

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable Madam

Justice Leitch

) Wednesday the 18<sup>th</sup> day  
)  
) of February, 2009



BETWEEN:

NUTECH BRANDS INC.

Plaintiff

- 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**

**THIS MOTION** made by the Plaintiffs for an Order approving the Settlement Agreement entered into with the Defendants, Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd. (the "Settling Defendants"), was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the settlement agreement 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 Defendants.

**AND ON BEING ADVISED** that a) the Plaintiffs consent to this Order; b) the Settling Defendants consent to this Order; and c) the Non-Settling Defendants take no position on this Order:

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order. In addition to the definitions in the Settlement Agreement the following definition shall also apply in this Order:

"Proportionate Liability" means that proportion of any judgment that, had they not settled, a court or other arbiter would have apportioned to the Settling Defendants and Released Parties, whether pursuant to the *pro rata*, proportionate fault, *pro tanto*, or another method.

2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act*, 1992 and shall be implemented in accordance with its terms. Where any term of this Order and the Settlement Agreement conflict, the term contained in this Order shall govern.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiff and all Settlement Class Members. Where any term of this Order and the Settlement Agreement conflict, the term contained in this Order shall govern.
5. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member who is not an Opt Out is deemed to consent to the dismissal, without costs and with prejudice, of his, her or its Other Action against the Released Parties.
6. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, all Other Actions commenced in Ontario by Settlement Class Members who are not Opt Outs are hereby dismissed against the Released Parties, without costs and with prejudice.
7. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member who is not an Opt Out, including

those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this action.

8. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, the Releasing Parties are deemed to, and do hereby, release and forever discharge the Released Parties of and from any and all Claims arising from or in any way related to the Released Claims.
9. **THIS COURT ORDERS AND DECLARES** that it is a condition of receipt of funds under the Settlement Agreement that each Settlement Class Member receiving funds execute a written release in favour of the Released Parties in respect of all Released Claims.
10. **THIS COURT ORDERS** that the Releasing Parties 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 within the scope of the Released Claims against any Released Party or any other person who may claim contribution or indemnity from any Released Party in respect of any Released Claim or any matter related thereto, except for the continuation of the Actions against the Non-Settling Defendants and, in the event that a future contested certification hearing in the Actions is not resolved in favour of the Plaintiffs, continuation of the Claims as alleged in the Actions against the Non-Settling Defendants in the form of individual claims, group proceedings, or test cases.
11. **THIS COURT ORDERS AND DECLARES** that the use of the terms “Releasing Parties” and “Released Claims” in this Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
12. **THIS COURT ORDERS AND DECLARES** that any Settlement Class Member resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors, the Releasing Parties do not release the Released Parties but instead covenant and undertake not to sue, make any Claim in any way or to threaten, commence, or continue any Claim in any jurisdiction against the Released Parties, arising from or in any way related to the Released Claims.

13. **THIS COURT ORDERS** that notwithstanding section 4.1(a)(i) 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 Actions by any Non-Settling Defendant or any other Person or Party against a Released Party, or by a Released Party against a Non-Settling Defendant or any other Person or Party, are barred, prohibited and enjoined in accordance with the terms of this paragraph (unless such claim is made in respect of a claim by an Opt Out);
- (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 13 or 14 hereof, then that Non-Settling Defendant is permitted to bring a claim for contribution, indemnity or other claims over against the Released Parties 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.

14. **THIS COURT ORDERS** that if, in the absence of paragraph 13 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 Released Parties:

- (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 Released Parties 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 this Action, whether or not the Released Parties remain in this Action or appear at the trial or other disposition, and the Proportionate Liability shall be determined as if the Released Parties are parties to this Action for that purpose and any such finding by this Court in respect of the Proportionate Liability shall only apply in this Action and shall not be binding upon the Released Parties in any other proceedings.


15. **THIS COURT ORDERS** that if, in the absence of paragraph 13 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 Action.
16. **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 each of the Settling Defendants as if they remained parties to this proceeding:
- (i) to documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure* O.Reg. 194 from each of the Settling Defendants;
  - (ii) to oral discovery of a representative of each of the Settling Defendants, the transcript of which may be read in at trial;
  - (iii) to serve a request to admit on each 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 Defendants, for the production of a representative of each of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

The Settling Defendants retain 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 16, the Court may make such Orders as to costs and other terms as it considers appropriate.

17. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 16 above on a Settling Defendant by service on counsel of record for the Settling Defendants in this action.
18. **THIS COURT ORDERS** that for purposes of enforcement of this Order, this Court will retain an ongoing supervisory role and the Settling Defendants will attorn to the jurisdiction of this Court for these purposes.

19. **THE COURT ORDERS** that, except as provided herein, this Order does not affect any Claims that any Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators in the Actions.
20. **THIS COURT ORDERS** that the Settling Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Settlement Fund.
21. **THIS COURT ORDERS** that the Settlement Amount, plus any accrued interest, be held in trust by the Escrow Agent for the benefit of the Settlement Class, pending further order of the Court, which shall be sought by the Plaintiff on a motion, brought on notice to the Defendants.
22. **THIS COURT ORDERS AND ADJUDGES** that this Action be and is hereby dismissed against the Settling Defendants without costs and with prejudice.
23. **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.

Date: *February 18, 2009*

  
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(Signature of judge, officer or registrar)

**ORDER ENTERED**  
**77-72**  
**FEB 23 2009**

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

Between:

NUTECH BRANDS INC., CARTISE SPORTS INC. and KAREN MCKAY

and

DEUTSCHE LUFTHANSA AG, LUFTHANSA CARGO AG  
and SWISS INTERNATIONAL AIR LINES LTD.

**Executed December 30, 2006**

**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 Lufthansa, participated in an unlawful conspiracy to restrain trade pursuant to which Lufthansa and its alleged co-conspirators, including the Defendants, 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 common law;

B. **AND WHEREAS** Lufthansa does not admit, through the execution of this Settlement Agreement, any allegation of unlawful conduct alleged in the Actions;

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

D. **AND WHEREAS**, despite its belief that it is not liable in respect of the claims as alleged in the Actions and have good defences thereto, Lufthansa is entering into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation and achieve final resolutions of all claims asserted or which could have been asserted against it by the Plaintiffs on their own behalf and on behalf of the classes they seek to represent, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy with valued business customers;

E. **AND WHEREAS** Plaintiffs have agreed to accept this settlement, in part, because of the value of the Settlement Amount to be paid by Lufthansa under this Settlement Agreement

and the value of the cooperation Lufthansa has made and agrees to render or make available to the Plaintiffs and/or Class Counsel pursuant to this Settlement Agreement, as well as (i) the attendant risks of litigation in light of the potential defences that may be asserted by Lufthansa, and (ii) the desirability of permitting the settlement to be consummated as provided by the terms of this Settlement Agreement;

F. **AND WHEREAS** Plaintiffs recognize the benefits of Lufthansa's early cooperation;

G. **AND WHEREAS** arm's-length settlement negotiations have taken place between counsel for Lufthansa and the Plaintiffs, and this Settlement Agreement, which embodies all of the terms and conditions of the settlement between Lufthansa and 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 burdens and expense in prosecuting the Actions, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that a settlement with Lufthansa 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** the Plaintiffs and Lufthansa therefore wish to, and hereby do, subject to the Courts' approval, for purposes of all jurisdictions in relation to which the Actions are brought, and for purposes of all classes the Plaintiffs seek to represent, without admission of liability, finally resolve all of the Actions as against Lufthansa;

J. **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 Lufthansa that the Actions be settled and dismissed with prejudice as to Lufthansa only, without costs as to the Plaintiffs, the Settlement Class or Lufthansa, 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) *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.
- (c) *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.
- (d) *Approval Orders* means any order by the Courts approving this Settlement Agreement.
- (e) *BC Action* means the proceeding commenced by Karen McKay in the BC Court, under Vancouver Registry No. S-067490, on November 20, 2006.
- (f) *BC Counsel* means Camp Fiorante Matthews.
- (a) *BC Court* means the Supreme Court of British Columbia.
- (g) *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, from any air cargo carrier, including without limitation, the Defendants, and specifically

including Lufthansa. Excluded from the BC Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors.

- (h) *Claims* means any and all actions, suits, claims, rights, demands, assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries, legal fees, costs, expenses, debts, liabilities, judgments, or remedies (whether equitable or legal).
- (i) *Claims Administrator* means the Person proposed by Class Counsel, after consultation with Lufthansa, and appointed by the Courts to administer the Settlement Fund in accordance with the provisions of this Settlement Agreement, and any employees of such firm.
- (j) *Class Counsel* means Ontario Counsel, Québec Counsel and BC Counsel.
- (k) *Cooperation Materials* means any information or material relevant to the Actions that relate to Airfreight Shipping Services during the Purchase Period that Lufthansa provides under the terms of the U.S. Settlement Agreement and any other information or material provided for in Section 2.4 of this Settlement Agreement.
- (l) *Courts* means the Ontario Court, the Québec Court and the BC Court.
- (m) *Defendants* means all defendants named in the Actions, including Lufthansa, and any named or unnamed co-conspirators who may be added as defendants in the Actions in the future.
- (n) *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.

- (o) **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.
- (p) **Effective Date** means the earlier of: (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 below) order or judgment. For the purposes of this paragraph, an "appeal" shall not include any appeal that concerns only the issue of Class Counsel's fees and disbursements, or the Distribution Protocol. If the conditions in (i) or (ii) occur before the "Date of Final Approval" of the U.S. Settlement Agreement, the Effective Date of this Settlement Agreement will be the "Date of Final Approval" of the U.S. Settlement Agreement.
- (q) **Escrow Agent** means the person or entity designated by Class Counsel with the approval of counsel for Lufthansa to receive and invest the Settlement Fund in accordance with the provisions of this Settlement Agreement.
- (r) **Execution Date** means the date of the execution of this Settlement Agreement by counsel for all Plaintiffs and Lufthansa herein.

- (s) **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 and the ultimate court of appeal to which an appeal (if any) was taken has upheld such order or judgment.
- (t) **Imputed Recovery** means the cash recovery that would have been paid to any Opt Out under this Settlement Agreement and pursuant to the Distribution Protocol, if such Opt Out had otherwise qualified as a member of the Settlement Class and had not validly opted out from the Settlement Class. An Opt Out's Imputed Recovery shall be estimated as best as practicable on the basis of information that is acceptable to both Plaintiffs and Lufthansa, including, if available, information provided by the Opt Out.
- (u) **Lufthansa** means Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd., individually and collectively, and their respective subsidiaries, predecessors, successors, and affiliates.
- (v) **Non-Settling Defendants** means Air Canada, Air Canada Cargo, Air France, Air France-KLM, Air France Cargo, Air France-KLM Cargo, Asiana, British Airways, Cathay Pacific, JAL, SAS, SAS Cargo, SAS Cargo AG, UAL, United, United Cargo, IATA, Korean Air, Ace, Cargolux, LAN, LAN Cargo, Atlas Air, Polar Air, Singapore Air, Singapore Cargo, UPS, UPS Air Cargo, Virgin Air, AMR, American Airlines, ANA, Nippon Cargo, Scandanavian Air and any other provider of Airfreight Shipping Services or alleged co-conspirator whether named or unnamed in the Actions, but specifically excluding Lufthansa.
- (w) **Notice of Certification and Approval Hearings** means the form of notice, agreed to by the Plaintiffs and Lufthansa, or such other form as may be approved by the Courts, which



informs the Settlement Class of: (i) the certification of the Actions; (ii) the dates and locations of the Approval Hearings; (iii) the core elements of the Settlement Agreement; and (iv) the process by which Settlement Class Members may opt out of the Actions.

- (x) *Notice of Settlement Approval and Claims Procedure* means the form of notice, agreed to by the Plaintiffs and Lufthansa or such other form as may be approved by the Courts, which informs the Settlement Class of: (i) the approval of the Settlement Agreement; and (ii) the process by which Settlement Class Members may apply to obtain compensation from the Settlement Fund.
- (y) *Notices* means the Notice of Certification and Approval Hearings, the Notice of Settlement Approval and Claims Procedure, and notice of termination.
- (z) *Ontario Action* means the proceeding commenced by Nutech Brands Inc. in the Ontario Court, under Court File No. 50389 CP, on July 6, 2006.
- (aa) *Ontario Counsel* means Siskinds<sup>LLP</sup>, Sutts, Strosberg<sup>LLP</sup> and Harrison Pensa<sup>LLP</sup>.
- (bb) *Ontario Court* means the Ontario Superior Court of Justice.
- (cc) *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, from any air cargo carrier, including without limitation, the Defendants, and specifically including Lufthansa. Excluded from the Ontario Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors.

- (dd) **Opt Out** means a Settlement Class Member who has timely submitted a valid Opt Out Form and has successfully opted out of the Actions pursuant to Section 7.1.
- (ee) **Opt Out Claim** means any Claim within the scope of the Released Claims made by an Opt Out.
- (ff) **Opt Out Deadline** means the date by which all Opt Out Forms must be submitted to the person appointed by the Ontario Court and the BC Court to receive Opt Out Forms, and by the clerk of the Québec Court, as applicable, in order to enable a Settlement Class Member to opt out of the Actions.
- (gg) **Opt Out Form** means the form agreed upon by the Plaintiffs and Lufthansa, or such other form as is approved by the Courts, for the purpose of enabling a Settlement Class Member to opt out of the Actions.
- (hh) **Opt Out Period** means the period up to and including the Opt Out Deadline, during which Settlement Class Members may submit Opt Out Forms.
- (ii) **Other Action** means any Claim within the scope of the Released Claims other than the Actions that has been, or is later, commenced by a Settlement Class Member who has not validly opted out of the Actions as set forth in Section 7.1.
- (jj) **Party** and **Parties** means the Plaintiffs, Settlement Class Members, and Lufthansa.
- (kk) **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.

- (ll) ***Plaintiffs*** means Nutech Brands Inc, Cartise Sports Inc. and Karen McKay, individually and collectively.
- (mm) ***Purchase Period*** means January 1, 2000 up to and including September 11, 2006.
- (nn) ***Québec Action*** means the proceeding commenced by Cartise Sports Inc. in the Québec Court, under Court File No. 500-06-000344-065, on May 5, 2006.
- (oo) ***Québec Counsel*** means Liebman & Associés.
- (pp) ***Québec Court*** means the Québec Superior Court.
- (qq) ***Québec Settlement Class*** means all individuals resident in the province of Québec and all legal persons 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 legal persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including without limitation, the Defendants, and specifically including Lufthansa, during the Purchase Period. Excluded from the Québec Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors.
- (rr) ***Released Claims*** means any Claims arising from, or in any way related to, the pricing of or compensation related to Airfreight Shipping Services (specifically including, without

limitation those Claims in any way related to cargo rates, fuel surcharges, security surcharges, customs surcharges, war risk surcharges, navigation surcharges, commissions, incentives, rebates, credits, and yields), 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, including known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated Claims (specifically including, without limitation those Claims in any way related to cargo rates, fuel surcharges, security surcharges, customs surcharges, war risk surcharges, navigation surcharges, commissions, incentives, rebates, credits, and yields), 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. Nothing herein shall be construed to include within "Released Claims" any Claims solely relating to conduct occurring after the Execution Date of this Settlement Agreement.

(ss) ***Released Parties*** means, jointly and severally, individually and collectively, Lufthansa, and all of its respective present and former, direct and indirect, predecessors, successors, parents, subsidiaries, divisions, departments, affiliates, heirs, executors, administrators, and any and all past, present, and future officers, directors, stockholders, partners, agents, attorneys, servants, employees, and assignees. Notwithstanding the foregoing, "Released Parties" does not include any other Defendant who was formerly or is currently, named in the Actions or who may be named in the Actions in the future.

- (tt) **Releasing Parties** means, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any person or entity claiming by or through them as an heir, administrator, devisee, predecessor, successor, parent, subsidiary, representative of any kind, shareholder, partner, director, owner of any kind, affiliate, assignee, agent, employee, contractor, attorney, or insurer, who do not validly and timely opt out of the Actions in the manner and time prescribed in Section 7.1 below, and Class Counsel, on behalf of themselves and any person or entity claiming by or through them as an heir, administrator, devisee, predecessor, successor, parent, subsidiary, representative of any kind, shareholder, partner, director, owner of any kind, affiliate, assignee, agent, employee, contractor, attorney, or insurer.
- (uu) **Settlement Agreement** means this agreement, including the recitals and schedules attached hereto.
- (vv) **Settlement Amount** means the sum of five million three hundred thirty eight thousand United States dollars (USD \$5,338,000).
- (ww) **Settlement Class** and **Settlement Class Members** means all Persons included in the Ontario Settlement Class, the Québec Settlement Class and the BC Settlement Class.
- (xx) **Settlement Fund** means the escrow account established pursuant to Section 2.1 of this Settlement Agreement, including all monies held therein in accordance with the terms of this Settlement Agreement. The Settlement Fund shall be maintained in Canadian currency.
- (yy) **U.S. Class Counsel** means Settlement Class Counsel as defined in the U.S. Settlement Agreement.

- (zz) **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 Aircargo Shipping Services Antitrust Litigation*, 06-MD-1775 (CBA)(VVP)(E.D.N.Y.), and including all actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, and all actions that may be transferred in the future.
- (aaa) **U.S. Settlement Agreement** means the settlement agreement between the plaintiffs in the U.S. Litigation and Lufthansa, as executed on September 11, 2006, and attached as Schedule A to this Settlement Agreement. Any amendments to the U.S. Settlement Agreement after the Execution Date of this Settlement Agreement will not be incorporated into this Settlement Agreement without the written agreement of both the Plaintiffs and Lufthansa.

## 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 an 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 the specific authorization of both Class Counsel and counsel for Lufthansa, and authorization may not be withheld if inconsistent with this Settlement Agreement, or without orders from one or more of the BC Court, Ontario Court, or Québec Court, as required by this Settlement Agreement, issued with notice to or with consent of the Plaintiffs and Lufthansa. Class Counsel and

counsel for Lufthansa agree to cooperate, in good faith, to form an appropriate escrow agreement in conformance with this Settlement Agreement.

- (b) The escrow account shall be established and maintained in a manner that minimizes transactional costs and risks and maximizes the amount available for distribution. All transactional costs associated with maintaining the Settlement Fund shall be paid from the Settlement Fund.
- (c) The Escrow Agent and Claims Administrator shall cause the Settlement Fund to be invested in guaranteed investment vehicles of no more than six (6) months' duration or liquid money market accounts or equivalent securities with a rating equivalent to or better than that of a Canadian Schedule 1 bank. All interest earned on the Settlement Fund shall become and remain part of the Settlement Fund.
- (d) The Plaintiffs and Lufthansa acknowledge that the Settlement Class includes both shippers and freight forwarders, and both customers and non-customers of Lufthansa, 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 to the Courts for approval of a proposed Distribution Protocol.
- (e) After the Effective Date, the Settlement Fund shall be distributed in accordance with the Distribution Protocol. Any opt out refund due to Lufthansa, pursuant to Section 7 below, shall be paid to Lufthansa immediately prior to the distribution to Settlement Class Members.

**2.2 Payment of the Settlement Benefits**

- (a) Lufthansa agrees to pay the Settlement Amount, plus such other costs as set forth in this Settlement Agreement, in full satisfaction of all of the Claims within the scope of the Released Claims against the Released Parties.
- (b) Lufthansa, by or through its counsel or designee, shall wire transfer 100% of the Settlement Amount into the Settlement Fund within ten (10) business days after the Execution Date of this Settlement Agreement. Before any wire transfer takes place, Class Counsel shall provide Lufthansa with the information necessary to complete the wire transfer.
- (c) The obligations of Lufthansa pursuant to this Settlement Agreement, including but not limited to the payment of the Settlement Amount, are joint and several as to Deutsche Lufthansa AG. In the event of default or a declaration of bankruptcy by any of the entities that are defined collectively as Lufthansa, Deutsche Lufthansa AG shall continue to be obligated to fulfill all the provisions and obligations of this Settlement Agreement, including payment of the entire Settlement Amount.
- (d) If the Settlement Fund must be returned to Lufthansa pursuant to Section 10.2 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 Amount to Lufthansa less any deductions expressly permitted by this Settlement Agreement, and shall pay to Lufthansa the interest accrued on its respective contributions, all in Canadian currency. Neither Class Counsel nor the Plaintiffs shall have any liability whatsoever to Lufthansa for any loss they may incur as a result of any intervening fluctuations in the Canada/U.S. dollar exchange rate.



- (e) In addition to payment of the Settlement Amount, Lufthansa shall be solely responsible for the payment of all costs of administering, investing and distributing the Settlement Fund, including the payment of the costs of providing Notice to the Settlement Class in accordance with Section 6. Except for such costs as specifically set forth in this Settlement Agreement, Lufthansa shall have no responsibility for any other costs, including, as further detailed in this Settlement Agreement, any lawyers' fees and expenses, and as set out in Section 2.3 any taxes or tax related costs relating to the Settlement Fund, or any referee costs that the referee assigns to the Settlement Class, but all such fees, expenses, or costs shall be paid from the Settlement Fund.
- (f) Other than the payment of costs as provided for in this Section, Lufthansa shall have no responsibility or liability relating to the administration, investment, or distribution of the Settlement Fund.
- (g) With regard to those costs for which Lufthansa is responsible, the Escrow Agent and/or Claims Administrator responsible for administering, investing, and/or distributing the Settlement Fund, as appropriate, shall submit invoices, with appropriate supporting documentation, to Lufthansa for payment. Payment of such invoices shall be made by Lufthansa within sixty (60) days after their receipt by Lufthansa or, where necessary, in such manner as to permit timely publication of all Notices in accordance with this Settlement Agreement and with orders of the Courts, provided that in no event shall Lufthansa be required to pay any invoice sooner than 15 business days after its receipt by Lufthansa. If, after discussion, Lufthansa challenges any costs listed on an invoice, Lufthansa may apply to the Ontario Court to resolve the matter within twenty (20) business days of receiving the invoice in

question, and may withhold payment of the challenged costs if payment has not already been made, pending resolution by the Ontario Court. Lufthansa shall not challenge any cost it was aware of, and consented to, prior to receiving the invoice and supporting documentation for such cost. In no event shall Class Counsel be responsible for paying any of the costs for which Lufthansa is responsible, including the cost of Notices provided pursuant to Section 6, and the costs of administering, investing and distributing the Settlement Fund.

- (h) 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 the U.S. Settlement Agreement and any other settlements that have been or may be reached. The cost of provision of Notice shall be allocated proportionally among settling defendants.

### 2.3 Taxes

- (a) All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. None of the Settlement Amount, including interest earned thereon, will be reported as taxable to Lufthansa.
- (b) Except as provided for in Section 10.2 Escrow Agent and/or the Claims Administrator shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned on the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund,

as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund.

- (c) Except as provided for in Section 10.2, Lufthansa 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 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) Upon execution of this Settlement Agreement, Lufthansa shall authorize Class Counsel, and/or their experts, equal access to any Cooperation Materials that already have been, or in the future will be, provided to U.S. Class Counsel. In furtherance of this, Lufthansa shall, within ten (10) days of the Execution Date provide Class Counsel with any Cooperation Materials contained in material or information already provided to U.S. Class Counsel pursuant to Section J of the U.S. Settlement Agreement and going forward shall provide to Class Counsel any further Cooperation Materials at the time, and in the form and manner the additional material is provided to U.S. Class Counsel. In the alternative, Lufthansa may elect, with U.S. Class Counsel's prior agreement, to direct U.S. Class Counsel to forward any such Cooperation Materials to Class Counsel. If U.S. Class Counsel fails to timely forward such Cooperation Materials to Class Counsel, upon notification by Class Counsel, Lufthansa shall provide such materials to Class Counsel in accordance with this Section. Lufthansa also authorizes Class Counsel, and/or their experts to participate in any proceedings, depositions, attorney meetings, and interviews in which U.S. Class Counsel participate pursuant to Section J of the U.S. Settlement

Agreement and that Class Counsel reasonably believes relate to Airfreight Shipping Services during the Purchase Period in order to obtain Cooperation Materials. Lufthansa shall provide Class Counsel with notice, including the times, dates and locations, of any proceedings, depositions, attorney meetings, and interviews in which U.S. Class Counsel participate pursuant to Section J of the U.S. Settlement Agreement, at least fifteen (15) business days in advance of any such proceedings, depositions, attorney meetings, or interviews taking place. Lufthansa states that Cooperation Materials, Documents, or other materials in the possession of the Administrator of the SAirGroup AG liquidation or the SAirGroup companies themselves are not in the possession, custody, or control of Lufthansa, specifically including Swiss International Air Lines Ltd., and Lufthansa has no legal right to obtain such materials or documents.

- (b) In addition, at the request of Class Counsel, Lufthansa, at its own expense and upon reasonable notice, shall provide Class Counsel with the following:
  - (i) Interviews with up to two (2) current or former directors, officers, and employees of Lufthansa who possess particular knowledge or information concerning alleged anti-competitive behaviour affecting Airfreight Shipping Services during the Purchase Period;
  - (ii) Declarations or affidavits by up to two (2) current or former directors, officers, and employees of Lufthansa who possess particular knowledge or information concerning alleged anti-competitive behaviour affecting Airfreight Shipping Services during the Purchase Period;

- (iii) Persons to testify at any trial of the Actions who are identified by U.S. Class Counsel under paragraph 54(e) of the U.S. Settlement Agreement and in addition, two (2) current or former directors, officers, and employees of Lufthansa to testify at any trial of the Actions, who Class Counsel, in consultation with Lufthansa, reasonably believe to have knowledge or information concerning alleged anti-competitive behaviour affecting Airfreight Shipping Services during the Purchase Period;
  - (iv) To the extent not previously produced, and subject to Section 2.4(k), any Documents provided by Lufthansa to the Canadian Competition Bureau; and
  - (v) At trial and/or deposition, or through affidavits or declarations, up to five (5) representatives of its choice qualified to establish for admission into evidence any of Lufthansa's Documents produced or to be produced in the Actions, evidence of Lufthansa's sales of Airfreight Shipping Services during the Purchase Period, including surcharges related thereto, any other Documents of Lufthansa, and, to the extent possible, any Documents produced by any of Lufthansa's alleged co-conspirators. Lufthansa agrees to produce at trial and/or deposition, or through affidavits or declarations, additional representatives of its choice for the purposes described in this subsection, provided such additional representatives are reasonably necessary to Plaintiffs' prosecution of the Claims as alleged in the Actions.
- (c) With respect to former directors, officers, and employees, Lufthansa shall make reasonable efforts to have such former directors, officers, and employees appear for interviews, depositions, and trial testimony, and to provide declarations and/or affidavits,

under the same conditions provided under this agreement for current directors, officers, and employees of Lufthansa. The failure of a former director, officer, or employee to agree to make himself or herself available to or otherwise cooperate with Plaintiffs or any Settlement Class Member shall not constitute a breach of Lufthansa's obligations under this Settlement Agreement and will not provide any basis for the termination of this Settlement Agreement.

- (d) Lufthansa's obligations to cooperate shall not be affected by the releases set forth in Section 3 of this Settlement Agreement. Unless this Settlement Agreement is terminated or otherwise fails to take effect for any reason, Lufthansa's obligations to cooperate under this Settlement Agreement shall continue until the date that Final judgment has been rendered in the Actions against the Non-Settling Defendants, and shall terminate at that time.
- (e) The Plaintiffs and Lufthansa agree that Opt Outs are not entitled to the benefits and relief of this Settlement Agreement. Notwithstanding the foregoing, Lufthansa may choose to provide cooperation to Opt Outs.
- (f) Notwithstanding any other provision in this Settlement Agreement, Lufthansa may assert where applicable any legal privilege with respect to any Cooperation Materials (including Documents, statements, testimony, material, and/or information), including without limitation, solicitor-client privilege and litigation privilege. Lufthansa will not withhold factual attorney work product otherwise subject to litigation privilege if Plaintiffs have a substantial need for the factual information contained in such work product and such factual information is not otherwise obtainable from Lufthansa without undue hardship. Any such work product provided to Plaintiffs or any Settlement Class Member shall be

subject to the strict confidentiality rules set forth in Section 2.4(g)-(i), shall not be introduced in Court, is intended solely to further the common, cooperative interests of the Parties, and shall not be deemed to constitute a waiver of any privilege. If any Documents protected by legal privilege are accidentally or inadvertently produced, these Documents shall be promptly returned to Lufthansa, and their production shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents. No Document shall be withheld under claim of privilege if produced to or made available to any competition authority, other than privileged Documents inadvertently produced to any competition authority, which Documents Lufthansa requested be returned on the basis of legal privilege.

- (g) All Documents and other Cooperation Materials provided by Lufthansa to Plaintiffs, any Settlement Class Member, and/or Class Counsel under this Settlement Agreement or otherwise shall be confidential, shall be used only in connection with the Actions and only for the prosecution of Claims regarding Airfreight Shipping Services during the Purchase Period, and shall not be used directly or indirectly for any other purpose. No Documents or other Cooperation Materials provided by Lufthansa to Plaintiffs, any Settlement Class Member, and/or Class Counsel pursuant to this Settlement Agreement or otherwise may be disclosed by Plaintiffs, any Settlement Class Member and/or Class Counsel to any Person (other than experts retained by Plaintiffs and Lufthansa in the course of the Actions), including absent Settlement Class Members, Defendants, or Opt Outs and counsel for such absent Settlement Class Members, Defendants, or Opt Outs, except with the prior consent of Lufthansa, as required under Canadian law, or, provided Lufthansa receives thirty (30) days notice prior to disclosure, as reasonably necessary to further litigate the Actions.

- (h) Notwithstanding any requirements to disclose confidential information, Lufthansa, Plaintiffs, Settlement Class Members and Class Counsel shall make all reasonable efforts permitted by law to protect the confidentiality of Lufthansa's confidential or proprietary information.
- (i) The confidentiality requirements in this Section will continue to bind Plaintiffs, Settlement Class Members and Class Counsel even in the event that the Settlement Agreement is terminated or otherwise fails to take effect for any reason. The requirements of this Section shall also apply to all Documents and other Cooperation Materials shared by Class Counsel with experts under this Settlement Agreement.
- (j) Nothing in this Settlement Agreement shall be construed to require Lufthansa to commit any act, including the transmittal or disclosure of any information, which would violate any federal, state, provincial or local privacy law, of any jurisdiction. To the extent Lufthansa withholds information, including Documents and testimony, on the basis of any federal, state, provincial or local privacy law, of any jurisdiction, Lufthansa shall create a log describing the basis for withholding this information and shall provide a copy of such log to Class Counsel. Any disputes arising under this paragraph, including any dispute which arises from an assertion by Class Counsel of entitlement to Documents or testimony withheld pursuant to this paragraph, shall be resolved in accordance with Section 11.
- (k) Notwithstanding its obligation to cooperate as set forth in this Section, if Lufthansa reasonably believes that any of its leniency applications filed with competition authorities throughout the world would be endangered by the production of Documents and testimony which are otherwise required to be produced to the Plaintiffs pursuant to the



terms of this Settlement Agreement, Lufthansa may withhold such Documents and testimony. To the extent that Lufthansa withholds Documents and testimony pursuant to this section, Lufthansa shall provide to Class Counsel a written explanation of the type of Document or testimony to be withheld, and the basis for withholding such information. Lufthansa will work in good faith with the leniency-granting authority to obtain permission to disclose the Documents or other information being withheld. If, on the date the Plaintiffs would ordinarily be entitled to obtain documentary productions from any one of the Defendants pursuant to the Ontario Rules of Civil Procedure or on the date which is eighteen months (18) from the Execution Date, whichever date is later, Documents or testimony continue to be withheld by Lufthansa pursuant to this Section, Lufthansa shall forthwith provide such Documents and/or testimony to the Plaintiffs, unless any of the Courts, either pursuant to motions filed by Lufthansa or otherwise, orders to the contrary. Any disputes arising under this paragraph shall be resolved in accordance with Section 11.

- (l) The provisions set forth in Section 2 of this Settlement Agreement shall constitute the exclusive means by which Plaintiffs, Settlement Class Members and Class Counsel may obtain discovery from Lufthansa or its officers, directors, or employees, and Plaintiffs. Settlement Class Members and Class Counsel shall pursue no other means of discovery against Lufthansa or its officers, directors, or employees, whether under the laws or rules of any jurisdiction.

### **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

Lufthansa's commitment to provide continuing compliance with the cooperation provisions of this Settlement Agreement set forth in Section 2.4, the Releasing Parties shall be deemed to, and do hereby, release and forever discharge the Released Parties of and from any and all Claims arising from or in any way related to the Released Claims.

- (b) It shall be a condition of receipt of funds under this Settlement Agreement that each Settlement Class Member receiving funds 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.

### **3.2 Covenant Not To Sue**

- (a) Notwithstanding Section 3.1, 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 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, arising from or in any way related to the Released Claims.

### **3.3 No Further Claims**

- (a) The Releasing Parties shall not now or hereafter commence, institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any Claim within the scope of the Released Claims against any Released Party or any other person who may claim contribution or indemnity from any Released Party in respect of any Released Claim or any matter related thereto, except for the continuation of the Actions against the Non-

Settling Defendants and, in the event that a future contested certification hearing in the Actions is not resolved in favour of the Plaintiffs, continuation of the Claims as alleged in the Actions against the Non-Settling Defendants in the form of individual claims, group proceedings, or test cases.

**3.4 Dismissal of Actions as Against Lufthansa**

- (a) Except as provided herein, the Actions shall be dismissed, without costs and with prejudice, as against Lufthansa.

**3.5 Dismissal of Other Actions as Against Lufthansa**

- (a) Upon the Effective Date each Settlement Class Member who is not an Opt Out shall be deemed to consent to the dismissal, without costs and with prejudice, of his, her or its Other Action against the Released Parties.
- (b) Upon the Effective Date, all Other Actions in each of the Courts' respective jurisdictions commenced by Settlement Class Members who are not Opt Outs shall be dismissed against the Released Parties, without costs and with prejudice.
- (c) Each Settlement Class Member who is not an Opt Out must execute a consent to dismissal of any Other Actions 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.

**SECTION 4 BAR ORDER AND OTHER CLAIMS**

**4.1 Bar Order**

- (a) A bar order shall be granted by each of the 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, by any Non-Settling Defendant, or any other Person or Party, against a Released Party, or by a Released Party against a Non-Settling Defendant, or any other Person or Party, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by an Opt Out);
  - (ii) a Non-Settling Defendant may, upon motion, seek an order from one or more of the Courts providing for discovery from Lufthansa as deemed appropriate by the Court(s). To the extent that such order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall timely be provided by Lufthansa to the Plaintiffs and Class Counsel; and
  - (iii) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 4.1(a)(ii) on Lufthansa by service on counsel of record for Lufthansa in the Actions.
- (b) If the Courts ultimately determine there is a right of contribution and indemnity between co-conspirators, the Plaintiffs and Settlement Class Members shall restrict their joint and several claims against the Non-Settling Defendants such that the Plaintiffs and Settlement Class Members shall be entitled to claim and recover from the Non-Settling Defendants, on a joint and several basis, only those damages, if any, arising from the sales of Airfreight Shipping Services of the Non-Settling Defendants.

- (c) The bar order contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the bar order contemplated herein shall give rise to a right of termination pursuant to Section 10.1(a).

## **SECTION 5 SETTLEMENT APPROVAL**

### **5.1 Best Efforts**

- (a) The Parties shall use their best efforts to effectuate the settlement provided for in this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Actions as against Lufthansa.

### **5.2 Motions for Certification and Approval of Notice**

- (a) The Plaintiffs and Lufthansa shall use their best efforts to obtain orders from the Courts providing that the Actions shall be certified or authorized as class proceedings against Lufthansa solely for the purpose of settling the Actions and obtaining the approval of this Settlement Agreement by the Courts.
- (b) The process for obtaining the approval of the Courts is as follows:
  - (i) The Plaintiffs shall bring motions before the Courts for orders certifying or authorizing each of the Actions as a class proceeding against Lufthansa, fixing the dates for the Approval Hearings, and approving the Notice of Certification and Approval Hearings, and to which motions Lufthansa will consent provided that such motions are not inconsistent with the terms of this Settlement Agreement.
  - (ii) After the Notice of Certification and Approval Hearings has been published, and upon expiration of the Opt Out Period, the Plaintiffs shall bring motions before the Courts to approve the Settlement Agreement and the Notice of Settlement Approval and Claims Procedure, to which motions Lufthansa will consent

provided that such motions are not inconsistent with the terms of this Settlement Agreement.

- (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 Lufthansa shall jointly seek entry of orders that, *inter alia*:
  - (i) approve this Settlement Agreement and its terms as being a fair, reasonable, and in the best interests of the Settlement Class Members and directing its consummation according to its terms;
  - (ii) determine that the Notice of Settlement Approval and Claims Procedure constitutes, under the circumstances, the most effective and practicable notice of this Settlement Agreement and constitutes due and sufficient notice for all other purposes to all Persons entitled to receive notice; and
  - (iii) direct that, as to the Released Parties, the Actions and any Other Actions in each respective Court's jurisdiction be dismissed with prejudice and without costs against Lufthansa. Such dismissal shall not affect, in any way, the Plaintiffs' right to pursue claims, if any, outside the scope of the Releases in Section 3 of this Settlement Agreement.
- (e) Subject to the approval of the Courts, the Plaintiffs and Lufthansa shall agree on the form of the orders to be sought. Should the Plaintiffs and Lufthansa fail to agree on the form of

the orders such dispute will be resolved pursuant to Section 11 of this Settlement Agreement.

**5.3 Pre-Motion Confidentiality**

- (a) Until the motions required by Section 5.2(b)(i) are filed, this Settlement Agreement and all of its terms shall be kept confidential and shall not be disclosed by either the Plaintiffs or Lufthansa, without the prior written consent of counsel for Lufthansa or Class Counsel respectively, except as may be required for the purposes of financial reporting or the preparation of financial records (including without limitation tax returns and financial statements) or as otherwise required by law.

**5.4 Sequence of Motions**

- (a) The Plaintiffs in Québec and British Columbia 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 Québec and British Columbia, but Québec Counsel and BC 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. On consent of all Parties, the BC Court may order that the British Columbia motions to certify and/or approve the Settlement Agreement be adjourned, and be determined by the Ontario Court.

**5.5 Effect of Non-Approval**

- (a) If any Court declines to approve this Settlement Agreement or any material part hereof, or if any Court approves this Settlement Agreement in a materially modified form, or if, after any Court's approval, such approval is materially modified or set aside on appeal,

then the Plaintiffs and Lufthansa shall each, in their respective sole discretion, have the option to terminate this Settlement Agreement in its entirety, in accordance with the provisions of Section 10.

- (b) Any order, ruling or determination made by any Court with respect to Class Counsel's fees or 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. Further, any modification, or reversal on appeal, of any amount of Class Counsel's fees and disbursements by the Courts from the Settlement Fund or of the Distribution Protocol shall not be deemed a material modification of all or a part of this Settlement Agreement.

## **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 Settlement Approval and Claims Procedure; and (iii) termination of this Settlement Agreement if it is terminated after notice provided in accordance with (i) above or as otherwise ordered by the Courts. All notices shall be in a form agreed upon by the Plaintiffs and Lufthansa or in such other form as approved by the Courts.

### **6.2 Distribution of Notices**

- (a) The manner of publication and distribution of the Notices will be agreed upon by the Plaintiffs and Lufthansa or in such form or manner as approved by the Courts, and, in as



far as is possible, shall be completed in conjunction to the notice provided in the U.S. Settlement Agreement. Lufthansa shall pay the costs of publishing the Notices.

## **SECTION 7 OPT OUTS**

### **7.1 Procedure**

- (a) Settlement Class Members shall have the right to opt out of the Actions. Any Person who elects to opt out of the Ontario Action or the BC Action must complete the Opt Out Form and file it with the person designated to receive the Opt Out Form by their respective Court by the Opt Out Deadline. Members of the Québec Class who wish to opt out of the Québec Action must do so by giving notice (the "Québec Notice") to the Clerk of the Québec Court in the manner prescribed under the C.p.c. by the Opt Out Deadline.
- (b) Each Opt Out Form/Québec Notice shall disclose the name, address, phone number of the Person(s) seeking to opt out from the Actions, and the value of Airfreight Shipping Services purchased by such Person during the Purchase Period. Additionally, each Opt Out Form shall contain the executed statement: "I/we hereby request that I/we be excluded from the proposed Settlement Class in the *Canadian Air Cargo Shipping Services Class Action*."
- (c) Settlement Class Members who validly opt out shall be excluded from the Settlement Class and the continuing Actions against the Non-Settling Defendants, including any future settlements or judgments, shall have no rights with respect to this Settlement Agreement, and shall receive no payments as provided in this Settlement Agreement.
- (d) Except as provided for in Section 7.1(e) below, Settlement Class Members who do not validly opt out in the manner and time prescribed above, regardless of whether such Settlement Class Members timely file a claim form, shall be deemed to have elected to

participate in this Settlement Agreement and in the remainder of the Actions, and shall be for all purposes, a Settlement Class Member and a member of the class for the duration of the Actions.

- (e) Québec Class Members who have commenced proceedings or commence proceedings and fail to discontinue such proceedings by the Opt Out Deadline shall be deemed to have opted out. Québec Counsel warrant and represent that, to the best of their knowledge, no such action has been commenced as of the date this Settlement Agreement was executed by it.
- (f) The Person designated by the Ontario Court and the BC Court to receive the Opt Out Forms shall forward to Class Counsel and to Lufthansa's counsel copies of all Opt Out Forms as they are received, but in any event, within ten (10) days of the expiration of the Opt-Out Deadline. Opt Out Forms submitted to the clerk of the Québec court shall be forwarded to Lufthansa's counsel within ten (10) days of the Opt Out Deadline.

## **7.2 Opt Out Report**

- (a) Within ten (10) days of the Opt Out Deadline, Lufthansa's counsel and Class Counsel shall be provided with a report from the person designated by the Ontario Court and the BC Court to receive Opt Out Forms advising as to the names and addresses of the Opt Outs, if any, and the amount of Airfreight Shipping Services the Opt Out claims to have purchased from Lufthansa whether or not through a freight forwarder, during the Purchase Period. Lufthansa shall have fifty five (55) days from the Opt Out Deadline to communicate confidentially with the Opt Outs. Each Opt Out shall be entitled to withdraw its election to opt out by delivering written notification to that effect to the

person designated by the Ontario Court to receive Opt Out Forms on or before the expiry of the fifty five (55) day period.

**7.3 Payment of Opt Out Refunds**

- (a) In respect of each valid Opt Out, Lufthansa shall be entitled to receive an opt out refund equal to such Opt Out's Imputed Recovery from the Settlement Fund. In respect of each valid Opt Out, Lufthansa shall provide Class Counsel and the Claims Administrator with its computation of entitlement to an opt out refund.
- (b) Any disputes between the Parties arising out of Lufthansa's claim to an opt out refund, including Lufthansa's computation of its opt out refund, shall be resolved pursuant to Section 11 of this Settlement Agreement.
- (c) Lufthansa shall be paid its opt out refund immediately prior to distribution to Settlement Class Members.

**7.4 Claims Against Other Entities Reserved**

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

**SECTION 8 CLASS COUNSEL FEES**

- (a) Ontario Counsel shall seek the Ontario Court's approval of its fee application, including fees, disbursements, and taxes.
- (b) BC Counsel shall seek the BC Court's approval of its fee application, including fees, disbursements, and taxes.

- (c) Québec Counsel shall seek the Québec Court's approval of its fee application including fees, disbursements, and taxes.
- (d) Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for approved fees, disbursements, and taxes after the Effective Date. No Class Counsel fees, disbursements, or taxes, shall be paid from the Settlement Fund prior to the Effective Date, except as otherwise provided in this Settlement Agreement.
- (e) Lufthansa shall not be liable for any fees, disbursements or taxes of any of the Class Counsel's, the Plaintiffs' or Settlement Class Members', respective lawyers, experts, advisors, agents, or representatives.

## **SECTION 9 IMPLICATIONS OF SETTLEMENT**

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

- (a) The Plaintiffs and Lufthansa 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 Lufthansa 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, or of any wrongdoing or liability by Lufthansa or any Released Party, or of the truth of any of the claims or allegations contained in the Actions or any other pleading filed by the Plaintiffs or any Settlement Class Member.

**9.2 Agreement Not Evidence**

- (a) The Plaintiffs and Lufthansa agree that, whether or not it is finally approved this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

**9.3 No Further Litigation**

- (a) Except as otherwise provided in this Settlement Agreement, no Class Counsel, 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 any Person which relates to or arises from 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, Cooperation Materials and Documents obtained in the course of the Actions or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court.

- (b) Section 9.3(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 10 TERMINATION OF SETTLEMENT AGREEMENT**

### **10.1 Right of Termination**

- (a) If one or more of the following events occur, the Plaintiffs and Lufthansa shall each, in their respective sole discretion, have the option to terminate this Settlement Agreement in its entirety:

- (i) Any court declines to approve this Settlement Agreement or any material part hereof;
- (ii) Any court approves this Settlement Agreement in a materially modified form;
- (iii) Any Approval Order is materially modified or set aside on appeal; or
- (iv) The U.S. Settlement Agreement is not approved as specified in the U.S. Settlement Agreement, is properly terminated or rescinded under its terms, or otherwise does not take effect.

- (b) Any order, ruling or determination made by any 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.

- (c) If pursuant to Section 10.1(a) above, the Plaintiffs or Lufthansa wish to terminate the Settlement Agreement, notice of such decision to terminate the Settlement Agreement must be provide in writing to the Plaintiffs or Lufthansa, as applicable, within sixty (60)

days of an event under Section 10.1(a) having occurred. Any dispute between the Plaintiffs and Lufthansa with respect to whether the U.S. Settlement Agreement has been finally approved by the U.S. courts, shall be determined in accordance with Section 11.

- (d) In the event this Settlement Agreement is not approved and is terminated in accordance with its terms, the Plaintiffs and Lufthansa agree that any prior certification or authorization of an Action as a class proceeding, including the definitions of the Settlement Class, 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.

#### **10.2 Effect of Termination Generally**

- (a) Except as provided in Sections 10.3(a), if this Settlement Agreement is terminated or otherwise fails to take effect for any reason, it shall have no further force and effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.
- (b) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason:
  - (i) no further 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 anyone attempting to assert otherwise shall be estopped from doing so;

- (iii) Class Counsel in each Action shall forthwith deliver consents in writing authorizing Lufthansa to bring motions before each of the Courts for orders:
  - (A) declaring this Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in Section 10.3(1));
  - (B) setting aside any order certifying or authorizing these Actions as a class proceeding on the basis of this Settlement Agreement; and
  - (C) directing that the balance in the Settlement Fund less any deductions provided for in this Settlement Agreement be paid to Lufthansa, including interest.
- (iv) The Escrow Agent or Claims Administrator shall thereupon pay to Lufthansa the balance in the Settlement Fund, including interest, less only reasonable administrative costs charged by the financial institution holding the Settlement Fund, and neither Class Counsel nor the Plaintiffs shall have any liability whatsoever to Lufthansa for any loss it may incur as a result of intervening fluctuations in the Canada/U.S. dollar exchange rate. Despite Section 2.3, if the Settlement Agreement is terminated, to the extent the balance in the Settlement is paid to Lufthansa, it shall be responsible for the payment of taxes owed by it with respect to income on such amounts.
- (c) In the event that the Settlement Agreement is terminated or otherwise fails to take effect for any reason, Plaintiffs shall, upon request by Lufthansa, return to Lufthansa all Documents and other Cooperation Materials, and all copies of such Documents and other Cooperation Materials, provided by Lufthansa under this Settlement Agreement or otherwise. In the event any Documents and other Cooperation Materials are incapable of being physically returned to Lufthansa, Lufthansa shall witness Plaintiffs destroy all such Documents and other Cooperation Materials, and Plaintiffs shall provide Lufthansa with



a written certification by Class Counsel of such destruction. The requirements of this Section shall also apply to all Documents and other Cooperation Materials shared by Class Counsel with experts under Section 2.4.

**10.3 Survival of Provisions After Termination**

- (a) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 2.2(d)(e)(f)(g)(h), 2.3(b)(c), 2.4(f)-(k), 5.3, 6.1, 6.2, 9.1, 9.2, 10.3, 11, 12.1-12.5, 12.6(b)(c) and 12.7 and the definitions in Section 1 and Schedules applicable thereto shall survive the termination and continue in full force and effect.

**SECTION 11 DETERMINATION OF DISPUTES**

- (a) Lufthansa and the Plaintiffs agree that all disputes, claims, or controversies arising in connection with, pursuant to, or related to the implementation 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) Lufthansa shall bear all costs of such reference, including the fees and disbursements of the referee as fixed by the Ontario Court, unless the referee in his or her discretion finds it reasonable to assess such costs solely to the Settlement Class, or to Lufthansa and the Settlement Class jointly.
- (c) In considering the reasonableness of any request made pursuant to the provisions of this Settlement Agreement, the referee shall weigh the burden and expense of complying with the request against the importance of the subject matter of the request to Plaintiffs' prosecution of the claims as alleged in the Actions.

- (d) To the extent possible such disputes shall be resolved in co-operation with U.S. Counsel and in conjunction with any similar disputes for which resolution is sought in the U.S. Litigation.

## **SECTION 12 MISCELLANEOUS**

### **12.1 Governing Law**

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

### **12.2 Ongoing Jurisdiction**

- (a) Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction, the parties thereto and the Fee Applications in those Actions.
- (b) The Plaintiffs and Lufthansa 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 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 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 Lufthansa may apply to the Ontario Court for directions in respect of the implementation, administration or enforcement of this Settlement Agreement.

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

### **12.3 Interpretation**

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

### **12.4 Language**

- (a) The Plaintiffs and Lufthansa 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 Lufthansa shall prepare a French translation of this Settlement Agreement (including all Schedules) as and when necessary or required

by the Courts. The Plaintiffs and Lufthansa 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.

- (b) The cost of translating this Settlement Agreement, Notices, claim forms, Opt Out Forms, or other documents referenced to or flowing from this Settlement Agreement into French and/or any other language shall, in the event such translation is required, be paid by Lufthansa.

#### **12.5 Entire Agreement**

- (a) This Settlement Agreement, including the recitals herein and the schedules attached hereto, constitutes the entire agreement among the Plaintiffs and Lufthansa, 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 Lufthansa 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.

**12.6 Binding Effect**

- (a) This Settlement Agreement shall be binding upon, and enure to the benefit of the Releasing Parties, the Released Parties and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasing Parties and every covenant and agreement made herein by Lufthansa shall be binding upon all of the Released Parties.
- (b) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect.
- (c) This Settlement Agreement constitutes a transaction in accordance with Civil Code of Québec art. 2631 *et seq.*, and the Plaintiffs and Lufthansa 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.

**12.7 Notice**

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

If to: THE PLAINTIFFS and/or CLASS COUNSEL.

Charles M. Wright  
Siskinds <sup>LLP</sup>  
680 Waterloo Street  
London, ON N6A 3V8

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

Jonathan J. Foreman  
Harrison Pensa <sup>LLP</sup>  
450 Talbot St.  
London, ON N6A 5J6

Tel.: (519) 661-6775  
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J. J. Camp, Q.C.  
Camp Fiorante Matthews  
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555 West Georgia St.  
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Tel.: (604) 331-9520  
Fax: (604) 689-7554  
Email: jjcamp@cfmlawyers.ca

Harvey T. Strosberg, Q.C.  
Sutts, Strosberg <sup>LLP</sup>  
600-251 Goyeau Street  
Windsor, ON N9A 6V1

Tel.: (519) 561-6228  
Fax: (519) 561-6203  
Email: Harvey@strosbergeco.com

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

If to: DEUTSCHE LUFTHANSA AG and LUFTHANSA CARGO AG,

David W. Ogden  
Wilmer Cutler Pickering Hale and Dorr <sup>LLP</sup>  
1875 Pennsylvania Avenue, NW  
Washington, DC, 20006

Tel.: (202) 663-6440  
Fax: (202) 663-6363  
Email: david.ogden@wilmerhale.com

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

**12.8 Survival**

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

**12.9 Acknowledgements**

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

**12.10 Authorized Signatures**

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

**12.11 Counterparts**

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

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

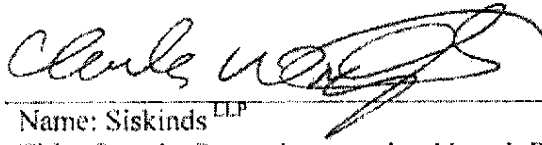
**12.12 Date of Execution**

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

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

NUTECH BRANDS INC., KAREN MCKAY and CARTISE SPORTS INC. *by their counsel,*

Per:

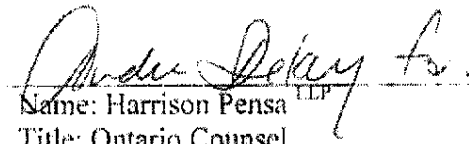


Name: Siskinds<sup>LLP</sup>  
Title: Ontario Counsel, counsel to Nutech Brands Inc.  
(Charles M. Wright)

Per:

Name: Sutts Strosberg<sup>LLP</sup>  
Title: Ontario Counsel  
(Harvey T. Strosberg, Q.C.)

Per:



Name: Harrison Pensa<sup>LLP</sup>  
Title: Ontario Counsel  
(Jonathan Foreman)

Per:



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

Per:



Name: Camp Fiorante Matthews<sup>LLP</sup>  
Title: BC Counsel, counsel to Karen McKay  
(J. J. Camp, Q.C.)



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

**12.12 Date of Execution**

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

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

NUTECH BRANDS INC., KAREN MCKAY and CHARLISE SPORTS INC. by their counsel,

Per:

Name: Siskind, C.P.  
Title: Ontario Counsel, counsel to Nutech Brands Inc.  
(Charles M. Wright)

Per:

Name: Suits Strosberg  
Title: Ontario Counsel  
(Harvey L. Strosberg, Q.C.)

Per:

Name: Barber, Pensa  
Title: Ontario Counsel  
(Jonathan Foreman)

Per:

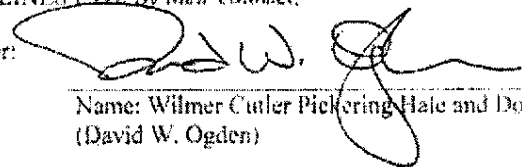
Name: Liebman & Associates  
Title: Quebec Counsel, counsel to Charise Sports Inc.  
(Ivwin Liebman)

Per:

Name: Comp Forensic Mathews  
Title: BC Counsel, counsel to Karen McKay  
(J. J. Comp, Q.C.)

DEUTSCHE LUFTHANSA AG, LUFTHANSA CARGO AG and SWISS  
INTERNATIONAL AIR LINES LTD. *By their counsel.*

Per:



12/31/06

Name: Wilmer Cutler Pickering Hale and Dorr <sup>LLP</sup>  
(David W. Ogden)

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**Lufthansa Settlement Approval  
(Returnable January 28, 29, 2009)**

**Siskinds** <sup>LLP</sup>  
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Charles M. Wright LSUC # 36599Q  
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**Sutts, Strosberg** <sup>LLP</sup>  
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Harvey T. Strosberg, Q.C. LSUC#126400  
Heather Rumble Peterson LSUC#24671V  
Tel: (519) 258-9333  
Fax: (519) 561-6203

Lawyers for the Plaintiffs

**Harrison Pensa** <sup>LLP</sup>  
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Jonathan Foreman LSUC #45087H  
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