

**CANADIAN CHOCOLATE CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Made on December 30, 2011

Between

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

(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

**HERSHEY CANADA INC.**

(“Hershey Canada”)

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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 Hershey Company 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 Hershey Company has specifically reserved its rights to move to quash service *ex juris* and to challenge the jurisdiction of the Courts and other courts in Canada over The Hershey Company;

E. AND WHEREAS Hershey Canada did sell Chocolate Products in Canada during the Class Period but believes that it is not liable in respect of the claims as alleged in the Canadian Proceedings, and believes it has good and reasonable defences in respect of the merits in the Canadian Proceedings;

F. AND WHEREAS Hershey Canada would actively pursue its defences in respect of the merits during the course of certification, during the course of discovery and at trial if the Canadian Plaintiffs continued the Canadian Proceedings against them;

G. AND WHEREAS, despite its belief that it is not liable in respect of the claims as alleged in the Canadian Proceedings and that it has good and reasonable defences in respect of the merits, Hershey Canada has entered into this Settlement Agreement to avoid the further 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 and to achieve final resolutions of all claims asserted or which could have been asserted against Hershey Canada and the other Releasees by the Canadian Plaintiffs on their own behalf and on behalf of the classes they seek to represent, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy involving Hershey Canada's valued business customers in Canada;

H. AND WHEREAS counsel for Hershey Canada and other Releasees have engaged in extensive arm's-length settlement discussions and negotiations with Class Counsel in respect of this Settlement Agreement relating to Canada;

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

J. 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;

K. AND WHEREAS the Main Plaintiffs and Additional Plaintiffs have agreed to accept this settlement, in part, because of the value of the Settlement Amount paid under this Settlement Agreement and the value of the cooperation Hershey Canada agrees to render or make available to the Main Plaintiffs and/or Class Counsel pursuant to this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by the Releasees;

L. AND WHEREAS the Main Plaintiffs, Class Counsel and the Additional Plaintiffs recognize the benefits of Hershey Canada's early cooperation in respect of the Main Proceedings;

M. AND WHEREAS Hershey Canada does not admit, through the execution of this Settlement Agreement, any allegation of unlawful conduct alleged in the Canadian Proceedings;

N. AND WHEREAS the Main Plaintiffs, Class Counsel, the Additional Plaintiffs, and Hershey Canada 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 Hershey Canada or any other Releasee or evidence of the truth of any of the Canadian Plaintiffs' allegations against Hershey Canada or any other Releasee;

O. AND WHEREAS the Main Plaintiffs, Class Counsel, and the Additional Plaintiffs have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Main Plaintiffs' and Additional 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 Main Plaintiffs, Class Counsel, and the Additional Plaintiffs have concluded that this Settlement Agreement is fair,

reasonable and in the best interests of the Main Plaintiffs, the Additional Plaintiffs and the classes they seek to represent;

P. AND WHEREAS Hershey Canada 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 Main Plaintiffs and the Additional Plaintiffs and the classes they seek to represent in the Canadian Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

Q. AND WHEREAS as a necessary and integral part of this final and nation-wide resolution, Hershey Canada 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;

R. AND WHEREAS the Main Plaintiffs and Class Counsel have entered into the ITWAL Settlement Agreement with ITWAL and this Settlement Agreement is subject to the condition, among other conditions, 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;

S. AND WHEREAS the Main Plaintiffs, the Additional Plaintiffs and the Settlement Class intend to fully and completely settle and resolve all of their claims, including the ITWAL Claims, as against Hershey Canada and the other Releasees on the Effective Date pursuant to this Settlement Agreement;

T. 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 Hershey Canada and the other Releasees;

U. 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;

V. AND WHEREAS the Parties acknowledge and confirm that The Hershey Company is attorning to the jurisdiction of the Courts for the sole purpose of approving, implementing, administering, and enforcing this Settlement Agreement, and not for any other purpose or proceeding, and that The Hershey Company otherwise reserves all of its jurisdictional rights;

W. 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 Hershey Canada and 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 Hershey Canada and any and all Releasees named as Defendants in the Additional Proceedings;

X. 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;

Y. AND WHEREAS the deadline for Settlement Class Members to opt-out of the Main Proceedings has passed;



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 Hershey Canada and the other Releasees, without costs as to the Canadian Plaintiffs, the classes they seek to represent, Hershey Canada or any other Releasees named as Defendants in the Canadian Proceedings, 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 this Settlement Agreement.
- (4) ***Administration Expenses*** mean all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Main Plaintiffs, Class Counsel, Additional Plaintiffs, the Additional Counsel or otherwise for the approval, implementation and operation of this 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 Hershey Company and

Hershey Canada and for the Courts' approval of the settlement provided for in this Settlement Agreement.

- (6) **Base Period** means the period of time between October 1, 2005 and September 30, 2007.
- (7) **BC Counsel** means Camp Fiorante Matthews and Branch MacMaster LLP.
- (8) **BC Court** means the Supreme Court of British Columbia.
- (9) **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.
- (10) **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.
- (11) **Canadian Plaintiffs** mean the Main Plaintiffs and the Additional Plaintiffs.
- (12) **Canadian Proceedings** mean the Main Proceedings and the Additional Proceedings.
- (13) **Chocolate Products** mean any and all chocolate confectionary products of the Defendants sold in Canada.
- (14) **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.
- (15) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel who act as class counsel in the Main Proceedings.

(16) **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.

(17) **Common Issue** in each Main Proceeding means: Did Hershey Canada and/or The Hershey Company 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?

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

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

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

(21) **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.

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

(23) **Escrow Agent** means the Person agreed to by Hershey Canada and Class Counsel to hold and administer the Trust Account.

(24) **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.

(25) **Final Order** means a final order made by a Court in respect of the approval of this 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 this Settlement Agreement upon a final disposition of all appeals.

(26) **Hershey Canada** means Hershey Canada Inc.

(27) **ITWAL** means ITWAL Limited.

(28) **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.

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

(30) ***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.

(31) ***ITWAL Settlement Agreement*** means the executed settlement agreement made between the Main Plaintiffs, the Additional 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 Main Plaintiffs, the Additional Plaintiffs, Cadbury Adams Canada Inc., Cadbury Holdings Limited and ITWAL, dated April 19, 2010.

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

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

(34) ***Materially Adverse Litigation Event*** means an event that has a materially adverse effect on the overall prospects for success against the Non-Settling Defendants in the Canadian Proceedings and meets the criteria set out in section 14.11(2) of this Settlement Agreement.

(35) ***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.

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

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

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

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

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

(41) **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.

(42) **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.

(43) **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.

(44) **Parties** mean the Main Plaintiffs, the Additional Plaintiffs, the Settlement Class Members and Hershey Canada.

(45) **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.

(46) **Proportionate Liability** means the proportion of any judgment that, had they not settled, the Ontario or BC Court would have apportioned to the Releasees.

(47) **Purchase Price** means the purchase price actually paid by Settlement Class Members for Chocolate Products purchased during the Settlement Class Period, less any rebates or other form of discounts (such as off-invoice, bill-back or scan-back trade promotion payments), delivery or shipping charges and taxes.

(48) **Quebec Counsel** means Siskinds Desmeules S.E.N.C.R.L.

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

(50) **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.

(51) **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, 2007 and November 28, 2008, 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.

(52) **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 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.

(53) **Releasees** mean, jointly and severally, individually and collectively, Eric Lent, Hershey Canada, The Hershey Company, 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 (subject to such particular inclusions or exclusions of individuals as may be specified in writing by Hershey Canada in its sole discretion prior to the Effective Date); and the predecessors, successors, purchasers, heirs, executors,

administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and the Settled Defendants, and any affiliates of the Non-Settling Defendants or the Settled Defendants.

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

(55) **Relevant Additional Settlement** means any settlement of any of the Canadian Proceedings involving any Non-Settling Defendant whereby the Relevant Additional Settlement Percentage is less than 2.6%, unless that settlement is made subsequent to a Materially Adverse Litigation Event.

(56) **Relevant Additional Settlement Amount** means the amount that any Non-Settling Defendant agrees to pay pursuant to a Relevant Additional Settlement and, in the case where that amount is in a currency other than Canadian dollars, the Canadian dollar equivalent of that amount calculated using the Bank of Canada exchange rate at the close of business on the date that the Relevant Additional Settlement was executed.

(57) **Relevant Additional Settlement Percentage** is a Relevant Additional Settlement Amount expressed as a percentage of the sales of Chocolate Products sold during the Base Period by a Non-Settling Defendant who agrees to pay a Relevant Additional Settlement Amount.

(58) **Settled Defendants** means ITWAL, Cadbury Adams Canada Inc., Cadbury Holdings Limited.

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

- (60) ***Settlement Amount*** means the sum of **CAD\$5.3 million**.
- (61) ***Settlement Class*** means all Persons included in the Ontario Settlement Class, the Quebec Settlement Class and the BC Settlement Class.
- (62) ***Settlement Class Member*** means a member of the Settlement Class who has not 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.
- (63) ***Settlement Class Period*** means February 1, 2001 to December 31, 2008.
- (64) ***Subsequent Settlement*** means any settlement of any of the Canadian Proceedings involving any Non-Settling Defendant that is entered into subsequent to a Relevant Additional Settlement, regardless of whether that subsequent settlement is also a Relevant Additional Settlement.
- (65) ***The Hershey Company*** means The Hershey Company, headquartered at Hershey, Pennsylvania.
- (66) ***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 Hershey Canada 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 Hershey Canada 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 Hershey Canada and The Hershey Company each of the Main Proceedings commenced in their respective jurisdictions as a class proceeding for settlement purposes and approving and enforcing this Settlement Agreement.

## **2.3 Agreement on Form of Orders**

(1) It is a fundamental term of this Settlement Agreement that the Main Plaintiffs and Hershey Canada 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 this Settlement Agreement. If agreement on the form and content of the orders, including the related form of notice, is not reached on or before January 15, 2012, Hershey Canada and the Main Plaintiffs shall have a right of termination pursuant to Section 13 of this Settlement Agreement. Hershey Canada and the Main Plaintiffs may agree in writing to extend this deadline but neither Party shall be required to do so.

(2) The form and content of the orders agreed upon pursuant to section 2.3(1) shall be considered a material term of this 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 of this Settlement Agreement.

#### **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 this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for the Hershey Canada 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) Notwithstanding section 2.4(1), at any time after the execution of this Settlement Agreement, Hershey Canada may elect to disclose this Settlement Agreement to the Non-Settling Defendants or for insurance purposes provided the recipient has agreed to act in accordance with section 2.4(1).

#### **2.5 Sequence of Motions**

(1) The Main Plaintiffs and Hershey Canada 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 Hershey Canada and The Hershey Company 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 render its decision on the certification and settlement approval motion. Hershey Canada may agree to waive this provision.

### **SECTION 3 - SETTLEMENT BENEFITS**

#### **3.1 Payment of Settlement Amount**

(1) Subject to section 3.3 below, none of the Releasees shall have any obligation to pay any amount other than the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.

(2) The Main Plaintiffs and the Additional Plaintiffs hereby acknowledge receipt of the Settlement Amount, which has been paid to the Escrow Agent by Hershey Canada in full satisfaction of all payment obligations under this Settlement Agreement and in full satisfaction the Released Claims against the Releasees.

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

### **3.2 Partial Refund of Settlement Amount**

(1) The Plaintiffs will advise Hershey Canada in writing of any Relevant Additional Settlement, the Relevant Additional Settlement Amount and the Relevant Additional Settlement Percentage, as soon as such disclosure is permitted pursuant to the terms of the Relevant Additional Settlement.

(2) In the event of a Relevant Additional Settlement, after the Relevant Additional Settlement becomes effective, the Main Plaintiffs and the Additional Plaintiffs shall pay or cause to be paid to Hershey Canada an amount equal to (i) 2.6% minus the Relevant Additional Settlement Percentage (ii) multiplied by CAD\$204 million.

(3) Any obligation arising under section 3.2(2) shall be paid from the Relevant Additional Settlement Amount or, in the event that any Relevant Additional Settlement Amount is not sufficient to fully satisfy the payment obligation, the balance of the obligation shall be satisfied from any amounts paid by any Non-Settling Defendant in any Subsequent Settlement.

(4) There shall be no distribution of any funds paid pursuant to a Relevant Additional Settlement or any Subsequent Settlement unless and until any outstanding obligation to Hershey Canada arising under this Section 3.2 has been fully satisfied. In the event of a Subsequent Settlement while there is an outstanding obligation to Hershey Canada under this Section 3.2, the Plaintiffs will advise Hershey Canada in writing of the Subsequent Settlement as soon as such disclosure is permitted pursuant to the terms of the Subsequent Settlement.

### **3.3 Contingent Additional Payment**

(1) In the event that: (i) Hershey Canada enters a plea of guilty to having participated in any agreement or arrangement in Canada contrary to the *Competition Act* in respect of the matters

and time period alleged in the Canadian Proceedings; and, (ii) in connection with that plea, Hershey Canada agrees or admits that any such agreement or arrangement affected a volume of sales of Chocolate Products by Hershey Canada in excess of CAD\$204 million, then Hershey Canada shall pay to the Escrow Agent an amount equivalent to 2.6% of the amount by which the agreed or admitted affected volume of sales of Chocolate Products by Hershey Canada exceeded CAD\$204 million.

(2) In the event that: (i) Hershey Canada enters a plea of guilty to having participated in any agreement or arrangement in Canada contrary to the *Competition Act* in respect of the matters and time period alleged in the Canadian Proceedings; and, (ii) in connection with that plea, Hershey Canada does not agree or admit that any such agreement or arrangement affected a volume of sales of Chocolate Products by Hershey Canada in excess of CAD\$204 million, but Hershey Canada does agree or admit that any such agreement or arrangement affected a volume of sales of Chocolate Products by Hershey Canada for a period of time that is greater than twenty-four (24) months, then Hershey Canada shall pay to the Escrow Agent an amount equivalent to 2.6% of the volume of Hershey Canada's sales of Chocolate Products during that number of months by which the agreed or admitted period of affected sales of Chocolate Products by Hershey Canada exceeded twenty-four (24) months.

### **3.4 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 3.4(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) Hershey Canada 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 Hershey Canada who, in such case, shall be responsible for the payment of all taxes on such interest.

### **3.5 Cooperation - No Disclosure of Privileged Communications**

(1) Nothing in this Settlement Agreement shall require, or shall be construed to require, Hershey Canada to disclose or produce any Documents or information prepared by or for any counsel for Hershey Canada or any other Releasee, or to disclose or produce any Documents or information in breach of any order, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction, or subject to solicitor-client privilege, litigation privilege, attorney-client privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege, or to disclose or produce any information or Documents they obtained on a privileged or co-operative basis from any party to any action or proceeding.

### **3.6 Cooperation - No Disclosure of Confidential Regulatory Communications**

(1) Nothing in this Settlement Agreement shall require, or shall be construed to require,

Hershey Canada to disclose or produce: (i) any communications, discussions or agreements with any government authorities or administrative or regulatory agencies in connection with any regulatory, administrative or criminal investigation related to the sale of chocolate confectionary products; (ii) any information or Documents created for or by government authorities or administrative or regulatory agencies in connection with any regulatory, administrative or criminal investigations related to the sale of chocolate confectionary products; (iii) any notes, transcripts, testimony or other information or Documents relating to meetings or interviews with government authorities or administrative or regulatory agencies in connection with any regulatory, administrative or criminal investigations related to the sale of chocolate confectionary products.

### **3.7 Cooperation - No Disclosure of Confidential information under License**

(1) Nothing in this Settlement Agreement shall require, or shall be construed to require, Hershey Canada to disclose or produce confidential information that Hershey Canada holds under license or under other commercial arrangements where such disclosure or production would potentially result, in the reasonable judgment of Hershey Canada, in a breach of contract.

### **3.8 Cooperation - Limited to Canada**

(1) The cooperation that is to be provided by Hershey Canada under this Settlement Agreement shall be limited to allegations contained in the Main Proceedings and for greater certainty shall be limited to alleged activity or conduct relating to the purchase, sale, pricing, discounting, marketing or distributing of Chocolate Products in Canada only.

### **3.9 Cooperation - Scope of Cooperation**

(1) To the extent not previously provided to the Main Plaintiffs and subject to the limitations set forth in this Settlement Agreement, Hershey Canada agrees to provide cooperation to Class Counsel, as specifically set forth in subsections (a) to (f) inclusive below. Within thirty (30) days after the Effective Date, or at a time mutually agreed upon by Class Counsel and Hershey Canada, Hershey Canada shall provide:

- (a) Through a meeting between counsel for Hershey Canada and Class Counsel, an evidentiary proffer, which will include information originating with Hershey Canada and being within its possession relating to the allegations in the Main Proceedings including, without limitation, information with respect to dates, locations, subject matter, and participants in any meetings or discussions between competitors relating to the purchase, sale, pricing, discounting, marketing or distributing of Chocolate Products in Canada.
- (b) A set of existing electronic transactional data relating to sales of Chocolate Products made during the Settlement Class Period by Hershey Canada relating to Canada. Hershey Canada believes that it is in the possession of existing electronic transactional data relating to various sales of Chocolate Products by it relating to Canada for a substantial part of the Settlement Class Period, which data includes Purchase Price information in respect of purchases by Settlement Class Members who purchased Chocolate Products directly from Hershey Canada during the Settlement Class Period. Counsel for Hershey Canada agrees to be reasonably available as necessary to respond to Class Counsel's questions regarding the set(s) of electronic transactional data produced by Hershey Canada.

If counsel for Hershey Canada is unable to provide an adequate response to Class Counsel's questions, Hershey Canada shall direct that a current employee of Hershey Canada be reasonably available to Class Counsel to respond to Class Counsel's questions. The inability of the employee to respond to Class Counsel's questions or the failure of the current employee to agree to make him or herself available to or otherwise cooperate with the Main Plaintiffs shall not constitute a breach or violation of Hershey Canada's obligations under this Settlement Agreement.

- (c) Copies of the following categories of Documents originating with and being within the possession of Hershey Canada: (i) price announcements for Chocolate Products during the Settlement Class Period; and (ii) Documents that Hershey Canada has provided and delivered to government authorities in Canada relating to the allegations in the Main Proceedings and which are reasonably necessary for the prosecution of the Main Proceedings.
- (d) The obligation to produce Documents pursuant to this section shall be a continuing obligation to the extent Documents are identified following the initial productions.
- (e) A material factor influencing Hershey Canada's decision to execute this Settlement Agreement is its desire to limit the burden and expense of ongoing cooperation relating to the Main Proceedings. Accordingly, Class Counsel undertake to exercise good faith in seeking cooperation from Hershey Canada and to avoid requesting information that is unnecessary, cumulative or duplicative and

agree otherwise to avoid imposing undue or unreasonable burden or expense on Hershey Canada.

- (f) For the purpose of this section 3.9, a Document that is not in Hershey Canada's actual possession shall be deemed to be in Hershey Canada's possession if it is a Document that originated with Hershey Canada and remains within Hershey Canada's power or control.

(2) If any Documents protected by any privilege, and/or any privacy law or other rule or law are accidentally or inadvertently produced, such Documents shall be promptly returned by the Main Plaintiffs and Class Counsel and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of Hershey Canada, and the production of such Documents shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents.

(3) Within thirty (30) days following the certification or authorization of any of the Main Proceedings against the Non-Settling Defendants, or at any time mutually agreed upon by the Parties, Class Counsel may, after conferring with Counsel for Hershey Canada, name up to a total of four (4) current or former officers, directors or employees of Hershey Canada for interviews. Upon reasonable notice, and subject to any legal restrictions, Hershey Canada shall engage reasonable efforts to make available those named current directors, officers or employees of Hershey Canada for interviews with Class Counsel and/or experts retained by Class Counsel in the Main Proceedings, at a location agreed to by Class Counsel and Hershey Canada. The reasonable costs incurred by, and the reasonable expenses of, the current directors, officers or employees in relation to such interviews shall be the responsibility of Hershey Canada. Furthermore, if Class Counsel and counsel for Hershey Canada, acting reasonably, agree that

such interviews are reasonably necessary for the Main Plaintiffs' prosecution of the Main Proceedings, Hershey Canada shall engage reasonable efforts to make available a maximum of two (2) additional current or former directors, officers or employees of Hershey Canada specifically identified by Class Counsel as possessing information that would be reasonably necessary for the prosecution of the Main Proceedings. The reasonable costs incurred by, and the reasonable expenses of, the current directors, officers or employees in relation to such interviews shall be the responsibility of Hershey Canada and/or the current directors, officers or employees. If any Person refuses to cooperate under this section, Hershey Canada shall engage its reasonable efforts to make such Person available for interviews with Class Counsel and/or experts retained by Class Counsel in the Main Proceedings. The failure or refusal of any current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Main Plaintiffs shall not constitute a breach or violation of the obligations of Hershey Canada under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement.

(4) Subject to the rules of evidence, any court order with respect to confidentiality, and the other provisions of this Settlement Agreement, Hershey Canada agrees to engage reasonable efforts to make available for testimony at trial in the Main Proceedings in Canada, or to be available to provide an affidavit or declaration and attend at a cross examination in support of the certification or authorization motion in the Main Proceedings or in the event of a summary judgment or other motion brought against the Main Plaintiffs in the Main Proceedings, such current directors, officers or employees of Hershey Canada as Class Counsel and Hershey Canada, acting reasonably, agree would be reasonably necessary to support the submission into evidence of any information or Documents produced by Hershey Canada in accordance with this Settlement Agreement that Class Counsel and Hershey Canada, acting reasonably, agree may be

reasonably necessary for the prosecution of the Main Proceedings and may be presented to the Courts. The reasonable costs incurred by, and the reasonable expenses of, the current directors, officers or employees in relation to such cooperation shall be the responsibility of Hershey Canada and/or the current directors, officers or employees. If any current director, officer or employee refuses to cooperate under this section, Hershey Canada shall use its reasonable efforts to make such Person available to provide testimony or otherwise cooperate with the Main Plaintiffs. Except for the purpose of discovery, which shall be governed by section 3.9(13), the Main Plaintiffs shall be at liberty to compel by subpoena or summons the testimony of any current director, officer or employee who is identified under this section but refuses to cooperate under this section, provided that the testimony is reasonably necessary for the prosecution of the Main Proceedings, and provided the Main Plaintiffs have given Hershey Canada reasonable advance notice of their steps to compel the testimony. The failure or refusal of any current director, officer or employee to agree to make him or herself available, to provide testimony, to provide an affidavit or declaration, to attend at a cross-examination or to otherwise cooperate with the Main Plaintiffs shall not constitute a breach or violation of the obligations of Hershey Canada under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement.

(5) With respect to a maximum of two (2) former directors, officers or employees of Hershey Canada named by Class Counsel pursuant to section 3.9(3) who have direct knowledge of certain of the allegations in the Main Proceedings, Hershey Canada shall, in response to reasonable requests from Class Counsel, use reasonable efforts to encourage such former directors, officers or employees to appear for interviews, trial testimony, cross-examination, and/or to provide declarations and/or affidavits, if the former director, officer or employee would have been requested by Hershey Canada to do so under this Settlement Agreement had they been a director,

officer or current employee, and Class Counsel and Hershey Canada, acting reasonably, agree their evidence is reasonably necessary for the prosecution of the Main Proceedings and may be presented to the Courts. Any former directors, officers or employees made available under this section shall be made available at a mutually agreeable time and place, except with respect to trial testimony, which shall be provided in Canada. The reasonable costs incurred by, and the reasonable expenses of, the former directors, officers or employees in relation to such cooperation shall be the responsibility of Hershey Canada and/or the former directors, officers or employees. The failure or refusal of any former director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Main Plaintiffs shall not constitute a breach or violation of the obligations of Hershey Canada under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement.

(6) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, then within ten (10) days of the date of such termination or failure, Class Counsel shall return to Hershey Canada all Documents or other materials provided by Hershey Canada or containing or reflecting information derived from such Documents or other materials received from Hershey Canada or containing or reflecting information received from Hershey Canada and, to the extent Class Counsel has disclosed any Documents or information provided by Hershey Canada to any other Person, then Class Counsel shall recover and return any Documents or materials containing or reflecting such Documents or information. The Main Plaintiffs and Class Counsel shall provide Hershey Canada with a written confirmation of the return of such Documents or other materials to Hershey Canada. In the event that any Documents or other materials are incapable of being physically returned to Hershey Canada, Class Counsel shall destroy all such Documents or other materials and provide Hershey Canada with a written confirmation of such destruction. Nothing contained in this section shall be construed to require Class Counsel to destroy any of



their work product. The confidentiality requirements in this section 3.9 will continue to bind the Main Plaintiffs, Settlement Class Members and Class Counsel even in the event that the Settlement Agreement is terminated or otherwise fails to take effect for any reason.

(7) In connection with its provision of information, testimony, and Documents, Hershey Canada and any of its current or former directors, officers or employees shall have the right to assert solicitor-client privilege, litigation privilege, and/or any other privilege, and Hershey Canada shall have the right to assert a right to refuse production on the basis of privacy law, regulatory directive, regulatory policy, regulatory agreement or other rule or law of this jurisdiction.

(8) The Main Plaintiffs, Settlement Class Members, Additional Plaintiffs and Class Counsel shall not, without the express written consent of Hershey Canada, directly or indirectly use or disclose any information or Documents provided by Hershey Canada or any of its current or former directors, officers or employees for any purpose other than the investigation or prosecution of the claims in the Main Proceedings. Moreover, except as expressly permitted herein, the Main Plaintiffs, Settlement Class Members Additional Plaintiffs and Class Counsel shall not disclose to any other Person (including, without limitation, the Additional Counsel, other plaintiffs or their counsel in any action or proceeding against any of the Releasees in any court), any information or Documents obtained from Hershey Canada or any of its current or former directors, officers or employees in connection with or under this Settlement Agreement, except in the event that a court in Canada expressly orders such information or Documents to be disclosed. In no circumstances, however, may the Main Plaintiffs, the Settlement Class Members, Additional Plaintiffs and/or Class Counsel apply for, or consent to, such an order, and promptly upon becoming aware of any motion or application for such an order Class Counsel

shall immediately notify Hershey Canada of the motion or application in order that any Hershey Canada may intervene in such proceedings. In the event that Hershey Canada or any other Releasee intervenes in such a proceeding to prevent disclosure, neither the Main Plaintiffs, Settlement Class Members, Additional Plaintiffs and/or Class Counsel shall oppose any Releasee's efforts to prevent disclosure. The disclosure restrictions set forth in this subsection do not apply to otherwise publicly available Documents and information.

(9) If the Main Plaintiffs, the Settlement Class Members, Additional Plaintiffs and/or Class Counsel intend to take steps to provide Documents or information obtained from Hershey Canada or any of its current or former directors, officers or employees that are not otherwise publicly available Documents or information to the Non-Settling Defendants or any affiliates of the Non-Settling Defendants, or to file such Documents or information in court in the Main Proceedings or in any court or tribunal in any other proceeding, then the Main Plaintiffs, the Settlement Class Members, Additional Plaintiffs and/or Class Counsel shall provide Hershey Canada with an advance written description of the Documents or information that is to be provided to the Non-Settling Defendants or their affiliates or filed with the Courts at least sixty (60) days in advance of the proposed disclosure or filing, in order that Hershey Canada may intervene to for the purposes of obtaining a sealing or confidentiality order or other relief. In the event that Hershey Canada or any other Releasee intervenes in such a proceeding for such a purpose, neither the Main Plaintiffs, Settlement Class Members, Additional Plaintiffs, and/or Class Counsel shall oppose any Releasee's efforts in that regard. For clarity, nothing in this section 3.7(9) relieves the Main Plaintiffs, the Settlement Class Members, Additional Plaintiffs and/or Class Counsel of the obligations of non-disclosure imposed upon them by the other sections of this Settlement Agreement.

(10) Hershey Canada's obligation to cooperate as particularized in this section 3.9 shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. Hershey Canada's obligation to cooperate under this Settlement Agreement shall cease at the date of final judgment in the Main Proceedings against all Defendants. In the event Hershey Canada materially breaches this section 3.9, Class Counsel may move before the Courts to either enforce the terms of this Settlement Agreement or seek to set aside the approval of this Settlement Agreement.

(11) Notwithstanding its obligation to cooperate as set forth in this section 3.9, if Hershey Canada reasonably believes that any application or agreement with government authorities or regulatory or administrative agencies in connection with any regulatory or criminal investigations relating to chocolate confectionary products (without admitting that any such applications or agreements exist) would be endangered by the production or disclosure of Documents or information which would otherwise be required to be produced to the Main Plaintiffs pursuant to the terms of this Settlement Agreement, Hershey Canada may withhold such Documents or information. To the extent that Hershey Canada withholds such Documents or information, pursuant to this section, Hershey Canada shall provide to Class Counsel a written explanation of the type of Document or information to be withheld, and the basis for withholding such information. Hershey Canada shall work in good faith with such government authorities to obtain permission to disclose the Documents or information being withheld. If, on the date the Main Plaintiffs would ordinarily be entitled to obtain documentary productions from any one of the Defendants pursuant to the Ontario *Rules of Civil Procedure* or on the date which is eighteen (18) months from the execution of this Settlement Agreement, whichever date is later, Documents or information continue to be withheld by Hershey Canada pursuant to this section, Hershey Canada shall forthwith provide such Documents or information to the Main Plaintiffs,

unless any of the Courts, pursuant to motions filed by Hershey Canada or otherwise, orders to the contrary. The Main Plaintiffs may not, however, seek to enforce this obligation without providing Hershey Canada with reasonable notice. For greater certainty, nothing in this section shall limit or restrict the obligation of Hershey Canada to engage in reasonable efforts to make available current or former directors, officers or employees for interviews with Class Counsel and/or experts retained by Class Counsel pursuant to section 3.9(3) or to provide an affidavit in support of the certification or authorization motion in the Main Proceedings pursuant to section 3.9(4), for the purposes of providing information regarding the general operations of the business, including the distribution of Chocolate Products in Canada.

(12) The provisions set forth in section 3.9 of this Settlement Agreement shall constitute the exclusive means by which the Main Plaintiffs, Settlement Class Members, Additional Plaintiffs and Class Counsel may obtain discovery from Hershey Canada. The Main Plaintiffs, Settlement Class Members, Additional Plaintiffs and Class Counsel shall pursue no other means of discovery against Hershey Canada, its current and former directors, officers or employees or any of the Releasees, under the laws or rules of Ontario or any other jurisdiction.

(13) Notwithstanding section 3.9(12), if any current or former officer, director or employee of Hershey Canada who is named by the Main Plaintiffs under section 3.9(3) fails to cooperate in accordance with that section and the Main Plaintiffs are unable to obtain from Hershey Canada information relevant to a material issue in the action that there is reason to believe is in the possession of that Person, then the Main Plaintiffs shall be at liberty to move before the Ontario Court under rule 31.10 of the *Rules of Civil Procedure* to obtain non-party discovery of that Person. In the event that the Main Plaintiffs bring any such motion or seek to exercise any such right of discovery, they shall provide Hershey Canada with reasonable advance notice of any

related motion, proceeding or examination. The Main Plaintiffs shall not object to Hershey Canada's intervention in any related motion or court proceeding and shall not object to the attendance of Hershey Canada and its counsel at any such examination or discovery proceeding. Nothing in this section 3.9(13) confers any right of examination or discovery, however, and Hershey Canada reserves its right to oppose any related motion under rule 31.10 or any related court proceeding.

(14) The Main Plaintiffs may, on motion with notice to Hershey Canada only, seek Orders from the Ontario Court relating to their rights under section 3.9 should Hershey Canada not act reasonably in terms of its obligations under section 3.9 or act in a manner that is inconsistent with the spirit and intent of section 3.9.

(15) The Main Plaintiffs may serve of the motion(s) referred to in section 3.9(14) on Hershey Canada by service on counsel of record for Hershey Canada in the Main Proceedings.

(16) Notwithstanding any other provision of this agreement, Class Counsel shall have the right to disclose information or Documents obtained from Hershey Canada or its current or former officers, directors or employees to one or more of the Additional Counsel provided that: (1) the disclosure is reasonably necessary for the conduct of the Canadian Proceedings or for giving advice to Additional Plaintiffs or taking instructions from Additional Plaintiffs in relation to the Canadian Proceedings; and (2) any such Additional Counsel undertake and agree with Hershey Canada in writing, in advance of such disclosure, that in consideration for Hershey Canada's consent to such disclosure they will: (a) accept, honor and be bound by every obligation of confidentiality, non-use, non-disclosure and non-assistance imposed upon Class Counsel, the Main Plaintiffs or the Additional Plaintiffs under this Settlement Agreement including, without limitation, all of those obligations imposed under sections 3.9(2), 3.9(6), 3.9(8) 3.9(9), 6.9 and

8.3; and, (b) be bound by and comply with any court order enforcing this Settlement Agreement. Any such Additional Counsel shall thereafter be bound by such obligations and any such order. The Additional Counsel shall not, however, thereby acquire any rights whatsoever under this Settlement Agreement.

## **SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT AND INTEREST**

### **4.1 Distribution Protocol**

(1) At a time wholly 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) Hershey Canada 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 Releasers 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 Releasers 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 Releasers 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

Releasers 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 Releasers 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 member of the Ontario Settlement Class and the BC Settlement Class 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 Hershey Canada 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 in 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 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, this 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 this Agreement, the Main Plaintiffs, the Additional Plaintiffs, the Settlement Class Members and Class Counsel shall not, without the express written consent of Hershey Canada, provide any direct or indirect assistance to any plaintiff or

any plaintiff's counsel related to any proceeding alleging competition-related misconduct against Hershey Canada or any of the Releasees, except in the event that a court in Canada expressly directs the Main Plaintiffs, the Additional Plaintiffs, the Settlement Class Members or Class Counsel to provide such assistance. In no circumstances, however, may the Main Plaintiffs, the Additional Plaintiffs, the Settlement Class Members and/or Class 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 Hershey Canada of the application in order that Hershey Canada or 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 of this 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; (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; and (iii) a claim by a Person who has validly and timely opted-out of the Main Proceedings), 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 Hershey Canada 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, seeking orders for the following:

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

(2) Hershey Canada retains all rights to oppose such motion(s) brought under section 7.1(1)(c).

(3) A Non-Settling Defendant may serve of the motion(s) referred to in section 7.1(1)(c) on Hershey Canada by service on counsel of record for Hershey Canada 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 Hershey Canada 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 Hershey Canada will be determined according to the provisions

of the *Code of Civil Procedure*, and Hershey Canada 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 of this Settlement Agreement.

## **SECTION 8 - EFFECT OF SETTLEMENT**

### **8.1 No Admission of Liability**

(1) The Canadian Plaintiffs and Hershey Canada expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by Hershey Canada or by any Releasee, or of the truth of any of the claims or allegations contained in the Canadian Proceedings 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, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with

this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except: (a) by the Parties in a proceeding to approve or enforce this 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 Main Plaintiff, no Additional Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class 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 or arises from the Released Claims.

(2) Section 8.3(1) of this Settlement Agreement, and only section 8.3(1), shall be inoperative to the extent that it requires 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 this Settlement Agreement.

(3) No Class Counsel, no Main Plaintiff, no Additional Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel may divulge to any Person for any purpose any information, including, without limitation, any cooperation materials and Documents provided pursuant to section 3.9, obtained in the course of the Main Proceedings or the negotiation and preparation of this 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 this 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 this 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 Hershey Canada agrees to the definition of the Common Issue for purposes of settlement only.

### **9.2 Certification or Authorization Without Prejudice**

(1) In the event this 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 or any other litigation.

## **SECTION 10 - NOTICE TO SETTLEMENT CLASS**

### **10.1 Notice Required**

(1) The proposed 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.

### **10.2 Form and Distribution of Notice**

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

### **10.3 Notice of Distribution**

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

## **11.2 Information and Assistance**

(1) Hershey Canada will make reasonable efforts to compile a list of the names and addresses of Persons in Canada who purchased Chocolate Products directly from Hershey Canada in Canada during the Settlement Class Period, together with information regarding the volume 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 this Settlement Agreement.

(3) Class Counsel may use the information provided under section 11.2(2):

(a) to facilitate the dissemination of the notices required in section 10.1;

(b) to advise Persons in Canada who purchased Chocolate Products from Hershey Canada during the 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;

(c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement achieved in the Main Proceedings;  
and

(d) as otherwise authorized in section 3.9.

(4) If this Settlement Agreement is terminated, all information provided by Hershey Canada pursuant to section 11(2) shall be returned or destroyed forthwith in accordance with section 3.9(6), 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 any Person to whom Class Counsel has disclosed such information.

## **SECTION 12 - CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

(1) The Escrow Agent shall pay the costs of the notices referred to in section 10.1 of this Settlement Agreement 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 this Settlement Agreement, or at such other time as they shall determine in their sole discretion. Hershey Canada 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) Hershey Canada or the Main Plaintiffs may terminate this Settlement Agreement in the event that:

- (a) The Parties fail to reach agreement on the form and content of any order or notice in accordance with 2.3(1) of the Settlement Agreement;
  - (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 Hershey Canada under section 2.3(1) of this Settlement Agreement.
  - (c) any Court declines to approve this Settlement Agreement or any material term or part hereof;
  - (d) any Court approves this Settlement Agreement in a materially modified form; or
  - (e) any orders approving this 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 of this Settlement Agreement. Upon delivery of such a written notice, this 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 of form and content of the respective Final Order, as agreed upon by the Main Plaintiffs and Hershey Canada in accordance with section 2.3(1), shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for the termination of this Settlement Agreement, provided however that Hershey Canada 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 this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

(5) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Main Plaintiffs, the Additional Plaintiffs and Hershey Canada agree that 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 any Releasee may later take on any issue in the Canadian Proceedings or any other litigation.

(6) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Main Plaintiffs, the Additional Plaintiffs and Hershey Canada agree that any appearance, attendance, filing or any other action or step taken by Hershey Canada or The Hershey Company pursuant to or relating to this Settlement Agreement shall be without prejudice to any position that any Releasee may later take in respect of the jurisdiction of the Courts or any other court, including, without limitation, a motion to quash service *ex juris* or to otherwise challenge the jurisdiction of the Courts or any other court over any Releasee in the Canadian Proceedings or any other litigation.

### **13.2 If Settlement Agreement is Terminated**

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) 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
- (b) the Parties shall negotiate in good faith to determine a new timetable, if the Canadian Proceedings are to continue against any Releasees.

### **13.3 Allocation of Monies in the Trust Account Following Termination**

(1) If the Settlement Agreement is terminated, the Escrow Agent shall pay to Hershey Canada the Settlement Amount plus all accrued interest thereon, less the costs of the Escrow Agent, and less the costs of the Notices referred to in section 10.1, within thirty (30) business days of a final judgment being entered by a Court denying the certification or authorization of a Main Proceeding as a class proceeding or denying the approval of the Settlement Agreement, whichever is earlier. The Releasees, the Main Plaintiffs, and the Additional Plaintiffs expressly reserve all of their respective rights if this 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 3.4, 3.9(6), 8.1, 8.2, 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 this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease

immediately.

## SECTION 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) Hershey Canada or the Main Plaintiffs may apply to the Ontario Court for directions in respect of the interpretation, implementation and administration of this 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 this Settlement Agreement shall be on notice to the Main Plaintiffs and Hershey Canada, except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

### **14.3 Headings, etc.**

#### **(1) In this Settlement Agreement:**

(a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and

- (b) the terms “this Settlement Agreement”, “hereof”, “hereunder”, “herein” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

#### **14.4 Computation of Time**

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

#### **14.5 Ongoing Jurisdiction**

- (1) Subject to section 14.5(4) and 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) Subject to section 14.5(4), the Main Plaintiffs and Hershey Canada 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.



(3) Notwithstanding the above but subject to section 14.5(4) the Ontario Court shall exercise jurisdiction with respect to implementation, administration, and enforcement of the terms of this Settlement Agreement, and the Main Plaintiffs, the Additional Plaintiffs, the Settlement Class and Hershey Canada submit to the jurisdiction of the Ontario Court for purposes of implementing, administering, and enforcing the settlement provided for in this Settlement Agreement. Issues related to the administration of this 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.

(4) The Parties acknowledge and confirm that the certification and authorization of proceedings against The Hershey Company pursuant to this Agreement is for the purposes of settlement only and contingent on the approvals by the Courts as provided for in this Settlement Agreement, and is for the purpose of implementing, administering and enforcing this Settlement Agreement. The Parties acknowledge and confirm that The Hershey Company does not thereby attorn to the Courts or any other court for any other purpose or proceeding and that The Hershey Company otherwise reserves all of its other jurisdictional rights.

#### **14.6 Governing Law**

(1) This 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) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding

in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

#### **14.8 Amendments**

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

#### **14.9 Binding Effect**

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Canadian Plaintiffs, Hershey Canada, the Settlement Class Members, the Releasors, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Canadian Plaintiffs shall be binding upon all Releasors and (with the exception of those covenants binding solely upon Hershey Canada) each and every covenant and agreement made herein by Hershey Canada shall be binding upon all of the Releasees.

#### **14.10 Counterparts**

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

#### **14.11 Interpretation**

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that

any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, all have no bearing upon the proper interpretation of this Settlement Agreement.

(2) For the purpose of interpreting this Settlement Agreement, a Materially Adverse Litigation Event is a decision of a Court in the Canadian proceedings or a change in the financial circumstances of a Non-Settling Defendant that would reasonably cause a responsible Class Counsel firm to materially alter its position in settlement negotiations with the Non-Settling Defendants and: (a) has a materially adverse effect upon the overall prospects for success and/or enforcement against the Non-Settling Defendants in the Canadian Proceedings; or, (b) has the effect of materially decreasing the valuation of the Canadian Proceedings. Such an event might include, but is not limited to, a judgment dismissing the Main Plaintiffs' motion for certification against the Non-Settling Defendants, a judgment dismissing the Canadian Proceedings, a judgment that materially reduces the size of the class relative to the class that the Main Plaintiffs presently seek to represent, a judgment that materially reduces the class period relative to the class period that the Main Plaintiffs presently assert, or a material change in the financial or other circumstances of the Non-Settling Defendants that would materially adversely affect the ability of the Non-Settling Defendants to satisfy any judgment or to fund a settlement of more than 2.6% of the Non-Settling Defendants' sales of Chocolate Products during the Base Period, or that would materially adversely affect the Main Plaintiffs ability to enforce any judgment issued in the Canadian Proceedings. In the event that the Main Plaintiffs and Hershey Canada are unable to agreed upon whether an event qualifies as a Materially Adverse Litigation Event, such

disputes shall be resolved in accordance with section 14.2.

#### **14.12 Language**

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

(2) The cost of translating the Notices, claims forms, or other documents referenced to or flowing from this Settlement Agreement into French and/or any other language shall, in the event such translation is required, be paid by Hershey Canada.

#### **14.13 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.

#### **14.14 Recitals**

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

#### **14.15 Schedules**

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

#### **14.16 Notice**

(1) Any and all notices, requests, directives, or communications required by this 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 in the Main Proceedings:**

Charles M. Wright

Heather Rumble Peterson

SISKINDS LLP  
Barristers and Solicitors  
680 Waterloo Street  
London, ON N6A 3V8  
Tel: 519-660-7753  
Fax: 519-672-6065  
Email: charles.wright@siskinds.com

SUTTS, STROSBERG LLP  
Barrister and Solicitors  
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Windsor, ON N9A 6V4  
Tel: 519-258-9333  
Fax: 519-258-9527  
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J. J. Camp, Q.C.

Ward Branch

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Email: jjcamp@cfmlawyers.ca

BRANCH MACMASTER LLP  
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Vancouver, BC V7G 3E2  
Tel: 604-654-2966  
Fax: 604-684-3429  
Email: wbranch@branmac.com

**For Hershey Canada:**

Scott Maidment

McMILLAN LLP  
Brookfield Place  
181 Bay Street  
Suite 4400  
Toronto, Ontario M5J 2T3  
Tel: 416-865-7911  
Fax: 414-865-7048  
Email: scott.maidment@mcmillan.ca

**14.17 Acknowledgements**

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

**14.18 Authorized Signatures**

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

**Executed in counterparts on December 30, 2011**

Andrea DeKay for:  
CHARLES WRIGHT for Siskinds Desmeules  
S.E.N.C.R.L. and the Main Plaintiffs (per  
ANDREA DEKAY)

Andrea DeKay  
ANDREA DEKAY for Siskinds LLP and the  
Main Plaintiffs

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

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

Andrea DeKay for:  
J.J. CAMP Q.C. for Camp Fiorante Matthews  
and the Main Plaintiffs (per ANDREA  
DEKAY)

\_\_\_\_\_  
SCOTT MAIDMENT for Hershey Canada

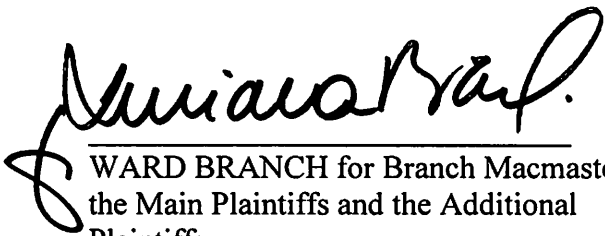
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\_\_\_\_\_  
CHARLES WRIGHT for Siskinds Desmeules  
S.E.N.C.R.L. and the Main Plaintiffs (per  
ANDREA DEKAY)

\_\_\_\_\_  
ANDREA DEKAY for Siskinds LLP and the  
Main Plaintiffs

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

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

\_\_\_\_\_  
J.J. CAMP Q.C. for Camp Fiorante Matthews  
and the Main Plaintiffs (per ANDREA  
DEKAY)

\_\_\_\_\_  
SCOTT MAIDMENT for Hershey Canada



**14.18 Authorized Signatures**

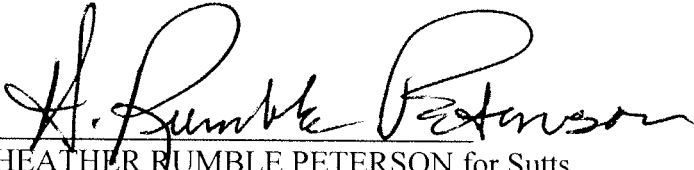
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\_\_\_\_\_  
CHARLES WRIGHT for Siskinds Desmeules  
S.E.N.C.R.L. and the Main Plaintiffs (per  
ANDREA DEKAY)

\_\_\_\_\_  
ANDREA DEKAY for Siskinds LLP and the  
Main Plaintiffs

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

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

\_\_\_\_\_  
J.J. CAMP Q.C. for Camp Fiorante Matthews  
and the Main Plaintiffs (per ANDREA  
DEKAY)

\_\_\_\_\_  
SCOTT MAIDMENT for Hershey Canada

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\_\_\_\_\_  
CHARLES WRIGHT for Siskinds Desmeules  
S.E.N.C.R.L. and the Main Plaintiffs (per  
ANDREA DEKAY)

\_\_\_\_\_  
ANDREA DEKAY for Siskinds LLP and the  
Main Plaintiffs

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

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

\_\_\_\_\_  
J.J. CAMP Q.C. for Camp Fiorante Matthews  
and the Main Plaintiffs (per ANDREA  
DEKAY)

\_\_\_\_\_  
SCOTT MAIDMENT for Hershey Canada



**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
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., Cadbury Adams Canada Inc., Cadbury Schweppes PLC, Cadbury Adams USA LLC, ITWAL Limited, Glenn Stevens, Robert Leonidas and Eric Lent

#	Court and File No.	Title of Additional Proceedings
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-T0650 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 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, 2007 and November 28, 2008, 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