SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of the Effective Date, by and between Agility Holdings, Inc., Agility Logistics Corp., Geologistics Corp., and Geologistics International Management (Bermuda) Limited (collectively referred to herein as “Settling Defendants”) and Plaintiffs Precision Associates, Inc., Anything Goes LLC d/b/a Mailboxes Etc., JCK Industries, Inc., RBX Industries, Inc., Mary Elle Fashions, Inc., Inter-Global, Inc., Zeta Pharmaceuticals, LLC., Kraft Chemical Company, Printing Technology, Inc., David Howell Product Design Inc., Innovation 714 Inc., Mika Overseas Corporation, and NORMA Pennsylvania Inc. (collectively, “Plaintiffs”), individually and on behalf of a class of direct purchasers of Freight Forwarding Services, as defined herein, subject to the approval of the Court (the “Settlement”).

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A. Plaintiffs are prosecuting the above-captioned Action on their own behalf and on behalf of the Settlement Class.
B. Plaintiffs have alleged, among other things, that the Settling Defendants participated in unlawful conspiracies to restrain trade pursuant to which Settling Defendants and the alleged co-conspirators agreed to fix, raise, or maintain the prices of specified Freight Forwarding Services for shipments within, to, or from the United States or for purchases made within the United States during the Class Period, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

C. More specifically, Plaintiffs have alleged in their Corrected Third Amended Complaint (“CTAC”) that certain of the Settling Defendants engaged in the following unlawful agreements:

1. The Security Surcharge Agreement;
2. The New Export System Agreement;
3. The Chinese Currency Adjustment Factor Agreement (“CAF”);
4. The Peak Season Rate Increase Agreement;
5. The U.S. Customs Air Automated Manifest Surcharge Agreement (“Air AMS”);
6. The U.S. Customs Ocean Automated Manifest Surcharge Agreement (“Ocean AMS”); and

D. Settling Defendants have asserted numerous defenses to Plaintiffs’ claims and intend to vigorously defend Plaintiffs’ claims if the Action proceeds further. Further, Settling Defendants vigorously deny Plaintiffs’ allegations of wrongdoing in the Actions and deny any and all liability to Plaintiffs for their claims.
E. Plaintiffs and Settling Defendants agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, or regulation or of any liability or wrongdoing by the Settling Defendants or of the truth of any of Plaintiffs’ Claims or allegations. Plaintiffs and Settling Defendants further agree that nothing in this Agreement should be construed as a waiver or qualification in any way of Settling Defendants’ denials and defenses.

F. Settlement Class Counsel have conducted an investigation into the facts and law regarding the Actions, and the possible legal and factual defenses thereto, and have concluded that a settlement with Settling Defendants according to the terms set forth below is fair, reasonable, and adequate, and beneficial to, and in the best interests of, Plaintiffs and the Class, given the uncertainties, risks, and costs of litigation.

G. Plaintiffs and Settling Defendants dispute the relevant time period for Plaintiffs’ claims in the Action, especially since government investigations of Settling Defendants that relate to the conspiracies at issue in the Action were limited to shorter time periods. Settling Defendants note that the U.S. Department of Justice has not charged that the alleged conspiracies continued past 2007.

H. Without admitting liability for the claims and despite the availability of numerous defenses thereto, Settling Defendants have agreed to enter into this Settlement Agreement to avoid the further expense, inconvenience, disruption, and burden of this and any other present or future litigation arising out of facts that gave rise to this litigation, and thereby put to rest this controversy. Settling Defendants recognize that the expenses of litigating the Actions cannot be recovered if Settling Defendants would prevail in the Action.
I. Arm’s-length settlement negotiations have taken place between Settlement Class Counsel and the Settling Defendants’ Counsel, including with the assistance of a neutral third party mediator, and this Agreement has been reached as a result of those negotiations.

J. The Parties to this Agreement desire to fully and finally settle all actual and potential Claims arising from or in connection with the Actions, the factual allegations underlying the Actions, and avoid the costs and risks of protracted litigation.

NOW THEREFORE, in consideration of the promises and agreements, covenants, representations, and warranties set forth herein, intending to be legally bound;

IT IS HEREBY AGREED, by and among the Settling Parties, that these Actions and all Released Claims are finally and fully settled and compromised as to the Released Parties and that these Actions shall be dismissed in their entirety with prejudice as to the Settling Defendants, and without costs, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, upon and subject to the following terms and conditions:

I. DEFINITIONS

A. Class Definition

“Settlement Class” means the class described in Section II(F)(1) below.

B. General Definitions

1. “Action” or “Actions” means the action captioned *Precision Associates, Inc., et al. v. Panalpina World Transport (Holding) Ltd., et al.,* No. 08-CV-0042 (JG) (VVP) (E.D.N.Y.) (“Precision Associates”), which is currently pending in the United States District Court for the Eastern District of New York, and any previously filed, subsequently filed, or transferred actions, whether brought in state, federal or any foreign court, on behalf of persons or entities that purchased Freight Forwarding Services directly from any Defendant and alleging
violations of any federal or state law, including but not limited to the antitrust laws, unfair competition laws, and conspiracy laws, arising from the same or similar conduct as alleged in Precision Associates or any amended complaint that may be filed in Precision Associates.

2. “Air Cargo Litigation” or “Air Cargo” means (i) In re Air Cargo Shipping Services Antitrust Litigation, No. 06-MD-1775 (JG) (VVP) (E.D.N.Y.) (“Air Cargo”), and (ii) any litigation Settling Defendants bring in the future as opt-out plaintiffs in that litigation.

3. “Claims” means any and all actual or potential causes of action, claims, contentions, allegations, assertions of wrongdoing, damages, losses, or demands for recoveries, remedies, or fees complained of, or relating or referred to, in the Actions.

4. “Class Notice” means the notice to the Settlement Class that is approved by the Court, in accordance with Sections II(F)(3) and (4).

5. “Class Period” means the period from and including January 1, 2001 until and including January 4, 2011.

6. “Court” or “District Court” means the United States District Court for the Eastern District of New York and the Honorable Judge John Gleeson or his successor or any other Court in which an Action is proceeding.

7. “Date of Final Approval” means the date on which the Court enters an order granting final approval to this Settlement Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(F)(7).

8. “Date of Preliminary Approval” means the date on which the Court enters an order granting preliminary approval to this Settlement Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(F)(2).
9. “Defendants” means any or all of the parties listed as Defendants in this Action now or in the future and each of their corporate parents, subsidiaries, and affiliated companies.

10. “Documents” means: (a) all papers, electronically stored information (“ESI”) or other materials within the scope of Rule 34(a)(1)(a) of the Federal Rules of Civil Procedure; and (b) any copies or reproductions of the foregoing, including microfilm copies or computer images.

11. “Effective Date” means the date on which this Settlement Agreement is entered into and executed by all Parties.

12. “Escrow Account” means the account with the Escrow Agent that holds the Settlement Fund.

13. “Escrow Agent” means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Section II(C) of this Agreement.

14. “Fairness Hearing” means a hearing on the settlement proposed in this Settlement Agreement held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

15. “Freight Forwarder” means any person or entity that engages in or has engaged in or provides or has provided Freight Forwarding Services.

16. “Freight Forwarding Services” includes services relating to the organization of transportation of items via air, ocean, and/or ancillary rail, and/or truck, both nationally and internationally, and can include related activities such as customs clearance, warehousing and ground services.
17. “Net Settlement Fund” means the Settlement Fund, less any award of attorneys’ fees or reimbursement of expenses and less applicable taxes, tax preparation expenses, and costs of notice and administration, that may be awarded or approved by the Court.

18. “Opt-Out Claim” means any claim, as set forth in Section II(F)(5), made by a Person, otherwise qualifying as a member of the Settlement Class, that has validly and timely excluded itself from the Settlement Class.

19. “Order and Final Judgment” means the order and final judgment of the Court approving the Settlement Agreement, as described in Sections II(F)(7) and (10).

20. “Other Defendant” means any Defendant named in the Actions other than the Settling Defendants and Released Parties.


22. “Person(s)” means an individual or an entity.


24. “Released Claims” means any and all actual or potential causes of action, claims, damages, losses, injuries, expenses, demands, debts, liabilities, obligations, liens, judgments, remedies, and rights of action, of every nature and description, whether known or unknown (including unknown claims), suspected or unsuspected, asserted or unasserted, matured or unmatured, liquidated or unliquidated, absolute or contingent, accrued or unaccrued, whether
or not concealed or hidden, direct or indirect, at law, equity, or otherwise, including monetary, injunctive or declaratory relief, arising from, in any way relating to, or in connection with any conduct, express, implied, or tacit agreement, or activity occurring during the Class Period (a) complained of, in any way relating to, or referred to in the Action or which could have been alleged in the Action; (b) concerning or in any way relating to any understanding, agreement, or coordinated activity between or among two or more Defendants and/or unnamed co-conspirators regarding Freight Forwarding Services; or (c) concerning the marketing, provision or arranging of, pricing of, charges for, or payments made for Freight Forwarding Services (i) for shipments within, to, or from the United States or (ii) purchased or sold in the United States regardless of the location or destination of shipment, in the case of each of (a), (b) and (c), whether such claims are based on federal, state, local, statutory, or common law, or any other law, code, rule, or regulation, including known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated claims, whether brought in an individual, representative, or any other capacity, that the Releasing Parties have asserted or in the future might assert against the Released Parties in any action or proceeding in any court or forum, in any country or other jurisdiction worldwide, regardless of the legal theory, or type or amount of relief or damages claimed. “Released Claims” includes all claims that the Releasing Parties may have against the Released Parties for any payments received by the Released Parties as claimants in Air Cargo, except as agreed to herein. “Released Claims” do not include (a) claims asserted against any Other Defendant (provided, however, that the Released Parties cannot be held liable for any such claims) nor (b) any claims not arising out of the allegations in the Actions based on: (1) product defect or breach of warranty; (2) breach of contract not arising out of the allegations in the Action; or (3) indirect purchases of Freight Forwarding Services by
persons or entities other than the Releasing Parties. The reservation of claims set forth in (a) and (b) of this paragraph does not impair or diminish the right of the Released Parties to assert any and all defenses to such claims.

25. “Released Parties” means jointly and severally, individually and collectively, the Settling Defendants, their respective predecessors; successors; assigns; and any and all past, present, and future parents, owners, subsidiaries, divisions, departments, affiliates, heirs, executors, devisees, administrators, officers, directors, stockholders, partners, agents, attorneys, advisors, auditors, accountants, contractors, servants, employees, representatives, insurers, and assignees. Notwithstanding the foregoing, “Released Parties” does not include Other Defendants. The Released Parties who are not Settling Defendants are intended to be third-party beneficiaries of this Settlement Agreement with respect to the release of the Released Claims.

26. “Releasing Parties” means jointly and severally, individually and collectively, Plaintiffs and all Settlement Class Members, on behalf of themselves and any person or entity claiming by or through them as, including without limitation, their respective predecessors; successors; assigns; and any and all past, present, and future parents, owners, subsidiaries, divisions, departments, affiliates, heirs, executors, devisees, administrators, officers, directors, stockholders, partners, agents, attorneys, advisors, auditors, accountants, contractors, servants, employees, representatives, insurers, and assignees.

27. “Settlement Class Counsel” or “Class Counsel” means, collectively, the law firms of Lovell Stewart Halebian Jacobson LLP; Lockridge Grindal Nauen PLLP; Cotchett, Pitre & McCarthy, LLP; and Gustafson Gluek PLLC.
28. “Settlement Class Member” means each member of the Settlement Class that does not timely and properly elect to be excluded from the Settlement Class.


30. “Settling Defendants’ Counsel” means the law firm Vinson & Elkins L.L.P.

31. “Settlement Amount” means the payments described in Sections II(A)(2)(a) and II(A)(2)(b).

32. “Settlement Fund” means the funds deposited, plus accrued interest, in the separate Escrow Account for the settlement contemplated by this Settlement Agreement established in accordance with Section II(A)(2) below.

33. “U.S. Freight Forwarding Services” means: (a) Freight Forwarding Services purchased or sold in the United States regardless of the location of shipment or (b) Freight Forwarding Services with respect to shipments into, out of, or within the United States.

34. All references to days and dates in this Agreement and in any Supplemental Agreement are to calendar days, unless otherwise specified.

II. SETTLEMENT

A. Performance By Settling Defendants

1. Settlement Amount. The Settlement Amount was determined through consideration of the amount of revenues that were or would have been derived from the alleged conspiracies. Consistent with prior settlements approved by the Court, the revenue amounts considered were not trebled and the settlement amount does not reflect treble damages. Settling Defendants disclaim any liability to Plaintiffs for treble damages.
2. Settlement Payments

a. Settling Defendants will make the following cash payments to the Settlement Fund, which payments shall total sixteen million ($16,000,000) in United States dollars, to the Escrow Agent.

   i. Within fifteen (15) business days of the Effective Date of this Settlement Agreement, Settling Defendants shall pay by wire transfer, pursuant to instructions from Settlement Class Counsel, five million ($5,000,000) United States dollars to the Escrow Agent.

   ii. Within fifteen (15) business days after the Court enters an order requiring notice to be sent to the Class, or on January 2, 2015, whichever is later, Settling Defendants shall pay by wire transfer, pursuant to instructions from Settlement Class Counsel, six million ($6,000,000) United States dollars to the Escrow Agent.

   iii. Within fifteen (15) business days after the date of Final Approval, or on January 4, 2016, whichever is later, Settling Defendants shall pay by wire transfer, pursuant to instructions from Settlement Class Counsel, five million ($5,000,000) United States dollars to the Escrow Agent.

b. Settling Defendants will also make the following payments to the Settlement Fund with respect to amounts received in Air Cargo.

   i. Within fifteen (15) business days after the Effective Date, Settling Defendants shall pay by wire transfer, pursuant to instructions from Settlement Class Counsel, all payments received to date in Air Cargo.

   ii. Settling Defendants will agree in good faith to take all reasonable steps necessary to comply with requests from the claims administrator and to obtain
any and all payments potentially due them in *Air Cargo*. Within fifteen (15) business days after receipt of any future payments in *Air Cargo*, Settling Defendants shall wire transfer pursuant to instructions from Settlement Class Counsel to the Escrow Agent an amount equal to any and all payments received in the future as a claimant in *Air Cargo*. This obligation shall continue so long as this Settlement Agreement shall remain in effect.

c. The payments described in Sections II(A)(2)(a) and II(A)(2)(b) collectively shall constitute the total Settlement Amount.

d. Settling Defendants are jointly and severally obligated to make the payments described in this Section II(A)(2). If any of the payments described herein are not paid to the Settlement Fund, Settlement Class Counsel on behalf of the Settlement Class may take all appropriate action to collect such payments from any or all of the Settling Defendants.

3. **Cooperation:** Settling Defendants warrant and represent that they have produced to Settlement Class Counsel all Documents located that were produced to the U.S. Department of Justice (the “DOJ”) by Settling Defendants or their counsel in response to a grand jury subpoena issued in connection with an investigation of anticompetitive conduct in the freight forwarding industry, produced in the same format as provided to the DOJ. The Settling Defendants shall provide reasonable good faith cooperation with Plaintiffs and Settlement Class Counsel in accordance with the terms and provisions of this Agreement regarding Plaintiffs’ Claims, except where prohibited by foreign law or the applicable foreign investigative authority, subject to Section II(A)(3)(j). Such cooperation shall specifically be limited as follows:

a. Within sixty (60) days of the Effective Date, or within such other time as the Parties shall agree, Settling Defendants shall produce to Settlement Class Counsel from reasonably available records the following Documents. Settlement Class Counsel and
counsel for Settling Defendants will meet and confer within fifteen (15) days of the Effective Date to agree upon the format of the production. Settling Defendants shall produce the following, to the extent it exists and is reasonably accessible:

(i) transactional data sufficient to show Settling Defendants’ annual revenues and volumes of Freight Forwarding Services to, from or within the United States during the Class Period;

(ii) transactional data reflecting the shipping origin and destination by country, date of shipment, weight of shipment; and amounts of payments, if any, and currency and applicable conversion rate, if any, made by customers of Settling Defendants’ U.S. Freight Forwarding Services during the Class Period for the Security Surcharge, the New Export System Surcharge, CAF Surcharge, Peak Season Rate Increase, Air AMS Surcharge, and Ocean AMS Surcharge; and

(iii) to the extent not already produced, the reasonably available names and last known addresses of those customers. To the extent Settling Defendants’ customers are assigned a unique identifier, such as an account number, Settling Defendants shall produce this information with the transactional data produced in response to Settling Defendants’ obligations under this Paragraph II(A)(3)(a).

Settling Defendants shall either provide a data dictionary or clearly identify all data fields produced under this Paragraph.

b. Within sixty (60) days after the Effective Date, or within such other time period after the Effective Date on which the Parties shall agree, Settling Defendants shall produce to Settlement Class Counsel reasonably available records of publicly disseminated price
announcements for U.S. Freight Forwarding Services during the Class Period, including surcharges related thereto.

**c. Meetings with Counsel for Settling Defendants:** Beginning thirty (30) days after the Effective Date, or at such other time as the Parties agree, one or more representatives of Settling Defendants’ Counsel shall meet with Settlement Class Counsel for at least seven (7) hours, or as otherwise agreed by the Parties, at a location within the United States to be agreed upon by the Parties, and provide at the meeting or meetings a reasonably detailed verbal description of the principal facts previously provided to the DOJ, or any other Investigative Authority by Settling Defendants or the Released Parties in response to subpoenas or otherwise that are relevant to the conduct at issue in the Actions, and answer any non-privileged questions of Settlement Class Counsel with respect to the same. Counsel for Settling Defendants will also provide a reasonably detailed verbal description of factors affecting the overcharges alleged in this case, including without limitation, the freight forwarding industry’s structure, including cost structure. To the extent Settlement Class Counsel have follow-up questions after this meeting, Settling Defendants’ Counsel shall reasonably endeavor to answer such questions, and Settlement Class Counsel agree they shall use reasonable best efforts to minimize the burden of any such follow-up questions. In addition, Settling Defendants’ Counsel shall meet or confer with Settlement Class Counsel, in-person or telephonically as agreed by the Parties and upon reasonable notice, if Settlement Class Counsel believes it is reasonably necessary to support Plaintiffs’ prosecution of the Actions against non-settling Defendants. Settlement Class Counsel’s meetings and telephone conferences with Settling Defendants’ Counsel under this provision shall not exceed 35 hours total, including reasonable travel time. Any statements made by Settling Defendants’ Counsel
under this Paragraph II(A)(3)(c) shall be deemed to be “conduct or statements made in compromise negotiations regarding the claim” and shall be inadmissible in evidence under Federal Rule of Evidence 408. In the event, for whatever reason, this Agreement is terminated or the Settlement is not approved by the Court, such inadmissibility shall survive.

d. **Interviews:** At Settlement Class Counsel’s request, and at Plaintiffs’ expense and upon reasonable notice, Settling Defendants agree to make all reasonable efforts to secure the cooperation of and make available for interviews up to three current or former employees of Settling Defendants or other Released Parties who Settlement Class Counsel identify and reasonably believe have knowledge of Plaintiffs’ Claims alleged in the Actions. Settling Defendants’ efforts in this regard are subject to applicable laws and legal requirements of U.S. and foreign jurisdictions. The failure of any current or former employee to make himself or herself available for an interview shall not affect in any way the release of the Released Parties.

e. **Other Documents:** At Settlement Class Counsel’s request, Settling Defendants agree to make all reasonable efforts to obtain consent from, and if received, thereafter produce to Settlement Class Counsel (to the extent they have not already produced them):

- (i) copies of Documents provided to the DOJ in connection with an investigation of anticompetitive conduct in the freight forwarding industry relating to non-U.S. current or former employees of Settling Defendants or other Released Parties, produced in the same format as provided to the DOJ; and

- (ii) if consent is not obtained from the employees at issue in paragraph (i), copies of Documents relating to up to five (5) current or former employees of
Settling Defendants or other Released Parties identified by Settlement Class Counsel that relate to Plaintiffs’ Claims alleged in the Actions and are reasonably accessible to Settling Defendants. Settling Defendants’ efforts in regard to this paragraph (e) are subject to applicable laws and legal requirements of U.S. and foreign jurisdictions. The failure of any current or former employee to provide consent to the production of Documents shall not affect in any way the release of the Released Parties.

f. **Authentication of Documents:** If requested by Settlement Class Counsel, Settling Defendants agree to provide written declarations pursuant to Federal Rules of Evidence 902(11) and (12) with respect to documents produced by Settling Defendants to Settlement Class Counsel. Settlement Class Counsel agree to use reasonable efforts to minimize the burden to Settling Defendants of any such authentication testimony. In the event that such declarations are not sufficient to secure the admission of the documents, the Settling Defendants agree to, if reasonably necessary to Plaintiffs’ prosecution of the Claims alleged in the Action, make all reasonable efforts to secure the cooperation of and produce at trial and/or deposition, one or more representatives of their choice to testify as to the facts related to authentication of any of Settling Defendants’ Documents produced at any time pursuant to this Settlement Agreement or in the course of the litigation of the Actions. The failure of any current or former employee to make himself or herself available for testimony shall not affect in any way the release of the Released Parties.

g. **Depositions To Preserve Trial Testimony:** If Settlement Class Counsel believes it is reasonably necessary to Plaintiffs’ prosecution of the Claims in the Action to take depositions of any current or former Agility employee interviewed pursuant to this Agreement for the purpose of preserving testimony for trial, Settling Defendants agree, upon Settlement Class
Counsel’s request, (i) to make all reasonable efforts to secure the cooperation of and make available for deposition the employee, if he is a current U.S. employee of Settling Defendants or other Released Parties, and (ii) to make all reasonable efforts to notify the employee of Plaintiffs’ request for a deposition, request his consent, and request his cooperation, if he is a current non-U.S. or former employee of Settling Defendants or other Released Parties. Plaintiffs will pay reasonable expenses for any such deposition. If a witness agrees to be deposed pursuant to this Paragraph, but the deposition would be prohibited by law in the country of the witness’ residence, Settling Defendants will not object to Plaintiffs conducting the deposition in a different location allowing such a deposition, and will request the consent of the witness to such a location. The failure of any current or former employee to make himself or herself available for a deposition shall not affect in any way the release of the Released Parties.

h. Attorney Client Privilege, Work Product Doctrine.
Notwithstanding any other provision in this Settlement Agreement, Settling Defendants may assert, where applicable, the work product doctrine and the attorney client privilege, the joint defense privilege, the common interest privilege, and other privilege doctrines, howsoever defined under the governing law of the applicable U.S. or foreign jurisdiction, with respect to any Cooperation Materials requested under this Settlement Agreement. If any Documents protected by the attorney client privilege, the work product doctrine, the joint defense privilege, the common interest privilege, and other privilege doctrines, howsoever defined under the governing law of the applicable U.S. or foreign jurisdiction, are accidentally or inadvertently produced, these Documents shall be promptly returned to Settling Defendants’ Counsel immediately upon discovery of such production by Settlement Class Counsel or Plaintiffs, and
their production shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents.

   i. **Discovery.** None of the foregoing provisions shall be construed to prohibit Plaintiffs from seeking appropriate discovery from non-settling Defendants or any Person other than Released Parties. Subject to any applicable protective orders, Plaintiffs and Settlement Class Counsel hereby agree to provide Settling Defendants’ Counsel, at Settling Defendants’ expense and at Settling Defendants’ request, with copies of any Documents, deposition testimony, or other evidence received by Plaintiffs or Settlement Class Counsel from any non-settling Defendants or third parties in the Action; provided, however, that Plaintiffs and Settlement Class Counsel are not obligated to provide Settling Defendants’ Counsel any information or material subject to the attorney client privilege, the attorney work product doctrine, the common interest privileges, any right to privacy, or any other applicable privilege or privacy right. Absent the Parties’ agreement, Plaintiffs are prohibited from seeking from Released Parties: (i) beyond the information specified herein, discovery of any kind whatsoever relating to the Action, whether pursuant to this Agreement or by formal requests, subpoena or other means; or (ii) any witness testimony, whether pursuant to this Agreement or by subpoena or other means.

   j. **Confidentiality.** All non-public data, Documents, information, testimony, or communications provided to Settlement Class Counsel pursuant to this Section II(A)(3) (“Cooperation Materials”) shall be subject to the protective order entered on July 19, 2011 in the Action. Settling Defendants may make appropriate designations of the Cooperation Materials under the Protective Order, and Plaintiffs may object to Settling Defendants’ confidentiality designations. Settlement Class Counsel shall use such non-public data,
Documents, information, testimony, or communications solely for purposes of prosecuting Plaintiffs’ Claims in the Actions, and for no other purpose. Other than as provided herein, Settlement Class Counsel shall not disclose such Cooperation Materials to any Person (other than experts retained by Plaintiffs or Settlement Class Counsel in connection with the Action), except pursuant to legal compulsion or appropriate discovery requests from non-settling Defendants. In the event disclosure of Cooperation Materials is sought by any Person, Settlement Class Counsel agree to reasonably cooperate with Settling Defendants in their efforts to oppose disclosure of such Cooperation Materials. In the event the confidentiality of Cooperation Materials is challenged by any Person, Settlement Class Counsel agree to reasonably cooperate with Settling Defendants in their efforts to preserve the confidentiality designation of the Cooperation Materials, provided, however, that Class Counsel shall seek that any trial of this matter be open, and nothing in this Agreement shall be construed to prevent Class Counsel from so doing. The confidentiality requirements of this Paragraph shall continue to bind Plaintiffs and Settlement Class Counsel in the event that this Agreement is rescinded, terminated, not approved by the Court, or otherwise no longer in effect. Within thirty (30) days of the Actions having been finally resolved as to all Defendants, at their election Settlement Class Counsel either shall return or destroy (with a written certification of destruction) such non-public data, Documents, information, testimony, or communications. Settling Defendants’ obligations pursuant to this Agreement, including those set forth in Section II(A)(3)(a)-(j), are subject to applicable laws and legal requirements of U.S. and foreign jurisdictions, and nothing in this Agreement shall be construed to require Settling Defendants to produce Cooperation Materials to the extent such production is prohibited by any applicable law or legal restrictions on disclosure.
B. Release of Claims.

1. Release. Upon the occurrence of the Date of Final Approval, and in consideration of the valuable consideration set forth in this Agreement, Plaintiffs shall be deemed to, and by operation of the Order and Final Judgment shall have, hereby fully, finally, and forever released, relinquished, and discharged the Released Parties of and from any and all Released Claims that any Settlement Class Member ever had, now has, or may have in the future. In the event the Releasing Parties grant a more comprehensive or inclusive release to any Other Defendant situated like Settling Defendants, Plaintiffs shall notify the Settling Defendants within 15 business days of entering into such an agreement, and the Settling Defendants shall have the option to receive such more comprehensive or inclusive release and amend the definition of Released Claims and Released Parties.

2. Covenant Not to Sue. The Releasing Parties covenant not to sue any Released Party for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of or related to the Actions or the Released Claims. This Paragraph shall not apply to any action to enforce this Settlement Agreement.

3. Full Release. The Parties to this Agreement expressly agree and confirm that the Released Claims as set forth in Section I(B)(24) and the provisions of Section II(B), constitute a full and final release of the Released Parties by the Releasing Parties with respect to the Released Claims.

4. Waiver. Upon the Date of Final Approval, the Releasing Parties (which includes each Settlement Class Member) shall be deemed to have, and by operation of the Order and Final Judgment shall have, waived the provisions, rights, and benefits of Section 1542 of the
California Civil Code and Section 20-7-11 of the South Dakota Codified Laws, each of which provides:

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

The Releasing Parties shall further be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived all comparable or similar present or future law, provisions, statutes, regulations, rules, or principles of law or equity of any other state or applicable jurisdiction, or principle of common law. In connection with the waiver and relinquishment set forth in this Paragraph, Plaintiffs and each Settlement Class Member acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Released Claims, but that it is their intention to release fully, finally, and forever all Released Claims, and, upon the Date of Final Approval, shall be deemed to have, and by operation of the Order and Final Judgment, shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, notwithstanding the discovery or existence of any such additional or different facts. Plaintiffs and Settlement Class Members intend and, by operation of the Order and Final Judgment, shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement of which this waiver and release is a part.
5. **Other Jurisdictions.** The Parties intend this Agreement to effect a complete release of all Released Claims. Therefore, to the extent class actions or representative actions are permitted in countries and jurisdictions other than the United States ("Other Jurisdictions"), and in the event the releases set forth in this Agreement are determined by any court or tribunal of competent jurisdiction in such Other Jurisdictions not to constitute a full and final release of the Released Claims in such Other Jurisdictions, then Plaintiffs and Settlement Class Counsel shall cooperate in good faith with the Released Parties as necessary to reasonably assist the Released Parties in their efforts to obtain a valid and enforceable release of claims against the Released Parties, comparable to the Released Claims, from Persons in Other Jurisdictions who directly purchased Freight Forwarding Services in those Other Jurisdictions from any Released Party during the Class Period and from the end date of the Class Period through to and including the Effective Date.

C. **Settlement Fund Administration.** The Settlement Fund shall be administered pursuant to the provisions of this Settlement Agreement and subject to the Court’s continuing supervision and control, until the funds in the Settlement Fund are fully distributed or returned to Settling Defendants, as follows:

1. The Settlement Fund shall be established within an Escrow Account and administered by an Escrow Agent at a bank designated by Settlement Class Counsel and administered by an Escrow Agent designated by Settlement Class Counsel. Counsel for the Parties agree to cooperate in good faith to form an appropriate escrow agreement in conformance with this Agreement.

2. Neither the Plaintiffs, nor Settlement Class Counsel, shall have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to
providing notice to the Class or obtaining approval of the settlement, or administering the Settlement.

3. The costs of providing Class Notice to Settlement Class Members shall be paid by the Escrow Agent from the Settlement Fund. With the object of reducing the costs of notice, Settlement Class Counsel will use their reasonable efforts to coordinate the provision of Class Notice with the provision of notice for any other settlements that have been or may be reached. Settlement Class Counsel may, without prior order of the Court, withdraw from the Settlement Fund up to $1,500,000 to pay the costs for notice and for preliminary and final approval of this Settlement, and including for the services of experts on class publication or other issues relating to notice, preliminary approval, or final approval. In the event that Court-ordered notice and administration costs exceed $1,500,000, Plaintiffs and Settlement Class Counsel may apply to the Court to pay such notice and administration costs from the Settlement Fund. Such costs of notice shall be non-refundable in the event that, for any reason, the Settlement is not finally approved.

4. The Escrow Agent shall, to the extent practicable, invest the funds deposited in the Settlement Fund in discrete and identifiable instruments backed by the full faith and credit of the United States Government, or fully insured by the United States Government or any agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. Any cash portion of the Settlement Fund not invested in instruments of the type described in the first sentence of this Paragraph shall be maintained by the Escrow Agent, and not commingled with any other funds or monies, in a federally insured bank account. Subsequent to payment into the Settlement Fund pursuant to
Section II(A)(2), neither the Settling Defendants nor Settling Defendants’ Counsel shall bear any responsibility or risk related to the Settlement Fund or the Net Settlement Fund.

5. The Parties agree that the Settlement Fund and the Net Settlement Fund are each intended to be a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1 and that the Escrow Agent, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Taxes, as defined below, owed with respect to the Escrow Account. Neither the Settling Defendants nor the Settling Defendants’ Counsel shall have any other liability or responsibility of any sort for filing any tax returns or paying any Taxes with respect to the Escrow Account.

6. All: (i) taxes on the income of the Settlement Fund (“Taxes”), and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) shall timely be paid by the Escrow Agent out of the Settlement Fund. The Settlement Class Members shall be responsible for paying any and all federal, state, and local income taxes due on any distribution made to them pursuant to the Settlement provided herein.

7. After the Date of Final Approval, the Net Settlement Fund shall be disbursed in accordance with a plan of distribution approved by the Court. The Settlement Class Members shall look solely to the Net Settlement Fund for settlement and satisfaction of any and all Released Claims from Released Parties. It shall be a pre-condition to any receipt of funds under this Agreement that each Settlement Class Member seeking to receive funds executes a written release in favor of the Released Parties of all Released Claims.
D. Option to Terminate Based on Exclusions.

Settling Defendants shall have the option to terminate this Settlement Agreement, and thus prevent the entry of the Order and Final Judgment, in accordance with the provisions set forth in a separate Supplemental Agreement, dated October 16, 2014 (the “Supplemental Agreement”), the provisions of which are incorporated by reference as though fully set forth herein, if the criteria specified in the Supplemental Agreement are met. Absent an order or other direction from the Court, the Supplemental Agreement will not be filed with the Court unless and until either: (i) a dispute among the Parties concerning its interpretation or application arises, and in that event it shall be, to the greatest extent permitted by law and/or the Court, filed and maintained with the Court under seal; or (ii) the Court otherwise orders the Supplemental Agreement to be filed.

In the event of termination of this Settlement Agreement, neither Plaintiffs nor their Counsel shall have any responsibility for the costs of class notice nor to pay or reimburse Defendants for any sums expended for the costs of class notice or otherwise expended in accordance with Court orders or authorization.

E. No Reversion

Except as provided in the Supplemental Agreement and in Section II(F)(11) herein, Settling Defendants shall have no rights to reversion in the event that Class members request exclusion or opt out of the Settlement Class, and any Opt-Out Claims shall have no effect on this Settlement Agreement.

F. Approval of Settlement Agreement and Dismissal of Claims.

This Settlement Agreement is subject to preliminary and final approval by the Court. Plaintiffs and Settling Defendants shall use their best efforts to effectuate this Settlement
Agreement, including cooperating in promptly seeking the Court's approval of the Settlement Agreement, the giving of appropriate class notice under Federal Rules of Civil Procedure 23(c) and (e), securing certification of the Settlement Class, and the prompt, complete, and final dismissal with prejudice of the Actions as to the Settling Defendants only, as follows:

1. Settlement Class Certification. Plaintiffs shall seek, and Settling Defendants shall not object to, appointment of Settlement Class Counsel as lead counsel for purposes of this Settlement, and certification in the Actions of a class for settlement purposes only, defined as follows:

   All persons (excluding governmental entities, Defendants, their respective parents, subsidiaries and affiliates) who directly purchased U.S. Freight Forwarding Services

   (a) for shipments within, to, or from the United States, or

   (b) purchased or sold in the United States regardless of the location of shipment; from any of the Defendants or any subsidiary or affiliate thereof, at any time during the period from January 1, 2001 to January 4, 2011.

2. Preliminary Approval. Plaintiffs shall submit to the District Court a motion, to be joined by Settling Defendants requesting entry of an order, substantially in the form of Exhibit A, attached hereto, preliminarily approving the settlement and certifying the Settlement Class for Settlement Purposes only ("Preliminary Order"). The Preliminary Order shall provide, inter alia: that the settlement proposed in the Settlement Agreement has been negotiated at arm’s length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;

   a. that the Class Notice meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances for settlement purposes;
b. that the Settlement Class defined herein be certified, designating Class Representatives and Settlement Class Counsel as defined herein, on the condition that the certification and designations shall be automatically vacated in the event that the Settlement Agreement is terminated pursuant to its terms or is not approved by the Court or any appellate court;

c. for a hearing on the settlement proposed in this Settlement Agreement to be held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court (the “Fairness Hearing”);

d. in aid of the Court’s jurisdiction to implement and enforce the proposed settlement, Plaintiffs and all Settlement Class Members shall be preliminarily enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any of the Claims released in Section II(B) against any Released Parties, either directly, individually, representatively, derivatively, or in any other capacity, by whatever means, in any local, state, or federal court, or in any agency or other authority or arbitral or other forum wherever located.

3. Class Notice. All materials and information provided to Settlement Class Counsel by Settling Defendants with respect to Class Members, Class Notice and Claims shall be treated as “Highly Confidential” under the terms of the Protective Order approved by the Court, and any Person involved in Class Notice shall agree in writing to comply with the terms agree in writing to be subject to the jurisdiction of the Court for any violation of any such Order.

4. The Class Notice shall provide for a right of exclusion, as set forth in Section II(F)(5), and shall provide that a request for exclusion must be postmarked (or mailed by
overnight delivery) no later than forty-five (45) days prior to the date set for the Fairness Hearing by the Court. The Class Notice shall also provide for a right to object, as set forth in Section II(F)(6). Individual notice of the Settlement shall be mailed or emailed to Persons that are identified by Settling Defendants and/or any other Defendant, or will be provided to class members as otherwise ordered by the Court. Notice to other members of the Settlement Class shall be by publication or other means deemed necessary if approved or required by the Court.

5. **Right of Exclusion.**

   a. Any Person seeking exclusion from the Settlement Class must file a timely written request for exclusion as provided in this Paragraph. Any Person that files such a request shall be excluded from the Settlement Class, and shall have no rights with respect to this Settlement. A request for exclusion must be in writing and: (a) state the name, address, and phone number of the Settlement Class Member seeking exclusion; (b) all trade names or business names and addresses that the Settlement Class Member has used, as well as any parents, subsidiaries, or affiliates that have purchased Freight Forwarding Services; (c) the name of the Action (*Precision Associates, Inc., et al. v. Panalpina World Transport (Holdings) Ltd., et al.*, No. 08-CV-0042 (JG) (VVP) (E.D.N.Y.)); and (d) a signed statement that “I/we hereby request that I/we be excluded from the proposed settlement with Agility Holdings, Inc., Agility Logistics Corp., Geologistics Corp., and Geologistics International Management (Bermuda) Limited in *Precision Associates, Inc., et al. v. Panalpina World Transport (Holdings) Ltd., et al.*, No. 08-CV-0042 (JG) (VVP) (E.D.N.Y.).” Further, each Person seeking exclusion from the Settlement Class shall identify all Freight Forwarding Services and an estimate of the total amount of direct purchases (by dollar volume) of Freight Forwarding Services (a) for shipments within, to, or from the United States, or (b) purchased or sold in the
United States regardless of the location of shipment; by such person from all Defendants during the Class Period. The request must be mailed to Settlement Class Counsel at the address provided in the Class Notice and postmarked (or mailed by overnight delivery) no later than forty-five (45) days prior to the date set for the Fairness Hearing or any other date set by the Court. A request for exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated in the Class Notice, or that is not sent within the time specified, shall be invalid, and the Person(s) serving such an invalid request shall be Settlement Class Member(s) and shall be bound by this Settlement Agreement, if approved. Settlement Class Counsel shall promptly forward complete copies of all requests for exclusion, as they are received, to Settling Defendants’ Counsel.

b. To the extent permitted by the Court, the Parties agree that any Person that has properly excluded itself from the Settlement Class (“Opt-Out Class Member”) shall be permitted to apply to the Court for good cause shown to re-enter the Settlement Class at the time of distribution of the Settlement Fund, with the same rights and obligations under this Settlement Agreement as the Settlement Class Members. Settlement Class Counsel shall, within five (5) days after the Court-ordered deadline for timely requests for exclusion from the Class, cause to be provided to Settling Defendants’ Counsel a list of those Class Members who have timely excluded themselves from the Class.

6. **Right to Object.** Any Person who has not requested exclusion from the Settlement Class and who objects to the settlement may appear in person or through counsel, at that Person’s own expense, at the Fairness Hearing to present any evidence or argument that the Court deems proper and relevant. However, no such Person shall be heard, and no papers, briefs, pleadings, or other Documents submitted by any such Person shall be received and considered by
the Court, unless such Person properly submits a written objection that includes: (a) a notice of intention to appear; (b) proof of membership in the Settlement Class; and (c) the specific grounds for the objection and any reasons why such Person desires to appear and be heard, as well as all Documents or writings that such Person desires the Court to consider. Such a written objection must be both filed with the Court no later than thirty (30) days prior to the date set for the Fairness Hearing and mailed to Settlement Class Counsel and Settling Defendants’ Counsel at the addresses provided in the Class Notice and postmarked (or mailed by overnight delivery) no later than thirty (30) days prior to the date of the Fairness Hearing. Any Person who fails to object in the manner prescribed herein shall be deemed to have waived its objections and will forever be barred from making any such objections in the Actions or in any other action or proceeding, unless otherwise excused for good cause shown as determined by the Court.

7. **Final Approval.** If this Settlement Agreement is preliminarily approved by the Court, Plaintiffs shall seek entry of an Order and Final Judgment that, *inter alia:* finally approves this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms and conditions;

a. determines that the Class Notice constituted, under the circumstances, the most effective and best notice practicable of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;

b. reconfirms the appointment of Class Representatives and Settlement Class Counsel as defined herein;
c. directs that, as to the Released Parties, any and all then currently pending class action lawsuits related to the subject matter of the action captioned *Precision Associates, Inc., et al. v. Panalpina World Transport (Holding) Ltd., et al.*, No. 08-CV-0042 (JG) (VVP) (E.D.N.Y.), be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs;

d. orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any of the Released Claims released in Section II(B) against any Released Party, either directly, individually, representatively, derivatively, or in any other capacity, by whatever means, in any local, state, or federal court, or in any agency or other authority or arbitral or other forum wherever located;

e. reserves to the United States District Court for the Eastern District of New York exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of this Agreement; and

f. determines under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to the Released Parties shall be final and entered forthwith.

8. **Cost of Class Notice.** The costs of providing Class Notice to Settlement Class Members shall be paid by the Escrow Agent from the Settlement Fund pursuant to Section II(C). With the object of reducing the costs of notice, Settlement Class Counsel will use their reasonable best efforts to coordinate the provision of Class Notice with the provision of notice for any other settlements that have or may be reached.
9. **Class Counsel Fees and Expenses; No Other Costs.**

a. Except as otherwise expressly provided in this Settlement Agreement, Settling Defendants shall have no responsibility for any costs, including Settlement Class Counsel’s attorneys’ fees, costs, and expenses or the fees, costs, or expenses of any Plaintiff’s or Settlement Class Member’s respective attorneys, experts, advisors, or representatives, provided, however, that with respect to the Actions, including this Settlement Agreement, Settling Defendants shall bear their own costs and attorneys’ fees.

b. Settlement Class Counsel may seek, after proper notice to the Settlement Class and opportunity to object, a court order awarding attorneys’ fees and reimbursement of their expenses from the Settlement Fund.

c. The procedure for and the allowance or disallowance by the Court of any applications by Settlement Class Counsel for attorneys’ fees and expenses, or the expenses of Plaintiffs, to be paid out of the Settlement Fund, are not part of or a condition to the Settlement set forth herein, and are to be considered by the Court separately from the Court’s consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Agreement, and any order or proceeding relating to an application for attorneys’ fees or expenses shall not operate to terminate or cancel this Agreement or the releases set forth herein, or affect or delay the finality of the judgment approving this settlement.

d. Settling Defendants shall have no role in or responsibility for the allocation among Plaintiffs’ counsel and/or any other Person who may assert some claim thereto, of any attorneys’ fee and expense award that the Court may make.

e. The named Plaintiffs may seek reimbursement of their costs and compensation for their time donated in this action from the Settlement Fund.
10. **When Settlement Becomes Final.** The settlement contemplated by this Settlement Agreement shall become final on the date that: (a) the Court has entered the Order and Final Judgment approving this Settlement Agreement, and all of its material terms and conditions, in accordance with Section II(F)(7), above, under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Actions as against the Settling Defendants with prejudice as to all Settlement Class Members and without costs; and (b) the time for appeal or to seek permission to appeal from the Court’s approval of this Settlement Agreement and entry of the order of Final Judgment, as described in Section II(F)(7)(a) above, has expired or, if appealed, approval of this Settlement Agreement and the Order and Final Judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review. The Parties agree that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

11. **Termination and Rescission.**

   a. **Rejection or Alteration of Settlement Terms.** If the Court declines to grant either preliminary or final approval to this Settlement Agreement or any material part hereof (as set forth in Sections II(F)(2) or (F)(7) above, respectively), or if the Court approves this Settlement Agreement in a materially modified form, or if, after the Court’s approval, such approval is materially modified or set aside on appeal, or if the Court does not enter the Final Order and Judgment, or if the Court enters the Final Order and Judgment and appellate review is sought and, on such review, such Final Order and Judgment is not affirmed (collectively “Triggering Events”); then Settling Defendants and Plaintiffs shall each, in their respective sole discretion, have the option to rescind this Settlement Agreement in its entirety by
providing written notice of their election to do so (“Termination Notice”) to each other within thirty (30) days of such Triggering Event. For purposes of this Section II(F)(11), a material modification includes, but is not limited to, the scope of the Released Claims or the settlement payments pursuant to Section II(A)(2).

b. Termination of Settlement. In the event this Settlement Agreement is rescinded or terminated pursuant to this Section II(F)(11) or Section II(D), then:

(i) within fifteen (15) business days, the Settlement Fund (including accrued interest), less expenses and costs that have been disbursed pursuant to Section II(C)(2), shall be refunded by the Escrow Agent to the Settling Defendants pursuant to written instructions from Settling Defendant’s Counsel to Settlement Class Counsel; (ii) the Parties shall be deemed to have reverted to their respective status in the Action as of the day before the Effective Date, and without waiver of any positions asserted in the Action as of the day before the Effective Date, which shall then resume proceedings in the District Court, that Court having retained jurisdiction over the Settlement and related matters and, except as otherwise expressly provided in this Settlement Agreement, the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, and Plaintiffs shall return to Settling Defendants, or provide a written certification of destruction, all Documents and Cooperation Materials, and all copies or reproductions thereof, produced by Settling Defendants under this Settlement Agreement or otherwise, including any and all copies of Documents and Cooperation Materials shared by Settlement Class Counsel with Plaintiffs’ experts.

12. No Admission.

a. Nothing in this Settlement Agreement shall be deemed or construed in any way to be an admission or be evidence of any violation of any statute, law, rule
or regulation or of any liability or wrongdoing by Released Parties, an admission by Settling Defendants as to the merits or truth of the allegations made in the Actions, an admission by Plaintiffs of the validity of any defenses that could be asserted by Settling Defendants, or the appropriateness of certification of any class other than the Settlement Class under Rule 23 of the Federal Rules of Civil Procedure. This Settlement Agreement is without prejudice to the rights of Settling Defendants to: (i) challenge the Court’s class certification in the Actions should the Settlement Agreement not be approved or implemented for any reason; and/or (ii) oppose any certification or request for certification in any other proposed or certified class action.

b. This Settlement Agreement, and any of its terms, and any agreement or order relating thereto, shall not be deemed to be, or offered by any of the Settling Parties to be received in any civil, criminal, administrative, or other proceeding, or utilized in any manner whatsoever as, a presumption, a concession, or an admission of any fault, wrongdoing, or liability whatsoever on the part of any of the Settling Defendants or other Released Parties; provided, however, that nothing contained in this Section II(F)(12) shall prevent this Settlement Agreement (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement (or any agreement or order relating thereto) or the Order and Final Judgment, or in which the reasonableness, fairness, or good faith of any Party participating in the Settlement (or any agreement or order relating thereto) is in issue, or to enforce or effectuate provisions of this Settlement Agreement, the accompanying Supplemental Agreement, dated October 16, 2014 or the Order and Final Judgment. This Settlement Agreement may, however, be filed and used in other proceedings, where relevant, to demonstrate the fact of its existence and of this Settlement, including but not limited to Settling Defendants filing the Settlement Agreement
and/or the Order and Final Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, waiver, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

III. MISCELLANEOUS

A. Entire Agreement. This Settlement Agreement (and the Supplemental Agreement referenced herein) shall constitute the entire agreement between Plaintiffs and Settling Defendants pertaining to the Settlement of the Actions against Settling Defendants and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Settling Defendants in connection therewith. All terms of the Settlement Agreement are contractual and not mere recitals.

B. Inurement. The terms of the Settlement Agreement are and shall be binding upon, to the fullest extent possible, each of the Releasing Parties and the Released Parties, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties, Releasing Parties, or Released Parties, including any Settlement Class Members.

C. Modification. This Settlement Agreement may be modified or amended only by a writing executed by Plaintiffs and Settling Defendants, subject (if after preliminary or final approval) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

D. Drafted Mutually. For the purpose of construing or interpreting this Settlement Agreement, Plaintiffs and Settling Defendants shall be deemed to have drafted it equally, and it shall not be construed strictly for or against any party.
E. **Governing Law.** All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law or conflict-of-law principles.

F. **Jurisdiction.** This Settlement Agreement is subject to the continuing and exclusive jurisdiction of the United States District Court for the Eastern District of New York, for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein. If for any reason this Settlement Agreement is rescinded, terminated or fails to become effective, then, in such event, nothing in this Settlement Agreement or with regard to any conduct of Settling Defendants or Settling Defendants’ Counsel pursuant to any obligations Settling Defendants have pursuant to the Agreement shall constitute or are intended to be construed as any agreement to personal jurisdiction (general or specific) or subject matter jurisdiction so as to confer the jurisdiction of the District Court over Settling Defendants, nor shall it constitute any waiver of any defenses based on personal or subject matter jurisdiction.

G. **Counterparts.** This Settlement Agreement may be executed in counterparts by Settlement Class Counsel and Settling Defendants’ Counsel, each of which shall be deemed an original and all of which taken together shall constitute the same Settlement Agreement. A facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

H. **Represented by Counsel.** Plaintiffs and Settling Defendants acknowledge that each have been represented by counsel, and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so and
are not relying on any representation or warranty by the other party other than as set forth herein. Therefore, Plaintiffs and Settling Defendants and their respective counsel agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake.

I. Authorization. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval; the undersigned Settlement Class Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Plaintiffs; and the undersigned Settling Defendants’ Counsel represent that they are authorized to execute the Settlement Agreement on behalf of Settling Defendants.

J. Privilege. Nothing in this Settlement Agreement, Settlement, or the negotiations or proceedings relating to the foregoing is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the accountants’ privilege, the attorney-client privilege, the joint defense privilege, or work product immunity.

K. Notice. Any notice required pursuant to or in connection with this Settlement shall be in writing and shall be given by: (1) hand delivery; (2) registered or certified mail, return receipt requested, postage prepaid; or (3) Federal Express or similar overnight courier, addressed, in the case of notice to any Plaintiff or Settlement Class Member, to Settlement Class their representative at the address set forth below, or such other address as Settling Defendants or Settlement Class Counsel may designate, from time to time, by giving notice to all Parties in the manner described in this Paragraph.

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For Settling Defendants:

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With copies to:

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Facsimile: (202) 639-6604
IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the Effective Date.

Dated: 10-16-2014

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IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the Effective Date.

Dated: ____________________________ Dated: October 15, 2014

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Dated: ______________________  Dated: ______________________

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Plaintiffs' Interim Co-Lead Counsel and Settlement Class Counsel
[PROPOSED] ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANTS AGILITY HOLDINGS, INC., AGILITY LOGISTICS CORP., GEOLOGISTICS CORP., AND GEOLOGISTICS INTERNATIONAL MANAGEMENT (BERMUDA) LIMITED AND CERTIFYING SETTLEMENT CLASS

THIS CAUSE came before the Court on Plaintiffs’ Motion for Preliminary Approval of Settlement. Plaintiffs have entered into a Settlement Agreement with Defendants Agility Holdings, Inc., Agility Logistics Corp., Geologistics Corp., and Geologistics International Management (Bermuda) Limited (“Settling Defendants”). The Court, having reviewed the Motion, its accompanying memorandum and the exhibits thereto, the Settlement Agreement,¹ and the file, hereby:

ORDERS AND ADJUDGES:

Preliminary Approval of Settlement Agreement

1. This Court has jurisdiction over this action and each of the parties to the Settlement Agreement. Upon review of the record, the Court finds that the proposed Settlement Agreement, which was arrived at by arm’s-length negotiations by highly experienced counsel,
falls within the range of possible approval and is hereby preliminarily approved, subject to further consideration at the Court’s Fairness Hearing. The Court preliminarily finds that the Settlement encompassed by the Settlement Agreement raises no obvious reasons to doubt its fairness, and raises a reasonable basis for presuming that the Settlement and its terms satisfy the requirements of Federal Rules of Civil Procedure 23(c)(2) and 23(e) and due process so that Notice of the Settlement should be given.

Class Certification

2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and in light of the proposed Settlement, the Court hereby finds that the prerequisites for a class action have been met and certifies the following class for settlement purposes (the “Settlement Class”):

All persons (excluding governmental entities, Defendants, their respective parents, subsidiaries and affiliates) who directly purchased Freight Forwarding Services

(a) for shipments within, to, or from the United States, or

(b) purchased or sold in the United States regardless of the location of shipment;

from any of the Defendants or any subsidiary or affiliate thereof, at any time during the period from January 1, 2001 to January 4, 2011.

3. For settlement purposes, the Court finds that the certification of the Settlement Class is warranted in light of the Settlement Agreement because:

(a) The Settlement Class, which has well over 1,000 members, is sufficiently numerous to satisfy the numerosity requirement;

(b) There are sufficient legal and factual issues common to the Settlement Class to meet the commonality requirement;

(c) Plaintiffs’ and the Settlement Class’ claims arise out of the same alleged illegal anticompetitive conduct and are based on the same legal theories, and therefore satisfy the typicality requirement;
(d) Plaintiffs Precision Associates, Inc., Anything Goes LLC d/b/a Mail Boxes Etc., JCK Industries, Inc., RBX Industries, Inc., Mary Elle Fashions, Inc., Inter-Global, Inc., Zeta Pharmaceuticals, LLC., Kraft Chemical Company, Printing Technology, Inc., David Howell Product Design Inc., Innovation 714 Inc., Mika Overseas Corporation, and NORMA Pennsylvania Inc. (collectively, “Plaintiffs”) have retained experienced counsel and do not have interests antagonistic to the class, and thus these Plaintiffs will fairly and adequately represent the Settlement Class; and

(e) Common issues, including those noted above, predominate over any individual issues affecting the members of the Settlement Class.

(f) Settlement of this Action on a class basis is superior to other means of adjudicating this matter.


Class Notice and Fairness Hearing

5. Co-Lead Counsel for Plaintiffs shall submit for the Court’s approval a Proposed Notice to the Class, including a proposed schedule for Class Members to opt out or object to the proposed Settlement, a proposed Plan of Notice that includes the proposed manner of Notice, a proposed Administrator for Notice and Claims to determine whether the Settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.
6. The Court confirms the appointment of class counsel for purposes of the Settlement Class as the law firms of Lovell Stewart Halebian Jacobson LLP, Lockridge Grindal Nauen PLLP, Cotchett, Pitre & McCarthy, LLP, and Gustafson Gluek PLLC.

Other Provisions

7. Terms used in this Order that are defined in the Settlement Agreement are, unless otherwise defined herein, used in this Order as defined in the Settlement Agreement.

8. In aid of the Court’s jurisdiction to implement and enforce the proposed Settlement, as of the date of entry of this Order, Plaintiffs and all members of the Settlement Class shall be preliminarily enjoined from commencing or prosecuting any action or other proceeding against the Settling Defendants asserting any of the Claims released in Section II(B) of the Settlement Agreement pending final approval of the Settlement Agreement or until such time as this Court lifts such injunction by subsequent order.

9. If the Settlement Agreement is terminated in accordance with its provisions, or is not approved by the Court or any appellate court, then the Settlement Agreement and all proceedings had in connection therewith shall be vacated, and shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of Plaintiffs, the Settling Defendants, and the members of the Settlement Class.

10. If the Settlement Agreement is terminated or is ultimately not approved, the Court will modify any existing scheduling order to ensure that the Plaintiffs and Settling Defendants will have sufficient time to prepare for the resumption of litigation, including, but not limited to, motion(s) to dismiss any amended complaint, the completion of discovery, preparation of expert reports, the filing of any summary judgment motion or motions, and preparation for trial.

11. The Court’s certification of the Settlement Class as provided herein is without prejudice to, or waiver of: (a) the rights of any non-settling Defendant to contest certification of
any other class proposed in this Action; or (b) the rights and/or arguments which have been or may be asserted by any non-settling Defendant in a motion to dismiss. The Court’s findings in this Order shall have no effect on the Court’s ruling on any motion to certify any class in this Action or on the Court’s rulings concerning any non-settling Defendant’s motion to dismiss; and no party may cite or refer to the Court’s approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any non-settling Defendant’s motion to dismiss. Further, if the Settlement Agreement is terminated or is ultimately not approved, Settling Defendants expressly retain the right to contest class certification, including, but not limited to, the right of appeal, of any other litigation class proposed in this Action.

IT IS SO ORDERED.

DATED: __________________, 2014

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HON. JOHN GLEESON
United States District Judge

Conformed copies furnished to:
Counsel of Record