

**CANADIAN ODD CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of May 30, 2017

Between

**NEIL GODFREY, THE FANSHAWE COLLEGE OF APPLIED ARTS AND
TECHNOLOGY and C. FOGELMAN**
(the "Plaintiffs")

and

NEC CORPORATION and NEC CANADA, INC.
(the "Settling Defendants")

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RECITALS

A. WHEREAS the Proceedings have been commenced by the Plaintiffs in British Columbia, Quebec and Ontario which allege that the Settling Defendants participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of ODD and ODD Products in Canada and/or to allocate markets and customers for the sale of ODD and ODD Products in Canada, contrary to Part VI of the *Competition Act* and the common law and/or the civil law;

B. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful or otherwise actionable conduct alleged in the Proceedings or otherwise;

C. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Settling Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which allegations are expressly denied by the Settling Defendants;

D. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a full, final and nation-wide resolution of all claims asserted or which could have been asserted against them by the Plaintiffs in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

E. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceedings and as is expressly provided in this Settlement Agreement with respect to the Proceedings;

F. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in extensive arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;

G. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the classes they represent and seek to represent, subject to approval of the Courts;

H. WHEREAS the Class Counsel has reviewed and fully understands the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they represent and seek to represent;

I. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Settling Defendants;

J. WHEREAS the Parties now consent to certification or authorization as against the Settling Defendants of the Proceedings as class proceedings and to the Settlement Classes and a Common Issue in respect of each of the Proceedings solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and

K. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Classes and will seek to be appointed representative plaintiffs for the Settlement Classes in their respective Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the Parties that the BC Action and Ontario Action be settled and

dismissed with prejudice as to the Settling Defendants only, and the Quebec Action be declared settled out of court with prejudice as against the Settling Defendants only, all without costs as to the Plaintiffs, the classes they represent and seek to represent or the Settling Defendants, subject to the approval of the Courts, on the following terms and conditions:

Section 1 - Definitions

For the purposes of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.
- (2) **BC Action** means the BC Action as defined in Schedule A.
- (3) **BC Class Proceedings Act** means the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
- (4) **BC Counsel** means Camp Fiorante Matthews Mogergerman LLP.
- (5) **BC Court** means the Supreme Court of British Columbia.
- (6) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol as approved by the Courts, and any employees of such firm.
- (7) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel.
- (8) **Class Counsel Fees** include the fees, disbursements, costs, interest, and/or charges of Class Counsel, and any GST, HST and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Quebec for repayment of funding, as a result of this Settlement Agreement.

- (9) ***Class Period*** means January 1, 2000 through to January 1, 2010.
- (10) ***Common Issue*** in each Proceeding means: Did the Settling Defendants, or any of them, conspire to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, ODD directly or indirectly in Canada during the Class Period? If so, what damages, if any, are payable by the Settling Defendants, or any of them to the Settlement Class Members?
- (11) ***Confidential Opt-Out Threshold*** means the threshold agreed to by the Parties, as set out in Schedule D, which Schedule shall be kept confidential, and shall not be filed in the Courts except under seal.
- (12) ***Counsel for the Settling Defendants*** means Osler, Hoskin & Harcourt LLP.
- (13) ***Courts means the Ontario Court, the Quebec Court and the BC Court.***
- (14) ***Date of Execution*** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (15) ***Defendants*** means the entities named as defendants in any of the Proceedings as set out in Schedule A, and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes the Settling Defendants and the Settled Defendants.
- (16) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as established by Class Counsel and as approved by the Courts.
- (17) ***Effective Date*** means the date when Final Orders have been received from all Courts approving this Settlement Agreement and the Settlement Amount has been paid to BC Counsel.
- (18) ***Excluded Person*** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and any Person who timely and validly exercises the right to opt-out of the Proceedings.

(19) **Final Order** means the later of a final judgment entered by a Court in respect of (i) the certification or authorization of a Proceeding as a class proceeding pursuant to this Settlement Agreement, and (ii) the approval of this Settlement Agreement, in either case once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the certification or authorization of a Proceeding as a class proceeding and the approval of this Settlement Agreement upon a final disposition of all appeals.

(20) **First Publication of Notice Date** means the first date on which the notice referred to in Section 12.1(1) is published.

(21) **Non-Settling Defendant** means any Defendant that is not a Settling Defendant or a Settled Defendant, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Date of Execution.

(22) **ODD** means any device which reads and/or writes data from and to an optical disk, including but not limited to the following: CD-ROM, CD-R/RW, DVD-ROM, DVD-R/RW, Blu-Ray, Blu-Ray R/RW, HD DVD and other combination drives, and optical disk drives designed to be attached externally to computers or other devices.

(23) **ODD Product** means products that contain ODD and ODD designed for use in conjunction with other products.

(24) **Ontario Action** means the Ontario Action as defined in Schedule A.

(25) **Ontario Class Proceedings Act** means the Class Proceedings Act, 1992, S.O. 1992, c. 6, as amended, S.O. 2006, c. 19.

(26) **Ontario Counsel** means Siskinds LLP.

(27) **Ontario Court** means the Ontario Superior Court of Justice.

(28) **Opt-Out Deadline** means the date which is sixty (60) days after the First Publication of Notice Date.

(29) ***Other Actions*** means actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(30) ***Parties*** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.

(31) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(32) ***Plaintiffs*** means the individuals and entities named as plaintiffs in the Proceedings as set out in Schedule A.

(33) ***Proceedings*** means the BC Action, the Quebec Action and the Ontario Action as defined in Schedule A.

(34) ***Proportionate Liability*** means the proportion of any judgment that, had the Settling Defendants not settled, the BC Court, Quebec Court or Ontario Court, as applicable, would have apportioned to the Releasees.

(35) ***Purchase Price*** means the sale price paid by Settlement Class Members for ODD and ODD Products purchased during the Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.

(36) ***Quebec Action*** means the Quebec Action as defined in Schedule A.

(37) ***Quebec Code of Civil Procedure*** means Code of Civil Procedure of Quebec, R.S.Q., c.c-25.

(38) ***Quebec Counsel*** means Consumer Law Group Inc.

(39) ***Quebec Court*** means the Superior Court of Quebec.

(40) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, in law, under statute or in equity, relating in any way to any conduct anywhere, during the Class Period, in respect of the purchase, sale, pricing, discounting, marketing or distributing of ODD and ODD Products or relating to any conduct alleged (or which was previously alleged) in the Proceedings including, without limitation, any such claims which have been asserted or could have been asserted, whether in Canada or elsewhere. However, nothing herein shall be construed to release any claims that are not related to an alleged unlawful conspiracy or other unlawful agreement or combination, including any claims related to or arising from any alleged product defect, breach of contract, or similar claim between the Parties related to ODD and/or ODD Products.

(41) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding the Non-Settling Defendants.

(42) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective present, former and future parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.

(43) **Settled Defendants** means:

- (a) TEAC Corporation, TEAC America, Inc. and TEAC Canada, Ltd.; and
- (b) any Defendant that executes its own settlement agreement before or after the execution of this Settlement Agreement, which settlement agreement is finally approved by the necessary Courts.

- (44) **Settlement Agreement** means this agreement, including the recitals and schedules.
- (45) **Settlement Amount** means CDN\$730,000.00.
- (46) **Settlement Class** means, in respect of each Proceeding, the settlement class defined in Schedule A.
- (47) **Settlement Class Member** means a member of a Settlement Class.
- (48) **Settling Defendants** means NEC Corporation and NEC Canada, Inc.
- (49) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the Bank Act, S.C. 1991, c. 46) held at a Canadian financial institution under the control of BC Counsel or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members, as provided for in this Settlement Agreement.
- (50) **U.S. Litigation** means the class action proceeding pending in the United States District Court for the Northern District of California, under the caption In Re: Optical Disk Drive Products Antitrust Litigation 3:10-md-02143-RS, and includes all actions transferred by the Judicial Panel for Multidistrict Litigation for coordination involving similar allegations relating to ODD and ODD Products.
- (51) **U.S. Settlement Agreements** includes any settlement reached with the Settling Defendants in the U.S. Litigation.

Section 2– Settlement Approval

2.1 Best Efforts

- (1) The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the BC Action and Ontario Action as against the Settling Defendants, and a declaration of settlement out of court of the Quebec Action as against the Settling Defendants.

2.2 Applications Approving Notice and Seeking Certification or Authorization

(1) The Plaintiffs shall bring applications before the Courts, as soon as practicable after the Settlement Agreement is executed, for orders approving the notices described in Section 12.1(1), and certifying or authorizing each of the relevant Proceedings commenced in their respective jurisdictions as a class proceeding as against the Settling Defendants (for settlement purposes).

(2) The BC order approving the notices described in Section 12.1(1) and certifying the BC Action shall be substantially in the form attached hereto as Schedule B. The Ontario and Quebec orders approving the notices described in Section 12.1(1) and certifying or authorizing the relevant Proceedings shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order.

2.3 Applications for Approval of the Settlement

(1) The Plaintiffs shall bring applications before the Courts for orders approving this Settlement Agreement as soon as practicable after:

- (a) the orders referred to in Section 2.2(2) have been granted; and
- (b) the notices described in Section 12.1(1) have been published.

(2) The BC order approving this Settlement Agreement shall be substantially in the form attached hereto as Schedule C. The Ontario and Quebec orders approving this Settlement Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order.

(3) The Plaintiffs can elect to request that the Courts hold joint hearings seeking approval of this Settlement Agreement pursuant to the Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions. The Settling Defendants will not oppose any such request.

(4) This Settlement Agreement shall only become final on the Effective Date.

2.4 Pre-Application Confidentiality

(1) Until the first of the applications required by Section 2.2 is filed or as otherwise agreed by the Parties, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of Counsel for the Settling Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), to give effect to the terms of the settlement, or as otherwise required by law.

Section 3 - Settlement Benefits

3.1 Payment of Settlement Amount

(1) Within thirty (30) days after the Date of Execution, the Settling Defendants shall pay the Settlement Amount to BC Counsel for deposit into the Trust Account.

(2) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(3) The Settling Defendants shall deposit the Settlement Amount into the Trust Account by wire transfer. BC Counsel shall provide the necessary wire transfer information to Counsel for the Settling Defendants with reasonable advance notice so that the Settling Defendants have a reasonable period of time to comply with Section 3.1(1).

(4) The Settlement Amount shall be all-inclusive.

(5) The Settling Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.

(6) Once a Claims Administrator has been appointed, BC Counsel may transfer all funds in the Trust Account to the Claims Administrator.

(7) BC Counsel and the Claims Administrator, respectively, shall maintain the Trust Account as provided for in this Settlement Agreement.

(8) While in control of the Trust Account, each of BC Counsel and the Claims Administrator, respectively, shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Classes and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(5), all Canadian taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account.

(3) BC Counsel or the Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(4) Subject to Section 3.2(5), the Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account.

(5) Notwithstanding Section 3.1(4) and 3.1(5), if this Settlement Agreement is terminated, the interest earned on the Settlement Amount in the Trust Account shall be paid to the Settling Defendants in accordance with Section 7.3 who, in such case, shall be solely responsible for the payment of all taxes on such interest.

Section 4– Cooperation

4.1 Extent of Cooperation

(1) Subject to section 4.1(17), and no later than forty five (45) days after the Effective Date, and subject to any confidentiality order in these Proceedings and the other provisions of this

Settlement Agreement, the Settling Defendants shall insofar as such production has not already been produced and production is not prohibited by law:

- (a) provide electronic copies of any documents that were produced by the Settling Defendants in the U.S. Litigation including, but not limited to any such documents provided to U.S. plaintiffs in the U.S. Settlement Agreements and any pre-existing translations of such documents;
- (b) provide to Class Counsel transactional sales and cost data of the Settling Defendants related to ODDs and ODD Products for the period of January 1, 2003 through January 1, 2012. The Settling Defendants will identify the transactional data by document number;
- (c) provide reasonable assistance through the Settling Defendants' counsel to Class Counsel in understanding the transactional sales and cost data produced by the Settling Defendants, including a reasonable number of written and/or telephonic communications with Class Counsel and/or the Plaintiffs' experts and between technical personnel;
- (d) provide electronic copies of transcripts and video recordings of all depositions of current or former employees, officers or directors of the Settling Defendants, including all exhibits thereto, taken in the U.S. Litigation;
- (e) provide electronic copies of any documents (as defined in Rule 30.01 of the Ontario *Rules of Civil Procedure*) previously collected for or produced by the Settling Defendants to the Canadian Competition Bureau, the United States Department of Justice and/or any other antitrust authority that are relevant to the allegations in the Proceedings, and any pre-existing translations of such documents; and
- (f) the Settling Defendants will use reasonable efforts to answer any questions or requests for information from Class Counsel that arise from the documents provided to Class Counsel by the Settling Defendants, including information originating with the Settling Defendants and being within their possession relating

to the allegations in the Proceedings including, without limitation, information with respect to dates, locations, subject matter, and identities of participants in any meetings or discussions between competitors relating to the purchase, sale, pricing, discounting, marketing or distributing of ODD and ODD Products for the period of January 1, 2000 through January 1, 2009.

(2) The obligation to provide documents and information pursuant to Section 4.1(1) shall be a continuing obligation to the extent documents are identified by the Settling Defendants following the initial productions pursuant to this Settlement Agreement.

(3) Documents provided to Class Counsel in accordance with this Section 4.1(1) will be provided in the format in which they were produced in the U.S. Litigation, to the Canadian Competition Bureau, the United States Department of Justice and/or any other antitrust authority, and will include any non-privileged electronic coding. In addition, where the documents previously produced in the U.S. Litigation contain bates stamps on their face, a field will be produced containing the corresponding bates stamps of the first page of each document.

(4) The Settling Defendants shall not object to the Plaintiffs' participation in any evidentiary proffers and/or interviews of the Settling Defendants' representatives that occur in the U.S. Litigation pursuant to any U.S. Settlement Agreements after the Effective Date. The Settling Defendants shall, where possible, provide notice to Class Counsel thirty (30) days before such proffers and/or interviews.

(5) In addition, within sixty (60) days of the Effective Date, the Settling Defendants shall, at the request of Class Counsel, upon reasonable notice, and subject to any legal restrictions, make reasonable efforts to make available at a mutually convenient time, up to two (2) current or former officers, directors or employees of the Settling Defendants who have knowledge of the allegations raised in the Proceedings to provide information regarding the allegations raised in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel. As agreed to by Counsel for the Settling Defendants and Class Counsel, the employees shall be made available telephonically, via videoconference, or in person in at such place agreed to by Counsel for the Settling Defendants and Class Counsel. Any personal interview with Class Counsel and/or experts retained by Class Counsel shall be limited to a total of six (6) hours over

one day per interview. Costs incurred by, and the expenses of, the employees of the Settling Defendants in relation to such interviews and costs of an interpreter or otherwise related to foreign language translation in connection with interviews shall be the responsibility of the Settling Defendants. If an employee refuses to provide information, or otherwise cooperate, the Settling Defendants shall use reasonable efforts to make him/her available for an interview with Class Counsel and/or experts retained by Class Counsel. The failure of an employee to agree to make him or herself available, or to otherwise cooperate, with the Plaintiffs shall not constitute a violation of this Settlement Agreement.

(6) Nothing in Section 4.1 or any other section of this Settlement Agreement shall require or be construed to require the Settling Defendants or any of their present, former or future officers, directors or employees to perform any act, including the transmittal or disclosure of any information, which would violate any federal, provincial, state or local privacy law, any law of a foreign jurisdiction, or any court order.

(7) Nothing in Section 4.1 or any other section of this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants to disclose or produce any documents or information prepared by or for Counsel for the Settling Defendants, or that is not within the possession, custody or control of the Settling Defendants, or to disclose or produce any documents or information in breach of any order, regulatory directive, rule or law of this or any applicable jurisdiction including but not limited to Canada and the United States, or subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee. If Counsel for the Settling Defendants have created a relevant privilege log, the Settling Defendants will use reasonable efforts to provide Class Counsel with a copy of such log or document.

(8) Nothing in Section 4.1 or any other section of this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants to disclose or produce any documents or information if the Settling Defendants reasonably believe that said disclosure or production will endanger any of their applications or agreements with government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to ODD and

ODD Products (without admitting that such applications or agreements exist). If any documents or information are withheld under this section, the Settling Defendants shall provide Class Counsel with a summary of the types of documents and information withheld and the basis for withholding such information. The Settling Defendants shall act in good faith in supporting the efforts of the Plaintiffs to obtain permission from such government authorities to disclose the documents and information that have been withheld under this section. If such permission is not obtained, said documents and information will continue to be withheld unless any of the Courts order otherwise and/or the Settling Defendants are advised by the government authority that such production will no longer interfere with its ongoing investigation relating to ODD and ODD Products.

(9) If any documents protected by any privilege and/or any privacy law or other order, regulatory directive, rule or law of this or any applicable jurisdiction including but not limited to Canada and the United States are accidentally or inadvertently produced, such documents shall be promptly returned to the Settling Defendants and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such documents shall in no way be construed to have waived in any manner any privilege or protection attached to such documents.

(10) If, in the course of the Proceedings, the Plaintiffs and/or Class Counsel conclude that it is reasonably necessary to disclose information or documents obtained from the Settling Defendants under Section 4.1, which are not otherwise publically available, to any of the Non-Settling Defendants or any other entities, the Plaintiffs and/or Class Counsel shall provide the Settling Defendants with a thirty (30)-day advance notice in writing setting out the proposed disclosure in order that the Settling Defendants may intervene for the purposes of obtaining a sealing or confidentiality order or similar relief. If the Settling Defendants intervene for this purpose, the Plaintiff, Settlement Class Members and Class Counsel will not oppose any reasonable position taken by the Settling Defendants relating to the terms of such order or other relief.

(11) Subject to the rules of evidence, any Court order with regard to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to provide affidavits for use at trial or otherwise in the Proceedings for the sole purpose of supporting the submission into evidence of any information, transactional data and/or documents provided by the Settling Defendants in accordance with this Settlement Agreement and for the prosecution of the Proceedings. If, and only if, a Court should determine that affidavits are inadequate for the purpose of submitting into evidence of the information, transactional data and/or documents produced by the Settling Defendants, the Settling Defendants agree to use reasonable efforts to make available for testimony at trial or otherwise appropriate current or former officers, directors and/or employees of the Settling Defendants, as is reasonably necessary for the prosecution of the Proceedings and, specifically, for the purpose of admitting into evidence any information, transactional data and/or documents provided by the Settling Defendants to Class Counsel pursuant to Section 4.1 herein.

(12) The obligations of the Settling Defendants to cooperate as particularized in Section 4.1 shall not be affected by the release provisions contained in Section 8.1 of this Settlement Agreement. If Class Counsel reach a settlement with all of the Non-Settling Defendants or obtain final judgment against each of them in each of the Proceedings, then all obligations under this Section 4 shall cease and this Section 4 shall be of no further force or effect.

(13) Subject to sections 4.1(14) and 4.1(15), the provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or documents from the Releasees or their current or former officers, directors or employees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(14) The Plaintiffs may exercise any rights they have to seek to obtain discovery in the Proceedings as against the officers, directors and/or employees of the Settling Defendants put forward to participate in employee interviews or provide testimony at trial or otherwise pursuant

to Section 4.1(5) and (11), if the current or former officer, director or employee of the Settling Defendants fails to cooperate in accordance with those Sections and the provisions of this Settlement Agreement.

(15) In the event that the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement, seek an order setting aside Section 4.1(14) and allowing the Plaintiffs to obtain discovery or information from the Settling Defendants as if the Settling Defendants remained parties to the action, set aside the approval of this Settlement Agreement, or seek such other remedy that is available at law.

(16) A material factor influencing the decision by the Settling Defendants to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants and to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue, unreasonable or disproportionate burden or expense on the Settling Defendants.

(17) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to an alleged conspiracy to fix, raise, maintain or stabilize price, allocate markets or customers or restrict output or capacity, of ODD and ODD Products sold during the Class Period, subject to the requirements of Section 4.1(1)(b) and (f).

4.2 Intervention in the U.S. Litigation

(1) The Settling Defendants shall not oppose any application by or on behalf of the Plaintiffs to intervene in the U.S. Litigation in order to gain access to discovery documents and other documents and information subject to the stipulated Protective Order granted in the U.S. Litigation.

4.3 Limits on Use of Documents

(1) It is understood and agreed that all documents made available or provided by the Settling Defendants to Plaintiffs and Class Counsel under this Settlement Agreement, shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the documents or

information are or become publicly available (without the involvement of the Plaintiffs or Class Counsel). Plaintiffs and Class Counsel agree they will not publicize the documents and information provided by the Settling Defendants beyond what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law, except to the extent that the documents or information are or become publicly available.

Section 5– Distribution of the Settlement Amount and Accrued Interest

5.1 Distribution Protocol

(1) After the Effective Date, at a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will make an application seeking orders from the Courts approving the Distribution Protocol.

(2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

5.2 No Responsibility for Administration or Fees

(1) The Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees.

Section 6 – Opting-Out

6.1 Procedure

(1) Class Counsel will seek Court approval of the following opt-out process as part of the orders certifying or authorizing the Proceedings as class proceedings for settlement purposes:

- (a) Persons seeking to opt-out of the Proceedings must do so by sending a written election to opt-out, signed by the Person or the Person's designee, by pre-paid

mail, courier, fax or email to Class Counsel at an address to be identified in the notice described in Section 12.1(1). Residents of Quebec must also send the written election to opt-out by pre-paid mail or courier to the Quebec Court at an address to be identified in the notice described in Section 12.1(1).

- (b) Any potential Settlement Class Member who validly opts-out of the Proceedings shall not be able to participate in the Proceedings and no further right to opt-out of the Proceedings will be provided.
- (c) An election to opt-out sent by mail or courier will only be valid if it is postmarked on or before the Opt-Out Deadline to the designated address in the notice described in Section 12.1(1). Where the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.
- (d) The written election to opt-out must contain the following information in order to be valid:
 - (A) the Person's full name, current address and telephone number;
 - (B) if the Person seeking to opt-out is a corporation, the name of the corporation and the position of the Person submitting the request to opt-out on behalf of the corporation;
 - (C) a statement to the effect that the Person wishes to be excluded from the Proceedings; and
 - (D) the reason(s) for opting out.
- (e) Quebec Class Members who have commenced proceedings or commence proceedings and fail to discontinue such proceedings by the Opt-Out Deadline shall be deemed to have opted out. Quebec Counsel warrant and represent that, to the best of their knowledge, no such action has been commenced as of the Execution Date.

(2) Within thirty (30) days of the Opt-Out Deadline, Ontario Counsel shall provide to the Settling Defendants a report containing the names of each Person who has validly and timely opted out of the Proceedings.

(3) With respect to any potential Settlement Class Member who validly opts-out from the Proceedings, the Settling Defendants reserve all of their legal rights and defences.

(4) The Plaintiffs through their respective Class Counsel expressly waive their right to opt-out of the Proceedings.

6.2 Confidential Opt-Out Threshold

(1) The Confidential Opt-Out Threshold shall be stated in Schedule D. The Confidential Opt-Out Threshold shall be kept confidential by the Parties and their counsel and may be shown to the Courts but shall not otherwise be disclosed.

(2) The Confidential Opt-Out Threshold contemplated in this section shall be considered a material term of this Settlement Agreement, and, once met, shall give rise to a right of termination to the Settling Defendants pursuant to section 7.1(1).

Section 7- Termination of Settlement Agreement

7.1 Right of Termination

(1) In the event that:

- (a) any Court declines to certify or authorize the Proceedings for settlement purposes as against the Settling Defendants;
- (b) any Ontario or BC Courts declines to dismiss the Ontario or BC Actions against the Settling Defendants or the Quebec Court declines to declare settled out of court the Quebec Action against the Settling Defendants;
- (c) any Court declines to approve this Settlement Agreement or any material part hereof;
- (d) any Court approves this Settlement Agreement in a materially modified form;

- (e) any orders approving this Settlement Agreement made by the Ontario Court, the BC Court or the Quebec Court do not become Final Orders or are issued in a materially modified form;
- (f) the Confidential Opt-Out Threshold is met; or
- (g) any Court excludes Settlement Class Members who are resident or situated in any Canadian province from the effects of this Settlement Agreement; or
- (h) the Settlement Amount is not paid in accordance with Section 3.1(1);

the Settling Defendants and the Plaintiffs shall have the right to terminate this Settlement Agreement (except with respect to (f) and (g) in which case only the Settling Defendants shall have the right to terminate this Settlement agreement, and (h), in which case only the Plaintiffs shall have the right to terminate this Settlement Agreement) by delivering a written notice within thirty (30) days following an event described above.

(2) Except as provided for in Section 7.4, if the Settling Defendants or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made (or rejected) by any Court with respect to:

- (a) Class Counsel Fees;
- (b) the opt-out process;
- (c) the Distribution Protocol; or
- (d) documentary confidentiality;

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

7.2 If Settlement Agreement is Terminated

- (1) If this Settlement Agreement is terminated:
 - (a) no application to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
 - (b) the Parties will cooperate in seeking to have any prior order certifying or authorizing a Proceeding as a class proceeding on the basis of the Settlement Agreement, or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and the Parties shall be estopped as against each other from relying on any such order;
 - (c) any prior certification or authorization of a Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation; and
 - (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other Person, shall endeavour to recover and destroy such documents or information. Class Counsel shall forthwith thereafter provide the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this section shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Settling Defendants, or received from the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior

written permission of the Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel.

7.3 Allocation of Monies in the Trust Account Following Termination

(1) If the Settlement Agreement is terminated, Class Counsel or the Claims Administrator, as the case may be, shall within thirty (30) days of the written notice pursuant to section 7.1(1) return to the Settling Defendants all monies paid by the Settling Defendants including interest but less the costs of notice expended in accordance with Section 12 up to a maximum of \$30,000 and less the cost of any translations required under Section 15.12 up to a maximum of \$7,750.

7.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is terminated, the provisions of Sections 3.2(5), 7.1(2), 7.2(1), 7.3, 7.4(1), 10.1, 10.2, 12.1(2), and 15.6, and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.2(5), 7.1(2), 7.2(1), 7.3, 7.4(1), 10.1, 10.2, 12.1(2), and 15.6 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

Section 8– Releases and Dismissals

8.1 Release of Releasees

(1) Upon the Effective Date, subject to Section 8.3, and in consideration of payment of the Settlement Amount and other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

8.2 Release by Releasees

(1) Upon the Effective Date, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released Claims.

8.3 Covenant Not To Sue

(1) Notwithstanding Section 8.1, upon the Effective Date, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

8.4 No Further Claims

(1) Upon the Effective Date, the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity from any Releasee in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee.

8.5 Dismissal of the Proceedings

(1) Upon the Effective Date, the BC Action and the Ontario Action shall be dismissed with prejudice and without costs as against the Settling Defendants.

(2) Upon the Effective Date, the Quebec Action shall be declared settled out of court with prejudice and without costs as against the Settling Defendants.

8.6 Dismissal of Other Actions

- (1) Upon the Effective Date, each Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (2) Class Counsel shall seek an order from the Courts (on terms acceptable to Counsel for the Settling Defendants) providing that, upon the Effective Date, all Other Actions commenced in British Columbia or Ontario, as applicable, by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.

Section 9- Bar Order, Waiver of Solidarity Order and Other Claims

9.1 British Columbia and Ontario Bar Order

- (1) Class Counsel shall seek bar orders from the BC Court and the Ontario Court providing for the following:
 - (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);
 - (b) if the BC Court or Ontario Court, as applicable, ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

- (A) the BC and Ontario Plaintiffs and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (B) the BC and Ontario Plaintiffs and Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the BC and Ontario and BC and Settlement Class Members, if any, and, for greater certainty, the Ontario and BC Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

- (C) the BC and Ontario Courts shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the relevant Proceeding, whether or not the

Releasees remain in the relevant Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the relevant Proceeding and any determination by the BC Court or Ontario Court, as applicable, in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceeding and shall not be binding on the Releasees in any other proceeding;

- (c) a Non-Settling Defendant may, on application to the BC Court or the Ontario Court, as applicable, determined as if the Settling Defendants remained parties to the relevant Proceedings, and on at least ten (10) days notice to Counsel for the Settling Defendants, and not to be brought unless and until the relevant Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
 - (A) documentary discovery and an affidavit of documents (list of documents in British Columbia) from the Settling Defendants in accordance with that Court's rules of procedure;
 - (B) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
 - (C) leave to serve a request to admit on the Settling Defendants (notice to admit in British Columbia) in respect of factual matters; and/or
 - (D) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (d) the Settling Defendants retain all rights to oppose any application brought pursuant to Section 9.1(1)(c), including any such application brought at trial seeking an order requiring the Settling Defendants to produce a representative to testify at trial;

- (e) on any application brought pursuant to Section 9.1(1)(c), the BC or Ontario Court, as applicable, may make such orders as to costs and other terms as it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;
- (g) the BC and Ontario Courts will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the BC and Ontario Courts for these purposes; and
- (h) a Non-Settling Defendant may effect service of the application(s) referred to in Section 9.1(1)(a) on a Settling Defendant by service on Counsel for the Settling Defendants in the relevant Proceedings.

9.2 Quebec Waiver or Renunciation of Solidarity Order

- (1) Class Counsel shall seek a waiver or renunciation of solidarity from the Quebec Court providing for the following:
 - (a) the Quebec Plaintiff and the Settlement Class Members in the Quebec Action expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees;
 - (b) the Quebec Plaintiff and the Settlement Class Members in the Quebec Action shall henceforth only be able to claim and recover damages, including punitive damages, interests and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;

- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Quebec Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Quebec Code of Civil Procedure*.

9.3 Claims Against Other Entities Reserved

- (1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Releasors against any Person other than the Releasees.

Section 10 – Effect of Settlement

10.1 No Admission of Liability

- (1) The Plaintiffs and the Releasees expressly reserve all of their rights if the Settlement Agreement is terminated. Further, whether or not this Settlement Agreement is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Settling Defendants, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

10.2 Agreement Not Evidence

- (1) The Parties agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve

and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

10.3 No Further Litigation

(1) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Settling Defendants that relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is or becomes otherwise publicly available or unless ordered to do so by a court.

(2) Section 10.3(1) shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under sections 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia* by refraining from participation or involvement in any claim or action in a British Columbia court.

Section 11 – Certification or Authorization for Settlement Only

(1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings in respect of the Settling Defendants and the approval of this Settlement Agreement by the Courts.

(2) The Parties agree that the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes in the applications for

certification or authorization of the relevant Proceedings and for the approval of this Settlement Agreement.

(3) The Parties agree that the certification or authorization of the relevant Proceedings as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants or any other Persons or parties that are not Releasees, except as expressly set out in this Settlement Agreement.

Section 12- Notice to Settlement Classes

12.1 Notices Required

(1) Class Counsel will give the proposed Settlement Classes a single notice of (i) the certification or authorization of the Proceedings as class proceedings as against the Settling Defendants for settlement purposes and the right to opt-out of the Proceedings, (ii) the dates of hearings at which the Courts will be asked to approve the Settlement Agreement and, (iii) if they are brought with the hearings to approve the Settlement Agreement, the hearings to request the Courts to approve Class Counsel Fees.

(2) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Classes shall be given notice of such event.

12.2 Form and Distribution of Notices

(1) The notices shall be in a form agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Courts.

(2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Courts.

Section 13 – Administration and Implementation

13.1 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and Distribution Protocol shall be determined by the Courts on applications brought by Class Counsel.

13.2 Information and Assistance

(1) The Settling Defendants will make reasonable efforts to compile a list of the names and addresses (including any relevant email addresses) of those Persons in Canada who purchased ODD and/or ODD Products from them during the Class Period and the Purchase Price paid by each such Person for such purchases. The information shall be delivered in Microsoft Excel or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel, and shall be delivered as a separate production from the documents to be delivered pursuant to Section 4.1(1) or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1(1).

(2) The name and address information required by Section 13.2(1) shall be delivered to Class Counsel within fifteen (15) days of the Date of Execution. The Purchase Price information required by Section 13.2(1) shall be delivered to Class Counsel within fifteen (15) days of the Effective Date.

(3) Class Counsel may use the information provided under Section 13.2(1):

- (a) to facilitate the dissemination of the notices required in Section 12.1 ;
- (b) to advise Persons in Canada who purchased ODD and/or ODD Products from the Settling Defendants during the Class Period of any subsequent settlement agreement reached in the Proceedings, any related approval hearings, and any other major steps in the Proceedings;
- (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement and/or court award achieved in the Proceedings; and

(d) as otherwise authorized in Section 4.

(4) All information provided by the Settling Defendants pursuant to Section 13.2(1) shall be dealt with in accordance with Section 4, except that Class Counsel may disclose all information provided by the Settling Defendants pursuant to Section 13.2(1) to any Court-appointed notice provider and/or any Court-appointed claims administrator, to the extent reasonably necessary for the purposes enumerated in Section 13.2(3). Any Court-appointed notice provider and/or any Court-appointed claims administrator shall be bound by the same confidentiality obligations set out in Section 4. If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to Section 13.2(1) shall be dealt with in accordance with Section 7.2(1)(d) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

(5) The Settling Defendants will make themselves reasonably available to respond to questions respecting the information provided pursuant to Section 13.2(1) from Class Counsel or any Court-appointed notice provider and/or Court-appointed claims administrator. The Settling Defendants' obligations to make themselves reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 8 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate pursuant to this Section 13.2 shall cease when the Proceedings are resolved as against all Defendants and all settlement funds or court awards have been distributed.

Section 14 – Class Counsel Fees and Administrative Expenses

(1) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement or at such other time as they may determine in their sole discretion.

(2) The costs of the notices referred to in Section 12.1 and the translation referred to in Section 15.12 shall be paid by BC Counsel out of the Trust Account as they become due.

(3) Except as provided in Section 14(2), Class Counsel Fees and Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Settling Defendants shall not be liable for any fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members, and/or any amounts payable to the Fonds d'aide aux actions collectives in Quebec as a result of this Settlement Agreement.

Section 15 - Miscellaneous

15.1 Applications for Directions

(1) Class Counsel or the Settling Defendants may apply to the BC Court and/or such other Courts as may be required by the Courts for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, applications for directions that do not relate specifically to the matters affecting the Ontario Action, Settlement Class Members in the Ontario Action, the Quebec Action or/and Settlement Class Members in the Quebec Action shall be determined by the BC Court.

(2) All applications contemplated by this Settlement Agreement shall be on notice to the Parties except for those applications concerned solely with the implementation and administration of the Distribution Protocol.

15.2 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol.

15.3 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

15.4 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday, as "holiday" is defined in the *Supreme Court Civil Rules*, the act may be done on the next day that is not a holiday.

15.5 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the Parties thereto and the Class Counsel Fees in that Proceeding.
- (2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding Sections 15.5(1) and 15.5(2), the BC Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the BC Court for such purposes. Issues related to the

administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a Settlement Class Member in the Ontario Action or a Settlement Class Member in the Quebec Action shall be determined by the BC Court.

15.6 Governing Law

(1) Subject to Section 15.6(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

(2) Notwithstanding Section 15.6(1), for matters relating specifically to the Ontario or Quebec Action, the Ontario or Quebec Court, as applicable, shall apply the law of its own jurisdiction.

15.7 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

15.8 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

15.9 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

15.10 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

15.11 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

15.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by the Quebec Court, Class Counsel and/or a translation firm mandated by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

15.13 Transaction

(1) The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Quebec Civil Code*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

15.14 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

15.15 Schedules

(1) The Schedules annexed hereto form part of this Settlement Agreement.

15.16 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party beyond the terms of the Settlement Agreement with respect to the first Party's decision to execute this Settlement Agreement.

15.17 Authorized Signatures

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

15.18 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel in the Proceedings:

Reidar Mogerman

CAMP FIORANTE MATTHEWS MOGERMAN
4th Floor, 856 Homer St.
Vancouver, BC V6B 2W5

Tel.: 604-689-7555
Fax: 604-689-7554
Email: service@cfmlawyers.ca

Charles M. Wright and Linda Visser

SISKINDS LLP
Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8

Tel.: 519-660-7753
Fax: 519-672-6065
Email: charles.wright@siskinds.com
linda.visser@siskinds.com

Jeff Orenstein

CONSUMER LAW GROUP INC.
1030 rue Berri, Suite 102
Montreal, Quebec, H2L 4C3

Tel.: 514-266-7863
Fax: 514-868-9690
Email: jorenstein@clg.org

For the Settling Defendants:

Mahmud Jamal

OSLER, HOSKIN & HARCOURT LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Tel: 416.362.2111
Fax: 416.862.6666
Email: mjamal@osler.com

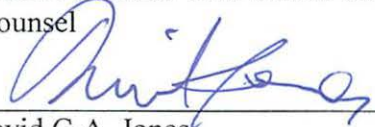
15.19 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

NEIL GODFREY, THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY and C. FOGELMAN on their own behalf and on behalf of the Settlement Class by their counsel

Signature of Authorized Signatory:

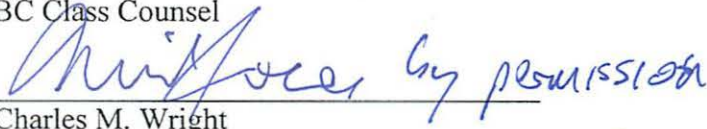
Name of Authorized Signatory:



David G.A. Jones
Camp Fiorante Matthews Mogerman
BC Class Counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:



Charles M. Wright
Siskinds LLP
Ontario Class Counsel

Signature of Authorized Signatory:

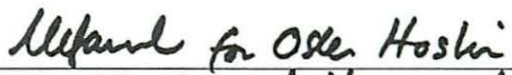
Name of Authorized Signatory:


Jeff Orenstein
Consumer Law Group Inc.
Quebec Class Counsel

NEC CORPORATION and NEC CANADA, INC. by their counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:



Mahmud Jamal 
Osler, Hoskin & Harcourt LLP
Counsel for the Settling Defendants

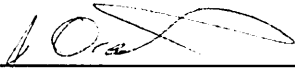
15.19 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

NEIL GODFREY, THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY and C. FOGELMAN on their own behalf and on behalf of the Settlement Class by their counsel

Signature of Authorized Signatory: _____
Name of Authorized Signatory: David G.A. Jones
Camp Fiorante Matthews Mogerman
BC Class Counsel

Signature of Authorized Signatory: _____
Name of Authorized Signatory: Charles M. Wright
Siskinds LLP
Ontario Class Counsel

Signature of Authorized Signatory: 
Name of Authorized Signatory: Jeff Orenstein
Consumer Law Group Inc.
Quebec Class Counsel

NEC CORPORATION and NEC CANADA, INC. by their counsel

Signature of Authorized Signatory: _____
Name of Authorized Signatory: Mahmud Jamal
Osler, Hoskin & Harcourt LLP
Counsel for the Settling Defendants

SCHEDULE “A”

Proceedings

Court and File No.	Plaintiffs’ Counsel	Plaintiff	Named Defendants	Settlement Class
BC Action				
Supreme Court of British Columbia (Vancouver Registry) (Court File No. S-106462)	Camp Fiorante Matthews Mogerma	Neil Godfrey	Sony Corporation, Sony Optiarc, Inc., Sony Optiarc America Inc., Sony Of Canada Ltd., Sony Electronics, Inc., NEC Corporation, NEC Canada Inc., Toshiba Corporation, Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Corp. Korea, Toshiba of Canada Ltd., Toshiba America Information Systems, Inc., Samsung Electronics Co., Ltd., Samsung Electronics Canada Inc., Samsung Electronics America, Inc., Hitachi-LG Data Storage, Inc., Hitachi-LG Data Storage Korea, Inc., Hitachi Ltd., LG Electronics, Inc., LG Electronics Canada, LG Electronics USA, Inc., TEAC Corporation, TEAC America, Inc., TEAC Canada, Ltd., Koninlijke Philips Electronics N.V., Lite-On It Corporation of Taiwan, Philips & Lite-On Digital Solutions Corporation, Philips & Lite-On Digital Solutions USA, Inc., Philips Electronics Ltd., Quanta Storage, Inc., Quanta Storage America,	All Persons resident in British Columbia who purchased ODD and/or an ODD Product during the Class Period, except Excluded Persons.

Court and File No.	Plaintiffs' Counsel	Plaintiff	Named Defendants	Settlement Class
			Inc., Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., BenQ Corporation, BenQ America Corporation, BenQ Canada Corp., Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co., Ltd. and Pioneer Electronics of Canada Inc.	
Ontario Action				
Ontario Superior Court of Justice (London) (1501/10CP)	Siskinds LLP	The Fanshawe College of Applied Arts And Technology	Sony Optiarc, Inc., Sony Optiarc America Inc., Sony Corporation, Sony of Canada Ltd., Sony Computer Entertainment America LLC, Sony Computer Entertainment Canada, Inc., Sony Electronics, Inc., NEC Corporation, NEC Canada, Inc., Toshiba Samsung Storage Technology Corp, Toshiba Corp., Toshiba Samsung Storage Technology Corp. Korea, Toshiba of Canada Ltd., Toshiba America Information Systems, Inc., Samsung Electronics Co., Samsung Electronics Canada Inc., Samsung Electronics America, Inc., Hitachi-LG Data Storage Inc., Hitachi-LG Data Storage Korea, Inc., Hitachi Ltd., LG Electronics Inc., LG Electronics Canada, LG Electronics USA, Inc., TEAC Corporation, TEAC America, Inc.,	All Persons in Canada who purchased ODD and/or ODD Products during the Class Period, except the Excluded Persons and Persons who are included in the Quebec Settlement Class and the BC Settlement Class.

Court and File No.	Plaintiffs' Counsel	Plaintiff	Named Defendants	Settlement Class
			TEAC Canada, Ltd., Koninklijke Philips Electronics N.V., BenQ Corporation, BenQ America Corporation, BenQ Canada Corp., Lite-On It Corporation, Philips & Lite-On Digital Solutions Corporation, Philips & Lite-On Digital Solutions USA, Inc., Philips Electronics Ltd., Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada, Inc., Quanta Storage, Inc., and Quanta Storage America, Inc.	
Quebec Action				
Superior Court of Québec (Québec) (File No. 500-06-000504-106)	Consumer Law Group Inc.	C. Fogelman	Sony Corporation, Sony of Canada Ltd., Sony Corporation of America, Sony Optiarc, Inc., Sony Optiarc America Inc., Sony NEC Optiarc, Inc., Toshiba Corporation, Toshiba America Consumer Products, LLC, Toshiba of Canada Limited, Samsung Electronics Company, Ltd., Samsung Electronics America Inc., Samsung Electronics Canada Inc., Toshiba Samsung Storage Technology Corporation, Hitachi, Ltd., Hitachi Canada, Ltd., Hitachi America Ltd., LG Electronics, Inc., LG Electronics Canada, LG Electronics USA, Inc., Hitachi-LG Data Storage, Inc., Koninklijke Philips Electronics N.V., Philips Electronics North America	All Persons in Quebec who purchased ODD and/or ODD Products during the Class Period, except the Excluded Persons.

Court and File No.	Plaintiffs' Counsel	Plaintiff	Named Defendants	Settlement Class
			Corporation, Philips Canada Ltd., Lite-On It Corporation, Philips & Lite-On Digital Solution Corporation, Philips & Lite-On Digital Solutions USA, Inc., NEC Corporation, NEC Electronics America, Inc., TEAC Corporation, TEAC America, Inc., TEAC Canada Ltd.	

SCHEDULE "B"

No. S-106462
Vancouver Registry

In the Supreme Court of British Columbia

Between:

NEIL GODFREY

Plaintiff

and:

SONY CORPORATION, SONY OPTIARC, INC., SONY OPTIARC AMERICA INC., SONY OF CANADA LTD., SONY ELECTRONICS, INC., NEC CORPORATION, NEC CANADA INC., TOSHIBA CORPORATION, TOSHIBA SAMSUNG STORAGE TECHNOLOGY CORP., TOSHIBA SAMSUNG STORAGE TECHNOLOGY CORP. KOREA, TOSHIBA OF CANADA LTD., TOSHIBA AMERICA INFORMATION SYSTEMS, INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS CANADA INC., SAMSUNG ELECTRONICS AMERICA, INC., HITACHI-LG DATA STORAGE, INC., HITACHI-LG DATA STORAGE KOREA, INC., HITACHI LTD., LG ELECTRONICS, INC., LG ELECTRONICS CANADA, LG ELECTRONICS USA, INC., TEAC CORPORATION, TEAC AMERICA, INC., TEAC CANADA, LTD., KONINLIJKE PHILIPS ELECTRONICS N.V., LITE-ON IT CORPORATION OF TAIWAN, PHILIPS & LITE-ON DIGITAL SOLUTIONS CORPORATION, PHILIPS & LITE-ON DIGITAL SOLUTIONS USA, INC., PHILIPS ELECTRONICS LTD., QUANTA STORAGE, INC., QUANTA STORAGE AMERICA, INC., PANASONIC CORPORATION, PANASONIC CORPORATION OF NORTH AMERICA, PANASONIC CANADA INC., BENQ CORPORATION, BENQ AMERICA CORPORATION BENQ CANADA CORP., PIONEER CORPORATION, PIONEER NORTH AMERICA, INC., PIONEER ELECTRONICS (USA) INC., PIONEER HIGH FIDELITY TAIWAN CO., LTD. AND PIONEER ELECTRONICS OF CANADA INC.

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION REGARDING:
NEC CERTIFICATION FOR SETTLEMENT AND
APPROVAL OF NOTICE OF SETTLEMENT APPROVAL HEARING**

BEFORE) THE HONOURABLE)
) MR. JUSTICE MASUHARA)
))

dd/mm/yyyy

))
))
))

ON THE APPLICATION of the plaintiff coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on dd/mmm/yyyy and on hearing [**counsel appearing**]; and on reading the materials filed, including the Settlement Agreement;

THIS COURT ORDERS that:

1. Except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

Certification for Settlement

2. The BC Action is certified as a class proceeding as against NEC Corporation and NEC Canada, Inc. (collectively the “Settling Defendants”) for settlement purposes only.

3. The BC Settlement Class is defined as:

All persons resident in British Columbia who purchased ODD and/or ODD Products during the Class Period, except Excluded Persons.

4. Neil Godfrey is appointed as the representative plaintiff for the BC Settlement Class.

5. The BC Action is certified on the basis of the following issue common to the BC Settlement Class:

Did the Settling Defendants, or any of them, conspire to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, ODD directly or indirectly in Canada during the Class Period? If so, what damages, if any, are payable by the Settling Defendants, or any of them to the Settlement Class Members?

6. The certification of the BC Action as against the Settling Defendants for settlement purposes pursuant to this Order, including the definition of the BC Settlement Class and the Common Issue, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing BC Action.

7. Members of the BC Settlement Class who wish to opt-out of this action must do so by sending a written election to opt-out signed by the Person or the Person's designee, by pre-paid mail, courier, fax or email to Class Counsel at the address identified in the Notice of Certification and Settlement Approval Hearing.

8. An election to opt-out sent by mail or courier will only be valid if it is postmarked on or before the Opt-Out Deadline to the address identified in the Notice of Certification and Settlement Approval Hearing. Where the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.

9. In addition to complying with paragraphs 7 and 8, any Person who wishes to opt-out of the BC Action must include the following information as part of their written election to opt-out:

- (a) the Person's full name, current address and telephone number;
- (b) if the Person seeking to opt-out is a corporation, the name of the corporation and the position of the Person submitting the request to opt-out on behalf of the corporation;
- (c) a statement to the effect that the Person wishes to be excluded from the Proceedings; and
- (d) the reason(s) for opting out.

10. Any putative member of the BC Settlement Class who validly opts-out of this action shall be excluded from this action and the BC Settlement Class and shall no longer participate or have the opportunity to participate in this action in the future.

11. Any putative member of the BC Settlement Class who does not validly opt-out in the manner and time prescribed above, shall be deemed to have elected to participate in this action and may not opt out of this action in the future.

12. This Order, including the Settlement Agreement, is binding upon each BC Settlement Class Member including those Persons who are minors or mentally incapable and the requirements of Rule 20-2 of the Supreme Court Civil Rules are dispensed with in respect of the BC Action.

Notices of Certification for Settlement and Settlement Approval Hearing

13. The long-form Notice of Certification and Settlement Approval Hearing substantially in the form attached hereto as **Schedule “A”** is approved.

14. The short-form Notice of Certification and Settlement Approval Hearing substantially in the form attached hereto as **Schedule “B”** is approved.

15. The Plan of Dissemination of the Notice of Certification and Settlement Approval Hearing in the form attached as **Schedule “C”** is approved and the Notice of Certification and Settlement Approval Hearings shall be disseminated in accordance with the Plan of Dissemination.

16. This Order is contingent upon parallel orders being made by the Ontario Court and the Quebec Court, and the terms of this Order shall not be effective unless and until such orders are made by the Ontario Court and the Quebec Court

17. Endorsement of this Order by counsel for the Non-Settling Defendants and Settled Defendants shall be dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the plaintiff

Reidar Mogerman

Signature of lawyer NEC Corporation and
NEC Canada, Inc.

Mahmud Jamal

By the Court

Registrar

SCHEDULE "C"

No. S-106462
Vancouver Registry

In the Supreme Court of British Columbia

Between:

NEIL GODFREY

Plaintiff

and:

SONY CORPORATION, SONY OPTIARC, INC., SONY OPTIARC AMERICA INC., SONY OF CANADA LTD., SONY ELECTRONICS, INC., NEC CORPORATION, NEC CANADA INC., TOSHIBA CORPORATION, TOSHIBA SAMSUNG STORAGE TECHNOLOGY CORP., TOSHIBA SAMSUNG STORAGE TECHNOLOGY CORP. KOREA, TOSHIBA OF CANADA LTD., TOSHIBA AMERICA INFORMATION SYSTEMS, INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS CANADA INC., SAMSUNG ELECTRONICS AMERICA, INC., HITACHI-LG DATA STORAGE, INC., HITACHI-LG DATA STORAGE KOREA, INC., HITACHI LTD., LG ELECTRONICS, INC., LG ELECTRONICS CANADA, LG ELECTRONICS USA, INC., TEAC CORPORATION, TEAC AMERICA, INC., TEAC CANADA, LTD., KONINLIJKE PHILIPS ELECTRONICS N.V., LITE-ON IT CORPORATION OF TAIWAN, PHILIPS & LITE-ON DIGITAL SOLUTIONS CORPORATION, PHILIPS & LITE-ON DIGITAL SOLUTIONS USA, INC., PHILIPS ELECTRONICS LTD., QUANTA STORAGE, INC., QUANTA STORAGE AMERICA, INC., PANASONIC CORPORATION, PANASONIC CORPORATION OF NORTH AMERICA, PANASONIC CANADA INC., BENQ CORPORATION, BENQ AMERICA CORPORATION BENQ CANADA CORP., PIONEER CORPORATION, PIONEER NORTH AMERICA, INC., PIONEER ELECTRONICS (USA) INC., PIONEER HIGH FIDELITY TAIWAN CO., LTD. AND PIONEER ELECTRONICS OF CANADA INC.

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION FOR
APPROVAL OF NEC SETTLEMENT AGREEMENT**

BEFORE)
) THE HONOURABLE)
) MR. JUSTICE MASUHARA) dd/mmm/yyyy
))

))
))

ON THE APPLICATION of the plaintiff coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on dd/mmm/yyyy and on hearing [**counsel appearing**]; and on reading the materials filed, including the Settlement Agreement;

This Court certified the BC Action as a class proceeding as against the settling NEC Corporation and NEC Canada, Inc. (collectively “NEC”) for settlement purposes only on ♦ (the “NEC Certification Order”).

The NEC Certification Order also approved the opt-out procedure. The deadline for opt-out was ♦. Class Counsel received ♦ requests to opt-out of the Proceedings.

THIS COURT ORDERS that:

1. Except to the extent they are modified by this Order, the definitions set out in the settlement agreement reached with NEC (or the “Settling Defendants”) dated ♦ (the “Settlement Agreement”) attached as Schedule “A” apply to and are incorporated into this Order.
2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. The Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class.
4. The Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 and shall be implemented in accordance with its terms.
5. The Settlement Agreement is incorporated by reference to and forms part of this Order and is binding upon the representative plaintiff and all BC Settlement Class Members.
6. Upon the Effective Date,
 - (a) each BC Settlement Class Member shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice; and

- (b) each Other Action commenced in British Columbia by any BC Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.

7. This Order, including the Settlement Agreement, is binding upon each member of the BC Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rule 20-2 of the Supreme Court Civil Rules are dispensed with in respect of the BC Action.

8. Upon the Effective Date, in accordance with s. 8.3(1) of the Settlement Agreement, each Releasor resident in British Columbia covenants not to sue and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims. The use of the terms “Releasors”, “Releasees” and “Released Claims” in this Order is a matter of form only for consistency with the Settlement Agreement.

9. Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees or, if the Proceedings are not certified or authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.

10. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise by any Non-Settling Defendant, any Settled Defendant, any named or unnamed co-conspirators who are not Releasees or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, any Settled Defendant, any named or unnamed co-conspirators who

are not Releasees or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Proceedings).

11. If this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

- (a) the BC Plaintiffs and the BC Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (b) the BC Plaintiffs and the BC Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the BC Plaintiffs and BC Settlement Class Members, if any, and, for greater certainty, the BC Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and
- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the BC Action, whether or not the

Releasees remain in the BC Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the BC Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Action and shall not be binding on the Releasees in any other proceeding.

12. Nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of BC Settlement Class Members in the BC Action or the rights of the BC Plaintiffs and the BC Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

13. Subject to paragraph 14 hereof, a Non-Settling Defendant may, on application to this Court determined as if the Settling Defendants remained parties to the BC Action and on at least ten (10) days' notice to Counsel for the Settling Defendants, and not to be brought unless and until the BC Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

- (a) documentary discovery and a list of documents in accordance with the *Supreme Court Civil Rules* from the Settling Defendants;
- (b) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
- (c) leave to serve a notice to admit on the Settling Defendants in respect of factual matters; and/or
- (d) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

14. The Settling Defendants retain all rights to oppose such application(s) brought under paragraph 13. Notwithstanding any provision in this Order, on any application brought pursuant to paragraph 13, the Court may make such orders as to costs and other terms as it considers appropriate.

15. A Non-Settling Defendant may effect service of the application(s) referred to in paragraph 14 above on the Settling Defendants by service on Counsel for the Settling Defendants in the BC Action.

16. For the purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement.

17. Except as provided herein, this Order does not affect any claims or causes of action that any BC Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators who are not Releasees in the BC Action.

18. The Releasees have no responsibility for and no liability whatsoever relating to:

- (a) the administration of the Settlement Agreement;
- (b) the administration, investment, or distribution of the Trust Account; or
- (c) the Distribution Protocol.

19. BC Counsel and the Claims Administrator shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Settlement Class and the Settling Defendants, and make only such payments therefrom as are provided for in the Settlement Agreement, pending further Orders of the Courts.

20. Approval of the Settlement Agreement is contingent upon approval by the Ontario Court and the Quebec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved the Ontario Court and the Quebec Court. If such orders are not secured in Ontario and Quebec, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the BC Action and any agreement between the Parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.

21. This Order shall be declared null and void on subsequent application made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

22. Except as aforesaid, the BC Action is hereby dismissed against the Settling Defendants without costs and with prejudice.

23. Endorsement of this Order by counsel for the Non-Settling Defendants and Settled Defendants shall be dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the plaintiff

Reidar Mogerman

Signature of lawyer NEC Corporation and
NEC Canada, Inc.

Mahmud Jamal

By the Court

Registrar

SCHEDULE "D"

Confidential Opt-Out Threshold

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]