

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class action)

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No: 500-06-000756-151

**DAVID HURST**

Plaintiff

v.

**AIR CANADA**

Defendant

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**NATIONAL SETTLEMENT AGREEMENT**

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A. This National Settlement Agreement is entered into by and among Plaintiff David Hurst, on behalf of himself and the Settlement Class Members, and Defendant Air Canada, and resolves in full the Action. Subject to Court approval as required by the *Code of Civil Procedure*, CQLR, c. C-25.01, and as provided herein, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Agreement and upon the issuance by the Court of a Final Judgment Approving Settlement and the occurrence of the Effective Date, the Action shall be settled and terminated upon the terms and conditions contained herein.

**I. RECITALS**

B. **WHEREAS**, on August 31, 2015, Plaintiff filed the *Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative* against Defendant (the "**Application for Authorization**") which asserted claims under the *Consumer Protection Act*, CQLR, c. P-40.1 as well as under the contractual obligations of the *Civil Code of Québec*, CQLR, c. CCQ-1991 in relation to the purchase of the Flight Pass which was mistakenly priced at one tenth of its intended price for a period of approximately 13 hours on August 26, 2015.

C. **WHEREAS**, on June 28, 2016 the Plaintiff amended the Application for Authorization, which allowed Plaintiff to further substantiate its claim although the basis of the claim remained unchanged.

D. **WHEREAS**, on January 29, 2017, by means of the *Rectified Judgment of Judgment rendered January 27, 2017*, the Application for Authorization, as amended, was granted by the Honourable Pepita G. Capriolo, S.C.J. and the Plaintiff was authorized to bring a class action on behalf of the following class:

*All "consumers", within the meaning of the CPA, in Canada, who between August 25, 2015 and August 28, 2015:*

- a) purchased, received, and/or acquired a flight pass from Air Canada's internet website, which consisted of credits for ten business class one-way flights in the Western USA and/or Canada (the "Flight Pass"); and*
- b) had their Flight Pass delivered to their Air Canada internet website account and subsequently removed from their internet website account by Air Canada;*

E. **WHEREAS**, on September 5, 2017, Plaintiff filed the *Originating Application* which asserted the same claims made in the Application for Authorization, as amended, on behalf of the above mentioned class.

F. **WHEREAS** the hearing on the merits of the Action occurred on February 18 to 20, 25 and 26, 2019 before the Honourable Pepita G. Capriolo, S.C.J. at the Montreal Courthouse, but judgment on the merits of the Action has not been rendered.

G. **WHEREAS**, the Parties have reached the resolution set forth in this Agreement, providing for, *inter alia*, the settlement of the Action between and among Plaintiff, on behalf of himself and the Settlement Class, and Defendant on the terms and subject to the conditions set forth below.

H. **WHEREAS**, the Parties have determined that a settlement of the Action on the terms reflected in this Agreement is fair, reasonable, adequate, and in the best interests of the Parties and the Settlement Class;

I. **WHEREAS** the Defendant denies the allegations made by Plaintiff in his proceedings as well as in his pleadings, has not conceded or admitted, shall not be deemed to have conceded or admitted and expressly denies any liability, including any liability for monetary compensation or compensation in kind to the members of the members of the group covered by the Action.

J. **WHEREAS**, the Parties, to avoid a judgment being rendered on the merits of the Action and to avoid any uncertainty as to the judgment that could be rendered, have concluded that it is desirable that the claims in the Action be settled, without admission, on the terms reflected in this Agreement.

K. **WHEREAS**, the Settlement Group Members have been identified by Air Canada and the Parties agree that the most effective method to notify the Settlement Group Members is on an individual basis.

**NOW, THEREFORE**, this Agreement is entered into by and among the Parties, by and through their respective counsel and representatives, and in consideration of the mutual promises, covenants and agreements contained herein and for value received, the Parties agree that upon the Effective Date, the Action and all Released Claims shall be settled and terminated as between Plaintiff and the Settlement Class on the one hand, and Defendant on the other hand, as detailed herein.

## II. DEFINITIONS

A. As used in this Agreement and the attached Schedules, the following terms shall have the meanings set forth below, unless this Agreement specifically provides otherwise:

1. **"Action"** means *Hurst v. Air Canada* (S.C.M.: 500-06-000756-151).
2. **"Agreement"** means this National Settlement Agreement (including all Schedules attached hereto).
3. **"Air Canada's Counsel"** means Blake, Cassels & Graydon LLP.
4. **"Attorneys' Fees and Expenses"** means such attorneys' fees and expenses as may be awarded by the Court based on this Agreement to compensate Class Counsel (subject to Court approval), as described more particularly in Section **VIII** of this Agreement.
5. **"Award Amount"** means \$1,018,400, being the maximum amount of Air Canada's monetary obligations under this Agreement.
6. **"Class Counsel"** means Evolink Law Group and Champlain Avocats.
7. **"Class Notice"** or **"Notice"** means the forms of notice to be given to Settlement Class Members informing them about the Agreement. Copies of each of the proposed Class Notices are attached respectively as **Schedules A** (English) and **B** (French) ("**Long-form Notice**") and **Schedules C** (English) and **D** (French) ("**Short-form Notice**") and will be submitted to the Court for approval.
8. **"Class Representative"** or **"Plaintiff"** means David Hurst.

9. **"Court"** means the Superior Court of Quebec, district of Montreal, in which the Action was filed and where the parties will seek approval of the Agreement.

10. **"Days"** means calendar days, except that, when computing any period of time prescribed or allowed by this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time prescribed or allowed by this Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday in Quebec, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday in Quebec.

11. **"Defendant"** means Air Canada.

12. **"Distribution Amount"** means the difference between the Award Amount less the Attorneys' Fees and Expenses approved by the Court during the Final Approval Hearing.

13. **"Effective Date"** means:

- (a) if no appeal is taken from the Final Judgment Approving Settlement, forty (40) Days after the Court renders the Final Judgment Approving Settlement; or
- (b) if an appeal is taken from the Final Judgment Approving Settlement, the date on which all appellate rights have expired, been exhausted, or been finally disposed of in a manner that affirms the Final Judgment Approving Settlement.

14. **"Final Approval Hearing"** means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Agreement and to determine the Attorneys' Fees and Expenses. The Parties shall request

that the Court set the Final Approval Hearing no earlier than forty-five (45) Days after the Notice Date.

**15. "Final Judgment Approving Settlement"** means the Final Judgment Approving Settlement to be rendered by the Court:

- (a) approving the Settlement as fair, adequate, and reasonable;
- (b) discharging the Released Parties of and from all further liability for the Released Claims;
- (c) permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on their behalf, or in any other capacity of any kind whatsoever, any action in any Court, before any regulatory authority or in any other tribunal, forum or proceeding of any kind against the Released Parties that asserts any Released Claims; and
- (d) issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Agreement.

**16. "Flight Pass(es)"** means Defendant's One Traveler, 10 Flight Credits, Business Class Western USA Plus flight pass valid for a period of one year.

**17. "Judgment on Class Notice"** means the Judgment to be rendered by the Court with respect to the approval of the Class Notice and the Notice Program.

18. “**Notice Date**” means five (5) Days after the Judgment on Class Notice is rendered or any other date set by the Court.

19. “**Notice Program**” means the program to be implemented by Class Counsel to cause the dissemination of the Class Notice.

20. “**Objection Date**” means the date by which Settlement Class Members must file with the Court and serve on the Parties any objections to the Settlement and shall be no later than 15 Days before the date first set for the Final Approval Hearing.

21. “**Parties**” means Plaintiff and Air Canada.

22. “**Settlement Class**” and “**Settlement Class Member(s)**” each means all 1273 persons who between August 25, 2015 and August 28, 2015 (1) purchased, received, and/or acquired a Flight Pass from Air Canada's internet website, which consisted of credits for ten business class one-way flights in the Western USA and/or Canada; and (2) had their Flight Pass delivered to their Air Canada internet website account and subsequently removed from their internet website account by Air Canada; a list of the Settlement Class Members is attached hereto as **Schedule E**.

B. Other capitalized terms in this Agreement but not specifically defined in this section shall have the meanings ascribed to them elsewhere in this Agreement, including by reference to capitalized terms indicating in parentheses.

### III. SETTLEMENT RELIEF

1. Each of the 1273 Settlement Class Member is eligible to obtain 1/1274<sup>th</sup> of the Distribution Amount – which takes into account the number of Settlement Class Members and the additional 1/1274<sup>th</sup> of the Distribution Amount that the Class Counsel will try to obtain for the

Plaintiff at the Final Approval Hearing as provided in Section VIII (A) – to be paid in the form of an Air Canada electronic flight voucher (<https://www.aircanada.com/ca/en/aco/home/fly/customer-support/electronic-and-paper-travel-vouchers.html>) (the “Credits”).

2. The Credits are to be issued via email which shall indicate a 15-digit identification number and corresponding 4-digit security code (PIN) as well as all the information relevant provided for in Section III (3)-(7) of this Agreement. The email to be sent by Defendant to the Settlement Class Member shall take the form provided for in **Schedule F** attached hereto and shall be sent on the Effective Date or within ten (10) Days thereof. To the extent any of the email addresses of the Settlement Class Member are no longer operative, the Credits shall be issued to such alternate email address of said Settlement Class Member identified by Class Counsel. Each Settlement Class Member is responsible to keep this information confidential and to keep this information secure.

3. The Credits are transferable and are valid for a period of 12 months from the date that each Settlement Class Member receives the email containing their respective Credits information. If any Credits remains unused, in whole or in part, at the expiry of the validity period of 12 months, the Credits will become null and void.

4. The Credits may be used to purchase an Air Canada, Air Canada Rouge or Air Canada Express flight either (1) online, (2) by calling Air Canada Reservations at 1 (888) 247-2262 or (3) through a travel agent.

5. The Credits may also be used to pay for a variety of fees, travel options and services, including but not limited to seat selection, unaccompanied minor service, pet handling charges, change fees, etc.



6. However, the Credits may not be used when completing a booking with a mobile device or at an Air Canada airport counter, when booking travel for a group of ten or more, for hotel or car reservations, or to buy travel insurance, to pay for Air Canada Bistro products or duty-free items on board of a flight, for flight pass purchases or to purchase an Air Canada Vacations package.

7. Other restrictions apply and are provided in the terms and conditions associated with eCoupons accessible on Air Canada's website at <https://www.aircanada.com/ca/en/aco/home/fly/customer-support/electronic-and-paper-travel-vouchers.html> and attached hereto as **Schedule G**, for ease of reference. If the terms and conditions on Air Canada's website differ from the terms and conditions attached hereto as **Schedule G**, the terms and conditions in the enclosed Schedule prevails.

#### IV. NOTICE TO THE SETTLEMENT CLASS

##### A. Notice

1. No later than the Notice Date, Class Counsel shall cause the Class Notice, in both French and English, to be e-mailed to the potential Settlement Class Members. The Parties agree that a notice sent to each Settlement Class Member via email is the most effective method of notification, under the circumstances of this case, to effect notice to the Settlement Class Members.

2. At or prior to the Final Approval Hearing, Class Counsel shall provide the Court with an affidavit attesting that Class Notice was disseminated.

**B. Long-form Notice**

The Long-form Notice shall be in substantially the form of **Schedule A-B**, attached hereto, agreed to by the Parties and to be approved by the Court. At a minimum, the Long-form Notice shall: (a) include a short, plain statement of the background of the Action and the Agreement; (b) describe the proposed settlement relief as set forth in this Agreement; (c) describe the settlement process; (d) explain the scope of the releases provided in this Agreement; (e) state the identity of Class Counsel and the amount sought in Attorneys' Fees and Expenses; (f) explain the procedures for objecting to the Agreement, including the applicable deadline; (g) explain that any judgment or orders entered in the Action, whether favorable or unfavorable to the Settlement Class, shall include and be binding on all Settlement Class Members; and (h) provide any other information judicially required.

**C. Short-form Notice**

The Short-form Notice shall be in substantially the form attached hereto as **Schedule C-D**. At a minimum, the Short-form Notice shall: (a) include the toll-free telephone number to contact Class Counsel; (b) include the class definition; (c) include a brief description of the proposed Settlement relief as set forth in this Agreement; and (d) inform of the right to object to the Settlement and the deadlines to exercise this right.

**D. Notice Program and Dissemination of the Class Notice**

1. The Short-form Notice (**Schedule A-B**) and Long-Form Notice (**Schedule C-D**) shall be sent to the Settlement Class Members no later than the Notice Date.

2. The Short-form Notice (**Schedule C-D**) and/or the Long-form Notice (**Schedule A-B**), in both French and English may also be sent via e-mail to all persons that subscribed to Class Counsel's mailing list.

3. The Short-form Notice (**Schedule C-D**) and/or the Long-form Notice (**Schedule A-B**), in both French and English shall also be prominently posted on the website(s) of Class Counsel.

## **V. OBJECTIONS AND MEDIA COMMUNICATIONS**

### **A. Objections**

1. Unless otherwise authorized by the Court, any Settlement Class Member who intends to object to the fairness of the Agreement must do so in writing no later than the Objection Date. The written objection must be filed with the Court and served on Class Counsel identified in the Notice and/or Air Canada's Counsel no later than the Objection Date. The written objection must include: (a) a heading which refers to the Action; (b) the objector's name, address, telephone number and, if represented by counsel, of his/her counsel; (c) a statement that the objector purchased Flight Pass(es) during the period of time described in the Settlement Class definition; (d) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel; (e) a statement of the objection and the grounds supporting the objection; (f) copies of any papers, briefs, or other documents upon which the objection is based; and (g) the objector's signature.

2. Any Settlement Class Member who files and serves a written objection, as described in the preceding Section, may appear at the Final Approval Hearing, either in person

or through counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement.

3. Unless otherwise authorized by the Court, any Settlement Class Member who fails to comply with the above provisions above shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments.

**B. Media Communications**

1. Following the issuance of the judgment approving the Class Notice, the Parties agree that they may issue a joint or separate press release. However, if a Party wishes to issue a separate press release, the terms of such a press release is subject to the prior written consent of the other Party.

2. Defendant and Class Counsel may post the joint or separate press release on Defendant's website(s) and Class Counsel's website(s), if they so choose. Any such press release shall only include information relating to the Action or this Agreement available in the public record. The Parties shall not make any other statement or communication to the media pertaining to the Action, this Agreement or its terms. Air Canada may make such disclosures regarding the Action and the terms of the Agreement as it deems necessary in its filings with the Securities Commissions, the Canadian Transportation Agency, to its auditors, or as otherwise required by provincial or federal law.

3. Nothing herein shall prevent Class Counsel from responding to Settlement Class Member inquiries regarding the Settlement in a manner consistent with the terms and conditions of this Agreement.

## **VI. IMPLEMENTATION OF THIS AGREEMENT**

1. The Parties agree that the relative simplicity of this Agreement would not require the mandate of a settlement administrator and, instead, agree to implement this Agreement by directly issuing the Credits to the Class Members and appointing contact person(s) as provided below.

### **B. Class Counsel**

1. No later than the Notice Date, Class Counsel shall provide an e-mail address and a toll-free number for Class Members to make inquiries regarding this Agreement.

2. Class Counsel shall promptly respond to inquiries from Class Members and shall maintain the above noted e-mail address and toll-free number for twelve months from the Effective Date.

3. In the event that Class Counsel cannot address the Class Members' inquiry, Class Counsel shall refer the Class Member to Air Canada's contact person (below).

### **C. Air Canada**

1. Upon the Final Judgment Approving Settlement, Air Canada shall appoint one employee as the contact person and provide the contact information to Class Counsel. Air Canada contact person's mandate shall be valid for twelve months from the Effective Date.

2. That employee shall assist in resolving any other technical matters in respect of the Credits other than: (a) questions about this Agreement that Class Counsel can reasonably answer and address; and (b) matters that can be resolved by Air Canada Reservations at 1 (888) 247-2262.

## VII. RELEASES

A. The Agreement shall be the sole and exclusive remedy for any and all Released Claims of all Releasing Parties against all Released Parties. No Released Party shall be subject to liability of any kind to any Releasing Party with respect to any Released Claim. Upon the Effective Date, and subject to fulfillment of all of the terms of this Agreement, each and every Releasing Party shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim against any Released Party in any court or any forum.

B. The following terms have the meanings set forth herein:

1. **"Released Claims"** means any and all actions, claims, demands, rights, suits, and causes of action of whatever kind or nature that could reasonably have been, or in the future might reasonably be asserted by Plaintiff or Settlement Class Members or the Releasing Parties either in the Action or in any action or proceeding in this Court or in any other court or forum, against the Released Parties, including damages, costs, expenses, penalties, and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity arising out of or relating to legal claims made by the Plaintiff or Members of the Settlement Class or the Releasing Parties arising out of or relating to the allegations in the Action. For avoidance of doubt, this includes, *inter alia*, all such claims that related in any way to the sale/purchase of Flight Passes between August 25, 2015 and August 28, 2015.

2. **"Released Parties"** means Air Canada, including all of its respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, subrogees and assigns. It is expressly understood that, to the extent a Released Party is not a

Party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

3. **"Releasing Parties"** means Plaintiff and each and every Settlement Class Member, including each of their respective spouses, executors, representatives, heirs, successors, bankruptcy trustees, guardians, agents and assigns, and all those who claim through them or who assert duplicative claims for relief on their behalf.

C. On the Effective Date, each Releasing Party shall be deemed to have released and forever discharged each of the Released Parties of and from any and all liability for any and all Released Claims.

D. On the Effective Date, each of the Released Parties shall be deemed to have released and forever discharged each of the Releasing Parties and their respective counsel, including Class Counsel, for all claims arising out of or relating to the institution, prosecution and resolution of the Action, except to enforce terms and conditions contained in this Agreement.

E. The Parties agree that the Court shall retain exclusive and continuing jurisdiction to interpret, apply and enforce the terms, conditions, and obligations under the Agreement, including managing any ancillary matters that may arise from this Agreement

#### **VIII. ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF'S AWARD**

A. During the Final Approval Hearing, Class Counsel will make representations before the court to the effect that the Plaintiff should receive an additional share of the eCoupon representing 1/1274<sup>th</sup> of the Distribution Amount to be issued under the same condition as the compensation to be paid to the Settlement Class Members pursuant to Section III. The Parties agree that this additional share to the Plaintiff is fair and reasonable.

B. During the Final Approval Hearing, Class Counsel will also make representations before the Court to obtain approval of the Attorneys' Fees and Expenses for a total amount of \$377,900, which **includes all** GST (5%) and QST (9,975%) or British Columbia PST (7%), as legal fees, settlement administration costs, and extrajudicial costs and disbursements (of approximately \$10,000) incurred up to the date of Final Judgment Approving Settlement. This amount is based on the Class Counsel's mandate, which provided a contingency consisting, the greater of, 25% of the Award Amount or 3.5x the hourly rate of \$275/hour for the work undertaken by Class Counsel, as represented by Class Counsel.

C. The Attorneys' Fees and Expenses are to be deducted and paid from the Award Amount and shall not exceed \$377,900.

D. Air Canada shall take no position with regards to the Attorneys' Fees and Expenses described above during the Final Approval Hearing.

E. No later than 10 Days before the Effective Date or any other reasonable delay, Class Counsel will provide the Defendant with an invoice(s) setting out (i) the \$377,900 (inclusive of all taxes) for legal fees and extrajudicial costs and disbursements (of approximately \$10,000), to be paid by the Defendant to Class Counsel as legal fees and extrajudicial costs incurred up to the date of Final Judgment Approving Settlement, and (ii) the wire transfer / payment information.

F. On the Effective Date, the Defendant will pay to Class Counsel the amount of Attorneys' Fees and Expenses if and as approved by the Court in the Final Judgment Approving Settlement.

G. In consideration for the payment of legal fees, extrajudicial costs, expert fees, and disbursements above, Class Counsel will not claim any other fee or disbursement from the Defendant or from the Class Members.



H. The Parties agree that, to the extent any levy is required to be paid to *Fonds d'aide aux actions collectives*, such levy is to be paid from the amount for Attorneys' Fees and Expenses.

#### **IX. FINAL JUDGMENT APPROVING SETTLEMENT**

This Agreement is subject to and conditional upon the issuance by the Court of the Final Judgment Approving Settlement that grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder.

#### **X. REPRESENTATIONS AND WARRANTIES**

A. Air Canada represents and warrants: (1) that it has the requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transactions contemplated hereby; (2) that the execution, delivery and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Air Canada; and (3) that the Agreement has been duly and validly executed and delivered by Air Canada and constitutes its legal, valid and binding obligation.

B. Plaintiff represents and warrants that he is entering into the Agreement on behalf of himself individually and as representative of the Settlement Class Members, of his own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Plaintiff represents and warrants that he has reviewed the terms of the Agreement in consultation with Class Counsel and believes them to be fair and reasonable.

C. The Parties warrant and represent that no promise, inducement or consideration for the Agreement has been made, except those set forth herein. No consideration, amount or

sum paid, accredited, offered, or expended by Air Canada in its performance of this Agreement constitutes a fine, penalty, punitive damage, or other form of assessment for any claim against it.

#### **XI. NO ADMISSIONS, NO USE**

The Agreement and every stipulation and term contained in it is conditional upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement shall not be: (a) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by Plaintiff, Air Canada, any Settlement Class Member or Releasing Party or Released Party, of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of such Party; or (b) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by Plaintiff, Air Canada, any Releasing Party or Released Party in the Action or in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of the Agreement.

#### **XII. TERMINATION OF THIS AGREEMENT**

A. Either Party may terminate this Agreement by providing written notice to the other Party within ten (10) Days of the Court's refusal to render the Final Judgment Approving Settlement in its entirety, or, if rendered, such Final Judgment Approving Settlement is reversed, vacated, or modified in any material respect by another court before the Effective Date.

B. It is expressly agreed that neither the failure of the Court to grant the Attorneys' Fees and Expenses award nor the amount of any the Attorneys' Fees and Expenses or incentive awards that may be finally determined and awarded, shall provide a basis for termination of this Agreement.

C. In the event of termination, Class counsel shall provide information regarding the termination to the Settlement Class Members under the same conditions of the Notice Program and Dissemination of the Class Notice.

D. In the event this Agreement terminates for any reason, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of this Agreement. Upon termination, this Agreement shall be null and void.

### **XIII. MISCELLANEOUS PROVISIONS**

A. **Entire Agreement:** The Agreement, including all Schedules hereto, shall constitute the entire Agreement among the Parties with regard to the Agreement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of the Agreement. The Agreement may not be changed, modified, or amended except in a writing signed by one of Class Counsel and one of Air Canada's Counsel and, if required, approved by the Court. The Parties contemplate that the Schedules to the Agreement may be modified by subsequent agreement of Air Canada's Counsel and Class Counsel, or by the Court. The Parties may make non-material changes to the Schedules to the extent deemed necessary, as agreed to in writing by all Parties.

B. **Governing Law and Jurisdiction:** The Agreement shall be construed under and governed by the laws of the Province of Quebec, Canada, in which the Court is located, applied without regard to conflict of laws provisions. The Parties hereby submit themselves exclusively to

the Courts of the Province of Quebec, District of Montreal, concerning any and all matters related to the interpretation or application of this Agreement.

C. **Execution in Counterparts:** The Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures scanned to PDF and sent by e-mail shall be treated as original signatures and shall be binding.

D. **Notices:** Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by email to:

1. If to Class Counsel:

Mr. Simon Lin  
[simonlin@evolinklaw.com](mailto:simonlin@evolinklaw.com)  
Mtres. Jeremie Martin and Sebastien Paquette  
[jmartin@champlainavocats.com](mailto:jmartin@champlainavocats.com)  
[spaquette@champlainavocats.com](mailto:spaquette@champlainavocats.com)

2. If to Defendants' Counsel:

Mtres. Robert J. Torralbo & Simon J. Seida  
[robert.torralbo@blakes.com](mailto:robert.torralbo@blakes.com)  
[simon.seida@blakes.com](mailto:simon.seida@blakes.com)

E. **Stay of Proceedings:** Upon the execution of this Agreement, all proceedings in this Action shall be stayed until further order of the Court, except for proceedings that may be necessary to implement the Agreement or comply with or effectuate the terms of this Agreement.

F. **Good Faith:** The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

G. **Binding on Successors:** The Agreement shall be binding upon, and enure to the benefit of, the heirs, successors and assigns of the Released Parties.

H. **Arms'- Length Negotiations:** The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto, the Air Canada's Counsel and the Class Counsel. This Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of this Agreement and the Parties agree that the drafting of this Agreement has been a mutual undertaking.

I. **Waiver:** The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

J. **Variance:** In the event of any variance between the terms of this Agreement and any of the Schedules hereto, the terms of this Agreement shall control and supersede the Schedule(s).

K. **Schedules:** All Schedules to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

L. **Taxes:** No opinion concerning the tax consequences of the Agreement to any Settlement Class Member is given or will be given by Air Canada, Air Canada's Counsel, Class Counsel, or Plaintiff; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Agreement, if any.

M. **Modification in Writing:** This Agreement may be amended or modified only by written instrument signed by Class Counsel and Air Canada's Counsel. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

N. **Integration:** This Agreement represents the entire understanding and agreement among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings related to the subject matter of this Agreement. The Parties acknowledge, stipulate and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation or undertaking concerning any part or all of the subject matter of this Agreement has been made or relied upon except as set forth expressly herein.

O. **Retain Jurisdiction:** The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the agreement embodied in this Agreement.

P. **Language:** The Parties acknowledge that they have required and consented to this Agreement and all related documents be drafted in English. *Les parties reconnaissent avoir exigé et consentie à ce que la présente convention et tous les documents connexes soient rédigés en anglais.*

Q. **Translation:** Nevertheless, if required by the Court, Class Counsel shall, at their own cost, procure a French translation of the Agreement. In the event of any dispute as to the interpretation or application of this Agreement, the English version shall govern.

R. **Transaction:** The present Agreement constitutes a transaction in accordance with Articles 2631 and following of the C.C.Q., and the Parties hereby renounce to any errors of fact, of law and/or calculation;

S. **Recitals:** The recitals to this Agreement are true and form part of the Settlement Agreement.

T. **Authorized Signatures:** Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, on behalf of the Parties identified above and their law firms.

[Signature page follows]