

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

Between:

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

and

SCANDINAVIAN AIRLINES SYSTEM

Executed November 26, 2010

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RECITALS

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

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

C. **AND WHEREAS** the Plaintiffs, Class Counsel and SAS 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 SAS or evidence of the truth of any of the Plaintiffs' allegations against SAS, which SAS expressly denies;

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

E. **AND WHEREAS**, despite its belief that it is not liable in respect of the claims as alleged in the Actions and has good defences thereto, SAS 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 SAS under this Settlement Agreement and the value of the cooperation SAS has made and agrees to render or make available to the Plaintiffs and/or Class Counsel pursuant to this Settlement Agreement, as well as (i) the attendant risks of litigation in light of the potential defences that may be asserted by SAS, 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 SAS and the Plaintiffs, and this Settlement Agreement, which embodies all of the terms and conditions of the settlement between SAS 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 SAS 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 SAS therefore wish to, and hereby do, subject to the Courts' approval, for purposes of all jurisdictions in relation to which the Actions are brought, and for purposes of all classes the Plaintiffs seek to represent, without admission of liability, finally resolve all of the Actions as against SAS;

K. **AND WHEREAS** for the purposes of settlement only and contingent on approvals by the Canadian Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the 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 SAS that the Actions be settled and dismissed with prejudice on the merits as to SAS only, without costs as to the Plaintiffs, the Settlement Class or SAS, subject to the approval of the Courts and on the terms and conditions of this Settlement Agreement, as follows:

SECTION 1 DEFINITIONS

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

- (a) ***Actions*** means the Ontario Action, the Québec Action and the BC Action.
- (b) ***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 to or from the United States.
- (d) ***Approval Hearings*** means the hearings to approve motions brought by Class Counsel for the Courts' approvals of the settlement provided for in this Settlement Agreement.
- (e) ***Approval Orders*** means any order of the Courts approving this Settlement Agreement.
- (f) ***BC Action*** means the proceeding commenced by Karen McKay in the BC Court, under Vancouver Registry No. S-067490, on November 20, 2006.
- (g) ***BC Counsel*** means Camp Fiorante Matthews.
- (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, and specifically including SAS. 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) **Claims Administrator** means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Fund in accordance with the provisions of this Settlement Agreement, and any employees of such firm.
- (k) **Class Counsel** means Ontario Counsel, Québec Counsel and BC Counsel.
- (l) **Class Counsel Fees** include the fees, disbursement, costs, interest, GST or HST (as the case may be) and other applicable taxes or charges of Class Counsel.
- (m) **Courts** means the Ontario Court, the Québec Court and the BC Court.
- (n) **Defendants** means all defendants named in the Actions, including SAS, and any named or unnamed co-conspirators who may be added as defendants in the Actions in the future.
- (o) **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.
- (p) **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.
- (q) **Effective Date** means the earlier of: (i) the date upon which the ability to appeal, if an appeal lies therefrom, from each Approval Order has expired without any appeal being taken, namely, thirty (30) days after the issuance of the Approval Order; or (ii) if any appeals have been taken from any Approval Order, the date upon which all such appeals

are concluded by way of a Final (as defined below) order or judgment. For the purposes of this paragraph, an "appeal" shall not include any appeal that concerns only the issue of Class Counsel's fees and disbursements, or the Distribution Protocol.

- (r) ***Escrow Agent*** means the person or entity designated by Class Counsel with the approval of counsel for SAS to receive and invest the Settlement Fund in accordance with the provisions of this Settlement Agreement.
- (s) ***Execution Date*** means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and SAS herein.
- (t) ***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.
- (u) ***Non-Settling Defendants*** means any Defendant that is not a Settling Defendant or a Settled Defendant, or any Defendant that terminates its own settlement agreement in accordance with its terms, whether or not such settlement agreement is in existence at the date of execution of this Settlement Agreement.
- (v) ***Notice of Certification and Approval Hearings*** means the form of notice or notices, agreed to by Counsel for the Plaintiffs and for SAS, or such other form as may be approved by the Courts, 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.

- (w) ***Notice of Certification and Settlement Approval*** means the form of notice, agreed to by the Plaintiffs and SAS or such other form as may be approved by the Courts, which informs the Settlement Class of: (i) the certification of the Actions; (ii) the approval of the Settlement Agreement; and (iii) the core elements of the Settlement Agreement, including the terms of the Distribution Protocol if applicable.
- (x) ***Notices*** means the Notice of Certification and Approval Hearings, the Notice of Certification and Settlement Approval, and notice of termination.
- (y) ***Ontario Action*** means the proceeding commenced by Airia Brands Inc., StarTech.com Ltd., and QCS-Quick Cargo Service GmbH in the Ontario Court, under Court File No. 50389 CP, on July 6, 2006.
- (z) ***Ontario Counsel*** means Siskinds^{LLP}, Sutts, Strosberg^{LLP} and Harrison Pensa^{LLP}.
- (aa) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (bb) ***Ontario Settlement Class*** means all Persons, other than members of the Québec Settlement Class or the BC Settlement Class, who purchased Airfreight Shipping Services during the Purchase Period, including those Persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including without limitation, the Defendants, and specifically including SAS. 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) **Other Action** means any Claim within the scope of the Released Claims other than the Actions that has been, or is later, commenced by a Settlement Class Member.
- (dd) **Party** and **Parties** means the Plaintiffs, Settlement Class Members, and SAS.
- (ee) **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.
- (ff) **Plaintiffs** means Airia Brands Inc., StarTech.com Ltd., QCS-Quick Cargo Service GmbH, Cartise Sports Inc. and Karen McKay, individually and collectively.
- (gg) **Purchase Period** means January 1, 2000 up to and including September 11, 2006.
- (hh) **Québec Action** means the proceeding commenced by Cartise Sports Inc. in the Québec Court, under Court File No. 500-06-000344-065, on May 5, 2006.
- (ii) **Québec Counsel** means Liebman & Associés.
- (jj) **Québec Court** means the Québec Superior Court.
- (kk) **Québec Settlement Class** means all individuals resident in the province of Québec and all legal persons established for a private interest, partnership or association in the province of Québec which, at all times between May 5, 2005 and May 5, 2006, had under its direction or control no more than 50 persons bound to it by a contract of employment, who purchased Airfreight Shipping Services during the Purchase Period, including those legal persons who purchased Airfreight Shipping Services through freight forwarders,

from any air cargo carrier, including without limitation, the Defendants, and specifically including SAS, during the Purchase Period. Excluded from the Québec Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons who validly and timely opted-out of the Québec Action in accordance with the order of the Québec Court dated April 14, 2008.

- (II) ***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, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing, distributing of or compensation for, Airfreight Shipping Services, specifically including, without limitation, any Claims in any way related to air cargo rates or prices, fuel surcharges, security surcharges, 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.

- (mm) **Released Parties** means, jointly and severally, individually and collectively, SAS, and all of its present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners (including, but not limited to, SAS Cargo Group A/S, SAS AB, SAS Consortium and Nordair A/S), 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) **SAS** means Scandinavian Airlines System and its subsidiaries, predecessors, successors, and affiliates (including, but not limited to, SAS Cargo Group A/S, SAS AB, SAS Consortium and Nordair A/S).

- (pp) **Settled Defendant** means Deuteche Lufthansa AG, Lufthansa Cargo AG, Swiss International Air Lines Ltd., Japan Airlines International Co., Ltd., 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 date of execution of this Settlement Agreement.
- (qq) **Settlement Agreement** means this agreement, including the recitals and schedules attached hereto.
- (rr) **Settlement Amount** means the sum of three hundred thousand Canadian dollars (Cdn \$300,000).
- (ss) **Settlement Class** and **Settlement Class Members** means all Persons included in the Ontario Settlement Class, the Québec Settlement Class and the BC Settlement Class.
- (tt) **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.
- (uu) **Settling Defendant** means Scandinavian Airlines System.
- (vv) **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.

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 the Escrow Agent until the Courts have appointed a Claims Administrator, at which time the Escrow Agent will cede control to the Claims Administrator, or such other trustee as may be appointed by the Courts, who will administer the Settlement Fund. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Courts' continuing supervision and control. No monies shall be paid from the Settlement Fund without (i) the specific authorization of both Class Counsel and counsel for SAS, 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 BC Court, Ontario Court, or Québec Court, as required by this Settlement Agreement, issued with notice to or with consent of the Plaintiffs and SAS. Class Counsel and SAS agree to cooperate, in good faith, to form an appropriate escrow agreement in conformance with this Settlement Agreement.
- (b) The escrow account shall be established and maintained in a manner that minimizes transactional costs and risks and maximizes the amount available for distribution. All transactional costs associated with maintaining the Settlement Fund shall be paid from the Settlement Fund.
- (c) The Escrow Agent and Claims Administrator shall cause the Settlement Fund to be invested in guaranteed investment vehicles or liquid money market accounts or equivalent securities with a rating equivalent to or better than that of a Canadian Schedule

1 bank. All interest earned on the Settlement Fund shall become and remain part of the Settlement Fund.

- (d) The Plaintiffs and SAS acknowledge that the Settlement Class includes both shippers and freight forwarders, and both customers and non-customers of SAS, and that the Settlement Agreement makes no determination as to which Settlement Class Members are entitled to distribution of the Settlement Fund, or as to the formula for determining the amounts to be distributed. As soon as practicable, the Plaintiffs shall prepare and submit to the Courts for approval of a proposed Distribution Protocol.
- (e) After the Effective Date, the Settlement Fund shall be distributed in accordance with the Distribution Protocol.

2.2 Payment of the Settlement Benefits

- (a) SAS 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) SAS 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, SAS 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 the Escrow Agent or the Claims Administrator, or the payment of any Class Counsel Fees or any Administration Expenses.

- (c) SAS, directly or through its counsel or designee, shall wire transfer 100% of the Settlement Amount into the Settlement Fund within ten (10) business days after the Execution Date of this Settlement Agreement. Before any wire transfer takes place, Class Counsel shall provide SAS with the information necessary to complete the wire transfer.
- (d) If the Settlement Fund must be returned to SAS pursuant to Section 9.2 of this Settlement Agreement, then the Escrow Agent and/or the Claims Administrator, as the case may be, shall be obliged to return the Settlement Fund to SAS.

2.3 Taxes

- (a) All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. None of the Settlement Amount, including interest earned thereon, will be reported as taxable to SAS.
- (b) Except as provided for in Section 9.2, Escrow Agent and/or the Claims Administrator shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned on the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund.
- (c) Except as provided for in Section 9.2, SAS shall have no responsibility to make any filings relating to the Settlement Fund, will not be considered a payee of any income earned on the Settlement Fund, and will have no responsibility to pay tax on any income earned by the Settlement Fund or pay taxes, if any, on the Settlement Fund.

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

(a) The Parties understand and agrees as follows:

- (i) All documents and information provided by the Settling Defendant 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. Plaintiffs and Class Counsel agree they will not use or publicize the documents and information provided by the Settling Defendant beyond what is reasonably necessary for the prosecution of the Actions or as otherwise required by law.
- (ii) Prior to the Effective Date, no documents or other information provided by SAS 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 the expert agrees to be bound by these same confidentiality obligations), except with the prior written consent of SAS or as required under Canadian law. After the Effective Date, the Plaintiffs or Class Counsel shall give SAS thirty (30) days' notice prior to the disclosure of any documents or other information provided by SAS in any of the Actions or otherwise and any such disclosure shall be in compliance with the confidentiality orders that have been obtained pursuant to subparagraph (iii) below. SAS 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.

- (iii) The Settling Defendant, Plaintiffs, and Class Counsel shall make all reasonable efforts permitted by law to protect the confidentiality of the Settling Defendant's confidential or proprietary information, including opposing any challenges by other parties to the confidential treatment of these documents as contemplated hereby. Class Counsel and the Plaintiffs shall seek to obtain, at the same time as the motions to approve the settlement agreement (and in any event, before any document or information is disclosed in the Actions) on notice to the Settling Defendant, a confidentiality and protective order from the Ontario Court in a form satisfactory to the Settling Defendant, acting reasonably. Class Counsel and the Plaintiffs shall also seek to obtain, on notice to the Settling Defendant, confidentiality and protective orders in a form acceptable to the Settling Defendant, acting reasonably, from the B.C. Court and the Quebec Court before any disclosure of any document or information is made in the B.C. Action or the Quebec Action, respectively. Any documents and other information provided by the Settling Defendant will be treated as highly confidential under any applicable confidentiality orders entered in the Actions.
- (iv) The confidentiality requirements in this Section will continue to bind Plaintiffs, Settlement Class Members 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 shall also apply to all documents and other information shared by Class Counsel with experts under this Settlement Agreement.

- (b) Within thirty (30) days after the filing of the motion for approval of this Settlement Agreement as contemplated by Section 5.2 or at any time mutually agreed upon by the Parties, SAS shall provide to Class Counsel the following information to the extent it is currently in existence and is reasonably available:
- (i) transaction data, which data includes pricing and surcharge information, in electronic format for SAS's Airfreight Shipping Services during the Purchase Period. Counsel for SAS agree to be reasonably available as necessary to respond to Class Counsel's questions regarding the set of electronic data produced by SAS;
 - (ii) any documents provided by SAS in the U.S. Litigation, including but not limited to, any documents provided to counsel for the plaintiffs in the U.S. Litigation pursuant to the settlement agreement reached between SAS and the plaintiffs in the U.S. Litigation ("U.S. Settlement Agreement"); and
 - (iii) any other pre-existing documents provided by SAS to the Canadian Competition Bureau concerning the allegations raised in the Actions, excluding any documents created for the purpose of being so provided.
- (c) The obligation to produce documents pursuant to Section 2.4(b) is a continuing one to the extent documents responsive to Section 2.4(b) are identified following the initial productions. SAS shall make reasonable efforts to provide the information specified above in Section 2.4(b)(i) 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 2.4(b)(i), and it is understood and agreed that the failure to produce a complete set of the

documents and information shall not constitute a breach or violation of this Settlement Agreement.

- (d) Subject to Section 2.4(m) below, commencing no sooner than thirty (30) days after the counsel meetings held in the U.S. Litigation contemplated by Section 55 of the U.S. Settlement Agreement, but in no event later than the earlier of the Effective Date and 365 days after the filing of the motion for approval of the Settlement Agreement, or at any time mutually agreed by the Parties, counsel for SAS will meet in Canada or the United States as may be agreed by the Parties, acting reasonably, with Class Counsel, for up to a total of two (2) meetings and no more than six (6) hours in the aggregate, to provide information relevant to the continued prosecution of the Actions, including by providing an evidentiary proffer setting forth the facts of the Actions and any potential testimony by current or former employees of SAS. 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 SAS are privileged, will be kept strictly confidential 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) Subject to Section 2.4(m) below, sixty (60) days following the Effective Date or at any time mutually agreed to by the Parties, SAS shall, at the request of Class Counsel, upon reasonable notice, and subject to any legal restrictions under any applicable domestic or foreign laws, make reasonable efforts to make available up to two (2) current or former officers, directors and employees of SAS (excluding Timothy Pfeil and Jan Lillieborg) who have knowledge of the allegations raised in the Actions, to provide information regarding the allegations in the Actions in a personal interview with Class Counsel and/or

experts retained by Class Counsel, at a location chosen by SAS within its sole discretion acting reasonably. Each such interview shall last no more than eight (8) hours, including reasonable breaks, and may occur on more than a single day, but not more than two (2) days. The Plaintiffs shall pay for the costs of the meeting rooms for the interviews, including one “caucus” or “break-out” room for the use of the interviewee, the Settling Defendant and their counsel. If such officers, directors or employees refuse to provide information, or otherwise cooperate, SAS shall use reasonable efforts to make him/her available for an interview but the failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement by SAS.

- (f) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, SAS agrees to produce at trial and/or discovery or through acceptable affidavits or other testimony in the Actions, up to two (2) representatives qualified to establish for admission into evidence any of the SAS’s documents and information provided as cooperation pursuant to Section 2.4(b) of this Settlement Agreement, and agrees to authenticate documents produced by the Defendants that were created by, sent to, or received by SAS. If such officers, directors or employees refuse to provide information, or otherwise cooperate, SAS shall use reasonable efforts to make him/her available but the failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement.
- (g) Nothing in this Settlement Agreement shall require, or shall be construed to require, SAS (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 SAS, 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 who is not a Settling Defendant.

- (h) If any documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently produced, such documents shall be promptly returned to SAS and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of SAS, 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.
- (i) SAS's obligation to cooperate as particularized in this Section 2.4 shall not be affected by the release provisions contained in this Settlement Agreement. Unless this Settlement Agreement is not approved or is terminated (at which time SAS's obligation to cooperate ceases), SAS's obligations to cooperate shall cease at the date of a settlement or final judgment in the Actions with or against all Defendants.
- (j) The provisions set forth in this Section 2.4 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or documents from SAS or its current or former officers, directors or

employees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, SAS or its current or former officers, directors or employees, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction. Notwithstanding the above in this Section 2.4(j), the Plaintiffs are at liberty to exercise any rights they have to seek to obtain discovery of Timothy Pfeil and Jan Lillieborg, as well as any current or former officer, director or employee of SAS who is put forward by SAS under Section 2.4(e) or (f) but who fails to cooperate in accordance with that section.

- (k) A material factor influencing SAS'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 SAS 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 SAS on its former and current officers, directors and employees.
- (l) Notwithstanding any other provision of this Settlement Agreement, SAS (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 SAS that any production contemplated by this Settlement Agreement may interfere with an ongoing investigation of the Airfreight Shipping Services industry, such

production will be only be made after SAS is advised by the national competition authority that such production will no longer interfere with its ongoing investigation of the Airfreight Shipping Services industry.

(m) Notwithstanding the provisions of Sections 2.4(d) and (e) above, the Parties agree that SAS shall have the right to elect to conduct the counsel meetings contemplated by Section 2.4(d) and the pre-trial witness interviews contemplated by Section 2.4(e) concurrently with (i.e., at the same time as and at the same place as) the counsel meetings and pre-trial witness interviews contemplated by, respectively, Sections 55 and 56 of the U.S. Settlement Agreement, and that, if SAS so elects, it is understood that the cooperation may take place before the Effective Date. SAS recognizes that such an election might result in the Plaintiffs and Class Counsel obtaining greater cooperation than what is provided for by Sections 2.4(d) and (e) above. In the event that SAS makes such an election, notwithstanding anything to the contrary in Sections 2.4(d) and (e) above:

- (i) any documents and information provided in the course of those interviews shall be subject to the terms and protections of this Settlement Agreement;
- (ii) counsel for SAS will, if requested, meet Class Counsel for one (1) further meeting lasting no more than three (3) hours to address, to the extent known, Canada-specific issues raised in the Actions that were not addressed at the counsel meetings conducted pursuant to Section 55 of the U.S. Settlement Agreement;
- (iii) the cooperation so provided shall fully satisfy SAS' obligations under Section(s) 2.4(d) or (e), as the case may be; and

- (iv) in the event that this Settlement Agreement is not approved by the Courts under Section 5.2, the information and documentation provided during the counsel meetings and witness interviews shall not be used by Plaintiffs or Class Counsel against SAS as an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by SAS or any Defendant, or of the truth of any claims or allegations contained in the Statements of Claim or any other pleading filed by Plaintiffs in the Actions, and such information shall not be discoverable by any person or treated as evidence of any kind, unless otherwise ordered by a Court. In order to give effect to this agreement, Class Counsel agrees to return all copies of any documents received during, and destroy all copies of any notes taken during (or subsequent reports provided about), these meetings and interviews and to provide written confirmation to SAS of having done so.

SECTION 3 RELEASES AND DISMISSALS

3.1 Release of Released Parties

- (a) Upon the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, including SAS' commitment to provide continuing compliance with the cooperation provisions of this Settlement Agreement set forth in Section 2.4, the Releasing Parties shall be deemed to, and do hereby, release and forever discharge the Released Parties of and from any and all Claims arising from or in any way related to the Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein incorporated into the orders obtained from the Courts approving this Settlement Agreement.

- (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 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.
- (c) It shall be a condition of receipt of funds under this Settlement Agreement that each Settlement Class Member receiving funds execute a written release in favour of the Released Parties in respect of all Released Claims. Such written release will be contained within the body of the claim form to be filed by Settlement Class Members for compensation pursuant to the Distribution Protocol.

3.2 Covenant Not To Sue

- (a) Notwithstanding Section 3.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasing Parties do not release the Released Parties but instead covenant and undertake not to sue, make any Claim in any way or to threaten, commence, or continue any Claim in any jurisdiction against the Released Parties, arising from or in any way related to the Released Claims. The Parties shall use their best efforts to have the terms of the covenant not to sue contemplated herein incorporated into the orders obtained from the Courts approving this Settlement Agreement.
- (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 fully, finally and forever covenant and undertake not to sue or make any Claim 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) The Releasing Parties shall not now or hereafter commence, institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any Claim within the scope of the Released Claims against any Released Party or any other person who may claim contribution or indemnity from any Released Party in respect of any Released Claim or any matter related thereto, except for the continuation of the Actions against the Non-Settling Defendants and, in the event that a future contested certification hearing in the Actions is not resolved in favour of the Plaintiffs, continuation of the Claims as alleged in the Actions against the Non-Settling Defendants in the form of individual claims, group proceedings, or test cases.

3.4 Dismissal of Actions as Against SAS

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

3.5 Dismissal of Other Actions as Against SAS

- (a) Upon the Effective Date each Settlement Class Member shall be deemed to consent to the dismissal, without costs and with prejudice, of his, her or its Other Action against the Released Parties.

- (b) Upon the Effective Date, all Other Actions in each of the Courts' respective jurisdictions commenced by Settlement Class Members shall be dismissed against the Released Parties, without costs and with prejudice.
- (c) Each Settlement Class Member must execute a consent to dismissal of any Other Actions against the Released Parties, without costs and with prejudice. Such consent will be contained within the body of the claim form to be filed by Settlement Class Members for compensation pursuant to the Distribution Protocol.

3.6 Claims Against Other Entities Reserved

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

SECTION 4 BAR ORDER

4.1 Ontario and British Columbia Bar Order

- (a) The Plaintiffs in the Ontario Action and the BC Action shall seek a bar order from the Ontario and BC Courts providing for the following:
 - (i) all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Actions or otherwise, by any Non-Settling Defendant or any other Person or party, against one or more of the Released Parties, or by one of more of the Released Parties against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Section;

(ii) a Non-Settling Defendant may, upon motion on at least ten (10) days notice to counsel for SAS, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek an order from one or more of the Ontario and BC Courts for the following:

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

SAS retains all rights to oppose such motion(s).

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

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

(b) If the Courts ultimately determine that there is a right of contribution and indemnity between co-conspirators, the Plaintiffs in the Ontario Action and the BC Action, and Ontario Settlement Class Members and BC Settlement Class Members shall restrict their joint and several claims against the Non-Settling Defendants such that the Plaintiffs in the Ontario Action and the BC Action, and Ontario Settlement Class Members and BC

Settlement Class Members shall be entitled to claim and recover from the Non-Settling Defendants on a joint and several basis, only those damages, if any, arising from and allocable to the conduct of and/or sales by the Non-Settling Defendants.

4.2 Québec Bar Order

- (a) The Plaintiff in the Québec Action shall seek a bar order from the Québec Court providing for the following:
- (i) the Plaintiff in the Québec Action and the Québec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of SAS;
 - (ii) the Plaintiff in the Québec Action and the Québec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and/or sales by the Non-Settling Defendants;
 - (iii) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Settling Defendants or relating to the Released Claims shall be inadmissible and void in the context of the Québec Action; and
 - (iv) that any future right by the Non-Settling Defendants to examine on discovery a representative of SAS will be determined according to the provisions of the *Code of Civil Procedure*, and SAS shall reserve its right to oppose such an examination under the *Code of Civil Procedure*.

4.3 Material Term

- (a) Without derogating from the materiality of any other term or condition of this agreement, for greater certainty, the form and content of the bar orders contemplated in this Section 4 shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the bar orders contemplated herein shall give rise to a right of termination pursuant to Section 9 of this Settlement Agreement.

SECTION 5 SETTLEMENT APPROVAL

5.1 Best Efforts

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

5.2 Motions for Certification and Settlement Approval

- (a) The Plaintiffs shall, within fifteen (15) days of the execution of this Settlement Agreement, file motions before the Courts seeking orders from the Courts certifying or authorizing the Actions as class proceedings against SAS solely for the purpose of settling the Actions and approving this Settlement Agreement.
- (b) Subject to Section 5.4(a), the Plaintiffs shall seek to schedule the motions described in Section 5.2(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 Québec Settlement Class and the BC Settlement Class.

- (d) If this Settlement Agreement is approved by the Courts, the Plaintiffs and SAS shall jointly seek entry of orders that, *inter alia*:
- (i) approve this Settlement Agreement and its terms as being a fair, reasonable, and in the best interests of the Settlement Class Members and directing its consummation according to its terms;
 - (ii) determine that the Notice of Certification and Settlement Approval constitutes, under the circumstances, the most effective and practicable notice of this Settlement Agreement and constitutes due and sufficient notice for all other purposes to all Persons entitled to receive notice;
 - (iii) direct that, as to the Released Parties, the Actions and any Other Actions in each respective Court's jurisdiction be dismissed with prejudice and without costs against SAS; and
 - (iv) incorporate any other operative language and provisions as contemplated herein.
- (e) Subject to the approval of the Courts, the Plaintiffs and SAS shall agree on the form of the orders to be sought. Should the Plaintiffs and SAS fail to agree on the form of the orders such dispute will be resolved pursuant to Section 10 of this Settlement Agreement.

5.3 Pre-Motion Confidentiality

- (a) Until the motions required by Section 5.2 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 SAS, without the prior written consent of counsel for SAS 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) or as otherwise required by law. Notwithstanding the foregoing, the Parties agree that at any time after this Settlement Agreement is entered into, SAS may, in its discretion, file a press release announcing that this Settlement Agreement has been entered into and describing the nature and effect of the Settlement Agreement.

5.4 Sequence of Motions

- (a) The Plaintiffs in Québec and British Columbia shall not proceed with motions to certify, authorize, or approve this Settlement Agreement in the Actions commenced in their respective jurisdictions unless and until the Ontario Court approves this Settlement Agreement. The approval motions may be filed in Québec and British Columbia, but Québec Counsel and BC Counsel agree to seek any adjournment of their approval hearing required to permit the Ontario Court to first render its decision on the motion for approval brought before it. On consent of all Parties, the BC Court may order that the British Columbia motions to certify and/or approve the Settlement Agreement be adjourned, and be determined by the Ontario Court.

5.5 Effect of Non-Approval

- (a) If any Court declines to approve this Settlement Agreement or any material part hereof, or if any Court approves this Settlement Agreement in a materially modified form, or if, after any Court's approval, such approval is materially modified or set aside on appeal, then the Plaintiffs and SAS shall each, in their respective sole discretion, have the option to terminate this Settlement Agreement in its entirety, in accordance with the provisions of Section 9.

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

SECTION 6 NOTICE TO SETTLEMENT CLASS

6.1 Notices Required

- (a) The proposed Settlement Class shall be given the following notice: (i) Notice of Certification and Approval Hearings; (ii) Notice of Certification and Settlement Approval; and (iii) termination of this Settlement Agreement if ordered by the Courts. All notices shall be in a form agreed upon by the Plaintiffs and SAS or in such other form as approved by the Courts.
- (b) The Plaintiffs shall, at a time determined in their full and complete discretion, bring and seek to schedule motions before the Courts seeking orders from the Courts approving the notices described in Section 6.1(a).

6.2 Distribution of Notices

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

the Actions and/or the U.S. Litigation. The costs of provision of notice shall be allocated proportionally among settlements. Notwithstanding the above, prior to each of the Courts issuing an Approval Order, no more than \$50,000 may be deducted or paid from the Settlement Fund for the purposes of any notice costs. After each Court has issued an Approval Order, if necessary, an additional deduction or payment may be made from the Settlement Fund to enable the costs of notice to be allocated proportionally among the settlements.

SECTION 7 CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

7.1 Class Counsel Fees and Administration Expenses

- (a) Class Counsel shall seek the Courts' approval of their fee applications, including fees, disbursements, and taxes.
- (b) The Escrow Agent or Claims Administrator shall pay the costs of the Notices referred to in Section 6 of this Settlement Agreement out of the Settlement Fund. Notwithstanding Section 7.1(c), but subject to Section 6.2(b), any such costs can be paid as they are incurred.
- (c) Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for approved fees, disbursements, and taxes after the Effective Date. No Class Counsel fees, disbursements, or taxes, shall be paid from the Settlement Fund prior to the Effective Date, except as otherwise provided in this Settlement Agreement.
- (d) SAS shall not be liable for any Class Counsel Fees, or the Plaintiffs' or Settlement Class Members' experts, advisors, agents, or representatives.

- (e) With the object of reducing the costs of claims administration, Class Counsel shall use their reasonable best efforts to coordinate the claims administration process pertaining to this Settlement Agreement with the claims administration process pertaining to any other settlements that have been or may be reached in the Actions and/or the U.S. Litigation. The costs of the claims administration process shall be allocated proportionally among settlements. For greater certainty, notwithstanding that a portion of the costs of the claims administration process will be paid from the Settlement Fund as contemplated herein, SAS is not liable to pay any further amount on account of any Administrative Expenses or Class Counsel Fees, including the cost of providing any notices required by the Court, regardless of whether or not the Settlement Fund is sufficient to pay for its proportional share of the Administration Expenses, Class Counsel Fees or other such shared costs.

SECTION 8 IMPLICATIONS OF SETTLEMENT

8.1 No Admission of Liability

- (a) The Plaintiffs and SAS 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 SAS 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 SAS 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.

8.2 Agreement Not Evidence

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

8.3 No Further Litigation

- (a) Except as otherwise provided in this Settlement Agreement, no Class Counsel, Plaintiff, Settlement Class Member nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, any Plaintiff or Settlement Class Member may directly or indirectly participate or be involved in or in any way assist with respect to any Claim made or action commenced by any Person which relates to or arises from the Released Claims. Moreover, no Class Counsel, Plaintiff, Settlement Class Member nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, any Plaintiff or Settlement Class Member may divulge to anyone for any purpose any information, including, without limitation, Documents obtained in the course of the Actions or the negotiation and preparation of this Settlement Agreement, except to

the extent such information is otherwise publicly available or otherwise ordered by a court.

- (b) Section 8.3(a) does not apply to the involvement of any Person in the continued prosecution of the Actions against any Non-Settling Defendants, including any unnamed co-conspirators that may be added as defendants to the Actions in the future.

SECTION 9 TERMINATION OF SETTLEMENT AGREEMENT

9.1 Right of Termination

- (a) If one or more of the following events occur, the Plaintiffs and SAS shall each, in their respective sole discretion, have the option to terminate this Settlement Agreement in its entirety:
 - (i) any Court declines to approve this Settlement Agreement or any material part hereof;
 - (ii) any Court approves this Settlement Agreement in a materially modified form;
 - (iii) any Approval Order is materially modified or set aside on appeal; or
 - (iv) the U.S. Settlement Agreement in the U.S. Litigation is not approved by the U.S. District Court for the Eastern District of New York, or an approval by that court is overturned on appeal.
- (b) Any order, ruling or determination made by any Court with respect to Class Counsel's fees and disbursements or with respect to the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

- (c) If pursuant to Section 9.1(a) above, the Plaintiffs or SAS wish to terminate the Settlement Agreement, notice of such decision to terminate the Settlement Agreement must be provide in writing to the Plaintiffs or SAS, as applicable, within thirty (30) days of an event under Section 9.1(a) having occurred.

- (d) In the event this Settlement Agreement is not approved and is terminated in accordance with its terms, the Plaintiffs and SAS agree that any prior certification or authorization of an Action as a class proceeding in any jurisdiction in Canada, including the definitions of the Settlement Class, shall be null and void and without prejudice to any position that any of the Parties may later take on any issue in the Actions or any other litigation, and the Parties shall take all reasonable steps to vacate any such orders made in any Canadian jurisdiction.

9.2 Effect of Termination Generally

- (a) Except as provided in Section 9.3(a), if this Settlement Agreement is terminated or otherwise fails to take effect for any reason, it shall have no further force and effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

- (b) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason:
 - (i) no further motion to certify or authorize any of the Actions as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement shall proceed;

 - (ii) any order certifying or authorizing these Actions as a class proceeding on the basis of this Settlement Agreement and approving this Settlement Agreement

shall be set aside and declared null and void and of no force or effect, and anyone attempting to assert otherwise shall be estopped from doing so;

- (iii) Class Counsel in each Action shall forthwith deliver consents in writing authorizing SAS 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 9.3(a));
 - (B) setting aside any order certifying or authorizing these Actions as a class proceeding on the basis of this Settlement Agreement; and
 - (C) directing that the balance in the Settlement Fund less any deductions provided for in this Settlement Agreement be paid to SAS, including interest.
- (iv) The Escrow Agent or Claims Administrator shall thereupon pay to SAS the balance in the Settlement Fund, including interest, less reasonable administrative costs charged by the financial institution holding the Settlement Fund and the costs of notice expended in accordance with Section 7.1(b). Despite Section 2.3, if the Settlement Agreement is terminated, to the extent the balance in the Settlement is paid to SAS, it shall be responsible for the payment of taxes owed by it with respect to income on such amounts paid to SAS.
- (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 SAS, return to SAS all Documents and notes or records of information (and all copies of such Documents and notes or records of information), provided by SAS under this Settlement Agreement or otherwise. In the event any Documents and notes or records of information are incapable of being physically returned to SAS, the Plaintiffs shall destroy all such Documents and notes or records of information (howsoever recorded) and provide SAS 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 under Section 2.4 or that the experts themselves created.

9.3 Survival of Provisions After Termination

- (a) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 2.2(d), 2.3(b)-(c), 2.4(a), (h)-(l) and (m)(iv), 5.5, 6.1, 6.2, 7.1(b), 8.1, 8.2, 9.1(d), 9.2, and 9.3 and the definitions in Section 1 and Schedules applicable thereto shall survive the termination and continue in full force and effect.

SECTION 10 DETERMINATION OF DISPUTES

10.1 Disputes

- (a) SAS and the Plaintiffs agree that all disputes, claims, or controversies arising in connection with, pursuant to, or related to the implementation of the terms of this Settlement Agreement shall be finally resolved by the Ontario Court, or if the Ontario Court directs, by a referee appointed by the Ontario Court. To the extent necessary, the referee appointed under this Section shall have the authority to conduct a reference in accordance with the Ontario *Rules of Civil Procedure*.
- (b) SAS and the Plaintiffs shall bear their own costs of such Court hearing or reference, unless the Court or referee in its, his or her discretion finds it reasonable to assess such costs solely to SAS or the Plaintiffs. The Plaintiffs and SAS 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 11 MISCELLANEOUS

11.1 Governing Law

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

11.2 Ongoing Jurisdiction

- (a) Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction, the parties thereto and the application brought in those Actions for fee approval pursuant to Section 7.
- (b) The Plaintiffs and SAS intend and agree that no Court shall make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (c) Notwithstanding the above, the Ontario Court shall exercise jurisdiction with respect to implementation, administration, and enforcement of the terms of this Settlement Agreement, and the Parties submit to the jurisdiction of the Ontario Court for purposes of implementing, administering, and enforcing the settlement provided for in this Settlement Agreement. Issues related to the Settlement Fund, the appointment of referees, and other matters not specifically related to the claim of a BC Settlement Class Member or a Québec Settlement Class Member shall be determined by the Ontario Court.

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

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, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (ii) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

11.4 Language

- (a) The Plaintiffs and SAS acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties

reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. The Plaintiffs and SAS shall prepare a French translation of this Settlement Agreement (including all Schedules) as and when required by the Courts. The Plaintiffs and SAS shall each pay one half of the cost of such translation in the event such translation is required by the Courts. The Plaintiffs and SAS agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

11.5 Entire Agreement

- (a) This Settlement Agreement, including the recitals herein and the schedules attached hereto, constitutes the entire agreement among the Plaintiffs and SAS, and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement, other than the representations, warranties, and covenants contained and memorialized in such document. This Settlement Agreement supersedes any and all prior and contemporaneous agreements, understandings, undertakings, negotiations, representations, warranties, promises, and inducements concerning the Actions.
- (b) The Plaintiffs and SAS further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.
- (c) The recitals and schedules to this Settlement Agreement are material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

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 SAS shall be binding upon all of the Released Parties.
- (b) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect.
- (c) This Settlement Agreement constitutes a transaction in accordance with Civil Code of Québec art. 2631 *et seq.*, and the Plaintiffs and SAS are hereby renouncing any errors of fact, of law, and/or of calculation.
- (d) This Settlement Agreement may not be modified or amended except in writing and on consent of all parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

11.7 Notice

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

If to: THE PLAINTIFFS and/or CLASS COUNSEL,

Charles M. Wright
Siskinds ^{LLP}
680 Waterloo Street
London, ON N6A 3V8

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

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

Tel.: (519) 661-6775
Fax: (519) 667-3362
Email: jforeman@harrisonpensa.com

J. J. Camp, Q.C.
Camp Fiorante Matthews
4th Floor, Randall Bldg
555 West Georgia St.
Vancouver, BC V6B 1Z6

Tel.: (604) 331-9520
Fax: (604) 689-7554
Email: jjcamp@cfmlawyers.ca

Heather Rumble Peterson
Sutts, Strosberg LLP
600-251 Goyeau Street
Windsor, ON N9A 6V1

Tel.: (519) 561-6228
Fax: (519) 561-6203
Email: hpeterson@strosbergco.com

Irwin Liebman
Liebman & Associés
1 carrée Westmount, bureau/Suite 1500
Montréal, QC H3Z 2P9

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

If to: SAS

Jessica Kimmel
Goodmans LLP
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Tel: (416) 979-2211
Fax: (416) 979-1234
Email: jkimmel@goodmans.ca

Michael F. Goldman
Silverberg, Goldman, & Bikoff, LLP
1101 30th St., N.W., Suite 120
Washington, DC 20007

Tel: (202) 944-3300
Fax: (202) 944-3306
email: mgoldman@sgbdc.com

