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March 6, 2013

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, Ontario, K1A 0N9

Dear Madam Secretary:

Re: Dr. Gábor Lukács v. Porter Airlines
Complaint about Porter Airlines' Domestic Tariff Rule 16

Please accept the following formal complaint pursuant to s. 67.2(1) of the *Canada Transportation Act*, 1996, c. 10 and Rule 40 of the *Canadian Transportation Agency General Rules* concerning Porter Airlines' Domestic Tariff Rule 16, a copy of which is attached and marked as Exhibit "A".

The Applicant submits that Rule 16 is unreasonable, within the meaning of s. 67.2(1) of the *Canada Transportation Act*, because:

1. it deprives passengers of the right to be provided with notice about schedule changes;

2. it is a blanket exclusion that exonerates Porter Airlines from liability for delays (such as failure to operate on schedule or sudden changes to its flight schedule);

3. it is inconsistent with the legal principles of the *Montreal Convention*.

The Applicant is asking that the Agency disallow Porter Airlines' Domestic Tariff Rule 16 in its entirety, or in part, and substitute it with a language that incorporates the principles of the *Montreal Convention*.

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I. Applicable legal principles

(a) The balancing test – meaning of “unreasonable” in s. 67.2(1)

The *Canada Transportation Act* provides that:

> **67.2** (1) If, on complaint in writing to the Agency by any person, the Agency finds that the holder of a domestic licence has applied terms or conditions of carriage applicable to the domestic service it offers that are unreasonable or unduly discriminatory, the Agency may suspend or disallow those terms or conditions and substitute other terms or conditions in their place.

However, neither the *Canada Transportation Act* nor the *Air Transportation Regulations*, S.O.R./88-58 define the meaning of the phrase “unreasonable”. This issue was settled by the Agency in *Anderson v. Air Canada*, 666-C-A-2001, as follows:

> The Agency is, therefore, of the opinion that, in order to determine whether a term or condition of carriage applied by a domestic carrier is “unreasonable” within the meaning of subsection 67.2(1) of the CTA, a balance must be struck between the rights of the passengers to be subject to reasonable terms and conditions of carriage, and the particular air carrier’s statutory, commercial and operational obligations.

The balancing test was strongly endorsed by the Federal Court of Appeal in *Air Canada v. Canadian Transportation Agency*, 2009 FCA 95. The test was applied in *Lukács v. WestJet*, 483-C-A-2010 (leave to appeal denied by the Federal Court of Appeal; 10-A-42), and more recently in *Lukács v. Air Canada*, 291-C-A-2011 and *Lukács v. Air Canada*, 251-C-A-2012.

(b) There is no presumption of reasonableness

In *Griffiths v. Air Canada*, 287-C-A-2009, the Agency underscored the importance of applying the balancing test due to the unilateral nature of terms and conditions set by carriers, which often are based only on the carrier’s commercial interests:

> [25] The terms and conditions of carriage are set by an air carrier unilaterally without any input from future passengers. The air carrier sets its terms and conditions of carriage on the basis of its own interests, which may have their basis in statutory or purely commercial requirements. There is no presumption that a tariff is reasonable. Therefore, a mere declaration or submission by the carrier that a term or condition of carriage is preferable is not sufficient to lead to a determination that the term or condition of carriage is reasonable.

The Agency applied this principle in *Lukács v. WestJet*, 483-C-A-2010 (leave to appeal was denied by the Federal Court of Appeal; 10-A-42), and more recently in *Lukács v. Air Canada*, 291-C-A-2011 and *Lukács v. Air Canada*, 251-C-A-2012.

(c) The *Montreal Convention* as a persuasive authority for reasonableness

The *Montreal Convention* is an international treaty that has the force of law in Canada by virtue of the *Carriage by Air Act*, R.S.C. 1985, c. C-26. The *Montreal Convention* governs the liability limitations for loss, damage, or delay of baggage applicable to international carriage by air.

In *Pinksen v. Air Canada*, 181-C-A-2007, the Agency recognized that international instruments are persuasive authorities in interpreting domestic rules and determining their reasonableness. The same reasoning was affirmed by the Agency in *Kipper v. WestJet*, 309-C-A-2010.

In *Lukács v. WestJet*, 483-C-A-2010, the Agency used the *Montreal Convention* as a persuasive authority for determining the reasonableness of WestJet's domestic tariff provisions, and ordered WestJet to revise its tariff to provide for a limit of liability equivalent to that set out in the *Montreal Convention* (leave to appeal denied by the Federal Court of Appeal; 10-A-42).

In *Lukács v. Air Canada*, 291-C-A-2011, the Agency held that passengers ought to be afforded the same protection against lost, damaged or delayed baggage as in the *Montreal Convention* regardless of whether the convention applies.

In *Lukács v. Air Canada*, LET-C-A-129-2011, the Agency reaffirmed the doctrine that the underlying principles of the *Montreal Convention* are also applicable to domestic carriage, and provided a wealth of of authorities in support of its finding (paras. 35-45).

In *Lukács v. Air Canada*, 250-C-A-2012, which affirmed *Lukács v. Air Canada*, LET-C-A-129-2011, the Agency explained the dual role of the *Montreal Convention* in determining the reasonableness of a tariff provision:

> [23] [...] Past Agency decisions reflect the two distinct ways in which the Convention might be considered: by looking at whether a tariff is in direct contravention of the Convention, thereby rendering the provision null and void and unreasonable [Footnote: See for example: *Balakrishnan v. Aeroflot*, Decision No. 328-C-A-2007 at para. 20 and *Lukács v. WestJet*, Decision No. 477-C-A-2010 at paras. 39-40 (Leave to appeal to Federal Court of Appeal denied, FCA 10-A-41).]; or by referring to the principles of the Convention when considering the reasonableness of a tariff provision. [Footnote: See for example: *Lukács v. WestJet*, Decision No. 313-C-A-2010 and Decision No. LET-C-A-51-2010 .]

II. Changing the schedule "without notice" is unreasonable

Porter Airlines' Domestic Tariff Rule 16(c) states that:

> Schedules are subject to change without notice. [...]
>
> [Emphasis added.]

The Applicant challenges the reasonableness of this tariff provision, because it deprives passengers of their right to be notified about schedule changes affecting their travels.

Transportation by air, as opposed to travelling by bus, requires significant preparations for the passenger: travelling to an airport that is located some distance away from the passenger's residence (in the case of Halifax, the airport is 37 km away from the city), checking in, clearing security, and then boarding the flight. Due to natural and fully justifiable operational considerations (which the Applicant does not dispute), carriers set deadlines for completing each of these steps. Typically, the consequence of missing these deadlines is loss of the assigned seat at the very least, and possibly cancellation of the passenger's reservation.

In the case of Porter Airlines, these deadlines are found in Rule 20 of the Domestic Tariff (Exhibit "B"):

> **RULE 20. CHECK-IN REQUIREMENTS**
>
> In addition to any other check in requirements set out in this tariff, the following check-in requirements must be complied with:
>
> (a) a passenger must have obtained his/her boarding pass and checked any baggage by the check-in deadline below and must be available for boarding at the boarding gate by the deadline shown below. Failure to meet these deadlines may result in the loss of the passenger's assigned seat or the cancellation of the passenger's reservation.
>
> [Emphasis added.]

The deadlines provided in Rule 20 are all relative to the published departure time of the flights. If the departure time of a flight changes, then the respective deadlines also change accordingly. In particular, if the carrier reschedules a flight an hour *earlier* than published, then it results in passengers having to arrive at the airport an hour earlier, and having to check in an hour earlier, or else they will lose their seats and reservations.

For example, a passenger on a 2:00 pm flight may safely plan to arrive at the airport by 12:30 pm, and check in before 1:00 pm. However, if there is a "change of schedule without notice" causing the flight to depart at 12:45 pm, then the passenger will be denied his seat and his reservation will be cancelled by Rule 20.

Thus, passengers have a vital interest in being informed about changes in the departure times of their flights, especially if a flight is rescheduled to an earlier time. On the other hand, there is no evidence on the record about how not giving notice of schedule changes, or doing so without notice, affects a carrier's statutory, commercial and operational obligations.

The right of passengers to be informed about delays and schedule changes was recognized by the Agency in *Lukács v. Porter Airlines*, 16-C-A-2013, in the context of Porter Airlines' International Tariff, where the Agency held (at para. 87) that:

> In this regard, the Agency notes that some Canadian carriers, including Air Canada, have tariff provisions that provide that passengers have a right to information on flight times and schedule changes, and that carriers must make reasonable efforts to inform passengers of delays and schedule changes, and the reasons for them. The Agency finds that such provisions are reasonable, and that, in this regard, the rights of passengers to be subject to reasonable terms and conditions of carriage outweigh any of the carrier's statutory, commercial or operational obligations. The Agency therefore finds that the absence of similar provisions in Porter's Existing Tariff Rules would render Proposed Tariff Rule 18(a) unreasonable, if filed with the Agency.

Therefore, it is submitted that the portion of Rule 16(c) that relieves Porter Airlines from the obligation to provide timely notice to its passengers about schedule changes, when considered in context together with Rule 20, is unreasonable.

III. Blanket exclusions of liability are unreasonable

Porter Airlines' Domestic Tariff Rules 16(c), 16(e), and 16(g) state that:

> (c) Schedules are subject to change without notice. The carrier is not responsible or liable for failure to make connections or for failure to operate any flight according to schedule, or for a change to the schedule of any flight.
>
> (e) The Carrier is not responsible or liable for failure to make connections, or for failure to operate any flight according to schedule, or for a change to the schedule of any flight.
>
> (g) The Carrier will not provide or reimburse passengers for expenses incurred due to delays or cancellations of flights or be responsible for any special, incidental, direct or indirect, or consequential damages arising out of such delays or cancellations of flights whether or not the carrier had knowledge that such damages might be occurred.

The Applicant challenges the reasonableness of these provisions, because they are blanket exclusions that relieve Porter Airlines from any and every liability for delay and failure to operate on

schedule, and because they are inconsistent with the legal principles of the *Montreal Convention*.

Blanket exclusions of liability have consistently been held by the Agency to be unreasonable even in the context of domestic tariffs, where the *Montreal Convention* is not applicable. The Agency held that the legal principles of the *Montreal Convention* are a persuasive authority for determining the reasonableness of provisions, regardless of whether the *Montreal Convention* applies.

In *Pinksen v. Air Canada*, 181-C-A-2007, the Agency held that a blanket exclusion of liability with respect to perishable items in checked baggage was unreasonable, and furthermore, such provisions reduce the contract of carriage to "a mere declaration of intent" (para. 35). The same principle was reaffirmed in *Kipper v. WestJet*, 309-C-A-2010. In *Lukács v. Air Canada*, LET-C-A-29-2011, the Agency held:

> [33] In striking the balance between passengers' rights and the statutory, commercial obligations of Air Canada, the Agency, applying the precedents noted above, is of the preliminary opinion that it is reasonable to apply the principles of the *Montreal Convention* to carriage involving itineraries to which neither the *Montreal Convention* nor *Warsaw Convention* applies. On the one hand it is important that passengers have the right, and are able, to rely on general consumer protection principles, irrespective of the passengers' itineraries. [...]

The Agency's preliminary opinion was affirmed in *Lukács v. Air Canada*, 291-C-A-2011, and was subsequently cited with approval by the Agency in *Lukács v. Porter Airlines*, 16-C-A-2013, in concluding that Porter Airlines' International Tariff Rule 18(e), a provision similar to Domestic Tariff Rule 16(g), was unreasonable:

> [65] In Decision No. 291-C-A-2011 (*Lukács v. Air Canada*), the Agency considered whether a baggage liability provision appearing in Air Canada's international tariff was inconsistent with the Convention and the Warsaw Convention. In that Decision, the Agency noted that the effect of the provision was to create a blanket exclusion of liability which relieves Air Canada from all liability regarding loss, damage and delay of baggage containing certain items. The Agency concluded that the provision was inconsistent with the principles of the Convention, and as a result, disallowed that provision.
>
> [66] Given the foregoing, the Agency finds that Existing Tariff Rule 18(e) is inconsistent with the Convention, and that the Rule is therefore unreasonable.

In the same decision, the Agency considered a part of Porter Airlines' International Tariff Rule 18(c) that was similar to Domestic Tariff Rules 16(c) and 16(e), and held that:

> [51] Existing Tariff Rule 18(c) is silent on the matter of the liability assumed by Porter should a flight be delayed, and Porter is unable to provide the proof required by Article 19 of the Convention to relieve itself from such liability. The Agency finds that the absence of a provision to this effect renders Existing Tariff Rule 18(c)

> inconsistent with Article 19 of the Convention, and that Rule is therefore unreasonable.

In light of the Agency's findings with respect to Porter Airlines' international tariff provisions, it is submitted that the same conclusion applies to similar provisions in Porter Airlines' domestic tariffs: they are blanket exclusions of liability, they are inconsistent with the legal principles of the *Montreal Convention*, and thus they are unreasonable.

Therefore, it is submitted that these provisions ought to be substituted with a tariff provision that incorporates the legal principles of Article 19 of the *Montreal Convention*:

> The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

IV. Blanket exclusions of liability based solely on occurrence of events are unreasonable

Porter Airlines' Domestic Tariff Rule 16 contains a 2-page long list of exclusions of liability with a preamble that reads as follows:

> Notwithstanding any other terms or conditions contained herein, the Carrier shall not be liable for failure in the performance of any of its obligations due to:
>
> [...]
>
> Upon the happening of any of the foregoing events, the Carrier may without notice cancel, terminate, divert, postpone or delay any flight whether before departure or enroute. If the flight, having commenced is terminated, the carrier shall refund the unused portion of the fare and shall use its best effort to provide alternate transportation to the destination for the passengers and baggage at the expense and risk of the passenger or shipper. If the flight has not commenced prior to termination, the carrier will provide a credit equal to the paid fare which will be available for use in the purchase of a new ticket on the same terms for a period of one year from the date of termination. No refund will be available.
>
> [Emphasis added.]

The list of events that Porter Airlines purports to exonerate itself from any liability from performance of any of its obligations includes, for example:

> v) Accidents to or failure of the aircraft or equipment used in connection therewith including, in particular, mechanical failure.

vi) Non-availability of fuel at the airport of origin, destination or enroute stop.

vii) Others upon whom the Carrier relies for the performance of the whole or any part of any charter contract or flight.

xvii) Any other causes beyond the reasonable control of the Carrier and any other event not reasonably to be foreseen, anticipated or predicted, whether actual, threatened or reported, which may interfere with the operations of the Carrier.

The Applicant submits that the provisions of Rule 16 starting on "3rd Revised Page 31" are unreasonable because they are blanket exclusions of liability, and they are inconsistent with the legal principles of the *Montreal Convention*.

(a) Legal principles of the *Montreal Convention* in the case of delay

Article 19 of the *Montreal Convention* provides that the carrier is liable for delay, and it can exonerate itself from liability only if it demonstrates the presence of an affirmative defense, namely, that it and its servants and agents have taken all reasonable steps necessary to avoid the delay.

As the Agency explained in *Lukács v. Porter Airlines*, 16-C-A-2013, what determines liability for delay is not the cause of the delay, but rather how the airline reacts to the delay:

> [105] Accordingly, what is at issue, in terms of avoiding liability for delay, is not who caused the delay but, rather, how the carrier reacts to a delay. In short, did the carrier's servants and agents do everything they reasonably could in the face of air traffic control delays, security delays on releasing baggage, delays caused by late delivery of catered supplies or fuel to the aircraft and so forth, even though these may have been caused by third parties who are not directed by the carrier?

In *Lukács v. Air Canada*, 251-C-A-2012, the Agency held that:

> [20] In light of the foregoing, the Agency concludes that the principles of Article 19 of the Convention are equally applicable to domestic carriage.

Thus, it is submitted that the aforementioned principle, which states that exoneration from liability for delay depends on how the carrier reacts to a delay and not on the cause of the delay, equally applies to domestic carriage.

Therefore, it is submitted that Rule 16 (starting on "3rd Revised Page 31"), which relieves Porter Airlines from liability for delay solely based on the cause and without any reference to how it reacts to the delay, is inconsistent with the principles of Article 19 of the *Montreal Convention*, and as such, these tariff provisions are unreasonable.

(b) Legal principles of the *Montreal Convention* in the case of damage or destruction of baggage or cargo

Destruction, loss, and damage to checked baggage is governed by Article 17(2) of the *Montreal Convention*, while Article 18 governs the same with respect to cargo. Both articles impose a regime of strict liability upon the carrier, where the carrier is presumed to be liable for destruction, loss, and damage, but it can exonerate itself if it can demonstrate certain affirmative defenses.

In the case of checked baggage, Article 17(2) of the *Montreal Convention* provides that:

> However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage.

In the case of cargo, Article 18(2) of the *Montreal Convention* provides that:

> However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:
>
> (a) inherent defect, quality or vice of that cargo;
>
> (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents;
>
> (c) an act of war or an armed conflict;
>
> (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

In *Kipper v. WestJet*, 309-C-A-2010, the Agency held that these principles equally apply to domestic carriage:

> [31] In Decision No. 208-C-A-2009 (*Gábor Lukács v. Air Canada*), the Agency found that "[...] to exempt a carrier from liability for damage to baggage under Article 17(2) of the Convention, there must be a causal relationship between the damage and an inherent defect, quality or vice of the baggage." The Agency finds that this principle is equally applicable to the present matter [...]

Thus, it is submitted that Rule 16 (starting on "3rd Revised Page 31"), which relieves Porter Airlines from liability for delay solely based on the cause and without any reference to how it reacts to the delay, is inconsistent with the principles of Articles 17(2) and 18(2) of the *Montreal Convention*, and as such, these tariff provisions are unreasonable.

(c) Relief from “performance of any of its obligations” is unreasonable

The impugned provision purports to relieve Porter Airlines from “performance of any of its obligations” in the case of certain events, regardless of how the event affects Porter Airlines’ ability to perform. That is, in the case of these events, Porter Airlines is exonerated from any and every liability under the contract of carriage, even if they are not hindered by the event, and even if Porter Airlines could perform its obligations with reasonable effort (taking reasonable steps).

Thus, it is submitted that the impugned provision is a blanket exclusion of liability, which relieves Porter Airlines from liability for delay regardless of whether it took all reasonable steps necessary to avoid the delay, and from liability for damage or loss of baggage even in the absence of a causal link between the damage or loss and the inherent defect, vice or quality of the baggage. It is submitted that such an exclusion of liability is inconsistent with the legal principles of the *Montreal Convention*.

Therefore, it is submitted that the impugned portion of Rule 16 is unreasonable, and ought to be substituted with provisions that incorporate the principles of the *Montreal Convention*.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Mr. Robert Deluce, President and CEO, Porter Airlines
Mr. Greg Sheahan, Counsel, Porter Airlines

LIST OF AUTHORITIES

Legislation

1. *Canada Transportation Act*, S.C. 1996, c. 10.
2. *Canadian Transportation Agency General Rules*, S.O.R./2005-35.
3. *Carriage by Air Act*, R.S.C. 1985, c. C-26.

International instruments

4. *Montreal Convention: Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal, 28 May 1999).

Case law

5. *Air Canada v. Canadian Transportation Agency*, 2009 FCA 95.
6. *Anderson v. Air Canada*, Canadian Transportation Agency, 666-C-A-2001.
7. *Griffiths v. Air Canada*, Canadian Transportation Agency, 287-C-A-2009.
8. *Kipper v. WestJet*, Canadian Transportation Agency, 309-C-A-2010.
9. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-29-2011.
10. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-129-2011.
11. *Lukács v. Air Canada*, Canadian Transportation Agency, 291-C-A-2011.
12. *Lukács v. Air Canada*, Canadian Transportation Agency, 250-C-A-2012.
13. *Lukács v. Air Canada*, Canadian Transportation Agency, 251-C-A-2012.
14. *Lukács v. Porter Airlines*, Canadian Transportation Agency, 16-C-A-2013.
15. *Lukács v. WestJet*, Canadian Transportation Agency, 483-C-A-2010.
16. *Lukács v. WestJet*, Federal Court of Appeal, 10-A-42.
17. *Pinksen v. Air Canada*, Canadian Transportation Agency, 181-C-A-2007.

SECTION VI – REFUNDS

RULE 16 – RESPONSIBILITY FOR SCHEDULES AND OPERATIONS

(a) The Carrier will endeavour to transport the passenger and baggage with reasonably dispatch, but times shown in timetables or elsewhere are not guaranteed and form no part of this contract.

(b) The agreed stopping places are those places shown in the carrier's timetable as scheduled stopping places on the route. The carrier may, without notice, substitute alternative carriers or aircraft and, if necessary, may alter or omit stopping places shown in the timetable.

(c) Schedules are subject to change without notice. The carrier is not responsible or liable for failure to make connections or for failure to operate any flight according to schedule, or for a change to the schedule of any flight.

(d) Without limiting the generality of the foregoing, the carrier cannot guarantee that the passenger's baggage will be carried on the flight if sufficient space is not available as determined by the carrier.

(e) The Carrier is not responsible or liable for failure to make connections, or for failure to operate any flight according to schedule, or for a change to the schedule of any flight.

(f) Without limiting the generality of the foregoing, the Carrier cannot guarantee that a passenger's baggage will be carried on the flight if sufficient space is not available as determined by the Carrier.

(g) The Carrier will not provide or reimburse passengers for expenses incurred due to delays or cancellations of flights or be responsible for any special, incidental, direct or indirect, or consequential damages arising out of such delays or cancellations of flights whether or not the carrier had knowledge that such damages might be occurred.

Notwithstanding any other terms or conditions contained herein, the Carrier shall not be liable for failure in the performance of any of its obligations due to:

i) Act of God.

ii) War, revolution, insurrection, riot, blockade or any other unlawful act against public order or authority including an act of terrorism involving the use or release or threat thereof, of any nuclear weapon or device or chemical or biological agent.

iii) Strike, lock-out, labour dispute, or other industrial disturbance whether involving the Carrier's employees or others upon whom the Carrier relies.

iv) Fire, flood, explosion, storm, lightning or adverse weather conditions generally.

v) Accidents to or failure of the aircraft or equipment used in connection therewith including, in particular, mechanical failure.

vi) Non-availability of fuel at the airport of origin, destination or enroute stop.

vii) Others upon whom the Carrier relies for the performance of the whole or any part of any charter contract or flight.

viii) Government order, regulation, action or inaction.

ix) Unless caused by its negligence, any difference in weight or quantity of cargo from shrinkage, leakage or evaporation.

x) The nature of the cargo or any defect in the cargo or any characteristic or inherent vice therein.

xi) Violation by a consignee or any other party claiming an interest in the cargo of any of the terms and conditions contained in this tariff or in any other applicable tariff including, but without being limited to, failure to observe any of the terms and conditions relating to cargo not acceptable for transportation or cargo acceptable only under certain conditions.

xii) Improper or insufficient packing, securing, marking or addressing.

xiii) Acts or omissions of warehousemen, customs or quarantine officials or other persons other than the Carrier or its agents, in gaining lawful possession of the cargo.

xiv) Compliance with delivery instructions from the consignor or consignee.

xv) Failure to obtain the approval of any government agency, commission, board or other tribunal having jurisdiction in the circumstances as may be required to the conduct of operations hereunder or any government or legal restraint upon such operation.

xvi) Loss of or hijacking of aircraft, or any shortage of or inability to provide labour, fuel or facilities.

xvii) Any other causes beyond the reasonable control of the Carrier and any other event not reasonably to be foreseen, anticipated or predicted, whether actual, threatened or reported, which may interfere with the operations of the Carrier.

Upon the happening of any of the foregoing events, the Carrier may without notice cancel, terminate, divert, postpone or delay any flight whether before departure or enroute. If the flight, having commenced is terminated, the carrier shall refund the unused portion of the fare and shall use its best effort to provide alternate transportation to the destination for the passengers and baggage at the expense and risk

of the passenger or shipper. If the flight has not commenced prior to termination, the carrier will provide a credit equal to the paid fare which will be available for use in the purchase of a new ticket on the same terns for a period of one year from the date of termination. No refund will be available.

RULE 17. REFUNDS

(a) **Voluntary Cancellations** – If a passenger decides not to use the ticket and cancels the reservation, the passenger may not be entitled to a refund, depending on any refund condition attached to the particular fare.

(b) **Involuntary Cancellations** – In the event a refund is required because of the carrier's failure to complete the operation of any flight after its commencement and the ticket is partially unused as a result of an enroute cancellation, termination or diversion, that part of the total fare paid for each unused segment will be refunded. If the ticket is totally or partially unused as a result of a refusal to transport, the total fare or that part of the total fare paid for each unused segment will be refunded. No refund will be available if the flight is cancelled prior to the commencement of the flight and the provisions of Rule 16 will apply.

RULE 18. DENIED BOARDING COMPENSATION

In case of an oversold flight, if a passenger has been denied a reserved seat and has checked in prior to the posted check-in cutoff time, the carrier will:

(a) refund the total fare paid for each unused segment; or

(b) arrange to provide reasonable alternate transportation on its own services.

RULE 19. CURRENCY

Fares and charges are published in the lawful currency of Canada.

RULE 20. CHECK-IN REQUIREMENTS

In addition to any other check in requirements set out in this tariff, the following check-in requirements must be complied with:

(a) a passenger must have obtained his/her boarding pass and checked any baggage by the check-in deadline below and must be available for boarding at the boarding gate by the deadline shown below. Failure to meet these deadlines may result in the loss of the passenger’s assigned seat or the cancellation of the passenger’s reservation.

DESTINATION	CHECK-IN DEADLINE	BOARDING GATE DEADLINE
Toronto City Airport	20 minutes	15 minutes
Other	30 minutes	20 minutes

For explanation of abbreviations, reference marks and symbols used but not explained hereon, see Page 4.