

**CANADIAN CHOCOLATE CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made on July 26, 2012

Between

**DAVID OSMUN, METRO (WINDSOR) ENTERPRISES INC.,
GAETAN ROY, JACOB STUART MAIN AND JENNIFER MAYNARD**

(the "Main Plaintiffs")

and

**CHRISTOPHER CONWAY, SHEILA DOBIE, MICHAEL LINDEBACH,
VIKTORIYA SAMARINA, DAVID WILLIAM COWAN, JEREMY MCINTYRE,
GAVIN CRAWFORD, BRIAN KJELSHUS, ROSALYN GOLFMAN, DANIEL
PAWLACHUK, BEVERLY BRANTH, AZIK EBERT, BARRETT THOMPSON,
RICK THOMPSON, WILLIAM KELLY AND
GERALD LEDREW**

(the "Additional Plaintiffs")

and

MARS CANADA INC.

(the "Settling Defendant")

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**CANADIAN CHOCOLATE CLASS ACTIONS
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RECITALS

A. WHEREAS the Main Plaintiffs have commenced the Main Proceedings in the Courts and allege that the Defendants participated in an unlawful conspiracy to raise, maintain, fix, or stabilize the price of Chocolate Products in Canada and/or to allocate markets and customers for the sale of Chocolate Products in Canada, contrary to Part VI of the *Competition Act* and common law, and the Main Plaintiffs claim class-wide damages allegedly caused as a result of the same;

B. AND WHEREAS the Additional Plaintiffs have commenced the Additional Proceedings in the Ontario Court, the BC Court and a number of other courts in Canada which make similar allegations against the Defendants as well as against other parties related to the sale of Chocolate Products in Canada, and the Additional Plaintiffs claim similar class-wide damages;

C. AND WHEREAS the Defendant, Mars, Incorporated, does not conduct business in Canada and did not sell Chocolate Products in Canada during the Class Period or any other relevant time;

D. AND WHEREAS the Settling Defendant did sell Chocolate Products in Canada during the Class Period but vigorously denies any and all liability in respect of all claims alleged in the Canadian Proceedings, and strongly asserts that it has complete defences in respect of the merits in the Canadian Proceedings;

E. AND WHEREAS the Settling Defendant would have actively and diligently pursued all of its defences in respect of the merits had this settlement not occurred and the Canadian Plaintiffs continued the Canadian Proceedings against it;

F. AND WHEREAS, despite its strong belief that it is not liable in respect of any of the claims as alleged in the Canadian Proceedings and that it has complete defences in respect of the merits, the Settling Defendant has entered into this Settlement Agreement solely to avoid the further considerable expense, inconvenience, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation, to achieve final resolutions of all

claims asserted or which could have been asserted against the Releasees by the Canadian Plaintiffs on their own behalf and on behalf of the Settlement Class, and to avoid the risks inherent in uncertain, complex and protracted litigation;

G. AND WHEREAS counsel for the Settling Defendant has engaged in extensive arm's-length settlement discussions and negotiations with Class Counsel in respect of this Settlement Agreement relating to Canada;

H. AND WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendant and the Main Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement of the Canadian Proceedings between the Settling Defendant and the Main Plaintiffs, both individually and on behalf of the Settlement Class, subject to approval of the Courts;

I. AND WHEREAS the Additional Plaintiffs have agreed to join and abide by this Settlement Agreement on the basis that the terms of this Settlement Agreement are in the best interests of the Settlement Class;

J. AND WHEREAS the Canadian Plaintiffs have agreed to accept this settlement because of the value of the Settlement Amount paid under this Settlement Agreement, as well as the attendant risks of litigation in light of the defences that would be asserted by the Settling Defendant and Mars, Incorporated.

K. AND WHEREAS the Settling Defendant does not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Canadian Proceedings and has always and will continue to deny all such allegations;

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

M. AND WHEREAS the Canadian Plaintiffs, Class Counsel, and Additional Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Canadian Plaintiffs' claims, and having regard to the burdens and expense in prosecuting the Canadian Proceedings, including the risks and uncertainties associated with trials and appeals, the Canadian Plaintiffs, Class Counsel, and Additional Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Canadian Plaintiffs and the Settlement Class;

N. AND WHEREAS the Settling Defendant is entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Releasees by the Canadian Plaintiffs and the Settlement Class, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

O. AND WHEREAS as a necessary and integral part of this final and nation-wide resolution, the Settling Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against the Releasees by ITWAL in the Canadian Proceedings or in any other proceedings, taking into account that ITWAL was a purchaser of Chocolate Products during the Settlement Class Period and that ITWAL, as a Defendant in the Canadian Proceedings, is an Excluded Person;

P. AND WHEREAS the Canadian Plaintiffs have entered into the ITWAL Settlement Agreement with ITWAL and this Settlement Agreement is subject to the condition, among others, that the ITWAL Entities have absolutely and unconditionally assigned and transferred to the Settlement Class any and all right, title and interest that the ITWAL Entities have ever held, now hold or may hereafter hold in respect of the ITWAL Claims;

Q. AND WHEREAS the Canadian Plaintiffs and the Settlement Class Members intend to fully and completely settle and resolve all of their claims, including the ITWAL Claims, as against the Releasees on the Effective Date pursuant to this Settlement Agreement;

R. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Canadian Proceedings as against all of the Releasees;

S. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the Main Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in each of the Main Proceedings;

T. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Main Plaintiffs have consented to a dismissal of the Main Proceedings as against any and all Releasees named as Defendants in the Main Proceedings, and the Additional Plaintiffs have consented to a dismissal of the Additional Proceedings as against any and all Releasees named as Defendants in the Additional Proceedings;

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

V. AND WHEREAS the deadline for Settlement Class Members to opt-out of the Main Proceedings has passed, with no opt-outs occurring;

W. NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Canadian Proceedings be settled and dismissed with prejudice as to all Releasees, without costs as to the Canadian Plaintiffs, the Settlement Class, or the Releasees, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 – DEFINITIONS

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

(1) *Additional Counsel* means counsel for the Additional Plaintiffs.

(2) *Additional Plaintiffs* mean the individuals and entities named as plaintiffs in the Additional Proceedings.

- (3) ***Additional Proceedings*** mean the actions or proceedings listed in Schedule "A" to the Settlement Agreement.
- (4) ***Administration Expenses*** mean all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Canadian Plaintiffs, Class Counsel, Additional Counsel or otherwise for the approval, implementation and operation of the Settlement Agreement, including the costs of Notices, the Escrow Agent, and claims administration but excluding Class Counsel Fees.
- (5) ***Approval and Certification Hearings*** mean the hearings of the motions brought by Class Counsel for the certification of the Main Proceedings as against the Settling Defendant and for the Courts' approval of the Settlement Agreement.
- (6) ***BC Counsel*** means Camp Fiorante Matthews and Branch MacMaster LLP.
- (7) ***BC Court*** means the Supreme Court of British Columbia.
- (8) ***BC Proceeding*** means the proceeding commenced by Jacob Stuart Main in the form of an action filed in the BC Court (Vancouver registry), Court File No. S078807, filed on December 24, 2007, and in respect of which Jennifer Maynard was added as a plaintiff on May 22, 2012.
- (9) ***BC Settlement Class*** means all Persons resident in British Columbia who, during the Settlement Class Period, purchased Chocolate Products in Canada, except the Excluded Persons.
- (10) ***Canadian Plaintiffs*** mean the Main Plaintiffs and the Additional Plaintiffs.
- (11) ***Canadian Proceedings*** mean the Main Proceedings and the Additional Proceedings.
- (12) ***Chocolate Products*** mean any and all chocolate confectionary products of the Defendants sold in Canada.
- (13) ***Claims Administrator*** means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Agreement, including the claims process, in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such Person.

(14) ***Class Counsel*** means Ontario Counsel, Quebec Counsel and BC Counsel who act as class counsel in the Main Proceedings.

(15) ***Class Counsel Fees*** include the fees, disbursements, costs, interest, and other applicable taxes or charges of Class Counsel, including any applicable GST, HST or QST.

(16) ***Common Issue*** in each Main Proceeding means: Did the Settling Defendant conspire to raise, maintain, fix or stabilize the prices of, or allocate markets and customers for, Chocolate Products in Canada during the Settlement Class Period? If so, what damages did Settlement Class Members suffer?

(17) ***Courts*** mean the Ontario Court, the Quebec Court and the BC Court.

(18) ***Defendants*** mean the individuals and entities named as defendants in the Main Proceedings as set out in Schedule "B" to this Settlement Agreement.

(19) ***Document*** has the meaning given to that term in rule 30.01(1)(a) of the *Ontario Rules of Civil Procedure*.

(20) ***Distribution Protocol*** means the plan developed by Class Counsel for distributing the Settlement Amount and accrued interest, in whole or part, as approved by the Courts.

(21) ***Effective Date*** means the date immediately when the Final Orders have been received from the Courts approving the Settlement Agreement.

(22) ***Escrow Agent*** means the Person agreed to by the Settling Defendant and Class Counsel to hold and administer the Trust Account.

(23) ***Excluded Person*** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing. For greater certainty, Excluded Person shall not include a purchaser of Chocolate Products from ITWAL, and Excluded Person shall not include a Person that has received an assignment of rights under the terms of the ITWAL Settlement Agreement.

(24) **Final Order** means a final order made by a Court in respect of the approval of the Settlement Agreement once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of the Settlement Agreement upon a final disposition of all appeals.

(25) **ITWAL** means ITWAL Limited.

(26) **ITWAL Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, including for certain, that the ITWAL Entities, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing or distributing of Chocolate Products, or relating to any conduct alleged (or which could have been alleged) in the Canadian Proceedings or the Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or combination or as a result of or in connection with any other alleged unlawful horizontal or vertical anti-competitive conduct in connection with the purchase, sale, pricing, discounting, marketing or distributing of Chocolate Products in Canada and including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the date hereof in respect of any agreement or conduct that occurred prior to the date hereof.

(27) **ITWAL Defendants** means ITWAL and Glenn Stevens.

(28) **ITWAL Entities** means, jointly and severally, individually and collectively, the ITWAL Defendants and their respective parents, subsidiaries, predecessors, successors, heirs, executors, administrators, insurers and assigns.

(29) ***ITWAL Settlement Agreement*** means the executed settlement agreement made between the Canadian Plaintiffs and ITWAL in respect of the Canadian Proceedings, dated October 2, 2009, including the recitals and schedules to that agreement, and the executed amending agreement made between the Canadian Plaintiffs, Cadbury Adams Canada Inc., Cadbury Holdings Limited and ITWAL, dated April 19, 2010.

(30) ***Main Plaintiffs*** mean the individuals and entities named as plaintiffs in the Main Proceedings.

(31) ***Main Proceedings*** mean the Ontario Proceeding, the Quebec Proceeding and the BC Proceeding listed in Schedule "B" to this Settlement Agreement.

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

(33) ***Notice of Approval and Certification Hearings*** means the form or forms of notice, agreed to by the Main Plaintiffs and the Settling Defendant, or such other form or forms as may be approved by the Courts, which inform the Settlement Class of the dates and locations of the Approval and Certification Hearings and the principal elements of the Settlement Agreement.

(34) ***Notice of Settlement Approval and Claims Procedure*** means the form or forms of notice, agreed to by the Main Plaintiffs and the Settling Defendant, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the approval of the Settlement Agreement; (ii) the certification or authorization of the Main Proceedings as class proceedings as against the Settling Defendant for settlement purposes; and (iii) the process by which Settlement Class Members may apply to obtain compensation from the Settlement Amount.

(35) ***Notices*** mean the Notice of Approval and Certification Hearings, the Notice of Settlement Approval and Claims Procedure, and any notice of termination.

(36) ***Ontario Counsel*** means Sutts, Strosberg LLP and Siskinds LLP.

- (37) **Ontario Court** means the Ontario Superior Court of Justice.
- (38) **Ontario Proceeding** means the proceeding commenced by David Osmun and Metro (Windsor) Enterprises Inc. in the form of a Notice of Action and Statement of Claim filed in the Ontario Court (Toronto registry), Court File No. 08-CV-347263PD2 (Toronto), filed respectively on January 17, 2008 and on February 4, 2008.
- (39) **Ontario Settlement Class** means all Persons in Canada who, during the Settlement Class Period, purchased Chocolate Products in Canada, except the Excluded Persons and Persons who are included in the Quebec Settlement Class and the BC Settlement Class.
- (40) **Other Actions** mean actions or proceedings, other than the Main Proceedings and Additional Proceedings, relating to the Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (41) **Parties** mean the Canadian Plaintiffs, the Settlement Class Members and the Settling Defendant.
- (42) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (43) **Proportionate Liability** means the proportion of any judgment that, had they not settled, the Ontario or BC Court would have apportioned to the Releasees.
- (44) **Quebec Counsel** means Siskinds Desmeules S.E.N.C.R.L.
- (45) **Quebec Court** means the Superior Court of Quebec.
- (46) **Quebec Proceeding** means the proceeding commenced by Gaetan Roy in the form of an application for authorization (la Requete pour obtenir l'autorisation d'exercer un recours collectif) in the Quebec Superior Court (Quebec City registry), Court File No. 200-06-000094-071, filed on November 28, 2007.

(47) **Quebec Settlement Class** means all individuals resident in Quebec who, during the Settlement Class Period, purchased Chocolate Products in Canada, as well as any legal person resident in Quebec established for a private interest, partnership or association which, at all times between November 28, 2006 and November 28, 2007, had under its direction or control no more than 50 persons bound to it by a contract of employment, who, during the Settlement Class Period, purchased Chocolate Products in Canada, except the Excluded Persons.

(48) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity (including for certainty the ITWAL Claims that have been absolutely and unconditionally assigned to the Settlement Class under the ITWAL Settlement Agreement) that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing or distributing of Chocolate Products, or relating to any conduct alleged (or which could have been alleged) in the Canadian Proceedings or Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or combination or as a result of or in connection with any other alleged unlawful horizontal or vertical anti-competitive conduct in connection with the purchase, sale, pricing, discounting, marketing or distributing of Chocolate Products in Canada and including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the date hereof in respect of any agreement or conduct that occurred prior to the date hereof.

(49) **Releasees** mean, jointly and severally; individually and collectively, Mars Canada Inc., Mars, Incorporated, and all of their respective present and former, direct and indirect, parents, subsidiaries,

divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing (excluding always the Non-Settling Defendants and Settled Defendants and their affiliates).

(50) ***Releasors*** mean, jointly and severally, individually and collectively, the Canadian Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, predecessors, successors, heirs, executors, administrators, insurers, and assigns.

(51) ***Settled Defendants*** means any Defendant who has settled the Canadian Proceedings and whose settlement has obtained final approval of the Courts.

(52) ***Settlement Agreement*** means this agreement, including the recitals and schedules.

(53) ***Settlement Amount*** means the sum of CDN \$3.2 million.

(54) ***Settlement Class*** means all Persons included in the Ontario Settlement Class, the Quebec Settlement Class and the BC Settlement Class (considering that no member validly opted out of the Settlement Class in accordance with the order of the Ontario Court, dated December 30, 2009, the order of the BC Court dated January 10, 2010 or the order of the Quebec Court, dated February 4, 2010, as appropriate).

(55) ***Settlement Class Member*** means a Person who is a member of the Settlement Class.

(56) ***Settlement Class Period*** means February 1, 2001 to December 31, 2008.

(57) ***Settling Defendant*** means Mars Canada Inc.

(58) ***Trust Account*** means an interest bearing trust account at a Canadian Schedule 1 bank in Ontario under the control of the Escrow Agent for the benefit of Settlement Class Members.

SECTION 2 – SETTLEMENT APPROVAL

2.1 Best Efforts

(1) The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the Canadian Proceedings as against the Settling Defendant and any and all Releasees named as defendants in the Canadian Proceedings.

2.2 Motions Approving Notice and Authorizing and Certifying Actions

(1) At a time mutually agreed to by the Main Plaintiffs and the Settling Defendant after this Settlement Agreement is executed, the Main Plaintiffs shall bring motions before the Courts for orders approving the Notice of Approval and Certification Hearings described in section 10.1.

(2) As soon as practicable after the orders referred to in sections 2.2(1) are granted, and after the Notice of Approval and Certification Hearings has been published, the Main Plaintiffs shall bring motions before the Courts for orders certifying or authorizing as against the Settling Defendant each of the Main Proceedings commenced in their respective jurisdictions as a class proceeding for settlement purposes only and approving and enforcing the Settlement Agreement.

2.3 Agreement on Form of Orders

(1) It is a fundamental term of this Settlement Agreement that the Main Plaintiffs and the Settling Defendant must agree on the form and content of the orders to be sought pursuant to sections 2.2(1) and 2.2(2), including the form of notice, and every order and notice must be consistent with the terms of the Settlement Agreement. If agreement on the form and content of the orders, including the related form of notice, is not reached within a reasonable period of time, the Settling Defendant and the Main Plaintiffs shall have a right of termination pursuant to section 13.1.

(2) The form and content of the orders agreed upon pursuant to section 2.3(1) shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the form and content of the orders agreed upon shall give rise to a right of termination pursuant to section 13.1.

2.4 Pre-Motion Confidentiality

(1) Until the first of the motions required by section 2.2(1) is brought, the Parties shall keep all of the terms of the Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for the Settling Defendant and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law.

2.5 Sequence of Motions

(1) The Main Plaintiffs and Settling Defendant agree to request that the Courts hold joint hearings to consider the motions required by section 2.2 pursuant to the Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions.

(2) If the Courts do not agree to hold joint hearings pursuant to section 2.5(1), the Main Plaintiffs in Quebec and British Columbia shall not proceed with a motion to certify or authorize the Quebec and BC Proceedings and approve the Settlement Agreement unless and until the Ontario Court certifies the Ontario Proceeding as against the Settling Defendant for settlement purposes and approves the Settlement Agreement. The certification or authorization and approval motions may be filed in Quebec and British Columbia, but, if necessary, Quebec and BC Counsel will seek an adjournment of their hearings to permit the Ontario Court to first render its decision on the certification and settlement approval motion. The Settling Defendant may agree to waive this provision.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Except as otherwise provided in section 10.1(2) in respect of the Settling Defendant, the Releasees have no obligation to pay any amount other than the Settlement Amount, for any reason, pursuant to or in furtherance of the Settlement Agreement.

(2) Within 30 days of execution of the Settlement Agreement, the Settling Defendant shall pay the Settlement Amount to the Escrow Agent, which payment shall be in full satisfaction of all settlement payment obligations under the Settlement Agreement and in full satisfaction of the Released Claims against the Releasees, subject to section 10.1(2).

(3) The Escrow Agent shall maintain the Trust Account as provided for in the Settlement Agreement. The Escrow Agent shall not pay out all or part of the monies in the Trust Account, except in accordance with the Settlement Agreement or in accordance with an order of the Courts obtained on motion, and in any event, after all appeals related thereto have been disposed of.

3.2 Taxes and Interest

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

(2) Subject to section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class. The Escrow Agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendant shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendant who, in such case, shall be responsible for the payment of all taxes on such interest.

SECTION 4 – DISTRIBUTION OF SETTLEMENT AMOUNT AND INTEREST

4.1 Distribution Protocol

(1) At a time within the discretion of Class Counsel, Class Counsel will seek orders from the Courts approving the Distribution Protocol.

4.2 No Responsibility for Administration or Fees

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

SECTION 5 – ITWAL SETTLEMENT AGREEMENT

5.1 Representations and Warranties Regarding the ITWAL Settlement Agreement

(1) The Main Plaintiffs and Class Counsel hereby represent and warrant that the ITWAL Entities have absolutely and unconditionally assigned and transferred to the Settlement Class any and all right, title and interest that the ITWAL Entities have ever held, now hold or may hereafter hold in respect of the ITWAL Claims on the ITWAL Effective Date. The Main Plaintiffs and Class Counsel also agree, represent and warrant that they will not take any steps to detract, diminish or further transfer the rights, titles and/or interests that have been assigned and transferred to the Settlement Class under the ITWAL Settlement Agreement.

SECTION 6 – RELEASES AND DISMISSALS

6.1 Release of Releasees

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims.

6.2 Covenant Not To Sue

(1) Notwithstanding section 6.1(1), for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the

Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

6.3 No Further Claims

(1) The Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or against any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Main Proceedings or Additional Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees.

6.4 Scope of Released Claims

(1) For greater certainty, pursuant to the definition of Released Claims in section 1 of this Settlement Agreement, the releases, covenants and undertakings granted and given by the Releasors in respect of the Released Claims on the Effective Date under sections 6.1, 6.2 and 6.3, shall include, without limitation, the ITWAL Claims that are held by the Settlement Class as Releasors on the Effective Date.

6.5 Dismissal of the Main Proceedings

(1) The Main Proceedings shall be dismissed with prejudice and without costs as against any and all Releasees that are defendants in the Main Proceedings.

6.6 Dismissal of the Additional Proceedings

(1) Upon the Effective Date, the Additional Proceedings listed in Schedule "A" shall be dismissed without costs and with prejudice against any and all Releasees that are defendants in the Additional Proceedings.

(2) Upon the Effective Date, each Additional Plaintiff shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Additional Proceedings against any and all of the Releasees.

(3) The Main Plaintiffs and Settling Defendant agree to request that the Canadian courts in which Additional Proceedings have been commenced hold joint hearings to consider the dismissals required by section 6.6(1), pursuant to the Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions. If the Canadian courts do not agree to hold joint hearings, the Additional Plaintiffs shall bring separate motions or applications to obtain the dismissals required by section 6.6(1).

6.7 Dismissal of the Other Actions

(1) Upon the Effective Date, the Other Actions that were commenced in Ontario, British Columbia or any other jurisdiction in Canada except Quebec by any Settlement Class Member shall be dismissed against any and all Releasees who are named as defendants, without costs and with prejudice.

(2) Upon the Effective Date, each member of the Ontario Settlement Class and the British Columbia Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.

(3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Releasees.

(4) Each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed against the Releasees, without costs and without reservation.

6.8 Claims Against Other Entities Reserved

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

6.9 No Assistance to Other Plaintiffs

(1) As of the date of the execution of the Settlement Agreement, the Canadian Plaintiffs, the Settlement Class Members, Class Counsel, and Additional Counsel shall not, without the express written consent of the Settling Defendant, provide any direct or indirect assistance to any plaintiff or any plaintiff's counsel that assert or seek to assert claims or make allegations that relate to, are in connection with or arise from the Released Claims against any of the Releasees, except in the event that a court in Canada expressly directs the Canadian Plaintiffs, the Settlement Class Members, Class Counsel, or Additional Counsel to provide such assistance. In no circumstances, however, may the Canadian Plaintiffs, the Settlement Class Members, Class Counsel, and/or Additional Counsel apply for or consent to such an order, and promptly upon becoming aware of an application for such an order, Class Counsel shall immediately notify the Settling Defendant of the application in order that any Releasee may intervene in such proceedings.

6.10 Releases

(1) The releases contemplated in this section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to section 13.1 of the Settlement Agreement.

SECTION 7 – BAR ORDER AND OTHER CLAIMS

7.1 Ontario and British Columbia Bar Order

(1) The Main Plaintiffs in the Ontario Proceeding and the BC Proceeding shall seek a bar order from the Ontario and BC Courts providing for the following:

- (a) All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims which were or could have been brought in the Canadian Proceedings, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against any Non-Settling Defendant or any other Person or party (excepting (i) a claim by a Releasee against any Person

excluded in writing from the definition of Releasees; and (ii) a claim by a Releasee pursuant to a policy of insurance, provided any such claim involves no right of subrogation against any Non-Settling Defendant), are barred, prohibited and enjoined in accordance with the terms of the order.

- (b) If the Ontario or BC Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
 - (i) the Ontario or BC Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise; and,
 - (ii) the Ontario or BC Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario or BC Proceeding, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario or BC Proceeding and any determination by the Ontario or BC Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario or BC Proceedings and shall not be binding on the Releasees in any other proceedings.
- (c) A Non-Settling Defendant may, on motion to the Ontario or BC Court brought on at least ten (10) days notice and to be determined as if the Settling Defendant is a party to the Ontario or BC Proceeding, not to be brought until the Ontario or BC Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal from such certification have been exhausted, seek orders for the following:

- (i) documentary discovery and an affidavit of documents in accordance with the relevant rules of civil procedure from the Settling Defendant;
- (ii) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
- (iii) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
- (iv) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendant.

(2) The Settling Defendant retains all rights to oppose such motion(s) brought under section 7.1(1)(c).

(3) A Non-Settling Defendant may serve the motion(s) referred to in section 7.1(1)(c) on the Settling Defendant by service on counsel of record for the Settling Defendant in the Main Proceedings.

(4) To the extent that an order is granted pursuant to section 7.1(1)(c) and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall promptly be provided by the Settling Defendant to the Main Plaintiffs and Class Counsel.

7.2 Quebec Bar Order

(1) The Main Plaintiffs in the Quebec Proceeding shall seek a bar order from the Quebec Court providing for the following:

- (a) the Main Plaintiffs in Quebec and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of the Releasees;

- (b) the Main Plaintiffs in Quebec and the Quebec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and/or sales by the Non-Settling Defendants;
- (c) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims (including, without limitation, the ITWAL Claims held and released by the Settlement Class as Released Claims) shall be inadmissible and void in the context of the Quebec Proceeding; and
- (d) that any future right by the Non-Settling Defendants to examine on discovery a representative of the Settling Defendant will be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendant shall reserve its right to oppose such an examination under the *Code of Civil Procedure*.

7.3 Material Term

- (1) The form and content of the bar orders contemplated in this section 7 shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the bar orders contemplated herein shall give rise to a right of termination pursuant to section 13.1 of the Settlement Agreement.

SECTION 8 – EFFECT OF SETTLEMENT

8.1 No Admission of Liability

- (1) The Canadian Plaintiffs and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, the Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with the

Settlement Agreement, and any action taken to carry out the Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any Releasee, or of the truth of any of the claims or allegations contained in the Canadian Proceedings, the Other Actions, or any other pleading filed by the Canadian Plaintiffs or any other Settlement Class Member.

8.2 Agreement Not Evidence

(1) Whether or not it is terminated, the Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with the Settlement Agreement, and any action taken to carry out the Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except: (a) by the Parties in a proceeding to approve or enforce the Settlement Agreement; (b) by a Releasee to defend against the assertion of a Released Claim; (c) by a Releasee in any insurance-related proceeding; or (d) as otherwise required by law or as provided in this Settlement Agreement.

8.3 No Further Litigation

(1) Except as provided in sections 8.3(2) and 8.3(4) of this Settlement Agreement, no Class Counsel, no Canadian Plaintiff, no Settlement Class Member, no Additional Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel or Additional Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to, is in connection with or arises from the Released Claims.

(2) Sections 6.9 and 8.3(1) of the Settlement Agreement, and only sections 6.9 and 8.3(1), shall be inoperative to the extent that they require any lawyer who is a member of the Law Society of British Columbia (the "LSBC") to breach his or her obligations under Rule 4.7 of the LSBC's Professional Conduct Handbook by refraining from participation or involvement in any claim or action in a British Columbia court. This section 8.3(2) shall not affect or render inoperative any other section or provision of the Settlement Agreement.

(3) No Class Counsel, no Canadian Plaintiff, no Settlement Class Member, no Additional Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel or Additional Counsel may divulge to any Person for any purpose any information obtained from the Releasees in the course of the Main Proceedings or the negotiation and preparation of the Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court in Canada.

(4) Section 8.3(1) does not apply to the involvement of any Person in the continued prosecution of the Main Proceedings against any Non-Settling Defendant or unnamed co-conspirators who are not Releasees.

SECTION 9 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

9.1 Settlement Class and Common Issue

(1) The Parties agree that the Main Proceedings shall be certified or authorized as class proceedings solely for purposes of settlement of the Canadian Proceedings and the approval of the Settlement Agreement by the Courts.

(2) The Main Plaintiffs agree that, in the motions for certification or authorization of the Main Proceedings as class proceedings and for the approval of the Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert is the Settlement Class. The Main Plaintiffs and Additional Plaintiffs acknowledge that the Settling Defendant agrees to the definition of the Common Issue for purposes of settlement only.

9.2 Certification or Authorization Without Prejudice

(1) In the event the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect, the Parties agree that any prior certification or authorization of a Main Proceeding as a class proceeding, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any

position that any of the Parties or any Releasee may later take on any issue in the Canadian Proceedings, the Other Actions, or any other litigation.

SECTION 10 – NOTICE TO SETTLEMENT CLASS

10.1 Notice Required

(1) The Settlement Class shall be given the following Notices: (i) Notice of Approval and Certification Hearings; (ii) Notice of Settlement Approval and Claims Procedure; and (iii) termination of this Settlement Agreement if it is terminated after notice provided in accordance with (i) above or as otherwise ordered by the Courts.

(2) In the event that the motions required by section 2.2 do not proceed in conjunction with settlement approval motions involving another Defendant, the Settling Defendant will contribute up to CDN \$86,000 towards the costs of the Notices required by section 10.1, which contribution would be in addition to the Settlement Amount and would be paid to the Escrow Agent to be added to the Trust Account.

10.2 Form and Distribution of Notice

(1) The form of the Notices referred to in section 10.1 and the manner of their publication and distribution shall be as agreed to by the Main Plaintiffs and the Settling Defendant and approved by the Courts.

10.3 Notice of Distribution

(1) Except to the extent provided for in the Settlement Agreement, the Courts shall determine the form of notice in respect of the administration of the Settlement Agreement and the Distribution Protocol, on motions brought by Class Counsel.

SECTION 11 – ADMINISTRATION AND IMPLEMENTATION

11.1 Mechanics of Administration

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

11.2 Information and Assistance

(1) The Settling Defendant will make reasonable efforts to compile a list of the names and addresses of Persons in Canada who purchased Chocolate Products directly from the Settling Defendant in Canada during the Settlement Class Period, together with information regarding the value of sales of Chocolate Products to those Persons during the Settlement Class Period.

(2) The information required by section 11.2(1) shall be delivered to Class Counsel within thirty (30) business days of the date of execution of the Settlement Agreement.

(3) Class Counsel shall maintain the information provided under section 11.2(2) as confidential, and may only use this information for the following purposes:

- (a) to facilitate the dissemination of the notices required in section 10.1(1);
- (b) to advise Persons in Canada who purchased Chocolate Products from the Settling Defendant in Canada during the Settlement Class Period of any subsequent settlement agreement reached in the Main Proceedings, any related approval hearings, and any other major steps in the Main Proceedings; and
- (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement achieved in the Main Proceedings.

(4) If this Settlement Agreement is terminated, all information provided by the Settling Defendant pursuant to section 11.2 shall be returned or destroyed forthwith, no record of the information so provided shall be retained by Class Counsel in any form whatsoever, and the

information so provided may not be used or disclosed, directly or indirectly, in any form or manner by Class Counsel or by the Claims Administrator.

SECTION 12 – CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

(1) The Escrow Agent shall pay the costs of the Notices required by section 10.1 from the Trust Account.

(2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of the Settlement Agreement, or at such other time as they shall determine in their sole discretion. The Settling Defendant will not oppose Class Counsel's motion for payment of Class Counsel Fees.

(3) Except as provided in sections 12(1) and 12(2), Class Counsel Fees and Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Releasees shall not be liable for any fees, disbursements or taxes, including but not limited to any fees, disbursements or taxes of Class Counsel's, Additional Counsel's, the Main Plaintiffs', the Additional Plaintiffs' or any Settlement Class Member's respective lawyers, experts, advisors, agents, or representatives.

SECTION 13 – TERMINATION OF SETTLEMENT AGREEMENT

13.1 Right of Termination

(1) The Settling Defendant or the Main Plaintiffs may terminate this Settlement Agreement in the event that,

- (a) The Parties do not reach agreement on the form and content of any order or notice pursuant to section 2.3(1);
- (b) the form and content of any of the Final Orders approved by the Ontario Court, the BC Court and the Quebec Court departs from the form and content of the orders agreed upon by the Main Plaintiffs and the Settling Defendant under section 2.3(1);

- (c) any Court declines to approve the Settlement Agreement or any material term or part hereof;
- (d) any Court approves the Settlement Agreement in a materially modified form; or
- (e) any orders approving the Settlement Agreement made by the Ontario Court, the BC Court or the Quebec Court do not become Final Orders.

(2) To exercise a right of termination under section 13.1(1), a terminating party shall deliver a written notice of termination pursuant to section 14.15 of the Settlement Agreement. Upon delivery of such a written notice, the Settlement Agreement shall be terminated and, except as provided for in section 13.4, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by any Court that is not substantially in the form and content of the respective Final Order, as agreed upon by the Main Plaintiffs and the Settling Defendant in accordance with section 2.3(1), shall be deemed to be a material modification of the Settlement Agreement and shall provide a basis for the termination of the Settlement Agreement, provided however that the Settling Defendant may agree to waive this provision.

(4) Any order, ruling or determination made by any Court with respect to Class Counsel Fees or the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of the Settlement Agreement and shall not provide any basis for the termination of the Settlement Agreement.

13.2 If Settlement Agreement is Terminated

(1) In the event the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Parties agree that:

- (a) no motion to certify or authorize any of the Main Proceedings as a class proceeding on the basis of the Settlement Agreement or to approve the Settlement Agreement, which has not been decided, shall proceed;

- (b) any order certifying or authorizing a Main Proceeding as a class proceeding on the basis of the Settlement Agreement or approving the Settlement Agreement shall be set aside and declared null and void and of no force and effect, and anyone shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of a Main Proceeding as a class proceeding, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Canadian Proceedings or any other litigation; and
- (d) the Parties shall negotiate in good faith to determine a new timetable, if the Canadian Proceedings are to continue against any of the Releasees who are named as Defendants.

13.3 Allocation of Monies in the Trust Account Following Termination

(1) If the Settlement Agreement is terminated, the Escrow Agent shall pay to the Settling Defendant the Settlement Amount plus all accrued interest thereon, less the costs of the Escrow Agent, and less the costs of the Notices required by section 10.1, within thirty (30) business days of the Escrow Agent being advised in writing that the Settlement Agreement has been terminated in accordance with its terms. The Releasees and the Canadian Plaintiffs expressly reserve all of their respective rights if the Settlement Agreement is terminated.

13.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.2, 8, 9.2, 10, 11.2(4), 12(1), 12(4) and 13 shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of the Settlement Agreement, but for no other purposes. All other provisions of the Settlement Agreement and all other obligations pursuant to the Settlement Agreement shall cease immediately.

SECTION 14 – MISCELLANEOUS

14.1 Releasees Have No Liability for Administration

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

14.2 Motions for Directions

(1) The Settling Defendant or the Main Plaintiffs may apply to the Ontario Court for directions in respect of the interpretation, implementation and administration of the Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate specifically to the matters affecting the BC or Quebec Proceeding or/and BC or Quebec Settlement Class Members shall be determined by the Ontario Court.

(2) Class Counsel may apply to the Courts for directions in respect of the Distribution Protocol.

(3) All motions contemplated by or referred to in this Settlement Agreement (including the motions referred to in section 10.3(1)) shall be on notice to the Main Plaintiffs and the Settling Defendant, it being agreed that the Settling Defendant does not have standing on a motion dealing solely with the distribution of the Settlement Amount as between Settlement Class Members.

14.3 Headings, etc.

(1) In the Settlement Agreement:

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

14.4 Computation of Time

(1) In the computation of time in the Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

14.5 Ongoing Jurisdiction

(1) Notwithstanding section 14.2(1), each of the Courts shall retain exclusive jurisdiction over the Main Proceeding commenced in its jurisdiction, the parties thereto and Class Counsel Fees in that Main Proceeding.

(2) The Main Plaintiffs and the Settling Defendant agree that no Court shall make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Courts with which it shares jurisdiction over that matter. Notwithstanding the above, the Ontario Court shall exercise jurisdiction with respect to implementation, administration, and enforcement of the terms of the Settlement Agreement, and the Canadian Plaintiffs, the Settlement Class Members and the Settling Defendant submit to the jurisdiction of the Ontario Court for purposes of implementing, administering, and enforcing the Settlement Agreement. Issues related to the administration of the Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a BC Settlement Class Member or a Quebec Settlement Class Member shall be determined by the Ontario Court.

14.6 Governing Law

(1) The Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

14.7 Entire Agreement

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

14.8 Amendments

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

14.9 Binding Effect

(1) The Settlement Agreement shall be binding upon, and enure to the benefit of, the Canadian Plaintiffs, the Settling Defendant, the Settlement Class Members, the Releasers, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Canadian Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made herein by the Settling Defendant shall be binding upon all of the Releasees.

14.10 Counterparts

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

14.11 Interpretation

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

(2) The Parties acknowledge that they have required and consented that the Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, the Settling Defendant shall prepare a French translation of the Settlement Agreement including the Schedules at its expense. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of the Settlement Agreement, only the English version shall be considered.

14.12 Transaction

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

14.13 Recitals

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

14.14 Schedules

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

14.15 Notice

(1) Any and all notices, requests, directives, or communications required by the Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

For the Main Plaintiffs and for Class Counsel:

Charles M. Wright

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Barristers and Solicitors
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London, ON N6A 3V8

Tel: 519-660-7753

Fax: 519-672-6065

Email: charles.wright@siskinds.com

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Heather Rumble Peterson

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Ward Branch

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Tel: 604-654-2966

Fax: 604-684-3429

Email: wbranch@branmac.com

For the Settling Defendant:

Sandra A Forbes and Davit Akman

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Tel: 416-863-0900

Fax: 416-863-0871

Email: sforbes@dwpv.com
dakman@dwpv.com


14.16 Acknowledgements


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

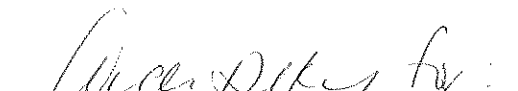
14.17 Authorized Signatures


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


Executed in counterparts as at July 26, 2012



CHARLES WRIGHT for Siskinds
Desmeules S.E.N.C.R.L. and the Main
Plaintiffs


J.J. CAMP Q.C. for Camp Fiorante
Matthews and the Main Plaintiffs


WARD BRANCH for Branch
Macmaster LLP, the Main Plaintiffs, the
Additional Plaintiffs and Additional
Counsel


ANDREA DEKAY for Siskinds LLP and the
Main Plaintiffs


HEATHER RUMBLE PETERSON for
Sutts, Strosberg LLP and the Main
Plaintiffs


SANDRA FORBES for the Settling
Defendant

SCHEDULE A

ADDITIONAL PROCEEDINGS

#	Court and File No.	Title of Additional Proceedings
1	Supreme Court of British Columbia (Victoria Registry) (Court File No. 08-0620)	Christopher Conway and Sheila Dobie v. Hershey Canada Inc, The Hershey Company, Mars Canada Inc., Mars Incorporated, Nestle Canada Inc., Nestle Inc., Cadbury Adams Canada Inc., ITWAL Limited, Glenn Stevens, Robert Leonidas and Eric Lent
2	Court of Queen's Bench of Alberta (Judicial District of Calgary) (Court File No. 080101724)	Michael Lindebach and Viktoriya Samarina v. Hershey Canada Inc., The Hershey Company, Mars Canada Inc., Mars Incorporated, Nestle Canada Inc., Nestle Inc., Cadbury Adams Canada Inc., Cadbury Schweppes PLC, ITWAL Limited, Glenn Stevens, Robert Leonidas and Eric Lent
3	Court of Queen's Bench of Alberta (Judicial District of Edmonton) (Court File No. 080302316)	David William Cowan v. Cadbury Adams Canada Inc., Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc., The Hershey Company, Hershey Canada Inc., Nestle Canada Inc. and ITWAL Limited
4	Court of Queen's Bench for Saskatchewan (Judicial Centre of Regina) (Court File No. Q.B. No. 257 of 2008)	Jeremy McIntyre and Gavin Crawford v. Hershey Canada Inc., The Hershey Company, Mars Canada Inc., Mars Incorporated, Nestle Canada Inc., Nestle Inc., Nestle S.A, Nestle USA Inc., Cadbury Adams Canada Inc., Cadbury Schweppes PLC, Cadbury Adams USA LLC, ITWAL Limited, Glenn Stevens, Robert Leonidas and Eric Lent
5	Court of Queen's Bench for Saskatchewan (Judicial Centre of Melfort) (Court File No. Q.B.G. No. 12 of 2008)	Brian Kjelshus v. Cadbury Adams Canada Inc., The Hershey Company, Hershey Canada Inc., Nestle Canada Inc., Mars, Incorporated, Mars Canada Inc., and ITWAL Limited
6	Court of Queen's Bench for Manitoba (Winnipeg Centre) (Court File No. CI-08-01-55595)	Rosalyn Golfman v. Cadbury Adams Canada Inc., Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc., The Hershey Company, Hershey Canada Inc., Nestle Canada Inc., and ITWAL Limited

#	Court and File No.	Title of Additional Proceedings
7	Court of Queen's Bench for Manitoba (Winnipeg Centre) (Court File No. CI-08-01-55648)	Daniel Pawlachuk and Beverly Branth v. Hershey Canada Inc., The Hershey Company, Mars Canada Inc., Mars Incorporated, Nestle Canada Inc., Nestle Inc., Nestle S.A., Nestle USA, Inc. Cadbury Adams Canada Inc., Cadbury Schweppes PLC, Cadbury Adams USA LLC, ITWAL Limited, Glenn Stevens, Robert Leonidas and Eric Lent
8	Supreme Court of Nova Scotia (Halifax) (Court File No. 292103)	Barrett Thompson v. Cadbury Adams Canada Inc. Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc., The Hershey Company, Hershey Canada Inc., Nestle Canada Inc. and ITWAL Limited
9	Court of Queen's Bench for New Brunswick (Moncton) (Court File #MC 0116008)	Rick Thompson v. Cadbury Schweppes PLC, Cadbury Adams Canada Inc., Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc. The Hershey Company, Hershey Canada Inc., Nestle Canada Inc. and ITWAL Limited
10	Supreme Court of Newfoundland and Labrador (Trial Division) (St. John's) (Court File No. 2008-01-TO650 CP)	William Kelly and Gerald Ledrew v. Cadbury Adams Canada Inc., Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc. The Hershey Company, Hershey Canada Inc., Nestle Canada Inc. and ITWAL Limited

SCHEDULE B

MAIN PROCEEDINGS

#	Court and File No.	Main Proceedings	Settlement Class
1	Supreme Court of British Columbia (Vancouver Registry) (Court File No. S078807)	Jacob Stuart Main and Jennifer Maynard v. Cadbury Schweppes plc, Cadbury Adams Canada Inc., Mars, Incorporated, Mars Canada Inc. formerly known as Effem Inc., The Hershey Company, Hershey Canada Inc., Nestle S.A., Nestle Canada Inc. and ITWAL Limited	All Persons resident in British Columbia who, during the Settlement Class Period, purchased Chocolate Products in Canada, except the Excluded Persons.
2	Quebec Superior Court (Quebec City) (File No. 200-06-000094-071)	Gaetan Roy v. Cadbury Adams Canada Inc., Hershey Canada Inc., Mars Canada Inc., Nestle Canada Inc.	All individuals resident in Quebec who, during the Settlement Class Period, purchased Chocolate Products in Canada, as well as any legal person resident in Quebec established for a private interest, partnership or association which, at all times between November 28, 2006 and November 28, 2007, had under its direction or control no more than 50 persons bound to it by a contract of employment, who, during the Settlement Class Period, purchased Chocolate Products in Canada, except the Excluded Persons.
3	Ontario Superior Court of Justice (Toronto) (Court File No. 08-CV-0347263 PD2)	David Osmun and Metro (Windsor) Enterprises Inc. v. Cadbury Adams Canada Inc., The Hershey Company, Hershey Canada, Inc., Nestle Canada, Inc., Mars, Incorporated, Mars Canada Inc. and ITWAL Limited	All Persons in Canada who, during the Settlement Class Period, purchased Chocolate Products in Canada, except the Excluded Persons and Persons who are included in the Quebec Settlement Class and the BC Settlement Class.