

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

**Between:**

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

**and**

**QANTAS AIRWAYS LIMITED**

**Executed May 6, 2011**

**CANADIAN AIR CARGO SHIPPING SERVICES CLASS ACTION  
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This Settlement Agreement is made and entered into as of this [ ] day of May 2011 (the “Execution Date”), by and between Qantas and the Plaintiffs, who are acting as class representatives on behalf of themselves and all other Settlement Class Members of the Settlement Classes set forth herein.

**RECITALS**

A. **WHEREAS** the Plaintiffs undertake to add Qantas as a Defendant to each of the Actions. Where a motion is required to add Qantas as a Defendant, such motion will be brought returnable no later than the date of the motion for approval of the Notice of Certification and Approval Hearings;

B. **AND WHEREAS** Actions have been commenced in the Ontario Court, Québec Court and BC Court alleging, *inter alia*, that the Defendants and their alleged unnamed co-conspirators participated in an unlawful conspiracy to fix, raise, maintain or stabilize the prices of Airfreight Shipping Services in violation of Part VI of the *Competition Act* and the common law;

C. **AND WHEREAS**, for the purposes of facilitating court approval of the Settlement Agreement, Qantas does not oppose being added as a Defendant in each of the Actions and agrees to accept service of the statement of claim in respect of each of the Actions through service on its Canadian counsel identified herein. In the event that the Settlement Agreement does not become effective or is terminated in accordance with its terms, Qantas expressly reserves its rights to assert any defence or challenges it might have in respect of the Actions;

D. **AND WHEREAS** Qantas does not admit any allegation of unlawful conduct alleged or to be alleged in the Actions, or at all;

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

F. **AND WHEREAS** the Plaintiffs and Qantas agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against Qantas or any of its alleged co-conspirators or evidence of the truth of any of the Plaintiffs' allegations;

G. **AND WHEREAS**, despite its belief that it is not liable in respect of the claims as alleged in the Actions and that it has good defences thereto, Qantas is entering into this Settlement Agreement to avoid the further expense, inconvenience, and burden of these Actions and any other present or future litigation arising out of the facts and circumstances alleged in the Actions and otherwise in respect of all Released Claims and to achieve full and 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 Settlement Classes, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy;

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

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

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

K. **AND WHEREAS** the Plaintiffs and Qantas 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 on behalf of all the Settlement Classes and the Plaintiffs, and without any admission of liability by Qantas, fully and finally resolve all of the Actions as against Qantas;

L. **AND WHEREAS** the deadline for Settlement Class Members to opt-out of the Actions has passed and, pursuant to the order of the Ontario Court dated March 6, 2008, the order of the BC Court dated March 20, 2008 and the order of the Quebec Court dated April 14, 2008, no further opportunity to opt-out of the Actions will be provided;

M. **NOW THEREFORE**, in consideration of the covenants, promises, mutual promises, agreements and releases set forth herein, the receipt and sufficiency of which are hereby acknowledged, and for other good and valuable consideration, **IT IS HEREBY AGREED** by

and among the Plaintiffs and Qantas that the Actions shall be settled and dismissed with prejudice as to Qantas only, without costs as to the Plaintiffs, the Settlement Class or Qantas, subject to the approval of the Courts and on the terms and conditions of this Settlement Agreement, as follows:

## SECTION 1 DEFINITIONS

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

- (a) *Actions* means the Ontario Action, the Québec Action and the BC Action.
- (b) *Airfreight Shipping Services* means airfreight 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 brought by Class Counsel to seek 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.
- (g) *BC Court* means the Supreme Court of British Columbia.
- (h) *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 Qantas. Excluded from the BC Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors; and Persons who validly and timely opted-out of the BC Action in accordance with the order of the BC Court dated March 20, 2008.

- (i) **Claims** means any and all actions, suits, claims, rights, demands, assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries, legal and attorneys' fees, costs, expenses, penalties, debts, liabilities, judgments, or remedies, whether equitable or legal, and whether class, individual, or otherwise.
- (j) **Claims Administrator** means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Fund in accordance with the provisions of this Settlement Agreement, and any employees of such firm.
- (k) **Class Counsel** means Ontario Counsel, Québec Counsel and BC Counsel.
- (l) **Courts** means the Ontario Court, the Québec Court and the BC Court.
- (m) **Defendants** means all defendants named in the Actions, and any named or unnamed co-conspirators who may, subject to the terms of this Settlement Agreement and except for Released Parties, be added as defendants in the Actions in the future. For greater certainty, Defendants includes Qantas.
- (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, electronically stored information, 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 (i) the date upon which the ability to appeal from each Approval Order, if an appeal lies therefrom, 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 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.
- (q) **Escrow Agent** means the person or entity designated by Class Counsel with the approval of counsel for Qantas to receive and invest the Settlement Fund in accordance with the provisions of this Settlement Agreement.
- (r) **Final**, when used in relation to a court order or judgment, means all rights of appeal from such order or judgment have expired or have been exhausted and the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order or judgment.
- (s) **Non-Settling Defendants** means Air Canada, AC Cargo Limited Partnership, Société Air France, Koninklijke Luchtvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines, Asiana Airlines Inc., British Airways PLC, Cathay Pacific Airways Ltd., 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 Martinair Holland N.V. and any other alleged co-conspirator whether named or unnamed in the Actions, but specifically excluding Qantas and the Released Parties.

- (t) *Notice of Certification and Approval Hearings* means the form of notice, agreed to by the Plaintiffs and Qantas, or such other form as may be approved by the Courts, which informs the Settlement Class of: (i) the motion for certification of the Actions as against Qantas solely for the purposes of effecting this settlement, and for approval of the Settlement Agreement; (ii) the dates and locations of the Approval Hearings; and (iii) the core elements of the Settlement Agreement.
- (u) *Notice of Certification and Settlement Approval* means the form of notice, agreed to by the Plaintiffs and Qantas or such other form as may be approved by the Courts, which informs the Settlement Class of the certification of the Actions as against Qantas for the purposes of settlement and of the approval of the Settlement Agreement.
- (v) *Notice of Claims Procedure* means the form of notice, agreed to by the Plaintiffs and Qantas or such other form as may be approved by the Courts, which informs the Settlement Class of the process by which Settlement Class Members may apply to obtain compensation from the Settlement Fund.
- (w) *Notices* means the Notice of Certification and Approval Hearings, the Notice of Claims Procedure, the Notice of Certification and Settlement Approval, and any notice of termination of the Settlement Agreement.

- (x) **Ontario Action** means the proceeding commenced by Airia Brands Inc., StarTech.com Ltd., and QCS-Quick Cargo Service GmbH in the Ontario Court, under Court File No. 50389 CP, on July 6, 2006.
- (y) **Ontario Counsel** means Siskinds<sup>LLP</sup>, Sutts, Strosberg<sup>LLP</sup> and Harrison Pensa<sup>LLP</sup>.
- (z) **Ontario Court** means the Ontario Superior Court of Justice.
- (aa) **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 Qantas. Excluded from the Ontario Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors; Persons who validly and timely opted-out of the Ontario Action in accordance with the order of the Ontario Court dated March 6, 2008; and Persons currently resident in Australia who paid identified amounts totalling more than AUD\$20,000 for the carriage of goods to or from Australia, including in each instance a component by air during the period January 1, 2000 to January 11, 2007.
- (bb) **Other Action** means any Claim within the scope of the Released Claims other than the Actions.
- (cc) **Party** and **Parties** means the Plaintiffs, Settlement Class Members, and Qantas.
- (dd) **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.

- (ee) **Plaintiffs** means Airia Brands Inc., StarTech.com Ltd., QCS-Quick Cargo Service GmbH, Cartise Sports Inc. and Karen McKay, individually and collectively.
- (ff) **Purchase Period** means from January 1, 2000 up to and including September 11, 2006.
- (gg) **Qantas** means Qantas Airways Limited and its subsidiaries, predecessors, successors, affiliates, officers, directors, employees, and agents.
- (hh) **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.
- (ii) **Québec Counsel** means Liebman & Associés.
- (jj) **Québec Court** means the Québec Superior Court.
- (kk) **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 Qantas. Excluded from the Québec Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors; and

Persons who validly and timely opted-out of the Québec Action in accordance with the order of the Québec Court dated April 14, 2008.

(ll) **Released Claims** means any Claims that the Releasing Parties, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing, distributing of or compensation for, Airfreight Shipping Services, specifically including, without limitation, any Claims in any way related to air cargo rates or prices, fuel surcharges, security surcharges, custom surcharges or fees, war risk surcharges, navigation surcharges, commissions, incentives, rebates, discounts, credits and yields or relating to any conduct alleged (or which could have been alleged) in the Actions including, without limitation, any Claims, whether in Canada or elsewhere, resulting from or relating to the purchase of Airfreight Shipping Services. However, nothing herein shall release any Claims for negligence, breach of contract, bailment, failure to deliver, lost goods, delayed or damaged goods or comparable claim between any of the Releasing Parties and Released Parties relating to Airfreight Shipping Services.

(mm) **Released Parties** means, jointly and severally, individually and collectively, Qantas and all of its 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, representatives, attorneys, servants, employees, and assignees. Notwithstanding the foregoing, "Released Parties" does not include any other Defendant or Peter Frampton.

As used in this definition, “affiliates” means entities controlling, controlled by, or under common control with any of the Released Parties.

- (nn) ***Releasing Parties*** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any person or entity claiming by or through them as an heir, administrator, devisee, predecessor, successor, executor, parent, subsidiary, representative of any kind, shareholder, partner, director, owner of any kind, affiliate, division, department, assignee, agent, employee, contractor, attorney, or insurer, and Class Counsel, on behalf of themselves and any person or entity claiming by or through them as an heir, administrator, devisee, predecessor, successor, executor, parent, subsidiary, representative of any kind, shareholder, partner, director, owner of any kind, affiliate, division, department, assignee, agent, employee, contractor, attorney, or insurer. As used in this definition, “affiliates” means entities controlling, controlled by, or under common control with any of the Releasing Parties.
- (oo) ***Settlement Agreement*** means this agreement, including the recitals.
- (pp) ***Settlement Amount*** means the sum of two hundred, thirty-seven thousand Canadian dollars (Cdn \$237,000).
- (qq) ***Settlement Class*** and ***Settlement Class Members*** means all Persons included in the Ontario Settlement Class, the Québec Settlement Class and the BC Settlement Class.
- (rr) ***Settlement Fund*** means the escrow account established pursuant to Sections 2.1 and 2.2 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.

- (ss) *U.S. Litigation* means the class action proceeding currently 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 (JG)(VVP)(E.D.N.Y.), and including all actions filed in or transferred to the Eastern District of New York for consolidation and/or coordination with the above-captioned multidistrict litigation by the Judicial Panel for Multidistrict Litigation and all related United States actions that may be transferred in the future.

## **SECTION 2 SETTLEMENT BENEFITS**

### **2.1 The Settlement Fund**

- (a) The Settlement Fund shall be established as an escrow account at a bank designated by Class Counsel and administered by 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 Qantas, and authorization may only be withheld if the payment from the Settlement Fund would be inconsistent with this Settlement Agreement, or is proposed to be made without orders from one or more of the BC Court, Ontario Court, or Québec Court, as required by this Settlement Agreement. Class

Counsel and counsel for Qantas 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 Qantas acknowledge that the Settlement Class includes both shippers and freight forwarders, and both customers and non-customers of Qantas, and that the Settlement Agreement makes no determination as to which Settlement Class Members may be entitled to distribution from the Settlement Fund, or as to the formula for determining the amounts to be distributed. As soon as practicable, the Plaintiffs shall prepare and submit a proposed Distribution Protocol to the Courts for their approval. After the Effective Date, the Settlement Fund shall be distributed in accordance with the Distribution Protocol as approved by the Courts.

## **2.2 Payment of the Settlement Benefits**

- (a) Qantas agrees to pay the Settlement Amount in full satisfaction of all of the Claims within the scope of the Released Claims against the Released Parties.



- (b) Qantas shall have no obligation to pay any amount in addition to the Settlement Amount for any reason, pursuant to or in furtherance of this Settlement Agreement or in respect of any of the Released Claims.
- (c) Qantas, 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 later of (i) Class Counsel has provided Qantas with the information necessary to complete the wire transfer; and (ii) the Execution Date of this Settlement Agreement.
- (d) Qantas shall not have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution and administration, except as expressly otherwise provided in this Settlement Agreement.
- (e) If the Settlement Fund must be returned to Qantas pursuant to Section 9.2 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 Qantas less any deductions expressly permitted by this Settlement Agreement, and shall pay to Qantas the interest accrued on the Settlement Amount, all in Canadian currency.

### **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 Qantas.
- (b) Except as provided for in Section 9.2, the Escrow Agent and/or the Claims Administrator, as the case may be, 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 9.2, Qantas 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) Beginning within ten (10) calendar days, and to be completed within ninety (90) calendar days after the Execution Date of this Settlement Agreement, Qantas shall, at its own expense and upon reasonable notice, provide Class Counsel with the following documentary production, to the extent it: (1) exists, (2) is in the power, possession, or control of Qantas, and (3) is reasonably accessible:
  - (i) copies of all Documents created or obtained for ordinary business purposes that were produced to the Canadian Competition Bureau, the United States Department of Justice, the European Commission, the Australian Competition and Consumer Commission, the New Zealand Commerce Commission, the Japan Fair Trade Commission, or the Korea Fair Trade Commission in connection with their investigations of the air cargo industry;
  - (ii) translations in English of foreign language documents that have been produced in the U.S. Litigation;

- (iii) any electronic transactional data related to Qantas' surcharges for Airfreight Shipping Services during the Purchase Period; and
- (iv) to the extent not included in the above categories, any Documents, including any electronic transactional, cost or other data, provided by Qantas to the plaintiffs in the U.S. Litigation.

The obligation to produce Documents pursuant to this Section shall be a continuing obligation to the extent that additional Documents are identified following the initial productions.

- (b) Any questions that Class Counsel might have in relation to the documentary production and data described in Section 2.4(a) shall be addressed in accordance with the following protocol:
  - (i) Class Counsel shall provide written questions pertaining to the documentary production to counsel for Qantas;
  - (ii) Counsel for Qantas shall make reasonable inquiries to Qantas and provide written answers to Class Counsel within 30 days of receiving the written questions; and
  - (iii) The inability of Qantas to fully answer Class Counsel's questions shall not constitute a breach or violation of Qantas' obligations under this Settlement Agreement.
- (c) In addition, at the request of Class Counsel, Qantas shall, at its own expense and upon reasonable notice, provide Class Counsel with the name of one representative of Qantas with particular knowledge or information concerning the alleged anti-competitive conduct in respect of the matters to which the Actions relate (the "Qantas

Representative”) who will cooperate with Class Counsel, in accordance with the following protocol:

- (i) The Qantas Representative will make himself available for one meeting with Class Counsel at the offices of BC Counsel in British Columbia or at the offices of Qantas’ counsel in Toronto to answer questions concerning documents, witnesses, meetings, communications, and events not covered by privilege or other protections available under any applicable Canadian law;
- (ii) If requested by Class Counsel, with reasonable prior notice, the Qantas Representative will provide a declaration or affidavit concerning his/her personal knowledge and information that he/she has obtained from Qantas after making reasonable inquiries concerning alleged anti-competitive behaviour affecting Airfreight Shipping Services during the Purchase Period;
- (iii) If requested by Class Counsel, with reasonable prior notice, the Qantas Representative will attend at trial, or provide an affidavit or declaration, to establish for admission into evidence any of Qantas' Documents produced or to be produced in the Actions, evidence of Qantas' sales of Airfreight Shipping Services during the Purchase Period, including surcharges related thereto, any other Documents of Qantas, and, to the extent possible, any Documents produced by any of Qantas' alleged co-conspirators; and
- (iv) If, having made reasonable inquiries, the Qantas Representative is unable to produce specific documents, answer specific questions or testify to specific facts, this shall not constitute a breach of Qantas' obligations under this Settlement

Agreement and will not provide any basis for the termination of this Settlement Agreement.

- (d) Qantas' 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, Qantas' 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) Notwithstanding any other provision in this Settlement Agreement, Qantas may assert where applicable any legal privilege with respect to any Documents, statements, testimony, material, and/or information, including without limitation, solicitor-client privilege and litigation privilege. Qantas will not be required to produce any attorney work product or other information or material subject to litigation privilege, solicitor-client privilege, or other form of legal privilege. If any Documents protected by legal privilege are accidentally or inadvertently produced, these Documents shall be promptly returned to Qantas, and their production shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents. However, 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 Qantas requested be returned on the basis of legal privilege.
- (f) All Documents provided by Qantas to the Plaintiffs, 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, and the Plaintiffs and Class Counsel shall be bound by the terms and provisions of Rule 30.1 of the Ontario *Rules of Civil Procedure* in respect of all Documents provided by Qantas to the Plaintiffs and/or Class Counsel. No Documents provided by Qantas to Plaintiffs 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 or Qantas in the course of the Actions), including to any Defendants, and counsel for such Defendants, except with the prior consent of Qantas, as required under Canadian law, or, provided Qantas receives thirty (30) days notice prior to disclosure, as reasonably necessary to further litigate the Actions.

- (g) Documents identified as “highly confidential” in accordance with the protective order issued in the U.S. Litigation cannot be disclosed to Settlement Class Members, except with the advance written consent of Qantas.
- (h) Notwithstanding any requirements to disclose confidential information, Qantas, the Plaintiffs, Settlement Class Members and Class Counsel shall make all reasonable efforts permitted by law to protect the confidentiality of Qantas' confidential or proprietary information.
- (i) The confidentiality requirements in this Section will continue to bind the 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 shared by Class Counsel with experts under this Settlement Agreement.

- (j) Nothing in this Settlement Agreement shall be construed to require Qantas 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 Qantas withholds information, including Documents and testimony, on the basis of any federal, state, provincial or local privacy law, of any jurisdiction, Qantas 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 10.
- (k) The provisions set forth in Section 2.4 of this Settlement Agreement shall constitute the exclusive means by which the Plaintiffs, Settlement Class Members and Class Counsel may obtain discovery from Qantas or its officers, directors, or employees, and Plaintiffs, Settlement Class Members and Class Counsel shall pursue no other means of discovery against Qantas 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 the payment of the Settlement Amount, and for other valuable consideration as set forth in the Settlement Agreement, including Qantas' commitment to comply 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, acquit, and forever discharge the Released Parties of and from any and all Claims arising from or in any way related to the Released Claims. It shall be a

condition of receipt of funds under this Settlement Agreement that each Settlement Class Member receiving funds execute a further 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. Prior to and as a condition precedent to the distribution of the claim form to Settlement Class Members, Class Counsel shall obtain written approval by counsel for Qantas as to the form and content of the release, which approval cannot be unreasonably withheld.

### **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 nor 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 of the Released Parties or any other person who may claim contribution or indemnity from any of the Released Parties 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 Qantas**

- (a) Except as provided herein, the Actions shall be dismissed, without costs and with prejudice, as against Qantas, and such dismissal shall be an express term of the Approval Orders.

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

- (a) Upon the Effective Date each Settlement Class Member shall be deemed to consent to the dismissal, without costs and with prejudice, of all of the Settlement Class Members' Other Actions against the Released Parties.
- (b) Upon the Effective Date, all Other Actions in each of the Courts' respective jurisdictions commenced by Settlement Class Members shall be dismissed against the Released Parties, without costs and with prejudice, and such dismissal shall be an express term of the Approval Orders.

**3.6 Claims Against Other Entities Reserved**

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

## **SECTION 4 BAR ORDER**

### **4.1 Ontario and British Columbia Bar Order**

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

(i) all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Actions or otherwise, by any Non-Settling Defendant or any other Person or party, against a Released Party, or by a Released Party against a Non-Settling Defendant are barred, prohibited and enjoined in accordance with the terms of this Section;

(ii) a Non-Settling Defendant may, upon motion on at least thirty (30) days notice to counsel for Qantas, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal from such certification orders have been exhausted, seek an order from one or more of the Ontario and BC Courts for any the following:

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

Qantas retains all rights to oppose such motion(s) and shall not by the terms hereof, be deemed to have agreed or acknowledged that any Non-Settling Defendant is entitled to any such relief;

(iii) To the extent that an order is granted pursuant to Section 4.1(a)(ii) and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall timely be provided by Qantas to the Plaintiffs and Class Counsel; and

(iv) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 4.1(a)(ii) on Qantas by service on counsel of record for Qantas in the Actions.

(b) If the Courts ultimately determine there is a right of contribution and indemnity between any or all of the Defendants, the Plaintiffs in the Ontario Action and the BC Action, and Ontario Settlement Class Members and BC Settlement Class Members shall restrict their joint and several Claims against the Non-Settling Defendants such that the Plaintiffs in the Ontario Action and the BC Action, and Ontario Settlement Class Members and BC 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 and allocable to their proportionate share of liability, and exclusive of any proportion of liability allocated to Qantas or any other Released Party.

#### **4.2 Québec Bar Order**

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

- (i) the Plaintiff in the Québec Action and the Québec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of Qantas;
- (ii) the Plaintiff in the Québec Action and the Québec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and/or sales by the Non-Settling Defendants;
- (iii) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Released Parties or relating to the Released Claims shall be inadmissible and void in the context of the Québec Action;
- (iv) that any future right by the Non-Settling Defendants to examine on discovery a representative of Qantas will be determined according to the provisions of the *Code of Civil Procedure*, and Qantas shall reserve its right to oppose such an examination under the *Code of Civil Procedure*; and
- (v) such other relief as necessary to ensure the effectiveness of the purpose and intent of the Bar Order under the laws of Québec.

#### **4.3 Material Term**

- (a) The form and content of the bar orders contemplated in this Section 4 shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the bar orders contemplated herein shall give rise to a right of termination pursuant to Section 9 of this Settlement Agreement.

## **SECTION 5 SETTLEMENT APPROVAL**

### **5.1 Best Efforts**

- (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 Qantas.

### **5.2 Motions for Notice Approval, and for Certification and Settlement Approval**

- (a) Promptly after the Execution Date of this Settlement Agreement, the Plaintiffs and Qantas shall use their best efforts to obtain orders from the Courts:
- (i) approving the form and content of the Notice of Certification and Approval Hearings and the method of dissemination of the Notice of Certification and Approval Hearings; and
  - (ii) certifying or authorizing the Actions as class proceedings against Qantas solely for the purpose of settling the Actions and approving this Settlement Agreement.

Such orders will be sought subject to the sequence of motions in Section 5.4.

- (b) 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.
- (c) If this Settlement Agreement is approved by the Courts, the Plaintiffs and Qantas shall jointly seek entry of orders that, *inter alia*:
- (i) approve this Settlement Agreement and its terms as being fair, reasonable, and in the best interests of the Settlement Class Members and directing its consummation according to its terms; and

(ii) 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 Qantas. Such dismissal shall not affect, in any way, the Plaintiffs' right to pursue claims, if any, outside the scope of the Released Claims or the Releases in Section 3 of this Settlement Agreement.

(d) Subject to the approval of the Courts, the Plaintiffs and Qantas shall agree on the form and text of the orders to be sought. Should the Plaintiffs and Qantas fail to agree on the form or text of the orders to be sought such dispute will be resolved pursuant to Section 10 of this Settlement Agreement.

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

(a) Until the motions required by Section 5.2 (a) are filed with the Courts, this Settlement Agreement and all of its terms shall be kept confidential and shall not be disclosed by either the Plaintiffs or Qantas, without the prior written consent of counsel for Qantas 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.

(b) In the event such disclosure is compelled by a court or administrative agency or otherwise required by law prior to the filing of the motions outlined in Section 5.2(a), the disclosing party shall provide the other party with notice, shall attempt to limit such disclosure under a confidentiality order or other suitable order or procedure intended to prevent public disclosure of the existence and terms of this Settlement Agreement, and shall cooperate with Qantas' efforts to prevent such public disclosure.

- (c) Not less than three business days prior to any proposed publication of any proposed press release or any other communications to any form of media, with respect to this Settlement Agreement or the approval thereof, Class Counsel shall provide a draft to the US and Canadian counsel for Qantas for their approval, which shall not be unreasonably withheld.
- (d) Each Party represents that it has not publicly disclosed information relating to the existence or terms of this Settlement Agreement prior to Execution Date.

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

- (a) The Plaintiffs in the Québec Action and the BC Action shall not proceed with the motions outlined in Section 5.2(a) unless and until the Ontario Court has rendered its decisions on the motions brought before it. The motions may be filed in Québec and British Columbia, but Québec Counsel and BC Counsel agree to seek an adjournment of the hearings on such terms as may be required to permit the Ontario Court to first render its decision on motions brought before it.

#### **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 Qantas 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 9.
- (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 Certification and Settlement Approval; (iii) Notice of Claims Procedure; or (iv) notice of termination of this Settlement Agreement if it is terminated after notice is provided in accordance with 6.1(a)(i), above, or as otherwise ordered by the Courts. All notices shall be in a form agreed upon by the Plaintiffs and Qantas 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 Qantas or in such form or manner as approved by the Courts.
- (b) With the object of reducing the costs of notice, Class Counsel shall use their reasonable best efforts to coordinate the provision of Notice pertaining to this Settlement Agreement with the provision of notice for any other settlements that have been or may be reached in the Actions and/or the U.S. Litigation. The costs of provision of notice shall be allocated proportionally among all such settlements. Qantas and the Released Parties shall not be separately liable or responsible for any such costs.



**SECTION 7 CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

- (a) Class Counsel shall seek the Courts' approval of their fee applications, including fees, disbursements, and taxes. This motion can be brought concurrently with the motion for settlement approval, however, Class Counsel must undertake to the Courts not to seek payment of any approved fees, disbursements and/or taxes until after the Effective Date of this Settlement Agreement.
- (b) The Escrow Agent and/or Claims Administrator, as the case may be, shall pay the costs of the provision and distribution of Notices to the Settlement Class Members referred to in Section 6 of this Settlement Agreement out of the Settlement Fund. Notwithstanding Sections 2.1(a) and 7(c), any such costs can be paid by the Escrow Agent or Claims Administrator as they are incurred.
- (c) Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for fees, disbursements, and taxes after the Effective Date, including fees and expenses arising from past, current or future litigation, and solely as approved by the Courts. 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.
- (d) With the object of reducing the costs of claims administration, Class Counsel shall use their reasonable best efforts to coordinate the claims administration process pertaining to this Settlement Agreement with the claims administration process pertaining to any other settlements that have been or may be reached in the Actions and/or the U.S. Litigation. The costs of the claims administration process shall be allocated proportionally among settlements.

- (e) Qantas and the Released Parties shall not be liable for any fees, disbursements, costs, expenses, or taxes of any of the Class Counsel, the Plaintiffs or Settlement Class Members, or their respective lawyers, experts, advisors, agents, or representatives, whether such fees, disbursements, costs, and expenses are approved or not by any of the Courts.

## **SECTION 8 IMPLICATIONS OF SETTLEMENT**

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

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

### **8.2 Agreement Not Evidence**

- (a) The Plaintiffs and Qantas agree that, whether or not this Settlement Agreement is finally approved, the existence of a 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, are

highly confidential and 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.

### **8.3 No Further Litigation**

- (a) Except as otherwise provided in this Settlement Agreement, no Class Counsel, Plaintiff, Settlement Class Member nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel or any Plaintiff or Settlement Class Member may directly or indirectly participate or be involved in or in any way assist with respect to any Claim made or action commenced by any Person which relates to or arises from the Released Claims against any of the Released Parties. Moreover, no Class Counsel, Plaintiff, Settlement Class Member nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel or any Plaintiff or Settlement Class Member may divulge to anyone for any purpose any information, including, without limitation, Documents obtained in the course of the Actions or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court.
- (b) Section 8.3(a) does not apply to the involvement of any Person in the continued prosecution of the Actions against any Non-Settling Defendants, including any unnamed co-conspirators that may be added as defendants to the Actions in the future.

## **SECTION 9 TERMINATION OF SETTLEMENT AGREEMENT**

### **9.1 Right of Termination**

- (a) If one or more of the following events occur, the Plaintiffs and Qantas shall each, in their respective sole discretion, have the option to terminate this Settlement Agreement in its entirety:
- (i) any Court declines to approve this Settlement Agreement or any material part hereof;
  - (ii) any Court approves this Settlement Agreement in a materially modified form; or
  - (iii) any Approval Order is materially modified or set aside on appeal.
- (b) 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 9.1(a) above, the Plaintiffs or Qantas wish to terminate the Settlement Agreement, notice of such decision to terminate the Settlement Agreement must be provided in writing to the Plaintiffs or Qantas, as applicable, within sixty (60) days of an event under Section 9.1(a) having occurred.
- (d) In the event this Settlement Agreement is not approved and is terminated in accordance with its terms, the Plaintiffs and Qantas 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.

- (e) If any non-material provision of this Settlement Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, the remainder of this Settlement Agreement will not be affected, and, in lieu of each provision that is found illegal, invalid or unenforceable, a provision will be added as a part of this Settlement Agreement that is as similar to the illegal, invalid or unenforceable provision as may be legal, valid and enforceable.

## **9.2 Effect of Termination Generally**

- (a) Except as provided in Section 9.3(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 Qantas to bring motions, to the extent necessary, before each of the Courts for orders:

- (A) declaring this Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in Section 9.3(a));
  - (B) setting aside any order certifying or authorizing these Actions as a class proceeding on the basis of this Settlement Agreement; and
  - (C) directing that the balance in the Settlement Fund less any deductions provided for in this Settlement Agreement be paid to Qantas, including interest; and
- (iv) The Escrow Agent and/or Claims Administrator, as the case may be, shall thereupon pay to Qantas the balance in the Settlement Fund, including interest, less reasonable administrative costs charged by the financial institution holding the Settlement Fund and the costs of notice expended in accordance with Section 7(b). Despite Section 2.3, if the Settlement Agreement is terminated, to the extent the balance in the Settlement Fund is paid to Qantas, it shall be responsible for the payment of any taxes that may be owed by it with respect to the income earned on the balance of the Settlement Fund.
- (c) In the event that the Settlement Agreement is terminated or otherwise fails to take effect for any reason, the Plaintiffs shall return to Qantas all Documents and all copies of such Documents, provided by Qantas under this Settlement Agreement or otherwise. In the event any Documents are incapable of being physically returned to Qantas, Plaintiffs shall destroy all such Documents and provide Qantas with a written certification by Class Counsel of such destruction. The requirements of this Section shall also apply to all Documents shared by Class Counsel with experts under Section 2.4.

### **9.3 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(e), 2.3(b)(c), 2.4(f)-(i), 5.5, 6.1, 6.2, 7(b), 8.1, 8.2, 9.1(d),

9.2, and 9.3 and the definitions in Section 1 applicable thereto shall survive the termination and continue in full force and effect.

## **SECTION 10 DETERMINATION OF DISPUTES**

- (a) Qantas 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) Qantas and the Plaintiffs shall bear their own costs of such reference, unless the referee in his or her discretion finds it reasonable to assess such costs solely to Qantas or the Plaintiffs. The fees and disbursements of the referee, as fixed by the Ontario Court, shall be the responsibility of the party whose view the referee did not accept.
- (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.

## **SECTION 11 - MISCELLANEOUS**

### **11.1 Governing Law**

- (a) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario, without regard to its choice of law or conflict of laws principles.

## **11.2 Ongoing Jurisdiction**

- (a) Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction, the parties thereto and the application brought in those Actions for fee approval pursuant to Section 7.
- (b) The Plaintiffs and Qantas 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 Qantas 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 Qantas.



### 11.3 Interpretation

- (a) The division of this Settlement Agreement into Sections and the insertion of headings are for convenience of reference only and shall in no way define, extend, or describe the scope of this Settlement Agreement or the intent of any provision thereof.
- (b) The terms "Settlement Agreement," "hereof," "hereunder," "herein," and similar expressions refer to this Settlement Agreement and not to any particular Section or other portion of this Settlement Agreement.
- (c) This Settlement Agreement shall be construed and interpreted to effectuate the intent of the Parties which is to provide, through this Settlement Agreement, for a complete resolution of the Released Claims with respect to the Released Parties.
- (d) Nothing expressed or implied in this Settlement Agreement is intended to or shall be construed to confer upon or give any person or entity other than Settlement Class Members, Releasing Parties, and Released Parties any right or remedy under or by reason of this Settlement Agreement.
- (e) 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; 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.

#### **11.4 Language**

- (a) The Plaintiffs and Qantas 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 shall prepare a French translation of this Settlement Agreement as and when necessary or required by the Courts. The Plaintiffs and Qantas agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

#### **11.5 Entire Agreement**

- (a) This Settlement Agreement, including the recitals herein, constitutes the entire agreement among the Plaintiffs and Qantas, 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 Qantas further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.
- (c) The recitals to this Settlement Agreement are material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

- (d) Neither this Settlement Agreement, nor any negotiations or proceedings connected with it, shall be deemed or construed to be an admission by any party to this Settlement Agreement or any Released Parties or evidence of any fact or matter in this Action or in any related actions or proceedings, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, except in a proceeding to interpret or enforce this Settlement Agreement.

#### **11.6 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 Qantas 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 Qantas are hereby renouncing any errors of fact, of law, and/or of calculation.

- (d) This Settlement Agreement may not be modified or amended except in writing and on consent of all parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

#### 11.7 Notice

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

If to: THE PLAINTIFFS and/or CLASS COUNSEL,

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Tel: 202.663.7822  
Fax: 202.663.7849  
Email: tmiller@bakerandmiller.com

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

#### **11.8 Survival**

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

### **11.9 Acknowledgements**

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

### **11.10 Authorized Signatures**

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

### **11.11 Counterparts**

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


**11.12 Date of Execution**

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

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

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

Per:

  
\_\_\_\_\_  
Name: Siskinds<sup>LLP</sup>  
Title: Ontario Counsel, counsel to Airia Brands Inc., Startech.com Ltd., and QCS-Quick Cargo Service Gmbh  
(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:


  
\_\_\_\_\_  
*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.)

QANTAS AIRWAYS LIMITED *by its counsel,*

Per:

  
\_\_\_\_\_  
Name: Paliare Roland Rosenberg Rothstein<sup>LLP</sup>  
(Chris Paliare)

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Name: Siskinds<sup>LLP</sup>  
Title: Ontario Counsel, counsel to Airia Brands Inc., Startech.com Ltd., and QCS-Quick Cargo Service Gmbh  
(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.)

QANTAS AIRWAYS LIMITED *by its counsel,*

Per:

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

Per:

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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:

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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.)

QANTAS AIRWAYS LIMITED *by its counsel,*

Per:

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Name: Paliare Roland Rosenberg Rothstein<sup>LLP</sup>  
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Title: Ontario Counsel, counsel to Airia Brands Inc., Startech.com Ltd., and QCS-Quick Cargo Service Gmbh  
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Per:

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

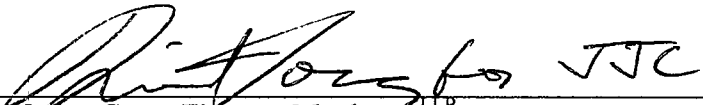
Per:

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Title: Ontario Counsel  
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Per:

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Per:

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

QANTAS AIRWAYS LIMITED *by its counsel,*

Per:

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Name: Paliare Roland Rosenberg Rothstein<sup>LLP</sup>  
(Chris Paliare)