Vantec Settlement Agreement
SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND VANTEC CORPORATION AND VANTEC WORLD TRANSPORT (USA), INC.

This Settlement Agreement ("Settlement Agreement" or "Agreement") is made and entered into as of April 26, 2011, by and among Vantec Corporation and Vantec World Transport (USA), Inc. (collectively, "Vantec" or the "Settling Defendants"), and Plaintiffs Precision Associates, Inc., Anything Goes LLC d/b/a Mailboxes Etc., and JCK Industries, Inc. (collectively, "Plaintiffs"), individually and on behalf of a class of Persons that directly purchased Freight Forwarding Services from any Defendant in this Action or any related actions from January 1, 2001, to and including the Effective Date, subject to the approval of the Court (the "Settlement").

RECITALS

A. Plaintiffs are prosecuting the 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 their 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 during the Class Period, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

C. More specifically, Plaintiffs have alleged that Settling Defendants engaged in the following unlawful agreements:

1. The 2002 Fuel Surcharge Agreement;
2. The 2004 U.S. Customs “AMS” Charge Agreement; and
3. The 2006 Surcharges Agreement (“security charge” and “explosives examination charge”).

In addition, Plaintiffs allege that the Settling Defendants engaged in regional and global unlawful agreements which were comprised, in part, of the three agreements set forth above.

D. Settling Defendants have represented that their best good faith estimate is that revenues from the fuel surcharge, “AMS” charge, and the security surcharge and explosives examination charge, as set forth in greater detail in Section II(A)(2)(o)(1), amounted to $11,206,000. Settling Defendants agree in Section II(A)(2)(b)(2) to provide, from reasonably available records, the names of customers who paid these amounts, their last known addresses, and the amount that each such customer paid.

E. Settling Defendants have asserted numerous defenses to Plaintiffs’ Claims and intend to assert a number of additional defenses to Plaintiffs’ Claims if the Actions proceed further.

F. 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 Settling Defendants or of the truth of any of
Plaintiffs’ Claims or allegations.

G. The Japan Fair Trade Commission (“JFTC”), on March 18, 2009, issued a cease-and-desist order, levied a total government charge on the following Defendants of ¥9,052,980,000 (approximately $96,600,000), and found that the following Defendants conspired to restrict competition by fixing prices on four separate surcharges, thereby “substantially restrain[ing] competition in the market of international air freight forwarding business”: (1) Nippon Express Co., Ltd.; (2) Yusen Air & Sea Service Co., Ltd.; (3) Kintetsu World Express, Inc.; (4) Nishi-Nippon Railroad Co., Ltd.; (5) Hankyu Hanshin Express Holdings Corporation; (6) Nissin Corporation; (7) Vantec World Transport Co., Ltd.; (8) “K” Line Logistics, Ltd.; (9) Yamato Global Logistics Japan Co., Ltd.; (10) MOL Logistics (Japan) Co., Ltd.; (11) Hanshin Air Cargo Co., Ltd.; (12) United Aircargo Consolidators, Inc.; (13) DHL Global Forwarding Japan K.K.; and (14) Airborne Express, Inc.

H. Vantec World Transport Co., Ltd., an entity which was merged into Vantec Corporation as of April 1, 2009, denies the JFTC charges and has appealed the JFTC decision.

I. In addition to the JFTC proceedings referenced above in Recitals G-H, the Settling Defendants acknowledge that Vantec World Transport (USA), Inc. has received subpoenas from the U.S. Department of Justice on January 16, 2008 and June 10, 2008, with which it has complied. Settling Defendants, to the best of their knowledge, are not aware of any other investigations by governments or government agencies with respect to any agreement to restrain trade or fix prices relating to Plaintiffs’ Claims, other than referenced in this Recital I.

J. Despite their belief that they are not liable for the Claims asserted by Plaintiffs and have good defenses thereto, Settling Defendants have agreed to enter into this Settlement Agreement to avoid the further expense, inconvenience, disruption, and burden of this litigation
and any other present or future litigation arising out of facts that gave rise to this litigation, to
avoid the risks inherent in uncertain complex litigation, and thereby to put to rest this
controversy.

K. Arm’s-length settlement negotiations have taken place between Settlement Class Coun
cel and Settling Defendants’ Counsel, and this Agreement has been reached as a result of
those negotiations.

L. The Parties desire fully and finally to settle all actual and potential Claims arising
from or in connection with the Actions, the factual allegations underlying the Actions, and each
of them, 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 and that these Actions shall be
dismissed in their entirety with prejudice as to 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 subsequently filed or transferred actions,
whether brought in state or federal 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*.

2. “Air Cargo Proceeds” means all proceeds in any form received by the Released Parties or their predecessors, successors, affiliates or subsidiaries or assigns from the *In Re Air Cargo Shipping Services Antitrust Litigation*, No. 06-MD-1775 (JG) (VVP) (E.D.N.Y.) (“Air Cargo”). For avoidance of doubt, Air Cargo Proceeds do not include any proceeds from the Air Cargo settlement with Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd. (collectively, “Lufthansa”) and nothing in this Settlement Agreement requires the Released Parties to submit such a claim in the Lufthansa settlement.

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 agreed upon by the Parties and that is approved by the Court, in accordance with Section II(F)(3).

5. “Class Period” means the period from January 1, 2001 up to and including the Effective Date.

6. “Cooperation Materials” means the information or material to be provided by Settling Defendants to Plaintiffs pursuant to Section II(A)(2), provided, however, that such Cooperation Materials shall not mean or include any information or material subject to the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, the common interest privileges, any right to privacy or any other applicable privilege or privacy right, subject to Section II(A)(2)(k).

7. “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.

8. “Date of Final Approval” means the date as of which this Settlement
Agreement becomes final, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(F)(10).

9. “Date of Preliminary Approval” means the date as of which this Settlement Agreement is preliminarily approved, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(F)(2).

10. “Defendants” means any or all of the defendants named in the Action(s) now or in the future.

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

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

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, ship, rail, and truck, both nationally and internationally, and can include related activities such as customs clearance, warehousing and ground services.

Cargo Co., Ltd., Yamato Global Logistics Japan Co., Ltd., MOL Logistics (Japan) Co., Ltd., United Aircargo Consolidators, Inc. and DHL Global Forwarding Japan K.K (including Airborne Express, Inc.).

18. "JFTC Evidence" means the Documents, copies of which are in Settling Defendant’s possession at the time of the Effective Date, that the JFTC relied upon during the appeal proceedings, referenced above in Recitals G-H.

19. "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.

20. "Opt-Out Claim" means any claim within the scope of the release 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.

21. "Order and Final Judgment" means the order and final judgment of the court approving the Settlement, as described in Section II(F)(10).

22. "Other Defendants" are all Defendants named in this action other than Vantec Corporation and Vantec World Transport (USA).


24. "Person(s)" means an individual or an entity.

25. "Plaintiffs" means Precision Associates, Inc., Anything Goes LLC dba Mail Boxes Etc., and JCK Industries, Inc., and any other plaintiffs designated by the Court as direct purchaser plaintiff class representatives, individually and on behalf of the Settlement Class.

26. "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 or relating or referred to in the Actions; (b) concerning or relating in any way 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, 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” 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 based on: (1) product defect or breach of warranty; (2) breach of contract not arising out of the allegations in the Class Action; or (3) indirect purchases of Freight Forwarding Services by persons or entities other than Releasors. With respect to and expressly subject to such reservation of claims, if and to the extent that any Japanese Defendant negotiates a more comprehensive or inclusive release, including, but not limited to, the duration of the time period, the scope of the Claims, and the scope of the carve-outs (1)-(3) in the immediately preceding sentence, then Settling Defendants shall be entitled to such more inclusive release. Such reservation of claims by the Releasors does
not constrain the Releasees from asserting any and all defenses to those claims.

27. “Released Parties” means jointly and severally, individually and collectively, the Settling Defendants, their respective predecessors (including, but not limited to, Vantec World Transport Co., Ltd.); 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 defendants in the Action other than the Settling Defendants formerly or currently named in the Actions. The Released Parties who are not Settling Defendants are third party beneficiaries of this Settlement Agreement with respect to the release of Released Claims. Other Defendants are not Released Parties.

28. “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.

29. “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.

30. “Settlement Class Member” means each member of the Settlement Class that does not timely and properly elect to be excluded from the Settlement Class.

31. “Settling Defendants” means Vantec World Transport (USA), Inc. and Vantec Corporation.

32. “Settling Defendants’ Counsel” means Weil, Gotshal & Manges LLP.
33. “Settlement Fund” means the separate Escrow Account for the settlement contemplated by this Settlement Agreement to hold the following payments: (a) $9,900,000 plus (b) the Air Cargo Proceeds, as described in Section II(A) below. In all events, settlement proceeds include any interest accrued in the Escrow Account.

II. SETTLEMENT

A. Performance By Settling Defendants.

1. Settlement Payments.

   a. Within fifteen (15) Japanese business days of the date of execution, Settling Defendants or their designee shall wire transfer pursuant to instructions from Settlement Class Counsel nine million nine hundred thousand ($9,900,000) in United States dollars to the Escrow Agent.

   b. In addition, within twenty (20) Japanese business days after receipt of any Air Cargo Proceeds received after the Effective Date, Settling Defendants or their designee shall wire transfer pursuant to instructions from Settlement Class Counsel to the Escrow Agent an amount equal to each such receipt of Air Cargo Proceeds received by Settling Defendants.

   c. In addition, within ten (10) Japanese business days after December 31, 2012, if the amount of the Air Cargo Proceeds is less than $300,000 as of December 31, 2012, then the Settling Defendants shall wire a further cash payment equal to $300,000 minus the total Air Cargo Settlement Proceeds that have been paid to that point. The Settling Defendants then shall be relieved of making further payments or Air Cargo Settlement Proceeds unless and until the Settling Defendants, their successors, their predecessors, their affiliates, subsidiaries or assigns have received total Air Cargo Settlement Proceeds equal to $300,000. At that point, the obligation to make further payments equal to the amount of the Air Cargo Settlement Proceeds hereunder shall resume.

2. Cooperation. The Settling Defendants shall cooperate in good faith with
Settlement Class Counsel in accordance with the terms and provisions of this Agreement to support the prosecution of Plaintiffs’ Claims in the Actions against non-settling defendants. This includes providing Cooperation Materials. The following sets forth the enumerated terms of cooperation:

a. Within thirty (30) Japanese business days after the execution of this agreement, Settling Defendants shall produce to Settlement Class Counsel copies of the JFTC Evidence as well as any translations thereof. Within sixty (60) Japanese business days after the Effective Date, Settling Defendants shall produce to Settlement Class Counsel copies of all other Documents received from and produced to the Japan Fair Trade Commission, that are reasonably available and in the possession of Settling Defendants at the time of the Effective Date as well as any translations thereof. If the Documents were kept at any time in an electronically searchable format, they shall be produced in such format.

b. Within thirty (30) Japanese business days after the execution of this agreement, or within such other time as the Parties shall agree, Settling Defendants shall produce to Settlement Class Counsel from reasonably available records:

1. publicly disseminated price announcements for Freight Forwarding Services, including surcharges related thereto, for shipments within, to, or from the United States for the period January 1, 2001 through the Effective Date;

2. the amounts, by claim, of payments made by customers from October 16, 2002 through November 12, 2007 to Settling Defendants for the charges as set forth in greater detail in Section II(A)(2)(o)(1) and, in electronic format, the names of those customers and their last known addresses;

c. Within sixty (60) Japanese business days after the Effective Date, or within such other time as the Parties shall agree, the Settling Defendants shall produce to
Settlement Class Counsel:

1. the names and addresses of customers, from reasonably available records;

2. Electronically Stored Information ("ESI") as agreed upon by the Parties (to the extent such ESI is within their possession, custody or control, and may be retrieved and compiled through reasonable efforts) sufficient to show Settling Defendants’ revenues and volumes of Freight Forwarding Services within, to, or from the United States for the period January 1, 2001 through the Effective Date, provided that the Settling Defendants shall not be obligated to produce invoices, individual transaction records, or Documents other than summaries or reports sufficient to break down and reflect the foregoing information;

3. without affecting Settling Defendants’ obligations under Section II(A)(2)(a) above, copies of Documents produced to any antitrust or competition regulators in any jurisdiction including the U.S. Department of Justice (collectively, "Investigative Authorities") by Settling Defendants (or their Counsel on Settling Defendants’ behalf), provided that such Documents concern Freight Forwarding Services within, to, or from the United States, and are reasonably available and in the possession of Settling Defendants at the time of the Effective Date, produced in the same format as produced to the Investigative Authorities.

d. Thereafter, the Released Parties shall provide copies of any other Documents in the possession of Settling Defendants’ Counsel that are responsive to reasonable and specific requests, within a reasonable timeframe, made by Settlement Class Counsel regarding any other issue relevant to the Claims alleged in the Actions regarding the fuel
surcharge, the “AMS” charge and the security surcharge and explosives examination charge, provided such requests are not unduly burdensome. If the Documents were kept at any time in an electronically searchable format, they shall be produced in such format. Counsel for the Parties shall agree to reasonable custodial and search-term limitations on the document-production obligations enumerated in this Paragraph.

e. **Meetings with Counsel for Settling Defendants.** Within sixty (60) U.S. business days after the Effective Date, or within such other time period on which the Parties shall agree, Settling Defendants’ Counsel shall meet in person or telephonically, as reasonably agreed by the Parties, with Settlement Class Counsel for at least seven (7) hours, and more if appropriate, at a location of Settlement Class Counsel’s choice within the United States and provide at that meeting a reasonably detailed description of the principal facts, answer (non-privileged) questions of Settlement Class Counsel with respect to the Documents, including the times, places, and participants with respect to any communications or meetings relevant to the conduct at issue regarding the fuel surcharge, the “AMS” charge and the security surcharge and explosives examination charge that are not reflected in the Documents. To the extent Settlement Class Counsel have follow-up questions after this meeting, Settling Defendants’ Counsel shall reasonably endeavor to answer such questions. In addition, Settling Defendants’ Counsel shall meet or confer with Settlement Class Counsel as often as Settlement Class Counsel believe is reasonably necessary, not to exceed twenty-five (25) hours, to support Plaintiffs’ prosecution of the Actions against non-settling defendants.

Any statements made by Settling Defendants’ Counsel under this Paragraph 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, provided, however, that Settling Defendants acknowledge that the information provided pursuant to this Paragraph and set forth in an amended complaint may be
used by Plaintiffs in this Action.

f. **Authentication of Documents.** Settling Defendants agree to use reasonable efforts to provide affidavits and, if reasonably necessary, produce at trial and/or deposition, up to three (3) representatives of their choice qualified 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. Settling Defendants agree to produce at trial and/or deposition, or through affidavits or declarations, additional representatives of their choice for the purposes described in this Paragraph, provided such additional representatives are reasonably necessary to Plaintiffs’ prosecution of the Claims alleged in the Actions.

g. **After Settlement Class Counsel have reviewed information produced by the Settling Defendants pursuant to Section II(A)(2)(a)-(d), Settlement Class Counsel shall discuss with Settlement Defendants’ Counsel appropriate means to present competent evidence (including but not limited to trial testimony) to prove the facts reflected in, suggested by, or pertinent to such information. Settling Defendants agree to assist and cooperate in good faith with Settlement Class Counsel in such efforts. At a minimum, the Settling Defendants shall be obligated, if reasonably necessary, to provide the following trial testimony set forth below in Paragraph h.**

h. **Testimony at Trial.** Settling Defendants agree to make reasonable efforts to make available at Settling Defendants’ expense and upon reasonable notice, for testimony at trial in the Actions: (i) any current directors, officers, and employees of Settling Defendants who have been interviewed by the U.S. Department of Justice or the Japan Fair Trade Commission regarding Plaintiffs’ Claims; and (ii) up to five (5) additional current employees of Settling Defendants whom Settlement Class Counsel, in consultation with Settling Defendants’ Counsel, reasonably believe have knowledge regarding Plaintiffs’ Claims alleged in the Actions.
i. **Interviews.** Within sixty (60) Japanese business days after the Effective Date, or within such other time period on which the Parties shall agree, Settling Defendants agree to make reasonable efforts to make available at Settling Defendants’ expense, at a location on which the Parties shall agree either in-person or telephonically, to be reasonably decided by the Parties and upon reasonable notice, for interview up to five (5) current employees of Settling Defendants with information regarding the factual allegations underlying the Claims in the Action, including general industry knowledge.

j. **Best Efforts.** Notwithstanding the foregoing Sections II(A)(2)(a)-(i), with regard to any current directors, officers, and employees of Settling Defendants who either have retained counsel and/or have confirmed an intention to assert any rights against self incrimination, Settling Defendants agree to use their reasonable best efforts to obtain the cooperation in good faith of such individuals with respect to Sections II(A)(2)(e)-(i). Any failure or good faith inability by Settling Defendants to make such individuals available shall not be deemed a failure or breach of Settling Defendants’ agreement to cooperate with Settlement Class Counsel under the terms of this Settlement Agreement.

k. **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, and the common interest privilege with respect to any Cooperation Materials (including Documents, statements, testimony, material, and/or information) requested under this Settlement Agreement. If any Documents protected by the attorney client privilege, the work product doctrine, the joint defense privilege, and/or the common interest privilege 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. No Document shall be withheld
under claim of privilege or work product if produced to or made available to the Investigative Authorities, other than privileged Documents inadvertently produced thereto.

1. **Discovery.** None of the foregoing provisions shall be construed to prohibit Plaintiffs from seeking discovery from non-settling defendants or any Person other than Settling Defendants if Settlement Class Counsel deem such discovery to be advisable for purposes of any aspect of the prosecution of Plaintiffs’ Claims against the non-settling defendants. Subject to any applicable protective orders, Plaintiffs and Settlement Class Counsel hereby agree to provide Settling Defendants’ Counsel, at Settling Defendants’ expense, 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. Plaintiffs are prohibited from seeking: (i) beyond the information specified herein, discovery of any kind whatsoever relating to the Action, whether pursuant to this Agreement or by formal requests or other means, from Settling Defendants; or (ii) any additional trial witnesses beyond those specified herein, whether pursuant to this Agreement or by subpoena or other means, from Settling Defendants.

m. **Confidentiality.** All non-public data, Documents, information, testimony, or communications provided to Settlement Class Counsel pursuant to this Section II(A)(2) shall be maintained in strict confidence and on an “Outside Counsel Only” basis and, if a protective order is subsequently entered in this Action, shall be deemed to be designated “Highly Confidential” or afforded the maximum protection of confidentiality. Settlement Class Counsel shall only use such non-public data, Documents, information, testimony, or communications for purposes of prosecuting Plaintiffs’ Claims in the Actions against non-settling defendants. Within thirty (30) days of the Actions having been finally resolved as set
forth in Section II(F)(10), Settlement Class Counsel shall return or destroy (with a written
certification of destruction) such non-public data, Documents, information, testimony, or
communications.

n. **Ongoing Duty to Cooperate.** Settling Defendants’ obligations to
cooperate pursuant to Section II(A)(2) of this Agreement shall not be affected by the release set
forth in Section II(B) of this Agreement. Unless this Agreement is disapproved by the Court or
terminated pursuant to Section II(F)(11), Settling Defendants’ obligations to cooperate under this
Settlement Agreement as provided in Section II(A)(2) shall continue until final judgment has
been rendered in the Actions against all Defendants, and the time to appeal or to seek permission
to appeal from the Court’s entry of final judgment has expired or, if appealed, final judgment has
been affirmed in its entirety by the court of last resort to which such appeal has been taken and
such affirmance has become no longer subject to further appeal or review.

o. **Representations By Settling Defendants; Conditions
Subsequent.** Settling Defendants represent, as of the Effective Date, (1) that their best good
faith estimate is that revenues they received from the fuel surcharge, the “AMS” charge and the
security surcharge and the explosives examination charge, on air cargo shipments from Japan to
the United States, on both a freight collect and freight pre-paid basis, from October 16, 2002
through November 12, 2007, using the annual average foreign exchange rate published by the
U.S. Federal Reserve to convert each year of the surcharges at issue from Japanese Yen to U.S.
amounted to $11,206,000; (2) that, to the best of their knowledge, the only government
investigation(s) of the Settling Defendants for anticompetitive conduct related to the fuel
surcharge, the “AMS” charge and the security surcharge and the explosives examination charge
during the Class Period are the JFTC proceeding and the investigation by the U.S. Department of
Justice; (3) the only government charge against Defendants for anticompetitive conduct are those
by the JFTC; and (4) that the Settling Defendants do not know of any other charges. For
avoidance of doubt, nothing in this Settlement Agreement shall prevent the Settling Defendants from taking any and all actions to defend or resolve the government investigation by the U.S. Department of Justice, the government charge by the JFTC, and any government investigation or charge by another authority related to the fuel surcharge, the “AMS” charge, and the security surcharge and the explosives examination charge that the Settling Defendants are unaware as of the Effective Date.

B. Release Of Claims.

1. Release. Subject only to the conditions subsequent of (a) the completion of the payments to the Settlement Fund, and (b) the Settling Defendants’ provision of the cooperation required pursuant to Section II(A)(2), upon the occurrence of the Date of Final Approval, and in consideration of the valuable consideration set forth in this Agreement, the Releasing Parties 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.

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. 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 similar 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 release is a part.

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, as follows:

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

2. Settlement Class Counsel may, without prior order of the Court, pay up to
$400,000 for costs of notice to the class and preliminary or final approval of this settlement, including for the services of experts on class publication or other issues relating to notice, notice or preliminary approval or final approval.

3. Other than the $400,000 referenced in Section II(C)(2) above, no monies shall be paid or disbursements made for notice or preliminary or final settlement approval purposes or for any other purposes from the Settlement Fund without an order of the Court or the specific authorization of both Settlement Class Counsel and Settling Defendants’ Counsel. Such authorization may not be withheld if withholding such authorization is inconsistent with this Agreement.

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)(1), neither the Settling Defendants nor Settling Defendants’ Counsel shall bear any responsibility or risk, except as provided in Sections II(F)(11)(b), 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. It shall be a pre-condition to any receipt of funds under this Agreement that each Settlement Class Member seeking to receive funds execute a written release in favor of the Released Parties of all Released Claims.

D. "Most Favored Nation"

1. Upon the Effective Date, the Settling Defendants will have a "most favored nation" status as provided in this Section. This Section will apply to all class settlements that Plaintiffs enter into with any Japanese Defendant to resolve or compromise any Claim, unless expressly excluded by this Section. For purposes of this Section II(D), a settlement will be deemed a "Qualifying Subsequent Settlement" only if the subsequent settling defendant (or any of its affiliates or current or former officers, directors or employees) is a Japanese Defendant. If Settling Defendants, or any of them, plead guilty to charges by the U.S. Department of Justice with respect to any agreement to restrain trade or fix prices related to Plaintiffs' Claims, then this Section II(D) Most Favored Nation provision shall be of no force and effect with respect to any
Japanese Defendant who is neither indicted nor pleads guilty to charges by the U.S. Department of Justice within eighteen (18) months after Settling Defendants, or any of them, plead guilty.

2. If Plaintiffs enter into a Qualifying Subsequent Settlement, then Plaintiffs will provide a copy of that settlement agreement to Settling Defendants no later than ten (10) U.S. business days from the time of execution of that Qualifying Subsequent Settlement.

3. For purposes of this Section, the “Settlement Ratio” for this Settlement Agreement is .8835 or 88.35% ($9,900,000 divided by $11,206,000) and any Qualifying Subsequent Settlement is the number obtained by dividing \(x\) by \(y\), where \(x\) is equal to the settlement payment(s) paid in this Action by the subsequent settling defendant, but excluding claims submitted in class settlements in *Air Cargo* and \(y\) is equal to the revenues from the fuel surcharge, the “AMS” charge and the security surcharge and explosives examination charge on the exact same basis as set forth in Section II(A)(2)(o)(1): October 16, 2002 – November 12, 2007; air cargo from Japan to the United States; on a freight collect and freight pre-paid basis; using the annual average foreign exchange rate published by the U.S. Federal Reserve to convert each year of revenues from the surcharges at issue from Japanese Yen to U.S. Dollars (2002: 125.22; 2003: 115.94; 2004: 108.15; 2005: 110.11; 2006: 116.31; 2007: 117.76).

4. If the Settlement Ratio for a Qualifying Subsequent Settlement is less than the Settlement Ratio paid by Settling Defendants under this Settlement Agreement (the “Settling Defendants’ Settlement Ratio”), then Settling Defendants will be entitled to receive, within ten (10) U.S. business days after the Qualifying Subsequent Settlement is executed, an amount sufficient to reduce Settling Defendants’ Settlement Ratio to the Settlement Ratio for that Qualifying Subsequent Settlement (the “MFN Refund Amount”). If the MFN Refund Amount is triggered pursuant to this Section II(D)(4), at the time that Settling Defendants receive the MFN...
Refund Amount, the Settling Defendants’ Settlement Ratio will be reduced to the Settlement Ratio for the Qualifying Subsequent Settlement that triggered the corresponding MFN Refund Amount for the purposes of subsequent class settlements that Plaintiffs enter into that are deemed Qualifying Subsequent Settlements pursuant to this Section II(D). But in no event shall Settling Defendants be entitled to MFN Refund Amounts that, in aggregate, reduce Settling Defendants’ Settlement Ratio to less than the lowest Settlement Ratio of any other Qualifying Subsequent Settlement.

5. Nothing herein will give Settling Defendants any standing to object to or appeal any settlement entered into by Plaintiffs, any Settlement Class Member, and/or Settlement Class Counsel with any Defendant, provided, however, that Settling Defendants retain their rights to enforce this Section of the Settlement Agreement.

6. Repayment obligations by Settlement Class Counsel if the MFN Refund Amount is triggered, pursuant to Section II(D)(4) above, shall not apply if a subsequent settling Japanese Defendant is insolvent or bankrupt, or has an inability to pay the amount that would be required by the application of the Settling Defendants’ Settlement Ratio to the applicable surcharges charged to the class by the subsequent settling Japanese Defendant from October 16, 2002 through November 12, 2007 according to Section II(D)(3) above. If such subsequent settlement is approved by the Court, the Settling Defendants may contest the subsequent settling Japanese Defendant’s inability to pay in a binding mediation. If Settling Defendants’ challenge is successful, Settling Defendants shall be entitled to the Settlement Ratio paid by the subsequent settling Japanese Defendant.
7. Repayment obligations shall not apply if the settlement is made after (a) a motion by Plaintiffs for class certification is denied, or (b) after summary judgment is granted against Plaintiffs' claims.

8. Any dispute regarding the rights and obligations under this Section, including any dispute over the adequacy of any MFN Refund Amount paid pursuant to this Section, that cannot be resolved by agreement of the parties will be submitted to an agreed upon neutral for final resolution within ninety (90) U.S. business days of submission of the dispute to the neutral. Settling Defendants and Settlement Class Counsel will provide the neutral with any Documents and information the neutral may reasonably request in connection with its work under this Section. The Parties will share equally the costs for the neutral.

E. No Reversion

Defendant shall have no rights to reversion in the event that Class members request exclusion or opt out of the Settlement Class, and neither these requests for exclusion nor Opt-Out Claims shall have any effect on this Settlement Agreement.

F. Approval Of Settlement Agreement And Dismissal Of Claims.

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 Released Parties 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 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 the present of this Settlement Agreement.

2. Preliminary Approval. Within one hundred twenty (120) days of the Effective Date or such other time as the Parties shall agree, Plaintiffs shall submit to the District Court a motion, to be joined by Settling Defendants, requesting entry of an order preliminarily approving the settlement and authorizing dissemination of Class Notice substantially in the form of Exhibit A, attached hereto, to the Settlement Class (“Preliminary Order”). The Preliminary Order shall provide that, inter alia:

a. 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;

b. 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;

c. 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;

d. A hearing on the settlement proposed in this Settlement Agreement shall 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”); and
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 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.

3. **Class Notice.** Settling Defendants shall, at their own expense, supply to Settlement Class Counsel in electronic mailing format, or such form as may reasonably be requested by Settlement Class Counsel and agreed upon by Settling Defendants, the names and addresses of potential Settlement Class Members from reasonably available records pursuant to Sections II(A)(2)(b)(2) and II(A)(2)(c)(1).

   If Settling Defendants so elect in writing within forty-five (45) days of the Date of Preliminary Approval, they may instead mail the Class Notice (and any subsequent class notices) to those of their current or former customers whom they reasonably believe may be Settlement Class Members according to what they deem to be their reasonably available records, in which event Settling Defendants shall bear the costs of that mailing, and shall submit an affidavit to Settlement Class Counsel stating that they mailed notice to those of their present and former customers whom they reasonably believed to be Class Members according to what they deem to be their reasonably available records.

   All materials and information provided to Settlement Class Counsel by Settling Defendants with respect to Class Members, Class Notice and Claims shall be treated confidentially pursuant to Section II(A)(2)(m). Any Person involved in Class Notice shall agree in writing to comply with the terms of the Protective Order before receiving Class Member or Class Notice information, and shall 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 to Persons that are identified by Settling Defendants and/or any other named Defendant. 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 Vantec Corporation and Vantec World Transport (USA), Inc., 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 should identify all Freight Forwarders from whom the
Settlement Class Member purchased 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 immediately 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 that 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 and Settling Defendants shall jointly seek entry of an Order and Final
Judgment that, inter alia:

a. 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;

b. determines that the Class Notice constituted, under the
circumstances, the most effective and practicable notice 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;
c. reconfirms the appointment of Class Representatives and Settlement Class Counsel as defined herein;

d. directs that, as to the Released Parties, any and all then currently pending class action lawsuits directly 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;

e. 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;

f. retains exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this Settlement; and

g. 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)(2). With the object of reducing the costs of notice, and if Settling Defendants agree, Settlement Class Counsel shall 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. Settling Defendants agree not to take any position on Settlement Class Counsel’s fee request.

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 the 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 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.

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 Paragraph 7, above, under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Actions as against all Released Parties 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 clause (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 (together “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)(1).

   b. **Termination of Settlement.** In the event of a Triggering Event or termination pursuant to this Paragraph, then: (i) within fifteen (15) 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 Defendants’ Counsel to Settlement Class Counsel; and (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.

12. **No Admission.**

   a. Nothing in this Settlement Agreement constitutes an admission by Settling Defendants as to the merits of the allegations made in these 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 Settling Party to be received in any civil, criminal, administrative, or other proceeding, including but not limited to the JFTC proceeding discussed in Recitals G-H, 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 Settling Defendant or other Released Parties; provided, however, that nothing contained in this Paragraph 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 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 any Settling Defendant 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 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 is 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 their 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 Plaintiffs and Settling Defendants, 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; and the undersigned Settlement Class Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Plaintiffs.
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 Counsel at their addresses set forth below, and, in the case of notice to a Settling Defendant, to their representatives at the address set forth below, or such other address as a Settling Defendant 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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IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the Effective Date.

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