

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

Between:

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

and

POLAR AIR CARGO LLC

Executed August 1, 2014

**CANADIAN AIR CARGO SHIPPING SERVICES CLASS ACTION  
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**RECITALS**

- A. **WHEREAS** the Actions have been commenced in the Courts alleging that the Defendants, including Polar, participated in an unlawful conspiracy pursuant to which Polar 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. **AND WHEREAS** the BC Action commenced before the British Columbia Supreme Court regarding the same alleged conspiracy was discontinued against Polar on June 18, 2008;
- C. **AND WHEREAS** Polar expressly denies and does not admit, through the execution of this Settlement Agreement, any allegation of unlawful conduct alleged in the Actions;
- D. **AND WHEREAS** the Plaintiffs, Class Counsel and Polar 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 Polar or evidence of the truth of any of the Plaintiffs' allegations against Polar, which Polar expressly denies;
- E. **AND WHEREAS** Polar would assert a number of defences to the Plaintiffs' claims if the Actions proceeded further as against it;
- F. **AND WHEREAS**, despite Polar's belief that it is not liable in respect of the claims as alleged in the Actions and have good defences thereto, Polar 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 classes they seek to represent, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy with valued business customers;

G. **AND WHEREAS** the Plaintiffs have agreed to accept this settlement, in part, because of the value of the Settlement Amount to be paid by Polar under this Settlement Agreement and the value of the cooperation Polar agrees to render or make available to the Plaintiffs and/or Class Counsel pursuant to this Settlement Agreement, as well as (i) the attendant risks of litigation in light of the potential defences that may be asserted by Polar, and (ii) the desirability of permitting the settlement to be consummated as provided by the terms of this Settlement Agreement;

H. **AND WHEREAS** the deadline for Settlement Class Members to opt-out of the Actions has passed;

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

J. **AND 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, 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 Polar according to the terms set forth below is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Class;

K. **AND WHEREAS** the Plaintiffs and Polar therefore wish to, and hereby do, subject to the Courts' approval, for purposes of all jurisdictions in relation to which the Actions are brought, and for purposes of all classes the Plaintiffs seek to represent, without admission of liability, finally resolve all of the Actions and Released Claims as against Polar;

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

M. **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;

N. **AND WHEREAS** the Defendant Atlas is a holding company that wholly owns Polar;

**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 Polar that the Actions be settled and dismissed with prejudice as to Polar and Atlas only, without costs as to the Plaintiffs, the Settlement Class, Polar or Atlas, 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 hereto:

(a) *Actions* means the Ontario Action and the Quebec Action.

- (b) *Administration Expenses* means all fees, disbursements, expenses, costs, taxes and any 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.
- (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 between Canada and the United States. 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, 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 to approve motions brought by Class Counsel for the certification (or authorization in Quebec) of the Actions as a class proceeding on the basis of this Settlement Agreement and for the Courts' approvals of the settlement provided for in this Settlement Agreement.
- (e) *Approval Orders* means any order of the Courts approving this Settlement Agreement.
- (f) *Atlas* means Atlas Air Worldwide Holdings Inc., a Delaware, United States corporation.
- (g) *BC Action* means the proceeding commenced in the British Columbia Supreme Court, under Vancouver Registry No. S067490.
- (h) *BC Counsel* means Camp Fiorante Matthews.
- (i) *Claim* shall have the meaning attributed to it in Section 1(qq).



- (j) ***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 any employees of such Person.
- (k) ***Class Counsel*** means Ontario Counsel and Quebec Counsel.
- (l) ***Class Counsel Fees*** include the fees, disbursements, costs, interest, GST or HST (as the case may be) and other applicable taxes or charges of Class Counsel.
- (m) ***Counsel for Polar*** means Stockwoods LLP.
- (n) ***Courts*** means the Ontario Court and the Quebec Court.
- (o) ***Defendants*** means all defendants named in the Actions, including Polar and Atlas, and any named or unnamed alleged co-conspirators who may be added as defendants in the Actions in the future.
- (p) ***Distribution Protocol*** means the plan for distributing the Settlement Fund to Settlement Class Members as approved by the Courts, which may, if directed by the Courts, require the Settlement Fund to be held in trust until the resolution of the Actions in whole or in part.
- (q) ***Documents*** means all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions, or summaries of the foregoing, including microfilm copies and computer images.
- (r) ***Effective Date*** means (i) the date upon which the ability to appeal, if an appeal lies therefrom, from each Approval Order has expired without any appeal being taken,

namely, thirty (30) days after the issuance of the Approval Order; or (ii) if any appeals have been taken from any Approval Order, the date upon which all such appeals are concluded by way of a Final (as defined in Section 1(u)) 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.

- (s) ***Escrow Agent*** means RBC Dominion Securities Inc. or such other Person as agreed to by the Parties or appointed by the Courts to receive and invest the Settlement Fund in accordance with the provisions of this Settlement Agreement.
- (t) ***Execution Date*** means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and Polar.
- (u) ***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.
- (v) ***Foreign Claim*** shall have the meaning attributed to it in Section 4.1(a)(i).
- (w) ***Non-Settling Defendants*** means any Defendant that is not Polar, Atlas or a Settled Defendant, provided that the Settled Defendant's own settlement has not been terminated in accordance with its terms or has otherwise failed to take effect for any reason.
- (x) ***Notice of Certification and Approval Hearings*** means the form of notice or notices, agreed to by the Plaintiffs and Polar, or such other form as may be approved by the Courts, which informs the Settlement Class of: (i) the proposed settlement classes; (ii) the

dates and locations of the Approval Hearings; and (iii) the core elements of the Settlement Agreement and the Distribution Protocol, if applicable.

- (y) ***Notice of Certification and Settlement Approval*** means the form of notice or notices, agreed to by the Plaintiffs and Polar or such other form as may be approved by the Courts, which informs the Settlement Class of: (i) the certification (or authorization in Quebec) of the Actions; (ii) the approval of the Settlement Agreement; and (iii) the core elements of the Settlement Agreement and the Distribution Protocol, if applicable.
- (z) ***Notice of Termination*** means the form of notice or notices, agreed to by the Plaintiff and Polar, or such other form as may be approved by the Courts, which informs the Settlement Class of the termination of the Settlement Agreement.
- (aa) ***Notices*** means the Notice of Certification and Approval Hearings, the Notice of Certification and Settlement Approval, and the Notice of Termination.
- (bb) ***Ontario Action*** means the proceeding commenced in the Ontario Court bearing Court File No. 50389CP (London).
- (cc) ***Ontario Counsel*** means Siskinds LLP, Sutts, Strosberg LLP and Harrison Pensa LLP.
- (dd) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (ee) ***Ontario Settlement Class*** means all Persons, other than members of the Quebec 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, and specifically including Polar. 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.

- (ff) ***Party and Parties*** means Polar, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (gg) ***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.
- (hh) ***Plaintiffs*** means Airia Brands Inc., StarTech.com Ltd., QCS-Quick Cargo Service GmbH and Cartise Sports Inc., individually and collectively.
- (ii) ***Polar*** means Polar Air Cargo LLC, a California, United States, limited liability company (previously known as Polar Air Cargo Inc., a California, United States corporation prior to its conversion to a limited liability company).
- (jj) ***Proportionate Liability*** means the proportion of any judgment that, had Polar not settled, a court or other arbiter would have apportioned to Polar and/or the Released Parties, whether pursuant to *pro rata*, proportionate fault, *pro tanto*, or another method.
- (kk) ***Purchase Period*** means January 1, 2000 up to and including September 11, 2006.

- (ll) **Purchase Price** means the sale price paid by Settlement Class Members for Airfreight Shipping Services purchased during the Purchase Period, less any rebates, delivery or shipping charges, taxes, and any other form of discounts.
- (mm) **Quebec Action** means the proceeding commenced in the Quebec Court, under Court File No. 500-06-000344-065.
- (nn) **Quebec Counsel** means Liebman Legal Inc.
- (oo) **Quebec Court** means the Quebec Superior Court.
- (pp) **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, and specifically including Polar, 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.
- (qq) **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 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, during the Purchase Period, 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, 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, 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 Releasing Parties and Released Parties relating to Airfreight Shipping Services.

- (rr) ***Released Parties*** means, jointly and severally, individually and collectively, Polar, and all of its present and former, direct and indirect, parents (including Atlas), subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated (including Polar Air Cargo Worldwide, Inc., a Delaware, United States corporation), 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.

(ss) **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.

(tt) **Settled Defendant** 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. and LAN Cargo S.A., and any other Defendant who has entered into a settlement agreement with the Plaintiffs relating to the allegations asserted in the Actions, whether or not such settlement agreement was in existence at the Execution Date.

(uu) **Settlement Agreement** means this agreement, including the recitals.

(vv) **Settlement Amount** means the sum of four hundred and twenty five thousand Canadian dollars (CAD\$425,000) (equivalent to three hundred and ninety one thousand United States dollars (USD\$391,000), based on the prevailing exchange rate, as of the Execution

Date, of 0.92 United States dollars to 1 Canadian dollar). For greater certainty, the Settlement Amount to be paid in accordance with this Settlement Agreement is the amount expressed herein in Canadian dollars, and a change in the prevailing exchange rate after the Execution Date will not affect the quantum of the Settlement Amount.

(ww) ***Settlement Class and Settlement Class Members*** means all Persons included in the Ontario Settlement Class and the Quebec Settlement Class.

(xx) ***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.

(yy) ***U.S. Litigation*** means the class action proceeding pending in the United States District Court for the Eastern District of New York under the caption *In re Air Cargo Shipping Services Antitrust Litigation*, 06-MD-1775 (JG)(VVP)(E.D.N.Y.), and including all actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, and all actions that may be transferred in the future.

## **SECTION 2- SETTLEMENT BENEFITS**

### **2.1 The Settlement Fund**

(a) The Settlement Fund shall be established as an escrow account at a bank designated by Class Counsel and administered by the Escrow Agent until the Courts have appointed a Claims Administrator, at which time the Escrow Agent will cede control to the Claims Administrator, or such other trustee as may be appointed by the Courts, who will administer the Settlement Fund. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Courts' continuing supervision and control.



No monies shall be paid from the Settlement Fund without (i) the specific authorization of both Class Counsel and Counsel for Polar, and such authorization may not be withheld if to do so would be inconsistent with this Settlement Agreement; or (ii) orders from one or more of the Courts, as required by this Settlement Agreement, issued with notice to or with consent of the Plaintiffs and Polar. Class Counsel and Polar agree to cooperate, in good faith, to form an appropriate escrow agreement in conformance with this Settlement Agreement.

- (b) The escrow account shall be established and maintained in a manner that minimizes transactional costs and risks and maximizes the amount available for distribution. All transactional costs associated with maintaining the Settlement Fund shall be paid from the Settlement Fund.
- (c) The Escrow Agent 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.
- (d) The Plaintiffs and Polar acknowledge that the Settlement Class includes both shippers and freight forwarders, and both customers and non-customers of Polar, 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. As soon as practicable, the Plaintiffs shall prepare and submit a Distribution Protocol to the Courts for approval.

- (e) 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, Polar agrees to pay the Settlement Amount in full satisfaction of all of the Claims within the scope of the Released Claims against the Released Parties.
- (b) Except as otherwise provided herein, Polar 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, Polar 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 the Escrow Agent or the Claims Administrator, or the payment of any Class Counsel Fees or any Administration Expenses, except as otherwise provided herein.
- (c) Polar, directly or through its counsel or designee, shall wire transfer 100% of the Settlement Amount into the Settlement Fund within fifteen (15) business days after the Escrow Agent has provided Polar with the information necessary to complete the wire transfer.
- (d) If the Settlement Fund must be returned to Polar pursuant to Section 10.2(b)(iv) of this Settlement Agreement, then the Escrow Agent and/or the Claims Administrator, as the case may be, shall be obliged to return the Settlement Fund to Polar.

### **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)(iv), none of the income earned by the Settlement Fund, including interest earned thereon, will be reported as taxable to Polar.
- (b) Except as provided for in Section 10.2(b)(iv), the Escrow Agent 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)(iv), Polar 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.

### **2.4 Cooperation in the Continued Prosecution of the Non-Settling Defendants**

- (a) The Parties understand and agree as follows:
  - (i) All Documents and information provided by Polar to Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Actions, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are publicly available. Plaintiffs and Class Counsel agree they will

not use or publicize the Documents and information provided by Polar beyond what is reasonably necessary for the prosecution of the Actions or as otherwise required by law, except to the extent that the Documents or information are publicly available.

- (ii) Prior to the Effective Date, no Documents or other information provided by Polar may be disclosed by Plaintiffs or Class Counsel to any Person (other than BC Counsel for the purpose of assisting in the prosecution of the Actions and experts retained by the Plaintiffs in the course of the Actions, provided that BC Counsel and the expert, as applicable, agrees to be bound by the confidentiality obligations set out in this Section 2.4(a), and signs a copy of the Confidentiality Agreement and Undertaking attached as Schedule “A” to the confidentiality order granted by the Ontario Court dated February 14, 2014), except with the prior written consent of Polar or as required under law.
  
- (iii) After the Effective Date:
  - (A) any Documents or other information provided by Polar may be disclosed by Plaintiffs or Class Counsel to BC Counsel for the purpose of assisting in the prosecution of the Actions and/or experts retained by the Plaintiffs in the course of the Actions, provided that BC Counsel and the expert, as applicable, agrees to be bound by the confidentiality obligations set out in this Section 2.4(a) and signs a copy of the Confidentiality Agreement and Undertaking attached as Schedule “A” to the confidentiality order granted by the Ontario Court dated February 14, 2014;

- (B) the Documents or other information provided by Polar pursuant to Section 2.4(b)(i), 2.4(c), and 2.4(d) may be disclosed by Plaintiffs or Class Counsel to any Court-appointed notice provider to the extent necessary to enable the Court-appointed notice provider to provide notice to Class Members of any subsequent settlement agreement reached in the Actions (including any related approval hearings), the process for filing a claim under this Settlement Agreement and any other settlement agreement(s) and/or court award(s) achieved in the Actions, and any other major steps in the Actions, provided that the Court-appointed notice provider agrees to be bound by the confidentiality obligations set out in this Section 2.4(a) and signs a copy of the Confidentiality Agreement and Undertaking attached as Schedule “A” to the confidentiality order granted by the Ontario Court dated February 14, 2014;
- (C) the Documents or other information provided by Polar pursuant to Section 2.4(b)(i), 2.4(c), and 2.4(d) may be disclosed by Plaintiffs or Class Counsel to the Claims Administrator to the extent necessary to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement(s) and/or court award(s) achieved in the Actions, provided that the Claims Administrator agrees to be bound by the confidentiality obligations set out in this Section 2.4(a) and signs a copy of the Confidentiality Agreement and Undertaking attached

as Schedule "A" to the confidentiality order granted by the Ontario Court dated February 14, 2014;

- (D) any Documents or other information provided by Polar may be disclosed by Plaintiffs or Class Counsel with the prior written consent of Polar or as required under law; and
  - (E) the Plaintiffs or Class Counsel shall give Polar thirty (30) days' notice prior to the filing of any Documents or other information provided by Polar (except to the extent that the Documents or information are publicly available) in any of the Actions, or otherwise and any such filing shall be in compliance with terms of the confidentiality order granted by the Ontario Court dated February 14, 2014, and any other confidentiality orders that have been obtained pursuant to subsection (iv) below. Polar may, but is not obliged to, participate in any hearing or other proceeding that may ensue to ensure satisfactory confidentiality protections are in place, however, this shall not relieve Plaintiffs or Class Counsel of their obligations to protect confidentiality as contemplated hereby.
- (iv) The Plaintiffs and Class Counsel shall make all reasonable efforts permitted by law to protect the confidentiality of Polar's confidential or proprietary information, including abiding by the terms of the confidentiality order granted by the Ontario Court dated February 14, 2014, as modified by this Section 2.4(a). Before any Document or information (except to the extent that the Documents or information are publicly available) is disclosed in the Actions, the Plaintiffs in the

applicable Action shall seek to obtain on notice to Polar, a confidentiality and protective order from the applicable court in a form satisfactory to Polar, acting reasonably, if no such order has already been obtained from that court. Any Documents and other information provided by Polar will be treated as highly confidential under any applicable confidentiality orders entered in the Actions.

- (v) The confidentiality requirements in this Section will continue to bind Plaintiffs and Class Counsel after the Effective Date and even in the event that the Settlement Agreement is terminated or otherwise fails to take effect for any reason. The requirements of this Section 2.4(a) shall also apply to all Documents and other information shared by Class Counsel with BC Counsel, experts, any Court-appointed notice provider, and the Claims Administrator under this Settlement Agreement.
  
- (b) Within ninety (90) days after the Effective Date or at any time mutually agreed upon by the Parties, Polar shall provide to Class Counsel the following information to the extent it (1) is currently in existence; (2) is in the power, possession or control of Polar; and (3) is reasonably accessible:
  - (i) electronic transaction data, which data includes pricing and surcharge information, reflecting Polar's Airfreight Shipping Services during the Purchase Period and until June 2007. Counsel for Polar has informed Class Counsel that Polar does not have electronic transactional data for the entire Purchase Period. The transactional sales data shall be produced in Microsoft Excel or such other format as may be agreed upon by Counsel for Polar and Class Counsel;

- (ii) electronic transactional cost data reflecting Polar's Airfreight Shipping Services during the Purchase Period and until June 2007. The cost data will have sufficient information to identify, insofar as possible, particular input costs including fuel, handling, and other costs. Counsel for Polar has informed Class Counsel that Polar did not keep track of input costs on a transaction by transaction basis, and therefore has limited information to meet this purpose, and in any event does not have such data for the entire Purchase Period. The cost data shall be produced in Microsoft Excel or such other format as may be agreed upon by Counsel for Polar and Class Counsel; and
  - (iii) any Documents provided by Polar to plaintiffs in the U.S. Litigation, including pursuant to any settlement achieved in the U.S. Litigation.
- (c) Within thirty (30) days after the Execution Date or at any time mutually agreed upon by the Parties, Polar shall provide to Class Counsel Polar's customer information provided to The Garden City Group in accordance with the order of the Ontario Court, dated May 2, 2008.
- (d) Counsel for Polar will respond to one set of written questions from Class Counsel and/or the Plaintiffs' experts regarding the electronic data and customer information produced by Polar pursuant to Sections 2.4(b)(i), 2.4(b)(ii) and 2.4(c) above, on the following terms:
  - (i) Counsel for Polar shall have thirty (30) days in which to respond after receiving the set of written questions, unless the Parties agree otherwise; and



- (ii) The inability of Polar to fully answer Class Counsel's questions shall not constitute a breach or violation of Polar's obligations under the Settlement Agreement.
  
- (e) The obligation to produce Documents pursuant to Section 2.4(b) is a continuing one to the extent Documents responsive to Section 2.4(b) are identified following the initial productions. Polar shall make reasonable efforts to provide the information specified above in Section 2.4(b)(i) and 2.4(b)(ii) but cannot, and does not, make any representation that it has, can or will produce a complete set of the Documents and information described in Section 2.4(b)(i) and 2.4(b)(ii), and it is understood and agreed that the failure to produce a complete set of the Documents and information described in Section 2.4(b)(i) and 2.4(b)(ii) shall not constitute a breach or violation of this Settlement Agreement.
  
- (f) No later than ninety (90) days after the Effective Date, or at any time mutually agreed to by the Parties, Polar shall, at the request of Class Counsel, upon reasonable notice, and subject to any legal restrictions under any applicable domestic or foreign laws, make reasonable efforts to make available up to one (1) current or former officer, director or employee of Polar who has knowledge of the allegations in the Actions, as chosen by Polar, to provide information regarding the allegations in the Actions in a personal interview with Class Counsel, BC Counsel and/or experts retained by Class Counsel, at a location within Canada or the United States, as agreed upon by Class Counsel and Counsel for Polar, acting reasonably. The interview shall last no more than eight (8) hours, including reasonable breaks, and may occur on more than a single day, but not more than two (2) days. If such officer, director or employee refuses to provide

information, or otherwise cooperate, Polar shall use reasonable efforts to make him/her available for an interview but the failure of a specific 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 by Polar.

- (g) If a settlement is achieved by Polar in the U.S. Litigation, which settlement provides for counsel meetings and/or employee interviews, notwithstanding anything in this Settlement Agreement, Class Counsel may attend any counsel meetings and/or employee interviews that are conducted by Polar pursuant to such settlement. Where possible, Counsel for Polar shall advise Class Counsel of the dates and locations of such counsel meetings and/or employee interviews at least thirty (30) days in advance. In such an event, notwithstanding anything to the contrary in this Section 2.4:
  - (i) any Documents and information provided in the course of those counsel meetings and/or witness interviews shall be subject to the terms and protections of this Settlement Agreement;
  - (ii) the cooperation so provided shall fully satisfy Polar's obligations under Section 2.4(f) of this Settlement Agreement; and
  - (iii) Polar understands that this might involve the Plaintiffs receiving greater cooperation than they would have otherwise been entitled to pursuant to Section 2.4(f) of this Settlement Agreement.
- (h) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, Polar agrees to produce at trial and/or discovery or through acceptable affidavits or other testimony in the Actions, at the

expense of Class Counsel, representatives qualified to establish for admission into evidence any of Polar's Documents and information provided as cooperation pursuant to Section 2.4 of this Settlement Agreement, and agree to authenticate Documents produced by the Defendants that were created by, sent to, or received by Polar. If such officer, director or employee refuses to provide information, or otherwise cooperate, Polar shall use reasonable efforts to make him/her available but the failure of a specific 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.

- (i) Nothing in this Settlement Agreement shall require, or shall be construed to require, Polar (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 Polar, or to disclose or produce any Documents or information in breach of any order, regulatory directive, rule or provincial, federal or foreign law, or produce any Document or information subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any Documents or information they obtained on a privileged or co-operative basis from any Person, including any party to any action or proceeding.
  
- (j) 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 by Polar, such Documents shall be promptly returned to Polar and the Documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of Polar, 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.

- (k) Polar's obligation to cooperate as particularized in this Section 2.4 shall not be affected by the release provisions contained in this Settlement Agreement. Unless this Settlement Agreement is terminated or otherwise fails to take effect for any reason (at which time Polar's obligation to cooperate ceases), Polar's obligations to cooperate shall cease at the date of a settlement or final judgment in the Actions with or against all Defendants, except that Polar's obligations pursuant to Sections 2.4(b)(i), 2.4(c), and 2.4(d) shall continue until all settlement funds and/or court awards have been distributed.
- (l) Subject to Section 2.4(m), the provisions set forth in this Section 2.4 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or Documents from Polar or their 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, or seek to compel the evidence of, Polar or their 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 Section 2.4(l), 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 Polar who is put forward by Polar under Section 2.4(f), (g), (h), but who fails to cooperate in accordance with that Section.
- (m) In the event that Polar materially breaches this Section 2.4, Class Counsel may move before the Courts to enforce the terms of this Settlement Agreement, seek an order setting aside Section 2.4(l) and allowing the Plaintiffs to obtain discovery or information from

Polar as if Polar remained parties to the action, or seek such other remedy that is available at law.

- (n) Polar agrees not to oppose any motion by the Plaintiffs to strike or otherwise remove from the court record the affidavits sworn by Ronald A. Lane and Mark Somerstein and filed by Polar in respect of the pending certification motion in the Ontario Court. The provisions of this Section shall not derogate from the respective rights of the Plaintiffs, the Settlement Class Members, Class Counsel and Polar pursuant to Section 9.2 in the event that this Settlement Agreement is terminated or otherwise fails to take effect for any reason.
- (o) A material factor influencing Polar's decision to execute this Settlement Agreement is its desire to limit the burden and expense of the Actions on itself and on its former and current officers, directors and employees. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from Polar and from its former and current officers, directors and employees, and to avoid seeking information that is unnecessary, cumulative or duplicative and otherwise agree to avoid imposing undue or unreasonable burden or expense on Polar or on its former and current officers, directors and employees.
- (p) Notwithstanding any other provision of this Settlement Agreement, Polar (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, or laws or policies of a national competition authority. In addition, notwithstanding any other provision of this Settlement Agreement, in the event that a national competition authority advises Polar that any production contemplated by this Settlement Agreement may interfere with an ongoing investigation of the Airfreight Shipping Services industry, such

production will only be made after Polar is advised by the national competition authority that such production will no longer interfere with its ongoing investigation of the Airfreight Shipping Services industry.

### **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, including Polar's commitment to provide continuing compliance with the cooperation provisions of this Settlement Agreement set forth in Section 2.4, 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.
- (b) The Plaintiffs and Settlement Class Members acknowledge that they are aware 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 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.
- (c) Each Settlement Class Member who files a claim form must execute a written release in favour of the Released Parties in respect of all Released Claims. Such written release will be contained within the body of the claim form to be filed by Settlement Class

Members for compensation pursuant to the Distribution Protocol. Any receipt of funds by Settlement Class Members under this Settlement Agreement shall be conditional upon receipt of an effective written release in favour of the Released Parties in respect of all Released Claims.

### **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 are aware 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 and, in the event that a future contested certification hearing in the Actions is not resolved in favour of the Plaintiffs, 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.

### **3.4 Dismissal of Actions as Against Polar and Atlas**

- (a) Except as provided herein, upon the Effective Date, the Actions shall be dismissed, without costs and with prejudice, as against Polar and Atlas.

### **3.5 Dismissal of Released Claims as Against the Released Parties**

- (a) Upon the Effective Date, each Settlement Class Member 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 Member's 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.
- (c) It shall be a condition of receipt of payment under this Settlement Agreement that each Settlement Class Member must execute a consent to dismissal of any and all Released



Claims in any jurisdiction against the Released Parties, without costs and with prejudice. Such consent will be contained within the body of the claim form to be filed by Settlement Class Members for compensation pursuant to the Distribution Protocol.

### **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 Defendant, including Non-Settling Defendants, other than the Released Parties.

## **SECTION 4 - BAR ORDER**

### **4.1 Ontario Bar Order**

- (a) The Plaintiffs in the Ontario Action shall seek a bar order from the Ontario Court 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 Approval 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 the Ontario 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, provided that the Non-Settling Defendant, other Defendant or Released Party, as the case may be, against whom the Foreign Claim is brought raises before the foreign court in a timely and proper manner under the laws and procedure of that court, that the Ontario Approval Order is an absolute bar to the Foreign Claim;

(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 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 the Ontario 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 the Ontario Action and the Ontario Settlement Class Members, if any; and
  - (D) the Ontario Court shall have full authority to determine the Proportionate Liability at the trial or other disposition of the Ontario Action, whether or not the Released Parties remain in the Ontario 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 Action for that purpose and any such finding by the Ontario Court in respect of the Proportionate Liability shall only apply in the Ontario 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 Approval 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 Ontario Action;

- (iv) a Non-Settling Defendant may, upon motion on at least ten (10) days' notice to counsel for Polar, and not to be brought unless and until the Ontario Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek an order from the Ontario Court for the following:
  - (A) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure* from Polar;
  - (B) oral discovery of a representative of Polar, the transcript of which may be read in at trial;
  - (C) leave to serve a request to admit on Polar in respect of factual matters; and/or
  - (D) the production of a representative of Polar to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants
- (v) Polar retain all rights to oppose such motion(s);
- (vi) on any motion brought pursuant to Section 4.1(a)(iv), the Court may make such Orders as to costs and other terms as it considers appropriate;
- (vii) to the extent that an order is granted pursuant to Section 4.1(a)(iv) and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by Polar to the Plaintiffs

and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;

(viii) the Ontario Court will retain an ongoing supervisory role over the discovery process and Polar will attorn to the jurisdiction of the Ontario Court for these purposes; and

(ix) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 4.1(a)(iv) on Polar by service on Counsel for Polar.

#### **4.2 Quebec Bar Order**

(a) The Plaintiff in the Quebec Action shall seek a bar 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 Polar;

(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;

(iii) any action in warranty or other joinder of parties to obtain any contribution or indemnity from Polar or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action; and

- (iv) that any future right by the Non-Settling Defendants to examine on discovery a representative of Polar will be determined according to the provisions of the *Code of Civil Procedure*, and Polar shall reserve their right to oppose such an examination under the *Code of Civil Procedure*.

#### **4.3 Material Term**

- (a) Without derogating from the materiality of any other term or condition of this Settlement Agreement, for greater certainty, the form and content of the bar orders 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 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 Action as against Polar and Atlas, and secure a prompt, complete declaration of settlement out of court of the Quebec Action as against Polar and Atlas in the Quebec Actions.

#### **5.2 Approval Hearings**

- (a) The Plaintiffs shall, as soon as practicable after the Execution Date, file motions before the Courts in relation to the Approval Hearings.
- (b) The Plaintiffs shall seek to schedule the motions described in Section 5.2(a) at a time determined in their full and complete discretion, but will endeavor to schedule the

Approval Hearing before the Ontario Court to take place no later than the commencement of the hearing of the certification motion in the Ontario Action.

- (c) The Plaintiffs agree that, for settlement purposes, the only classes that they will seek to assert are the Ontario Settlement Class and the Quebec Settlement Class.
- (d) If this Settlement Agreement is approved by the Courts, the Plaintiffs and Polar shall jointly seek entry of Approval Orders that, *inter alia*:
  - (i) approve this Settlement Agreement and its terms as being fair, reasonable, and in the best interests of the Settlement Class Members and directing its consummation according to its terms;
  - (ii) direct that, as to the Released Parties, the Actions and Released Claims in each respective Court's jurisdiction be dismissed with prejudice and without costs against Polar and Atlas; and
  - (iii) incorporate any other operative language and provisions as contemplated herein.
- (e) Subject to the approval of the Courts, the Plaintiffs and Polar shall agree on the form of the orders to be sought. Should the Plaintiffs and Polar fail to agree on the form of the orders, such dispute will be resolved pursuant to Section 11.1 of this Settlement Agreement.

### **5.3 Pre-Motion Confidentiality**

- (a) Until the motions required by Section 5.2(b) are 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 Polar, without the prior written consent of counsel for Polar 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. Notwithstanding the foregoing, the Parties agree that at any time after this Settlement Agreement is entered into, Polar may, in its discretion, issue a press release announcing that this Settlement Agreement has been entered into and describing the nature and effect of the Settlement Agreement.

#### **5.4 Sequence of Motions**

- (a) The Plaintiff in Quebec shall not proceed with the Approval Hearing unless and until the Ontario Court approves this Settlement Agreement. The Approval Hearing may be filed in Quebec, but Quebec Counsel agree to seek any adjournment of their Approval Hearing required to permit the Ontario Court to first render its decision on the Approval Hearing before it. Polar may agree to waive this provision.
- (b) Notwithstanding Section 5.4(a) of this Settlement Agreement, the Plaintiffs can elect to request that the Courts hold joint Approval Hearings pursuant to the Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions. Polar will not oppose any such request.

### **SECTION 6- NOTICE TO SETTLEMENT CLASS**

#### **6.1 Notices Required**

- (a) The proposed Settlement Class shall be given the following notice: (i) Notice of Certification and Approval Hearings; (ii) Notice of Certification and Settlement Approval; and (iii) Notice of Termination (if the Settlement Agreement is terminated or



otherwise fails to take effect). All Notices shall be in a form agreed upon by the Plaintiffs and Polar or in such other form as approved by the Courts.

- (b) The Plaintiffs shall bring and seek to schedule motions before the Courts seeking orders from the Courts approving the Notices described in Section 6.1(a). The Plaintiffs may determine the time of these motions in their full and complete discretion, except that the Plaintiffs will endeavor to schedule these motions at a time that will permit the Approval Hearing before the Ontario Court to take place prior to the commencement of the hearing of the certification motion in the Ontario Action.

## **6.2 Distribution of Notices**

- (a) The manner of publication and distribution of the Notices will be agreed upon by the Plaintiffs and Polar or in such form or manner as approved by the Courts.
- (b) With the object of reducing the costs of notice, Class Counsel shall use their reasonable best efforts to coordinate the provision of Notice pertaining to this Settlement Agreement with the provision of notice for any other settlements that have been or may be reached in the Actions.
- (c) Polar shall contribute up to seventy five thousand Canadian dollars CAD\$75,000 (equivalent to sixty nine thousand United States dollars (USD\$69,000), based on the prevailing exchange rate, as of the Execution Date, of 0.92 United States dollars to 1 Canadian dollar) towards the costs of disseminating the Notices (including the costs of translating the Notices), which contribution is in addition to the Settlement Amount. For greater certainty, the amount of the contribution is the amount expressed herein in Canadian dollars, and a change in the prevailing exchange rate after the Execution Date

will not affect the quantum of Polar's contribution towards the costs of disseminating the Notices. Within ten (10) days of receiving an invoice relating to the costs of disseminating the Notices, Polar shall pay the amount of the invoice to the Escrow Agent to be added to the Trust Account. In the event that the Plaintiffs reach a settlement with one or more of the Non-Settling Defendants and the Notices referred to in Section 6.1 apply to both this Settlement Agreement and such additional agreements reached by the Plaintiffs, the contribution by Polar for the cost of such Notices shall be reduced such that each Defendant (or group of related Defendants) to whom the Notice applies shall pay an amount proportionate to its respective settlement payment. In no circumstance, however, shall Polar be required to contribute more than CAD\$75,000 for such costs. In the event that Polar's proportionate share of the costs of such Notices exceeds CAD\$75,000, the amount of the excess can be paid from the Settlement Amount in accordance with the terms of this Settlement Agreement.

- (d) Polar consents to The Garden City Group using Polar's customer information provided to The Garden City Group 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**

- (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.

**SECTION 8- CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

- (a) Class Counsel shall seek the Courts' approval of their Class Counsel Fees. Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneously with the Approval Hearings or at such other time as they shall determine in their sole discretion.
- (b) Class Counsel shall be reimbursed and paid for approved Class Counsel Fees solely out of the Settlement Fund after the Effective Date. No Class Counsel Fees shall be paid from the Settlement Fund prior to the Effective Date.
- (c) Polar shall not be liable for any Class Counsel Fees, costs of Notices (except as provided herein) or the Plaintiffs' or Settlement Class Members' experts, advisors, agents, or representatives. For greater certainty, other than the payment of the Settlement Amount, and of the cost of Notices as provided herein, Polar shall have no further liabilities or debts in respect of this Settlement Agreement or the administration thereof.
- (d) The Escrow Agent or Claims Administrator shall pay the costs of the Notices referred to in SECTION 6 of this Settlement Agreement out of the Settlement Fund. Any such costs can be paid as they are incurred.
- (e) With the object of reducing the costs of claims administration, 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 any other settlements that have been or may be reached in the Actions. The costs of the claims administration process shall be allocated proportionally among settlements and shall be paid from the Settlement Fund.

- (f) Aside from payment of the Settlement Amount and the costs of Notices as provided herein, Polar are not liable to pay any further amount on account of any Administrative Expenses or Class Counsel Fees, including the cost of Notice, regardless of whether or not the Settlement Fund is sufficient to pay for Polar's proportional share of the Administration Expenses, Class Counsel Fees or other such shared costs.

## **SECTION 9 - IMPLICATIONS OF SETTLEMENT**

### **9.1 No Admission of Liability**

- (a) The Plaintiffs and Polar expressly reserve all of their rights if this Settlement Agreement is terminated or otherwise fails to take effect for any reason. Further, the Plaintiffs and Polar 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 Polar 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 Polar 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, BC Counsel, Plaintiff, Settlement Class Member nor anyone currently or hereafter employed by, associated with or a partner with Class Counsel, BC Counsel or any Plaintiff or Settlement Class Member 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. Moreover, unless otherwise ordered by a court, no Class Counsel, BC Counsel, Plaintiff, Settlement Class Member nor anyone currently or hereafter employed by, associated with or a partner with Class Counsel, BC Counsel, any Plaintiff or Settlement Class Member 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 or the BC Action against any Non-Settling Defendants or in the event that a future contested certification hearing in the Actions or the BC Action is not resolved in favour of the Plaintiffs, continuation of the Claims as alleged in the Actions or the BC Action against the Non-Settling Defendants in the form of individual claims, group proceedings, test cases, or otherwise.

## 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 Polar 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 approves this Settlement Agreement in a materially modified form;
  - (iii) any Approval Order is materially modified or set aside on appeal; or
  - (iv) the certification motion in the Ontario Action is dismissed by Final order before the Approval Hearing before the Ontario Court has taken place.
- (b) Any order, ruling or determination made by any Court with respect to Class Counsel Fees or with respect to 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.
- (c) If pursuant to Section 10.1(a) above, the Plaintiffs or Polar wish to terminate the Settlement Agreement, notice of such decision to terminate the Settlement Agreement must be provided in writing to the Plaintiffs or Polar, as applicable, within thirty (30) days of an event under Section 10.1(a) 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 or otherwise fails to take effect for any reason:
  - (i) no further Approval Hearing shall proceed;
  
  - (ii) any Approval Orders shall be 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. Anyone attempting to rely on such orders shall be estopped from doing so;
  
  - (iii) Class Counsel in each Action shall forthwith deliver consents in writing authorizing Polar to bring motions before each of 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 Orders;
  
    - (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 Polar, including interest.

- (iv) The Escrow Agent shall thereupon pay to Polar the balance in the Settlement Fund, including interest, less reasonable administrative costs charged by the Escrow Agent and less any costs of notice expended in accordance with section 8(d) that exceeds Polar's contribution to the costs of notice pursuant to Section 6.2(c). Despite Section 2.3, if the Settlement Agreement is terminated, to the extent the balance in the Settlement Fund is paid to Polar, Polar shall be responsible for the payment of taxes owed with respect to income on such amounts paid to Polar.
- (c) In the event that the Settlement Agreement is terminated or otherwise fails to take effect for any reason, the Plaintiffs shall, upon request by Polar, return to Polar all Documents and notes or records of information (and all copies of such Documents and notes or records of information), provided by Polar under this Settlement Agreement or otherwise. In the event any Documents and notes or records of information are incapable of being physically returned to Polar, the Plaintiffs shall destroy all such Documents and notes or records of information (howsoever recorded) and provide Polar with a written certification by Class Counsel of such destruction. The requirements of this Section shall also apply to all Documents and notes or records of information shared by Class Counsel with experts, BC Counsel, any Court-appointed notice provider or the Claims Administrator under Section 2.4 or that the experts, BC Counsel, the Court-appointed notice provider or the Claims Administrator themselves created.

### **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), 2.4(a), 6.1, 6.2, 9.1, 9.2, 10.2, and 11.1 and the



definitions in Section 1 applicable thereto shall survive the termination and continue in full force and effect.

## **SECTION 11 - DETERMINATION OF DISPUTES**

### **11.1 Disputes**

- (a) Polar and the Plaintiffs agree that all disputes, claims, or controversies arising in connection with, pursuant to, or related to the implementation or interpretation of the terms of this Settlement Agreement shall be finally resolved by the Ontario Court, or if the Ontario Court directs, by a referee appointed by the Ontario Court. To the extent necessary, the referee appointed under this Section shall have the authority to conduct a reference in accordance with the Ontario *Rules of Civil Procedure*.
- (b) Notwithstanding any other provision herein, Polar and the Plaintiffs shall bear their own costs of such Court hearing or reference, unless the Ontario Court or referee in its, his or her discretion finds it reasonable to assess such costs solely to Polar or the Plaintiffs. Notwithstanding any other provision herein, the Plaintiffs and Polar shall each be responsible for one half of the fees and disbursements of the referee, as fixed by the Ontario Court.
- (c) In considering the reasonableness of any request made pursuant to the provisions of this Settlement Agreement, the Ontario Court or the referee shall weigh the burden and expense of complying with the request against the importance of the subject matter of the request to the Plaintiffs' prosecution of the claims as alleged in the Actions.

## SECTION 12 - MISCELLANEOUS

### 12.1 Governing Law

- (a) Subject to Section 12.1(b), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- (b) Notwithstanding Section 12.1(a), for matters to be determined by the Quebec Court pursuant to Section 12.2(c), the Quebec Court shall apply the laws of the Province of Quebec.

### 12.2 Ongoing Jurisdiction and Motions for Directions

- (a) Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction, the Parties thereto and the application brought in those Actions for approval of Class Counsel Fees pursuant to section 8(a).
- (b) The Plaintiffs and Polar 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. Notwithstanding the above, motions that relate specifically to matters affecting the Quebec Action and Quebec Settlement Class Members shall be determined by the Quebec Court.

- (d) The Plaintiffs or Polar 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 Polar.

### **12.3 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, they 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.

#### **12.4 Language**

- (a) The Plaintiffs and Polar acknowledge that they have required and consented that this Settlement Agreement be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les Documents connexes soient rédigés en anglais. The Plaintiffs and Polar shall prepare a French translation of this Settlement Agreement as and when required by the Courts. Notwithstanding any other provision herein, in the event that a French translation of this Settlement Agreement is required by the Courts, the Plaintiffs and Polar shall each pay one half of the cost of such translation. The Plaintiffs and Polar agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

#### **12.5 Entire Agreement**

- (a) This Settlement Agreement, including the recitals herein, constitutes the entire agreement among the Plaintiffs and Polar, 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 Polar 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.

#### **12.6 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 Polar 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 Polar 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 Polar and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

#### **12.7 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<sup>LLP</sup>  
680 Waterloo Street  
London, ON N6A 3V8  
Tel.: (519) 672-2121  
Fax: (519) 672-6065  
Email: charles.wright@siskinds.com  
linda.visser@siskinds.com

Moe Liebman  
Liebman Legal Inc.  
1 carrée Westmount, bureau/Suite 1500  
Montréal, QC H3Z 2P9  
Tel.: (514) 846-066  
Fax: (514) 935-2314  
Email: info@liebmanlegal.com

If to: POLAR

Aaron Dantowitz  
Stockwoods LLP  
Royal Trust Tower  
77 King Street West  
Suite 4130, PO Box 140  
Toronto-Dominion Centre  
Toronto, ON M5K 1H1  
Tel: (416) 593-2497  
Fax: (416) 593-9345  
Email: aarond@stockwoods.ca

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

## **12.8 Survival**

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

## **12.9 Acknowledgements**

- (a) Each of the Plaintiffs and Polar 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.

**12.10 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.

**12.11 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 PDF signature shall be deemed an original signature.

**12.12 Execution Date**

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

IN WITNESS WHEREOF, the Plaintiffs and Polar 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: Linda Visser

Signature of Authorized Signatory:   
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: Linda Visser per Irwin Liebman

Signature of Authorized Signatory:   
Liebman Legal Inc.  
Quebec Counsel

**POLAR AIR CARGO LLC**, by its counsel

Name of Authorized Signatory: **AARON DANTOWITZ**

Signature of Authorized Signatory:   
Stockwoods LLP