

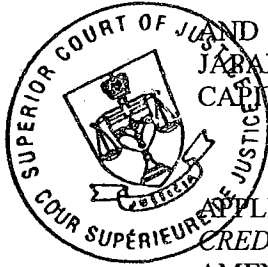
**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable ) Thursday, the 13<sup>th</sup> day  
Justice Campbell ) of January, 2011

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

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

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



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

Applicants

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

-and-

Court File No. 50389CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

Plaintiffs

-and-

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

Tor#: 2668838.2

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

**ON READING** the materials filed, including the settlement agreement entered into by the Settling Defendant and the Plaintiffs dated July 8, 2010 and attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendant;

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **THIS COURT ORDERS** that the Settlement Agreement is incorporated by reference into and forms part of the Order, and is binding upon the representative plaintiffs and all Settlement Class Members.
10. **THIS COURT ORDERS** that each Settlement Class Member is bound by the Settlement Agreement.
11. **THIS COURT ORDERS** that each Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
12. **THIS COURT ORDERS** that each Other Action commenced by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.
13. **THIS COURT ORDERS** that the Order, including the Settlement Agreement, is binding upon each Settlement Class Member including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Action.
14. **THIS COURT ORDERS** that each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
15. **THIS COURT ORDERS** that each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any

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

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

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

20. **THIS COURT ORDERS** that if, in the absence of paragraph 19 hereof, the Non-Settling Defendants would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees:

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

21. **THIS COURT ORDERS** that if, in the absence of paragraph 19 hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any judgment against them in the Action.

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

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

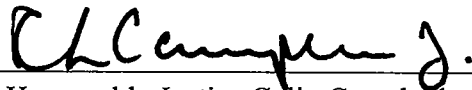
The Settling Defendant retains all rights to oppose such motion(s) under sub-paragraph (iv), hereof. Notwithstanding any provision in this Order, on any motion brought pursuant to this paragraph 22, the Court may make such Orders as to costs and other terms as it considers appropriate.

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

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

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

Date:



The Honourable Justice Colin Campbell

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ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JAN 14 2011

PER / PAR: 



# **SCHEDULE "A"**

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

Made as of July 8, 2010

Between

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

(the "Plaintiffs")

and

**JAPAN AIRLINES INTERNATIONAL CO., LTD.**

(the "Settling Defendant")

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

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SCHEDULE A – PROCEEDINGS	

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

**RECITALS**

A. WHEREAS the Proceedings have been commenced by the Plaintiffs in Ontario, Quebec and British Columbia which allege that the Defendants, including the Settling Defendant, participated in an unlawful conspiracy to raise, fix, maintain or stabilize the prices of Airfreight Shipping Services in violation of Part VI of the *Competition Act* and the common law;

B. WHEREAS the Settling Defendant expressly denies and does not admit, through the execution of this Settlement Agreement, all allegations of unlawful conduct in the Proceedings;

C. WHEREAS there has been a corporate reorganization filing by the Settling Defendant and related entities in Japan, and related filings in the United States and Canada, resulting in the stay of the Proceedings as against the Settling Defendant;

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

E. WHEREAS arm's-length settlement negotiations have occurred between Class Counsel and counsel for the Settling Defendant, resulting in this Settlement Agreement;

F. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent;

G. WHEREAS the Settling Defendant is entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted

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

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

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

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

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

#### SECTION 1 – DEFINITIONS

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

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

(2) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.

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

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



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

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

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

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

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

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

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

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

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

(31) ***Quebec Class*** means all individuals resident in Quebec and all legal persons resident in Quebec established for a private interest, partnership or association which, at all times between May 5, 2005 and May 5, 2006, had under its direction or control no more than 50 persons bound to it by a contract of employment, who purchased Airfreight Shipping Services during the Class Period, including those who purchased Airfreight Shipping Services through freight forwarders or from any air cargo carrier (including the Defendants), except Excluded Persons.

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

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

(34) *Released Claims* means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "Claims" or, individually, a "Claim"), that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing, distributing of or compensation for, Airfreight Shipping Services, specifically including, without limitation, any Claims in any way related to air cargo rates or prices, fuel surcharges, security surcharges, custom surcharges or fees, war risk surcharges, navigation surcharges, commissions, incentives, rebates, discounts, credits and yields or relating to any conduct alleged (or which could have been alleged) in the Proceedings including, without limitation, any Claims, whether in Canada or elsewhere, resulting from or relating to the purchase of Airfreight Shipping Services. However, nothing herein shall release any Claims for negligence, breach of contract, bailment, failure to deliver, lost goods, delayed or damaged goods or comparable claim between any of the Releasees and Releasors relating to Airfreight Shipping Services.

(35) *Releasees* means, jointly and severally, individually and collectively, the Settling Defendant, Japan Airlines Corporation and JAL Capital Co., Ltd., and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.

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

## **SECTION 2 – SETTLEMENT APPROVAL**

### **2.1 All Reasonable Steps**

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

### **2.2 Motions for Approval**

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

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

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

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

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

### **2.3 Pre-Motion Confidentiality**

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

### **2.4 Sequence of Motions**

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

### **SECTION 3 – SETTLEMENT BENEFITS**

#### **3.1 Payment of Settlement Amount**

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

(2) The Settling Defendant shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement, except as provided in section 10.2(3).

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

#### **3.2 Taxes and Interest**

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

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

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

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

### **3.3 Cooperation**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

**SECTION 4 – DISTRIBUTION OF THE SETTLEMENT  
AMOUNT AND ACCRUED INTEREST**

**4.1 Distribution Protocol**

At the appropriate time, the Plaintiffs will bring a motion for approval of a Distribution Protocol. After the Effective Date, the monies in the Account shall be treated in accordance with the Distribution Protocol.

**4.2 No Responsibility for Administration or Fees**

(1) The Settling Defendant shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Account including, but not limited to, Administration Expenses and Class Counsel Fees.

**SECTION 5 – TERMINATION OF SETTLEMENT AGREEMENT**

**5.1 Right of Termination**

- (1) In the event that:
- (a) the Plaintiffs and Settling Defendant are unable to agree on the form of orders required pursuant to this Settlement Agreement or on the form or distribution of notice required pursuant to this Settlement Agreement;
  - (b) any Canadian Court declines to approve this Settlement Agreement or any material part hereof, including the form or distribution of notice agreed to by the Parties and required pursuant to section 10;
  - (c) any Canadian Court approves this Settlement Agreement in a materially modified form; or
  - (d) any orders approving this Settlement Agreement made by the Canadian Courts do not become Final Orders;

this Settlement Agreement shall be terminated and, except as provided for in Section 5.3, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(2) Any order, ruling or determination made by any Canadian Court with respect to Class Counsel's fees and disbursements or with respect to the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

## **5.2 If Settlement Agreement is Terminated**

(1) If this Settlement Agreement is terminated:

- (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been heard, shall proceed;
- (b) any order certifying or authorizing a Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of a Proceeding as a class proceeding, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation;
- (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other information provided by the Settling Defendant as cooperation under this Settlement Agreement, or containing or reflecting information derived from such documents or other information and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendant to any other person (including Plaintiffs' experts), shall recover and destroy such documents or information. Class Counsel shall provide the Settling Defendant with a

written certification by Class Counsel of such destruction. Nothing contained in this paragraph shall be construed to require Class Counsel to destroy any of their work product;

- (e) within thirty (30) days of such termination having occurred, Siskinds LLP shall return to the Settling Defendant all monies in the Account including interest; and
- (f) Each Class Counsel shall forthwith deliver consents in writing to counsel for the Settling Defendant authorizing the Settling Defendant to bring motions before each of the Canadian Courts for orders:
  - (i) declaring this Settlement Agreement to be null and void and of no force or effect (except for the provisions set in out in section 5.3),
  - (ii) setting aside any order certifying or authorizing the Proceedings as class proceedings on the basis of this Settlement Agreement, and
  - (iii) directing that the balance in the Account be paid to the Settling Defendant, including interest.

### **5.3 Survival of Provisions After Termination**

(1) If this Settlement Agreement is terminated the provisions of sections 3.1(3), 3.2, 3.3(1), (8) and (9), 5, 8, and 12, and the definitions and portion of the Schedule applicable thereto shall survive the termination and continue in full force and effect. The definitions and portion of the Schedule applicable thereto shall survive only for the limited purpose of the interpretation of sections 3.1(3), 3.2, 3.3(1), (8) and (9), 5, 8, and 12 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

(2) The Settling Defendant and Plaintiffs expressly reserve all of their respective rights if this Settlement Agreement does not become effective or if this Settlement Agreement is terminated.

## **SECTION 6 – RELEASES AND DISMISSALS**

### **6.1 Release of Releasees**

(1) Upon the Effective Date, and in consideration of the provision of cooperation and the payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims and agree that they will not seek to institute, maintain, prosecute or continue to prosecute any suit, action or other proceeding, or collect from or proceed against the Releasees or any of them based on the Released Claims.

(2) 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, 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.

### **6.2 Release by Releasees**

Upon the Effective Date, each Releasee forever and absolutely releases each of the other Releasees from any and all Claims for contribution or indemnity with respect to the Released Claims.

### **6.3 Covenant Not To Sue**

Notwithstanding section 6.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any Claim in any way or to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

#### **6.4 No Further Claims**

The Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any Claim against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants.

#### **6.5 Dismissal of the Proceedings**

The Proceedings shall be dismissed with prejudice and without costs as against the Settling Defendant.

#### **6.6 Dismissal of Other Actions and Claims Reserved**

- (1) Each Settlement Class Member shall be deemed to consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (2) All Other Actions commenced by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.
- (3) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any Claim by Settlement Class Members against any person other than the Releasees.

### **SECTION 7 – BAR ORDER**

- (1) The Plaintiffs and Settling Defendant agree that the approval and implementation orders of the Canadian Courts must include a bar order. The bar order shall be in a form agreed to by the Plaintiffs and Settling Defendant and shall include:
  - (a) a provision that all Claims for contribution, indemnity or other Claims over, whether asserted, 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 Proceedings, by any Non-Settling Defendant or any other person or

party, against a Releasee, or by a Releasee against any Non-Settling Defendant, are barred, prohibited and enjoined (unless such claim is made in respect of a Claim by a person who validly opted-out of the Proceedings in accordance with the Lufthansa Certification and Notice Approval Orders);

- (b) a provision governing the Plaintiffs' and Settlement Class Members' continuing rights to assert Claims against the Non-Settling Defendants in the Proceedings, such that the Non-Settling Defendants are in no worse position than if this Settlement Agreement had not occurred; and
- (c) a provision governing the obtaining of any discovery of the Settling Defendant by the Non-Settling Defendants for the purposes of the continuation of the Proceedings.

## **SECTION 8 – EFFECT OF SETTLEMENT**

### **8.1 No Admission of Liability**

Whether or not this Settlement Agreement is terminated, 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 provincial, federal or foreign statute or law, or of any wrongdoing or liability by any Defendant, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

### **8.2 Agreement Not Evidence**

The Parties agree that, whether or not it is terminated, 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 approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.



### **8.3 No Further Litigation**

No Class Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any Claim made by any person which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendants. Moreover, these persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court.

## **SECTION 9 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY**

- (1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Canadian Courts.
- (2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes.

## **SECTION 10 – NOTICE TO SETTLEMENT CLASSES**

### **10.1 Notices Required**

The Settlement Class Members shall be given notice, by reasonable means in the circumstances, of: (i) hearings at which the Canadian Courts will be asked to approve the Settlement Agreement; (ii) the certification or authorization of the Proceedings as class proceedings and the approval of this Settlement Agreement if granted by the Canadian Courts; (iii) the core elements of the Settlement Agreement; and (iv) any process by which the Settlement Class Members may apply to obtain compensation.

## **10.2 Form and Distribution of Notice**

(1) The form of notice referred to in section 10.1 and the manner and extent of publication and distribution of the notice shall be as agreed to by the Plaintiffs and Settling Defendant and approved by the Canadian Courts.

(2) The Plaintiffs and Settling Defendant agree to work with the parties to the U.S. Settlement to coordinate the form and distribution of the notice of this Settlement Agreement, the U.S. Settlement and any other settlements that have or may be reached in the Proceedings or U.S. Class Proceeding so that, to the extent possible, notice expenses are reduced. Without limiting the generality of the foregoing, the Plaintiffs and Settling Defendant agree that extensive worldwide notice of the Proceedings has already been provided to the Settlement Classes as a result of the notice program created and administered by The Garden City Group for the Lufthansa Settlement. The Plaintiffs shall, to the extent reasonable, rely on the prior extensive worldwide notice of the Proceedings and the information gathered as a result of The Garden City Group notice program, for the purposes of satisfying the notice obligations arising as a result of this Settlement Agreement.

(3) The Settling Defendant shall contribute up to a maximum of \$225,000 for the cost of the notice required pursuant to section 10.1. In the event that the Plaintiffs reach a settlement with one or more of the Non-Settling Defendants and the notice referred to in section 10.1 apply to both this Settlement Agreement and such additional agreements reached by the Plaintiffs, the contribution by the Settling Defendant for the cost of the notice required under section 10.1 shall be reduced such that each Defendant to whom the notice applies shall pay an amount proportionate to its respective settlement payment.

## **SECTION 11 – ADMINISTRATION AND IMPLEMENTATION**

### **11.1 Mechanics of Administration**

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and Distribution Protocol shall be determined by the relevant Canadian Courts on motions brought by Class Counsel.

**SECTION 12 – CLASS COUNSEL FEES AND  
ADMINISTRATION EXPENSES**

- (1) Class Counsel may seek the relevant Canadian Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement.
- (2) Except as provided in section 12(1), Class Counsel Fees and Administration Expenses may only be paid out of the Account after the Effective Date.
- (3) The Settling Defendant shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.

**SECTION 13 – MISCELLANEOUS**

**13.1 Motions for Directions**

- (1) Any Class Counsel or Settling Defendant may apply to the Canadian Courts for directions in respect of the implementation and administration of this Settlement Agreement or Distribution Protocol.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

**13.2 Releasees Have No Liability for Administration**

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol.

**13.3 Headings, etc.**

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement;

- (b) the terms “this 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, and;
- (c) any reference to a “person” includes an individual and all types of business, legal, personal representative and government entities, and all of their heirs, predecessors, successors representatives or assignees.

#### **13.4 Computation of Time**

In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

#### **13.5 Ongoing Jurisdiction**

- (1) Each of the Canadian Courts shall retain exclusive jurisdiction over each Proceeding commenced in its jurisdiction, the Parties thereto and the Class Counsel Fees in those Proceedings.
- (2) No Party shall ask a Canadian Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complimentary order or direction being made or given by the other relevant Canadian Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding sections 13.5(1) and (2), the Ontario Court shall exercise jurisdiction with respect to the implementation, administration and enforcement of this Settlement Agreement, and the Parties submit to the jurisdiction of the Ontario Court for these purposes. Issues related to the

Account and other matters not specifically related to the claim of a BC Settlement Class Member or a Quebec Settlement Class Member shall be determined by the Ontario Court.

### **13.6 Governing Law**

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

### **13.7 Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

### **13.8 Amendments**

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 relevant Canadian Courts with jurisdiction over the matter to which the amendment relates.

### **13.9 Binding Effect**

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settling Defendant, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendant shall be binding upon all of the Releasees.

### **13.10 Counterparts**

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

### **13.11 Negotiated Agreement**

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. The Parties 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.

### **13.12 Language**

The Parties 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. Nevertheless, the Settling Defendant shall prepare a French translation of the Settlement Agreement as and when is necessary or required by the Canadian Courts. The Parties 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.

### **13.13 Transaction**

The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

**13.14 Recitals**

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

**13.15 Schedules**

The Schedule annexed hereto forms part of this Settlement Agreement.

**13.16 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

- (a) 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 the Settlement Agreement;
- (b) 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;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

**13.17 Authorized Signatures**

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

**13.18 Notice**

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided

by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For Plaintiffs and for Class Counsel:

Charles M. Wright  
Andrea Dekay  
Siskinds LLP  
Barristers and Solicitors  
680 Waterloo Street  
London, ON N6A 3V8

Telephone: 519-660-7753  
Facsimile: 519-672-6065  
Email: charles.wright@siskinds.com

J. J. Camp, Q.C.  
Camp Fiorante Matthews  
4<sup>th</sup> Floor  
856 Homer Street,  
Vancouver, BC V6B 2W5

Telephone: 604-689-7555  
Facsimile: 604-689-7554  
Email: jjcamp@cfmlawyers.ca

Irwin I. Liebman  
1, Westmount Square  
Suite 1500  
Montreal, QC H3Z 2P9  
Telephone: 514-846-0666  
Facsimile: 514-935-2314  
E-mail: irwin@liebman.org

Harvey T. Strosberg, Q.C.  
Sutts, Strosberg LLP  
Barrister and Solicitors  
600-251 Goyeau Street  
Windsor, ON N9A 6V4

Telephone: 519-258-9333  
Facsimile: 519-258-9527  
Email: harvey@strosbergco.com

Jonathan J. Forman  
Harrison Pensa LLP  
450 Talbot Street  
London, ON N6A 4K3

Telephone: 519-661-6775  
Facsimile: 519-667-3362  
Email: jforeman@harrisonpensa.com



For Settling Defendant:

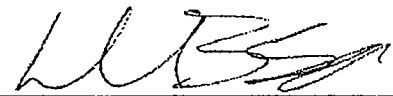
Sandra A. Forbes  
Davies Ward Phillips & Vineberg LLP  
1 First Canadian Place, 44<sup>th</sup> Floor  
Toronto ON Canada M5X 1B1

Telephone: 416-863-5574  
Facsimile: 416-868-0871  
Email: sforbes@dwpv.com

**13.19 Date of Execution**

The Parties have executed this Settlement Agreement as of the date on the cover page.

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

By:   
\_\_\_\_\_  
Name: Siskinds LLP  
Title: Ontario Counsel

By: \_\_\_\_\_  
Name: Sutts, Strosberg LLP  
Title: Ontario Counsel

By: \_\_\_\_\_  
Name: Harrison Pensa LLP

For Settling Defendant:

Sandra A. Forbes  
**Davies Ward Phillips & Vineberg LLP**  
**1 First Canadian Place, 44<sup>th</sup> Floor**  
**Toronto ON Canada M5X 1B1**

Telephone: 416-863-5574  
Facsimile: 416-868-0871  
Email: sforbes@dwpv.com

**13.19 Date of Execution**

The Parties have executed this Settlement Agreement as of the date on the cover page.


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

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Name: Siskinds LLP

Title: Ontario Counsel

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Name: Sutts, Strosberg LLP

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Name: Sutts, Strosberg LLP  
Title: Ontario Counsel

By:

  
\_\_\_\_\_  
Name: Harrison Pensa LLP

Title: Ontario Counsel

By: 

*per*

Name: Liebman & Associates

Title: Quebec Counsel

By:

Name: Camp Fiorante Matthews

Title: BC Counsel

**JAPAN AIRLINES INTERNATIONAL CO.,  
LTD.**

By: 

Name: Davies Ward Phillips & Vineberg  
LLP

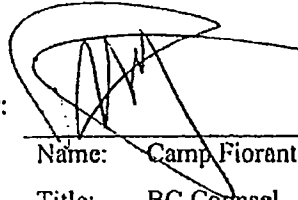
Title: Canadian Counsel

Title: Ontario Counsel

By:

Name: Liebman & Associates

Title: Quebec Counsel



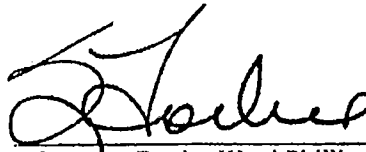
By:

Name: Camp Fiorante Matthews

Title: BC Counsel

JAPAN AIRLINES INTERNATIONAL CO.,  
LTD.

By:



Name: Davies Ward Phillips & Vineberg  
LLP

Title: Canadian Counsel

**SCHEDULE A – PROCEEDINGS**

<b>Proceeding</b>	<b>Plaintiffs</b>	<b>Defendants</b>	<b>Settlement Class</b>
Ontario Superior Court of Justice Court File No. 50389CP (the "Ontario Action")	Airia Brands Inc. (formerly known as Nutech Brands Inc.), Startech.com Ltd., and QCS-Quick Cargo Service GMBH	Air Canada, AC Cargo Limited Partnership, Societe Air France, Koninklijke Luchtvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines, Asiana Airlines Inc., British Airways PLC, Cathay Pacific Airways Ltd., Deutsche Lufthansa AG, Lufthansa Cargo AG, Japan Airlines International Co., Ltd., Scandinavian Airlines System, Korean Air Lines Co., Ltd., Cargolux Airline International, LAN Airlines S.A., LAN Cargo S.A., Atlas Air Worldwide Holdings Inc., Polar Air Cargo Inc., Singapore Airlines Ltd., Singapore Airlines Cargo PTE Ltd., and Swiss International Air Lines Ltd.	The "Ontario Class" as defined in section 1(23).
Superior Court of Quebec (District of Montreal), File No. 500-06-000344-065(the "Quebec Action")	Cartise Sports Inc.	Air Canada, AC Cargo Limited Partnership, Societe Air France, Koninklijke Luchtvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines, Asiana Airlines Inc.,	The "Quebec Class" as defined in section 1(30).

Proceeding	Plaintiffs	Defendants	Settlement Class
		British Airways PLC, Cathay Pacific Airways Ltd., Deutsche Lufthansa AG, Lufthansa Cargo AG, Japan Airlines International Co., Ltd., Scandinavian Airlines System, Korean Air Lines Co., Ltd., Cargolux Airline International, LAN Airlines S.A., LAN Cargo S.A., Atlas Air Worldwide Holdings Inc., Polar Air Cargo Inc., Singapore Airlines Ltd., Singapore Airlines Cargo PTE Ltd., and Swiss International Air Lines Ltd.	

Proceeding	Plaintiffs	Defendants	Settlement Class
British Columbia Supreme Court File No. S067490 (Vancouver Registry) (the "BC Action")	Karen McKay	Air Canada, AC Cargo Limited Partnership, Societe Air France, Koninklijke Luchtvaart Maatschappij N.V. 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 S.A., LAN Airlines S.A., LAN Cargo S.A., Atlas Air Worldwide Holdings Inc., Polar Air Cargo Inc., Singapore Airlines Ltd., Singapore Airlines Cargo PTE Ltd., and Swiss International Air Lines Ltd.	The "BC Class" as defined in section 1(4).



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTERS OF JAPAN AIRLINES CORPORATION, JAPAN AIRLINES INTERNATIONAL CO., LTD  
AND JAL CAPITAL CO., LTD.

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

- and-

AIRIA BRANDS INC. et al v. AIR CANADA et al

Court File No: 50389CP

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Toronto and London

**ORDER**

**Approval of JAL Settlement Agreement**

**Siskinds LLP**

Barristers & Solicitors  
680 Waterloo Street  
London, ON N6A 3V8  
Charles M. Wright LSUC # 36599Q  
Tel: (519) 672-2121  
Fax: (519) 672-6065

**Sutts, Strosberg LLP**

Barristers & Solicitors  
600-251 Goyeau Street  
Windsor, ON N9A 6V4  
Harvey T. Strosberg, Q.C. LSUC#126400  
Tel: (519) 258-9333  
Fax: (519) 561-6203

**Harrison Pensa LLP**

450 Talbot St.  
P.O. Box 3237  
London ON N6A 4K3  
Jonathan Foreman LSUC #45087H  
Tel: (519) 679-9660  
Fax: (519) 667-3362

Lawyers for Airia Brands Inc., Startech.com Ltd.,  
and QCS-Quick Cargo Service GmbH in the Ontario  
class action proceeding

**Davies Ward Phillips & Vineberg LLP**

44th Floor., 1 First Canadian Place  
Toronto, ON M5X 1B1  
Sandra A. Forbes  
Natasha MacParland  
Tel: (416) 863-0900  
Fax: (416) 863-0871

Lawyers for the Japan Airlines International Co., Ltd.  
defendant in the Ontario class action proceeding  
and applicant in the CCAA proceeding

Tor#: 2668838.2