

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

Between:

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

and

ASIANA AIRLINES INC.

Executed June 30, 2015

**CANADIAN AIR CARGO SHIPPING SERVICES CLASS ACTION
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RECITALS

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

B. **AND WHEREAS** Asiana expressly denies and does not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Actions;

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

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

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

the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy with valued business customers;

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

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

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

I. **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 Asiana according to the terms set forth below is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Class;

J. **AND WHEREAS** the Plaintiffs and Asiana 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 and Released Claims as against Asiana;

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

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

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 Asiana that the Actions be settled and dismissed with prejudice as to Asiana only, without costs as to the Plaintiffs, the Settlement Class or Asiana 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 Quebec Action and the BC Action.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the

approval, implementation and operation of this Settlement Agreement or in relation to the Settlement Fund, including the costs of notices and claims administration but excluding Class Counsel Fees.

- (c) ***Airfreight Shipping Services*** means airfreight cargo shipping services for shipments within, to, or from Canada, but specifically excluding airfreight cargo shipping services for shipments (i) with an origin point in Canada and a destination point in the United States or (ii) with an origin point in the United States and a destination point in Canada, but includes airfreight cargo shipping services in which the freight (i) travelled by truck from Canada to the United States, and then by air from the United States to a third country, or (ii) travelled by air from a third country to the United States, and then by truck from the United States to Canada.
- (d) ***Approval Hearings*** means the hearings to approve motions brought by Class Counsel for the certification (or authorization in Quebec) of the Actions as a class proceeding on the basis of this Settlement Agreement and for the Courts' approvals of the settlement provided for in this Settlement Agreement.
- (e) ***Approval Orders*** means any order of the Courts approving this Settlement Agreement.
- (f) ***Asiana*** means Asiana Airlines Inc. and all of its present and former affiliates and related companies (also referred to herein as the “***Settling Defendant***”).
- (g) ***BC Action*** means the proceeding commenced in the British Columbia Supreme Court, under Vancouver Registry No. S067490.
- (h) ***BC Counsel*** means Camp Fiorante Matthews Mogerman.

- (i) **BC Court** means the Supreme Court of British Columbia.
- (j) **BC Settlement Class** means all Persons resident in the province of British Columbia who purchased Airfreight Shipping Services during the Purchase Period, including those Persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including without limitation, the Defendants, and specifically including Asiana. 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.
- (k) **Claim** shall have the meaning attributed to it in Section 1(qq).
- (l) **Claims Administrator** means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Fund in accordance with the provisions of this Settlement Agreement, and any employees of such Person.
- (m) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel.
- (n) **Class Counsel Fees** include the fees, disbursements, costs, interest, GST or HST (as the case may be) and other applicable taxes or charges of Class Counsel.
- (o) **Counsel for Asiana** means Fasken Martineau DuMoulin LLP.
- (p) **Courts** means the Ontario Court, the Quebec Court and the BC Court.
- (q) **Defendants** means all defendants named in the Actions, including Asiana, and any named or unnamed alleged co-conspirators who may be added as defendants in the Actions in the future.

- (r) ***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.
- (s) ***Documents*** means all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions, or summaries of the foregoing, including microfilm copies and computer images.
- (t) ***Effective Date*** means (i) the date upon which the ability to appeal, if an appeal lies therefrom, from each Approval Order has expired without any appeal being taken, namely, thirty (30) days after the issuance of the Approval Order; or (ii) if any appeals have been taken from any Approval Order, the date upon which all such appeals are concluded by way of a Final (as defined in Section 1(v)) order or judgment. For the purposes of this paragraph, an "appeal" shall not include any appeal that concerns only the issue of Class Counsel Fees or the Distribution Protocol.
- (u) ***Execution Date*** means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and Asiana.
- (v) ***Final***, when used in relation to a court order or judgment, means that all rights of appeal from such order or judgment have expired or have been exhausted (including a right of appeal arising after the granting of leave if leave to appeal is required), and the ultimate court of appeal to which an appeal (if any) was taken has upheld such order or judgment.
- (w) ***Foreign Claim*** shall have the meaning attributed to it in Section 5.1(a)(i).

- (x) ***Non-Settling Defendants*** means any Defendant that is not Asiana or a Settled Defendant, provided that the Settled Defendant's own settlement has not been terminated in accordance with its terms or has otherwise failed to take effect for any reason.
- (y) ***Notice of Certification and Approval Hearings*** means the form of notice or notices, agreed to by the Plaintiffs and Asiana, or such other form as may be approved by the Courts on notice to Asiana, which informs the Settlement Class of: (i) the proposed settlement classes; (ii) the dates and locations of the Approval Hearings; and (iii) the core elements of the Settlement Agreement and the Distribution Protocol, if applicable.
- (z) ***Notice of Certification and Settlement Approval*** means the form of notice or notices, agreed to by the Plaintiffs and Asiana or such other form as may be approved by the Courts on notice to Asiana, which informs the Settlement Class of: (i) the certification (or authorization in Quebec) of the Actions; (ii) the approval of the Settlement Agreement; and (iii) the core elements of the Settlement Agreement and the Distribution Protocol, if applicable.
- (aa) ***Notice of Termination*** means the form of notice or notices, agreed to by the Plaintiff and Asiana, or such other form as may be approved by the Courts on notice to Asiana, which informs the Settlement Class of the termination of the Settlement Agreement.
- (bb) ***Notices*** means the Notice of Certification and Approval Hearings, the Notice of Certification and Settlement Approval, and the Notice of Termination.
- (cc) ***Ontario Action*** means the proceeding commenced in the Ontario Court bearing Court File No. 50389CP (London).
- (dd) ***Ontario Counsel*** means Siskinds LLP, Sutts, Strosberg LLP and Harrison Pensa LLP.

- (ee) **Ontario Court** means the Ontario Superior Court of Justice.
- (ff) **Ontario Settlement Class** means all Persons, other than members of the Quebec 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 Asiana. Excluded from the Ontario Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons who validly and timely opted-out of the Ontario Action in accordance with the order of the Ontario Court dated March 6, 2008.
- (gg) **Party and Parties** means Asiana, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (hh) **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.
- (ii) **Plaintiffs** means Airia Brands Inc., StarTech.com Ltd., QCS-Quick Cargo Service GmbH, Karen McKay and Cartise Sports Inc., individually and collectively.
- (jj) **Proportionate Liability** means the proportion of any judgment that, had Asiana not settled, a court or other arbiter would have apportioned to Asiana and/or the Released Parties, whether pursuant to *pro rata*, proportionate fault, *pro tanto*, or another method.

- (kk) **Purchase Period** means January 1, 2000 up to and including September 11, 2006.
- (ll) **Purchase Price** means the sale price paid by Settlement Class Members for Airfreight Shipping Services purchased during the Purchase Period, less any rebates, delivery or shipping charges, taxes, and any other form of discounts.
- (mm) **Quebec Action** means the proceeding commenced in the Quebec Court, under Court File No. 500-06-000344-065.
- (nn) **Quebec Counsel** means Liebman Legal Inc.
- (oo) **Quebec Court** means the Quebec Superior Court.
- (pp) **Quebec Settlement Class** means all individuals resident in the province of Quebec and all legal persons resident in Quebec established for a private interest, partnership or association in the province of Quebec which, at all times between May 5, 2005 and May 5, 2006, had under its direction or control no more than 50 persons bound to it by a contract of employment, who purchased Airfreight Shipping Services during the Purchase Period, including those individuals and legal persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including without limitation, the Defendants, and specifically including Asiana, during the Purchase Period. Excluded from the Quebec 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 Quebec Action in accordance with the order of the Quebec Court dated April 14, 2008.
- (qq) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated,

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

(rr) ***Released Parties*** means, jointly and severally, individually and collectively, Asiana, and all of its present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated and their respective past, present and future

officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.

(ss) **Releasing Parties** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, or representative of any kind.

(tt) **Settled Defendants** means Deutsche Lufthansa AG, Lufthansa Cargo AG, Swiss International Air Lines Ltd., Japan Airlines International Co., Ltd., Scandinavian Airlines System, Cargolux Airline International, Qantas Airways Limited, Singapore Airlines Ltd., Singapore Airlines Cargo PTE Ltd., Societe Air France, Koninklijke Luchtvaart Maatschappij N.V. (KLM), Royal Dutch Airlines, Martinair Holland N.V., LAN Airlines S.A., LAN Cargo S.A., Polar Air Cargo LLC, Atlas Air Worldwide Holdings Inc. and any other Defendant who has entered into a settlement agreement with the Plaintiffs relating to the allegations asserted in the Actions, whether or not such settlement agreement was in existence at the Execution Date.

(uu) **Settlement Agreement** means this agreement, including the recitals.

(vv) **Settlement Amount** means the sum of one million, five hundred thousand Canadian dollars (CAD\$1,500,000).

- (ww) ***Settlement Class and Settlement Class Members*** means all Persons included in the Ontario Settlement Class, the Quebec 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. Litigation*** means the class action proceeding pending in the United States District Court for the Eastern District of New York under the caption *In re Air Cargo Shipping Services Antitrust Litigation*, 06-MD-1775 (JG)(VVP)(E.D.N.Y.), and including all 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.
- (zz) ***U.S. Settlement*** means the settlement entered into by Asiana with the plaintiffs in the U.S. Litigation, dated October 1, 2014.

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 Class Counsel until the Courts have appointed a Claims Administrator, at which time Class Counsel will cede control to the Claims Administrator, or such other trustee as may be appointed by the Courts, who will administer the Settlement Fund. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Courts' continuing supervision and control. No monies shall be paid from the Settlement Fund without (i) the specific authorization of both Class Counsel and Counsel for Asiana, and such authorization may not be

withheld if to do so would be inconsistent with this Settlement Agreement; or (ii) orders from one or more of the Courts, as required by this Settlement Agreement, issued with notice to or with consent of the Plaintiffs and Asiana.

- (b) The escrow account shall be established and maintained in a manner that minimizes transactional costs and risks and maximizes the amount available for distribution. All transactional costs associated with maintaining the Settlement Fund shall be paid from the Settlement Fund.
- (c) Class Counsel and Claims Administrator shall cause the Settlement Fund to be invested in guaranteed investment vehicles or liquid money market accounts or equivalent securities with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46). All interest earned on the Settlement Fund shall become and remain part of the Settlement Fund.
- (d) The Plaintiffs and Asiana acknowledge that the Settlement Class includes both shippers and freight forwarders, and both customers and non-customers of Asiana, and that the Settlement Agreement makes no determination as to which Settlement Class Members are entitled to distribution of the Settlement Fund, or as to the formula for determining the amounts to be distributed. As soon as practicable, the Plaintiffs shall prepare and submit a Distribution Protocol to the Courts for approval.
- (e) After the Effective Date, the Settlement Fund shall be distributed in accordance with the Distribution Protocol.

2.2 Payment of the Settlement Benefits

- (a) Except as otherwise provided herein, Asiana agrees to pay the Settlement Amount in full satisfaction of all of the Claims within the scope of the Released Claims against the Released Parties.
- (b) Except as otherwise provided herein, Asiana shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement. For greater certainty, but without limiting the generality of the foregoing, Asiana shall have no responsibility or liability as a result of any decrease or depreciation of the value of the Settlement Fund, howsoever caused, including, but not limited to, a decrease or depreciation in the value of any investments purchased by Class Counsel or the Claims Administrator, or the payment of any Class Counsel Fees or any Administration Expenses, except as otherwise provided herein.
- (c) Asiana, directly or through its counsel or designee, shall wire transfer 100% of the Settlement Amount into the Settlement Fund within thirty (30) days after the Execution Date.
- (d) At least fifteen (15) days before the Settlement Amount is due, Class Counsel shall provide Asiana with the information necessary to complete the wire transfer.
- (e) If the Settlement Fund must be returned to Asiana pursuant to Section 11.2(b)(iv) of this Settlement Agreement, then Class Counsel and/or the Claims Administrator, as the case may be, shall be obliged to return the Settlement Fund to Asiana.

2.3 Taxes

- (a) All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. Except as provided for in Section 11.2(b)(iv), none of the income earned by the Settlement Fund, including interest earned thereon, will be reported as taxable to Asiana.
- (b) Except as provided for in Section 11.2(b)(iv), Class Counsel and/or the Claims Administrator shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned on the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund.
- (c) Except as provided for in Section 11.2(b)(iv), Asiana shall have no responsibility to make any filings relating to the Settlement Fund, will not be considered a payee of any income earned on the Settlement Fund, and will have no responsibility to pay tax on any interest or income earned by the Settlement Fund or pay taxes, if any, on the Settlement Fund.

SECTION 3 - COOPERATION

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

- (a) The Parties understand and agree as follows:
 - (i) All Documents and information provided by Asiana to Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Actions, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or

information are publicly available. Plaintiffs and Class Counsel agree they will not use or publicize the Documents and information provided by Asiana beyond what is reasonably necessary for the prosecution of the Actions or as otherwise required by law, except to the extent that the Documents or information are publicly available.

- (ii) Prior to the Effective Date, no Documents or other information provided by Asiana may be disclosed by Plaintiffs or Class Counsel to any Person (other than experts retained by the Plaintiffs in the course of the Actions, provided that such experts agree to be bound by the confidentiality obligations set out in this Section 3.1(a), and signs a copy of the Confidentiality Agreement and Undertaking attached as Schedule “A” to the confidentiality order granted by the Ontario Court dated February 14, 2014), except with the prior written consent of Asiana or as required under law.

- (iii) After the Effective Date:
 - (A) any Documents or other information provided by Asiana may be disclosed by Plaintiffs or Class Counsel to experts retained by the Plaintiffs in the course of the Actions, provided that the expert agrees to be bound by the confidentiality obligations set out in this Section 3.1(a) and signs a copy of the Confidentiality Agreement and Undertaking attached as Schedule “A” to the confidentiality order granted by the Ontario Court dated February 14, 2014;

- (B) the Documents or other information provided by Asiana pursuant to Sections 3.1(b)(i) and 3.1(c) may be disclosed by Plaintiffs or Class Counsel to any Court-appointed notice provider to the extent necessary to enable the Court-appointed notice provider to provide notice to Class Members of any subsequent settlement agreement reached in the Actions (including any related approval hearings), the process for filing a claim under this Settlement Agreement and any other settlement agreement(s) and/or court award(s) achieved in the Actions, and any other major steps in the Actions, provided that the Court-appointed notice provider agrees to be bound by the confidentiality obligations set out in this Section 3.1(a) and signs a copy of the Confidentiality Agreement and Undertaking attached as Schedule “A” to the confidentiality order granted by the Ontario Court dated February 14, 2014;
- (C) the Documents or other information provided by Asiana pursuant to Sections 3.1(b)(i) and 3.1(c) may be disclosed by Plaintiffs or Class Counsel to the Claims Administrator to the extent necessary to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement(s) and/or court award(s) achieved in the Actions, provided that the Claims Administrator agrees to be bound by the confidentiality obligations set out in this Section 3.1(a) and signs a copy of the Confidentiality Agreement and Undertaking attached as Schedule “A” to the confidentiality order granted by the Ontario Court dated February 14, 2014;

- (D) any Documents or other information provided by Asiana may be disclosed by Plaintiffs or Class Counsel with the prior written consent of Asiana or as required under law; and
 - (E) the Plaintiffs or Class Counsel shall give Asiana thirty (30) days' notice prior to the filing of any Documents or other information provided by Asiana (except to the extent that the Documents or information are publicly available) in any of the Actions, or otherwise and any such filing shall be in compliance with terms of the confidentiality order granted by the Ontario Court dated February 14, 2014, and any other confidentiality orders that have been obtained pursuant to subsection (iv) below. Asiana may, but is not obliged to, participate in any hearing or other proceeding that may ensue to ensure satisfactory confidentiality protections are in place, however, this shall not relieve Plaintiffs or Class Counsel of their obligations to protect confidentiality as contemplated hereby.
- (iv) The Plaintiffs and Class Counsel shall make all reasonable efforts permitted by law to protect the confidentiality of Asiana's confidential or proprietary information, including abiding by the terms of the confidentiality order granted by the Ontario Court dated February 14, 2014, as modified by this Section 3.1(a). Before any Document or information (except to the extent that the Documents or information are publicly available) is disclosed in the Actions, the Plaintiffs in the applicable Action shall seek to obtain on notice to Asiana, a confidentiality and protective order from the applicable court in a form satisfactory to Asiana, acting reasonably, if no such order has already been obtained from that court. Any

Documents and other information provided by Asiana will be treated as highly confidential under any applicable confidentiality orders entered in the Actions.

- (v) The confidentiality requirements in this Section will continue to bind Plaintiffs and Class Counsel after the Effective Date and even in the event that the Settlement Agreement is terminated or otherwise fails to take effect for any reason. The requirements of this Section 3.1(a) shall also apply to all Documents and other information shared by Class Counsel with experts, any Court-appointed notice provider, and the Claims Administrator under this Settlement Agreement.

- (b) Within ninety (90) days after the Effective Date or at any time mutually agreed upon by the Parties, Asiana shall provide to Class Counsel the following information to the extent it (1) is currently in existence; (2) is in the power, possession or control of Asiana; and (3) is reasonably accessible:
 - (i) electronic transaction data, which data includes pricing and surcharge information, reflecting Asiana's Airfreight Shipping Services during the Purchase Period and until September 31, 2008. The transactional sales data shall be produced in Microsoft Excel or such other format as may be agreed upon by Counsel for Asiana and Class Counsel;

 - (ii) electronic transactional cost data reflecting Asiana's Airfreight Shipping Services during the Purchase Period and until September 31, 2008. The cost data will have information to identify, insofar as possible, particular input costs including fuel and other costs. The cost data shall be produced in Microsoft Excel or such other format as may be agreed upon by Counsel for Asiana and Class Counsel;

- (iii) any Documents provided by Asiana to plaintiffs in the U.S. Litigation, including pursuant to the U.S. Settlement and any translations of Documents provided by Asiana to plaintiffs in the U.S. Litigation, provided that Asiana may withhold from production any transaction or cost data that do not relate to Airfreight Shipping Services as defined herein; and
- (iv) any transcripts or video recordings of any depositions of Asiana's current or former employees, directors or officers taken in the course of the U.S. Litigation concerning the allegations raised in the Actions.
- (c) Within thirty (30) days after the Execution Date or at any time mutually agreed upon by the Parties, Asiana shall provide to Class Counsel Asiana's customer information provided to The Garden City Group in accordance with the order of the Ontario Court, dated May 2, 2008.
- (d) At a date and time mutually agreed to by the Parties after the Effective Date, counsel for Asiana will meet with Class Counsel in Canada, or at some other location mutually agreed to by the Parties, should Class Counsel request such a meeting, to provide an evidentiary proffer which will include information originating with Asiana that is not covered by privilege relating to the allegations in the Actions. Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by counsel for Asiana are privileged, will be kept strictly confidential, may not be directly or indirectly disclosed to any other person, and will not be used by Class Counsel for any purpose other than for their own internal use in connection with the prosecution of the Actions.

- (e) Any documents or information provided in the course of an evidentiary proffer shall be subject to the terms and protections of this Settlement Agreement.
- (f) The obligation to produce Documents pursuant to Section 3.1(b) is a continuing one to the extent Documents responsive to Section 3.1(b) are identified following the initial productions. Asiana shall make reasonable efforts to provide the information specified above in Section 3.1(i) and 3.1(ii) but cannot, and does not, make any representation that it has, can or will produce a complete set of the Documents and information described in Section 3.1(i) and 3.1(ii), and it is understood and agreed that the failure to produce a complete set of the Documents and information described in Section 3.1(i) and 3.1(ii) shall not constitute a breach or violation of this Settlement Agreement.
- (g) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, to the extent any of Asiana's Documents produced or to be produced in the Actions (including any Documents and information provided as cooperation pursuant to Section 3.1 of this Settlement Agreement) are authentic or business records, including but not limited to evidence of Asiana's sales or costs of Airfreight Shipping Services or surcharges related thereto, Asiana agrees to produce, through affidavits, or, if necessary, testimony at discoveries or trial, representatives qualified to authenticate such Documents and information, and, to the extent possible, provide confirmation that such Documents and information are business records, provided that Class Counsel agree to use reasonable efforts to minimize the burden to Asiana of any such authentication or business records testimony. Asiana also agrees to produce at trial and/or discovery or through acceptable affidavits or other testimony in the Actions, representatives qualified to establish for admission into

evidence any of Asiana's information provided as cooperation pursuant to Section 3.1 of this Settlement Agreement, and agree to authenticate Documents produced by the Defendants that were created by, sent to, or received by Asiana, provided that Class Counsel agree to use reasonable efforts to minimize the burden to Asiana of any such authentication.

- (h) Nothing in this Settlement Agreement shall require, or shall be construed to require, Asiana (or any of its former or current officers, directors or employees) to perform any act which would violate any provincial, federal or foreign law, to disclose or produce any Documents or information prepared by or for counsel for Asiana, or to disclose or produce any Documents or information in breach of any order, regulatory directive, rule or provincial, federal or foreign law, or produce any Document or information subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any Documents or information they obtained on a privileged or co-operative basis from any Person, including any party to any action or proceeding.
- (i) If any Documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently produced by Asiana, such Documents shall be promptly returned to Asiana and the Documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of Asiana, and the production of such Documents shall in no way be construed to have waived in any manner any privilege or protection attached to such or other Documents.
- (j) Asiana's obligation to cooperate as particularized in this Section 3.1 shall not be affected by the release provisions contained in this Settlement Agreement. Unless this Settlement

Agreement is terminated or otherwise fails to take effect for any reason (at which time Asiana's obligation to cooperate ceases), Asiana's obligations to cooperate shall cease at the date of a settlement or final judgment in the Actions with or against all Defendants, except that Asiana's obligations pursuant to Section 3.1 shall continue until all settlement funds and/or court awards have been distributed.

- (k) Subject to Section 3.1(l), the provisions set forth in this Section 3.1 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or Documents from Asiana or their current or former officers, directors or employees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, Asiana or their current or former officers, directors or employees, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction. Notwithstanding the above in this Section 3.1(k), if Asiana is not able to make available another current or former officer, director or employee to authenticate documents and/or information in accordance with Section 3.1(g), the Plaintiffs are at liberty to exercise any rights they have to seek to obtain discovery of any current or former officer, director or employee of Asiana who is put forward by Asiana under Section 3.1(g), but who fails to cooperate in accordance with that Section.
- (l) In the event that Asiana materially breaches this Section 3.1, Class Counsel may move before the Courts to enforce the terms of this Settlement Agreement, seek an order setting aside Section 3.1(k) and allowing the Plaintiffs to obtain discovery or information from

Asiana as if Asiana remained parties to the action, or seek such other remedy that is available at law.

- (m) A material factor influencing Asiana's decision to execute this Settlement Agreement is its desire to limit the burden and expense of the Actions on itself and on its former and current officers, directors and employees. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from Asiana and from its former and current officers, directors and employees, and to avoid seeking information that is unnecessary, cumulative or duplicative and otherwise agree to avoid imposing undue or unreasonable burden or expense on Asiana or on its former and current officers, directors and employees.
- (n) Notwithstanding any other provision of this Settlement Agreement, Asiana (and any of its former or current officers, directors or employees) is not required to produce any Documents or information where such production would be contrary to the rules, or laws or policies of a national competition authority. In addition, notwithstanding any other provision of this Settlement Agreement, in the event that a national competition authority advises Asiana that any production contemplated by this Settlement Agreement may interfere with an ongoing investigation of the Airfreight Shipping Services industry, such production will only be made after Asiana is advised by the national competition authority that such production will no longer interfere with its ongoing investigation of the Airfreight Shipping Services industry.

SECTION 4 - RELEASES AND DISMISSALS

4.1 Release of Released Parties

- (a) Upon the Effective Date, subject to Section 4.2 and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, including Asiana's commitment to provide continuing compliance with the cooperation provisions of this Settlement Agreement set forth in Section 3.1, the Releasing Parties shall be deemed to, and do hereby, release and forever discharge the Released Parties of and from any and all Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein expressly incorporated into the Approval Orders.
- (b) The Plaintiffs and Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Settlement Agreement, and that it is their intention to release fully, finally and forever all Released Claims as set out in this Section 4.1, and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.
- (c) Each Settlement Class Member who files a claim form must execute a written release in favour of the Released Parties in respect of all Released Claims. Such written release will be contained within the body of the claim form to be filed by Settlement Class Members for compensation pursuant to the Distribution Protocol. Any receipt of funds by Settlement Class Members under this Settlement Agreement shall be conditional upon

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

4.2 Covenant Not To Sue

- (a) Notwithstanding Section 4.1, upon the Effective Date, for any Settlement Class Members resident in any jurisdiction where the release of one tortfeasor is a release of all other tortfeasors, the Releasing Parties do not release the Released Parties but instead covenant and undertake not to sue, make in any way any Claim within the scope of the Released Claims or to threaten, commence, or continue any Claim within the scope of the Released Claims in any jurisdiction against the Released Parties. The Parties shall use their best efforts to have the terms of the covenant not to sue contemplated herein incorporated into the Approval Orders.

- (b) With respect to the Settlement Class Members resident in any jurisdiction where the release of one tortfeasor is a release of all other tortfeasors, the Plaintiffs and Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Settlement Agreement, and that it is their intention to fully, finally and forever covenant and undertake not to sue or make any Claim within the scope of the Released Claims against the Released Parties as set out in this Section 4.2, and in furtherance of such intention, this covenant not to sue shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

4.3 No Further Claims

- (a) Upon the Effective Date, the Releasing Parties shall not now or hereafter commence, institute, continue, maintain or assert, either directly or indirectly, whether in Canada or

elsewhere, on their own behalf or on behalf of any class or any other Person, any Claim within the scope of the Released Claims against any Released Party or any other Person who may claim contribution or indemnity from any Released Party in respect of any Released Claim, except for the continuation of the Actions against the Non-Settling Defendants and, in the event that a 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, test cases, or otherwise.

4.4 Dismissal of Actions as Against Asiana

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

4.5 Dismissal of Released Claims as Against the Released Parties

- (a) Upon the Effective Date, each Settlement Class Member shall be deemed to irrevocably consent to the dismissal as against the Released Parties, without costs and with prejudice, of any and all of the Settlement Class Member's Released Claims in any jurisdiction.
- (b) Upon the Effective Date, any and all of the Settlement Class Members' Released Claims commenced in each of the Court's respective jurisdictions shall be dismissed against the Released Parties, without costs and with prejudice.
- (c) It shall be a condition of receipt of payment under this Settlement Agreement that each Settlement Class Member must execute a consent to dismissal of any and all Released Claims in any jurisdiction against the Released Parties, without costs and with prejudice. Such consent will be contained within the body of the claim form to be filed by Settlement Class Members for compensation pursuant to the Distribution Protocol.

4.6 Claims Against Other Entities Reserved

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

SECTION 5 - BAR ORDER

5.1 Ontario and British Columbia Bar Orders

- (a) The Plaintiffs in the Ontario Action and the BC Action shall seek a bar order from the Ontario Court and BC Court providing for the following:
- (i) all claims for contribution and indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, in respect of any Released Claims, by any Non-Settling Defendant or any other Person against a Released Party, or by a Released Party against any Non-Settling Defendant or any other Person, are barred, prohibited and enjoined;
 - (ii) that if, in the absence of Section 5.1(a)(i) above, a Person or Persons would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Released Parties, in any Canadian or foreign jurisdiction:
 - (A) the Releasing Party or Releasing Parties (including without limitation the Plaintiffs in the Ontario Action and BC Action and the Ontario Settlement Class Members and BC Settlement Class Members) are prohibited and barred from bringing or pursuing the claim that gives rise to the claim for contribution, indemnity, or other claim over against any one or more of the Released Parties;

- (B) for greater certainty, the Releasing Parties shall not be entitled to claim or recover from that Person or Persons that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) awarded in respect of any claim(s) on which judgment is entered that corresponds to the Proportionate Liability of the Released Parties proven at trial or otherwise;
- (C) for greater certainty, the Plaintiffs in the Ontario Action and BC Action and the Ontario Settlement Class Members and BC 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 in the Ontario Action and BC Action and the Ontario Settlement Class Members and BC Settlement Class Members, if any; and
- (D) the Ontario Court and BC Court shall have full authority to determine the Proportionate Liability at the trial or other disposition of the Ontario Action and BC Action, whether or not the Released Parties remain in the Ontario Action or BC Action or appear at the trial or other disposition, and the Proportionate Liability shall be determined as if the Released Parties are parties to the Ontario Action or the BC Action for that purpose and any such finding by the Ontario Court or BC Court in respect of the Proportionate Liability shall only apply in the Ontario Action and BC

Action and shall not be binding upon the Released Parties in any other proceedings;

- (iii) that if, in the absence of Section 5.1(a)(i) above, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Released Parties, then nothing in the Ontario and BC Approval Orders is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any judgment against them in the Ontario Action and BC Action;
- (iv) a Non-Settling Defendant may, upon motion on at least ten (10) days' notice to counsel for Asiana, and not to be brought unless and until the Ontario Action and BC Action against the Non-Settling Defendants have been certified and all appeals or times to appeal have been exhausted, seek an order from the Ontario Court and BC Court for the following:
 - (A) documentary discovery and an affidavit of documents (list of documents in British Columbia) in accordance with the relevant rules of civil procedure from Asiana;
 - (B) oral discovery of a representative of Asiana, the transcript of which may be read in at trial;
 - (C) leave to serve a request to admit (notice to admit in British Columbia) on Asiana in respect of factual matters; and/or

- (D) the production of a representative of Asiana to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (v) Asiana retains all rights to oppose such motion(s);
- (vi) on any motion brought pursuant to Section 5.1(a)(iv), the Ontario Court or BC Court may make such Orders as to costs and other terms as it considers appropriate;
- (vii) to the extent that an order is granted pursuant to Section 5.1(a)(iv) and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by Asiana to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;
- (viii) the Ontario Court and BC Court will retain an ongoing supervisory role over the discovery process and Asiana will attorn to the jurisdiction of the Ontario Court and BC Court for these purposes; and
- (ix) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 5.1(a)(iv) on Asiana by service on Counsel for Asiana.

5.2 Quebec Bar Order

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

- (i) the Plaintiff in the Quebec Action and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds or other conduct of Asiana;
- (ii) the Plaintiff in the Quebec Action and the Quebec 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 Asiana or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action; and
- (iv) that any future right by the Non-Settling Defendants to examine on discovery a representative of Asiana will be determined according to the provisions of the *Code of Civil Procedure*, and Asiana shall reserve their right to oppose such an examination under the *Code of Civil Procedure*.

5.3 Material Term

- (a) Without derogating from the materiality of any other term or condition of this Settlement Agreement, for greater certainty, the form and content of the bar orders contemplated in this Section 5 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 11.1(a) of this Settlement Agreement.

SECTION 6 - SETTLEMENT APPROVAL

6.1 Best Efforts

- (a) The Parties shall use their best efforts to effectuate the settlement provided for in this Settlement Agreement, secure the prompt, complete and final dismissal with prejudice of the Ontario Action and BC Action as against Asiana, and secure a prompt, complete declaration of settlement out of court of the Quebec Action as against Asiana in the Quebec Action.

6.2 Approval Hearings

- (a) The Plaintiffs shall, as soon as practicable after the Execution Date, file motions before the Courts in relation to the Approval Hearings.
- (b) Subject to Section 6.4(a), the Plaintiffs shall seek to schedule the motions described in Section 6.2(a) at a time determined in their full and complete discretion.
- (c) The Plaintiffs agree that, for settlement purposes, the only classes that they will seek to assert are the Ontario Settlement Class, the Quebec Settlement Class and the BC Settlement Class.
- (d) If this Settlement Agreement is approved by the Courts, the Plaintiffs and Asiana shall jointly seek entry of Approval Orders that, *inter alia*:
 - (i) approve this Settlement Agreement and its terms as being fair, reasonable, and in the best interests of the Settlement Class Members and directing its consummation according to its terms;

- (ii) direct that, as to the Released Parties, the Actions and Released Claims in each respective Court's jurisdiction be dismissed with prejudice and without costs against Asiana; and
 - (iii) incorporate any other operative language and provisions as contemplated herein.
- (e) Subject to the approval of the Courts, the Plaintiffs and Asiana shall agree on the form of the orders to be sought. Should the Plaintiffs and Asiana fail to agree on the form of the orders, such dispute will be resolved pursuant to Section 12.1 of this Settlement Agreement.

6.3 Pre-Motion Confidentiality

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

6.4 Sequence of Motions

- (a) The Plaintiffs in British Columbia and Quebec shall not proceed with the Approval Hearing unless and until the Ontario Court approves this Settlement Agreement. The Approval Hearing motions may be filed in British Columbia and Quebec, but BC Counsel and Quebec Counsel agree to seek any adjournment of their Approval Hearing required to permit the Ontario Court to first render its decision on the Approval Hearing before it. Asiana may agree to waive this provision.

- (b) Notwithstanding Section 6.4(a) of this Settlement Agreement, the Plaintiffs can elect to request that the Courts hold joint Approval Hearings pursuant to the Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions. Asiana will not oppose any such request.

SECTION 7- NOTICE TO SETTLEMENT CLASS

7.1 Notices Required

- (a) The proposed Settlement Class shall be given the following notice: (i) Notice of Certification and Approval Hearings; (ii) Notice of Certification and Settlement Approval; and (iii) Notice of Termination (if the Settlement Agreement is terminated or otherwise fails to take effect). All Notices shall be in a form agreed upon by the Plaintiffs and Asiana or in such other form as approved by the Courts.
- (b) The Plaintiffs shall bring and seek to schedule motions before the Courts seeking orders from the Courts approving the Notices described in Section 7.1(a). The Plaintiffs may determine the time of these motions in their full and complete discretion.

7.2 Distribution of Notices

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

- (c) Asiana consents to The Garden City Group using Asiana's customer information provided to The Garden City Group in accordance with the order of the Ontario Court, dated May 2, 2008 for the purpose of facilitating the dissemination of the Notices required in Section 7.1(a).

SECTION 8 – ADMINISTRATION AND IMPLEMENTATION

- (a) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Courts on motions brought by Class Counsel.

SECTION 9- CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

9.1 Class Counsel Fees

- (a) Class Counsel shall seek the Courts' approval of their Class Counsel Fees. Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneously with the Approval Hearings or at such other time as they shall determine in their sole discretion.
- (b) Class Counsel shall be reimbursed and paid for approved Class Counsel Fees solely out of the Settlement Fund after the Effective Date. No Class Counsel Fees shall be paid from the Settlement Fund prior to the Effective Date.
- (c) Asiana shall not be liable for any Class Counsel Fees, costs of Notices or the Plaintiffs' or Settlement Class Members' experts, advisors, agents, or representatives. For greater certainty, other than the payment of the Settlement Amount, Asiana shall have no further liabilities or debts in respect of this Settlement Agreement or the administration thereof.

9.2 Administration Expenses

- (a) Class Counsel or Claims Administrator shall pay Asiana's proportionate share of the costs of the Notices referred to in Section 7 of this Settlement Agreement out of the Settlement Fund. Any such costs can be paid as they are incurred.
- (b) With the object of reducing the costs of claims administration, Class Counsel shall use their reasonable best efforts to coordinate the claims administration process pertaining to this Settlement Agreement with the claims administration process pertaining to any other settlements that have been or may be reached in the Actions. The costs of the claims administration process shall be allocated proportionally among settlements and shall be paid from the Settlement Fund.
- (c) Aside from payment of the Settlement Amount, Asiana is not liable to pay any further amount on account of any Administrative Expenses or Class Counsel Fees, including the cost of Notice, regardless of whether or not the Settlement Fund is sufficient to pay for Asiana's proportional share of the Administration Expenses, Class Counsel Fees or other such shared costs.

SECTION 10 - IMPLICATIONS OF SETTLEMENT

10.1 No Admission of Liability

- (a) The Plaintiffs and Asiana 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 Asiana agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action

taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law of any jurisdiction, or of any wrongdoing or liability by Asiana or any Released Party, or of the truth of any of the claims or allegations contained in the Actions or any other pleading filed by the Plaintiffs or any Settlement Class Member.

10.2 Agreement Not Evidence

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

10.3 No Further Litigation

- (a) Except as otherwise provided in this Settlement Agreement, no Class Counsel, 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 within the scope of the Released Claims commenced by any Person. Moreover, unless otherwise ordered by a court, no Class Counsel, Plaintiff, Settlement Class Member nor anyone currently or hereafter employed by, associated with or a partner with Class Counsel, any Plaintiff or Settlement Class Member may divulge to

anyone for any purpose any information, including, without limitation, Documents obtained in the course of the Actions or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available.

- (b) Section 10.3(a) does not apply to the involvement of any Person in the continued prosecution of the Actions against any Non-Settling Defendants or in the event that 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, test cases, or otherwise.
- (c) Section 10.3(a) of this Settlement Agreement, and only section 10.3(a), shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia (the “LSBC”) to breach his or her obligations under Chapter 3.2-10 of the LSBC’s Code of Professional Conduct by refraining from participation or involvement in any claim or action in a British Columbia court. This section 10.3(c) shall not affect or render inoperative any other section or provision of this Settlement Agreement.

SECTION 11- TERMINATION OF SETTLEMENT AGREEMENT

11.1 Right of Termination

- (a) Only if one or more of the following events occur, the Plaintiffs and Asiana 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;
 - (ii) any Approval Order is materially modified or set aside on appeal; or

- (iii) the certification motion in the Ontario Action is dismissed by Final order before the Approval Hearing before the Ontario Court has taken place.

- (b) Any order, ruling or determination made by any Court with respect to Class Counsel Fees 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 11.1(a) above, the Plaintiffs or Asiana wish to terminate the Settlement Agreement, notice of such decision to terminate the Settlement Agreement must be provided in writing to the Plaintiffs or Asiana, as applicable, within thirty (30) days of an event under Section 11.1(a) having occurred.

11.2 Effect of Termination Generally

- (a) Except as provided in Section 11.3(a), if this Settlement Agreement is terminated or otherwise fails to take effect for any reason, it shall have no further force and effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

- (b) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason:
 - (i) no further Approval Hearing shall proceed;

 - (ii) any Approval Orders shall be set aside and declared null and void and of no force or effect, and without prejudice to any position that any of the Parties may later take on any issue in the Actions or any other litigation. Anyone attempting to rely on such orders shall be estopped from doing so;

- (iii) Class Counsel in each Action shall forthwith deliver consents in writing authorizing Asiana 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 11.3(a));
 - (B) setting aside any Approval Orders;
 - (C) setting aside any order approving Class Counsel Fees; and
 - (D) directing that the balance in the Settlement Fund less any deductions provided for in this Settlement Agreement be paid to Asiana, including interest.
- (iv) Class Counsel shall thereupon pay to Asiana the balance in the Settlement Fund, including interest, less reasonable transactional costs and Asiana's proportionate costs of notice to the extent same has already been expended in accordance with Section 9.2(a). Despite Section 2.3, if the Settlement Agreement is terminated, to the extent the balance in the Settlement Fund is paid to Asiana, Asiana shall be responsible for the payment of taxes owed with respect to income on such amounts paid to Asiana.
- (c) In the event that the Settlement Agreement is terminated or otherwise fails to take effect for any reason, the Plaintiffs shall, upon request by Asiana, return to Asiana all Documents and notes or records of information (and all copies of such Documents and notes or records of information), provided by Asiana under this Settlement Agreement or otherwise. In the event any Documents and notes or records of information are incapable of being physically returned to Asiana, the Plaintiffs shall destroy all such Documents

and notes or records of information (howsoever recorded) and provide Asiana with a written certification by Class Counsel of such destruction. The requirements of this Section shall also apply to all Documents and notes or records of information shared by Class Counsel with experts and any Court-appointed notice provider or the Claims Administrator under Section 3.1 or that the experts, the Court-appointed notice provider or the Claims Administrator themselves created.

11.3 Survival of Provisions After Termination

- (a) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 2.2(e), 3.1(a), 7.1, 7.2, 10.1, 10.2, 11.2, and 12.1 and the definitions in Section 1 applicable thereto shall survive the termination and continue in full force and effect.

SECTION 12 - DETERMINATION OF DISPUTES

12.1 Disputes

- (a) Asiana and the Plaintiffs agree that all disputes, claims, or controversies arising in connection with, pursuant to, or related to the implementation or interpretation of the terms of this Settlement Agreement shall be finally resolved by the Ontario Court, or if the Ontario Court directs, by a referee appointed by the Ontario Court. To the extent necessary, the referee appointed under this Section shall have the authority to conduct a reference in accordance with the Ontario *Rules of Civil Procedure*.
- (b) Notwithstanding any other provision herein, Asiana and the Plaintiffs shall bear their own costs of such Court hearing or reference, unless the Ontario Court or referee in its, his or her discretion finds it reasonable to assess such costs solely to Asiana or the Plaintiffs. Notwithstanding any other provision herein, the Plaintiffs and Asiana shall each be

responsible for one half of the fees and disbursements of the referee, as fixed by the Ontario Court.

- (c) In considering the reasonableness of any request made pursuant to the provisions of this Settlement Agreement, the Ontario Court or the referee shall weigh the burden and expense of complying with the request against the importance of the subject matter of the request to the Plaintiffs' prosecution of the claims as alleged in the Actions.

SECTION 13 - MISCELLANEOUS

13.1 Governing Law

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

13.2 Ongoing Jurisdiction and Motions for Directions

- (a) Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction, the Parties thereto and the application brought in those Actions for approval of Class Counsel Fees pursuant to Section 9.1.
- (b) The Plaintiffs and Asiana intend and agree that no Court shall make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (c) Notwithstanding the above, unless the Courts require otherwise, the Ontario Court shall exercise jurisdiction with respect to interpretation, implementation, administration, and enforcement of the terms of this Settlement Agreement, and the Parties submit to the

jurisdiction of the Ontario Court for purposes of interpreting, implementing, administering, and enforcing the settlement provided for in this Settlement Agreement.

- (d) The Plaintiffs or Asiana may apply to the Ontario Court for directions in respect of the interpretation, implementation, administration or enforcement of this Settlement Agreement.
- (e) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and Asiana.

13.3 Interpretation

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

- (ii) only in the case where the time for doing an act expires on a holiday (as “holiday” is defined in the *Interpretation Act*, RSC 1985, c I-21), the act may be done on the next day that is not a holiday.

13.4 Language

- (a) The Plaintiffs and Asiana acknowledge that they have required and consented that this Settlement Agreement 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 Asiana shall prepare a French translation of this Settlement Agreement as and when required by the Courts. In the event that a French translation of this Settlement Agreement is required by the Courts, the costs of the translation shall be paid from the Settlement Fund. The Plaintiffs and Asiana agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

13.5 Entire Agreement

- (a) This Settlement Agreement, including the recitals herein, constitutes the entire agreement among the Plaintiffs and Asiana, and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement, other than the representations, warranties, and covenants contained and memorialized in this Settlement Agreement. This Settlement Agreement supersedes any and all prior and contemporaneous agreements, understandings, undertakings, negotiations, representations, warranties, promises, and inducements concerning the Actions.

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

13.6 Binding Effect

- (a) This Settlement Agreement shall be binding upon, and enure to the benefit of the Releasing Parties, the Released Parties and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasing Parties and every covenant and agreement made herein by Asiana shall be binding upon all of the Released Parties.
- (b) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect.
- (c) This Settlement Agreement constitutes a transaction in accordance with *Civil Code of Quebec* art. 2631 et seq., and the Plaintiffs and Asiana are hereby renouncing any errors of fact, of law, and/or of calculation.
- (d) This Settlement Agreement may not be modified or amended except in writing and on consent of all the Plaintiffs and Asiana and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

13.7 Notice

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

If to: THE PLAINTIFFS and/or CLASS COUNSEL,

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

Irwin I. Liebman
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1 Westmount Square, suite 1500
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Tel.: (514) 846-066
Fax: (514) 935-2314
Email: irwin@liebmanlegal.com

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

If to: ASIANA

Paul Martin & Laura Cooper
Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6
Tel: (416) 366-8381
Fax: (416) 364-7813
Email: pmartin@fasken.com
lcooper@fasken.com

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

13.8 Survival

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

13.9 Acknowledgements

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

13.10 Authorized Signatures

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

13.11 Counterparts

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

13.12 Execution Date

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

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

AIRIA BRANDS INC., STARTECH.COM LTD., and QCS-QUICK CARGO SERVICE GMBH, on their own behalf and on behalf of the Ontario Settlement Class, by their counsel

Name of Authorized Signatory: Linda Visser

Signature of Authorized Signatory: [Handwritten Signature]
Siskinds LLP
Ontario Counsel

CARTISE SPORTS INC., on its own behalf and on behalf of the Quebec Settlement Class, by its counsel

Name of Authorized Signatory: Irwin Liebman

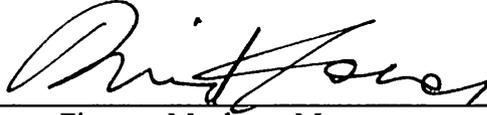
Signature of Authorized Signatory: [Handwritten Signature]
Liebman Legal Inc.
Quebec Counsel

KAREN MCKAY, on her own behalf and on behalf of the BC Settlement Class, by her counsel

Name of Authorized Signatory:

DAVID JONES

Signature of Authorized Signatory:



Camp Fiorante Matthews Mogerman
BC Counsel

ASIANA AIRLINES INC., by its counsel

Name of Authorized Signatory:

Signature of Authorized Signatory:

Fasken Martineau DuMoulin LLP

KAREN MCKAY, on her own behalf and on behalf of the BC Settlement Class, by her counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____

Camp Fiorante Matthews Mogeran
BC Counsel

ASIANA AIRLINES INC., by its counsel

Name of Authorized Signatory: _____

PAUL J. MARTIN

Signature of Authorized Signatory: _____

[Handwritten Signature]
Fasken Martineau DuMoulin LLP