

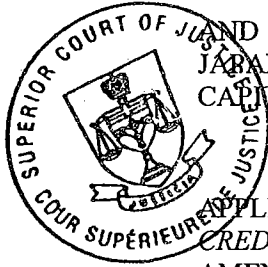
**ONTARIO
SUPERIOR COURT OF JUSTICE**

The Honourable) Thursday, the 13th day
Justice Campbell) of January, 2011

Court File No. CV-10-8692-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF *THE COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, C. c-36, AS AMENDED



AND IN THE MATTER OF JAPAN AIRLINES CORPORATION,
JAPAN AIRLINES INTERNATIONAL CO., LTD., AND JAL
CAPITAL CO., LTD.

Applicants

APPLICATION UNDER PART IV OF *THE COMPANIES'
CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS
AMENDED.

-and-

Court File No. 50389CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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., and SWISS INTERNATIONAL AIR LINES LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

Tor#: 2668838.2

THIS MOTION made by the Plaintiffs, jointly with Japan Airlines International Co., Ltd., the Settling Defendant in the Action and an applicant in the CCAA Proceeding, for an Order certifying the Action as a class proceeding for settlement purposes only as against the Settling Defendant, and approving the Settlement Agreement entered into with the Settling Defendant, was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the materials filed, including the settlement agreement entered into by the Settling Defendant and the Plaintiffs dated July 8, 2010 and 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 Settling Defendant consent to this Order and the Non-Settling Defendants take no position on this Order;

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, the definitions set out in the Settlement Agreement shall apply to and are incorporated into this Order. In addition, the following definitions shall also apply in this Order:

- (a) "Proportionate Liability" means that proportion of any judgment that, had they not settled, a court or other arbiter would have apportioned to the Settling Defendant and Releasees, whether pursuant to the *pro rata*, proportionate fault, *pro tanto*, or another method.
- (b) "Action" means the proceeding commenced by the Plaintiffs in Ontario Superior Court of Justice Court File No. 50389 (London).
- (c) "CCAA Proceeding" means the proceeding commenced by the Settling Defendant and other Releasees under the *Companies' Creditors Arrangement Act* ("CCAA") in Ontario Superior Court of Justice Court File No. CV-10-8692-00CL (Toronto).

2. **THIS COURT ORDERS** that the Action be certified as a class proceeding as against the Settling Defendant only and for settlement purposes only.

3. **THIS COURT ORDERS** that the Settlement Class be defined as:

All persons who purchased Airfreight Shipping Services* during the Class Period, including those who purchased through freight forwarders or from any air cargo carrier (including the Defendants), other than Excluded Persons and members of the Quebec Class and BC Class.

*Airfreight Shipping Services means airfreight cargo shipping services for shipments within, to, or from Canada, but specifically excluding airfreight cargo shipping services for shipments to or from the United States.

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

5. **THIS COURT ORDERS** that the following issue is common to the Settlement Class:

Did the Settling Defendant conspire to fix, raise, maintain or stabilize the prices of Airfreight Shipping Services during the Class Period in violation of Part VI of the *Competition Act* and the common law? If so, what damages, if any, did Settlement Class Members suffer?

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

7. **THIS COURT ORDERS** that the Settlement Agreement is fair and reasonable in all of the circumstances of the CCAA Proceeding.

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

9. **THIS COURT ORDERS** that the Settlement Agreement is incorporated by reference into and forms part of the Order, and is binding upon the representative plaintiffs and all Settlement Class Members.
10. **THIS COURT ORDERS** that each Settlement Class Member is bound by the Settlement Agreement.
11. **THIS COURT ORDERS** that each Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
12. **THIS COURT ORDERS** that each Other Action commenced by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.
13. **THIS COURT ORDERS** that the Order, including the Settlement Agreement, is binding upon each 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 the Action.
14. **THIS COURT ORDERS** that each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
15. **THIS COURT ORDERS** that each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any

matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators.

16. **THIS COURT ORDERS** that the Releasees have released and shall be conclusively deemed to have forever and absolutely released each of the other from any and all claims for contribution and indemnity with respect to the Released Claims.
17. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in the Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
18. **THIS COURT ORDERS** that each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
19. **THIS COURT ORDERS** that notwithstanding 7(1) of the Settlement Agreement:
 - (a) subject to subparagraph (b) of this paragraph, 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, relating to the Released Claims, which were or could have been brought in the Action by any Non-Settling Defendant or any other person or party against a Releasee, or by a Releasee against a Non-Settling Defendant or any other person or party, are barred, prohibited and enjoined in accordance with the terms of this paragraph;
 - (b) if a person or party is permitted to bring a claim against a Non-Settling Defendant in a jurisdiction outside of Ontario (the “Foreign Claim”) that if brought in Ontario would contravene paragraphs 19 or 20 hereof, then that Non-Settling Defendant is permitted to bring a claim for contribution, indemnity or other claims over against the Releasees thereafter in respect of the Foreign Claim notwithstanding this paragraph, provided that the Non-Settling Defendant

establishes that it raised before the foreign court or other arbiter in a timely and proper manner that this Order is an absolute bar to any Foreign Claim arising from the Released Claims.

20. **THIS COURT ORDERS** that if, in the absence of paragraph 19 hereof, the Non-Settling Defendants 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 Releasees:

- (a) the Plaintiffs and the Settlement Class Members shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) on which judgment is entered that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (b) for greater certainty, the Plaintiffs and the 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 and the Settlement Class Members, if any;
- (c) this Court shall have full authority to determine the Proportionate Liability at the trial or other disposition of the Action, whether or not the Releasees remain in the Action or appear at the trial or other disposition, and the Proportionate Liability shall be determined as if the Releasees 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 the Action and shall not be binding upon the Releasees in any other proceedings.

21. **THIS COURT ORDERS** that if, in the absence of paragraph 19 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 Releasees, 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 the Action.

22. **THIS COURT ORDERS** that if this proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal related thereto have been exhausted, the Non-Settling Defendants shall be entitled in respect of the Settling Defendant as if it remained a party to this proceeding:

- (i) to documentary discovery and an affidavit of documents in accordance with the Rules of Civil Procedure 0 .Reg. 194 from the Settling Defendant;
- (ii) to oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
- (iii) to serve a request to admit on the Settling Defendant in respect of factual matters; and
- (iv) to seek an Order on motion to the Court, on at least ten (10) days notice to counsel for the Settling Defendant, for the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

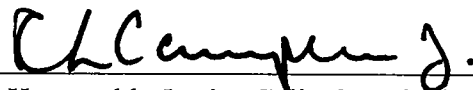
The Settling Defendant retains all rights to oppose such motion(s) under sub-paragraph (iv), hereof. Notwithstanding any provision in this Order, on any motion brought pursuant to this paragraph 22, the Court may make such Orders as to costs and other terms as it considers appropriate.

23. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 22 above on the Settling Defendant by service on counsel of record for the Settling Defendant in the Action.

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

25. **THIS COURT ORDERS** that, except as provided herein, the Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators in the Action.
26. **THIS COURT ORDERS** that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
27. **THIS COURT ORDERS** that the Settlement Amount be held in trust for the benefit of the Settlement Class, pending further order of the Court, which shall be sought by the Plaintiff on a motion in the Action brought on notice to the Settling Defendant.
28. **THIS COURT ORDERS** that the Action be dismissed against the Settling Defendant without costs and with prejudice.

Date:



The Honourable Justice Colin Campbell

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 14 2011

PER / PAR:



SCHEDULE "A"

**CANADIAN AIR CARGO SHIPPING SERVICES CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made as of July 8, 2010

Between

**AIRIA BRANDS INC. (formerly known as Nutech Brands Inc.), STARTECH.COM LTD.,
QCS-QUICK CARGO SERVICE GMBH, CARTISE SPORTS INC. AND KAREN
MCKAY**

(the "Plaintiffs")

and

JAPAN AIRLINES INTERNATIONAL CO., LTD.

(the "Settling Defendant")

**CANADIAN AIR CARGO SHIPPING SERVICES CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

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**CANADIAN AIR CARGO SHIPPING SERVICES CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. WHEREAS the Proceedings have been commenced by the Plaintiffs in Ontario, Quebec and British Columbia which allege that the Defendants, including the Settling Defendant, participated in an unlawful conspiracy to raise, fix, maintain or stabilize the prices of Airfreight Shipping Services in violation of Part VI of the *Competition Act* and the common law;
- B. WHEREAS the Settling Defendant expressly denies and does not admit, through the execution of this Settlement Agreement, all allegations of unlawful conduct in the Proceedings;
- C. WHEREAS there has been a corporate reorganization filing by the Settling Defendant and related entities in Japan, and related filings in the United States and Canada, resulting in the stay of the Proceedings as against the Settling Defendant;
- D. 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 any of the Parties or evidence of the truth of any of the Plaintiffs' allegations against the Defendants, which the Settling Defendant expressly denies;
- E. WHEREAS arm's-length settlement negotiations have occurred between Class Counsel and counsel for the Settling Defendant, resulting in this Settlement Agreement;
- F. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent;
- G. WHEREAS the Settling Defendant is entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted

against it by the Plaintiffs in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

H. WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Settling Defendant;

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

J. 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 Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceedings be settled and dismissed on the merits with prejudice as to the Settling Defendant only, without costs as to the Plaintiffs, the classes they seek to represent or the Settling Defendant, subject to the approval of the Canadian Courts, on the following terms and conditions:

SECTION 1 – DEFINITIONS

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

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

(2) ***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, including the costs of notices and claims administration but excluding Class Counsel Fees.

- (3) *Airfreight Shipping Services* means airfreight cargo shipping services for shipments within, to, or from Canada, but specifically excluding airfreight cargo shipping services for shipments to or from the United States.
- (4) *BC Class* means all persons resident in British Columbia who purchased Airfreight Shipping Services during the Class Period, including those persons who purchased Airfreight Shipping Services through freight forwarders or from any air cargo carrier (including the Defendants), except Excluded Persons.
- (5) *BC Counsel* means Camp Fiorante Matthews.
- (6) *BC Court* means the Supreme Court of British Columbia.
- (7) *CCAA Court* means the Ontario Superior Court of Justice (Commercial List), being the court which granted an order on April 30, 2010, recognizing the Japan Proceeding as a "foreign main proceeding" for the purposes of the *Companies Creditors Arrangement Act* and all related ancillary relief to facilitate the global restructuring of the Settling Defendant's business.
- (8) *Canadian Courts* means the Class Action Courts and the CCAA Court.
- (9) *Class Action Courts* means the Ontario Court, the Quebec Court and the BC Court.
- (10) *Claims Administrator* means the person appointed to administer the Settlement Amount in accordance with this Settlement Agreement and any employees of such firm.
- (11) *Class Counsel* means Ontario Counsel, Quebec Counsel and BC Counsel.
- (12) *Class Counsel Fees* include the fees, disbursements, costs, interest, GST and other applicable taxes or charges of Class Counsel.
- (13) *Class Period* means January 1, 2000 to September 11, 2006.
- (14) *Common Issue* in each Proceeding means: Did the Settling Defendant conspire to fix, raise, maintain or stabilize the prices of Airfreight Shipping Services during the Class Period in violation of Part VI of the *Competition Act* and common law? If so, what damages, if any, did Settlement Class Members suffer?

- (15) ***Defendants*** means the entities named as defendants in the Proceedings as set out in Schedule A, as well as any named or unnamed co-conspirator who may be added as a defendant in the Proceedings in the future.
- (16) ***Distribution Protocol*** means the plan for holding or distributing the Settlement Amount and accrued interest, in whole or part, for or to Settlement Class Members, as approved by the Canadian Courts which may, if directed by the Canadian Courts, require the Settlement Amount to be held in trust until the resolution of the Proceedings in whole or in part.
- (17) ***Effective Date*** means the date on which Final Orders have been received from all of the CCAA Court and the Class Action Courts.
- (18) ***Excluded Person*** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.
- (19) ***Final Order*** means a final court order, court judgment or equivalent decree certifying or authorizing a Proceeding as a class proceeding, approving this Settlement Agreement and implementing it in accordance with its terms, once the time to appeal has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the court order, court judgment or equivalent decree upon a final disposition of all appeals, and for greater certainty and without limiting the foregoing, includes all court orders, court judgments or equivalent decrees required to approve and implement this Settlement Agreement, excluding any court orders, court judgments or equivalent decrees in relation to Class Counsel Fees or the Distribution Protocol.
- (20) ***Japan Proceeding*** means the reorganization proceeding of the Settling Defendant and related parties brought under the *Corporate Reorganization Act* of Japan.
- (21) ***Lufthansa Settlement*** means the settlement agreement executed by the Plaintiffs and Deutsche Lufthansa AG, Lufthansa Cargo AG and Swiss International Air Lines Ltd. on December 30, 2006, as approved and implemented by orders issued by the Class Action Courts.

(22) ***Lufthansa Certification and Notice Approval Orders*** means the orders issued in the Proceedings by the Ontario Court on March 6, 2008, the B.C. Court on March 20, 2008 and the Quebec Court on April 14, 2008 in relation to the Lufthansa Settlement.

(23) ***Non-Settling Defendant*** means a Defendant that is not a Settling Defendant.

(24) ***Ontario Class*** means all persons who purchased Airfreight Shipping Services during the Class Period, including those who purchased through freight forwarders or from any air cargo carrier (including the Defendants), other than Excluded Persons and members of the Quebec Class and BC Class.

(25) ***Ontario Counsel*** means Siskinds LLP, Harrison Pensa LLP and Sutts, Strosberg LLP.

(26) ***Ontario Court*** means the Honourable Justice Lynne Leitch or such other judge of the Ontario Superior Court of Justice who is appointed as the case management and certification motion judge for the Ontario Action (as defined in Schedule A).

(27) ***Other Actions*** means actions or proceedings, other than the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(28) ***Parties*** means the Plaintiffs, Settlement Class Members and the Settling Defendant.

(29) ***Plaintiffs*** means the individuals and entities named as plaintiffs in the Proceedings as set out in Schedule A, individually and collectively.

(30) ***Proceedings*** means Ontario Court File No. 50389CP (London), Quebec Court (District of Montreal) Action No. 500-06-000344-065 and British Columbia Court File No. LS067490 (Vancouver Registry).

(31) ***Quebec Class*** means all individuals resident in Quebec and all legal persons resident in Quebec established for a private interest, partnership or association 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 Class Period, including those who purchased Airfreight Shipping Services through freight forwarders or from any air cargo carrier (including the Defendants), except Excluded Persons.

(32) *Quebec Counsel* means Liebman & Associates.

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

(34) *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), 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 Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing, distributing of or compensation for, Airfreight Shipping Services, specifically including, without limitation, any Claims in any way related to air cargo rates or prices, fuel surcharges, security surcharges, custom surcharges or fees, war risk surcharges, navigation surcharges, commissions, incentives, rebates, discounts, credits and yields or relating to any conduct alleged (or which could have been alleged) in the Proceedings including, without limitation, any Claims, whether in Canada or elsewhere, resulting from or relating to the purchase of Airfreight Shipping Services. However, 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 Releasees and Releasors relating to Airfreight Shipping Services.

(35) *Releasees* means, jointly and severally, individually and collectively, the Settling Defendant, Japan Airlines Corporation and JAL Capital Co., Ltd., and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and 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.

- (36) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs, Class Counsel and the Settlement Class Members on behalf of themselves and any person claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee or representative of any kind.
- (37) **Settlement Agreement** means this agreement, including the recitals and schedules.
- (38) **Settlement Amount** means \$738,000.00 in Canadian currency.
- (39) **Settlement Class** means, in respect of each Proceeding, the settlement class defined in Schedule A.
- (40) **Settlement Class Member** means a member of a Settlement Class who did not validly opt-out of the Proceedings in accordance with the Lufthansa Certification and Notice Approval Orders.
- (41) **Settling Defendant** means Japan Airlines International Co., Ltd.
- (42) **U.S. Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of New York, which issued an order on February 17, 2010, recognizing the Japan Proceeding as a foreign main proceeding pursuant to Chapter 15 of the U.S. Bankruptcy Code.
- (43) **U.S. Class Proceeding** means In re: Air Cargo Shipping Services Antitrust Litigation, Master File 06-MD-1775 (JG)(VVP).
- (44) **U.S. MDL Court** means the United States District Court for the Eastern District of New York, which court has carriage of the U.S. Class Proceeding.
- (45) **U.S. Settlement** means the settlement agreement entered into on July 8, 2010 between the Settling Defendant and the plaintiffs in the U.S. Class Proceeding.

SECTION 2 – SETTLEMENT APPROVAL

2.1 All Reasonable Steps

The Parties shall take all reasonable steps to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Settling Defendant, including cooperating in (i) the Settling Defendant's effort to obtain any approvals or orders required by the CCAA Court regarding the approval and implementation of this Settlement Agreement, including the payment of the Settlement Amount, and (ii) the Plaintiffs' efforts to obtain any approvals or orders required from the Canadian Courts, regarding the approval or implementation of the Settlement Agreement, including orders certifying the Settlement Classes for settlement purposes and approving the form and distribution of the notices contemplated by section 10 of this Settlement Agreement.

2.2 Motions for Approval

(1) After the Settlement Agreement is executed, the Settling Defendant shall bring any motion before the CCAA Court which is necessary to obtain the approval and implementation of this Settlement Agreement.

(2) Following receipt of any orders required from the CCAA Court referred to in section 2.2(1), the Plaintiffs shall bring any motions before the Class Action Courts which are necessary to obtain any orders as may be needed to allow for the approval and implementation of this Settlement Agreement, including any orders that may be necessary to approve the notices described in section 10, to certify or authorize each of the Proceedings as a class proceeding (for settlement purposes only) and to approve this Settlement Agreement. Any orders sought by the Plaintiffs shall:

- (a) approve the Settlement Agreement and its terms as being a fair, reasonable and adequate settlement for the Settlement Class and direct that the Settlement Agreement be consummated and implemented in accordance with its terms;
- (b) determine that the notices provided for in section 10 of this Settlement Agreement constitute, under the circumstances, the most effective and practicable notice of this

Settlement Agreement and constitute due and sufficient notice for all other purposes to all persons entitled to receive notice; and

- (c) direct that, as to the Releasees, the Proceedings and any Other Actions be dismissed with prejudice and without costs.
- (3) The orders referred to in sections 2.2(1) and (2) above shall be in a form agreeable to the Plaintiffs and Settling Defendant.
- (4) This Settlement Agreement shall only become final on the Effective Date.

2.3 Pre-Motion Confidentiality

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

2.4 Sequence of Motions

Unless the Parties agree otherwise, the Plaintiffs in the Quebec and BC Actions shall not proceed with motions to certify, authorize or approve the Settlement Agreement in the Proceedings commenced in their respective jurisdictions unless and until the CCAA Court and Ontario Court approve the Settlement Agreement. Motions to certify, authorize or approve the Settlement Agreement may be filed in Quebec and BC but Quebec and BC Counsel agree to seek any adjournment of their respective motions to allow the CCAA Court and Ontario Court to first render their decisions on the motions to certify and approve the Settlement Agreement brought before them.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within ten (10) business days after execution of this Settlement Agreement, the Settling Defendant shall pay the Settlement Amount to Siskinds LLP for deposit into the Account, in full satisfaction of the Released Claims against the Releasees.

(2) 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, except as provided in section 10.2(3).

(3) Siskinds LLP shall maintain the Account as provided for in this Settlement Agreement. The monies in the Account shall be held by Siskinds LLP for the benefit of the Settlement Class Members. Siskinds LLP shall not pay out all or part of the monies in the Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Canadian Courts obtained on notice to the Settling Defendant.

3.2 Taxes and Interest

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

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

(3) The Settling Defendant shall have no responsibility to make any filings relating to the Account and shall have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Account, unless this Settlement Agreement is terminated, in

which case the interest earned on the Settlement Amount in the Account shall be paid to the Settling Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel.

3.3 Cooperation

(1) It is understood and agreed that all documents and other information provided by the Settling Defendant or its counsel to Plaintiffs and Class Counsel under this Settlement Agreement shall be confidential and may not be disclosed to any person in any manner, directly or indirectly, by Class Counsel or any other person in any way for any reason, without the express prior written permission of the Settling Defendant, except that Class Counsel is permitted to provide such documents and other information to the Plaintiffs' experts in the Proceedings. Further, all documents and other information provided by the Settling Defendant or its counsel to Plaintiffs, Plaintiffs' experts and Class Counsel under this Settlement Agreement may be used by Class Counsel, the Plaintiffs and their experts only in connection with the prosecution of the Proceedings, and shall not be used directly or indirectly for any other purpose, including the prosecution of any claim against the Releasees. It is agreed that Class Counsel will take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel and the Plaintiffs' experts.

(2) Within thirty (30) days after the Effective Date or at a time mutually agreed upon by the Parties, the Settling Defendant shall produce in Canada to Class Counsel the following information currently in existence, to the extent reasonably available:

- (a) transaction data in electronic format for the Settling Defendant's Airfreight Shipping Services during the Class Period;
- (b) any documents provided by the Settling Defendant in the U.S. Class Proceeding, including but not limited to, any documents provided to counsel for the plaintiffs in the U.S. Class Proceeding pursuant to the U.S. Settlement, provided that the Settling Defendant may withhold from production any documents that relate exclusively to transportation to or from the United States; and

- (c) any pre-existing documents provided by the Settling Defendant to the Canadian Competition Bureau concerning the allegations raised in the Proceedings, excluding any documents created for the purpose of being so provided.

(3) The obligation to produce documents pursuant to section 3.3(2) is a continuing one to the extent documents responsive to section 3.3(2) are identified following the initial productions. The Settling Defendant shall make reasonable efforts to provide the information specified above in section 3.3(2)(a) but cannot and does not make any representation that it has, can or will produce a complete set of the information described in section 3.3(2)(a), and it is understood and agreed that the failure to do so shall not constitute a breach or violation of this Settlement Agreement.

(4) Commencing thirty (30) days after the Effective Date or at a time mutually agreed to by the Parties, counsel for the Settling Defendant will meet in Canada with Class Counsel, as often as is reasonable and necessary, but for no more than twenty (20) hours in the aggregate, to provide information relevant to the continued prosecution of the Proceedings, including by providing an evidentiary proffer setting forth the facts of the Proceedings and any potential testimony by current or former employees of the Settling Defendant. Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by counsel for the Settling Defendant are privileged, will be kept strictly confidential and will not be used by Class Counsel for any purpose other than the prosecution of the Proceedings.

(5) Sixty (60) days following the Effective Date or at a time mutually agreed to by the Parties, the Settling Defendant shall, at the request of Class Counsel, upon reasonable notice, and subject to any legal restrictions, make reasonable efforts to make available up to four (4) current or former officers, directors and employees of the Settling Defendant who have knowledge of the allegations raised in the Proceedings, to provide information regarding the allegations in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel, at a location chosen by the Settling Defendant within its sole discretion. Costs of these interviews shall be the responsibility of the Plaintiffs, excluding any travel costs of the interviewee and his/her counsel which will be the responsibility of the Settling Defendant. If the officer, director or employee refuses to provide information, or otherwise cooperate, the Settling Defendant shall use reasonable

efforts to make him/her available for an interview but the failure of the officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement.

(6) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendant agrees to produce at trial and/or discovery or through acceptable affidavits or other testimony in the Proceedings, representatives qualified to establish for admission into evidence any of the Settling Defendant's documents and information provided as cooperation pursuant to this Settlement Agreement, and agrees to authenticate documents produced by the Defendants that were created by, sent to, or received by the Settling Defendant.

(7) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendant (or any of its former or current officers, directors or employees) to perform any act which would violate any provincial, federal or foreign law, to disclose or produce any documents or information prepared by or for counsel for the Settling Defendant, or to disclose or produce any documents or information in breach of any order, regulatory directive, rule or provincial, federal or foreign law, or subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any person, including any party to any action or proceeding who is not a Settling Defendant.

(8) If any documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently produced, such documents shall be promptly returned to the Settling Defendant and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendant, and the production of such documents shall in no way be construed to have waived in any manner any privilege or protection attached to such or other documents.

(9) The Settling Defendant's obligation to cooperate as particularized in this section 3.3 shall not be affected by the release provisions contained in this Settlement Agreement. Unless this Settlement Agreement is not approved or is terminated (at which time the Settling Defendant's obligation to

cooperate ceases), the Settling Defendant's obligations to cooperate shall cease at the date of final judgment in the Proceedings against all Defendants.

(10) The provisions set forth in this section 3.3 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery from the Settling Defendant or its current or former officers, directors or employees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against the Settling Defendant or its current or former officers, directors or employees, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction. Notwithstanding the above in this paragraph 3.3(10), the Plaintiffs are at liberty to exercise any rights they have to seek to obtain discovery of any current or former officer, director or employee of the Settling Defendant who is put forward by the Settling Defendant under section 3.3(5) but fails to cooperate in accordance with that section.

(11) A material factor influencing the Settling Defendant's decision to execute this Settlement Agreement is its desire to limit the burden and expense of the Proceedings. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendant, and to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burden or expense on the Settling Defendant.

(12) Notwithstanding any other provision of this Settlement Agreement, the Settling Defendant (and any of its former or current officers, directors or employees) is not required to produce any documents or information where such production would be contrary to the rules, laws or policies of a national competition authority or would interfere with an ongoing investigation of the Airfreight Shipping Services industry by a national competition authority.

