

AMENDED THIS 20th DAY OF: AUGUST 2012
 PURSUANT TO THE ORDER OF: JUSTICE LEITCH
 DATED THE 19th DAY OF: AUGUST 2012
MILLIAN ZEGERS
 LOCAL REGISTAR SUPERIOR COURT OF JUSTICE
 MODIFIÉ LE _____
 CONFORMÉMENT À L'ORDONNANCE DE: ONTARIO
 FAIT LE _____ 19 **SUPERIOR COURT OF JUSTICE**

Court File No. 50389CP

The Honourable) Monday, the 23rd day
)
 Justice Leitch) of July, 2012

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*

AMENDED ORDER

THIS MOTION made by the Plaintiffs for an Order certifying the Ontario Action as a class proceeding for settlement purposes only as against Société Air France, Koninklijke Luchtvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines and Martinair Holland N.V. (the "AF-KLM-MP Defendants"), and approving the settlement agreement entered into with the AF-KLM Defendants was heard this day at the Court House, 80 Dundas Street, London, Ontario.

ON READING the materials filed, including the settlement agreement entered into by the Plaintiffs and AF-KLM Defendants dated as of September 19, 2011 and attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and counsel for the AF-KLM-MP Defendants;

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

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

(a) “Proportionate Liability” means the proportion of any judgment that, had the AF-KLM-MP Defendants not settled, a court or other arbiter would have apportioned to the AF-KLM-MP and/or Released Parties, whether pursuant to *pro rata*, proportionate fault, *pro tanto*, or another method;

(b) “Administrative Expenses” shall have the same meaning as “Administration Expenses” and

(c) “Ontario Action” means the proceeding commenced by the Plaintiffs in Ontario Superior Court of Justice Court File No. 50389CP (London).

2. **THIS COURT ORDERS** that the Ontario Action is certified as a class proceeding as against the AF-KLM-MP Defendants only and for settlement purposes only.

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

All Persons, other than members of the Québec Settlement Class or the BC Settlement Class, who purchased Airfreight Shipping Services during the Purchase Period, including those Persons who purchased Airfreight Shipping Services through freight forwarders or from any air cargo carrier, including without limitation, the Defendants, and specifically including the AF/KLM Defendants. Excluded from the Ontario Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons specifically named in the letter from Siskinds LLP to McMillan LLP dated September 2, 2011 as 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 to or from the United States.

4. **THIS COURT ORDERS** that Airia Brands Inc., StarTech.Com Ltd., and QCS-Quick Cargo Service GMBH are appointed as the representative plaintiffs for the Ontario Settlement Class.
5. **THIS COURT ORDERS** that, for settlement purposes, the following issue is common to the Ontario Settlement Class:

Did the AF-KLM Defendants 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 Ontario Settlement Class.
7. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
8. **THIS COURT ORDERS** that the Settlement Agreement is incorporated by reference into and forms part of this Order, and is binding upon the representative plaintiffs and all Ontario Settlement Class Members, and where any term of this Order and the Settlement Agreement conflict, the term contained in this Order shall govern.
9. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Ontario Settlement Class Member including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Action.
10. **THIS COURT ORDERS** that, upon the Effective Date, each Ontario Settlement Class Member shall consent and 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, upon the Effective Date, each Releasing Party has released and shall be conclusively deemed to have forever and absolutely released and forever discharged the Released Parties from any and all Released Claims.
13. **THIS COURT ORDERS** that, upon the Effective Date, each Releasing Party shall not now or hereafter commence, institute, continue, participate in, 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 against any Released Party or against any other Person who may claim contribution or indemnity, or other claims over relief, from any Released Party in respect of any Released Claim or any matter related thereto.
14. **THIS COURT ORDERS** that the use of the terms "Releasing Parties" and "Released Claims" in this Order does not constitute a release of Claims by those Ontario Settlement Class Members who are resident in any jurisdiction where the release of one tortfeasor is a release of all tortfeasors.
15. **THIS COURT ORDERS** that each Ontario Settlement Class Member who is resident in any jurisdiction where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to sue, make any Claim in any way or to threaten, commence, or continue any Claim in any jurisdiction against the Released Parties or against any Person who may claim contribution or indemnity from any one or more of the Released Parties, within the scope of, arising from or in any way related to the Released Claims.
16. **THIS COURT ORDERS** that 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 paragraph from bringing a claim for contribution, indemnity or other claims over against a Released Party or other Person, including a Non-Settling Defendant or other Defendant, in respect of the Foreign Claim, to the extent such a claim exists under the applicable law, provided that the Non-Settling Defendant, other Defendant or Released Party, as the case may be, raises before the foreign court in a timely and proper manner under the laws and procedure of that court, that this Order is an absolute bar to the Foreign Claim.

17. **THIS COURT ORDERS** that if, in the absence of paragraph 16 above, a Person or Persons would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Released Parties, in any Canadian or foreign jurisdiction:
- (a) the Releasing Party or Releasing Parties (including without limitation the Plaintiffs in the Ontario Action and the BC Action, and the Ontario Settlement Class Members and BC Settlement Class Members) are prohibited and barred from bringing or pursuing the claim that gives rise to the claim for contribution, indemnity, or other claim over against any one or more of the Released Parties
 - (b) for greater certainty, the Releasing Parties shall not be entitled to claim or recover from that Person or Persons that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) awarded in respect of any claim(s) on which judgment is entered that corresponds to the Proportionate Liability of the Released Parties proven at trial or otherwise;
 - (c) for greater certainty, the Plaintiffs 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 the Action, whether or not the Released Parties remain in the 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 the 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 the Ontario Action.
19. **THIS COURT ORDERS** that, subject to paragraph 20 hereof, a Non-Settling Defendant may, on motion to the Court brought on at least ten (10) days notice and determined as if the AF-KLM-MP Defendants are parties to the Ontario Action, not to be brought unless and until the Ontario Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
- (i) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure* from Air France, KLM and/or Martinair;
 - (ii) oral discovery of a representative of Air France, KLM and/or Martinair, the transcript of which may be read in at trial;
 - (iii) leave to serve a request to admit on Air France, KLM and/or Martinair in respect of factual matters; and/or
 - (iv) the production of a representative of Air France, KLM and/or Martinair to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

For greater certainty, if any of the AF-KLM-MP Defendants 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 the AF-KLM-MP Defendant 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 the AF-KLM-MP Defendants retain 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 affect service of the motion(s) referred to in paragraph 19 on the AF-KLM-MP Defendants by service on counsel of record for the AF-KLM-MP Defendants in the Ontario Action.
22. **THIS COURT ORDERS** that for purposes of enforcement of this Order, this Court will retain an ongoing supervisory role and the AF-KLM-MP Defendants 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 the Ontario 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 the Court, which shall be sought by the Plaintiffs on a motion in the Action brought on notice to the AF-KLM-MP Defendants.
26. **THIS COURT ORDERS** that the Ontario Action be dismissed against the AF-KLM-MP Defendants without costs and with prejudice.
27. **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.

28. **THIS COURT ORDERS** that this Order is contingent upon the approval of the Quebec Court and British Columbia Court of the same Settlement Agreement and this Order shall be of no force and effect if such approval is not secured in Quebec and British Columbia.

Date:

The Honourable Justice Leitch

Schedule "A"

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

Between:

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

and

**SOCIÉTÉ AIR FRANCE, KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V. dba KLM,
ROYAL DUTCH AIRLINES and MARTINAIR HOLLAND N.V.**

Executed September 19, 2011

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

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

RECITALS

- A. **WHEREAS** Actions have been commenced in the Ontario Court, Québec Court and BC Court alleging that the Defendants, including the AF/KLM Defendants, participated in an unlawful conspiracy pursuant to which the AF/KLM Defendants and their alleged co-conspirators, including the Defendants, allegedly agreed, among other things, to fix, raise, maintain or stabilize the prices of Airfreight Shipping Services in violation of Part VI of the *Competition Act* and the common law;
- B. **AND WHEREAS** the AF/KLM Defendants do not admit, through the execution of this Settlement Agreement, the allegations of unlawful conduct in the Actions;
- C. **AND WHEREAS** the AF/KLM Defendants deny liability for the Plaintiffs' claims and would assert a number of defences if the Actions proceeded further against them;
- D. **AND WHEREAS** the Plaintiffs, Class Counsel and the AF/KLM Defendants agree that neither the fact of this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the AF/KLM Defendants or evidence of the truth of any of the Plaintiffs' allegations against the AF/KLM Defendants;
- E. **AND WHEREAS**, despite their belief that they are not liable in respect of the claims as alleged in the Actions and have good defences thereto, the AF/KLM Defendants are entering into this Settlement Agreement, without admission of liability, 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 them by the Plaintiffs on their own behalf and on

behalf of the classes they seek to represent, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy with valued business customers;

F. **AND WHEREAS** the Plaintiffs have agreed to accept this settlement, in part, because of the value of the Settlement Amount to be paid by the AF/KLM Defendants under this Settlement Agreement and the value of the cooperation the AF/KLM Defendants agree 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 the AF/KLM Defendants, and (ii) the desirability of permitting the settlement to be consummated as provided by the terms of this Settlement Agreement;

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

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

I. **AND WHEREAS**, without admission of liability, the Plaintiffs and the AF/KLM Defendants therefore wish to, and hereby do, subject to the Courts' approval, for purposes of all jurisdictions and for purposes of all classes the Plaintiffs seek to represent, finally resolve all of the Actions and Released Claims as against the AF/KLM Defendants;

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

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

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

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein, the receipt and sufficiency of which is hereby acknowledged, **IT IS HEREBY AGREED** by and among the Plaintiffs and the AF/KLM Defendants that the Actions be settled and dismissed with prejudice as to the AF/KLM Defendants only, without costs as to the Plaintiffs, the Settlement Class or the AF/KLM Defendants, subject to the approval of the Courts and on the terms and conditions of this Settlement Agreement, as follows:

SECTION 1 - DEFINITIONS

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

(a) **Actions** means the Ontario Action, the Québec 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.
- (c) *AF/KLM Defendants* means Société Air France (“Air France”), Koninklijke Luchtvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines (“KLM”) and all of their present and former affiliates and related companies, including but not limited to Martinair Holland N.V. (“Martinair”) (also referred to herein collectively as the “*Settling Defendants*” and each individually a “*Settling Defendant*”).
- (d) *Airfreight Shipping Services* means airfreight cargo shipping services for shipments within, to, or from Canada, but specifically excluding airfreight cargo shipping services for shipments to or from the United States.
- (e) *Approval Hearings* means the hearings to approve motions brought by Class Counsel for the Courts’ approvals of the settlement provided for in this Settlement Agreement.
- (f) *Approval Orders* means any order of the Courts approving this Settlement Agreement.
- (g) *BC Action* means the proceeding commenced in the BC Court, under Vancouver Registry No. S067490.
- (h) *BC Counsel* means Camp Fiorante Matthews.
- (i) *BC Court* means the Supreme Court of British Columbia.

- (j) *BC Settlement Class* means all Persons resident in the province of British Columbia who purchased Airfreight Shipping Services during the Purchase Period, including those Persons who purchased Airfreight Shipping Services through freight forwarders or from any air cargo carrier, including without limitation, the Defendants, and specifically including the AF/KLM Defendants. Excluded from the BC Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons specifically named in the letter from Siskinds LLP to McMillan LLP dated September 2, 2011 as Persons who validly and timely opted-out of the BC Action in accordance with the order of the BC Court dated March 20, 2008.
- (k) *Claims (or individually, "Claim")* means any and all manner of claims, liabilities of any nature whatsoever, demands, actions, suits and causes of action, whether class, individual or otherwise in nature, whether personal, derivative or subrogated, damages whenever incurred, liabilities of any nature whatsoever, restitution, disgorgement, unjust enrichment, civil penalties, statutory penalties, injunctive and/or declaratory relief, including without limitation interest, costs, expenses, administration expenses (including without limitation Administration Expenses), penalties, and lawyers' fees (including without limitation Class Counsel Fees), whether known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, or brought pursuant to or under law, under statute or in equity, in this or any other Canadian or foreign jurisdiction.
- (l) *Claims Administrator* means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Fund in accordance with the provisions of this Settlement Agreement, and any employee of such Person.

- (m) *Class Counsel* means Ontario Counsel, Québec Counsel and BC Counsel.
- (n) *Class Counsel Fees* include the fees, disbursements, costs, interest, GST or HST (as the case may be) and other applicable taxes or charges of Class Counsel.
- (o) *Courts* means the Ontario Court, the Québec Court and the BC Court.
- (p) *Defendants* means all defendants named in the Actions, including the AF/KLM Defendants, and any named or unnamed co-conspirators who may be added as defendants in the Actions in the future.
- (q) *Distribution Protocol* means the plan for distributing the Settlement Fund to Settlement Class Members as approved by the Courts, which may, if directed by the Courts, require the Settlement Fund to be held in trust until the resolution of the Actions in whole or in part.
- (r) *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.
- (s) *Effective Date* means (i) the date upon which the ability to appeal, if an appeal lies therefrom, from each Approval Order has expired without any appeal being taken, namely, thirty (30) days after the issuance of the Approval Order; or (ii) if any appeals have been taken from any Approval Order, the date upon which all such appeals are concluded by way of a Final (as defined in Section 1(v)) order or judgment. For the purposes of this paragraph, an “appeal” shall not include any appeal that concerns only the issue of Class Counsel Fees or the Distribution Protocol.

- (t) *Escrow Agent* means RBC Dominion Securities Inc. or such other Person as agreed to by the Parties or appointed by the Courts to receive and invest the Settlement Fund in accordance with the provisions of this Settlement Agreement.
- (u) *Execution Date* means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and the AF/KLM Defendants.
- (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) *Non-Settling Defendants* means any Defendant that is not a Settling Defendant or a Settled Defendant, or any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the date of execution of this Settlement Agreement.
- (x) *Notice of Certification and Approval Hearings* means the form of notice or notices, agreed to by the Plaintiffs and the AF/KLM Defendants, or such other form as may be approved by the Courts, which informs the Settlement Class of: (i) the proposed settlement classes; (ii) the dates and locations of the Approval Hearings; and (iii) the core elements of the Settlement Agreement.
- (y) *Notice of Certification and Settlement Approval* means the form of notice or notices, agreed to by the Plaintiffs and the AF/KLM Defendants, or such other form as may be approved by the Courts, which informs the Settlement Class of: (i) the certification or

authorization of the Actions; (ii) the approval of the Settlement Agreement; and (iii) the core elements of the Settlement Agreement, including the terms of the Distribution Protocol if applicable.

- (z) *Notices* means the Notice of Certification and Approval Hearings, the Notice of Certification and Settlement Approval, and notice of termination.
- (aa) *Ontario Action* means the proceeding commenced in the Ontario Court bearing Court File No. 50389CP (London).
- (bb) *Ontario Counsel* means Siskinds LLP, Sutts, Strosberg LLP and Harrison Pensa LLP.
- (cc) *Ontario Court* means the Ontario Superior Court of Justice.
- (dd) *Ontario Settlement Class* means all Persons, other than members of the Québec Settlement Class or the BC Settlement Class, who purchased Airfreight Shipping Services during the Purchase Period, including those Persons who purchased Airfreight Shipping Services through freight forwarders or from any air cargo carrier, including without limitation, the Defendants, and specifically including the AF/KLM Defendants. Excluded from the Ontario Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons specifically named in the letter from Siskinds LLP to McMillan LLP dated September 2, 2011 as Persons who validly and timely opted-out of the Ontario Action in accordance with the order of the Ontario Court dated March 6, 2008.
- (ee) *Other Actions* means any proceeding or claim within the scope of the Released Claims, other than the Actions, that has been, or is later, commenced by or on behalf of a

Settlement Class Member or one or more of the Releasing Parties in any Canadian or foreign jurisdiction.

- (ff) *Party and Parties* means the Plaintiffs, Settlement Class Members, and the AF/KLM Defendants.
- (gg) *Person* means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees, wherever located or resident (whether in this or any Canadian or foreign jurisdiction).
- (hh) *Plaintiffs* means Airia Brands Inc., StarTech.com Ltd., QCS-Quick Cargo Service GmbH, Cartise Sports Inc. and Karen McKay, individually and collectively.
- (ii) *Proportionate Liability* means the proportion of any judgment that, had the AF/KLM Defendants not settled, a court or other arbiter would have apportioned to the AF/KLM Defendants and/or the Released Parties, whether pursuant to *pro rata*, proportionate fault, *pro tanto*, or another method.
- (jj) *Proportionate Liability of the Non-Settling Defendants* means the proportion of any judgment that, but for this Settlement Agreement, a court or other arbiter would have apportioned to the Non-Settling Defendants, whether pursuant to *pro rata*, proportionate fault, *pro tanto*, or another method.
- (kk) *Purchase Period* means January 1, 2000 up to and including September 11, 2006.

- (ll) *Québec Action* means the proceeding commenced in the Québec Court, under Court File No. 500-06-000344-065.
- (mm) *Québec Counsel* means Liebman & Associés.
- (nn) *Québec Court* means the Québec Superior Court.
- (oo) *Québec Settlement Class* means all individuals resident in the province of Québec and all legal persons resident in Québec established for a private interest, partnership or association in the province of Québec which, at all times between May 5, 2005 and May 5, 2006, had under its direction or control no more than 50 persons bound to it by a contract of employment, who purchased Airfreight Shipping Services during the Purchase Period, including those individuals and legal persons who purchased Airfreight Shipping Services through freight forwarders or from any air cargo carrier, including without limitation, the Defendants, and specifically including the AF/KLM Defendants, during the Purchase Period. Excluded from the Québec Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons specifically named in the letter from Siskinds LLP to McMillan LLP dated September 2, 2011 as Persons who validly and timely opted-out of the Québec Action in accordance with the order of the Québec Court dated April 14, 2008.
- (pp) *Released Claims* means any and all Claims that Releasing Parties, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct anywhere, from the beginning of time to the Execution Date, 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 or any other charges, 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, whether based on federal or provincial law, statutory or common law, or any other law, code, rule, or regulation of any country or other jurisdiction worldwide, that have been, could have been, or in the future may be asserted by any of the Releasing Parties in any action or proceeding in any court or forum, in any country or other jurisdiction worldwide regardless of legal theory, and regardless of the type or amount of relief or damages claimed (including, without limitation, those Claims in any way related to conduct alleged (or which could have been alleged) in the Actions), and 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, or comparable claim for failure to deliver, lost goods, or delayed or damaged goods between any of the Releasing Parties and Released Parties relating to Airfreight Shipping Services that were not asserted in the Actions.

- (qq) *Released Parties* means, jointly and severally, individually and collectively, the AF/KLM Defendants, and all of their present and former, direct and indirect, parents, subsidiaries, affiliates, divisions, partners, insurers, and all other Persons, individuals, partnerships or corporations with whom any of the foregoing have been, or are now, affiliated, and specifically including, without limitation, Air France-KLM S.A., and each of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, insurers, servants and representatives, and the predecessors,

successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.

- (rr) *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 any of 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, division, department, or representative of any kind, 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, customer, attorney, insurer, heir, executor, administrator, devisee, assignee, division, department, or representative of any kind. As used in this definition, "affiliates" means entities controlling, controlled by, or under common control with any one or more of the Releasing Parties.
- (ss) *Settled Defendants* means Deutsche Lufthansa AG, Lufthansa Cargo AG, Swiss International Air Lines Ltd., Japan Airlines International Co., Ltd. and any other Defendant who has entered into a settlement agreement with the Plaintiffs relating to the allegations asserted in the Actions, whether or not such settlement agreement was in existence at the Execution Date of this Settlement Agreement.
- (tt) *Settlement Agreement* means this agreement, including the recitals herein and schedules hereto.

- (uu) *Settlement Amount* means the sum of six million, five hundred thousand Canadian dollars (CAD\$6,500,000).
- (vv) *Settlement Class and Settlement Class Members* means all Persons included in the Ontario Settlement Class, the Québec Settlement Class and the BC Settlement Class.
- (ww) *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.
- (xx) *U.S. Litigation* means the class action proceeding pending in the United States District Court for the Eastern District of New York under the caption In re Air Cargo Shipping Services Antitrust Litigation, 06-MD-1775 (JG)(VVP)(E.D.N.Y.), and including all class actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all class actions pending such transfer, and all class actions that may be transferred in the future.
- (yy) *U.S. Settlement* means the settlement entered into by the AF/KLM Defendants with the plaintiffs in the U.S. Litigation, dated July 8, 2010.

SECTION 2 - SETTLEMENT BENEFITS

2.1 The Settlement Fund

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

administer the Settlement Fund. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Courts' continuing supervision and control. No monies shall be paid from the Settlement Fund without (i) the specific authorization of both Class Counsel and counsel for the AF/KLM Defendants, and such authorization may not be withheld if to do so would be inconsistent with this Settlement Agreement; or (ii) orders from one or more of the Courts, as required by this Settlement Agreement and in a manner consistent with this Settlement Agreement, obtained on notice to or with the consent of the Plaintiffs and the AF/KLM Defendants. Class Counsel and the AF/KLM Defendants agree to cooperate, in good faith, to form an appropriate escrow agreement in conformance with this Settlement Agreement.

- (b) The escrow account shall be established and maintained in a manner that minimizes transactional costs and risks and maximizes the amount available for distribution. All costs associated with maintaining the Settlement Fund shall be paid from the Settlement Fund.
- (c) The Escrow Agent and Claims Administrator shall cause the Settlement Fund to be invested in guaranteed investment vehicles or liquid money market accounts or equivalent securities with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46). All interest earned on the Settlement Fund shall become and remain part of the Settlement Fund, subject to Section 9.2 of this Settlement Agreement.
- (d) The Plaintiffs and the AF/KLM Defendants acknowledge that the Settlement Class includes both shippers and freight forwarders, and both customers and non-customers of the AF/KLM Defendants, and that the Settlement Agreement makes no determination as

to which Settlement Class Members are entitled to distribution of the Settlement Fund, or as to the formula for determining the amounts to be distributed. As soon as practicable, the Plaintiffs shall prepare and submit a Distribution Protocol to the Courts for approval.

- (e) The AF/KLM Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of the Settlement Amount, the Settlement Fund or the monies therein.
- (f) After the Effective Date, the Settlement Fund shall be distributed in accordance with the Distribution Protocol.

2.2 Payment of the Settlement Benefits

- (a) The AF/KLM Defendants agree to pay the Settlement Amount in full satisfaction of the Released Claims against the Released Parties.
- (b) The AF/KLM Defendants, directly or through their counsel or designee, shall wire transfer 100% of the Settlement Amount into the Settlement Fund within fifteen (15) business days after the later of the Execution Date and the date on which Class Counsel provide to the AF/KLM Defendants with the bank transit number and all other information necessary to complete the wire transfer.
- (c) The AF/KLM Defendants shall have no obligation or liability to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement. For greater certainty, but without limiting the generality of the foregoing, the AF/KLM Defendants shall have no responsibility or liability as a result of any decrease or depreciation of the value of the Settlement Fund, howsoever caused, including, but not limited to, a decrease or depreciation in the value of any investments

purchased by the Escrow Agent or the Claims Administrator, or the payment of any Class Counsel Fees or any Administration Expenses.

- (d) If the Settlement Fund must be returned to the AF/KLM Defendants pursuant to Section 9.2(b)(iv) of this Settlement Agreement, then the Escrow Agent and/or the Claims Administrator, as the case may be, shall be obliged to return the Settlement Fund to the AF/KLM Defendants, and Class Counsel shall forthwith take all necessary steps, including but not limited to providing any requisite directions or consents, to ensure the expeditious payment of the balance in the Settlement Fund, including interest, to the AF/KLM Defendants.

2.3 Taxes

- (a) All taxes (including any interest and penalties) due with respect to the Settlement Amount, including without limitation all taxes payable on any interest and income earned by the Settlement Fund, shall be paid from the Settlement Fund. Any remaining liabilities shall be the responsibility of the Settlement Class. Except as provided for in Section 9.2(b)(iv) none of the Settlement Amount, including any interest earned thereon, will be reported as taxable to the AF/KLM Defendants.
- (b) Except as provided for in Section 9.2(b)(iv), Class Counsel shall be solely responsible for ensuring that the Escrow Agent and/or the Claims Administrator file all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund, file all informational and other tax returns necessary to report any income earned on the Settlement Fund and shall be solely responsible for ensuring timely and appropriate payment out of the Settlement Fund, as and when legally required, in respect

of any tax payments, including interest and penalties due on income earned by the Settlement Fund.

- (c) Except as provided for in Section 9.2(b)(iv), the AF/KLM Defendants shall have no responsibility to make any filings relating to the Settlement Fund, will not be considered a payee of any income earned on the Settlement Fund, and will have no responsibility to pay tax on any interest or income earned by the Settlement Fund or pay taxes, if any, on the Settlement Fund.

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

- (a) The Parties understand and agree as follows:
 - (i) All Documents and information provided by the AF/KLM Defendants to Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the Actions and only in accordance with all applicable confidentiality obligations, including without limitation those provided for in this Settlement Agreement and in any confidentiality orders obtained for the benefit of the AF/KLM Defendants pursuant to Section 2.4(a)(iii), and shall not be used directly or indirectly for any other purpose. Plaintiffs and Class Counsel agree they will not directly or indirectly use, disclose or publicize any of the Documents or information provided by the AF/KLM Defendants beyond what is expressly authorized by this Settlement Agreement and is also reasonably necessary for the prosecution of the Actions or as otherwise required by any one of the Courts.

- (ii) Prior to the Effective Date, no Documents or other information provided by the AF/KLM Defendants may be disclosed by Plaintiffs or Class Counsel to any Person (other than experts retained by the Plaintiffs in the course of the Actions, provided that such experts are not Settlement Class Members and provided they agree to be bound by these same confidentiality obligations and such disclosure is in compliance with this Settlement Agreement and any confidentiality orders including without limitation those obtained pursuant to Section 2.4(a)(iii) below), except with the prior written consent of the AF/KLM Defendants or as required by any one of the Courts. After the Effective Date, the Plaintiffs or Class Counsel shall give the AF/KLM Defendants thirty (30) days' notice prior to the disclosure of any Documents or other information provided by the AF/KLM Defendants in any of the Actions or otherwise and, in any event, any such disclosure may only be permitted if such disclosure is otherwise permissible under this Settlement Agreement, reasonably necessary for the prosecution of the Actions and is in compliance with any confidentiality orders, including, without limitation, those that have been obtained pursuant to Section 2.4(a)(iii) below, or as required by any one of the Courts. The AF/KLM Defendants may, but are not obliged, to participate in any hearing or other proceeding that may ensue to ensure satisfactory confidentiality protections are in place, however, this shall not relieve Plaintiffs or Class Counsel of their obligations to protect confidentiality as contemplated hereby.

- (iii) The AF/KLM Defendants, Plaintiffs, and Class Counsel shall make all reasonable efforts permitted by law to protect the confidentiality of the AF/KLM Defendants' confidential or proprietary information, including opposing any challenges by

other parties to the confidential treatment of these Documents as contemplated hereby. Class Counsel and the Plaintiffs shall make best efforts to obtain, at the same time as the motions to approve the Settlement Agreement (and in any event, before any Document or information is disclosed in the Actions or otherwise) on notice to the AF/KLM Defendants, a confidentiality and protective order from the Ontario Court in a form satisfactory to the AF/KLM Defendants, acting reasonably. Class Counsel and the Plaintiffs shall also make best efforts to obtain, on notice to the AF/KLM Defendants, confidentiality and protective orders in a form acceptable to the AF/KLM Defendants, acting reasonably, from the B.C. Court and the Québec Court before any disclosure of any Document or information is made in the B.C. Action or the Québec Action, respectively. Any Documents and other information provided by the AF/KLM Defendants will be treated as highly confidential under any applicable confidentiality orders entered in the Actions.

- (iv) The confidentiality requirements in this Section 2.4(a) will continue to bind Plaintiffs, Settlement Class Members and Class Counsel after the Effective Date and even in the event that the Settlement Agreement is terminated or otherwise fails to take effect for any reason. The requirements of this Section 2.4(a) shall also apply to all Documents and information shared by Class Counsel with experts.
- (v) Without derogating from the materiality of any other term or condition of this agreement, for greater certainty, this Section 2.4(a) shall be considered a material term of the Settlement Agreement for the benefit of the Released Parties such that

the failure of any of the Courts to approve the confidentiality sections herein shall give rise to a right of termination for the AF/KLM Defendants, in their sole discretion, with the resulting effects as set out in Sections 9.2 and 9.3 of this Settlement Agreement.

(b) Subject to Section 2.4(a), within thirty (30) days after the Effective Date or at any time mutually agreed upon by the Parties, the AF/KLM Defendants shall make reasonable efforts to provide to Class Counsel the following information to the extent it is currently in existence, is in the power, possession or control of the AF/KLM Defendants, and is reasonably available to the AF/KLM Defendants:

- (i) existing transaction data, which data includes pricing and surcharge information, in electronic format for the AF/KLM Defendants' Airfreight Shipping Services during the Purchase Period. The AF/KLM Defendants cannot, and do not, make any representation that they have, can or will produce a complete set of such transaction data, and it is understood and agreed that the failure to produce a complete set of transaction data shall not constitute a breach or violation of this Settlement Agreement. Counsel for the AF/KLM Defendants agree to be reasonably available as necessary to respond to Class Counsel's questions regarding the set of electronic data produced by the AF/KLM Defendants; and
- (ii) Documents that were produced by the AF/KLM Defendants to the plaintiffs in the U.S. Litigation in the form so produced, provided that the AF/KLM Defendants may withhold from production any transaction or sales data provided in the U.S. Litigation and any Documents that are irrelevant to the Actions. The obligation to

produce Documents pursuant to this Section shall be a continuing obligation to the extent that additional Documents are produced in the U.S. Litigation.

- (c) Commencing no sooner than thirty (30) days after the Effective Date or at a time mutually agreed to by the Parties, counsel for the AF/KLM Defendants will meet in Canada, or at some other location mutually agreed to by the Parties, with Class Counsel for a total of up to two (2) meetings and no more than sixteen (16) hours in the aggregate, to provide information, relating to Air France, KLM and Martinair, that is not covered by privilege and is relevant to the continued prosecution of 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 the AF/KLM Defendants are privileged, will be kept strictly confidential, may not be directly or indirectly disclosed to any other person, and will not be used by Class Counsel for any purpose other than for their own internal use in connection with the prosecution of the Actions.
- (d) At any time following the certification of the Actions and the close of documentary discovery in the Actions, or at any time mutually agreed upon by the Parties, Class Counsel may, after conferring with Counsel for the AF/KLM Defendants, name up to a total of eight (8) current or former officers, directors or employees of Air France, KLM or Martinair that Class Counsel seeks to interview, no more than three (3) of which can be from any one of Air France, KLM or Martinair. The AF/KLM Defendants will, subject to any legal restrictions under any applicable domestic or foreign laws, make reasonable efforts to make the named individuals available for an interview with Class Counsel and/or experts retained by Class Counsel (provided that such experts are not

Settlement Class Members and provided they agree to be bound by these same confidentiality obligations and such disclosure is in compliance with this Settlement Agreement and any confidentiality orders including without limitation those obtained pursuant to Section 2.4(a)(iii), regarding information that is relevant to the allegations in the Actions. Any such interviews shall take place at a location chosen by the AF/KLM Defendants within their sole discretion. Each such interview shall last no more than eight (8) hours, including reasonable breaks, and may occur on more than a single day, but not more than two (2) days. The Plaintiffs shall be responsible for the costs of these interviews (excluding any travel costs and legal costs of the interviewees), including but not limited to the costs of the meeting rooms for the interviews (which must include at least one "caucus" or "break-out" room for the use of the interviewee, the AF/KLM Defendants and their counsel). The failure of any named officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement by any of the AF/KLM Defendants.

- (e) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, and following the certifications of the Actions and completion of discoveries in the Actions, Class Counsel may request up to eight (8) of the individuals named pursuant to Section 2.4(d) to attend at trial, or to give an affidavit or declaration for use at trial, in order to provide evidence to assist in authenticating any of the AF/KLM Defendants' Documents provided in accordance with Section 2.4(b) or any Documents produced in the Actions by any other Defendant that were received by or originating from any of the AF/KLM Defendants, provided the evidence is necessary for the prosecution of the Actions and not reasonably available by

any other means. If such officers, directors or employees refuse to provide information, or otherwise cooperate, the AF/KLM Defendants shall use reasonable efforts to make him/her available but the failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement. To the extent that none of the individuals named pursuant to Section 2.4(d) will make him or herself available in accordance with this section, the AF/KLM Defendants shall make reasonable efforts to make up to one (1) individual from each of Air France, KLM and Martinair available, in order to provide evidence to assist in authenticating any of the AF/KLM Defendants' Documents provided in accordance with Section 2.4(b) or any Documents produced in the Actions by any other Defendant that were received by or originating from any of the AF/KLM Defendants, provided the evidence is necessary for the prosecution of the Actions and not reasonably available by any other means. Notwithstanding anything herein, the failure of that person to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement by any of the AF/KLM Defendants.

- (f) Nothing in this Settlement Agreement shall require, or shall be construed or interpreted to require, any of the AF/KLM Defendants, or any of their former or current officers, directors, employees or counsel, to perform any act which would violate any court order or any provincial, federal or foreign law, to disclose or produce any Documents or information prepared by or for legal counsel for any of the AF/KLM Defendants, wherever located, to disclose or produce any Documents or information in breach of any order, regulatory directive, regulatory policy, regulatory agreement, rule, provincial, federal or foreign law, or produce or disclose any Document or information subject to

solicitor-client privilege, litigation privilege, common interest privilege, or any other type of privilege, to disclose any Documents or information they obtained on a privileged basis from any Person, to disclose any Documents or information they obtained on a cooperative basis from any party to a legal action or proceeding. Further, nothing in this Settlement Agreement shall require, or shall be construed to require, any of the AF/KLM Defendants to disclose or produce: (i) any communications, discussions or agreements between any of the Released Parties and government authorities in Canada or elsewhere in connection with any regulatory, criminal or other investigations or proceedings; (ii) any information or Documents created for or by authorities in Canada or elsewhere in connection with any regulatory, criminal or other investigations; and (iii) any notes, transcripts, testimony or other information or Documents relating to meetings, communications or interviews with government authorities in Canada or elsewhere in connection with any regulatory, criminal or other investigations.

- (g) If any information or Documents protected by any order, privilege, privacy law or rule, regulatory directive, regulatory policy, regulatory agreement or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently produced, such Documents shall be promptly returned to the AF/KLM Defendants and the Documents and the information contained therein shall not be disclosed or used, directly or indirectly, except with the express written consent and permission of the AF/KLM Defendants (containing an express waiver of such protection) provided following notice to the AF/KLM Defendants, and the production of such information or Documents shall in no way be construed to constitute a waiver of any privilege or protection attached to such or other Documents or information.

- (h) The AF/KLM Defendants' obligation to cooperate as particularized in this Section 2.4 shall not be affected by the release provisions contained in this Settlement Agreement. Unless this Settlement Agreement is not approved or is terminated (at which time the AF/KLM Defendants' obligation to cooperate ceases), the AF/KLM Defendants' obligations to cooperate shall cease at the date of a settlement or final judgment in the Actions with or against all Defendants.

- (i) The provisions set forth in this Section 2.4 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or Documents from the AF/KLM Defendants or their current or former officers, directors or employees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the AF/KLM Defendants or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction. Notwithstanding the above in this Section 2.4(i), subject to the other provisions of this Settlement Agreement the Plaintiffs are at liberty to exercise any rights they may have to seek to obtain discovery in the Actions of any current or former officer, director or employee of the AF/KLM Defendants who is named by Class Counsel under Section 2.4(d) but who fails to cooperate in accordance with that Section and the provisions of this Settlement Agreement.

- (j) A material factor influencing the AF/KLM Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of the Actions on themselves and their former and current officers, directors and employees. Accordingly,

Class Counsel agree to exercise good faith in seeking cooperation from the AF/KLM Defendants and from their former and current officers directors and employees, and further agree that they will not seek Documents or information that is unnecessary, cumulative or duplicative, or information, Documents or evidence that is reasonably available to Class Counsel or the Plaintiffs from any other source, and otherwise agree they will not impose an undue or unreasonable burden or expense on the AF/KLM Defendants or their former and current officers, directors and employees.

- (k) Notwithstanding any other provision of this Settlement Agreement, the AF/KLM Defendants (and any of their former or current officers, directors, employees or counsel) are not required to provide cooperation or produce any Documents or information where such cooperation or production would be contrary to the rules, or laws or policies of a competition or government authority or to a court order, or which could endanger any application or agreement with any competition or government authority, wherever located. In addition, notwithstanding any other provision of this Settlement Agreement, in the event that a competition or government authority advises the AF/KLM Defendants that any production or disclosure contemplated by this Settlement Agreement might interfere with an ongoing investigation including but not limited to any ongoing investigation of the Airfreight Shipping Services industry, such production or disclosure may only be made after the AF/KLM Defendants are advised by the competition authority that such production will no longer interfere with its ongoing investigation.

SECTION 3 - RELEASES AND DISMISSALS

3.1 Release of Released Parties

- (a) Upon the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, including the AF/KLM Defendants' commitment to provide continuing compliance with the cooperation provisions of this Settlement Agreement set forth in Section 2.4, the Releasing Parties shall be deemed to, and do hereby, release and forever discharge the Released Parties of and from any and all Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein incorporated into the orders obtained from the Courts approving this Settlement Agreement.
- (b) The Plaintiffs and Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Settlement Agreement, and that it is their intention to release fully, finally and forever all Released Claims as set out in this Section 3.1, and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.
- (c) Each Settlement Class Member who files a claim form must execute a written release in favour of the Released Parties in respect of all Released Claims. Such written release will be contained within the body of the claim form to be filed by Settlement Class Members for compensation pursuant to the Distribution Protocol. Any receipt of any funds by any Settlement Class Member under this Settlement Agreement shall be conditional upon

receipt of an effective written release in favour of the Released Parties in respect of all Released Claims.

- (d) Without derogating from the materiality of any other term or condition of this Settlement Agreement, for greater certainty, the terms and scope of releases of the Released Parties provided for in this Settlement Agreement and the definitions of BC Settlement Class, Ontario Settlement Class, Québec Settlement Class, Releasing Parties, Released Parties and Released Claims, shall all be considered material terms of the Settlement Agreement for the benefit of the Released Parties such that the failure of any of the Courts to approve the releases provided herein shall give rise to a right of termination for the AF/KLM Defendants, in their sole discretion, with the resulting effects as set out in Sections 9.2 and 9.3 of this Settlement Agreement.

3.2 Covenant Not To Sue

- (a) Notwithstanding Section 3.1, for any Settlement Class Members resident in any Canadian province or territory 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 any Claim in any way or to threaten, commence, or continue any Claim in any jurisdiction against the Released Parties or against any Person who may claim contribution or indemnity from any one or more of the Released Parties, within the scope of, arising from or in any way related to the Released Claims. The Parties shall use their best efforts to have the terms of the covenant not to sue contemplated herein incorporated into the orders obtained from the Courts approving this Settlement Agreement.

- (b) With respect to the Settlement Class Members resident in any Canadian province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Plaintiffs and the Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Settlement Agreement, and that it is their intention to fully, finally and forever covenant and undertake not to sue or make any Claim against the Released Parties, or against any Person who may claim contribution or indemnity from any one or more of the Released Parties, as set out in this Section 3.2, and in furtherance of such intention, this covenant not to sue shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.
- (c) Without derogating from the materiality of any other term or condition of this Settlement Agreement, for greater certainty, this Section 3.2 shall be considered a material term of the Settlement Agreement for the benefit of the Released Parties such that the failure of any of the Courts to approve the covenants not to sue provided herein shall give rise to a right of termination for the AF/KLM Defendants, in their sole discretion, with the resulting effects as set out in Sections 9.2 and 9.3 of this Settlement Agreement.

3.3 No Further Claims

The Releasing Parties shall not now or hereafter commence, institute, continue, participate in, 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 against any Person who may claim contribution or indemnity, or other claims over relief, from any Released

Party in respect of any Released Claim or any matter related thereto. Class Counsel agrees that Class Counsel will have no role whatsoever in litigating or advancing damage claims for Airfreight Shipping Services, whether on behalf of opt outs or otherwise, in Canada or in any other jurisdiction. It shall be a condition of receipt of payment under this Settlement Agreement that each Settlement Class Member must execute a written release in favour of the Released Parties in respect of all Released Claims, in a form to be approved by the AF/KLM Defendants. Such release will be contained within the body of the claim form to be filed by Settlement Class Members for compensation pursuant to the Distribution Protocol.

3.4 Dismissal of Actions as Against the AF/KLM Defendants

Except as provided herein, the Actions shall be dismissed, without costs and with prejudice, as against the AF/KLM Defendants.

3.5 Dismissal of Other Actions as Against the AF/KLM Defendants

- (a) Upon the Effective Date each Settlement Class Member shall be deemed to irrevocably consent to the dismissal as against the Released Parties, without costs and with prejudice, of any and all of the Settlement Class Member's Released Claims in any jurisdiction. Each Settlement Class Member shall take all necessary steps to ensure the dismissal of any and all of his, her or its Released Claims, if any, against the Released Parties.
- (b) Upon the Effective Date, any and all of the Settlement Class Members' Released Claims commenced in each of the Court's respective jurisdictions shall be dismissed against the Released Parties, without costs and with prejudice.
- (c) It shall be a condition of receipt of payment under this Settlement Agreement that each Settlement Class Member must execute a consent to dismissal of any and all Released

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

3.6 Claims Against Other Entities Reserved

Except as provided in this Settlement Agreement (specifically including without limitation the provisions of Sections 3.1, 3.2, 3.3, 3.4, 3.5 and Section 4), this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any Defendant, including Non-Settling Defendants, other than the Released Parties.

3.7 Form and Scope of Releases and Covenants Not to Sue

Without derogating from the materiality of any other term or condition of this Settlement Agreement, for greater certainty, the form and content of Sections 3.3, 3.4 and 3.5 shall be considered a material term of the Settlement Agreement for the benefit of the Released Parties such that the failure of any of the Courts to approve these provisions shall give rise to a right of termination for the AF/KLM Defendants, in their sole discretion, with the resulting effects as set out in Sections 9.2 and 9.3 of this Settlement Agreement.

SECTION 4 - BAR ORDER

4.1 Ontario and British Columbia Bar Order

(a) The Plaintiffs in the Ontario Action and the BC Action shall seek a bar order from the Ontario and BC Courts providing for the following:

- (i) all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in

the Actions or otherwise, by any Non-Settling Defendant or any other Person or party, against one or more of the Released Parties are barred, prohibited and enjoined in accordance with the terms of this Section;

(ii) a Non-Settling Defendant may, upon motion on at least ten (10) days notice to counsel for the AF/KLM Defendants, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek an order from one or more of the Ontario and BC Courts for the following:

- (A) documentary discovery and an affidavit of documents in accordance with the relevant rules of civil procedure from Air France, KLM and/or Martinair;
- (B) oral discovery of a representative of Air France, KLM and/or Martinair the transcript of which may be read in at trial;
- (C) leave to serve a request to admit on Air France, KLM and/or Martinair in respect of factual matters; and/or
- (D) the production of a representative of Air France, KLM and/or Martinair to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

The AF/KLM Defendants retain all rights to oppose such motion(s).

(iii) To the extent that an order is granted pursuant to Section 4.1(a)(ii) and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall promptly be provided to the Plaintiffs and Class Counsel provided, however, that the Plaintiffs pay any costs associated with producing a copy of any discovery materials provided to the Non-Settling Defendant; and

- (iv) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 4.1(a)(ii) on Air France, KLM or Martinair by service on counsel of record for any of the AF/KLM Defendants in the Actions.

- (b) If a court determines that a claim by one or more Releasing Parties can give rise to a claim of contribution and indemnity or other claim over by any Person against any one or more of the Released Parties, that Releasing Party or Releasing Parties (including without limitation the Plaintiffs in the Ontario Action and the BC Action, and the Ontario Settlement Class Members and BC Settlement Class Members) are prohibited and barred from bringing or pursuing the claim that gives rise to the claim for contribution, indemnity, or other claim over against any one or more of the Released Parties. For greater certainty, if any Court ultimately determines that there is a right of contribution and indemnity between co-conspirators, or against any one or more of the Released Parties, the Plaintiffs and the Settlement Class Members in the Ontario Action and the BC Action shall not be entitled to claim or recover from the Non-Settling Defendants that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs or other amounts claimed pursuant to s. 36 of the Competition Act) that corresponds to the Proportionate Liability of the Released Parties, or is in excess of the Proportionate Liability of the Non-Settling Defendants, proven at trial or otherwise, provided, however, that any determination by any Court in respect of the Proportionate Liability of any Released Party shall apply only in the relevant action before that Court and shall not be binding on any Released Party in any other proceedings. Similarly, a Plaintiff or Settlement Class Member pursuing a claim outside of the Ontario Action or BC Action would have to limit

their claim such that it would not give rise to a claim for contribution, indemnity, or other claim over against any one or more of the Released Parties.

4.2 Québec Bar Order

(a) The Plaintiff in the Québec Action shall seek a bar order from the Québec Court providing for the following:

- (i) the Plaintiff in the Québec Action and the Québec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds or other conduct of the Released Parties;
- (ii) the Plaintiff in the Québec Action and the Québec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and/or sales and/or other applicable measure of Proportionate Liability of the Non-Settling Defendants;
- (iii) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Released Parties or relating to the Released Claims shall be inadmissible and void in the context of the Québec Action; and
- (iv) that any future right by the Non-Settling Defendants to examine on discovery a representative of Air France, KLM or Martinair will be determined according to the provisions of the Code of Civil Procedure, and each of the AF/KLM Defendants reserve their right to oppose such an examination under the Code of Civil Procedure.

4.3 Material Term

Without derogating from the materiality of any other term or condition of this Settlement Agreement, for greater certainty, the form and content of the bar orders contemplated in this Section 4 shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the bar orders contemplated herein shall give rise to a right of termination pursuant to Section 9 of this Settlement Agreement.

SECTION 5 - SETTLEMENT APPROVAL

5.1 Best Efforts

The Parties shall use their best efforts to effectuate the settlement provided for in this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Actions as against the AF/KLM Defendants.

5.2 Motions for Certification and Settlement Approval

- (a) The Plaintiffs shall, as soon as practicable after the Execution Date, file motions before the Courts seeking orders from the Courts certifying or authorizing the Actions as class proceedings against the AF/KLM Defendants solely for the purpose of settling the Actions and approving this Settlement Agreement.

- (b) Subject to Section 5.4(a), the Plaintiffs shall seek to schedule promptly the motions described in Section 5.2(a) at a time determined in their full and complete discretion after consultation with counsel for the AF/KLM Defendants. However, the motions described in Section 5.2(a) must be returnable no sooner than four (4) calendar months after the Notice of Certification and Approval Hearings has been published/disseminated in each of the following:
 - (i) The Globe and Mail (National Edition)

- (ii) Le Journal de Montreal
- (iii) Le Journal de Quebec
- (iv) Wall Street Journal
- (v) Air Cargo Week
- (vi) Cargonews Asia
- (vii) International Transport Journal
- (viii) sent to the following trade organizations with a request that the trade organization forward the Notice of Certification and Approval Hearings to its members:
 - (A) Canadian Industrial Transportation Association (banner ad, <http://www.cita-acti.ca>)
 - (B) European Shippers' Council
 - (C) Korean Shippers' Council
 - (D) Indonesia Shippers' Council
 - (E) Malaysia National Shippers' Council
 - (F) Philippine Shippers' Bureau
 - (G) Singapore National Shippers' Council
 - (H) Thai National Shippers' Council
 - (I) South African Shippers' Council
 - (J) Hong Kong Shippers' Council
 - (K) Asian Shippers' Council
 - (L) National Shippers Strategic Transportation Council (NASSTRAC)
 - (M) Global Shippers' Forum

- (ix) issuance of a press release over PR Newswire's Canadian, European, Asian and Latin American transportation circuits; and
 - (x) sent by direct mail to any persons included on the mailing list maintained by Garden City for the purposes of the Actions.
- (c) The Plaintiffs agree that, for settlement purposes, the only classes that they will seek to assert are the Ontario Settlement Class, the Québec Settlement Class and the BC Settlement Class.
- (d) If this Settlement Agreement is approved by the Courts, the Plaintiffs and the AF/KLM Defendants shall jointly seek entry of orders that, inter alia:
- (i) approve this Settlement Agreement and its terms as being fair, reasonable, and in the best interests of the Settlement Class Members and directing its consummation according to its terms;
 - (ii) direct that, as to the Released Parties, the Actions and any Other Actions in each Court's respective jurisdiction be dismissed with prejudice and without costs as against the AF/KLM Defendants; and
 - (iii) incorporate any other operative language and provisions as contemplated herein.
- (e) Subject to the approval of the Courts, the Plaintiffs and the AF/KLM Defendants shall agree on the form of the orders to be sought. Should the Plaintiffs and the AF/KLM Defendants fail to agree on the form of the orders such dispute will be resolved pursuant to Section 10.1 of the Settlement Agreement.

5.3 Pre-Motion Confidentiality

Until the motions required by Section 5.2 are filed, this Settlement Agreement and all of its terms shall be kept confidential and shall not be disclosed by either the Plaintiffs, Class Counsel or the AF/KLM Defendants, without the prior written consent of counsel for the AF/KLM Defendants and Class Counsel, 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) or as otherwise required by law. Notwithstanding the foregoing, the Parties agree that at any time after this Settlement Agreement is entered into, the AF/KLM Defendants may, in their sole discretion, issue a press release announcing that this Settlement Agreement has been entered into and describing the nature and effect of the Settlement Agreement.

5.4 Sequence of Motions

- (a) Subject to Section 5.2(b), the Plaintiffs in British Columbia and Québec shall not proceed with motions to certify, authorize, or approve this Settlement Agreement in the Actions commenced in their respective jurisdictions unless and until the Ontario Court approves this Settlement Agreement. The approval motions may be filed in British Columbia and Québec, but BC Counsel and Québec Counsel agree to seek any adjournment of their approval hearing required to permit the Ontario Court to first render its decision on the motion for approval brought before it.

- (b) Notwithstanding Section 5.4(a) of this Settlement Agreement, if the Courts determine that it is appropriate to conduct coordinated or simultaneous Approval Hearings in

respect of all of the Actions, the motions for certification and settlement approval shall be heard in a coordinated or simultaneous manner by the Courts.

SECTION 6 - NOTICE TO SETTLEMENT CLASS

6.1 Notices Required

- (a) The proposed Settlement Class shall be given the following notice: (i) Notice of Certification and Approval Hearings; (ii) Notice of Certification and Settlement Approval; and (iii) notice of termination of this Settlement Agreement, if ordered by the Courts. All Notices and the claim form shall be in a form agreed upon by the Plaintiffs and the AF/KLM Defendants or in such other form as approved by the Courts on motion brought on notice to the AF/KLM Defendants.
- (b) The Plaintiffs shall, at a time determined in their discretion, schedule and bring motions before the Courts seeking orders from the Courts approving the Notices described in Section 6.1(a).

6.2 Distribution of Notices

- (a) Subject to section 5.2(b), the manner of publication and distribution of the Notices shall be agreed upon by the Plaintiffs and the AF/KLM Defendants or in such form or manner as approved by the Courts.
- (b) With the object of reducing the costs of notice, Class Counsel shall use their reasonable best efforts to coordinate the provision of Notice pertaining to this Settlement Agreement with the provision of notice for any other settlements that have been or may be reached in the Actions. The costs of provision of notice shall be allocated proportionally among settlements.

SECTION 7 - CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

7.1 Class Counsel Fees

- (a) Class Counsel shall seek the Courts' approval of their Class Counsel Fees. Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneously with seeking approval of this Settlement Agreement or at such other time as they shall determine in their sole discretion.
- (b) Class Counsel shall be reimbursed or paid solely out of the Settlement Fund for approved fees, disbursements and taxes after the Effective Date. No Class Counsel Fees may be paid from the Settlement Fund prior to the Effective Date.
- (c) The AF/KLM Defendants shall not be liable for any amounts, fees, disbursements or taxes, including but not limited to Class Counsel Fees and any fees, disbursements or taxes of Class Counsel's, the Plaintiffs' or any Settlement Class Member's lawyers, experts, advisors, agents, or representatives.

7.2 Administration Expenses

- (a) Subject to Section 6.2, the AF/KLM Defendants' proportionate share of the costs of the Notices referred to in Section 6 of this Settlement Agreement shall be paid out of the Settlement Fund.
- (b) Except as provided in Section 7.2(a), Administrative Expenses may only be paid out of the Settlement Fund after the Effective Date.
- (c) 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 and/or the U.S. Litigation. The costs of the claims administration process shall be allocated proportionally among settlements.

- (d) Notwithstanding that a portion of the costs of the claims administration process will be paid from the Settlement Fund as contemplated herein, the AF/KLM Defendants are not liable to pay any further amount including without limitation any amount on account of any Administration Expenses or Class Counsel Fees, including the cost of providing any notices required by the Courts, regardless of whether or not the Settlement Fund is sufficient to pay for the AF/KLM Defendants' proportional share of the Administration Expenses, notice or other such shared costs.

SECTION 8 - IMPLICATIONS OF SETTLEMENT

8.1 No Admission of Liability

The Plaintiffs and the AF/KLM Defendants 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 the AF/KLM Defendants agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law of any jurisdiction, or of any wrongdoing or liability by the AF/KLM Defendants 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.

8.2 Agreement Not Evidence

The Plaintiffs and the AF/KLM Defendants 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 Canadian law.

8.3 No Further Litigation

- (a) Except as otherwise provided in this Settlement Agreement, no Class Counsel, Plaintiff, Settlement Class Member nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, any Plaintiff or Settlement Class Member may directly or indirectly participate or be involved in or in any way assist with respect to any Claim made or action commenced by or on behalf of any Person which relates to or arises from or is within the scope of the Released Claims. Moreover, no Class Counsel, Plaintiff, Settlement Class Member nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, any Plaintiff or Settlement Class Member may divulge to anyone for any purpose any information, including, without limitation, Documents obtained in the course of the Actions or in connection with this Settlement Agreement or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a Court.

- (b) Section 8.3(a) does not apply to the involvement of any Person in the continued prosecution of the Actions against any Non-Settling Defendants, including any unnamed co-conspirators that may be added as defendants to the Actions in the future.

SECTION 9 - TERMINATION OF SETTLEMENT AGREEMENT

9.1 Right of Termination

- (a) If one or more of the following events occur, the Plaintiffs and the AF/KLM Defendants shall each, in their respective sole discretion, have the option to terminate this Settlement Agreement in its entirety:
 - (i) any Court declines to approve this Settlement Agreement or any material part hereof;
 - (ii) any Court approves this Settlement Agreement in a materially modified form; or
 - (iii) any Approval Order is materially modified or set aside on appeal.
- (b) If pursuant to Section 9.1(a) the Plaintiffs or the AF/KLM Defendants wish to terminate the Settlement Agreement, notice of such decision to terminate the Settlement Agreement must be provided in writing to the Plaintiffs or the AF/KLM Defendants, as applicable, within thirty (30) days of an event under Section 9.1(a) having occurred.

9.2 Effect of Termination Generally

- (a) Except as provided in Section 9.3, if this Settlement Agreement is terminated or otherwise fails to take effect for any reason, it shall have no further force and effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

- (b) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason:
- (i) no further motion to certify or authorize any of the Actions as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement shall proceed;
 - (ii) any order certifying or authorizing these Actions as a class proceeding on the basis of this Settlement Agreement and approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and shall be without prejudice to any position that any of the Parties may later take on any issue in the Actions or any other litigation. Anyone attempting to rely on such orders for any purpose shall be estopped from doing so;
 - (iii) Class Counsel in each Action shall forthwith deliver consents in writing authorizing the AF/KLM Defendants to bring motions before each of the Courts for orders:
 - (A) declaring this Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in Section 9.3(a));
 - (B) setting aside any order certifying or authorizing these Actions as a class proceeding on the basis of this Settlement Agreement;
 - (C) setting aside any Class Counsel Fees approval orders; and
 - (D) directing that the balance in the Settlement Fund less any deductions provided for in this Settlement Agreement be paid to the AF/KLM Defendants, including interest.
 - (iv) The Escrow Agent or Claims Administrator shall thereupon pay to the AF/KLM Defendants the balance in the Settlement Fund, including interest, less reasonable administrative costs charged by the Escrow Agent and AF/KLM's proportionate costs of notice to the extent same has already been expended in accordance with

Section 7.1(b). Despite Section 2.3, if the Settlement Agreement is terminated, to the extent the balance in the Settlement Fund is paid to the AF/KLM Defendants, they shall be responsible for the payment of taxes owed by them with respect to income on such amounts paid to the AF/KLM Defendants.

- (c) In the event that the Settlement Agreement is terminated or otherwise fails to take effect for any reason, any factual information provided by the AF/KLM Defendants in connection with any settlement discussions shall not be used or disclosed by Plaintiffs or Class Counsel, directly or indirectly, for any purpose and, without limiting the foregoing, any such information shall not be directly or indirectly used as an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by the AF/KLM Defendants or any Person, or of the truth of any claims or allegations contained in the Statements of Claim or any other pleading filed by the Plaintiffs in the Actions or in any Other Action, and such information shall not be discoverable by any Person or treated as evidence of any kind.

9.3 Survival of Provisions After Termination

If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 2.2(d), 2.3, 2.4(a), 2.4(f), 2.4(g), 2.4(k), 6.1, 6.2, 8.1, 8.2, 9.2, and 9.3 and any of the definitions in Section 1 and Schedules applicable to any of the Sections listed in this Section 9.3 shall survive the termination and continue in full force and effect.

SECTION 10 - DETERMINATION OF DISPUTES

10.1 Disputes

- (a) The AF/KLM Defendants 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) The AF/KLM Defendants 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 the AF/KLM Defendants or the Plaintiffs. The Plaintiffs and the AF/KLM Defendants 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 by Plaintiffs for compliance with the requirements 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, including whether any information or Documents sought are duplicative, unnecessary to the prosecution of the Actions against the Non-Settling Defendants, or reasonably available from another source.

SECTION 11 - MISCELLANEOUS

11.1 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

11.2 Ongoing Jurisdiction and Motions for Direction

- (a) Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction, the Parties thereto and the application brought in those Actions for approval of Class Counsel Fees pursuant to Section 7.1.
- (b) The Plaintiffs and the AF/KLM Defendants 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, 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. Issues related to the Settlement Fund, the appointment of referees, and other matters not specifically related to the claim of a BC Settlement Class Member or a Québec Settlement Class Member shall be determined by the Ontario Court.
- (d) The Plaintiffs or the AF/KLM Defendants may apply to the Ontario Court for directions in respect of the interpretation, implementation, administration or enforcement of this Settlement Agreement.

- (e) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and the AF/KLM Defendants.

11.3 Interpretation

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

11.4 Language

- (a) The Plaintiffs and the AF/KLM Defendants acknowledge that they have required and consented that this Settlement Agreement and all related Documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les Documents connexes soient rédigés en anglais. The Plaintiffs and the AF/KLM

Defendants shall prepare a French translation of this Settlement Agreement (including all Schedules). The Plaintiffs and the AF/KLM Defendants shall each pay one half of the cost of such translation in the event such translation is required by the Courts prior to the Effective Date. Following the Effective Date, the costs of any such translation will be the sole responsibility of the Plaintiffs. The Plaintiffs and the AF/KLM Defendants agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

11.5 Entire Agreement

- (a) This Settlement Agreement, including the recitals herein and the Schedules attached hereto, constitutes the entire agreement among the Plaintiffs and the AF/KLM Defendants, 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 such Document. This Settlement Agreement supersedes any and all prior and contemporaneous agreements, understandings, undertakings, negotiations, representations, warranties, promises, and inducements concerning the Actions.
- (b) The Plaintiffs and the AF/KLM Defendants 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 and schedules to this Settlement Agreement are material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

11.6 Binding Effect

- (a) This Settlement Agreement shall be binding upon the Plaintiffs, the Settlement Class, the Releasing Parties, the AF/KLM Defendants and the successors and assigns of each of the foregoing, and shall enure to the benefit of the Plaintiffs, the Settlement Class, the Releasing Parties, the Released Parties and all of their successors and assigns.
- (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 once approved will constitute a transaction in accordance with Civil Code of Québec art. 2631 et seq., and the Plaintiffs and the AF/KLM Defendants 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 parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

11.7 Notice

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

If to: THE PLAINTIFFS and/or CLASS COUNSEL,

Charles M. Wright
Siskinds ^{LLP}
680 Waterloo Street
London, ON N6A 3V8

Tel.: (519) 672-2121
Fax: (519) 672-6065
Email: charles.wright@siskinds.com

J. J. Camp, Q.C.
Camp Fiorante Matthews
4th Floor, Randall Bldg
555 West Georgia St.
Vancouver, BC V6B 1Z6

Tel.: (604) 331-9520
Fax: (604) 689-7554
Email: jjcamp@cfmlawyers.ca

Irwin Liebman
Liebman & Associés
1 carrée Westmount, bureau/Suite 1500
Montréal, QC H3Z 2P9

Tel.: (514) 846-066
Fax: (514) 935-2314
Email: irwin@liebman.org

If to: THE AF/KLM DEFENDANTS

D. Martin Low, Q.C.
Lisa Parliament
McMillan LLP
Brookfield Place, Suite 4400
181 Bay Street
Toronto, Ontario
Canada M5J 2T3

Tel: 416.865.7000
Fax: 416.865.7048
Email: martin.low@mcmillan.ca

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

11.8 Survival

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

11.9 Acknowledgements

(a) Each of the Plaintiffs and the AF/KLM Defendants hereby affirms and acknowledges that:

- (i) he, she or a representative of the party with the authority to bind the party with respect to the matters set forth herein has read and understood this Settlement Agreement;
- (ii) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the party's representative by his, her or its counsel;
- (iii) he, she or the party's representative fully understands each term of this Settlement Agreement and its effect; and
- (iv) no party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other party, beyond the terms of this Settlement Agreement, with respect to the first party's decision to execute this Settlement Agreement.

11.10 Authorized Signatures

(a) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

11.11 Counterparts

(a) This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

(b) For purposes of executing this Settlement Agreement a facsimile signature shall be deemed an original signature.

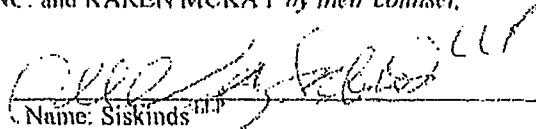
11.12 Date of Execution

(a) The Plaintiffs and the AF/KLM Defendants have executed this Settlement Agreement as of the date on the cover page.

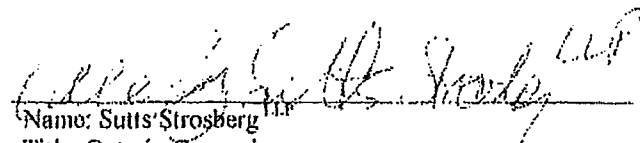
IN WITNESS WHEREOF, the Plaintiffs and the AF/KLM Defendants hereto have caused this Settlement Agreement to be executed, by their duly authorized counsel, as follows:

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

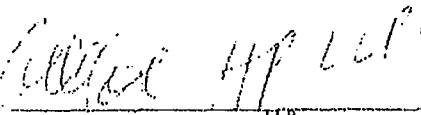
Per:


Name: Siskinds LLP
Title: Ontario Counsel, counsel to Airia Brands Inc., Startech.com Ltd., and QCS-Quick Cargo Service Gmbh
(Charles M. Wright)

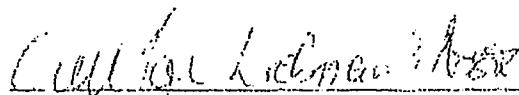
Per:


Name: Suttis Strosberg LLP
Title: Ontario Counsel
(Heather Rumble Peterson)

Per:


Name: Harrison Pensa LLP
Title: Ontario Counsel
(Jonathan Foreman)

Per:


Name: Liebman & Associés
Title: Québec Counsel, counsel to Cartise Sports Inc.

(Irwin Liebman)

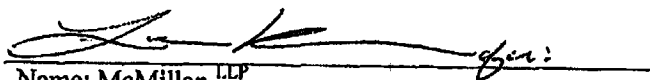
Per:

Camp Fibrante Matthews

Name: Camp Fibrante Matthews
Title: BC Counsel, counsel to Karen McKay
(J. J. Camp, Q.C.)

SOCIETE AIR FRANCE, KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N.V. dba
KLM, ROYAL DUTCH AIRLINES and MARTINAIR HOLLAND N.V.
by their counsel,

Per:

A handwritten signature in black ink, appearing to be "Lisa Parliament", written over a horizontal line.

Name: McMillan ^{LLP}
(D. Martin Low, Q.C.)
(Lisa Parliament)

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at London

AMENDED ORDER

Siskinds LLP

Barristers & Solicitors

680 Waterloo Street

P.O. Box 2520

London, ON N6A 3V8

Charles M. Wright LSUC # 36599Q

Linda Visser LSUC # 521581

Tel: (519) 672-2121

Fax: (519) 672-6065

Lawyers for the Plaintiffs