

# SUPERIOR COURT

(Class Action Chamber)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-000344-065

DATE: June 8th, 2021

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**PRESIDING: THE HONOURABLE LUKASZ GRANOSIK, J.S.C.**

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**CARTISE SPORTS INC.**

Plaintiff

v.

**AIR CANADA**

Defendant

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## JUDGMENT

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[1] **THE COURT IS SEIZED** with a Motion made by the Petitioner for a Judgment authorizing the Quebec Action as a class proceeding for settlement purposes only as against Air Canada and approving the Settlement Agreement entered into with Air Canada on November 17, 2020 annexed Exhibit 1;

[2] **CONSIDERING** the Settlement Agreement entered into between Petitioner and Air Canada dated November 17th, 2020 and attached to this Judgment as Schedule "A" (the "Settlement Agreement"), the materials filed, and on hearing the submissions of counsel for the Petitioner and counsel for Air Canada, including that Air Canada does

not admit, through the execution of the Settlement Agreement, any allegation of unlawful conduct alleged in the Quebec Action;

[3] **CONSIDERING THAT** the Petitioner and Air Canada consent to this Judgment;

[4] **CONSIDERING THAT** for settlement purposes only, Air Canada does not dispute that the criteria of Article 575 C.c.p. are satisfied;

[5] **CONSIDERING THAT** the Court finds that the Settlement Agreement is fair, reasonable and in the best interests of the Quebec Settlement Class;

[6] **CONSIDERING THAT** approval of settlement agreement has already been granted by the Ontario Court on May 25<sup>th</sup>, 2021;

**FOR THESE REASONS, THE COURT:**

[7] **ORDERS** that the definitions set out in the Settlement Agreement shall apply to and are incorporated into this Judgment;

[8] **ORDERS** that this Action is authorized as a class proceeding as against Air Canada and for settlement purposes only;

[9] **ORDERS** that the Quebec Settlement Class is defined as:

“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 5th, 2005 and May 5th, 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 Air Canada, 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 14th, 2008.”

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

[10] **ORDERS** that Cartise Sports Inc. is appointed as the representative Plaintiff for the Quebec Settlement Class;

[11] **ORDERS** that the following issue is common to the Quebec Settlement Class:

Did Air Canada conspire to fix, raise, maintain or stabilize the prices of Airfreight Shipping Services during the Purchase Period in violation of Part VI of the Competition Act and the common law?

[12] **ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Quebec Settlement Class, and constitutes a transaction within the meaning of Article 2631 of the Civil Code of Quebec, binding all Parties and all members of the Quebec Settlement Class;

[13] **ORDERS** that the Settlement Agreement is approved pursuant to Article 590 of the Code of Civil Procedure of Quebec and shall be implemented in accordance with its terms;

[14] **ORDERS** that the Settlement Agreement is incorporated by reference into and forms part of this Judgment, and is binding upon the representative Plaintiff and all Quebec Settlement Class Members, and where any term of this Judgment and the Settlement Agreement conflict, the terms of this Judgment shall govern;

[15] **ORDERS** that upon the Effective Date, each Quebec Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Released Parties, without costs and with prejudice, of any and all of the Settlement Class Member's Released Claims in any jurisdiction;

[16] **ORDERS** that upon the Effective Date, any and all Released Claims commenced in Quebec by any Settlement Class Member shall be dismissed against the Released Parties, without costs and with prejudice;



[17] **ORDERS** that, upon the Effective Date, 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;

[18] **ORDERS** that the Plaintiff 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 Air Canada;

[19] **ORDERS** that the Plaintiff 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, and/or any other applicable measure of proportionate liability of the Non-Settling Defendants;

[20] **ORDERS** that any action in warranty or other joinder of parties to obtain any contribution or indemnity from Air Canada or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action;

[21] **ORDERS** that 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;

[22] **ORDERS** that for purposes of enforcement of this Judgment, this Court will retain an ongoing supervisory role and Air Canada will attorn to the jurisdiction of this Court for this purpose;

[23] **ORDERS** that the Released Parties have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement;

[24] **ORDERS** that the Settlement Amount be held in trust for the benefit of the Settlement Class, pending further Judgment of the Court, which shall be sought by the Petitioner on a motion in the Action brought on notice to Air Canada;

[25] **ORDERS** that upon the Effective Date, the Quebec Action shall be deemed settled, without costs and without reservation, as against Air Canada;

[26] **ORDERS** that this Judgment shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms;

[27] **ORDERS** that this Judgment is contingent upon the approval of the British Columbia Court of the same Settlement Agreement and this Judgment shall be of no force and effect if such approval is not secured in British Columbia;

[28] **THE WHOLE without costs.**



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LUKASZ GRANOSIK, J.S.C.

Me Irwin Liebman  
LIEBMAN LÉGAL INC.  
Attorney for Cartise Sports Inc.

Me Guillaume Boudreau-Simard and  
Me Katherine Kay  
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Attorneys for Defendant Air Canada

Me Lory Beauregard  
FONDS D'AIDE AUX ACTIONS COLLECTIVES

Date of hearing:

June 8th, 2021

CANADA

SUPERIOR COURT

(Class Action)

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PROVINCE OF QUÉBEC

DISTRICT OF MONTRÉAL

No.: 500-06-000344-065

**CARTISE SPORTS INC.**

**Plaintiff**

-vs-

**AIR CANADA**

**Defendant/Respondent**

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**EXHIBIT 1:**

Settlement Agreement

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**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

AIR CANADA

(the “**Settling Defendant**”)

Executed November 17, 2020



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

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

**RECITALS**

- A. **WHEREAS** the Actions have been commenced in the Courts alleging that the Defendants, including the Settling Defendant, participated in an unlawful conspiracy pursuant to which the Settling Defendant 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. **WHEREAS**, as of December 1, 2009, the operations of AC Cargo Limited Partnership were wound up into Air Canada and are now operated as a division of Air Canada;
- C. **WHEREAS** the Ontario Action was certified as a national class proceeding under the Ontario *Class Proceedings Act, 1992* by Order dated August 26, 2015 and amended December 21, 2018. The certified class being defined as follows:

Persons who purchased Airfreight Shipping Services\* during the period January 1, 2000 to September 11, 2006, including those persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including, without limitation, the defendants, but not including Integrated Air Cargo Shippers\*\*.

Excluded from the Class are:

- a) Defendants and their unnamed co-conspirators\*\*\* and their respective parents, employees, subsidiaries, affiliates, officers, and directors,
- b) 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,
- c) persons who commence litigation in respect of Airfreight Shipping Services in a jurisdiction other than Canada prior to the conclusion of the trial of the common issues, and

d) persons who timely and validly opted out of the litigation pursuant to the order of the Ontario court dated March 6, 2008.

\*Airfreight Shipping Services are defined as airfreight cargo shipping services for shipments to or from Canada (excluding shipments to and from the United States).

\*\*Integrated Air Cargo Shipper is defined as an air cargo shipper that manages an integrated system of people, airplanes, trucks, and all other resources necessary to move airfreight cargo from a customer's point of origin to the delivery destination, and for greater certainty includes but is not limited to FedEx, UPS, DHL, and TNT,

\*\*\*Unnamed co-conspirators are defined as Aerolineas Brasileiras S.A (d/b/a Absa Cargo Airline), Air China Cargo Company Ltd. (d/b/a/ Air China Cargo), Air China Ltd. (d/b/a Air China), Air Mauritius Ltd., Airways Corporation of New Zealand Ltd. (d/b/a/ Airways New Zealand), Alitalia Linee Aeree Italiane S.p.A, All Nippon Airways Co. Ltd., DAS Air Ltd. (d/b/a Das Air Cargo), El Al Israel Airlines, Emirates Airlines (d/b/a Emirates), Ethiopian Airlines Corp., EVA Air, Kenya Airways Ltd., Malaysia Airlines, Nippon Cargo Airlines Co., Ltd., Saudi Arabian Airlines, Ltd., South African Airways (Proprietary), Ltd., Thai Airways International Public Co., Ltd, and Viação Aérea Rio-Grandense, S.A.

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

E. **AND WHEREAS** the Plaintiffs have entered into a proposed settlement with British Airways PLC, which settlement is subject to the approval of the Ontario Court and has not yet become effective in accordance with its terms;

F. **AND WHEREAS** if this Settlement Agreement and the proposed settlement between the Plaintiffs and British Airways PLC are approved and become effective with their terms, and neither are terminated in accordance with their terms, the Actions shall be resolved in their entirety;



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

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

I. **AND WHEREAS**, despite the Settling Defendant's belief that it is not liable in respect of the claims as alleged in the Actions and have good defences thereto, the Settling Defendant 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 Settlement Class, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this dispute with valued business customers;

J. **AND WHEREAS** the Plaintiffs have agreed to accept this settlement, in part, because of the value of the Settlement Amount to be paid by the Settling Defendant under this Settlement Agreement, the attendant risks of litigation in light of the potential defences that may be asserted by the Settling Defendant, and the desirability of permitting the settlement to be consummated as provided by the terms of this Settlement Agreement;

K. **AND WHEREAS** the deadline for Settlement Class Members to opt-out of the Actions has passed and 9 Persons exercised the right to opt-out of the Actions;

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

M. **AND WHEREAS** Class Counsel, on their own behalf and on behalf of the Plaintiffs and the proposed Settlement Class, 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 the Settling Defendant according to the terms set forth below is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Class;

N. **AND WHEREAS** the Plaintiffs and the Settling Defendant therefore wish to, and hereby do, finally resolve, without admission of liability, all of the Actions and the Released Claims as against the Settling Defendant, subject to the approval of the Courts;

O. **AND WHEREAS** for the purposes of settlement only and contingent on approval 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;

P. **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;

Q. **AND WHEREAS** the Settling Defendant does not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent it has previously done so in the Actions and as is expressly provided in this Settlement Agreement with respect to the 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 the Settling Defendant that the Ontario Action and BC Action be settled and dismissed with prejudice as to the Settling Defendant and AC Cargo Limited Partnership only, and the Quebec Action be settled with prejudice as against the Settling Defendant and AC Cargo Limited Partnership, all without costs as to the Plaintiffs, the Settlement Class or the Settling Defendant subject to the approval of the Courts and on the terms and conditions of this Settlement Agreement, as follows:

### **SECTION 1 - DEFINITIONS**

For the purpose of this Settlement Agreement only, including the recitals and schedule 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 and Class Counsel Disbursements.
- (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 of motions brought by Class Counsel for the certification (and authorization in Quebec) of the Actions as a class proceeding on the basis of this Settlement Agreement and for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (e) *Approval Orders* means orders of the Courts, substantially in the form attached as Schedule "B" hereto, or such other form of order as agreed upon by the Plaintiffs and the Settling Defendant approving this Settlement Agreement.
- (f) *BC Action* means the proceeding commenced in the British Columbia Supreme Court, under Vancouver Registry No. S067490.
- (g) *BC Counsel* means Camp Fiorante Matthews Mogergerman.
- (h) *BC Court* means the Supreme Court of British Columbia.
- (i) *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. 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.

- (j) *Claim* shall have the meaning attributed to it in Section 1(II)
- (k) *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 the Distribution Protocol, and any employees of such Person.
- (l) *Class Counsel* means Ontario Counsel, Quebec Counsel and BC Counsel.
- (m) *Class Counsel Disbursements* include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Actions, as well as any adverse costs awards issued against the Plaintiffs in the Actions.
- (n) *Class Counsel Fees* means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Quebec.
- (o) *Counsel for the Settling Defendant* means Stikeman Elliott LLP.
- (p) *Courts* means the Ontario Court, the Quebec Court and the BC Court.
- (q) *Defendants* means the entities named as defendants in any of the Actions. For greater certainty, Defendants includes the Settling Defendant and the Settled Defendants.

- (r) ***Distribution Protocol*** means the plan for distributing the Settlement Fund to Settlement Class Members as approved by the Courts.
- (s) ***Effective Date*** means (i) the date upon which the ability to appeal, if an appeal lies therefrom, from the last obtained Approval Order has expired without any appeal being taken; or (ii) if any appeals have been taken from an Approval Order, the date upon which all such appeals are concluded by way of a Final (as defined in Section 1(v)) order or judgment. For the purposes of this paragraph, an “appeal” shall not include any appeal that concerns only the issue of Class Counsel Fees or the Distribution Protocol.
- (t) ***Epiq*** means Epiq Class Action and Claims Solutions, Inc. (formerly known as Garden City Group, LLC).
- (u) ***Execution Date*** means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and the Settling Defendant.
- (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 4.1(a)(i).
- (x) ***Non-Settling Defendants*** means any Defendant that is not (i) the Settling Defendant; (ii) a Settled Defendant; or (iii) a Defendant against whom the Actions have been dismissed, settled or discontinued, either before or after the Execution Date.



- (y) **Ontario Action** means the proceeding commenced in the Ontario Court bearing Court File No. 50389CP (London).
- (z) **Ontario Counsel** means Siskinds LLP.
- (aa) **Ontario Court** means the Ontario Superior Court of Justice.
- (bb) **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. 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.
- (cc) **Party and Parties** means the Settling Defendant, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (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, Karen McKay and Cartise Sports Inc., individually and collectively.

- (ff) *Proportionate Liability* means the proportion of any judgment that, had the Settling Defendant not settled, the Ontario or BC Courts would have apportioned to the Settling Defendant and/or the Released Parties, whether pursuant to *pro rata*, proportionate fault, *pro tanto*, or another method.
- (gg) *Purchase Period* means January 1, 2000 up to and including September 11, 2006.
- (hh) *Quebec Action* means the proceeding commenced in the Quebec Court, under Court File No. 500-06-000344-065.
- (ii) *Quebec Counsel* means Liebman Legal Inc.
- (jj) *Quebec Court* means the Quebec Superior Court.
- (kk) *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, 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.

- (11) *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 and Class Counsel Disbursements), 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, from the beginning of time through the pendency of the Actions in respect of the conduct alleged (or which could have been alleged) in the Actions, or as a result of or in connection with any other alleged unlawful horizontal or vertical anticompetitive conduct in connection with the purchase, sale, pricing, discounting, marketing, distributing of or compensation for, Airfreight Shipping Services, specifically including, without limitation, 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, Claims, whether in Canada or elsewhere, resulting from or relating to the purchase of Airfreight Shipping Services, including future Claims relating to continuing acts or practices alleged to have occurred during the pendency of the Actions. For greater certainty, and without limiting the scope of the Released Claims, nothing herein authorizes or allows any Party to contravene the *Competition Act*. 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, the Settling Defendant, AC Cargo Limited Partnership and all of their 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.
- (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 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.
- (oo) **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., Korean Air Lines Co., Asiana Airlines Inc., Cathay Pacific Ltd. and British Airways PLC. Notwithstanding the foregoing, if the proposed settlement between the Plaintiffs and British Airways PLC does not become effective in accordance with its terms or is terminated in accordance with its terms, British Airways PLC shall cease being a Settled Defendant.

- (pp) *Settlement Agreement* means this agreement, including the recitals and schedule.
- (qq) *Settlement Amount* means CAD\$7,000,000 paid in installments as described in Section 2.2(c).
- (rr) *Settlement Class Member* means a member of the Ontario Settlement Class, Quebec Settlement Class or BC Settlement Class.
- (ss) *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.
- (tt) *Settling Defendant* means Air Canada.

## SECTION 2- SETTLEMENT BENEFITS

### 2.1 The Settlement Fund

- (a) The Settlement Fund shall be established as an escrow account at a Canadian financial institution 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. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Ontario Court's continuing supervision and

control. No monies shall be paid from the Settlement Fund, except in accordance with this Settlement Agreement, or in accordance with orders of the Ontario Court obtained after notice to the Parties.

- (b) 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.
- (c) The Plaintiffs and the Settling Defendant acknowledge that the Settlement Class includes both shippers and freight forwarders, and both customers and non-customers of the Settling Defendant, 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 and the Settling Defendant bears no responsibility for the determination of claim amounts or the Distribution Protocol. At a time within their discretion, on notice to the Settling Defendant and after providing the motion material in draft to the Settling Defendant for review, the Plaintiffs shall submit a Distribution Protocol to the Courts for approval. The Distribution Protocol will be in the form attached hereto as Schedule "E" or such other form agreed between the Plaintiffs and the Settling Defendant.
- (d) 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, the Settling Defendant agrees to pay the Settlement Amount in full satisfaction of all Released Claims against the Released Parties.
- (b) Except as otherwise provided herein, the Settling Defendant shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement. For greater certainty, but without limiting the generality of the foregoing, the Settling Defendant 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, Class Counsel Disbursements, or any Administration Expenses, except as otherwise provided herein.
- (c) The Settling Defendant, directly or through its counsel or designee, shall wire transfer the Settlement Amount in three equal installments into the Settlement Fund on: (i) the later of thirty (30) days after the Date of Execution or November 15, 2020; (ii) April 15, 2021; and (iii) October 15, 2021.
- (d) If the Settlement Agreement is terminated or otherwise fails to take effect pursuant to Section 10, the Settlement Fund shall be returned to the Settling Defendant pursuant to Section 10.2(b)(iii) of this Settlement Agreement.

## **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 10.2(b)(iii), none of the income earned by the Settlement Fund, including interest earned thereon, will be reported as taxable to the Settling Defendant.

- (b) Except as provided for in Section 10.2(b)(iii), 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 10.2(b)(iii), the Settling Defendant 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- RELEASES AND DISMISSALS**

#### **3.1 Release of Released Parties**

- (a) Upon the Effective Date, subject to Section 3.2 and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasing Parties shall be deemed to, and do hereby, release and forever discharge the Released Parties of and from any and all Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein incorporated into the Approval Orders. It is a material term of the Settlement Agreement that the Courts

include the release of the Released Parties of all the Released Claims provided for in this Settlement Agreement in the Approval Orders.

- (b) The Plaintiffs and Settlement Class Members acknowledge 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, and they do hereby, release fully, finally and forever all Released Claims as set out in this Section 3.1, and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

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

- (a) Notwithstanding Section 3.1, 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 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 3.2, and in furtherance of such intention, this covenant not to sue shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

### **3.3 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.

### **3.4 Dismissal of Actions as Against the Settling Defendant**

- (a) Except as provided herein, upon the Effective Date, the BC Action and the Ontario Action shall be dismissed, without costs and with prejudice, as against the Settling Defendant and AC Cargo Limited Partnership.
- (b) Except as provided herein, upon the Effective Date, the Quebec Action shall be settled, without costs and with prejudice, as against the Settling Defendant and AC Cargo Limited Partnership.

### **3.5 Dismissal of Released Claims as Against the Released Parties**

- (a) Upon the Effective Date, Settlement Class Members 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 Members' 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.

### **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 Person, other than the Released Parties.

## **SECTION 4 - BAR ORDER**

### **4.1 Ontario and BC Bar Order**

- (a) The Plaintiffs in the Ontario and BC Actions shall seek a bar order from the Ontario and BC Courts 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. If contrary to the Ontario and BC Approval Orders a foreign court permits a Releasing Party to bring a claim in respect of a Released Claim against a Non-Settling

Defendant, another Defendant or a Released Party in a jurisdiction outside of Ontario or BC (the “Foreign Claim”), that Non-Settling Defendant, other Defendant or Released Party will not be prohibited by the Ontario and BC Approval Order from bringing a claim for contribution, indemnity or other claims over against a Released Party or other Person, including a Non-Settling Defendant or other Defendant, in respect of the Foreign Claim, to the extent such a claim exists under the applicable law;

- (ii) that if, in the absence of Section 4.1(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 and BC Actions and the Ontario 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 and BC Actions and the Ontario 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 and BC Actions and the Ontario and BC Settlement Class Members, if any; and
- (D) the Ontario and BC Courts shall have full authority to determine the Proportionate Liability at the trial or other disposition of the Ontario or BC Action, whether or not the Released Parties remain in the Ontario 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 or BC Action for that purpose and any such finding by the Ontario or BC Court in respect of the Proportionate Liability shall only apply in the Ontario or BC Action and shall not be binding upon the Released Parties in any other proceedings;
- (iii) that if, in the absence of Section 4.1(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 and BC Actions.

#### **4.2 Quebec Waiver or Renunciation of Solidarity**

- (a) The Plaintiff in the Quebec Action shall seek an 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 the Settling Defendant;
  - (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, and/or any other applicable measure of proportionate liability of the Non-Settling Defendants; and
  - (iii) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Settling Defendant or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action.

#### **4.3 Material Term**

- (a) The Parties acknowledge that the bar orders, waivers and renunciations of solidarity 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, waivers and

renunciations of solidarity contemplated herein shall give rise to a right of termination pursuant to Section 10.1(a) 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, secure the prompt, complete and final dismissal with prejudice of the Ontario and BC Actions as against the Settling Defendant and AC Cargo Limited Partnership, and secure a prompt, complete declaration of settlement out of court of the Quebec Action as against the Settling Defendant and AC Cargo Limited Partnership.

### 5.2 Approval Hearings

- (a) As soon as practicable after the Execution Date, the Plaintiffs shall bring motions before the Courts for orders approving the notices described in Section 6.1(a). If the notices are approved by the Ontario Court, the Plaintiffs and the Settling Defendant shall jointly seek entry of an order in the form attached hereto as Schedule "A" or such other form as agreed upon by the Plaintiffs and the Settling Defendant. If the notices are approved by the BC and Quebec Courts, the Plaintiffs and the Settling Defendant shall jointly seek entry of orders that mirror the substance and form of the Ontario order.
- (b) As soon as practicable after the orders referred to in Section 5.2(a) have been issued and the notices described in Section 6.1(a) have been published, the Plaintiffs shall bring motions before the Courts for the Approval Hearings.
- (c) The Plaintiffs agree that, for settlement purposes, the only classes that they will seek to assert are the Ontario, BC and Quebec Settlement Classes.



- (d) If this Settlement Agreement is approved by the Ontario Court, the Plaintiffs and the Settling Defendant shall jointly seek entry of an Approval Order in the form attached hereto as Schedule “B” or such other form as agreed upon by the Plaintiffs and the Settling Defendant. If this Settlement Agreement is approved by the BC and Quebec Courts, the Plaintiffs and the Settling Defendant shall jointly seek entry of Approval Orders that mirror the substance and form of the Ontario Approval Order.

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

- (a) Until the first motion required by Section 5.2(a) is filed, this Settlement Agreement and all of its terms shall be kept confidential and shall not be disclosed by either the Plaintiffs, Class Counsel or the Settling Defendant, without the prior written consent of Counsel for the Settling Defendant 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.

## **SECTION 6- NOTICE TO SETTLEMENT CLASS**

### **6.1 Notices Required**

- (a) The proposed Settlement Class shall be given a single notice of: (1) the proposed certification of the Settlement Class as against the Settling Defendant, for settlement purposes only; (2) the date and location of the Approval Hearings; (3) the core elements of the Settlement Agreement and the Distribution Protocol; and (4) if brought with the Approval Hearings, the hearings to approve Class Counsel Fees and Class Counsel Disbursements.

## **6.2 Form and Distribution of Notices**

- (a) The notice of hearing will be in the form attached hereto as Schedules “C1” to “C3” or such other form as agreed upon by the Plaintiffs and the Settling Defendant and approved by the Courts.
- (b) The notice of hearing will be disseminated in accordance with the plan of dissemination attached hereto as Schedule “D” or such other form as agreed upon by the Plaintiffs and the Settling Defendant and approved by the Courts.
- (c) Class Counsel shall use their reasonable best efforts to coordinate the provision of notice pertaining to this Settlement Agreement with the provision of notice of the proposed settlement agreement between the Plaintiffs and British Airways PLC.
- (d) The Settling Defendant consents to Epiq using the Settling Defendant’s customer information provided to Epiq 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 6.1(a).

## **SECTION 7 – ADMINISTRATION AND IMPLEMENTATION**

### **7.1 Mechanics of Administration**

- (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 on notice to the Settling Defendants.

### **7.2 Information and Assistance**

- (a) After the Execution Date, the Settling Defendant will make itself reasonably available to any Court-appointed notice provider and/or the Claims Administrator to respond to

reasonable questions respecting the information provided by the Settling Defendant to Epiq in accordance with the order of the Ontario Court dated May 2, 2008.

- (b) The information provided by the Settling Defendant to Epiq in accordance with the order of the Ontario Court, dated May 2, 2008 may be used to:
- (i) facilitate the dissemination of the notices required in Section 6.1; and
  - (ii) in the event that the proposed settlement agreement between the Plaintiffs and British Airways PLC does not become effective in accordance with its terms, advise Settlement Class Members who purchased Airfreight Shipping Services from the Settling Defendant during the Purchase Period of any subsequent settlement agreement with British Airways PLC, any related approval hearings, and any other major steps in the Actions; and
  - (iii) facilitate the claims administration process with respect to this Settlement Agreement and the proposed settlement between the Plaintiffs and British Airways PLC, and, in the event that the proposed settlement between the Plaintiffs and British Airways PLC does not become effective in accordance with its terms, any subsequent settlement and/or court award achieved in the Actions.

## **SECTION 8- CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

### **8.1 Class Counsel Fees**

- (a) Class Counsel shall seek the approval of the Courts of their Class Counsel Fees and Class Counsel Disbursements. Class Counsel may seek such approval contemporaneously with the Approval Hearings or at such other time as they shall determine in their sole discretion.



Class Counsel shall provide a courtesy copy of the motion to Counsel for the Settling Defendants.

- (b) Class Counsel shall be reimbursed and paid for approved Class Counsel Fees and Class Counsel Disbursements solely out of the Settlement Fund after the Effective Date. No Class Counsel Fees or Class Counsel Disbursements shall be paid from the Settlement Fund prior to the Effective Date.
- (c) The Settling Defendant shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, 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, the Settling Defendant shall have no further liabilities or debts in respect of this Settlement Agreement or the administration thereof.

## **8.2 Administration Expenses**

- (a) 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 the proposed settlement agreement between the Plaintiffs and British Airways PLC.
- (b) Aside from payment of the Settlement Amount, the Settling Defendant is not liable to pay any further amount on account of any Administrative Expenses, Class Counsel Fees, or Class Counsel Disbursements, including the cost of notice.

## SECTION 9 - IMPLICATIONS OF SETTLEMENT

### 9.1 No Admission of Liability

- (a) The Plaintiffs and the Settling Defendant expressly reserve all of its rights if this Settlement Agreement is terminated or otherwise fails to take effect for any reason. Further, the Plaintiffs and the Settling Defendant agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law of any jurisdiction, or of any wrongdoing or liability by the Settling Defendant or any Released Party, or of the truth of any of the claims or allegations contained in the Actions or any other pleading filed by the Plaintiffs or any Settlement Class Member.

### 9.2 Agreement Not Evidence

- (a) The Plaintiffs and the Settling Defendant 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.

### 9.3 No Further Litigation

- (a) Except as otherwise provided in this Settlement Agreement, no Class Counsel nor anyone currently or hereafter employed by, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any Claim made or action within the scope of the Released Claims commenced by any Person including in respect of litigation in any jurisdictions outside of Canada. Moreover, unless otherwise ordered by a court, no Class Counsel nor anyone currently or hereafter employed by or a partner with Class Counsel, 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 9.3(a) does not apply to the involvement of any Person in the continued prosecution of the Actions against any Non-Settling Defendants.
- (c) Section 9.3(a) shall be inoperative to the extent that it is inconsistent with BC Counsel's obligations under Section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia*.

## SECTION 10- TERMINATION OF SETTLEMENT AGREEMENT

### 10.1 Right of Termination

- (a) Only if one or more of the following events occur, the Plaintiffs and the Settling Defendant 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 declines to sign the Approval Order;
  - (iii) any Approval Order is materially modified or set aside on appeal; or
  - (iv) any Court declines to dismiss the Ontario or BC Action or settle with prejudice the Quebec Action as against the Settling Defendant and/or AC Cargo Limited Partnership.
- (b) In addition, if the Settlement Amount is not paid in accordance with Section 2.2(a) and Section 2.2(c), the Plaintiffs shall have the right to terminate this Settlement Agreement or move before the Ontario Court to enforce the terms of this Settlement Agreement.
- (c) Any order, ruling or determination made by any Court with respect to Class Counsel Fees, Class Counsel Disbursements or 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.
- (d) If pursuant to Section 10.1(a) or (b) above, the Plaintiffs or the Settling Defendant wish to terminate the Settlement Agreement, notice of such decision to terminate the Settlement Agreement must be provided in writing to the Plaintiffs or the Settling Defendant, as applicable, within thirty (30) days of an event under Section 10.1(a) or (b) having occurred.

## **10.2 Effect of Termination Generally**

- (a) Except as provided in Section 10.3(a), if this Settlement Agreement is terminated or otherwise fails to take effect for any reason, it shall have no further force and effect, shall

not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

- (b) If this Settlement Agreement is terminated in accordance with Section 10.1 or otherwise fails to take effect for any reason:
  - (i) the Parties will cooperate in seeking to have any issued Approval Order 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. Any Person attempting to rely on such Approval Order shall be estopped from doing so;
  - (ii) Class Counsel shall forthwith deliver consents in writing authorizing the Settling Defendant to bring motions before the Courts for orders:
    - (A) declaring this Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in Section 10.3(a));
    - (B) setting aside any Approval Order;
    - (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 the Settling Defendant, including interest.
  - (iii) Class Counsel or the Claims Administrator, as applicable, shall thereupon pay to the Settling Defendant the Settlement Fund, including interest. Despite Section

2.2(d), if the Settlement Agreement is terminated, to the extent the Settlement Fund is paid to the Settling Defendant, the Settling Defendant shall be responsible for the payment of taxes owed with respect to income on the returned Settlement Fund.

### **10.3 Survival of Provisions After Termination**

- (a) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 2.2(d), 9.1, 9.2, and 10.2 and the definitions in Section 1 applicable thereto shall survive the termination and continue in full force and effect.

## **SECTION 11 - MISCELLANEOUS**

### **11.1 Governing Law**

- (a) Subject to Section 11.1(b), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (b) Notwithstanding Section 11.1(a), for matters relating specifically to the BC Action or the Quebec Action, the BC Court or Quebec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

### **11.2 Ongoing Jurisdiction and Motions for Directions**

- (a) Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction and the Parties thereto and the application brought in those Actions for approval of Class Counsel Fees pursuant to Section 8.1.
- (b) The Plaintiffs and the Settling Defendant 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 the Settling Defendant may apply to the Ontario Court for directions in respect of the interpretation, implementation, administration or enforcement of this Settlement Agreement.
- (e) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and the Settling Defendant.

### **11.3 Interpretation**

- (a) The division of this Settlement Agreement into Sections and the insertion of headings are for convenience of reference only and shall in no way define, extend, or describe the scope of this Settlement Agreement or the intent of any provision thereof.
- (b) The terms "Settlement Agreement," "hereof," "hereunder," "herein," and similar expressions refer to this Settlement Agreement and not to any particular Section or other portion of this Settlement Agreement.
- (c) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (i) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (ii) only in the case where the time for doing an act expires on a holiday (as “holiday” is defined in the *Interpretation Act*, RSC 1985, c I-21), the act may be done on the next day that is not a holiday.

#### **11.4 Language**

- (a) The Plaintiffs and the Settling Defendant acknowledge that they have required and consented that this Settlement Agreement be prepared in English.

#### **11.5 Entire Agreement**

- (a) This Settlement Agreement, including the recitals herein, constitutes the entire agreement among the Plaintiffs and the Settling Defendant, 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 the Settling Defendant 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.

#### **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 the Settling Defendant 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 the Settling Defendant 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 the Settling Defendant and any such modification or amendment must be approved by the Ontario Court.

#### **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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[droyal@stikeman.com](mailto:droyal@stikeman.com)

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