

**CANADIAN AIR CARGO SHIPPING SERVICES CLASS ACTION
MULTI-JURISDICTIONAL SETTLEMENT AGREEMENT**

Between:

AIRIA BRANDS INC., STARTECH.COM LTD., QCS-QUICK CARGO SERVICE GMBH,
KAREN MCKAY and CARTISE SPORTS INC.

and

AIR CANADA

(the “**Settling Defendant**”)

Executed November 17, 2020

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RECITALS

A. **WHEREAS** the Actions have been commenced in the Courts alleging that the Defendants, including the Settling Defendant, participated in an unlawful conspiracy pursuant to which the Settling Defendant and its alleged co-conspirators, including the Defendants, agreed to, among other things, fix, raise, maintain or stabilize the prices of Airfreight Shipping Services in violation of Part VI of the *Competition Act* and the common law and/or civil law;

B. **WHEREAS**, as of December 1, 2009, the operations of AC Cargo Limited Partnership were wound up into Air Canada and are now operated as a division of Air Canada;

C. **WHEREAS** the Ontario Action was certified as a national class proceeding under the Ontario *Class Proceedings Act, 1992* by Order dated August 26, 2015 and amended December 21, 2018. The certified class being defined as follows:

Persons who purchased Airfreight Shipping Services* during the period January 1, 2000 to September 11, 2006, including those persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including, without limitation, the defendants, but not including Integrated Air Cargo Shippers**.

Excluded from the Class are:

- a) Defendants and their unnamed co-conspirators*** and their respective parents, employees, subsidiaries, affiliates, officers, and directors,
- b) persons currently resident in Australia who paid identified amounts totalling more than AUD\$20,000 for the carriage of goods to or from Australia, including in each instance a component by air during the period January 1, 2000 to January 11, 2007,
- c) persons who commence litigation in respect of Airfreight Shipping Services in a jurisdiction other than Canada prior to the conclusion of the trial of the common issues, and

d) persons who timely and validly opted out of the litigation pursuant to the order of the Ontario court dated March 6, 2008.

*Airfreight Shipping Services are defined as airfreight cargo shipping services for shipments to or from Canada (excluding shipments to and from the United States).

**Integrated Air Cargo Shipper is defined as an air cargo shipper that manages an integrated system of people, airplanes, trucks, and all other resources necessary to move airfreight cargo from a customer's point of origin to the delivery destination, and for greater certainty includes but is not limited to FedEx, UPS, DHL, and TNT,

***Unnamed co-conspirators are defined as Aerolineas Brasileiras S.A (d/b/a Absa Cargo Airline), Air China Cargo Company Ltd. (d/b/a/ Air China Cargo), Air China Ltd. (d/b/a Air China), Air Mauritius Ltd., Airways Corporation of New Zealand Ltd. (d/b/a/ Airways New Zealand), Alitalia Linee Aeree Italiane S.p.A, All Nippon Airways Co. Ltd., DAS Air Ltd. (d/b/a Das Air Cargo), El Al Israel Airlines, Emirates Airlines (d/b/a Emirates), Ethiopian Airlines Corp., EVA Air, Kenya Airways Ltd., Malaysia Airlines, Nippon Cargo Airlines Co., Ltd., Saudi Arabian Airlines, Ltd., South African Airways (Proprietary), Ltd., Thai Airways International Public Co., Ltd, and Viação Aérea Rio-Grandense, S.A.

D. **AND WHEREAS** the Settling Defendant expressly denies and does not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Actions;

E. **AND WHEREAS** the Plaintiffs have entered into a proposed settlement with British Airways PLC, which settlement is subject to the approval of the Ontario Court and has not yet become effective in accordance with its terms;

F. **AND WHEREAS** if this Settlement Agreement and the proposed settlement between the Plaintiffs and British Airways PLC are approved and become effective with their terms, and neither are terminated in accordance with their terms, the Actions shall be resolved in their entirety;

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

H. **AND WHEREAS** the Settling Defendant would assert a number of defences to the Plaintiffs' claims if the Actions proceeded further as against it;

I. **AND WHEREAS**, despite the Settling Defendant's belief that it is not liable in respect of the claims as alleged in the Actions and have good defences thereto, the Settling Defendant is entering 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 a final resolution of all claims asserted or which could have been asserted against it by the Plaintiffs on their own behalf and on behalf of the Settlement Class, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this dispute with valued business customers;

J. **AND WHEREAS** the Plaintiffs have agreed to accept this settlement, in part, because of the value of the Settlement Amount to be paid by the Settling Defendant under this Settlement Agreement, the attendant risks of litigation in light of the potential defences that may be asserted by the Settling Defendant, and the desirability of permitting the settlement to be consummated as provided by the terms of this Settlement Agreement;

K. **AND WHEREAS** the deadline for Settlement Class Members to opt-out of the Actions has passed and 9 Persons exercised the right to opt-out of the Actions;

L. **AND WHEREAS** arm's-length settlement negotiations have taken place between the Settling Defendant and the Plaintiffs, and this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendant and the Plaintiffs, both individually and on behalf of the Settlement Class, has been reached, subject to approval of the Courts;

M. **AND WHEREAS** Class Counsel, on their own behalf and on behalf of the Plaintiffs and the proposed Settlement Class, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Actions, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that a settlement with the Settling Defendant according to the terms set forth below is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Class;

N. **AND WHEREAS** the Plaintiffs and the Settling Defendant therefore wish to, and hereby do, finally resolve, without admission of liability, all of the Actions and the Released Claims as against the Settling Defendant, subject to the approval of the Courts;

O. **AND WHEREAS** for the purposes of settlement only and contingent on approval by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification (or authorization in Quebec) of the Actions as class proceedings and have consented to a Settlement Class in each of the Actions;

P. **AND WHEREAS** the Plaintiffs assert that they are adequate class representatives for the Settlement Classes and will seek to be appointed representative plaintiffs in their respective Actions;

Q. **AND WHEREAS** the Settling Defendant does not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent it has previously done so in the Actions and as is expressly provided in this Settlement Agreement with respect to the Actions;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein, the receipt and sufficiency of which is hereby acknowledged, **IT IS HEREBY AGREED** by and among the Plaintiffs and the Settling Defendant that the Ontario Action and BC Action be settled and dismissed with prejudice as to the Settling Defendant and AC Cargo Limited Partnership only, and the Quebec Action be settled with prejudice as against the Settling Defendant and AC Cargo Limited Partnership, all without costs as to the Plaintiffs, the Settlement Class or the Settling Defendant subject to the approval of the Courts and on the terms and conditions of this Settlement Agreement, as follows:

SECTION 1 - DEFINITIONS

For the purpose of this Settlement Agreement only, including the recitals and schedule hereto:

- (a) ***Actions*** means the Ontario Action, the Quebec Action and the BC Action.
- (b) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement or in relation to the Settlement Fund, including the costs of notices and claims administration, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (c) ***Airfreight Shipping Services*** means airfreight cargo shipping services for shipments within, to, or from Canada, but specifically excluding airfreight cargo shipping services for

shipments (i) with an origin point in Canada and a destination point in the United States or (ii) with an origin point in the United States and a destination point in Canada, but includes airfreight cargo shipping services in which the freight (i) travelled by truck from Canada to the United States, and then by air from the United States to a third country, or (ii) travelled by air from a third country to the United States, and then by truck from the United States to Canada.

- (d) **Approval Hearings** means the hearings of motions brought by Class Counsel for the certification (and authorization in Quebec) of the Actions as a class proceeding on the basis of this Settlement Agreement and for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (e) **Approval Orders** means orders of the Courts, substantially in the form attached as Schedule "B" hereto, or such other form of order as agreed upon by the Plaintiffs and the Settling Defendant approving this Settlement Agreement.
- (f) **BC Action** means the proceeding commenced in the British Columbia Supreme Court, under Vancouver Registry No. S067490.
- (g) **BC Counsel** means Camp Fiorante Matthews Mogerman.
- (h) **BC Court** means the Supreme Court of British Columbia.
- (i) **BC Settlement Class** means all Persons resident in the province of British Columbia who purchased Airfreight Shipping Services during the Purchase Period, including those Persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including without limitation, the Defendants. Excluded from the BC

Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons who validly and timely opted-out of the BC Action in accordance with the order of the BC Court dated March 20, 2008.

- (j) **Claim** shall have the meaning attributed to it in Section 1(II)
- (k) **Claims Administrator** means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Fund in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such Person.
- (l) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel.
- (m) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Actions, as well as any adverse costs awards issued against the Plaintiffs in the Actions.
- (n) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Quebec.
- (o) **Counsel for the Settling Defendant** means Stikeman Elliott LLP.
- (p) **Courts** means the Ontario Court, the Quebec Court and the BC Court.
- (q) **Defendants** means the entities named as defendants in any of the Actions. For greater certainty, Defendants includes the Settling Defendant and the Settled Defendants.

- (r) ***Distribution Protocol*** means the plan for distributing the Settlement Fund to Settlement Class Members as approved by the Courts.
- (s) ***Effective Date*** means (i) the date upon which the ability to appeal, if an appeal lies therefrom, from the last obtained Approval Order has expired without any appeal being taken; or (ii) if any appeals have been taken from an Approval Order, the date upon which all such appeals are concluded by way of a Final (as defined in Section 1(v)) order or judgment. For the purposes of this paragraph, an “appeal” shall not include any appeal that concerns only the issue of Class Counsel Fees or the Distribution Protocol.
- (t) ***Epiq*** means Epiq Class Action and Claims Solutions, Inc. (formerly known as Garden City Group, LLC).
- (u) ***Execution Date*** means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and the Settling Defendant.
- (v) ***Final***, when used in relation to a court order or judgment, means that all rights of appeal from such order or judgment have expired or have been exhausted (including a right of appeal arising after the granting of leave if leave to appeal is required), and the ultimate court of appeal to which an appeal (if any) was taken has upheld such order or judgment.
- (w) ***Foreign Claim*** shall have the meaning attributed to it in Section 4.1(a)(i).
- (x) ***Non-Settling Defendants*** means any Defendant that is not (i) the Settling Defendant; (ii) a Settled Defendant; or (iii) a Defendant against whom the Actions have been dismissed, settled or discontinued, either before or after the Execution Date.

- (y) ***Ontario Action*** means the proceeding commenced in the Ontario Court bearing Court File No. 50389CP (London).
- (z) ***Ontario Counsel*** means Siskinds LLP.
- (aa) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (bb) ***Ontario Settlement Class*** means all Persons, other than members of the Quebec Settlement Class or the BC Settlement Class, who purchased Airfreight Shipping Services during the Purchase Period, including those Persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including without limitation, the Defendants. Excluded from the Ontario Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons who validly and timely opted-out of the Ontario Action in accordance with the order of the Ontario Court dated March 6, 2008.
- (cc) ***Party and Parties*** means the Settling Defendant, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (dd) ***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.
- (ee) ***Plaintiffs*** means Airia Brands Inc., StarTech.com Ltd., QCS-Quick Cargo Service GmbH, Karen McKay and Cartise Sports Inc., individually and collectively.

- (ff) ***Proportionate Liability*** means the proportion of any judgment that, had the Settling Defendant not settled, the Ontario or BC Courts would have apportioned to the Settling Defendant and/or the Released Parties, whether pursuant to *pro rata*, proportionate fault, *pro tanto*, or another method.

- (gg) ***Purchase Period*** means January 1, 2000 up to and including September 11, 2006.

- (hh) ***Quebec Action*** means the proceeding commenced in the Quebec Court, under Court File No. 500-06-000344-065.

- (ii) ***Quebec Counsel*** means Liebman Legal Inc.

- (jj) ***Quebec Court*** means the Quebec Superior Court.

- (kk) ***Quebec Settlement Class*** means all individuals resident in the province of Quebec and all legal persons resident in Quebec established for a private interest, partnership or association in the province of Quebec which, at all times between May 5, 2005 and May 5, 2006, had under its direction or control no more than 50 persons bound to it by a contract of employment, who purchased Airfreight Shipping Services during the Purchase Period, including those individuals and legal persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including without limitation, the Defendants, during the Purchase Period. Excluded from the Quebec Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons who validly and timely opted-out of the Quebec Action in accordance with the order of the Quebec Court dated April 14, 2008.

(II) ***Released Claims*** means 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, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "Claims" or, individually, a "Claim"), that Releasing Parties, 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 anywhere, from the beginning of time through the pendency of the Actions in respect of the conduct alleged (or which could have been alleged) in the Actions, or as a result of or in connection with any other alleged unlawful horizontal or vertical anticompetitive conduct in connection with the purchase, sale, pricing, discounting, marketing, distributing of or compensation for, Airfreight Shipping Services, specifically including, without limitation, Claims in any way related to air cargo rates or prices, fuel surcharges, security surcharges, customs surcharges or fees, war risk surcharges, navigation surcharges, commissions, incentives, rebates, discounts, credits, yields or any other element of the price of or compensation related to Airfreight Shipping Services or relating to any conduct alleged (or which could have been alleged) in the Actions including, without limitation, Claims, whether in Canada or elsewhere, resulting from or relating to the purchase of Airfreight Shipping Services, including future Claims relating to continuing acts or practices alleged to have occurred during the pendency of the Actions. For greater certainty, and without limiting the scope of the Released Claims, nothing herein authorizes or allows any Party to contravene the *Competition Act*. Nothing

herein shall release any Claims for negligence, breach of contract, bailment, failure to deliver, lost goods, delayed or damaged goods or comparable claim between any of the Releasing Parties and Released Parties relating to Airfreight Shipping Services.

- (mm) **Released Parties** means, jointly and severally, individually and collectively, the Settling Defendant, AC Cargo Limited Partnership and all of their 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 their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.
- (nn) **Releasing Parties** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, or representative of any kind.
- (oo) **Settled Defendants** means Deutsche Lufthansa AG, Lufthansa Cargo AG, Swiss International Air Lines Ltd., Japan Airlines International Co., Ltd., Scandinavian Airlines System, Cargolux Airline International, Qantas Airways Limited, Singapore Airlines Ltd., Singapore Airlines Cargo PTE Ltd., Societe Air France, Koninklijke Luchtvaart Maatschappij N.V. (KLM), Royal Dutch Airlines, Martinair Holland N.V., LAN Airlines

S.A., LAN Cargo S.A., Polar Air Cargo LLC, Atlas Air Worldwide Holdings Inc., Korean Air Lines Co., Asiana Airlines Inc., Cathay Pacific Ltd. and British Airways PLC. Notwithstanding the foregoing, if the proposed settlement between the Plaintiffs and British Airways PLC does not become effective in accordance with its terms or is terminated in accordance with its terms, British Airways PLC shall cease being a Settled Defendant.

- (pp) **Settlement Agreement** means this agreement, including the recitals and schedule.
- (qq) **Settlement Amount** means CAD\$7,000,000 paid in installments as described in Section 2.2(c).
- (rr) **Settlement Class Member** means a member of the Ontario Settlement Class, Quebec Settlement Class or BC Settlement Class.
- (ss) **Settlement Fund** means the escrow account established pursuant to Section 2.1 of this Settlement Agreement, including all monies held therein in accordance with the terms of this Settlement Agreement. The Settlement Fund shall be maintained in Canadian currency.
- (tt) **Settling Defendant** means Air Canada.

SECTION 2- SETTLEMENT BENEFITS

2.1 The Settlement Fund

- (a) The Settlement Fund shall be established as an escrow account at a Canadian financial institution designated by Class Counsel and administered by Class Counsel until the Courts have appointed a Claims Administrator, at which time Class Counsel will cede control to the Claims Administrator. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Ontario Court's continuing supervision and

control. No monies shall be paid from the Settlement Fund, except in accordance with this Settlement Agreement, or in accordance with orders of the Ontario Court obtained after notice to the Parties.

- (b) Class Counsel and Claims Administrator shall cause the Settlement Fund to be invested in guaranteed investment vehicles or liquid money market accounts or equivalent securities with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46). All interest earned on the Settlement Fund shall become and remain part of the Settlement Fund.
- (c) The Plaintiffs and the Settling Defendant acknowledge that the Settlement Class includes both shippers and freight forwarders, and both customers and non-customers of the Settling Defendant, and that the Settlement Agreement makes no determination as to which Settlement Class Members are entitled to distribution of the Settlement Fund, or as to the formula for determining the amounts to be distributed and the Settling Defendant bears no responsibility for the determination of claim amounts or the Distribution Protocol. At a time within their discretion, on notice to the Settling Defendant and after providing the motion material in draft to the Settling Defendant for review, the Plaintiffs shall submit a Distribution Protocol to the Courts for approval. The Distribution Protocol will be in the form attached hereto as Schedule "E" or such other form agreed between the Plaintiffs and the Settling Defendant.
- (d) After the Effective Date, the Settlement Fund shall be distributed in accordance with the Distribution Protocol.

2.2 Payment of the Settlement Benefits

- (a) Except as otherwise provided herein, the Settling Defendant agrees to pay the Settlement Amount in full satisfaction of all Released Claims against the Released Parties.
- (b) Except as otherwise provided herein, the Settling Defendant shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement. For greater certainty, but without limiting the generality of the foregoing, the Settling Defendant shall have no responsibility or liability as a result of any decrease or depreciation of the value of the Settlement Fund, howsoever caused, including, but not limited to, a decrease or depreciation in the value of any investments purchased by Class Counsel or the Claims Administrator, or the payment of any Class Counsel Fees, Class Counsel Disbursements, or any Administration Expenses, except as otherwise provided herein.
- (c) The Settling Defendant, directly or through its counsel or designee, shall wire transfer the Settlement Amount in three equal installments into the Settlement Fund on: (i) the later of thirty (30) days after the Date of Execution or November 15, 2020; (ii) April 15, 2021; and (iii) October 15, 2021.
- (d) If the Settlement Agreement is terminated or otherwise fails to take effect pursuant to Section 10, the Settlement Fund shall be returned to the Settling Defendant pursuant to Section 10.2(b)(iii) of this Settlement Agreement.

2.3 Taxes

- (a) All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. Except as provided for in

Section 10.2(b)(iii), none of the income earned by the Settlement Fund, including interest earned thereon, will be reported as taxable to the Settling Defendant.

- (b) Except as provided for in Section 10.2(b)(iii), Class Counsel and/or the Claims Administrator shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned on the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund.
- (c) Except as provided for in Section 10.2(b)(iii), the Settling Defendant shall have no responsibility to make any filings relating to the Settlement Fund, will not be considered a payee of any income earned on the Settlement Fund, and will have no responsibility to pay tax on any interest or income earned by the Settlement Fund or pay taxes, if any, on the Settlement Fund.

SECTION 3- RELEASES AND DISMISSALS

3.1 Release of Released Parties

- (a) Upon the Effective Date, subject to Section 3.2 and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasing Parties shall be deemed to, and do hereby, release and forever discharge the Released Parties of and from any and all Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein incorporated into the Approval Orders. It is a material term of the Settlement Agreement that the Courts

include the release of the Released Parties of all the Released Claims provided for in this Settlement Agreement in the Approval Orders.

- (b) The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Settlement Agreement, and that it is their intention to, and they do hereby, release fully, finally and forever all Released Claims as set out in this Section 3.1, and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

3.2 Covenant Not To Sue

- (a) Notwithstanding Section 3.1, upon the Effective Date, for any Settlement Class Members resident in any jurisdiction where the release of one tortfeasor is a release of all other tortfeasors, the Releasing Parties do not release the Released Parties but instead covenant and undertake not to sue, make in any way any Claim within the scope of the Released Claims or to threaten, commence, or continue any Claim within the scope of the Released Claims in any jurisdiction against the Released Parties. The Parties shall use their best efforts to have the terms of the covenant not to sue contemplated herein incorporated into the Approval Orders.
- (b) With respect to the Settlement Class Members resident in any jurisdiction where the release of one tortfeasor is a release of all other tortfeasors, the Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter

of the Settlement Agreement, and that it is their intention to fully, finally and forever covenant and undertake not to sue or make any Claim within the scope of the Released Claims against the Released Parties as set out in this Section 3.2, and in furtherance of such intention, this covenant not to sue shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

3.3 No Further Claims

- (a) Upon the Effective Date, the Releasing Parties shall not now or hereafter commence, 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 Claim within the scope of the Released Claims against any Released Party or any other Person who may claim contribution or indemnity from any Released Party in respect of any Released Claim, except for the continuation of the Actions against the Non-Settling Defendants.

3.4 Dismissal of Actions as Against the Settling Defendant

- (a) Except as provided herein, upon the Effective Date, the BC Action and the Ontario Action shall be dismissed, without costs and with prejudice, as against the Settling Defendant and AC Cargo Limited Partnership.
- (b) Except as provided herein, upon the Effective Date, the Quebec Action shall be settled, without costs and with prejudice, as against the Settling Defendant and AC Cargo Limited Partnership.

3.5 Dismissal of Released Claims as Against the Released Parties

- (a) Upon the Effective Date, Settlement Class Members shall be deemed to irrevocably consent to the dismissal as against the Released Parties, without costs and with prejudice, of any and all of the Settlement Class Members' Released Claims in any jurisdiction.
- (b) Upon the Effective Date, any and all of the Settlement Class Members' Released Claims commenced in each of the Court's respective jurisdictions shall be dismissed against the Released Parties, without costs and with prejudice.

3.6 Claims Against Other Entities Reserved

- (a) 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 Released Parties.

SECTION 4 - BAR ORDER

4.1 Ontario and BC Bar Order

- (a) The Plaintiffs in the Ontario and BC Actions shall seek a bar order from the Ontario and BC Courts providing for the following:
 - (i) all claims for contribution and indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, in respect of any Released Claims, by any Non-Settling Defendant or any other Person against a Released Party, or by a Released Party against any Non-Settling Defendant or any other Person, are barred, prohibited and enjoined. If contrary to the Ontario and BC Approval Orders a foreign court permits a Releasing Party to bring a claim in respect of a Released Claim against a Non-Settling

Defendant, another Defendant or a Released Party in a jurisdiction outside of Ontario or BC (the “Foreign Claim”), that Non-Settling Defendant, other Defendant or Released Party will not be prohibited by the Ontario and BC Approval Order from bringing a claim for contribution, indemnity or other claims over against a Released Party or other Person, including a Non-Settling Defendant or other Defendant, in respect of the Foreign Claim, to the extent such a claim exists under the applicable law;

- (ii) that if, in the absence of Section 4.1(a)(i) above, a Person or Persons would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Released Parties, in any Canadian or foreign jurisdiction:
 - (A) the Releasing Party or Releasing Parties (including without limitation the Plaintiffs in the Ontario and BC Actions and the Ontario and BC Settlement Class Members) are prohibited and barred from bringing or pursuing the claim that gives rise to the claim for contribution, indemnity, or other claim over against any one or more of the Released Parties;
 - (B) for greater certainty, the Releasing Parties shall not be entitled to claim or recover from that Person or Persons that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) awarded in respect of any claim(s) on which judgment

is entered that corresponds to the Proportionate Liability of the Released Parties proven at trial or otherwise;

(C) for greater certainty, the Plaintiffs in the Ontario and BC Actions and the Ontario and BC Settlement Class Members shall limit their claims against the Non-Settling Defendants to, and shall be entitled to recover from the Non-Settling Defendants, only those claims for damages, costs and interest attributable to the Non-Settling Defendants' several liability to the Plaintiffs in the Ontario and BC Actions and the Ontario and BC Settlement Class Members, if any; and

(D) the Ontario and BC Courts shall have full authority to determine the Proportionate Liability at the trial or other disposition of the Ontario or BC Action, whether or not the Released Parties remain in the Ontario or BC Action or appear at the trial or other disposition, and the Proportionate Liability shall be determined as if the Released Parties are parties to the Ontario or BC Action for that purpose and any such finding by the Ontario or BC Court in respect of the Proportionate Liability shall only apply in the Ontario or BC Action and shall not be binding upon the Released Parties in any other proceedings;

(iii) that if, in the absence of Section 4.1(a)(i) above, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Released Parties, then nothing in the Ontario and BC Approval Orders is intended

to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any judgment against them in the Ontario and BC Actions.

4.2 Quebec Waiver or Renunciation of Solidarity

- (a) The Plaintiff in the Quebec Action shall seek an order from the Quebec Court providing for the following:
- (i) the Plaintiff in the Quebec Action 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 or other conduct of the Settling Defendant;
 - (ii) the Plaintiff in the Quebec Action 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, and/or any other applicable measure of proportionate liability of the Non-Settling Defendants; and
 - (iii) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Settling Defendant or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action.

4.3 Material Term

- (a) The Parties acknowledge that the bar orders, waivers and renunciations of solidarity contemplated in this Section 4 shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the bar orders, waivers and

renunciations of solidarity contemplated herein shall give rise to a right of termination pursuant to Section 10.1(a) of this Settlement Agreement.

SECTION 5- SETTLEMENT APPROVAL

5.1 Best Efforts

- (a) The Parties shall use their best efforts to effectuate the settlement provided for in this Settlement Agreement, secure the prompt, complete and final dismissal with prejudice of the Ontario and BC Actions as against the Settling Defendant and AC Cargo Limited Partnership, and secure a prompt, complete declaration of settlement out of court of the Quebec Action as against the Settling Defendant and AC Cargo Limited Partnership.

5.2 Approval Hearings

- (a) As soon as practicable after the Execution Date, the Plaintiffs shall bring motions before the Courts for orders approving the notices described in Section 6.1(a). If the notices are approved by the Ontario Court, the Plaintiffs and the Settling Defendant shall jointly seek entry of an order in the form attached hereto as Schedule "A" or such other form as agreed upon by the Plaintiffs and the Settling Defendant. If the notices are approved by the BC and Quebec Courts, the Plaintiffs and the Settling Defendant shall jointly seek entry of orders that mirror the substance and form of the Ontario order.
- (b) As soon as practicable after the orders referred to in Section 5.2(a) have been issued and the notices described in Section 6.1(a) have been published, the Plaintiffs shall bring motions before the Courts for the Approval Hearings.
- (c) The Plaintiffs agree that, for settlement purposes, the only classes that they will seek to assert are the Ontario, BC and Quebec Settlement Classes.

- (d) If this Settlement Agreement is approved by the Ontario Court, the Plaintiffs and the Settling Defendant shall jointly seek entry of an Approval Order in the form attached hereto as Schedule “B” or such other form as agreed upon by the Plaintiffs and the Settling Defendant. If this Settlement Agreement is approved by the BC and Quebec Courts, the Plaintiffs and the Settling Defendant shall jointly seek entry of Approval Orders that mirror the substance and form of the Ontario Approval Order.

5.3 Pre-Motion Confidentiality

- (a) Until the first motion required by Section 5.2(a) is filed, this Settlement Agreement and all of its terms shall be kept confidential and shall not be disclosed by either the Plaintiffs, Class Counsel or the Settling Defendant, without the prior written consent of Counsel for the Settling Defendant or Class Counsel respectively, except as may be required for the purposes of on-going securities disclosure obligations, financial reporting or the preparation of financial records (including without limitation tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

SECTION 6- NOTICE TO SETTLEMENT CLASS

6.1 Notices Required

- (a) The proposed Settlement Class shall be given a single notice of: (1) the proposed certification of the Settlement Class as against the Settling Defendant, for settlement purposes only; (2) the date and location of the Approval Hearings; (3) the core elements of the Settlement Agreement and the Distribution Protocol; and (4) if brought with the Approval Hearings, the hearings to approve Class Counsel Fees and Class Counsel Disbursements.

6.2 Form and Distribution of Notices

- (a) The notice of hearing will be in the form attached hereto as Schedules “C1” to “C3” or such other form as agreed upon by the Plaintiffs and the Settling Defendant and approved by the Courts.
- (b) The notice of hearing will be disseminated in accordance with the plan of dissemination attached hereto as Schedule “D” or such other form as agreed upon by the Plaintiffs and the Settling Defendant and approved by the Courts.
- (c) Class Counsel shall use their reasonable best efforts to coordinate the provision of notice pertaining to this Settlement Agreement with the provision of notice of the proposed settlement agreement between the Plaintiffs and British Airways PLC.
- (d) The Settling Defendant consents to Epiq using the Settling Defendant’s customer information provided to Epiq in accordance with the order of the Ontario Court, dated May 2, 2008 for the purpose of facilitating the dissemination of the notices required in Section 6.1(a).

SECTION 7 – ADMINISTRATION AND IMPLEMENTATION

7.1 Mechanics of Administration

- (a) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Courts on motions brought by Class Counsel on notice to the Settling Defendants.

7.2 Information and Assistance

- (a) After the Execution Date, the Settling Defendant will make itself reasonably available to any Court-appointed notice provider and/or the Claims Administrator to respond to

reasonable questions respecting the information provided by the Settling Defendant to Epiq in accordance with the order of the Ontario Court dated May 2, 2008.

- (b) The information provided by the Settling Defendant to Epiq in accordance with the order of the Ontario Court, dated May 2, 2008 may be used to:
 - (i) facilitate the dissemination of the notices required in Section 6.1; and
 - (ii) in the event that the proposed settlement agreement between the Plaintiffs and British Airways PLC does not become effective in accordance with its terms, advise Settlement Class Members who purchased Airfreight Shipping Services from the Settling Defendant during the Purchase Period of any subsequent settlement agreement with British Airways PLC, any related approval hearings, and any other major steps in the Actions; and
 - (iii) facilitate the claims administration process with respect to this Settlement Agreement and the proposed settlement between the Plaintiffs and British Airways PLC, and, in the event that the proposed settlement between the Plaintiffs and British Airways PLC does not become effective in accordance with its terms, any subsequent settlement and/or court award achieved in the Actions.

SECTION 8- CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

8.1 Class Counsel Fees

- (a) Class Counsel shall seek the approval of the Courts of their Class Counsel Fees and Class Counsel Disbursements. Class Counsel may seek such approval contemporaneously with the Approval Hearings or at such other time as they shall determine in their sole discretion.

Class Counsel shall provide a courtesy copy of the motion to Counsel for the Settling Defendants.

- (b) Class Counsel shall be reimbursed and paid for approved Class Counsel Fees and Class Counsel Disbursements solely out of the Settlement Fund after the Effective Date. No Class Counsel Fees or Class Counsel Disbursements shall be paid from the Settlement Fund prior to the Effective Date.
- (c) The Settling Defendant shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, costs of notices or the Plaintiffs' or Settlement Class Members' experts, advisors, agents, or representatives. For greater certainty, other than the payment of the Settlement Amount, the Settling Defendant shall have no further liabilities or debts in respect of this Settlement Agreement or the administration thereof.

8.2 Administration Expenses

- (a) Class Counsel shall use their reasonable best efforts to coordinate the claims administration process pertaining to this Settlement Agreement with the claims administration process pertaining to the proposed settlement agreement between the Plaintiffs and British Airways PLC.
- (b) Aside from payment of the Settlement Amount, the Settling Defendant is not liable to pay any further amount on account of any Administrative Expenses, Class Counsel Fees, or Class Counsel Disbursements, including the cost of notice.

SECTION 9 - IMPLICATIONS OF SETTLEMENT

9.1 No Admission of Liability

- (a) The Plaintiffs and the Settling Defendant expressly reserve all of its rights if this Settlement Agreement is terminated or otherwise fails to take effect for any reason. Further, the Plaintiffs and the Settling Defendant agree that, 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 of any jurisdiction, or of any wrongdoing or liability by the Settling Defendant or any Released Party, or of the truth of any of the claims or allegations contained in the Actions or any other pleading filed by the Plaintiffs or any Settlement Class Member.

9.2 Agreement Not Evidence

- (a) The Plaintiffs and the Settling Defendant agree that, 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 referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

9.3 No Further Litigation

- (a) Except as otherwise provided in this Settlement Agreement, no Class Counsel nor anyone currently or hereafter employed by, 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 within the scope of the Released Claims commenced by any Person including in respect of litigation in any jurisdictions outside of Canada. Moreover, unless otherwise ordered by a court, no Class Counsel nor anyone currently or hereafter employed by or a partner with Class Counsel, may divulge to anyone for any purpose any information, including, without limitation, Documents obtained in the course of the Actions or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available.
- (b) Section 9.3(a) does not apply to the involvement of any Person in the continued prosecution of the Actions against any Non-Settling Defendants.
- (c) Section 9.3(a) shall be inoperative to the extent that it is inconsistent with BC Counsel's obligations under Section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia*.

SECTION 10- TERMINATION OF SETTLEMENT AGREEMENT

10.1 Right of Termination

- (a) Only if one or more of the following events occur, the Plaintiffs and the Settling Defendant shall each, in their respective sole discretion, have the option to terminate this Settlement Agreement in its entirety:

- (i) any Court declines to approve this Settlement Agreement or any material part hereof;
 - (ii) any Court declines to sign the Approval Order;
 - (iii) any Approval Order is materially modified or set aside on appeal; or
 - (iv) any Court declines to dismiss the Ontario or BC Action or settle with prejudice the Quebec Action as against the Settling Defendant and/or AC Cargo Limited Partnership.
- (b) In addition, if the Settlement Amount is not paid in accordance with Section 2.2(a) and Section 2.2(c), the Plaintiffs shall have the right to terminate this Settlement Agreement or move before the Ontario Court to enforce the terms of this Settlement Agreement.
- (c) Any order, ruling or determination made by any Court with respect to Class Counsel Fees, Class Counsel Disbursements 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.
- (d) If pursuant to Section 10.1(a) or (b) above, the Plaintiffs or the Settling Defendant wish to terminate the Settlement Agreement, notice of such decision to terminate the Settlement Agreement must be provided in writing to the Plaintiffs or the Settling Defendant, as applicable, within thirty (30) days of an event under Section 10.1(a) or (b) having occurred.

10.2 Effect of Termination Generally

- (a) Except as provided in Section 10.3(a), if this Settlement Agreement is terminated or otherwise fails to take effect for any reason, it shall have no further force and effect, shall

not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(b) If this Settlement Agreement is terminated in accordance with Section 10.1 or otherwise fails to take effect for any reason:

(i) the Parties will cooperate in seeking to have any issued Approval Order set aside and declared null and void and of no force or effect, and without prejudice to any position that any of the Parties may later take on any issue in the Actions or any other litigation. Any Person attempting to rely on such Approval Order shall be estopped from doing so;

(ii) Class Counsel shall forthwith deliver consents in writing authorizing the Settling Defendant to bring motions before the Courts for orders:

(A) declaring this Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in Section 10.3(a));

(B) setting aside any Approval Order;

(C) setting aside any order approving Class Counsel Fees; and

(D) directing that the balance in the Settlement Fund less any deductions provided for in this Settlement Agreement be paid to the Settling Defendant, including interest.

(iii) Class Counsel or the Claims Administrator, as applicable, shall thereupon pay to the Settling Defendant the Settlement Fund, including interest. Despite Section

2.2(d), if the Settlement Agreement is terminated, to the extent the Settlement Fund is paid to the Settling Defendant, the Settling Defendant shall be responsible for the payment of taxes owed with respect to income on the returned Settlement Fund.

10.3 Survival of Provisions After Termination

- (a) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 2.2(d), 9.1, 9.2, and 10.2 and the definitions in Section 1 applicable thereto shall survive the termination and continue in full force and effect.

SECTION 11 - MISCELLANEOUS

11.1 Governing Law

- (a) Subject to Section 11.1(b), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (b) Notwithstanding Section 11.1(a), for matters relating specifically to the BC Action or the Quebec Action, the BC Court or Quebec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

11.2 Ongoing Jurisdiction and Motions for Directions

- (a) Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction and the Parties thereto and the application brought in those Actions for approval of Class Counsel Fees pursuant to Section 8.1.
- (b) The Plaintiffs and the Settling Defendant intend and agree that no Court shall make any order or give any 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 Court(s) with which it shares jurisdiction over that matter.

- (c) Notwithstanding the above, unless the Courts require otherwise, the Ontario Court shall exercise jurisdiction with respect to interpretation, implementation, administration, and enforcement of the terms of this Settlement Agreement, and the Parties submit to the jurisdiction of the Ontario Court for purposes of interpreting, implementing, administering, and enforcing the settlement provided for in this Settlement Agreement.
- (d) The Plaintiffs or the Settling Defendant may apply to the Ontario Court for directions in respect of the interpretation, implementation, administration or enforcement of this Settlement Agreement.
- (e) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and the Settling Defendant.

11.3 Interpretation

- (a) The division of this Settlement Agreement into Sections and the insertion of headings are for convenience of reference only and shall in no way define, extend, or describe the scope of this Settlement Agreement or the intent of any provision thereof.
- (b) The terms “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.
- (c) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (i) 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
- (ii) only in the case where the time for doing an act expires on a holiday (as “holiday” is defined in the *Interpretation Act*, RSC 1985, c I-21), the act may be done on the next day that is not a holiday.

11.4 Language

- (a) The Plaintiffs and the Settling Defendant acknowledge that they have required and consented that this Settlement Agreement be prepared in English.

11.5 Entire Agreement

- (a) This Settlement Agreement, including the recitals herein, constitutes the entire agreement among the Plaintiffs and the Settling Defendant, and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement, other than the representations, warranties, and covenants contained and memorialized in this Settlement Agreement. This Settlement Agreement supersedes any and all prior and contemporaneous agreements, understandings, undertakings, negotiations, representations, warranties, promises, and inducements concerning the Actions.
- (b) The Plaintiffs and the Settling Defendant further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

- (c) The recitals to this Settlement Agreement are material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

11.6 Binding Effect

- (a) This Settlement Agreement shall be binding upon, and enure to the benefit of the Releasing Parties, the Released Parties and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasing Parties and every covenant and agreement made herein by the Settling Defendant shall be binding upon all of the Released Parties.
- (b) 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.
- (c) This Settlement Agreement constitutes a transaction in accordance with *Civil Code of Quebec* art. 2631 et seq., and the Plaintiffs and the Settling Defendant are hereby renouncing any errors of fact, of law, and/or of calculation.
- (d) This Settlement Agreement may not be modified or amended except in writing and on consent of all the Plaintiffs and the Settling Defendant and any such modification or amendment must be approved by the Ontario Court.

11.7 Notice

- (a) 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:

If to: THE PLAINTIFFS and/or CLASS COUNSEL,

Charles M. Wright & Linda J. Visser
Siskinds^{LLP}
680 Waterloo Street
London, ON N6A 3V8
Tel.: (519) 672-2121
Fax: (519) 672-6065
Email: charles.wright@siskinds.com
linda.visser@siskinds.com

Irwin I. Liebman
Liebman Legal Inc.
1 Westmount Square, suite 350
Montréal, QC H3Z 2P9
Tel.: (514) 846-0666
Fax: (514) 935-2314
Email: irwin@liebmanlegal.com

David Jones
Camp Fiorante Matthews Mogerman
#400-856 Homer Street
Vancouver, BC V6B 2W5
Tel: (604) 869-7555
Fax: (604) 689-7554
Email: djones@cfmlawyers.ca

If to: AIR CANADA

Katherine Kay
Danielle Royal
Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9
Tel: (416) 869-5507
Fax: (416) 869-5254
Email: kkay@stikeman.com
droyal@stikeman.com

or to any such address or individual as may be designated by further notice in writing given by any Party to another.

11.8 Survival

- (a) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

11.9 Acknowledgements

- (a) Each of the Plaintiffs and the Settling Defendant hereby affirms and acknowledges that:
 - (i) 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 this Settlement Agreement;
 - (ii) 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;
 - (iii) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect; and
 - (iv) 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.

11.10 Authorized Signatures

- (a) 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.

11.11 Counterparts

- (a) This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.
- (b) For purposes of executing this Settlement Agreement a facsimile or electronic signature shall be deemed an original signature.

11.12 Execution Date

- (a) The Plaintiffs and the Settling Defendant have executed this Settlement Agreement as of the date on the cover page.

IN WITNESS WHEREOF, the Plaintiffs and the Settling Defendant hereto have caused this Settlement Agreement to be executed, by their duly authorized counsel, as follows:

AIRIA BRANDS INC., STARTECH.COM LTD., and QCS-QUICK CARGO SERVICE GMBH, on their own behalf and on behalf of the Ontario Settlement Class, by their counsel

Name of Authorized Signatory: Charles M. Wright

Signature of Authorized Signatory: CMW for Siskinds LLP
Siskinds LLP
Ontario Counsel

CARTISE SPORTS INC., on its own behalf and on behalf of the Quebec Settlement Class, by its counsel

Name of Authorized Signatory: Charles M. Wright

Signature of Authorized Signatory: CMW for Lieberman
Lieberman Legal Inc
Quebec Counsel

KAREN MCKAY, on her own behalf and on behalf of the BC Settlement Class, by her counsel

Name of Authorized Signatory: Charles M. Wright

Signature of Authorized Signatory: CMW for CFMM -
Camp Fiorante Mathews Mogerman
BC Counsel

AIR CANADA, by its counsel

Name of Authorized Signatory: Katherine L. Kay

Signature of Authorized Signatory: Stikeman Elliott LLP per [Signature]
Stikeman Elliott LLP

SCHEDULE “A”

Court File No. 50389CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, THE ____ DAY
)
JUSTICE GRACE) OF _____, 2020

B E T W E E N :

AIRIA BRANDS INC., STARTECH.COM LTD.,
AND QCS-QUICK CARGO SERVICE GMBH

Plaintiffs

- and -

AIR CANADA, AC CARGO LIMITED PARTNERSHIP, SOCIETE AIR FRANCE,
KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V. dba KLM, ROYAL DUTCH
AIRLINES, ASIANA AIRLINES INC., BRITISH AIRWAYS PLC, CATHAY PACIFIC
AIRWAYS LTD., DEUTSCHE LUFTHANSA AG, LUFTHANSA CARGO AG, JAPAN
AIRLINES INTERNATIONAL CO., LTD., SCANDINAVIAN AIRLINES SYSTEM, KOREAN
AIR LINES CO., LTD., CARGOLUX AIRLINE INTERNATIONAL, LAN AIRLINES S.A,
LAN CARGO S.A., ATLAS AIR WORLDWIDE HOLDINGS INC., POLAR AIR CARGO
INC., SINGAPORE AIRLINES LTD., SINGAPORE AIRLINES CARGO PTE LTD., SWISS
INTERNATIONAL AIR LINES LTD., QANTAS AIRWAYS LIMITED, and MARTINAIR
HOLLAND N.V.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs for an Order approving the publication,
abbreviated, and long-form notices of the settlement approval hearing (“Notices of Hearing”) and

approving the plan of dissemination of those notices (“Plan of Dissemination”), was heard this day at the Court House, 80 Dundas Street, London, Ontario.

ON READING the materials filed, including the settlement agreement with Air Canada (the “Settling Defendant”) dated November 17, 2020 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and Counsel for the Settling Defendant;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendant consent to this Order and British Airways PLC takes no position on this motion:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to an are incorporated into this Order.
2. **THIS COURT ORDERS** that the customer information provided by any Defendant who has entered into a settlement with the Plaintiffs and International Air Transport Association, a non-party to this action, in accordance with the Order dated May 2, 2008, attached hereto as Schedule “B” (the "May 2 Order"), can be used by Epiq Class Action and Claims Solutions, Inc (formerly known as The Garden City Group LLP) for the limited purpose of disseminating the Notice of Hearing in accordance with the Order, subject to the same terms and conditions as the May 2 Order;
3. **THIS COURT ORDERS** that the publication, abbreviated, and long-form Notices of Hearing are approved substantially in the form attached hereto as Schedules “C” to “E”.

4. **THIS COURT ORDERS** that the Plan of Dissemination is approved in the form attached hereto as Schedule “F” and that the Notices of Hearing shall be disseminated in accordance with the Plan of Dissemination.

5. **THIS COURT ORDERS** that this Order is contingent upon parallel orders being made by the BC Court and the Quebec Court, and the terms of this Order shall not be effective unless and until such orders are made by the BC Court and the Quebec Court.

The Honourable Justice Grace

SCHEDULE “B”

Court File No. 50389CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE GRACE

)
)

●, THE ● DAY
OF ●, 2020

BETWEEN:

AIRIA BRANDS INC., STARTECH.COM LTD.,
AND QCS-QUICK CARGO SERVICE GMBH

Plaintiffs

-and-

AIR CANADA, AC CARGO LIMITED PARTNERSHIP, SOCIETE AIR FRANCE,
KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V. dba KLM, ROYAL DUTCH
AIRLINES, ASIANA AIRLINES INC., BRITISH AIRWAYS PLC, CATHAY PACIFIC
AIRWAYS LTD., DEUTSCHE LUFTHANSA AG, LUFTHANSA CARGO AG, JAPAN
AIRLINES INTERNATIONAL CO., LTD., SCANDINAVIAN AIRLINES SYSTEM, KOREAN
AIR LINES CO., LTD., CARGOLUX AIRLINE INTERNATIONAL, LAN AIRLINES S.A.,
LAN CARGO S.A., ATLAS AIR WORLDWIDE HOLDINGS INC., POLAR AIR CARGO
INC., SINGAPORE AIRLINES LTD., SINGAPORE AIRLINES CARGO PTE LTD., SWISS
INTERNATIONAL AIR LINES LTD., QANTAS AIRWAYS LIMITED, and MARTINAIR
HOLLAND N.V.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Settlement Approval – Air Canada)**

THIS MOTION made by the Plaintiffs for an Order certifying the Ontario Action as a class proceeding for settlement purposes only as against Air Canada (the “Settling Defendant”) and approving the settlement agreement entered into with the Settling Defendant, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

ON READING the materials filed, including the settlement agreement entered into between the Plaintiffs and the Settling Defendant dated as of November 17, 2020 and attached to this Order as Appendix “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and Counsel for the Settling Defendant, including that the Settling Defendant denies and does not admit, through the execution of the Settlement Agreement, and expressly denies any allegation of unlawful conduct alleged in the Ontario Action;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendant consent to this Order and British Airways PLC takes no position on this Order;

1. **THIS COURT ORDERS** that the definitions set out in the Settlement Agreement shall apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that this Action is certified as a class proceeding as against the Settling Defendant only and for settlement purposes only.
3. **THIS COURT ORDERS** that the Settlement Class is defined as:

All Persons, other than members of the Québec Settlement Class or the BC Settlement Class, who purchased Airfreight Shipping Services during the Purchase Period, including those Persons who purchased Airfreight Shipping Services* through freight forwarders, from any air cargo carrier, including without limitation, the Defendants. Excluded from the Ontario Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons who validly and timely opted-out of the Ontario Action in accordance with the order of the Ontario Court dated March 6, 2008.

*Airfreight Shipping Services means airfreight cargo shipping services for shipments within, to, or from Canada, but specifically excluding airfreight cargo shipping services for shipments (i) with an origin point in Canada and a destination point in the United States or

(ii) with an origin point in the United States and a destination point in Canada, but includes airfreight cargo shipping services in which the freight (i) travelled by truck from Canada to the United States, and then by air from the United States to a third country, or (ii) travelled by air from a third country to the United States, and then by truck from the United States to Canada.

4. **THIS COURT ORDERS** that Airia Brands Inc., StarTech.Com Ltd., and QCS-Quick Cargo Service GMBH are appointed as the representative plaintiffs for the Ontario Settlement Class.

5. **THIS COURT ORDERS** that, for settlement purposes, the following issue is common to the Ontario Settlement Class:

Did the Settling Defendant conspire to fix, raise, maintain or stabilize the prices of Airfreight Shipping Services during the Purchase Period in violation of Part VI of the *Competition Act* and the common law?

6. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.

7. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.

8. **THIS COURT ORDERS** that the Settlement Agreement is incorporated by reference into and forms part of this Order, and is binding upon the representative plaintiffs and all Ontario Settlement Class Members, and where any term of this Order and the Settlement Agreement conflict, the term contained in this Order shall govern.

9. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Ontario Settlement Class Member including those persons who are minors or

mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Action.

10. **THIS COURT ORDERS** that, upon the Effective Date, each Ontario Settlement Class Member shall be deemed to have consented to the dismissal as against the Released Parties, without costs and with prejudice, of any and all of the Settlement Class Member's Released Claims in any jurisdiction.
11. **THIS COURT ORDERS** that, upon the Effective Date, any and all Released Claims commenced in Ontario by any Settlement Class Member shall be dismissed against the Released Parties, without costs and with prejudice.
12. **THIS COURT ORDERS** that, subject to paragraph 13 and upon the Effective Date, the Releasing Parties shall be deemed to, and do hereby, release and forever discharge the Released Parties of and from any and all Released Claims.
13. **THIS COURT ORDERS** that the use of the terms "Releasing Parties" and "Released Claims" in this Order does not constitute a release of Claims by those Ontario Settlement Class Members who are resident in any jurisdiction where the release of one tortfeasor is a release of all tortfeasors.
14. **THIS COURT ORDERS** that, upon the Effective Date, for any Ontario Settlement Class Member who is resident in any jurisdiction where the release of one tortfeasor is a release of all tortfeasors, the Releasing Parties do not release the Released Parties but instead covenant and undertake not to sue, make in any way any Claim within the scope of the

Released Claims or to threaten, commence, or continue any Claim within the scope of the Released Claims in any jurisdiction against the Released Parties.

15. **THIS COURT ORDERS** that, upon the Effective Date, the Releasing Parties shall not now or hereafter commence, 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 Claim within the scope of the Released Claims against any Released Party or any other Person who may claim contribution or indemnity from any Released Party in respect of any Released Claim, except for the continuation of the Actions against the Non-Settling Defendants and, in the event that the Ontario Action is decertified, continuation of the Claims as alleged in the Actions against the Non-Settling Defendants in the form of individual claims, group proceedings, test cases, or otherwise.

16. **THIS COURT ORDERS** that, notwithstanding the continuation of the Actions against the Non-Settling Defendants or, in the event that the Ontario Action is decertified, continuation of the Claims as alleged in the Actions against the Non-Settling Defendants in the form of individual claims, group proceedings, test cases, or otherwise, all claims for contribution and indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, in respect of any Released Claims, by any Non-Settling Defendant or any other Person against a Released Party, or by a Released Party against any Non-Settling Defendant or any other Person, are barred, prohibited and enjoined. If contrary to this Order a foreign court permits a Releasing Party to bring a claim in respect of a Released Claim against a Non-Settling Defendant, another Defendant or a Released Party in a jurisdiction outside of Ontario (the "Foreign Claim") then that Non-Settling

Defendant, other Defendant or Released Party will not be prohibited by this Order from bringing a claim for contribution, indemnity or other claims over against a Released Party or other Person, including a Non-Settling Defendant or other Defendant, in respect of the Foreign Claim, to the extent such a claim exists under the applicable law.

17. **THIS COURT ORDERS** that if, in the absence of paragraph 16 above, a Person or Persons would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Released Parties, in any Canadian or foreign jurisdiction:

- (a) the Releasing Party or Releasing Parties (including without limitation the Plaintiffs in this Action and the Ontario Settlement Class Members) are prohibited and barred from bringing or pursuing the claim that gives rise to the claim for contribution, indemnity, or other claim over against any one or more of the Released Parties;
- (b) for greater certainty, the Releasing Parties shall not be entitled to claim or recover from that Person or Persons that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) awarded in respect of any claim(s) on which judgment is entered that corresponds to the Proportionate Liability of the Released Parties proven at trial or otherwise;
- (c) for greater certainty, the Plaintiffs in this Action and the Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants to, and shall be entitled to recover from the Non-Settling Defendants, only those claims for

damages, costs and interest attributable to the Non-Settling Defendants' several liability to the Plaintiffs in this Action and the Ontario Settlement Class Members, if any;

- (d) this Court shall have full authority to determine the Proportionate Liability at the trial or other disposition of this Action, whether or not the Released Parties remain in this Action or appear at the trial or other disposition, and the Proportionate Liability shall be determined as if the Released Parties are parties to this Action for that purpose and any such finding by this Court in respect of the Proportionate Liability shall only apply in this Action and shall not be binding upon the Released Parties in any other proceedings.

18. **THIS COURT ORDERS** that if, in the absence of paragraph 16 hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Released Parties, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any judgment against them in this Action.

19. **THIS COURT ORDERS** that for purposes of enforcement of this Order, this Court will retain an ongoing supervisory role and the Settling Defendant will attorn to the jurisdiction of this Court for this purpose.

20. **THIS COURT ORDERS** that, except as provided in this Order and the Settlement Agreement, this Order does not affect any claims or causes of action that any Ontario

Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators in this Action.

21. **THIS COURT ORDERS** that the Released Parties have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
22. **THIS COURT ORDERS** that the Settlement Amount be held in trust for the benefit of the Settlement Class, pending further order of this Court, which shall be sought by the Plaintiffs on a motion in the Action brought on notice to the Settling Defendant.
23. **THIS COURT ORDERS** that, after the Effective Date, the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Class in the continued prosecution of the Ontario Action against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Class to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.
24. **THIS COURT ORDERS** that, upon the Effective Date, this Action be and is hereby dismissed against the Settling Defendant and AC Cargo Limited Partnership without costs and with prejudice.
25. **THIS COURT ORDERS** that this Order shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms.

26. **THIS COURT ORDERS** that the approval of the Settlement Agreement and any reasons given by this Court in relation thereto, except any reasons given in connection with paragraphs 16 to 18 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario Action as against the Non-Settling Defendants.
27. **THIS COURT ORDERS** that this Order is contingent upon parallel orders being made by the BC Court and the Quebec Court, and the terms of this Order shall not be effective unless and until such orders are made by the BC Court and the Quebec Court.

The Honourable Justice Grace

SCHEDULE "C1"

Did you purchase airfreight shipping services within, to, or from Canada (except to/from the United States) between January 2000 and September 2006?



If so, you might be affected by class action settlements with British Airways PLC ("British Airways") and Air Canada. Pursuant to the settlements, British Airways agreed to pay CAD\$9,000,000 and Air Canada agreed to pay CAD\$7,000,000.

The settlement amounts will be paid in three installments over the period from 15 October 2020 to 15 October 2021. The settlements are compromises of disputed claims and are not admissions of liability or wrongdoing and British Airways or Air Canada expressly deny any liability or wrongdoing.

Both settlements require court approval in Ontario. The Air Canada settlement also requires approval in British Columbia and Quebec. The Ontario approval hearing is scheduled for February 11, 2021 at 10:00 a.m. The British Columbia approval hearing is scheduled for X at X. The Quebec approval hearing is scheduled for X at X.

At the approval hearings, the courts will also be asked to approve a protocol for distributing the settlement funds.

For more information about the settlements, your options in relation to the settlements, and deadlines for acting:

w: www.aircargosettlement2.com

e: aircargo@siskinds.com

p: 1-800-461-6166 x 2455

**You are represented by Siskinds LLP, Liebman Legal,
and Camp Fiorante Matthews Mogerman LLP**

Did you purchase Airfreight Shipping Services between January 2000 and September 2006?

If so, you could be affected by proposed class action settlements.



What is this litigation about?

Class actions were commenced in Canada alleging an unlawful conspiracy to fix prices for Airfreight Shipping Services. Airfreight Shipping Services are air cargo shipments to/from Canada (except to/from the United States) between January 2000 and September 2006 (see the long-form notice at www.aircargosettlement2.com for the full definition).

What settlements have been reached?

Settlements were reached with British Airways PLC ("British Airways") and Air Canada. Both settlements are subject to court approval. If approved, the settlements will resolve the litigation in its entirety.

Under the terms of their settlement agreements, British Airways agreed to pay CAD\$9,000,000 and Air Canada agreed to pay CAD\$7,000,000. The settlement funds will be paid in three installments over the period from 15 October 2020 to 15 October 2021.

The settlements represent a resolution of disputed claims and are not an admission of liability or wrongdoing and British Airways or Air Canada expressly deny any liability or wrongdoing.

What should I know about the approval hearings?

Both settlements must be approved by the Ontario court. The Air Canada settlement must also be approved by the British Columbia and Quebec courts. At the approval hearings, the courts will determine whether the settlements are fair, reasonable, and in the best interests of Settlement Class Members.

Class Counsel's legal fees and disbursements must also be approved by the courts. Class Counsel will request that legal fees of up to 25% of the British Airways and Air Canada settlement funds, plus disbursements and applicable taxes, be approved and paid out of the settlement funds.

The Ontario approval motion will take place by video conference on February 11, 2021 at 10:00 a.m. The British Columbia approval motion will take place on [redacted] at [redacted]. The Quebec approval hearing will take place on [redacted] at [redacted].

How will the settlement funds be distributed?

Previous settlements were reached with 12 groups of defendants. In 2019, those settlement funds were distributed to eligible Settlement Class Members, less fees, disbursements and a litigation reserve fund.

At the approval motion, the courts will also be asked to approve a second protocol for distributing the Net Settlement Funds to Settlement Class Members. The Net Settlement Funds include (i) the British Airways and Air Canada settlement amounts, less approved legal fees and expenses; (ii) residual settlement funds from the first distribution; and (iii) the remainder of the litigation reserve fund. A copy of the proposed distribution protocol is available at www.aircargosettlement2.com.

The Net Settlement Funds will be distributed in the same manner as in the first distribution (see the long-form notice at www.aircargosettlement2.com for more information).

Persons who filed a claim in the first distribution ("Original Claimants") will be able to rely on information provided in their previous claim form, but will be required to confirm their contact information and provide a statement of release. Persons who did not file a claim in the first distribution will need to file a claim to be eligible for payment.

Original Claimants who were issued a minimum payment of \$20 in the first distribution, notwithstanding that their pro rata entitlement was less than \$20 will have to account for the excess payment in this distribution. For example, if the Original Claimant's pro rata entitlement under the First Distribution was \$15, but the Original Claimant was paid \$20, and the Original Claimant's pro rata entitlement under the Second Distribution is \$30, the Original Claimant will only be paid an additional \$25.

All valid Claims will be assigned a minimum value of \$20. However, if the pro rata distribution would result in a payment of less than \$10 to an Original Claimant, no additional payment will be issued to that claimant.

Another notice will be provided regarding the process for applying to receive settlement funds. In the interim, you should keep copies of all relevant records.

What are my options?

You may express your views to the courts on the proposed settlements, distribution protocol, or Class Counsel's fee request. If you wish to do so, you must act by [redacted].

You may (but do not need to) attend the approval hearing. Please contact Class Counsel for additional details.

What if I have questions?

Visit us at www.aircargosettlement2.com, email aircargo@siskinds.com or call 1-800-461-6166 x 2455.

**NOTICE OF SETTLEMENT APPROVAL HEARING
IN THE CANADIAN AIR CARGO PRICE-FIXING CLASS ACTIONS**

Please read this notice carefully. It may affect your legal rights.

A. WHO IS AFFECTED BY THIS NOTICE?

This notice affects anyone who purchased Airfreight Shipping Services, including those persons who purchased Airfreight Shipping Services through freight forwarders or from any air cargo carrier, for shipments within, to, or from Canada during the period from January 1, 2000 to September 11, 2006, and have not already excluded themselves from the class actions (the "Settlement Class" or "Settlement Class Members").

Airfreight Shipping Services means airfreight cargo shipping services for shipments within, to, or from Canada, but excludes airfreight shipping services for shipments:

- a) with an origin point in Canada and a destination point in the United States; or
- b) with an origin point in the United States and a destination point in Canada,

but includes airfreight cargo shipping services in which the freight:

- c) travelled by truck from Canada to the United States, and then by air from the United States to a third country; or
- d) travelled by air from a third country to the United States, and then by truck from the United States to Canada.

B. WHAT IS A CLASS ACTION?

A class action is a lawsuit filed by one person on behalf of a large group of people.

C. WHAT ARE THESE CLASS ACTIONS ABOUT?

Class action lawsuits were commenced in Ontario, British Columbia and Quebec alleging that the Defendants participated in an unlawful conspiracy to fix prices of Airfreight Shipping Services from January 1, 2000 to September 11, 2006.

The Ontario action was certified as a national class proceeding in 2015. As a result, Class Counsel agreed to actively pursue the litigation in Ontario. Pending the outcome of the Ontario action, the Quebec action has been stayed and the parties have agreed not to litigate in British Columbia.

Previous settlements were reached with twelve groups of defendants and the related settlement funds have been distributed to Settlement Class Members. For information about those settlements, visit www.aircargosettlement2.com.

D. WHAT NEW SETTLEMENTS HAVE BEEN REACHED IN THE CLASS ACTIONS?

Settlements were reached with British Airways PLC (“British Airways”) and Air Canada. The settlements are subject to court approval. If approved, the settlements will resolve the litigation in its entirety.

Under the terms of their settlement agreements, British Airways agreed to pay CAD\$9,000,000 and Air Canada agreed to pay CAD\$7,000,000 in exchange for a full release of the claims against them relating to the alleged price-fixing of Airfreight Shipping Services. The settlement funds will be paid in three installments over the period from 15 October 2020 to 15 October 2021. British Airways also agreed to provide cooperation to the plaintiffs.

The settlements represent a resolution of the disputed claims. British Airways and Air Canada do not admit and expressly deny any wrongdoing or liability.

Copies of the settlement agreements are available at www.aircargosettlement2.com.

E. WHAT SHOULD I KNOW ABOUT THE APPROVAL HEARINGS?

Both settlements must be approved by the Ontario court. The Air Canada settlement must also be approved by the British Columbia and Quebec courts. At the approval hearings, the courts will determine whether the settlements are fair, reasonable, and in the best interests of Settlement Class Members.

Class Counsel’s legal fees and disbursements must also be approved by the courts. Class Counsel will collectively be requesting that legal fees of up to 25% of the British Airways and Air Canada settlement funds, plus disbursements and applicable taxes, be approved and paid out of the settlement funds.

The Ontario approval motion will take place by video conference on February 11, 2021 at 10:00 a.m. The British Columbia approval motion will take place on ● at ●. The Quebec approval hearing will take place on ● at ●.

F. PROPOSED DISTRIBUTION OF THE SETTLEMENT FUNDS

Previous settlements were reached with 12 groups of defendants. In 2019, those settlement funds were distributed to eligible Settlement Class Members, less fees, disbursements and a litigation reserve fund.

At the approval motions, the courts will also be asked to approve a second protocol for distributing the current Net Settlement Funds to Settlement Class Members. The Net Settlement Funds include (i) the British Airways and Air Canada settlement amounts, less approved legal fees and expenses; (ii) residual settlement funds from the first distribution; and (iii) the remainder of the litigation reserve fund.

The Net Settlement Funds will be distributed in the same manner as in the first distribution. The following is a summary of the proposed distribution. A copy of the proposed distribution protocol is available at www.aircargosettlement2.com.

Persons Eligible to Claim

While the settlements release the claims of persons who purchased Airfreight Shipping Services within Canada, those persons are not eligible for compensation, as the alleged conspiracy related only to international shipments.

For the purposes of the distribution of settlement funds, Airfreight Shipping Services means airfreight cargo shipping services for shipments to or from Canada, but specifically excluding:

- a) airfreight cargo shipping services for shipments between Canada and the United States; and
- b) airfreight cargo shipping services provided by integrated air cargo shippers, such as FedEx, UPS, DHL, and TNT, on their own aircraft.

For certainty, Airfreight Shipping Services includes airfreight cargo shipping services in which the freight:

- a) travelled by truck from Canada to the United States, and then by air from the United States to a third country on a through airway bill;
- b) travelled by air from a third country to the United States, and then by truck from the United States to Canada on a through airway bill; or
- c) the shipping arrangement was made with an integrated air cargo shipper, but the freight was shipped on an air cargo carrier (not on the integrated shipper's own aircraft), including any of the Defendants in the litigation.

For the purposes of the distribution of settlement funds, Settlement Class Members means all persons who purchased Airfreight Shipping Services between January 1, 2000 and September 11, 2006. The following persons are excluded:

- a) the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors;
- b) the alleged unnamed co-conspirators: Aerolineas Brasileiras S.A (d/b/a Absa Cargo Airline), Air China Cargo Company Ltd. (d/b/a Air China Cargo), Air China Ltd. (d/b/a Air China), Air Mauritius Ltd., Airways Corporation of New Zealand Ltd. (d/b/a Airways New Zealand), Alitalia Linee Aeree Italiane S.p.A., All Nippon Airways Co., Ltd., DAS Air Ltd. (d/b/a Das Air Cargo), El Al Israel Airlines, Emirates Airlines (d/b/a Emirates), Ethiopian Airlines Corp., EVA Air, Kenya Airways Ltd., Malaysia Airlines, Nippon Cargo Airlines Co., Ltd., Saudi Arabian Airlines, Ltd., South African Airways (Proprietary), Ltd., Thai Airways International Public Co., Ltd., and Viação Aérea Rio-Grandense, S.A., and their respective parents, employees, subsidiaries, affiliates, officers and directors; and
- c) persons who opted out of the proceedings.

Distribution of Settlement Funds

Subject to further order of the Ontario court, the settlement funds will be distributed on a *pro rata* (proportional) basis, based on the value of a Settlement Class Member's Eligible Airfreight Shipping Services Purchases as against the value of all claimants' Eligible Airfreight Shipping Services Purchases.

To calculate Eligible Airfreight Shipping Services Purchases, Settlement Class Members will be categorized based on their position in the distribution chain and the following percentages will be applied their Airfreight Shipping Services Purchases. Settlement Class Members may fall into more than one category.

Purchaser Type	Description	Percentage
Direct Purchaser Shippers	Settlement Class Members who purchased Airfreight Shipping Services direct from an air cargo carrier, for shipments by that Settlement Class Member.	100%
Shippers	Settlement Class Members who purchased Airfreight Shipping Services from a Freight Forwarder.	75%
Freight Forwarders	Settlement Class Members who purchased Airfreight Shipping Services direct from an air cargo carrier, for resale to Shippers.	25%
Freight Forwarders who provided customer information in the first distribution		35%

Sample Calculation

If a Settlement Class Member purchased \$10,000 of Airfreight Shipping Services directly from an air cargo carrier and \$20,000 of Airfreight Shipping Services from a Freight Forwarder, its Eligible Airfreight Shipping Services Purchases for the purposes of determining its *pro rata* share of the Net Settlement Funds would be calculated as follows:

- d) $\$10,000 \times 1.00$ (representing the categorization of the purchaser as a Direct Purchaser Shipper) = \$10,000;
- e) $\$20,000 \times .75$ (representing the categorization of the purchaser as a Shipper) = \$15,000;
- f) $\$10,000 + \$15,000 = \$25,000$.

Assuming all valid claims totalled \$100 million, this Settlement Class Member would be entitled to 0.025% of the Net Settlement Funds.

Persons Who Claimed in the First Distribution

Persons who were issued payment in the first distribution (“Original Claimants”) will be able to rely on information provided in their previous claim form, but will be required to confirm their contact information and provide a statement of release.

Original Claimants who were issued a minimum payment of \$20 in the first distribution, notwithstanding that their *pro rata* entitlement was less than \$20, will have to account for the excess payment in this distribution. For example, if the Original Claimant’s *pro rata* entitlement under the First Distribution was \$15, but the Original Claimant was paid \$20, and the Original Claimant’s *pro rata* entitlement under the Second Distribution is \$30, the Original Claimant will only be paid an additional \$25.

Minimum Payments

Subject to further order of the Ontario Court, all valid Claims will be assigned a minimum value of \$20. However, if the *pro rata* distribution would result in a payment of less than \$10 to an Original Claimant, no additional payment will be issued to that claimant.

Filing a Claim

Another notice will be provided regarding the process for applying to receive settlement funds. In the interim, you should keep copies of all relevant records.

Residual Funds

To the extent that the full Net Settlement Funds are not paid out due to uncashed cheques, residual interest or otherwise, subject to further Order of the court, such monies shall be paid to Pro Bono Canada if the amount is equal or less than \$10,000, less any amounts payable to the Quebec Fonds d’aide aux actions collectives. For distribution of any amount above \$10,000, further direction of the court shall be sought.

G. WHAT ARE MY OPTIONS?

You do not have to do anything to stay in the class action. The time to opt-out (exclude yourself) from the class action has already expired. Settlement Class Members who have not opted-out will be bound by the settlement agreements and any court orders in the class actions.

If you want to object to the proposed settlements, fee request or distribution protocol at the approval hearings, you must send a letter to Class Counsel at the addressed listed below, postmarked no later than ●.

You may (but do not need to) attend the settlement approval hearing. If you want to attend the hearing, please contact Class Counsel for additional details.

H. WHO ARE LAWYERS WORKING ON THESE CLASS ACTIONS AND HOW ARE THEY PAID?

The following law firms represent Settlement Class Members and are available to answer questions about the proposed settlement:

Settlement Class Members outside British Columbia and Quebec:

- 1-800-461-6166 ext. 2455
- aircargo@siskinds.com
- Siskinds LLP, 680 Waterloo Street, London, ON, N6A 3V8, Canada, Attn: Charles Wright.

British Columbia Settlement Class Members:

- (604) 689-7555
- djones@cfmlawyers.ca
- Camp Fiorante Matthews Mogerman LLP, #400 - 856 Homer Street, Vancouver, BC, V6B 2W5, Attn: David Jones.

Quebec Settlement Class Members:

- (514) 846-0666
- moe@liebmanlegal.com
- Liebman Legal Inc., 1 Westmount Square #350, Montreal, QC, H3Z 2P9, Attn: Moe F. Liebman.

You do not have to pay the lawyers working on these class actions any money. The lawyers will be paid from the money collected in the class actions. The courts will be asked to decide how much the lawyers will be paid.

I. WHAT IF I HAVE MORE QUESTIONS?

For more information, and relevant documents (including copies of the settlement agreements and proposed distribution protocol) please visit www.aircargosettlement2.com.

SCHEDULE "D"

AIR CARGO CLASS ACTION PLAN OF DISSEMINATION

The Notices of Hearing shall be distributed in the following manner:

Publication Notice:

1. Published once in the following newspapers, in either English or French as is appropriate for each newspaper, subject to each having reasonable publication deadlines and costs:
 - (a) The Globe and Mail (National Edition);
 - (b) The Vancouver Sun;
 - (c) Le Journal de Montreal; and
 - (d) Le Soleil.

Abbreviated Notice:

2. Sent by direct mail or email to any persons included on the mailing list maintained by Epiq Class Action and Claims Solutions, Inc. (formerly known as Garden City Group LLP) for the purposes of the Canadian Air Cargo Proceedings; and
3. Sent to the following trade organizations, in English or French, as applicable, with a request that the trade organization forward the Notice to its members:
 - (a) Freight Management Association of Canada/Association Canadienne de Gestion du Fret (in French and English);
 - (b) European Shippers' Council;
 - (c) Asian Shippers' Council;
 - (d) Korean Shippers' Council;
 - (e) Philippine Shippers' Bureau;
 - (f) Hong Kong Shippers' Council;
 - (g) Global Shippers' Forum;
 - (h) Indonesia Shippers' Council;
 - (i) Malaysia National Shippers' Council;

- (j) Singapore National Shippers' Council;
- (k) Thai National Shippers' Council;
- (l) South African Shippers' Council; and
- (m) National Shippers Strategic Transportation Council (NASSTRAC).

Online Notice:

- (a) A banner advertisement shall be published for a one-month period on the Air Cargo Week website (www.aircargoweek.com), subject to reasonable placement deadlines and costs; and
- (b) An advertisement shall be published in the Payload Asia eNewsletter.

Long-Form Notice:

- 4. Posted in English and French by Class Counsel on Class Counsel's respective websites;
- 5. Posted in English and French on the website established for the purposes of the litigation: www.aircargosettlement2.com; and
- 6. Provided by Class Counsel or the Claims Administrator to any person who requests it, in English or French, as applicable.

SCHEDULE "E"

DISTRIBUTION PROTOCOL – SECOND DISTRIBUTION IN THE MATTER OF THE CANADIAN AIR CARGO PRICE-FIXING CLASS ACTION SETTLEMENTS

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GENERAL PRINCIPLES OF THE ADMINISTRATION

1. A previous distribution (the “**First Distribution**”) occurred in the context of the following settlements:
 - (a) Deutsche Lufthansa AG, Lufthansa Cargo AG and Swiss International Air Lines Ltd., dated December 30, 2006;
 - (b) Japan Airlines International Co., Ltd., dated July 8, 2010;
 - (c) Scandinavian Airlines System, dated November 26, 2010;
 - (d) Qantas Airways Limited, dated May 6, 2011;
 - (e) Cargolux Airlines International S.A., dated May 10, 2011;
 - (f) Singapore Airlines Ltd. and Singapore Airlines Cargo Pte. Ltd., dated June 24, 2011;
 - (g) Société Air France, Koninklijke Luchtvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines and Martinair Holland N.V., dated September 19, 2011;
 - (h) LAN Airlines S.A. and LAN Cargo S.A., dated December 12, 2011;
 - (i) Polar Air Cargo LLC, dated August 1, 2014;
 - (j) Korean Air Lines Co., Ltd., dated May 25, 2015;
 - (k) Asiana Airlines Inc., dated June 30, 2015;
 - (l) Cathay Pacific Airways Ltd., dated November 27, 2015.

2. After First Distribution, settlements were entered into with the following Defendants (the “**New Settlements**”):
 - (a) British Airways PLC, dated June 8, 2020; and
 - (b) Air Canada, dated November 17, 2020.

3. The procedures set forth herein (the “**Second Distribution**”) are intended to govern the administration of the Net Settlement Funds. The administration shall:
 - (a) implement and conform to this Distribution Protocol, and any orders of the Courts respecting this Distribution Protocol;
 - (b) employ secure, paperless, web-based systems with electronic registration and record-keeping wherever possible; and
 - (c) rely on the Airfreight Shipping Services sales information provided by the Defendants, IATA, and Freight Forwarders wherever possible.
4. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to their Airfreight Shipping Services, unless by such proceedings or private out-of-class settlements the Settlement Class Member’s claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.
5. In order to participate in the distribution of the Net Settlement Funds, Settlement Class Members will be required to:
 - (a) expressly consent to the jurisdiction of the Ontario Superior Court of Justice for all purposes relating to the Canadian air cargo litigation, including, without limiting the generality of the foregoing, the enforcement of the Settlement Agreements;
 - (b) expressly release the Released Parties (as defined in the Settlement Agreements) in respect of all Released Claims (as defined in the Settlement Agreements); and
 - (c) if they have commenced litigation in other jurisdictions against the Released Parties (as defined in the Settlement Agreements) relating to the Released Claims (as defined in the Settlement Agreements—e.g. claims resulting from or relating

to the purchase of Airfreight Shipping Services) or if such litigation has been commenced on their behalf, either discontinue or amend that litigation to exclude the Released Claims before filing a Claim, or expressly consent to a dismissal of such litigation when filing a Claim.

6. Settlement Class Members who filed a Claim as part of the First Distribution can rely on that Claim in respect of the Second Distribution.

DEFINITIONS

7. The definitions set out in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.

8. For the purpose of this Distribution Protocol:

(a) *Airfreight Shipping Services* means airfreight cargo shipping services for shipments to or from Canada, but specifically excluding:

- (i) airfreight cargo shipping services for shipments between Canada and the United States; and
- (ii) airfreight cargo shipping services provided by integrated air cargo shippers, such as FedEx, UPS, DHL, and TNT, on their own aircraft.

For certainty, Airfreight Shipping Services includes airfreight cargo shipping services in which the freight:

- (i) travelled by truck from Canada to the United States, and then by air from the United States to a third country on a through airway bill;
- (ii) travelled by air from a third country to the United States, and then by truck from the United States to Canada on a through airway bill; or
- (iii) the shipping arrangement was made with an integrated air cargo shipper, but the freight was shipped on an air cargo carrier (not on the integrated shipper's own aircraft), including any of the Defendants in the litigation.

- (b) ***Airfreight Shipping Services Purchases*** means the aggregate amount actually paid by Settlement Class Members for Airfreight Shipping Services between January 1, 2000 and September 11, 2006, less any rebates or other form of discounts and taxes.
- (c) ***Claim*** means the electronic or paper form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.
- (d) ***Claims Filing Deadline*** means the date by which Claims (and any required supporting documentation) must be electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Protocol.
- (e) ***Decision Notice*** shall have the meaning attributed to it in paragraph 38.
- (f) ***Direct Purchaser Shipper*** means a Settlement Class Member who purchased Airfreight Shipping Services direct from an air cargo carrier, for shipments by that Settlement Class Member.
- (g) ***Eligible Airfreight Shipping Services Purchases*** shall mean the value of the Settlement Class Member's Airfreight Shipping Services Purchases in respect of which the Settlement Class Member is entitled to settlement benefits, calculated in accordance with paragraph 10;
- (h) ***First Distribution*** has the meaning set out in paragraph 1.
- (i) ***Freight Forwarder*** means a Settlement Class Member who purchased Airfreight Shipping Services direct from an air cargo carrier, for resale to Shippers.
- (j) ***Net Settlement Funds*** means:
 - (i) the aggregate of:
 - (A) the Settlement Amounts recovered pursuant to the New Settlements;

- (B) any residual funds from the First Distribution; and
 - (C) any remaining Reserve Funds; and
 - (D) accrued interest on the foregoing,
- (ii) less :
- (A) Class Counsel Fees as approved by the Courts;
 - (B) Administration Expenses; and
 - (C) taxes (including interest and penalties) accruable with respect to the income earned on the settlement funds.
- (k) ***New Claimants*** means Settlement Class Members who were not issued payments under the First Distribution but are eligible for payments under the Second Distribution.
- (l) ***New Settlements*** means the settlements listed in paragraph 2.
- (m) ***Original Claimants*** means Settlement Class Member who were issued payments under the First Distribution.
- (n) ***Reserve Funds*** means the amount of CAD \$2 million reserved in the context of the First Distribution for the benefit of the Settlement Class Members.
- (o) ***Second Distribution*** has the meaning set out in paragraph 3.
- (p) ***Settlement Agreements*** means the settlements reached with the Defendants listed in paragraphs 1 and 2.
- (q) ***Settlement Class Members*** means all persons who purchased Airfreight Shipping Services between January 1, 2000 and September 11, 2006. The following persons are excluded:
- (i) the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors;
 - (ii) the alleged unnamed co-conspirators: Aerolineas Brasileiras S.A (d/b/a Absa Cargo Airline), Air China Cargo Company Ltd. (d/b/a Air China

Cargo), Air China Ltd. (d/b/a Air China), Air Mauritius Ltd., Airways Corporation of New Zealand Ltd. (d/b/a Airways New Zealand), Alitalia Linee Aeree Italiane S.p.A., All Nippon Airways Co., Ltd., DAS Air Ltd. (d/b/a Das Air Cargo), El Al Israel Airlines, Emirates Airlines (d/b/a Emirates), Ethiopian Airlines Corp., EVA Air, Kenya Airways Ltd., Malaysia Airlines, Nippon Cargo Airlines Co., Ltd., Saudi Arabian Airlines, Ltd., South African Airways (Proprietary), Ltd., Thai Airways International Public Co., Ltd., and Viação Aérea Rio-Grandense, S.A., and their respective parents, employees, subsidiaries, affiliates, officers and directors; and

(iii) persons who opted out of the proceedings.

(r) **Shipper** means a Settlement Class Member who purchased Airfreight Shipping Services from a Freight Forwarder.

DISTRIBUTION OF NET SETTLEMENT FUNDS

Calculation of Payments

9. Subject to paragraphs 13 and 14, the Net Settlement Funds will be distributed to Settlement Class Members *pro rata* (or proportionally) based on the value of the Settlement Class Member's Eligible Airfreight Shipping Services Purchases as against the value of all claimants' Eligible Airfreight Shipping Services Purchases. For the purposes of the distribution, Eligible Airfreight Shipping Services Purchases shall be calculated in accordance with paragraph 10.

Eligible Airfreight Shipping Services Purchases

10. To calculate Eligible Airfreight Shipping Services Purchases, Settlement Class Members will be categorized based on their position in the distribution chain and the following

percentages will be applied their Airfreight Shipping Services Purchases. Settlement Class Members may fall into more than one category.

Purchaser Type	Percentage
Direct Purchaser Shippers	100%
Shippers	75%
Freight Forwarders	25%
Freight Forwarders who, in the First Distribution, provided customer information respecting their customers' Airfreight Shipping Services Purchases to the Claims Administrator	35%

11. The value of a Settlement Class Member's Airfreight Shipping Services Purchases will be converted to CAD from the original currency, at the average Bank of Canada rate for that currency between January 1, 2000 and September 11, 2006.

Sample Calculation

12. If a Settlement Class Member purchased \$10,000 of Airfreight Shipping Services directly from an air cargo carrier and \$20,000 of Airfreight Shipping Services from a Freight Forwarder, its Eligible Airfreight Shipping Services Purchases for the purposes of determining its *pro rata* share of the Net Settlement Funds would be calculated as follows:

- (a) $\$10,000 \times 1.00$ (representing the categorization of the purchaser as a Direct Purchaser Shipper) = \$10,000;
- (b) $\$20,000 \times .75$ (representing the categorization of the purchaser as a Shipper) = \$15,000;
- (c) $\$10,000 + \$15,000 = \$25,000$.

Distribution

13. Subject paragraph 15 and any further order of the Ontario Court following the adjudication of all claims, all valid Claims will be assigned a minimum value of \$20. The \$20 valuation target is not an estimate of any damages suffered. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution.
14. Original Claimants who were issued a minimum payment of \$20 in the First Distribution, notwithstanding that their *pro rata* entitlement was less than \$20 must account for the excess payment as part of the *pro rata* distribution. For example, if the Original Claimant's *pro rata* entitlement under the First Distribution was \$15, but the Original Claimant was paid \$20, and the Original Claimant's prorata entitlement under the Second Distribution is \$30, the Original Claimant will only be paid an additional \$25.
15. If the *pro rata* distribution would result in payments of less than \$10 to an Original Claimant, no additional payment will be issued to the Original Claimant.
16. To the extent that the full Net Settlement Funds are not paid out due to uncashed cheques, residual interest or otherwise, subject to further Order of the Ontario Court, such monies shall be paid to Pro Bono Canada if the amount is equal or less than \$10,000, less any amounts payable to the Quebec Fonds d'aide aux actions collectives, as calculated pursuant to paragraph 17. For distribution of any amount above \$10,000, further direction of the Ontario Court shall be sought.
17. The *cy pres* payments shall be less any amounts payable to the Fonds d'aide aux actions collectives, pursuant to section 42 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1 and calculated in accordance with Article 1. (1°) of the Regulation respecting the percentage withheld by the *Fonds d'aide aux actions collectives*, R.S.Q. c. F-3.2.0.1.1, r. 2. For the purposes of calculating the amount payable to the *Fonds*

d'aide aux actions collectives, 23.6%¹ of the *cy pres* payment will be notionally allocated to Quebec.

THE CLAIMS PROCESS

The Claim

18. Original Claimants' Claims will be evaluated based on information provided in the First Distribution. For Original Claimants, the Claim shall require the following:
 - (a) confirmation of their current contact information; and
 - (b) a release in favour of the Released Parties in respect of all Released Claims (as those terms are defined in the Settlement Agreements).
19. For New Claimants, the Claim shall require the following:
 - (a) a declaration by the Settlement Class Member of the dollar value and currency of its Airfreight Shipping Services Purchases;
 - (b) an option for the Settlement Class Member to rely on defendant, International Air Transport Association ("IATA"), and/or Freight Forwarder data;
 - (c) a declaration that the Settlement Class Member is expressly submitting to the jurisdiction of the Ontario Court for the purposes of the Canadian air cargo litigation in order to participate in the distribution of the Net Settlement Funds;
 - (d) information that will allow the Claims Administrator to determine the proportion of Airfreight Shipping Services Purchases that were made in the capacity of a Direct Purchaser Shipper, a Freight Forwarder, and/or a Shipper;
 - (e) a declaration that the Settlement Class Member has not commenced litigation relating to Airfreight Shipping Services in another jurisdiction; or that any litigation relating to Airfreight Shipping Services commenced by the Settlement

¹ 23.6% represents that portion of the Canadian population that resides in Quebec based on information from Statistics Canada's website.

Class Member in another jurisdiction has been discontinued or amended to exclude claims relating to Airfreight Shipping Services;

- (f) disclosure regarding whether the Settlement Class Member has received compensation through other proceedings or private out-of-class settlements in relation to its Airfreight Shipping Services and/or whether the Settlement Class Member's claims in relation to its Airfreight Shipping Services have been released, and details of the compensation received and the claims released;
- (g) authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate, for more information and/or to audit the Claim;
- (h) a declaration that the information submitted in the Claim is true and correct;
- (i) a release in favour of the Released Parties in respect of all Released Claims (as those terms are defined in the Settlement Agreements); and
- (j) if the Claim Form is submitted by a related entity (i.e., a parent company claiming on behalf of a subsidiary or affiliate) or a third-party on behalf of a Settlement Class Member (i.e., a third-party claims services or a lawyer of their own choosing), the Settlement Class Member must provide a signed authorization in the form attached hereto as Schedule "A" or Schedule "B", as applicable.

The Online Claims Portal

20. The Claims Administrator shall create an online claims portal that Settlement Class Members can access in order to file a Claim and shall provide the necessary administrative support to enable Settlement Class Members to do so.

21. The online claims portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim, in accordance with paragraphs 18 and 19 above.

The Claims Filing Process

22. Settlement Class Members will be encouraged to complete and submit a Claim electronically using the online claims portal. Subject to further order of the Ontario Court, claims must be submitted to the online claims portal on or before the Claim Filing Deadline.
23. Subject to the discretion of the Claims Administrator, claims may not be amended after the Claims Filing Deadline. For greater clarity, “placeholder claims”—meaning inaccurate claims filed solely for the purpose of meeting the Claim Filing Deadline—will not be permitted.
24. The Claims Administrator shall provide to Original Claimants, in writing, by e-mail or regular mail, his, her or its personal user name and password to permit the Original Claimant access to the online claims portal. The Online Claim Portal shall be prepopulated with a summary of the information provided by the Original Claimant as part of the First Distribution.
25. Where a Settlement Class Member (who did not file a Claim in the First Distribution) has been identified by the Defendants, IATA, and/or a Freight Forwarder, the Claims Administrator shall provide to the Settlement Class Member, in writing, by e-mail or regular mail, his, her or its personal user name and password to permit that Settlement Class Member access to the online claims portal. Where the Defendants, IATA, and/or Freight Forwarder(s) have also provided customer information in respect of the Settlement Class Member, the fields in the online claims portal requiring the Settlement Class Member to provide the value of the Settlement Class Member’s

Airfreight Shipping Services Purchases shall be automatically populated with the information provided by the the Defendants, IATA, and/or Freight Forwarder(s), as applicable. The online claims portal shall permit Settlement Class Members to supplement or elect not to rely on the information provided by the Defendants, IATA, and/or the Freight Forwarder(s).

26. If a Settlement Class Member does not have internet access or is otherwise unable to submit a Claim using the online claims portal, the Settlement Class Member can register over the telephone with the Claims Administrator and the Claims Administrator shall send the Settlement Class Member a hardcopy claim form by mail. Subject to the direction of the Ontario Court, the completed and executed hardcopy Claim must be submitted to the Claims Administrator postmarked no later than the Claims Filing Deadline.
27. Where a Settlement Class Member has purchase records for Airfreight Shipping Services for at least two years during the period January 1, 2000 to September 11, 2006, the Settlement Class Member can use such records to extrapolate its Airfreight Shipping Services Purchases for the remainder of the period January 1, 2000 to September 11, 2006. If the Settlement Class Member's Claim is audited pursuant to paragraphs 31 to 34, the Settlement Class Member must provide a sworn statement explaining the basis for and calculation of the extrapolation of purchases.

Assistance in Filing a Claim

28. Settlement Class Members can contact the Claims Administrator or Class Counsel, at no charge, for assistance in the completion of their Claim.
29. Settlement Class Members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claims. If a Settlement Class Member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the

Settlement Class Members will be responsible for any expenses arising from those additional and individual services.

Scope of Claims Administration

30. Claims filed by Original Claimants were reviewed and adjudicated in the context of the First Distribution. The procedures set forth in paragraphs 31 to 34 (audits), paragraphs 35 to 36 (deficiencies), paragraphs 37 to 39 (Claims Administrator's decision), and 40 to 45 (appeal of the Claims Administrator's decision) shall only apply to New Claimants.

Audits

31. The Claims Administrator shall audit:
- (a) all Claims where the Settlement Class Member relied in whole or in part on its own purchase records, and the value of that portion of the Settlement Class Member's Eligible Airfreight Shipping Services Purchases exceeds CDN \$50,000; and
 - (b) at least 10% of other Claims where the Settlement Class Member relied in whole or in part on its own purchase records.
32. In addition, at its sole discretion, the Claims Administrator can elect to audit any other Claim. In exercising its discretion on whether to audit a Claim, the Claims Administrator will consider, among other things, whether there is any reason to believe a Claim is duplicative and/or contains inaccurate or misleading information.
33. An audit shall require proof of the Settlement Class Member's Airfreight Shipping Services Purchases:
- (a) proof of purchase of the Settlement Class Member's Airfreight Shipping Services Purchases might include invoices, receipts, air way bills, purchase records, historical accounting records, or comparable verification that is acceptable to the Claims Administrator;
 - (b) Settlement Class Members who cannot satisfy the evidentiary requirements of (a) can provide a declaration attesting to the purchase and value of the purchase, together with a credit card statement, a bank statement, cancelled cheque, wire transfer confirmations, or comparable verification that is acceptable to the Claims Administrator; or

- (c) where a Settlement Class Member has extrapolated its Airfreight Shipping Services Purchases, the Settlement Class Member must provide a sworn statement explaining the basis for and calculation of the extrapolation of purchases.
34. At its sole discretion, the Claims Administrator can reject a Claim, in whole or in part, where, in the Claims Administrator's view, the Settlement Class Member has submitted insufficient or false information or has otherwise engaged in fraudulent conduct.

Deficiencies

35. If, during claims processing, the Claims Administrator finds that deficiencies exist in a Claim or other information is required (including in response to an audit), the Claims Administrator shall notify the Settlement Class Member, by email or regular mail, of the deficiencies. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, depending on the nature of the deficiency, the Claims Administrator may reject the Claim.
36. A deficiency shall not include missing the Claims Filing Deadline. Subject to further order of the Ontario Court, the Claims Administrator shall not accept Claims postmarked or electronically submitted after the Claims Filing Deadline.

Claims Administrator's Decision

37. In respect of each Settlement Class Member who has filed a Claim in accordance with this Distribution Protocol, the Claims Administrator shall:
- (a) decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Funds in accordance with this Distribution Protocol and any Court order relating to the implementation of this Distribution Protocol;

- (b) make a determination of the value of the Settlement Class Member's Airfreight Shipping Services Purchases in respect of which the Settlement Class Member is entitled to settlement benefits in accordance with this Distribution Protocol and any Court order relating to the implementation of this Distribution Protocol; and
 - (c) make a determination of the Settlement Class Member's categorization for the purposes of calculating Eligible Airfreight Shipping Services Purchases.
38. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the Claim and the determination of the Airfreight Shipping Services Purchases and their categorization (the "Decision Notice"). Where the Claims Administrator has rejected all or part of the Claim of the Settlement Class Member, the Claims Administrator shall include in the Decision Notice its grounds for rejecting all or part of the Claim.
39. The Claims Administrator's decision will be binding upon the Settlement Class Member, subject to the Settlement Class Member's right to appeal, as outlined in paragraphs 40 to 45.

Appeal of the Claims Administrator's Decision

40. Settlement Class Members shall be granted thirty (30) days from the date of the Decision Notice to appeal the rejection (in whole or in part) of their Claims.
41. Appeals will be determined by the Ontario Court or a third-party designated by the Ontario Court.
42. Appeals will be on the basis of written submissions, supported by the documentation provided to the Claims Administrator by the Settlement Class Member as part of the claims process. Settlement Class Members are not permitted to provide any new documentation as part of the appeal. Any new documentation provided as part of the appeal will not be provided to the Ontario Court for consideration.

43. The Claims Administrator must provide to the Ontario Court a copy of the documentation provided by the Settlement Class Member with the Claim or in response to requests for additional information, the Decision Notice, and any other information that might be reasonably useful in the determination of the appeal, and make written submissions to the Ontario Court as is reasonably necessary. Additionally, Class Counsel may provide written submissions to the Ontario Court or its designee as is reasonably necessary.
44. Notwithstanding the foregoing, the Ontario Court, acting in its sole discretion, can request oral submissions (to be provided via teleconference or videoconference, as requested by the Ontario Court) from the Settlement Class Member, Claims Administrator and/or Class Counsel.
45. The decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

Payment of Claims

46. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall report to Class Counsel and the Ontario Court the particulars of the proposed distribution to each eligible Settlement Class Member.
47. The Claims Administrator shall make arrangements to pay approved Claims as expeditiously as possible. Payments of settlement benefits to Settlement Class Members will be made by cheque or, at the Claims Administrator's discretion, wire transfer.

THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

Supervisory Powers of the Ontario Court

48. The Claims Administrator shall administer this Distribution Protocol under the ongoing authority and supervision of the Ontario Court.

Investment of Settlement Funds

49. The settlement funds shall be held in a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution and all payments from the Settlement Amounts shall be made from that account.

Communication, Languages and Translation

50. The Claims Administrator shall establish a toll-free number for calls from Canada.
51. The Claims Administrator shall establish a call centre capable of receiving international calls from Settlement Class Members worldwide.
52. The Claims Administrator shall dedicate sufficient personnel to respond to Settlement Class Members' inquiries (including in the call centre) in English or French, as the Settlement Class Member elects.
53. The Claims Administrator shall arrange for translation services with respect to responding to Settlement Class Members' inquiries in additional languages, on an as-needed basis.
54. All written communications from the Claims Administrator to a Settlement Class Member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.
55. The Claims Administrator shall have no responsibility for locating Settlement Class Members for any mailing returned to the Claims Administrator as undeliverable.
56. The Claims Administrator shall have the discretion, but is not required, to reissue payments to Settlement Class Member returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate. Any costs associated with locating current address information for the Settlement Class Member shall be deducted from that Settlement Class Member's settlement benefits.

Taxes

57. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Funds and shall have the discretion to pay any taxes imposed on such monies out of the Net Settlement Funds.

Reporting

58. The Claims Administrator shall provide regular reports to Class Counsel regarding the administration.
59. The Claims Administrator shall provide any reports requested by the Ontario Court.

Preservation and Disposition of Claim Submissions

60. The Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, the submissions relating to a Claim, until three years after all settlement monies have been paid out to Settlement Class Members, and at such time shall destroy the submissions by shredding, deleting, or such other means as will render the materials permanently illegible.

Assistance to the Claims Administrator

61. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of this Distribution Protocol.

Confidentiality

62. All information received from Defendants, IATA, Freight Forwarders, or the Settlement Class Members is collected, used, and retained by the Claims Administrator pursuant to the protections of the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 and may be used by the Claims Administrator for the sole purpose of administering this Distribution Protocol, including evaluating a Settlement Class Member's eligibility under this Distribution Protocol. The sales information provided by

Defendants and IATA and the information provided by Settlement Class Members is strictly private and confidential. Information concerning Settlement Class Members shall not be disclosed without the express written consent of the relevant Settlement Class Member, except in accordance with this Distribution Protocol and any Court order relating to the implementation of this Distribution Protocol. Any identifying information about Settlement Class Members will be kept confidential and redacted from any materials filed with the Court as part of the settlement administration process, unless otherwise directed by the Court or in accordance with this Distribution Protocol.

63. The Claims Administrator shall provide a report listing the particulars of the proposed distribution to each eligible Settlement Class Member (i.e. name of Settlement Class Member and distribution payment made to the Settlement Class Member), including identifying information respecting Settlement Class Members who reside outside Canada, to Class Counsel, the Settled Defendants and, if requested, the Courts. Such report shall be treated as if it were produced in the litigation and subject to all of the ensuing protections, including those in the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

SCHEDULE “A” – RELATED ENTITY AUTHORIZATION

This Schedule is to be completed only if the Claim is being submitted by a parent company on behalf of a subsidiary or affiliate.

Contact Information for Person completing this authorization:

Name:	
Title/Position:	
Address:	
Email:	
Phone:	

I _____ [*name of Settlement Class Member*]
authorize _____ [*name of representative*] to file
a Claim in the Second Canadian Air Cargo Price-Fixing Distribution on my behalf.

I understand that all communications relating to the Claim will be directed towards my representative and that any resulting payment will be issued to my representative.

DATED at _____ [*city*], in the Province of _____, this ____ day of _____, 2020.

Name

Signature

I have the authority to bind the corporation

SCHEDULE “B” – THIRD-PARTY AUTHORIZATION

This Schedule is to be completed only if the Claim is being submitted on behalf of a Settlement Class Member by a representative (including a third-party claims service or lawyer of their own choosing).

Contact Information for Person completing this authorization:

Name:	
Title/Position:	
Address:	
Email:	
Phone:	

I, _____ [*name of Settlement Class Member*] authorize _____ [*name of representative*] to file a Claim in the Second Canadian Air Cargo Price-Fixing Distribution on my behalf.

I understand that the claims filing process was designed to enable Settlement Class Members to file Claims without the assistance of an agent and that the Settlement Class Member can contact the Claims Administrator at no charge to ask questions about the claims filing process.

I have reviewed the information to be submitted by my representative as part of the Claim Form, including the quantum of my Airfreight Shipping Services. I understand that my representative will be claiming for Airfreight Shipping Services totalling \$ _____. I can attest based on personal knowledge that the information to be submitted by the representative, including the total purchases claimed, accurately reflects my business records.

I understand that all communications relating to the Claim will be directed towards my representative and that any resulting payment will be issued to my representative.

DATED at _____ [city], in the Province of _____, this _____ day of _____, 2020.

Name

Signature

I have the authority to bind the corporation