

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

PRECISION ASSOCIATES, INC., *et al.*, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

vs.

PANALPINA WORLD TRANSPORT  
(HOLDING) LTD., *et al.*,

Defendants.

Case No.: 08-CV-00042 (JG) (VVP)

**SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND  
DEFENDANT SDV LOGISTIQUE INTERNATIONALE**

This Settlement Agreement ("Settlement Agreement" or "Agreement") is made and entered into as of July 30, 2013, by and between Defendant SDV Logistique Internationale, ("Settling Defendant") and Plaintiffs Precision Associates, Inc., Anything Goes LLC d/b/a Mailboxes Etc., JCK Industries, Inc., RBX Industries, Inc., Mary Elle Fashions, Inc. d/b/a Meridian Electric, Inter-Global Inc., Zeta Pharmaceuticals LLC, Kraft Chemical Company, Printing Technology, Inc., David Howell Product Design, Inc. d/b/a David Howell & Company, 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").

## RECITALS

A. Plaintiffs have alleged, among other things, that Settling Defendant participated in unlawful conspiracies to restrain trade, pursuant to which Settling Defendant and its alleged co-conspirators agreed to fix, raise, or maintain the prices of 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.

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

1. The 2005 Chinese Currency Adjustment Factor Surcharges Agreement;
2. The Peak Season Rate Increase Agreements; and
3. The 2004 U.S. Customs Air "AMS" Charge Agreement.

C. Settling Defendant unequivocally denies any and all liability, denies that it entered into any such unlawful agreements or conspiracies, and has asserted numerous defenses to Plaintiffs' Claims and intends to assert further defenses to Plaintiffs' Claims if the Actions proceed further.

D. Plaintiffs and Settling Defendant 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 Defendant or of the truth of any of Plaintiffs' Claims or allegations.

E. Settlement Class Counsel have conducted an investigation into the facts and the law regarding the Actions, and the possible legal and factual defenses thereto, and have concluded that it is in the best interests of Plaintiffs and the Settlement Class to enter into a settlement with

Settling Defendant according to the terms set forth below, and to avoid the uncertainties, risks, and costs of litigation.

F. Without admitting liability for the Claims and despite the availability of numerous defenses thereto, Settling Defendant has agreed to enter into this Settlement to avoid the further expense, inconvenience, disruption, and burden of this litigation.

G. Arm's-length settlement negotiations have taken place between Settlement Class Counsel and Settling Defendant's Counsel, and this Agreement has been reached as a result of those negotiations.

H. The Parties desire fully, finally, and forever to settle all actual and potential Claims arising from or in connection with 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 with prejudice as to Settling Defendant 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 or federal court, on behalf of persons or entities that purchased Freight Forwarding Services directly from any Defendant and alleging violations of the antitrust laws arising from the same or similar conduct as alleged in *Precision Associates* or any amended complaint which may be filed in this proceeding.

2. "Claims" means any and all causes of action, claims, damages, losses, or demands for recoveries, remedies, or fees complained of, or relating or referred to, in the Actions, which have been asserted or could be asserted in the Actions.

3. "Class Notice" means the notice to the Settlement Class that is approved by the Court, in accordance with Section II(F)(3).

4. "Class Period" means the period from and including January 1, 2001, up to and including January 4, 2011.

5. "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 successors or any other Court in which an Action is proceeding.

6. "Date of Final Approval" means the date as of which this Settlement Agreement becomes final, as provided in Section II(F)(6).

7. "Date of Preliminary Approval" means the date as of which this Settlement Agreement is preliminarily approved, according to the process set forth in Section II(F)(2).

8. "Defendants" means any or all of the defendants named in the Action(s) now or in the future.

9. "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. "Documents" does not include any privileged information or materials.

10. "Effective Date" means the date as of which this Settlement Agreement is entered into and executed by all parties.

11. "Escrow Account" means the account with the Escrow Agent that holds the Settlement Fund.

12. "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.

13. "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.

14. "Freight Forwarder" means any person or entity that engages in or has engaged in or provides or has provided Freight Forwarding Services.

15. "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.

16. "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.

17. "Opt Out Claim" means any claim within the scope of the release set forth in Section II(A)(1) made by a Person, otherwise qualifying as a member of the Settlement Class, that has validly and timely excluded itself from the Settlement Class.

18. "Order and Final Judgment" means the order and final judgment of the Court approving the Settlement, as described in Section II(F)(9).

19. "Parties" or "Settling Parties" means Settling Defendant and Plaintiffs.

20. "Person(s)" means an individual or any other legally recognized entity.

21. "Plaintiffs" means Precision Associates, Inc., Anything Goes LLC d/b/a Mail Boxes Etc., JCK Industries, Inc., RBX Industries, Inc., Mary Elle Fashions, Inc. d/b/a Meridian Electric, Inter-Global Inc., Zeta Pharmaceuticals LLC, Kraft Chemical Company, Printing Technology, Inc., David Howell Product Design, Inc. d/b/a David Howell & Company, Innovation 714 Inc., Mika Overseas Corporation, Norma Pennsylvania, Inc. and any other plaintiffs designated by the Court as direct purchaser plaintiff class representatives, individually and on behalf of the Settlement Class.

22. "Released Claims" means any and all 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, activity, damage, loss, or injury occurring during the Class Period (a) complained of or relating or referred to in the Actions; (b) 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 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, or could 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 Releasing Parties. Such reservation of claims by the Releasing Parties does not constrain the Released Parties from asserting any defenses to those claims.

23. "Released Parties" means jointly and severally, individually and collectively, the Settling Defendant, its 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 Defendants formerly

or currently named in the Action other than Settling Defendant. The Released Parties who are not Settling Defendant are third party beneficiaries of this Settlement Agreement with respect to the release of Released Claims.

24. "Releasing Parties" means 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.

25. "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.

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

27. "Settling Defendant" means SDV Logistique Internationale.

28. "Settling Defendant's Counsel" means Hogan Lovells US LLP.

29. "Settlement Fund" means the amount deposited by Settling Defendant or its designee to the Escrow Account established pursuant to Section II(C)(1) of this Settlement Agreement, including all monies held therein in accordance with the terms of this Settlement Agreement, including any interest accrued thereon, and any proceeds received by Plaintiffs and the Settling Class from settlements in connection with the Air Cargo Litigation, as defined in Section II(B)(1) below.



30. "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.

## II. SETTLEMENT

### A. Release Of Claims.

1. Release. Subject only to the condition subsequent of the Settling Defendant's provision of the cooperation required pursuant to Section II(B)(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. Full Release. The Parties to this Agreement expressly agree and acknowledge that the Released Claims described and set forth in Sections I(B)(21) and II(A)(1), and the covenant described and set forth in Section II(A)(2), constitute a full and final release by the Releasing Parties of 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 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 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, including but not limited to Canada (“Other Jurisdictions”), and in the event the release set forth above is 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, the Plaintiffs and Settlement Class Counsel shall cooperate in good faith with the Released Parties or other 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 such Other Jurisdictions who purchased Freight Forwarding Services in those Other Jurisdictions from any Released Party on or between January 1, 2001 and January 4, 2011.

**B. Performance By Settling Defendant.**

1. Settlement Payments.

a. Within thirty (30) United States business days of the Effective Date, Settling Defendant or its designee shall wire transfer pursuant to instructions from Settlement Class Counsel three hundred and fifty thousand in United States dollars (\$350,000) to the Escrow Agent.

b. Settling Defendant agrees to transfer to Plaintiffs and the Settlement Class seventy-five percent (75%) of all proceeds it or any of its predecessors, successors, affiliates, parents, subsidiaries or assigns has already received or may receive in the future resulting from the Air Cargo Litigation, as defined below.

c. “Air Cargo Litigation” 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 claim Settling Defendant may assert as an opt-out plaintiff in that litigation.

d. Plaintiffs recognize and acknowledge that the Settling Defendant has entered into an agreement with Rodriguez, O’Donnell, Gonzalez & Williams P.C. (the “Firm”)

pursuant to which the Firm has agreed to take all necessary steps to obtain any proceeds to which the Settling Defendant is entitled as a result of settlements in the Air Cargo Litigation, in return for a fee of 25% of those proceeds. Plaintiffs agree that the Firm will continue to perform those services, and Settling Defendant shall turn over its 75% share of any proceeds as provided below. Except for providing cooperation as set forth in subparagraph (f) below, the Settling Defendant herein shall have no obligations to Plaintiffs or the Settlement Class or the Firm for anything relating to the Air Cargo Litigation, including the costs and expenses of Plaintiffs, the Settlement Class, Class Counsel and the Firm in connection therewith.

e. Within fifteen (15) calendar days of Preliminary Approval of this Settlement Agreement, Settling Defendant shall transfer to the Settlement Fund 75% of the Air Cargo Litigation settlement proceeds it has already received (\$905,993.00). After Preliminary Approval, Settling Defendant agrees to transfer or assign to the Settlement Fund 75% of the Air Cargo Litigation settlement proceeds it receives within fifteen (15) calendar days of receipt.

f. Settling Defendant shall continue to file timely claim forms and take all known necessary steps to recover all known and available recoveries or proceeds from the Air Cargo Litigation as a putative class member. This provision does not create any obligation of Settling Defendant to object to any settlement in the Air Cargo Litigation.

2. Cooperation.

The Settling Defendant shall provide the following information to Settlement Class Counsel:

a. Within thirty (30) calendar days after the Effective Date, or within such other time as the Parties shall agree, Settling Defendant shall produce to Settlement Class Counsel:

1. copies of Documents produced to the U.S. Department of Justice by Settling Defendant (or its Counsel on Settling Defendant's behalf), concerning Freight Forwarding Services within, to, or from the United States, that are reasonably available and in the possession of Settling Defendant on the Effective Date, produced in the same format as produced to the Department of Justice. If Settling Defendant did not retain copies of any such Documents it produced to the Department of Justice, it shall request copies from the Department of Justice.

2. a sworn statement obtained by Settling Defendant (or its Counsel on Settling Defendant's behalf) from a now former employee of Settling Defendant who attended a meeting related to the Peak Season Surcharge, during which the Complaint alleges there were conspiratorial discussions.

b. Authentication of Documents. Settling Defendant agrees to use reasonable efforts to provide affidavits and, if reasonably necessary, produce at trial and/or deposition, up to three (3) representatives of its choice qualified to testify as to the facts related to authentication of any of Settling Defendant's Documents produced at any time pursuant to this Settlement Agreement or in the course of the litigation of the Actions. Settling Defendant agrees to produce at trial and/or deposition, or through affidavits or declarations, additional representatives of its 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.

c. Confidentiality and Protective Order. Settling Defendant shall have the right to invoke the Protective Order entered in this case with respect to any documents or information produced pursuant to this Agreement or produced in the past, and the Protective Order shall remain in full force and effect.

3. CAFA Notice.

Settling Defendant shall timely fulfill its obligations under the Class Action Fairness Act, 28 U.S.C. § 1715, Pub. L. 109-2, 119 Stat. 4 (2005).

**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 such time as the funds in the Settlement Fund are fully distributed or are returned to the Settling Defendant pursuant to this Settlement Agreement and/or further order of the Court, as follows:

1. The Settlement Fund shall be established as an escrow account at U.S. Bank National Association, or other bank as designated by Settlement Class Counsel and administered by U.S. Bank or other Escrow Agent designated by Settlement Class Counsel, as approved by Settling Defendant's Counsel. Counsel for the Parties agree to cooperate in good faith to form an appropriate escrow agreement in conformance with this Agreement.

2. The costs associated with providing notice to the class, obtaining approval of the Settlement, or administering the Settlement will be drawn from the Settlement Fund. Settlement Class Counsel may, with prior order of the Court, withdraw from the Settlement Fund up to \$250,000 to pay costs of notice to the class in this Action and other costs related to settlement administration, including but not limited to costs for mail and publication notice and obtaining preliminary and final approval of this settlement and payment of experts on class publication or other issues relating to notice, preliminary approval or final approval. Any funds so disbursed, or

expenses incurred by Settlement Class Counsel in reliance on such right to disburse after notice of the prior settlements is mailed, shall not be refunded even if this Settlement is not approved by the Court, or if for any other reason, the Settlement is not completed.

3. Other than the monies referenced in Section II(C)(2) above, no monies shall be paid or disbursements made from the Settlement Fund without an order of the Court or the specific authorization of both Settlement Class Counsel and Settling Defendant's Counsel, and 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 transfer into the Settlement Fund pursuant to Section II(B)(1), neither the Settling Defendant nor Settling Defendant's 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 Defendant nor the Settling Defendant's 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 executes a written release in favor of the Released Parties of all Released Claims.

**D. Option to Terminate Based on Exclusions.**

Settling Defendant 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 July 30, 2013, 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 allowable by law and/or the Court, filed and maintained with the Court under seal; or (ii) the Court



otherwise orders the Supplemental Agreement 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 or to pay or reimburse Settling Defendant for any sums expended for the costs of class notice or otherwise expended in accordance with Court orders.

**E. No Reversion.**

Settling 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 Defendant shall use their best reasonable 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 Defendant 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 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. 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 Defendant, requesting entry of an order preliminarily approving the

settlement and authorizing dissemination of Class Notice to the Settlement Class ("Preliminary Order"). That proposed 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
- e. 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(A) 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. To the extent they have not already done so, Settling Defendant will provide to Settlement Class Counsel the names and addresses of potential Settlement Class Members from reasonably available records, in compliance with the Court's Order of September 29, 2011.

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, and 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.

The Class Notice shall provide for a right of exclusion, as set forth in Section II(F)(4), 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 also shall provide for a right to object, as set forth in Section II(F)(5). Individual notice of the Settlement shall be sent by Settlement Class Counsel/claims administrator to Persons that, to the extent permitted by applicable law, are identified by Settling Defendant 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.

4. 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 state: (a) 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) provide a signed statement that "I/we hereby request that I/we be excluded from the proposed settlement with SDV Logistique Internatinoale in *Precision Associates, Inc., et al. v. Panalpina World Transport (Holdings) Ltd, et al.*, No.

08-CV-0042 (JG) (VVP) (E.D.N.Y.)." Furthermore, each Person seeking exclusion from the settlement class shall identify all Freight Forwarders from whom the Settlement Class Member purchase Freight Forwarding Services and an estimate of the total amount of direct purchases (by dollar volume) of Freight Forwarding Services and (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 Defendant's 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 seven days after the Court-ordered deadline for timely requests for exclusion from the Class, cause to be provided to Settling Defendant's Counsel a list of those Class Members who have timely excluded themselves from the Class.

5. Right to Object. Any Person who has not requested exclusion from this 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 the date set by the Court and mailed to Settlement Class Counsel and Settling Defendant's Counsel at the addresses provided in the Class Notice and postmarked (or mailed by overnight delivery) no later than the date set forth in the Class Notice. 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.

6. Final Approval. If this Settlement Agreement is preliminarily approved by the Court, Plaintiffs and the Settlement Class shall 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(A)(1) 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 directing that the judgment of dismissal as to the Released Parties shall be final and entered forthwith.

7. 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, as approved by the Court and pursuant to the Court-approved notification plan, but limited by the terms of Section II(C)(2). With the object of reducing the costs of notice, Settlement Class Counsel may 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.

8. Class Counsel Fees and Expenses; No Other Costs.

a. Except as otherwise expressly provided in this Settlement Agreement, Settling Defendant 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 Defendant shall bear its own attorneys' fees, costs and expenses.

b. Settlement Class Counsel may seek, after proper notice to the Settlement Class and opportunity to object, a court order awarding reasonable attorneys' fees and reimbursement of their costs and 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 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 Defendant 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.

9. When Settlement Becomes Final. 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, 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.

10. Termination and Rescission.

a. If the Court declines to grant either preliminary or final approval (as set forth in Sections II(F)(2) or (F)(6) above, respectively) to this Settlement Agreement or any material part hereof; 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 Defendant 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 its election to do so ("Termination Notice") to each other within thirty (30) calendar days of such Triggering Event. For purposes of this Section, a material modification includes, but is not limited to, the scope of the Released Claims or the settlement payments pursuant to Section II(B)(1).

b. Termination of Settlement. In the event of a Triggering Event and the



exercise by either party of a right to rescind this Settlement Agreement, then: (i) within thirty (30) calendar days, the Settlement Fund (including accrued interest) less expenses and costs that have been disbursed pursuant to Court order and/or in accordance with Section II(C)(2), shall be refunded by the Escrow Agent to the Settling Defendant pursuant to written instructions from Settling Defendant's 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.

11. No Admission.

a. Nothing in this Settlement Agreement constitutes an admission of unlawful conduct by Settling Defendant as to the allegations made in these Actions, an admission by Plaintiffs of the validity of any defenses that could be asserted by Settling Defendant, or the appropriateness of certification of any litigation class under Rule 23 of the Federal Rules of Civil Procedure. This Settlement Agreement is without prejudice to the rights of Settling Defendant 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, or utilized in any manner whatsoever as,

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, including the Supplemental Agreement, dated July 30, 2013) is in issue, or to enforce or effectuate provisions of this Settlement Agreement, the accompanying Supplemental Agreement, dated July 30, 2013, 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 Defendant filing the Settlement Agreement and/or the Order and Final Judgment in any other action that may be brought against it 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 Defendant pertaining to the Settlement of the Actions against Settling Defendant and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Settling Defendant 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 Defendant, subject (if after preliminary or final approval by any court) 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 Defendant 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 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 Defendant or its Counsel pursuant to any obligations Settling Defendant has pursuant to the Agreement shall constitute or is 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 Defendant, 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 Defendant, 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 Defendant 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 Defendant 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 Settling Defendant, to its representatives at the address set forth below, or such other address as 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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**For Settling Defendant:**

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New York, NY 10022  
Telephone: (212) 918-3000  
Facsimile: (212) 918-3100

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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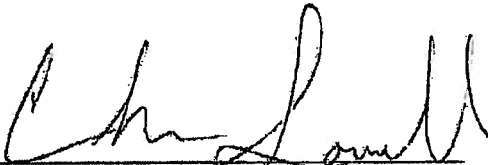
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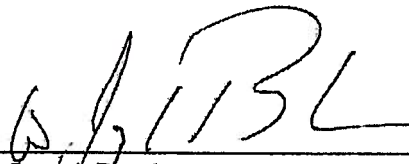
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