

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

Between:

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

and

BRITISH AIRWAYS PLC

Executed June 8, 2020

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RECITALS

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

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

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

Excluded from the Class are:

- a) Defendants and their unnamed co-conspirators*** and their respective parents, employees, subsidiaries, affiliates, officers and directors,
- b) b) persons currently resident in Australia who paid identified amounts totalling more than AUD\$20,000 for the carriage of goods to or from Australia, including in each instance a component by air during the period January 1, 2000 to January 11, 2007,
- c) c) persons who commence litigation in respect of Airfreight Shipping Services in a jurisdiction other than Canada prior to the conclusion of the trial of the common issues, and
- d) persons who timely and validly opted out of the litigation pursuant to the order of the Ontario court dated March 6, 2008.

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

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

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

C. **AND WHEREAS** British Airways 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 British Airways 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 British Airways or evidence of the truth of any of the Plaintiffs' allegations against British Airways, which British Airways expressly denies;

E. **AND WHEREAS** British Airways would assert a number of defences to the Plaintiffs' claims if the Actions proceeded further as against it;

F. **AND WHEREAS**, despite British Airways' belief that it is not liable in respect of the claims as alleged in the Actions and have good defences thereto, British Airways is entering into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation and to achieve a final resolution of all claims asserted or which could have been asserted against it by the Plaintiffs on their own behalf and on behalf of the Settlement Class, and to avoid

the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this 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 British Airways under this Settlement Agreement and the value of the cooperation British Airways 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 British Airways, 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 and nine Persons exercised the right to opt-out of the Actions;

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

J. **AND WHEREAS** Class Counsel, on their own behalf and on behalf of the Plaintiffs and the proposed Settlement Class, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Actions, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that a settlement with British Airways 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 British Airways therefore wish to, and hereby do, finally resolve, without admission of liability, all of the Actions and the Released Claims as against British Airways, subject to the approval of the Ontario Court;

L. **AND WHEREAS** for the purposes of settlement only and contingent on approval by the Ontario Court as provided for in this Settlement Agreement, the Parties have consented to certification of the Ontario Action as a class proceeding and have consented to a Settlement Class;

M. **AND WHEREAS** the Plaintiffs in the Ontario Action assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in the Ontario Action;

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

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

SECTION 1 - DEFINITIONS

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

- (a) ***Actions*** means the Ontario Action, the Quebec Action and the BC Action.
- (b) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement or in relation to the Settlement Fund, including the costs of notices and claims administration, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (c) ***Airfreight Shipping Services*** means airfreight cargo shipping services for shipments within, to, or from Canada, but specifically excluding airfreight cargo shipping services for shipments (i) with an origin point in Canada and a destination point in the United States or (ii) with an origin point in the United States and a destination point in Canada, but includes airfreight cargo shipping services in which the freight (i) travelled by truck from Canada to the United States, and then by air from the United States to a third country, or (ii) travelled by air from a third country to the United States, and then by truck from the United States to Canada.
- (d) ***Approval Hearing*** means the hearing to approve a motion brought by Class Counsel for the certification of the Ontario Action as a class proceeding on the basis of this Settlement Agreement and for the Ontario Court's approval of the settlement provided for in this Settlement Agreement.

- (e) **Approval Order** means any order of the Ontario Court, in the form attached as Schedule A hereto or such other form of order as agreed upon by the Plaintiffs and British Airways, approving this Settlement Agreement.
- (f) **BC Action** means the proceeding commenced in the British Columbia Supreme Court, under Vancouver Registry No. S067490.
- (g) **BC Counsel** means Camp Fiorante Matthews Mogerman.
- (h) **BC Court** means the Supreme Court of British Columbia.
- (i) **British Airways** means British Airways PLC and all of its present and former affiliates and related companies (also referred to herein as the “**Settling Defendant**”).
- (j) **Claim** shall have the meaning attributed to it in Section 1(jj)
- (k) **Claims Administrator** means the Person proposed by Class Counsel and appointed by the Ontario Court to administer the Settlement Fund in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such Person.
- (l) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel.
- (m) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Actions, as well as any adverse costs awards issued against the Plaintiffs in the Actions.
- (n) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class

Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Quebec.

- (o) **Counsel for British Airways** means DLA Piper (Canada) LLP.
- (p) **Courts** means the Ontario Court, the Quebec Court and the BC Court.
- (q) **Defendants** means the entities named as defendants in any of the Actions and any Persons added as defendants in any of the Actions in the future. For greater certainty, Defendants includes the Settling Defendants and the Settled Defendants.
- (r) **Distribution Protocol** means the plan for distributing the Settlement Fund to Settlement Class Members as approved by the Ontario Court, which may, if directed by the Ontario Court, require all or part of the Settlement Fund to be held in trust until the resolution of the Actions in whole or in part.
- (s) **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.
- (t) **Effective Date** means (i) the date upon which the ability to appeal, if an appeal lies therefrom, from the Approval Order has expired without any appeal being taken; or (ii) if any appeals have been taken from the Approval Order, the date upon which all such appeals are concluded by way of a Final (as defined in Section 1(v)) order or judgment. For the purposes of this paragraph, an "appeal" shall not include any appeal that concerns only the issue of Class Counsel Fees or the Distribution Protocol.

- (u) **Execution Date** means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and British Airways.
- (v) **Final**, when used in relation to a court order or judgment, means that all rights of appeal from such order or judgment have expired or have been exhausted (including a right of appeal arising after the granting of leave if leave to appeal is required), and the ultimate court of appeal to which an appeal (if any) was taken has upheld such order or judgment.
- (w) **Foreign Claim** shall have the meaning attributed to it in Section 5.1(a)(i).
- (x) **Non-Settling Defendants** means any Defendant that is not (i) the Settling Defendant; (ii) a Settled Defendant; or (iii) a Defendant against whom the Actions have been dismissed or discontinued, either before or after the Execution Date.
- (y) **Ontario Action** means the proceeding commenced in the Ontario Court bearing Court File No. 50389CP (London).
- (z) **Ontario Counsel** means Siskinds LLP and Harrison Pensa LLP.
- (aa) **Ontario Court** means the Ontario Superior Court of Justice.
- (bb) **Party and Parties** means British Airways, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (cc) **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.

- (dd) ***Plaintiffs*** means Airia Brands Inc., StarTech.com Ltd., QCS-Quick Cargo Service GmbH, Karen McKay and Cartise Sports Inc., individually and collectively.
- (ee) ***Proportionate Liability*** means the proportion of any judgment that, had British Airways not settled, the Ontario Court would have apportioned to British Airways and/or the Released Parties, whether pursuant to *pro rata*, proportionate fault, *pro tanto*, or another method.
- (ff) ***Purchase Period*** means January 1, 2000 up to and including September 11, 2006.
- (gg) ***Quebec Action*** means the proceeding commenced in the Quebec Court, under Court File No. 500-06-000344-065.
- (hh) ***Quebec Counsel*** means Liebman Legal Inc.
- (ii) ***Quebec Court*** means the Quebec Superior Court.
- (jj) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "Claims" or, individually, a "Claim"), that Releasing Parties, or any of them, whether directly, indirectly,

derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct anywhere, 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.

- (kk) ***Released Parties*** means, jointly and severally, individually and collectively, British Airways, and all of its 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.

- (ll) **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.
- (mm) **Settled Defendants** means Deutsche Lufthansa AG, Lufthansa Cargo AG, Swiss International Air Lines Ltd., Japan Airlines International Co., Ltd., Scandinavian Airlines System, Cargolux Airline International, Qantas Airways Limited, Singapore Airlines Ltd., Singapore Airlines Cargo PTE Ltd., Societe Air France, Koninklijke Luchtvaart Maatschappij N.V. (KLM), Royal Dutch Airlines, Martinair Holland N.V., LAN Airlines S.A., LAN Cargo S.A., Polar Air Cargo LLC, Atlas Air Worldwide Holdings Inc., Korean Air Lines Co., Asiana Airlines Inc., Cathay Pacific Ltd. and any other Defendant who has entered into a settlement agreement with the Plaintiffs relating to the allegations asserted in the Actions and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Execution Date.
- (nn) **Settlement Agreement** means this agreement, including the recitals and schedule.
- (oo) **Settlement Amount** means the sum of nine million Canadian dollars (CAD \$9,000,000) paid in three equal installments on 15 October 2020, 15 April 2021 and 15 October 2021.
- (pp) **Settlement Class and Settlement Class Members** means all Persons 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 British Airways. Excluded from the 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.

- (qq) **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.
- (rr) **U.S. Litigation** means the class action that proceeded 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.
- (ss) **U.S. Settlement** means the settlement entered into by British Airways with the plaintiffs in the U.S. Litigation, dated May 20, 2011.

SECTION 2- SETTLEMENT BENEFITS

2.1 The Settlement Fund

- (a) The Settlement Fund shall be established as an escrow account at a Canadian financial institution designated by Class Counsel and administered by Class Counsel until the Ontario Court has appointed a Claims Administrator, at which time Class Counsel will cede control to the Claims Administrator. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Ontario Court's continuing supervision and control. No monies shall be paid from the Settlement Fund, except in accordance with this

Settlement Agreement, or in accordance with orders of the Ontario Court obtained after notice to the Parties.

- (b) 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) Class Counsel and Claims Administrator shall cause the Settlement Fund to be invested in guaranteed investment vehicles or liquid money market accounts or equivalent securities with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46). All interest earned on the Settlement Fund shall become and remain part of the Settlement Fund.
- (d) The Plaintiffs and British Airways acknowledge that the Settlement Class includes both shippers and freight forwarders, and both customers and non-customers of British Airways, 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. At a time within their discretion, the Plaintiffs shall prepare and submit a Distribution Protocol to the Ontario Court 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, British Airways 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, British Airways 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, British Airways shall have no responsibility or liability as a result of any decrease or depreciation of the value of the Settlement Fund, howsoever caused, including, but not limited to, a decrease or depreciation in the value of any investments purchased by Class Counsel or the Claims Administrator, or the payment of any Class Counsel Fees, Class Counsel Disbursements, or any Administration Expenses, except as otherwise provided herein.
- (c) British Airways, directly or through its counsel or designee, shall wire transfer the Settlement Amount in three equal installments on 15 October 2020, 15 April 2021 and 15 October 2021. into the Settlement Fund.
- (d) If the Settlement Fund must be returned to British Airways pursuant to Section 11.2(b)(iv) of this Settlement Agreement, then Class Counsel and/or the Claims Administrator, as the case may be, shall be obliged to return the Settlement Fund to British Airways.

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 11.2(b)(iv), none of the income earned by the Settlement Fund, including interest earned thereon, will be reported as taxable to British Airways.

- (b) Except as provided for in Section 11.2(b)(iv), Class Counsel and/or the Claims Administrator shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned on the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund.
- (c) Except as provided for in Section 11.2(b)(iv), British Airways shall have no responsibility to make any filings relating to the Settlement Fund, will not be considered a payee of any income earned on the Settlement Fund, and will have no responsibility to pay tax on any interest or income earned by the Settlement Fund or pay taxes, if any, on the Settlement Fund.

SECTION 3- COOPERATION

3.1 Cooperation in the Continued Prosecution of the Non-Settling Defendants

- (a) Within ninety (90) days after the Effective Date or at any time mutually agreed upon by the Parties, British Airways 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 British Airways; (3) is reasonably accessible; and (4) has not already been produced in the Actions:
 - (i) electronic transaction data, which data includes pricing and surcharge information, reflecting British Airways' Airfreight Shipping Services during the Purchase Period

and until September 31, 2008. The transactional sales data shall be produced in Microsoft Excel or such other format as may be agreed upon by Counsel for British Airways and Class Counsel;

- (ii) electronic transactional cost data reflecting British Airways' Airfreight Shipping Services during the Purchase Period and until September 31, 2008. The cost data will have sufficient information to identify, insofar as possible, particular input costs including fuel, handling, and other costs. The cost data shall be produced in Microsoft Excel or such other format as may be agreed upon by Counsel for British Airways and Class Counsel;
- (iii) reasonable assistance in understanding the transactional sales and cost data produced by British Airways pursuant to Section 3.1(a)(i) or (ii) or otherwise in the Actions, including a reasonable number of written and/or telephonic communications with Class Counsel and/or the Plaintiffs' experts and between technical personnel;
- (iv) any Documents provided by British Airways to plaintiffs in the U.S. Litigation, including pursuant to the U.S. Settlement, and any pre-existing translations of those Documents and any pre-existing and non-privileged electronic coding. In addition, where the Documents previously produced in the U.S. Litigation contain bates stamps on their face, a field will be produced containing the corresponding bates stamps of the first page of each Document;
- (v) any Documents produced by British Airways to the Canadian Competition Bureau, the United States Department of Justice, the European Commission, Australian

Competition and Consumer Commission, the Korean Fair Trade Commission, the New Zealand Commerce Commission, and/or to any other governmental antitrust authority, and any pre-existing translations of those Documents and any pre-existing and non-privileged electronic coding;

- (vi) any responses to written interrogatories provided by British Airways to plaintiffs in the U.S. Litigation and any pre-existing translations of those written interrogatories;
 - (vii) any responses to requests to admit provided by British Airways to plaintiffs in the U.S. Litigation and any pre-existing translations of those requests to admit;
 - (viii) any affidavits or declarations of current or former employees, officers or directors of British Airways, including all exhibits thereto, taken in the U.S. Litigation, and any pre-existing translations of those affidavits or declarations; and
 - (ix) electronic copies of transcripts of all depositions or other live testimony of current or former employees, officers or directors of British Airways, including all exhibits thereto, taken in the U.S. Litigation, and any pre-existing translations of those transcripts.
- (b) The obligation to produce Documents pursuant to Section 3.1(a) is a continuing one to the extent Documents responsive to Section 3.1(a) are identified following the initial productions. British Airways shall make reasonable efforts to provide the information specified above in Section 3.1(a) 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 3.1(a), and it is understood and agreed that the failure to produce a complete set of

the Documents and information described in Section 3.1(a) shall not constitute a breach or violation of this Settlement Agreement.

- (c) Within ninety (90) days after the Effective Date or at any time mutually agreed upon by the Parties, British Airways shall provide to Class Counsel British Airways' customer information provided to Epiq Class Action and Claims Solutions, Inc. (formerly known as Garden City Group, LLC) in accordance with the order of the Ontario Court, dated May 2, 2008.
- (d) After the Execution Date, British Airways will make itself reasonably available to respond to reasonable questions respecting the information provided to Epiq Class Action and Claims Solutions, Inc. in accordance with the order of the Ontario Court, dated May 2, 2008 to any Court-appointed notice provider and/or the Claims Administrator. Further in the event that any Court-appointed notice provider and/or Claims Administrator is a Person other than Epiq Class Action and Claims Solutions, Inc., British Airways consents to such information being shared with the Court-appointed notice provider and/or Claims Administrator, provided such Person executes an undertaking in accordance with the confidentiality order issued by the Ontario Court, dated February 14, 2014.
- (e) Within ninety (90) days after the Execution Date or at any time mutually agreed upon by the Parties, Counsel for British Airways will meet with Class Counsel in-person in Ontario to provide an oral evidentiary proffer over a period of up to one (1) business day. The proffer shall include information originating with the Settling Defendants relating to the allegations in the Actions. 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 British Airways are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, unless disclosure is ordered by the Court. Further, absent a Court order, Class Counsel will not attribute any factual information obtained from the proffer to British Airways and/or Counsel for British Airways. Notwithstanding the foregoing, Class Counsel may: (1) use information obtained from the proffer in the prosecution of the Proceedings, including for the purpose of developing the Distribution Protocol or any other allocation plan relating to any settlement or judgment proceeds, except the prosecution of any claims against Released Parties; and (2) may rely on such information to certify that, to the best of Class Counsel's knowledge, information and belief, such information has evidentiary support or will likely have evidentiary support after reasonable opportunity for further investigation or discovery, but, absent a Court Order, the Plaintiffs shall not introduce any information from a proffer into the record or subpoena any Counsel for British Airways related to a proffer.

- (f) Within ninety (90) days after the Execution Date or at any time mutually agreed upon by the Parties, British Airways shall, upon the agreement of Class Counsel and Counsel for British Airways, acting reasonably, upon at least thirty (30) days' notice, and subject to any legal restrictions, make reasonable efforts to make available at a mutually convenient time, up to four (4) current or former officers, directors or employees of British Airways who have knowledge about the allegations in the Actions to provide information regarding the allegations raised in the Actions in a personal interview with Class Counsel and/or experts retained by Class Counsel. Such personal interviews shall take place in Ontario and shall not exceed eight (8) hours and may occur on more than a single day, but not more than two (2) days per interview. Notwithstanding the foregoing, in the event that the Parties agree that

the personal interviews will take place in a location outside Ontario, British Airways agrees to pay the associated airfare for two representatives of Class Counsel to travel to the location of the interviews, provided that the representatives travel on a flight operated by British Airways (including any alliance or code-sharing partners). If the flight time is greater than three (3) hours, British Airways will pay the associated airfare for business class seats. Costs incurred by, and the expenses of, the interviewee in relation to such interviews, excluding costs of an interpreter or otherwise related to foreign language translation in connection with interviews, shall be the responsibility of the Settling Defendants. If a proposed interviewee refuses to provide information, or otherwise cooperate, the Settling Defendants shall use best efforts to make him/her available for an interview with Class Counsel and/or experts retained by Class Counsel. British Airways shall have the right to have counsel present at interviews by Class Counsel. The failure of a proposed interviewee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement.

- (g) It is understood that the evidentiary proffers and interviews described in Section 3.1(e) and (f) and the evidentiary proffers and/or interviews of employees described in Section 3.1(e) and (f) might take place before the Effective Date. In such event:
 - (i) any Documents or information provided in the course of those evidentiary proffers and/or interviews shall be subject to the terms and protections of this Settlement Agreement; and
 - (ii) in the event that this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, the Documents and information

provided during the evidentiary proffers and/or interviews shall not be used by the Plaintiffs or Class Counsel, whether directly or indirectly, in any way for any reason, including, without limitation, against the Released Parties as an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by the Released Parties or of the truth of any claims or allegations in the Actions, and such information shall not be discoverable by any Person or treated as evidence of any kind, unless otherwise ordered by a Court. In the event of such non-approval, termination or failure to take effect, Class Counsel will make reasonable efforts to return all copies of any Documents received during, and destroy all copies of any notes taken during (or subsequent reports provided about), these evidentiary proffers and/or interviews and to provide written confirmation to British Airways of having done so.

- (h) Subject to the rules of evidence, any Court order with regard to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to provide or obtain affidavits from appropriate current or former officers, directors and/or employees of the Released Parties for use at trial or otherwise in the Actions for the sole purpose of supporting the submission into evidence of: (1) any information, transactional data and/or Documents provided by the Released Parties in accordance with this Settlement Agreement or as otherwise produced by the Released Parties in the Actions; and/or (2) any Documents produced by the Defendants that were created by, sent to, or received by British Airways. If, and only if, a Court should determine that affidavits are inadequate for the purpose of submitting into evidence such information or Documents, British Airways agrees to use reasonable efforts to make available for testimony at trial or

otherwise appropriate current or former officers, directors and/or employees of the Released Parties, as is reasonably necessary for the prosecution of the Actions and, specifically, for the purpose of admitting into evidence any such information or Documents. The Plaintiffs will work to minimize any burden on the Released Parties pursuant to this section.

- (i) Nothing in this Settlement Agreement shall require, or shall be construed to require, British Airways (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 British Airways, 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. The British Airways is not required to create a privilege log. However, if a relevant privilege log was created in the context of the U.S. Litigation, Counsel for British Airways have created a relevant privilege log, or there is some other pre-existing Document containing identifying information regarding the withheld Documents, British Airways will provide Class Counsel with a copy of such log or Document.
- (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 British Airways, such Documents shall be promptly returned to British Airways and the Documents and the information contained therein shall not be disclosed or used directly or

indirectly, except with the express written permission of British Airways, 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) British Airways' obligation to cooperate as particularized in this Section 3.1 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 British Airways' obligation to cooperate ceases), British Airways' obligations to cooperate shall cease at the date of a settlement or final judgment in the Actions with or against all Defendants, except that British Airways' obligations pursuant to Section 3.1(d) shall continue until all settlement funds and/or court awards have been distributed. For greater certainty, the Plaintiffs' failure to strictly enforce any of the deadlines for British Airways to provide cooperation pursuant to this Section 3.1 is not a waiver of the cooperation rights granted by Section 3.1.

- (l) Subject to Section 3.1(m), the provisions set forth in this Section 3.1 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or Documents from British Airways or their current or former officers, directors or employees, except that: (1) the Plaintiffs reserve their right to issue subpoenas for trial witnesses who were employed by British Airways should that become necessary, but only after consulting with Counsel for British Airways and subject to all available objections such former employee and/or British Airways may have or assert to such subpoenas; (2) the Plaintiffs may exercise any rights they have to seek to obtain discovery in the Actions as against knowledgeable officers, directors and/or employees of British Airways, if such individual(s) fails to cooperate in accordance with Sections

3.1(h)(f) and (h) and the provisions of this Settlement Agreement.. Subject to the foregoing exception, 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, British Airways 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.

- (m) In the event that British Airways materially breaches this Section 3.1, Class Counsel may move before the Courts to enforce the terms of this Settlement Agreement, seek an order setting aside Section 3.1(l) and allowing the Plaintiffs to obtain discovery or information from British Airways as if British Airways remained parties to the Actions, or seek such other remedy that is available at law.
- (n) A material factor influencing British Airways' decision to enter into 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 British Airways 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 British Airways or on its former and current officers, directors and employees.
- (o) Notwithstanding any other provision of this Settlement Agreement, British Airways (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 British Airways 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 British Airways is advised by the national competition authority that such production will no longer interfere with its ongoing investigation of the Airfreight Shipping Services industry.

3.2 Limits on Use of Documents and Information

- (a) It is understood and agreed that all Documents and information made available or provided by British Airways and/or Counsel for British Airways to the 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 were, are or become publicly available. The Plaintiffs and Class Counsel agree they will not disclose the Documents and information provided by British Airways and/or Counsel for British Airways 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 were, are or become publicly available. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such Documents and information, and of any work product of Class Counsel that discloses such Documents and information.

- (b) In addition, the Plaintiffs and Class Counsel agree that the use and disclosure of any Documents or information provided by British Airways pursuant to the terms of this

Settlement Agreement or otherwise produced by British Airways in the Actions shall be governed by the confidentiality order issued by the Ontario Court, dated February 14, 2014.

3.3 Intervention in the U.S. Litigation

- (a) British Airways and the other Released Parties shall not oppose any application by or on behalf of the Plaintiffs to: (1) intervene in the U.S. Litigation in order to gain access to discovery Documents and other Documents and information subject to any protective order granted in the U.S. Litigation that are relevant to the Actions; or (2) compel a U.S. resident to “give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal” pursuant to Title 28 of the United States Code §1782 for the prosecution of the Actions; provided such application is not otherwise inconsistent with the terms of this Settlement Agreement, including Section 3.1(I). However, it is agreed that the Settling Defendants and other Released Parties have no obligation to bring or otherwise participate in such an application.

SECTION 4- RELEASES AND DISMISSALS

4.1 Release of Released Parties

- (a) Upon the Effective Date, subject to Section 4.2 and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, including British Airways’ commitment to provide continuing compliance with the cooperation provisions of this Settlement Agreement set forth in Section 3.1, 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 Order.

- (b) The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Settlement Agreement, and that it is their intention to release fully, finally and forever all Released Claims as set out in this Section 4.1, 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.

4.2 Covenant Not To Sue

- (a) Notwithstanding Section 4.1, upon the Effective Date, for any Settlement Class Members resident in any jurisdiction where the release of one tortfeasor is a release of all other tortfeasors, the Releasing Parties do not release the Released Parties but instead covenant and undertake not to sue, make in any way any Claim within the scope of the Released Claims or to threaten, commence, or continue any Claim within the scope of the Released Claims in any jurisdiction against the Released Parties. The Parties shall use their best efforts to have the terms of the covenant not to sue contemplated herein incorporated into the Approval Orders.
- (b) With respect to the Settlement Class Members resident in any jurisdiction where the release of one tortfeasor is a release of all other tortfeasors, the Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Settlement Agreement, and that it is their intention to fully, finally and forever covenant and undertake not to sue or make any Claim within the scope of the Released Claims against the Released Parties as set out in this Section 4.2, 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.

4.3 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 or, if the Ontario Action is decertified, the 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.

4.4 Dismissal of Actions as Against British Airways

- (a) Except as provided herein, upon the Effective Date, the Ontario Action shall be dismissed, without costs and with prejudice, as against British Airways.

4.5 Dismissal of Released Claims as Against the Released Parties

- (a) Upon the Effective Date, Settlement Class Members shall be deemed to irrevocably consent to the dismissal as against the Released Parties, without costs and with prejudice, of any and all of the Settlement Class 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.

4.6 Claims Against Other Entities Reserved

- (a) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any Person, including Non-Settling Defendants, other than the Released Parties.

SECTION 5 - BAR ORDER

5.1 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 Approval Order from bringing a claim for contribution, indemnity or other claims over against a Released Party or other Person, including a Non-Settling Defendant or other Defendant, in respect of the Foreign Claim, to the extent such a claim exists under the applicable law;
 - (ii) that if, in the absence of Section 5.1(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 and the 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 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;
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 5.1(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 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 British Airways, seek an order from the Ontario Court for the following:
 - (A) documentary discovery and an affidavit of documents in accordance with the Ontario *Rules of Civil Procedure* from British Airways;
 - (B) oral discovery of a representative of British Airways, the transcript of which may be read in at trial;
 - (C) leave to serve a request to admit on British Airways in respect of factual matters; and/or

- (D) the production of a representative of British Airways to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (v) British Airways retains all rights to oppose such motion(s);
- (vi) on any motion brought pursuant to Section 5.1(a)(iv), the Ontario 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 5.1(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 British Airways 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 British Airways 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 5.1(a)(iv) on British Airways by service on Counsel for British Airways.

5.2 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 Approval Order (including, without limiting the generality of the foregoing, the matters contemplated in this Section 5) shall be considered a material term of the Settlement Agreement and the failure of the

Ontario Court to approve the bar orders shall give rise to a right of termination pursuant to Section 11.1(a) of this Settlement Agreement.

SECTION 6 - SETTLEMENT APPROVAL

6.1 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 Actions as against British Airways.

6.2 Approval Hearing

- (a) As soon as practicable after the Execution Date, the Plaintiffs in the Ontario Action shall bring a motion before the Ontario Court for an order approving the notices described in Section 7.1(a).
- (b) As soon as practicable after the order referred to in Section 6.2(a) has been issued and the notices described in Section 7.1(a) have been published, the Plaintiffs in the Ontario Action shall file a motion before the Ontario Court in relation to the Approval Hearing.
- (c) Subject to 6.2(a) and (b), the Plaintiffs in the Ontario Action shall seek to schedule the motions described in Section 6.2(a) and (b) at a time determined in their full and complete discretion subject always to the availability of Counsel for British Airways.
- (d) The Plaintiffs agree that, for settlement purposes, the only class that they will seek to assert is the Settlement Class.

- (e) If this Settlement Agreement is approved by the Ontario Court, the Plaintiffs and British Airways shall jointly seek entry of an Approval Order in the form attached hereto as Schedule “A” or such other form as agreed upon by the Plaintiffs and British Airways.
- (f) In the event that the BC and/or Quebec Court require an Approval Hearing to proceed in British Columbia and/or Quebec, the Parties, acting reasonably, will seek to reach agreement on terms relating to the approval of this Settlement Agreement in British Columbia and/or Quebec, including the form of a draft Approval Order(s), and the Settlement Agreement shall not be effective until such Approval Orders are obtained and become Final.

6.3 Dismissal of BC and Quebec Actions

- (a) After the Execution Date and as soon as practical after the Approval Order is issued, the Plaintiffs in the BC and Quebec Actions shall seek orders from the BC and Quebec Courts dismissing the BC and Quebec Actions as against British Airways, with prejudice and without costs.

6.4 Pre-Motion Confidentiality

- (a) Until the motion required by Section 6.2(a) is filed, this Settlement Agreement and all of its terms shall be kept confidential and shall not be disclosed by either the Plaintiffs, Class Counsel or British Airways, without the prior written consent of Counsel for British Airways or Class Counsel respectively, except as may be required for the purposes of on-going securities disclosure obligations, financial reporting or the preparation of financial records (including without limitation tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

SECTION 7- NOTICE TO SETTLEMENT CLASS

7.1 Notices Required

- (a) The proposed Settlement Class shall be given a single notice of: (1) the proposed certification of the Settlement Class as against British Airways, for settlement purposes only; (2) the date and location of the Approval Hearing; (3) the core elements of the Settlement Agreement and the Distribution Protocol, if applicable; and (4) if brought with the hearing to approve the Settlement Agreement, the hearing to approve Class Counsel Fees and Class Counsel Disbursements.
- (b) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Class shall be given notice of such event.

7.2 Form and Distribution of Notices

- (a) The notices shall be in a form agreed upon by the Parties and approved by the Ontario Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Ontario Court.
- (b) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Ontario Court or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Ontario Court.
- (c) 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. The costs of provision of notice shall be allocated proportionally among settlements.

- (d) British Airways consents to Epiq Class Action and Claims Solutions, Inc. (formerly known as Garden City Group, LLC) using British Airways' customer information provided to Epiq Class Action and Claims Solutions, Inc. 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 7.1(a).

SECTION 8 – 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 Ontario Court on motions brought by Class Counsel.

SECTION 9- CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

9.1 Class Counsel Fees

- (a) Class Counsel shall seek the approval of the Ontario Court and such other Court(s) as may be necessary of their Class Counsel Fees and Class Counsel Disbursements. Class Counsel may seek such approval contemporaneously with the Approval Hearing 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 and Class Counsel Disbursements solely out of the Settlement Fund after the Effective Date. No Class Counsel Fees or Class Counsel Disbursements shall be paid from the Settlement Fund prior to the Effective Date.
- (c) British Airways shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, costs of notices or the Plaintiffs' or Settlement Class Members' experts, advisors, agents, or representatives. For greater certainty, other than the payment of the

Settlement Amount and subject to Section 3.1(f), British Airways shall have no further liabilities or debts in respect of this Settlement Agreement or the administration thereof.

9.2 Administration Expenses

- (a) Class Counsel or Claims Administrator shall pay British Airways' proportionate share of the costs of the notices referred to in Section 7.1 of this Settlement Agreement out of the Settlement Fund. Any such costs can be paid as they are incurred.
- (b) 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.
- (c) Aside from payment of the Settlement Amount and subject to Section 3.1(f), British Airways is not liable to pay any further amount on account of any Administrative Expenses, Class Counsel Fees, or Class Counsel Disbursements, including the cost of notice, regardless of whether or not the Settlement Fund is sufficient to pay for British Airways' proportional share of the Administration Expenses, Class Counsel Fees, Class Counsel Disbursements, or other such shared costs.

SECTION 10 - IMPLICATIONS OF SETTLEMENT

10.1 No Admission of Liability

- (a) The Plaintiffs and British Airways 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 British Airways 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 British Airways 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.

10.2 Agreement Not Evidence

- (a) The Plaintiffs and British Airways 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.

10.3 No Further Litigation

- (a) Except as otherwise provided in this Settlement Agreement, no Class Counsel nor anyone currently or hereafter employed by, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any Claim made or action within the scope of the Released Claims commenced by any Person. Moreover,

unless otherwise ordered by a court, no Class Counsel nor anyone currently or hereafter employed by or a partner with Class Counsel, may divulge to anyone for any purpose any information, including, without limitation, Documents obtained in the course of the Actions or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available.

- (b) Section 10.3(a) does not apply to the involvement of any Person in the continued prosecution of the Actions against any Non-Settling Defendants or, in the event that Ontario Action is decertified, continuation of the Claims as alleged in the Actions against the Non-Settling Defendants in the form of individual claims, group proceedings, test cases, or otherwise.
- (c) Section 10.3(a) shall be inoperative to the extent that it is inconsistent with BC Counsel's obligations under Section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia*.

SECTION 11- TERMINATION OF SETTLEMENT AGREEMENT

11.1 Right of Termination

- (a) Only if one or more of the following events occur, the Plaintiffs and British Airways shall each, in their respective sole discretion, have the option to terminate this Settlement Agreement in its entirety:
 - (i) the Ontario Court declines to approve this Settlement Agreement or any material part hereof;
 - (ii) the Ontario Court declines to sign the Approval Order;

- (iii) the Approval Order is materially modified or set aside on appeal; or
 - (iv) any Court declines to dismiss the Actions as against British Airways.
- (b) In addition, the Plaintiffs shall have the option to terminate this Settlement Agreement in its entirety if the Settlement Amount is not paid in accordance with Section 2.2(a).
- (c) Any order, ruling or determination made by any Court with respect to Class Counsel Fees, Class Counsel Disbursements or the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.
- (d) If pursuant to Section 11.1(a) or (b) above, the Plaintiffs or British Airways wish to terminate the Settlement Agreement, notice of such decision to terminate the Settlement Agreement must be provided in writing to the Plaintiffs or British Airways, as applicable, within thirty (30) days of an event under Section 11.1(a) or (b) having occurred.

11.2 Effect of Termination Generally

- (a) Except as provided in Section 11.3(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 Approval Hearing shall proceed;

- (ii) the Parties will cooperate in seeking to have any issued Approval Order set aside and declared null and void and of no force or effect, and without prejudice to any position that any of the Parties may later take on any issue in the Actions or any other litigation. Any Person attempting to rely on such Approval Order shall be estopped from doing so;
- (iii) Class Counsel shall forthwith deliver consents in writing authorizing British Airways to bring a motion before the Ontario Court for an order:
 - (A) declaring this Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in Section 11.3(a));
 - (B) setting aside any Approval Order;
 - (C) setting aside any order approving Class Counsel Fees; and
 - (D) directing that the balance in the Settlement Fund less any deductions provided for in this Settlement Agreement be paid to British Airways, including interest.
- (iv) Class Counsel or the Claims Administrator shall thereupon pay to British Airways the balance in the Settlement Fund, including interest, less British Airways' proportionate costs of notice to the extent same has already been incurred or is payable. Despite Section 2.3, if the Settlement Agreement is terminated, to the extent the balance in the Settlement Fund is paid to British Airways, British Airways shall be responsible for the payment of taxes owed with respect to income on such amounts paid to British Airways.

- (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 British Airways, make reasonable efforts to return to British Airways all Documents and notes or records of information (and all copies of such Documents and notes or records of information), provided by British Airways under this Settlement Agreement or otherwise. In the event any Documents and notes or records of information are incapable of being physically returned to British Airways, the Plaintiffs shall make reasonable efforts to destroy all such Documents and notes or records of information (howsoever recorded) and provide British Airways 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 and any Court-appointed notice provider or the Claims Administrator or that the experts, the Court-appointed notice provider or the Claims Administrator themselves created. Nothing contained in this Section 11.2(c) shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by British Airways and/or Counsel for British Airways, or received from British Airways and/or Counsel for British Airways in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of British Airways. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

11.3 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), 3.1(g), 3.1(k), 7.1(b), 7.2, 10.1, 10.2, 11.2, and 12.1 and the definitions in Section 1 applicable thereto shall survive the termination and continue in full force and effect.

SECTION 12 - DETERMINATION OF DISPUTES

12.1 Disputes

- (a) British Airways 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, British Airways 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 British Airways or the Plaintiffs. Notwithstanding any other provision herein, the Plaintiffs and British Airways 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 13 - MISCELLANEOUS

13.1 Governing Law

- (a) Subject to Section 13.1(b), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (b) Notwithstanding Section 13.1(a), for matters relating specifically to the BC Action or the Quebec Action, the BC Court or Quebec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

13.2 Ongoing Jurisdiction and Motions for Directions

- (a) Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction and the Parties thereto. Notwithstanding the foregoing, the Ontario Court has jurisdiction to approve Class Counsel Fees and Class Counsel Disbursements for all Class Counsel.
- (b) The Plaintiffs and British Airways intend and agree that no Court shall make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (c) Notwithstanding the above, unless the Courts require otherwise, the Ontario Court shall exercise jurisdiction with respect to interpretation, implementation, administration, and enforcement of the terms of this Settlement Agreement, and the Parties submit to the jurisdiction of the Ontario Court for purposes of interpreting, implementing, administering, and enforcing the settlement provided for in this Settlement Agreement.

- (d) The Plaintiffs or British Airways 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 British Airways.

13.3 Interpretation

- (a) The division of this Settlement Agreement into Sections and the insertion of headings are for convenience of reference only and shall in no way define, extend, or describe the scope of this Settlement Agreement or the intent of any provision thereof.
- (b) The terms “Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular Section or other portion of this Settlement Agreement.
- (c) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (i) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (ii) only in the case where the time for doing an act expires on a holiday (as “holiday” is defined in the *Interpretation Act*, RSC 1985, c I-21), the act may be done on the next day that is not a holiday.

13.4 Language

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

13.5 Entire Agreement

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

13.6 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 British Airways 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 British Airways 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 British Airways and any such modification or amendment must be approved by the Ontario Court.

13.7 Notice

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

If to: THE PLAINTIFFS and/or CLASS COUNSEL,

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

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

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

If to: BRITISH AIRWAYS

David Neave
Rebecca von Rüti
DLA Piper (Canada) LLP
Suite 2800, Park Place
666 Burrard St
Vancouver BC V6C 2Z7
Tel: (604) 687-9444
Fax: (604) 687-1612
Email: david.neave@dlapiper.com
rebecca.vonruti@dlapiper.com

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

13.8 Survival

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

13.9 Acknowledgements

- (a) Each of the Plaintiffs and British Airways 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.

13.10 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.

13.11 Counterparts

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

13.12 Execution Date

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

IN WITNESS WHEREOF, the Plaintiffs and British Airways 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 Settlement Class, by their counsel

Name of Authorized Signatory: Linda Visser

Signature of Authorized Signatory: Linda Visser
Siskinds LLP
Ontario Counsel

CARTISE SPORTS INC., by its counsel

Name of Authorized Signatory: Linda Visser per

Signature of Authorized Signatory: Linda Visser
Liebman Legal Inc.
Quebec Counsel

KAREN MCKAY, by her counsel

Name of Authorized Signatory: Linda Visser per

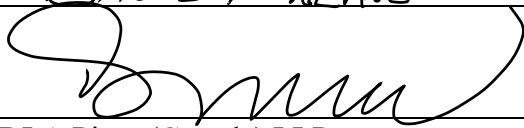
Signature of Authorized Signatory: Linda Visser
Camp Fiorante Matthews Mogerman
BC Counsel

BRITISH AIRWAYS PLC, by its counsel

Name of Authorized Signatory:

DAVID T. NEAVE

Signature of Authorized Signatory:



DLA Piper (Canada) LLP

SCHEDULE “A”

Court File No. 50389CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE GRACE

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● , THE ● DAY
OF ●, 2020

BETWEEN:

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

Plaintiffs

-and-

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Settlement Approval – British Airways)**

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

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

AND ON BEING ADVISED that the Plaintiffs and British Airways consent to this Order and the Non-Settling Defendants take no position on this Order;

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

All Persons 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 British Airways. Excluded from the Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons who validly and timely opted-out of the Ontario Action in accordance with the order of the Ontario Court dated March 6, 2008.

*Airfreight Shipping Services means airfreight cargo shipping services for shipments within, to, or from Canada, but specifically excluding airfreight cargo shipping services for shipments (i) with an origin point in Canada and a destination point in the United States or (ii) with an origin point in the United States and a destination point in Canada, but includes airfreight cargo shipping services in which the freight (i) travelled by truck from Canada to the United States, and then by air from the United States to a third country, or

(ii) travelled by air from a third country to the United States, and then by truck from the United States to Canada.

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

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

Did British Airways conspire to fix, raise, maintain or stabilize the prices of Airfreight Shipping Services during the Purchase Period in violation of Part VI of the *Competition Act* and the common law? 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 approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.

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

9. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Action.

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

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

16. **THIS COURT ORDERS** that, notwithstanding the continuation of the Actions against the Non-Settling Defendants or, in the event that the Ontario Action is decertified, continuation of the Claims as alleged in the Actions against the Non-Settling Defendants in the form of individual claims, group proceedings, test cases, or otherwise, all claims for contribution and indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, in respect of any Released Claims, by any Non-Settling Defendant or any other Person against a Released Party, or by a Released Party against any Non-Settling Defendant or any other Person, are barred, prohibited and enjoined. If contrary to this Order a foreign court permits a Releasing Party to bring a claim in respect of a Released Claim against a Non-Settling Defendant, another Defendant or a Released Party in a jurisdiction outside of Ontario (the “Foreign Claim”) then that Non-Settling Defendant, other Defendant or Released Party will not be prohibited by this Order from bringing a claim for contribution, indemnity or other claims over against a Released Party or other Person, including a Non-Settling Defendant or other Defendant, in respect of the Foreign Claim, to the extent such a claim exists under the applicable law.

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

- (a) the Releasing Party or Releasing Parties (including without limitation the Plaintiffs and the 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 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;
- (d) this Court shall have full authority to determine the Proportionate Liability at the trial or other disposition of this Action, whether or not the Released Parties remain in this Action or appear at the trial or other disposition, and the Proportionate

Liability shall be determined as if the Released Parties are parties to this Action for that purpose and any such finding by this Court in respect of the Proportionate Liability shall only apply in this Action and shall not be binding upon the Released Parties in any other proceedings.

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

19. **THIS COURT ORDERS** that, subject to paragraph 20 hereof, a Non-Settling Defendant may, upon motion to the Court brought on at least ten (10) days' notice to counsel for British Airways, seek orders for the following:
 - (i) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure* from British Airways;
 - (ii) oral discovery of a representative of British Airways, the transcript of which may be read in at trial;
 - (iii) leave to serve a request to admit on British Airways in respect of factual matters; and/or
 - (iv) the production of a representative of British Airways to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

For greater certainty, if British Airways brings a claim for contribution and indemnity or other claims over against a Non-Settling Defendant, nothing in this paragraph is intended to or does affect or limit in any way any documentary or oral discovery rights under the *Rules of Civil Procedure* or otherwise of that Non-Settling Defendant or British Airways in that claim, and such rights may be exercised by the parties in that claim notwithstanding any other provision in this paragraph.

20. **THIS COURT ORDERS** that British Airways retains all rights to oppose such motion(s) brought under paragraph 19. On any motion brought pursuant to paragraph 19, the Court may make such orders as to costs and other terms as it considers appropriate.
21. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 19 on British Airways by service on counsel of record for British Airways in this Action.
22. **THIS COURT ORDERS** that for purposes of enforcement of this Order, this Court will retain an ongoing supervisory role and British Airways will attorn to the jurisdiction of this Court for this purpose.
23. **THIS COURT ORDERS** that, except as provided in this Order and the Settlement Agreement, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators in this Action.

24. **THIS COURT ORDERS** that the Released Parties have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
25. **THIS COURT ORDERS** that the Settlement Amount be held in trust for the benefit of the Settlement Class, pending further order of this Court, which shall be sought by the Plaintiffs on a motion in the Action brought on notice to British Airways.
26. **THIS COURT ORDERS** that, after the Effective Date, the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Class in the continued prosecution of the Ontario Action against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Class to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.
27. **THIS COURT ORDERS** that, upon the Effective Date, this Action be and is hereby dismissed against British Airways without costs and with prejudice.
28. **THIS COURT ORDERS** that this Order shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms.
29. **THIS COURT ORDERS** that the approval of the Settlement Agreement and any reasons given by this Court in relation thereto, except any reasons given in connection with paragraphs 16 to 21 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or

elements of the causes of action asserted in the Ontario Action as against the Non-Settling Defendants.

The Honourable Justice Grace