMG MUSIC  
ENTERTAINMENT*

**SONY BMG MUSIC (CANADA)  
INC./SONY BMG MUSIQUE  
(CANADA) INC.**

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Christine J. Prudham

*Defendant SONY BMG MUSIC  
(CANADA) INC./SONY BMG  
MUSIQUE (CANADA) Inc.*

**DAVIES WARD PHILLIPS &  
VINEBERG LLP**

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Kent E. Thomson

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Nick Rodrigo

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Matthew Milne-Smith

*Attorneys for Defendant SONY BMG  
Music Entertainment*

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Jeannine Palmer

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Janet Cook

Sunncomm International Inc. and First4Internet Ltd. hereby agree to the terms of the foregoing Settlement Agreement and agree to be bound by its terms as if parties to that Agreement.

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***First4Internet Ltd.***

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***SunnComm International Inc.***