

Hearing Date and Time: October 27, 2021 at 10:00 a.m. (Prevailing Eastern Time)
Objection Date and Time: October 24, 2021 at 12:00 p.m. (Prevailing Eastern Time)

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Marshall S. Huebner
Timothy Graulich
Steven Z. Szanzer
Thomas S. Green

*Counsel to the Debtors
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

**GRUPO AEROMÉXICO, S.A.B. de C.V., et al.,
Debtors.¹**

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN
ORDER (I) AUTHORIZING DEBTOR AEROVÍAS DE MÉXICO, S.A. DE
C.V. TO ASSUME (ON AN AMENDED BASIS) THAT CERTAIN LEASE
AGREEMENT AND (II) APPROVING THE CLAIMS SETTLEMENT WITH
YAMASA AIRCRAFT AM1 KUMIAI AND RELATED PARTIES**

PLEASE TAKE NOTICE that, on October 13, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order (I) Authorizing Debtor Aerovías de México, S.A. de C.V. To Assume (On an Amended Basis) that Certain Lease Agreement and (II) Approving the Claims Settlement with Yamasa Aircraft AM1*

¹ The Debtors in these cases, along with each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de México, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; and Aerovías Empresa de Cargo, S.A. de C.V. 437094-1. The Debtors’ corporate headquarters is located at Paseo de la Reforma No. 243, piso 25 Colonia Cuauhtémoc, Mexico City, C.P. 06500.

Kumiai and Related Parties (the “**Motion**”). A hearing on the Motion is scheduled to be held on **October 27, 2021 at 10:00 a.m. (prevailing Eastern Time)** (the “**Hearing**”) before the Honorable Judge Shelley C. Chapman, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”), or at such other time as the Court may determine.

PLEASE TAKE FURTHER NOTICE that, in accordance with General Order M-543, dated March 20, 2020 (Morris, C.J.) (“**General Order M-543**”),² the Hearing will be conducted telephonically. Any parties wishing to participate must do so telephonically by making arrangements through CourtSolutions, LLC (www.court-solutions.com). Instructions to register for CourtSolutions, LLC are attached to General Order M-543.

PLEASE TAKE FURTHER NOTICE that copies of the Motion may be obtained free of charge by visiting the website of Epiq Corporate Restructuring, LLC at <https://dm.epiq11.com/aeromexico>. You may also obtain copies of any pleadings by visiting the Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned from time to time by an announcement of the adjourned date or dates at the Hearing or a later hearing or by filing a notice with the Court. The Debtors will file an agenda before the Hearing, which may modify or supplement the motion(s) to be heard at the Hearing.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion

² A copy of the General Order M-543 can be obtained by visiting <http://www.nysb.uscourts.gov/news/general-order-m-543-court-operations-under-exigent-circumstances-created-covid-19>.

shall be in writing, shall comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Court by (a) attorneys practicing in the Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov) and (b) all other parties in interest, in accordance with the customary practices of the Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 and the *Order Establishing Certain Notice, Case Management, and Administrative Procedures*, entered on July 8, 2020 [ECF No. 79], so as to be filed and received no later than **October 24, 2021 at 12:00 p.m. (prevailing Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that all objecting parties are required to telephonically attend the Hearing, and failure to appear may result in relief being granted upon default.

PLEASE TAKE FURTHER NOTICE that, if no responses or objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Court an order substantially in the form of the proposed order attached to the Motion, under certification of counsel or certification of no objection, which order may be entered by the Court without further notice or opportunity to be heard.

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Dated: October 13, 2021
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Marshall S. Huebner
Timothy Graulich
Steven Z. Szanzer
Thomas S. Green

*Counsel to the Debtors
and Debtors in Possession*

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**UNITED STATES BANKRUPTCY COURT
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In re:

**GRUPO AEROMÉXICO, S.A.B. de C.V., et
al.,**

Debtors.¹

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING DEBTOR
AEROVÍAS DE MÉXICO, S.A. DE C.V. TO ASSUME (ON AN AMENDED BASIS)
THAT CERTAIN LEASE AGREEMENT AND (II) APPROVING THE CLAIMS
SETTLEMENT WITH YAMASA AIRCRAFT AM1 KUMIAI AND RELATED PARTIES**

Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this motion (this “**Motion**”) seeking the entry of an order (i) authorizing, but not directing, Debtor Aerovías de México, S.A. de C.V. (the “**Debtor Lessee**”) to assume that certain Aircraft Lease Agreement, dated as of

¹ The Debtors in these cases, along with each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de México, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; and Aerovías Empresa de Cargo, S.A. de C.V. 437094-1. The Debtors’ corporate headquarters is located at Paseo de la Reforma No. 243, piso 25 Colonia Cuauhtémoc, Mexico City, C.P. 06500.

January 24, 2017 (the “**Aircraft Lease**”), on an amended basis on terms substantially consistent with those set forth in the form of the Amended and Restated Aircraft Lease Agreement (the “**Amended Aircraft Lease**”) and (ii) approving the Claims Settlement (as defined herein). The form of Amended Aircraft Lease is attached to the Proposed Order (as defined herein) as Exhibit 1 and a summary of the material terms thereof is attached hereto as Exhibit B. This Motion is supported by the *Declaration of Matthew Landess in Support of (A) Debtors’ Motion for Entry of an Order (I) Authorizing Debtor Aerovías de México, S.A. de C.V. To Assume (On an Amended Basis) that Certain Lease Agreement and (II) Approving the Claims Settlement with Yamasa Aircraft AM1 Kumiai and Related Parties and (B) Related Sealing Motion* (the “**Landess Declaration**”) filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter a final order or judgment in connection herewith consistent with Article III of the United States Constitution.

2. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

3. By this Motion, and pursuant to sections 365, 364, and 105(a) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Bankruptcy Rules 6004, 6006, 9013, and 9019, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**” and, if entered, the “**Order**”), (a) authorizing (but not directing) the Debtor Lessee to assume the Aircraft Lease on an amended basis on terms substantially consistent with those set forth in the Amended Aircraft Lease attached to the Proposed Order as **Exhibit 1**, and (b) approving the Claims Settlement, each as further detailed herein and in the Proposed Order.

Background

A. General Background

4. On June 30, 2020 (the “**Petition Date**”), each of the Debtors filed in this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued to operate and manage their businesses and have continued to possess their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [ECF No. 30] entered by the Court on July 1, 2020 in Grupo Aeroméxico’s Chapter 11 Case.²

6. On July 13, 2020, the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors (the

² On July 2, 2020, the Court entered similar orders for the other Debtors on their respective Court dockets. See *In re Aerovías de México, S.A. de C.V.*, No. 20-11561, ECF No. 4; *In re Aerolitoral, S.A. de C.V.*, No. 20-11565, ECF No. 4; *In re Aerovías Empresa de Cargo, S.A. de C.V.*, No. 20-11566, ECF No. 4.

“**Committee**”) pursuant to section 1102 of the Bankruptcy Code. *See Notice of Appointment of Official Committee of Unsecured Creditors* [ECF No. 92]. No trustee or examiner has been appointed in the Chapter 11 Cases.

7. Detailed information regarding the Debtors’ businesses and affairs, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases can be found in the *Declaration of Ricardo Javier Sánchez Baker in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [ECF No. 20], which is incorporated herein by reference.

B. The Debtors’ Fleet Optimization Process

8. As the Court is aware, the Debtors have been engaged in a multi-step process to (a) analyze their anticipated, long-term fleet and equipment needs, (b) make corresponding adjustments to the size and composition of their current operating fleet, and (c) obtain the most favorable terms for agreements relating to aircraft equipment.

9. On September 15, 2020, the Debtors filed their *Motion for Approval of Stipulations and Orders Between Debtors and Counterparties Concerning Certain Aircraft and Engines* [ECF No. 373] (the “**Equipment Stipulation Motion**”), pursuant to which the Debtors sought approval of certain stipulations between certain Debtors and certain counterparties concerning leases of Equipment (as defined in the Equipment Stipulation Motion). These stipulations enabled the Debtors to continue to utilize the Equipment on their operating routes and to maintain the Equipment when not being operated. Broadly speaking, such stipulations provide, with limited variation, for payment of rent calculated based on actual usage of the Equipment (called a “power by the hour” or “PBH” arrangement), rather than a fixed monthly amount. The Court entered an order approving the Equipment Stipulation Motion [ECF No. 396] and so ordered the underlying stipulations. [ECF Nos. 399–429, 475, 491, 502].

10. On April 22, 2021, the Debtors filed their *Motion for (I) Approval of Compromises with Boeing and Other Counterparties, (II) Authorization To (A) Enter Into Amended Aircraft Purchase Agreement with Boeing and (B) Enter into Agreements with Other Counterparties related to the Boeing Transaction, (III) Approval of the Assumption of Such Amended Agreements, as Applicable, and (IV) Approval To Settle Certain Prepetition Claims of Counterparties* [ECF No. 1108] (the “**Boeing Motion**”) and their *Motion for (I) Authorization To (A) Enter Into New Aircraft Lease Agreements and (B) Amend and Assume Certain Existing Aircraft Lease Agreements, and (II) Approval of Compromise Regarding Prepetition Claims with Air Lease Corporation* [ECF No. 1113] (the “**Air Lease Motion**”). The Court approved both the Boeing Motion and the Air Lease Motion at a hearing on April 30, 2021,³ and subsequently entered each of the orders related thereto.⁴ Pursuant to such orders, the Debtors (a) added 28 new aircraft to their fleet, (b) assumed agreements relating to 18 existing aircraft, and (c) settled the allowed amounts of unsecured claims of certain counterparties with respect to such equipment.

11. Over the last several months, the Debtors have continued negotiating with existing lessors and potential lessors of additional aircraft and equipment to obtain the best terms available for the aircraft and equipment that will be necessary for the Debtors to pursue their long-term business plan and to optimize their anticipated fleet upon emergence from the Chapter 11 Cases. As a result of these efforts, the Court has also entered additional orders authorizing the Debtors to either enter into new aircraft leases and/or assume existing aircraft leases on an amended basis. See ECF Nos. 984, 1100, 1544, 1572–73, 1659, 1693, 1759.

³ See Hr’g Tr. (April 30, 2021), 29:17–23 and 37:13–16.

⁴ See ECF Nos. 1141–42, 1145, 1154, 1156–57, 1160–62.

C. The Amended Aircraft Lease and the Claims Settlement

12. On August 31, 2021, the Debtors filed the *Debtors' Motion for Entry of an Order Authorizing Debtors To Assume Certain Aircraft Leases* [ECF No. 1677] (the “**Omnibus Assumption Motion**”) seeking to assume three Japanese aircraft operating leases, including the Aircraft Lease. Since filing the Omnibus Assumption Motion, the Debtors continued negotiating with Yamasa Aircraft AM1 Kumiai, represented by its Managing Partner, Yamasa Co., Ltd. (the “**Lessor**”), the terms and conditions for the Amended Aircraft Lease in an effort to obtain the best terms available for the Aircraft (as defined herein).⁵ As a result of arm’s length and good faith negotiations, the Debtors have reached an agreement with the Lessor to (a) assume the Aircraft Lease relating to a Boeing 787-9 aircraft bearing manufacturer’s serial number 43861 (together with the related engines, parts, equipment, and appurtenances, the “**Aircraft**”), which the Debtor Lessee currently operates as part of its existing fleet, on an amended basis on terms substantially consistent with those set forth in the Amended Aircraft Lease, (b) allow certain prepetition claims against the Debtors in the Chapter 11 Cases relating to the Aircraft in favor of the Lessor, and (c) reaffirm Grupo Aeroméxico’s guaranty of the Debtor Lessee’s obligations under the Amended Aircraft Lease (the “**Guaranty**”), each as described herein, in the Amended Aircraft Lease, and in the Landess Declaration.

13. The Amended Aircraft Lease sets forth the commercial terms between the Lessor and the Debtor Lessee. By agreeing to such terms, the Debtors have achieved certainty in maintaining the Aircraft in their fleet on terms that fit the Debtors’ short- and long-term needs and

⁵ As a result of reaching an agreement with the Lessor with respect to the Yamasa Transactions (as defined herein), the Debtors subsequently adjourned the Omnibus Assumption Motion as it related to the Aircraft. ECF No. 1738.

that the Debtors believe are advantageous. The Aircraft will come at attractive economics and ownership costs. Moreover, the Lessor and the Debtor Lessee have agreed that, subject to the Debtors' continued compliance with the terms of the Aircraft Lease and the applicable Equipment Stipulation, the assumption of the Aircraft Lease on an amended basis, on terms substantially consistent with those set forth in the Amended Aircraft Lease, would not give rise to an obligation to make any cash payment at the time of assumption to cure any defaults under the Aircraft Lease under section 365(b)(1)(A) of the Bankruptcy Code.

14. A summary of the principal terms and conditions of the Amended Aircraft Lease is attached hereto as **Exhibit B**.

15. In conjunction with this transaction, the Debtors seek to resolve all pre-assumption claims against the Debtors relating to the Aircraft or the Aircraft Lease belonging to the Lessor and certain other parties (collectively, the "**Claimants**"⁶) in the Chapter 11 Cases. To this end, the parties have agreed that the Lessor will have two allowed non-priority general unsecured prepetition claims, each in the final amount of \$50,000,000, one against the Debtor Lessee and another against Grupo Aeroméxico (the "**Claims Settlement**"⁷ and, together with the Amended Aircraft Lease and the reaffirmation of the Guaranty, the "**Yamasa Transactions**,"⁸ and, the Amended Aircraft Lease and other related documents necessary or advisable to implement the

⁶ For the avoidance of doubt, "**Claimants**" includes, without limitation, the claimants of claims numbered 381-91.

⁷ It is the intent of the parties that the claims allowed pursuant to this Claims Settlement would be classified in and afforded treatment under Class 3(a) of the *Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [ECF No. 1806].

⁸ The Yamasa Transactions also include, without limitation, the release and termination of a certain exchange agreement, guarantee, and netting letter entered into in connection with the financing of the Aircraft and the Debtors' agreement to continue performing under certain prepetition fee letters relating to the Aircraft.

Yamasa Transactions, the “**Yamasa Transaction Documents**”).⁹ Without prejudice to claims arising under the Amended Aircraft Lease, the Guaranty, and the other Yamasa Transaction Documents, the claims allowed pursuant to the Claims Settlement shall constitute the only general unsecured claims of the Claimants in respect of the Aircraft or the Aircraft Lease allowed in the Chapter 11 Cases.

16. In determining to enter into the Yamasa Transactions, the Debtors consulted with the respective advisors to Apollo Management Holdings, L.P. (on behalf of one or more affiliates and/or funds or separate accounts managed by it and its affiliates (such lenders collectively, the “**DIP Lenders**”)), the Committee, the Ad Hoc Group of Senior Noteholders,¹⁰ and the Ad Hoc Group of Unsecured Claimholders.¹¹

Basis for Relief

A. The Court Should Authorize the Assumption of the Aircraft Lease (on an Amended Basis) Under Sections 365(a), 364, and 105(a) of the Bankruptcy Code

17. Section 365 of the Bankruptcy Code allows a debtor in possession (with bankruptcy

⁹ In accordance with the Yamasa Transaction Documents, the Lessor has agreed that, solely to the extent that (a) no Event of Default under the Amended Aircraft Lease shall have occurred and be continuing and (b) the Lessor is entitled in respect of the claims allowed pursuant to the Claims Settlement to vote on a chapter 11 plan of reorganization proposed by the Debtors that is a Complying Plan (as defined herein), the Lessor (and, solely with respect to the claims allowed pursuant to the Claims Settlement, any of its successors, assignees, or transferees) shall vote in favor of the Debtors’ Complying Plan in respect of such claims (or any portion thereof). A Chapter 11 plan of reorganization shall be a “**Complying Plan**” if it (a) is not inconsistent with the Amended Aircraft Lease or the other Yamasa Transaction Documents and (b) treats the claims allowed pursuant to the Claims Settlement (i) as fully and finally allowed non-priority general unsecured claims not subject to any defense, reduction, setoff, recoupment, or reconsideration under section 502 of the Bankruptcy Code and (ii) no worse than the non-priority unsecured claims of any other aircraft or engine lessor whose claims run solely against the Debtor Lessee and/or the Guarantor (other than de minimis “convenience class” claims).

¹⁰ As used in this Motion, “Ad Hoc Group of Senior Noteholders” refers to the group identified in the *Third Amended Verified Statement of the Ad Hoc Group of Senior Noteholders Pursuant to Bankruptcy Rule 2019* [ECF No. 1731].

¹¹ As used in this Motion, “Ad Hoc Group of Unsecured Claimholders” refers to the group identified in the *First Amended Verified Statement of the Ad Hoc Group of Unsecured Claimholders Pursuant to Bankruptcy Rule 2019* [ECF No. 1733].

court approval) to maximize the value of its estates by, among other things, assuming executory contracts and unexpired leases. 11 U.S.C. § 365(a); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993). An executory contract is a “contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other.” *Sharon Steel Corp. v. Nat’l Fuel Gas Distribution Corp.*, 872 F.2d 36, 39 (3d Cir. 1989) (internal citations omitted); *see also In re Keren Ltd. P’ship*, 225 B.R. 303, 307 (S.D.N.Y. 1997), *aff’d*, 189 F.3d 86 (2d Cir. 1999) (same).

18. In determining whether to permit a debtor to assume or reject a contract or lease, “the debtor’s interests are paramount.” *COR Route 5 Co. v. Penn Traffic Co. (In re Penn Traffic Co.)*, 524 F.3d 373, 383 (2d Cir. 2008). Accordingly, the decision to assume or reject an executory contract or unexpired lease is governed by the business judgment rule, which requires that a debtor determine that the requested assumption would be beneficial to its estates. *See Grp. of Institutional Invs. v. Chicago, M., St. P. & P. R. Co.*, 318 U.S. 523, 550 (1943) (finding that the question of assumption “is one of business judgment”); *In re Penn Traffic*, 524 F.3d at 383; *In re Old Carco LLC*, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009); *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006); *In re MF Global Inc.*, No. 11-2790, 2011 WL 6792758, at *2 (Bankr. S.D.N.Y. Dec. 20, 2011) (“The assumption or rejection of an executory contract may be approved if such action would benefit the debtor’s estate and is an exercise of sound business judgment.”); *Sharon Steel*, 872 F.2d at 40.

19. In considering a motion to assume or reject an executory contract or unexpired lease, a debtor “should examine a contract and the surrounding circumstances and apply its best

‘business judgment’ to determine if [assumption] would be beneficial or burdensome to the estate.” *In re Orion Pictures Corp.*, 4 F.3d at 1099; *see also In re Klein Sleep Prods., Inc.*, 78 F.3d 18, 25 (2d Cir. 1996); *In re Gucci*, 193 B.R. 411, 415 (S.D.N.Y. 1996). A debtor’s decision to assume an executory contract or unexpired lease based on its business judgment will generally not be disturbed absent a showing of “bad faith or abuse of business discretion.” *In re Old Carco*, 406 B.R. at 188 (quoting *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994), *aff’d sub nom. John Forsyth Co., Inc. v. G Licensing, Ltd.*, 187 B.R. 111 (S.D.N.Y. 1995)); *see also In re MF Global Inc.*, No. 11-2790, 2011 WL 6792758, at *2 (Bankr. S.D.N.Y. Dec. 20, 2011) (“The assumption or rejection of an executory contract may be approved if such action would benefit the debtor’s estate and is an exercise of sound business judgment.”); *In re Chipwich, Inc.*, 54 B.R. 427, 430–31 (Bankr. S.D.N.Y. 1985). The party opposing a debtor’s exercise of its business judgment has the burden of rebutting the presumption of validity. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

20. Upon finding that the debtor has exercised its sound business judgment in determining that the assumption of a contract or lease is in the best interests of the debtor, its creditors, and all parties in interest, the court should approve the assumption under section 365(a) of the Bankruptcy Code. *See, e.g., In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); *In re Gucci*, 193 B.R. at 417.

21. Moreover, to the extent that entry into the Amended Aircraft Lease implicates section 364 of the Bankruptcy Code, given the reaffirmation of the Guaranty, the Debtors have established that entry into the Amended Aircraft Lease is in the best interests of the Debtors’ estates, their creditors, and all other parties in interest, which is sufficient to satisfy the standard

for relief under section 364 of the Bankruptcy Code. Provided that an agreement to obtain post-petition credit is consistent with the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in exercising its sound business judgment in obtaining such credit. *See, e.g., In re Latam Airlines Grp. S.A.*, 620 B.R. 722, 768 (Bankr. S.D.N.Y. 2020) (“Generally, in evaluating the merits of proposed post-petition financing, courts will defer to a debtor’s business judgment provided that the financing does not unduly benefit a party in interest at the expense of the estate.”) (citations omitted); *In re Barbara K. Enters., Inc.*, No. 08-11474 (MG), 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (“The Court is aware that its normal function in reviewing requests for post-petition financing is to defer to a debtor’s own business judgment so long as a request for financing does not ‘leverage the bankruptcy process’ and unfairly cede control of the reorganization to one party in interest.”) (citing *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990)).

22. Lastly, section 105(a) of the Bankruptcy Code confers the Court with broad equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

23. The Debtors respectfully submit that the relief requested herein is fair, equitable, reasonable, and in the best interests of the Debtors’ estates and is, thus, justified under sections 365(a), 364, and 105(a) of the Bankruptcy Code. As described above and in the Landess Declaration, the Debtors are seeking to reset their fleet and attendant costs to a market level. As part of this process, the Debtors are evaluating their fleet of aircraft and equipment, reviewing the relevant underlying leases and agreements, and, to the extent prudent, negotiating amendments to such leases and agreements for aircraft and equipment that the Debtors desire to maintain. In doing so, the Debtors compared the Aircraft Lease and the Aircraft to available alternatives and

ultimately negotiated (at arm's length, in good faith, and in consultation with their key stakeholders) economically favorable terms, as memorialized in the Amended Aircraft Lease, that are in line with the Debtors' long-term business plan. In addition to the improved costs and better terms and conditions as compared to the Aircraft Lease, the Amended Aircraft Lease also will create operational flexibility for the Debtors, as it will allow the Debtors to retain and operate an existing aircraft in their fleet and would position the Debtors to potentially reject other aircraft or equipment that are not as attractive for the long term fleet. Finally, the Debtors have determined (based on the exercise of their sound business judgment) that the terms of the Amended Aircraft Lease represent the best available transaction under the circumstances (*i.e.*, the Chapter 11 Cases), but also would be a commercially beneficial transaction irrespective of such circumstances (and is superior to at least some of their prepetition aircraft leases).

24. In light of the foregoing, the Debtors respectfully submit that the assumption of the Aircraft Lease on an amended basis, on terms substantially consistent with those set forth in the Amended Aircraft Lease, (a) would be the result of the Debtors exercising their sound business judgment in accordance with their fiduciary duties, (b) would be in the best interests of their estates and economic stakeholders, and (c) would further serve to maximize value for the benefit of all creditors. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtor Lessee to assume the Aircraft Lease on an amended basis on terms substantially consistent with those set forth in the Amended Aircraft Lease and to perform all the obligations thereunder.

B. The Court Should Approve the Claims Settlement Under Bankruptcy Rule 9019

25. By this Motion, the Debtors also seek approval of the Claims Settlement between the Claimants and the Debtors for the allowance of certain claims stemming from the amendment

of the Aircraft Lease's terms and certain guaranties in connection with the Aircraft Lease and the withdrawal of other claims belonging to the Claimants against the Debtors in the Chapter 11 Cases relating to the Aircraft and Aircraft Lease.

26. A court should exercise its discretion to approve settlements "in light of the general public policy favoring settlements." *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998). Indeed, courts in this district have made clear that "[a]s a general matter, 'settlements and compromises are favored in bankruptcy as they minimize costly litigation and further parties' interests in expediting the administration of the bankruptcy estate.'" *In re Republic Airways Holdings, Inc.*, No. 16-10429 (SHL), 2016 WL 2616717, at *3 (Bankr. S.D.N.Y. May 4, 2016) (citing *In re Dewey & LeBouef LLP*, 478 B.R. 626, 640 (Bankr. S.D.N.Y. 2012)); *see also Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 455 (2d Cir. 2007).

27. Under Bankruptcy Rule 9019 and governing case law, a court should approve a compromise or settlement where it makes an independent determination that the compromise or settlement is fair and equitable, reasonable, and in the best interests of the debtor's estate. *See, e.g., In re Republic Airways*, 2016 WL 2616717 at *3; *Air Line Pilots Ass'n, Int'l v. Am. Nat'l Bank & Trust Co. of Chi. (In re Ionosphere Clubs)*, 156 B.R. 414, 426 (S.D.N.Y. 1993); *Nellis v. Shugrue*, 165 B.R. 115, 122–23 (S.D.N.Y. 1994). In so doing, a court may consider the opinions of the trustee or debtor in possession that the settlement is fair and equitable. *See Nellis*, 165 B.R. at 122; *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993).

28. Furthermore, when assessing whether or not to approve a settlement, "the court need not conduct a 'mini-trial' to determine the merits of the underlying litigation" nor decide the issues of law or fact raised by the settlement. *See In re Purofied Down Prods.*, 150 B.R. at 522.

Instead, a court should “canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (alteration in original) (citations omitted). In this regard, courts have found that “[t]he ‘reasonableness’ of [a] settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to which the settlement is truly the product of ‘arms-length’ bargaining, and not fraud or collusion.” *In re Ionosphere Clubs, Inc.*, 156 B.R. at 428.

29. The Debtors respectfully submit that the Claims Settlement satisfies the range of reasonableness test described above. Rather than engage in costly and value-destructive litigation over the Debtor Lessee’s obligations to the Claimants, the amounts of the Claimants’ claims, and any amounts mitigating the quantum of those claims, the parties negotiated a consensual resolution settling on \$50,000,000 as the agreed aggregate amount for the Claims Settlement. Any efforts by the Debtors, through litigation or otherwise, to resolve such disputes would be time-consuming and expensive, and would delay any distribution to the creditor beneficiaries of the Debtors’ estates. A failure to resolve the matters at issue at this time could negatively impact the Debtors and their estates. The Claims Settlement is the product of arm’s length and good faith bargaining among the separate and independent advisors of the Debtors and the Lessor that will (a) eliminate the need for a costly claims dispute and (b) unlock distributable value for the Debtors’ unsecured creditors by liquidating the Claimants’ prepetition claims against the Debtors. Lastly, a number of the Debtors’ key stakeholders, including the respective advisors to the Committee, the Ad Hoc Group of Senior Noteholders, and the Ad Hoc Group of Unsecured Claimholders, have no objection to the relief requested herein. Accordingly, the Debtors respectfully submit that the

proposed Claims Settlement is fair and equitable, would be in the best interests of the Debtors' estates, creditors, and other stakeholders, and should be approved.

Notice

30. Notice of this Motion will be provided to the following parties: (a) the entities on the Master Service List (as defined in the *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [ECF No. 79], which is available on the Debtors' case website at <https://dm.epiq11.com/case/aeromexico/info>); (b) the U.S. Trustee; (c) counsel to the Committee; (d) counsel to the DIP Lenders; (e) counsel to the Ad Hoc Group of Senior Noteholders; and (f) any person or entity with a particularized interest in the subject matter of this Motion. The Debtors respectfully submit that no other or further notice is required.

No Prior Request

31. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: October 13, 2021
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Marshall S. Huebner
Timothy Graulich
Steven Z. Szanzer
Thomas S. Green

*Counsel to the Debtors
and Debtors in Possession*

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

**GRUPO AEROMÉXICO, S.A.B. de C.V., et
al.,

Debtors.¹**

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**ORDER (I) AUTHORIZING DEBTOR AEROVÍAS DE MÉXICO, S.A. DE C.V.
TO ASSUME (ON AN AMENDED BASIS) THAT CERTAIN LEASE
AGREEMENT AND (II) APPROVING THE CLAIMS SETTLEMENT WITH
YAMASA AIRCRAFT AM1 KUMIAI AND RELATED PARTIES**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an order (this “**Order**”), (i) authorizing, but not directing, Debtor Aerovías de México, S.A. de C.V. (the “**Debtor Lessee**”) to assume the Aircraft Lease on an amended basis on terms substantially consistent with those set forth in the Amended Aircraft Lease (a form of which is attached hereto as **Exhibit 1**) and (ii) approving the Claims Settlement, each as set forth more fully in the Motion and the Landess Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b); and venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided

¹ The Debtors in these cases, along with each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de México, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; and Aerovías Empresa de Cargo, S.A. de C.V. 437094-1. The Debtors’ corporate headquarters is located at Paseo de la Reforma No. 243, piso 25 Colonia Cuauhtémoc, Mexico City, C.P. 06500.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

to the notice parties identified in the Motion; such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion [and held a hearing to consider the relief requested in the Motion on October 27, 2021 (the “**Hearing**”)]; and upon [the record of the Hearing, and upon] all of the proceedings had before the Court; and after due deliberation the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having found that the relief granted herein is in the best interests of the Debtors, their creditors, and all other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. The Yamasa Transactions are hereby approved and the Debtors are authorized (but not directed), pursuant to and in accordance with sections 365 and 364 of the Bankruptcy Code, to (a) assume the Aircraft Lease on an amended basis on terms substantially consistent with those set forth in the Amended Aircraft Lease, (b) reaffirm Grupo Aeroméxico’s guaranty of the Debtor Lessee under the Amended Aircraft Lease, and (c) pay all amounts and otherwise perform all obligations under the Amended Aircraft Lease, the Guaranty, and the other Yamasa Transaction Documents in accordance with the terms thereof. The Aircraft Lease, as amended, shall be deemed assumed by the Debtors upon the effectiveness of the Amended Aircraft Lease in accordance with its terms, and, upon such effectiveness, the Amended Aircraft Lease, the Guaranty, and the other Yamasa Transaction Documents each shall be in full force and effect and the Debtor Lessee and Grupo Aeroméxico, as applicable, shall be obligated to perform all of their obligations

thereunder without the need for further notice or action by the Debtor Lessee, Grupo Aeroméxico, or the Lessor or a further order of the Court.

3. Subject to the Debtors' continued compliance with the terms of the Aircraft Lease and the applicable Equipment Stipulation, the cure payment required by section 365(b) of the Bankruptcy Code upon assumption of the Amended Aircraft Lease shall be \$0.00.

4. The Debtors and the Lessor are authorized (but not directed) to (a) execute, deliver, provide, implement, and fully perform any and all obligations, instruments, and papers necessary or advisable to implement the Yamasa Transactions, including, without limitation, as provided for or contemplated in the Amended Aircraft Lease, the Guaranty, or the other Yamasa Transaction Documents, and (b) take any and all actions to implement the Yamasa Transactions, including, without limitation, the Amended Aircraft Lease and the Guaranty in accordance with the terms thereof.

5. From and after the effective date of the Amended Aircraft Lease, the obligations of the Debtors under the Amended Aircraft Lease, the Guaranty, and the other Yamasa Transaction Documents shall constitute administrative expenses of the applicable Debtors' estates pursuant to sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code. For the avoidance of doubt, the Debtors' obligations under the Amended Aircraft Lease, the Guaranty, and the other Yamasa Transaction Documents (including to pay fees in accordance with the terms thereof), as applicable, shall be binding upon and constitute obligations of the reorganized Debtors or any successor entity notwithstanding the confirmation or effectiveness of any chapter 11 plan of reorganization confirmed in the Chapter 11 Cases.

6. The automatic stay under section 362 of the Bankruptcy Code is vacated and modified to the extent necessary to implement and effectuate the terms of the Amended Aircraft Lease, the Guaranty, and the other Yamasa Transaction Documents. Upon the occurrence and during the continuance of an event of default under the Amended Aircraft Lease, the Lessor may file with the Court and deliver to the Debtors and the Committee a written notice (a “**Termination Notice**”) effective as of five business days after its filing and delivery (the “**Remedies Period**”). Upon the expiration of the Remedies Period, the automatic stay in the Chapter 11 Cases shall be deemed lifted and the Lessor may exercise any remedies or enforcement actions provided for under the Amended Aircraft Lease without the need for further notice (other than as expressly provided in the Amended Aircraft Lease) or authorization from the Court. During the Remedies Period, the Debtors or the Committee may seek an emergency hearing at which either may contest the fact that an event of default under the Amended Aircraft Lease has occurred and is continuing. The Remedies Period shall automatically extend to the conclusion of such a hearing and the issuance of a ruling on the matters contested thereat.

7. The Claims Settlement is (a) integral and necessary to the Yamasa Transactions, (b) supported by reasonable consideration, (c) fair and equitable and in the best interest of the Debtors’ estates, and (d) permitted by the Bankruptcy Code, and thus, is hereby approved pursuant to Bankruptcy Rule 9019(a) and shall be binding on the Debtors, the Lessor, the Claimants, and their respective affiliates.

8. In accordance with the Claims Settlement, the following non-priority general unsecured claims shall be allowed against the Debtors listed below in the amounts listed below in the Chapter 11 Cases (or any subsequent chapter 7 case in the event of

conversion) (collectively, the “**Allowed Claims**”):

Claim Numbers	Claimant	Debtor	Treatment	Allowed Claim Amount
381	Yamasa Aircraft AM1 Kumiai	Aerovías de México, S.A. de C.V.	Allowed	\$50,000,000
382	Yamasa Aircraft AM1 Kumiai	Grupo Aeroméxico, S.A.B. de C.V.	Allowed	\$50,000,000

For the avoidance of doubt, the Claimants shall only be entitled to recover up to the aggregate amount of \$50,000,000 on account of the Allowed Claims.

9. In accordance with the Claims Settlement, and subject to the Debtors’ continued compliance with the terms of the Aircraft Lease and the applicable Equipment Stipulation, any and all claims against the Debtors relating to the Aircraft or the Aircraft Lease (other than the Allowed Claims), including, without limitation, the claims listed below, shall be withdrawn (collectively, the “**Withdrawn Claims**”):

Claim Numbers	Debtor	Claimant	Treatment
383	Aerovías de México, S.A. de C.V.	NTT Finance Corporation, as Security Agent	Withdrawn
384	Grupo Aeroméxico, S.A.B. de C.V.	NTT Finance Corporation, as Security Agent	Withdrawn
385	Aerovías de México, S.A. de C.V.	Commerzbank Aktiengesellschaft, Tokyo Branch, as Facility Agent	Withdrawn
386	Grupo Aeroméxico, S.A.B. de C.V.	Commerzbank Aktiengesellschaft, Tokyo Branch, as Facility Agent	Withdrawn
387	Aerovías de México, S.A. de C.V.	NTT TC Leasing Co., Ltd.	Withdrawn
388	Aerovías de México, S.A. de C.V.	The Bank of Fukuoka, Ltd.	Withdrawn
389	Aerovías de México, S.A. de C.V.	Showa Leasing Co., Ltd.	Withdrawn
390	Aerovías de México, S.A. de C.V.	Mizuho Leasing Co., Ltd.	Withdrawn
391	Aerovías de México, S.A. de C.V.	JA Mitsui Leasing, Ltd.	Withdrawn

10. The Allowed Claims shall be automatically allowed, and the Withdrawn Claims shall be automatically withdrawn, upon the effectiveness of the Amended Aircraft Lease, and no further notice or action shall be required of the Lessor, any other Claimant, or the Debtors to effectuate the allowance or withdrawal, as applicable, of such claims upon such occurrence. From and after the effective date of the Amended Aircraft Lease, Epiq Corporate Restructuring, LLC is authorized to update the claims register to reflect the terms of this Order, including, among other things, reflecting the allowance of the Allowed Claims and the withdrawal of the Withdrawn Claims as set forth in this Order.

11. Notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, their respective affiliates, successors, and assigns, and any affected third parties, including, but not limited to, the Lessor, all other Claimants, and all other persons asserting interests in the Aircraft or the Aircraft Lease.

12. The Debtors are authorized to take, or refrain from taking, any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of the Court.

13. While the above referenced Chapter 11 Cases are pending, this Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2021
New York, New York

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Amended Aircraft Lease

C L I F F O R D

CLIFFORD CHANCE

C H A N C E

高偉紳律師行

DATED _____ 2021

YAMASA AIRCRAFT AM1 KUMIAI

as Lessor

represented by its Managing Partner, Yamasa Co., Ltd.

and

AEROVÍAS DE MÉXICO, S.A. DE C.V.

as Lessee

**AMENDED AND RESTATED AIRCRAFT LEASE
AGREEMENT**

in respect of

ONE (1) BOEING 787-9 AIRCRAFT

Manufacturer's Serial Number 43861

Mexican Registration Mark XA-ADD

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THIS AIRCRAFT LEASE AGREEMENT is made on 24 January 2017 and **AMENDED and RESTATED** on _____ 2021.

BETWEEN:

- (1) **YAMASA AIRCRAFT AM1 KUMIAI**, a *Nin-i-Kumiai* which is formed under the Civil Code of Japan pursuant to the Nin-i Kumiai Agreement (as defined below) (hereinafter referred to as the "**Lessor**"), represented by the Managing Partner (as defined below), with its office and principal place of business at 362-1 Takao, Niimi City, Okayama 718-0003, Japan; and
- (2) **AEROVÍAS DE MÉXICO, S.A. DE C.V.**, a corporation (*sociedad anónima de capital variable*) organised and existing under the laws of Mexico, with its registered office and principal place of business at Paseo de la Reforma No. 445, piso 11, Col. Cuauhtémoc, CP: 06500, Ciudad de México, México (the "**Lessee**").

WHEREAS:

The parties are entering into this Agreement to provide for the lease by the Lessor to the Lessee of the Aircraft (as defined below).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall have the respective meanings shown opposite them:

"**Account**" means the Dollar current account of the Lessor number [REDACTED] with the Account Bank (Swift Code: [REDACTED]) or such other account as the Lessor (with the agreement of the Security Agent) may from time to time designate in writing to the Lessee;

"**Account Bank**" means Commerzbank Aktiengesellschaft, Tokyo Branch or such other bank as may be agreed between the Lessor, the Lessee and the Security Agent;

"**Account Pledge Agreement**" means the pledge agreement entered or to be entered into, as the context may require, between the Lessor and the Security Agent in respect of the Account;

"**Additional Insured**" has the meaning given to it in Schedule 6 (*Insurance Requirements*);

"**AEP Codes**" has the meaning given to it in Clause 2.1(f) (*Registrations*);

"**AFAC**" means the *Agencia Federal de Aviación Civil* of the *Secretaría de Comunicaciones y Transportes de México* and each other Mexican governmental airworthiness authority having authority with respect to the Aircraft that is comparable to the authority of the FAA and any successor thereto;

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

"**Agreed Value**" means at all times the sum of an amount in Dollars equal to [REDACTED] per cent. ([REDACTED]%) of the Stipulated Loss Value;

"**Agreement**" means this Agreement and the Schedules hereto as the same may be from time to time amended, modified, supplemented and novated in accordance with the terms hereof;

"**Aircraft**" means the Airframe together with the Engines whether or not any of the Engines may from time to time be installed on the Airframe or on any other airframe and, where the context permits, the Technical Records;

"**Aircraft Purchase Agreement**" means the aircraft purchase agreement entered into or to be entered into, as the context may require, between the Lessor, as buyer, and the Seller, as seller, providing for the sale of the Aircraft by the Lessee to the Lessor.

"**Aircraft Purchase Agreement Acceptance Certificate**" means the acceptance certificate in respect of the Aircraft executed or to be executed as the context may require, by the Lessor in favour of the Lessee pursuant to the Aircraft Purchase Agreement;

"**Aircraft Object**" has the meaning given to it in the Cape Town Convention;

"**Airframe**" means (i) the airframe described in Schedule 1 (*Aircraft Description*) (excluding the Engines or any engines from time to time installed thereon) and (ii) any and all Parts incorporated in or installed on or attached to such airframe when delivered and leased hereunder or from time to time thereafter incorporated, installed or attached or which, after removal therefrom, remain the property of the Lessor as required by the terms of this Agreement and all replacements, renewals and additions made in accordance with the terms of this Agreement;

"**Airframe Warranties**" means the warranties relating to the Airframe, provided by the Manufacturer pursuant to the Purchase Agreement as more particularly described in the Airframe Warranties Assignment;

"**Airframe Warranties Assignment**" means the airframe warranties assignment entered into or, as the context may require, to be entered into between the Lessor, the Lessee and the Security Agent in relation to the Airframe Warranties together with the Boeing Consent and Agreement.

"**Airworthiness Directive**" means an airworthiness directive issued by the FAA or the State of Registration;

"**Amendment and Restatement Deed**" means the amendment and restatement deed dated on or about _____ 2021 and entered into between, among others, the Lessee and the Lessor, in respect of the Aircraft;

"**Amendment Effective Date**" means the "Effective Time" as defined in the Amendment and Restatement Deed;

"Anticipated Fair Market Value" means, for the purposes of Clause 21 (*Purchase of Aircraft at Purchase Option Date*), the amount determined in accordance with Clause 21.3 (*Appraisal*);

"Approved Maintenance Performer" means any person approved by the FAA and the Aviation Authority to perform the relevant maintenance in respect of the Aircraft, or with respect to the Return, the EASA and the FAA or any other person from time to time approved in writing by the Lessor and the Facility Agent;

"Approved Maintenance Programme" means the Lessee's maintenance programme for the Aircraft which is based on and incorporates the Manufacturer's Maintenance Planning Document and approved by the Aviation Authority and encompassing, *inter alia*, scheduled maintenance (including block maintenance), condition-monitored maintenance, and/or on-condition maintenance of Airframe, Engines and Parts, including servicing, testing, preventive maintenance, repairs, structural inspections, system checks, overhauls, modifications, service bulletins, engineering orders, airworthiness directives, corrosion control, inspections and treatments;

"APU" means the auxiliary power unit installed on the Aircraft on the Delivery Date and described in Schedule 1 (*Aircraft Description*) or any replacement auxiliary power unit installed on the Aircraft and title to which is transferred to the Lessor in accordance with this Agreement;

"APU Medium Repair Shop Visit" means, with respect to the APU, a level of work that includes, at a minimum, [REDACTED];

"Assignment of Insurances" means the assignment of insurances entered or to be entered into, as the context may require, between the Lessee and the Lessor providing for the assignment of the Insurances and Requisition Compensation;

"Associated Rights" has the meaning given to it in article 1(c) of the Convention;

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, declaration, notarisation, order, permission, recording or registration;

"Aviation Authority" means all and any of the authorities, government departments, committees or agencies which under the laws of any State of Registration shall from time to time:

- (a) have control or supervision of civil aviation in that state; or
- (b) have jurisdiction over the registration, airworthiness or operation of, or other matters relating to, the Aircraft,

and, for so long as the State of Registration is Mexico, shall mean the AFAC (directly or through the RAM);

"Bankruptcy Cases" means the cases under Chapter 11 of the Bankruptcy Code filed by Lessee and certain of its affiliates on 30 June 2020 and pending in the United States Bankruptcy Court for the Southern District of New York under lead case number 20-11563;

"Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §101 *et seq.*;

"Benchmark" has the meaning given to it in Schedule 10 (*Benchmark Replacement*);

"BFE Bill of Sale" means, if applicable, the bill of sale in respect of the buyer furnished equipment in respect of the Aircraft executed or to be executed, as the context may require, by the Lessee in favour of the Manufacturer on the date of the transfer of title in respect of the Aircraft by the Manufacturer to the Lessee;

"Boeing Consent and Agreement" means the consent and agreement of the Manufacturer with respect to the Airframe Warranties Assignment.

"Buyer Furnished Equipment" means the equipment specified in the BFE Bill of Sale;

"Business Day" means a day, other than a Saturday or Sunday and which is not a public holiday, on which banks are open in London, Tokyo, Mexico City, and New York but, in respect of a Quotation Day, London only and, in respect of any Rental Payment Date, New York, Mexico City and Tokyo only.

"C Check" means a "C" check in accordance with the Approved Maintenance Programme or the MPD, each in effect on the relevant date;

"Cape Town Convention" has the meaning given to it in Clause 15.5 (*Cape Town Convention Registrations*);

"Cape Town UK Regulations" has the meaning given to it in Clause 15.5 (*Cape Town Convention Registrations*);

"Certificate of Registration" means the certificate of registration issued by the Aviation Authority in respect of the Aircraft;

"Change in Law" means any enactment, introduction, adoption, abolition, making or variation of, or any change in, deletion from or amendment or addition to, any applicable law, treaty, order, regulation, official directive or guideline in each case in any applicable jurisdiction (whether or not having the force of law, but in respect of which compliance is generally customary in the relevant jurisdiction) or any change in or any new or further or different interpretation or application of any thereof by any court, tribunal, central bank, tax, fiscal, monetary, financial services supervisory or other competent authority in any applicable jurisdiction or compliance with any request, requirement, guidance or guideline (whether or not having the force of law, but in respect of which compliance is generally customary in the relevant jurisdiction) or in each case from that existing as at the date of this Agreement but excluding any re-enactment or codification after the date of this Agreement (in each case without substantive change) of any applicable law, treaty, order, regulation, official directive or guideline existing and in force as at the date of this Agreement;

"Change of Control Event" means the Guarantor ceasing directly or indirectly to:

- (a) hold directly or indirectly fifty one per cent. (51%) of the registered share capital of the Lessee; or
- (b) have the power (whether through the ownership of voting capital, by contract, proxy, agency or otherwise) to:
 - (i) direct the management and the policies of the Lessee;
 - (ii) cast or control the casting of more than fifty one per cent. (51%) of the votes that might be cast at a general meeting or board meeting of the Lessee; or
 - (iii) appoint or remove all or the majority of the directors or equivalent officers of the Lessee.

"Compulsory Acquisition" means requisition for title, forfeiture, confiscation, sequestration, detention, condemnation or any compulsory acquisition whatsoever of the Aircraft or any Engine by any Government Entity or other governmental or competent authority or by any person acting or purporting to act by authority of the same and whether de jure or de facto;

"Contracting State" has the meaning given to it in the Convention;

"Convention" has the meaning given to it in Clause 15.5 (*Cape Town Convention Registrations*);

"CPCP" means the Manufacturer's corrosion prevention and control programme for the Aircraft;

"Cycle" means one take off and landing of the Aircraft, such period elapsing from the moment the Aircraft wheels leave the runway on take off until the time that the Aircraft wheels next touch the runway;

"Damage Notification Threshold" means \$1,000,000 or the equivalent in any other currency;

"Default Rate" means the rate per annum which is [REDACTED] per cent. ([REDACTED]%) per annum over the Benchmark;

"Delayed Delivery Letter Agreement" means the delayed delivery letter agreement entered or to be entered into, as the context may require, between the Lessee, the Lessor, the Facility Agent, the Security Agent and the Lenders in respect of the Aircraft;

"Delivery" means the time at which the Aircraft is acquired by the Lessor pursuant to the Aircraft Purchase Agreement and the Seller Bill of Sale;

"Delivery Date" means, in respect of the Aircraft, the date on which Delivery takes place;

"Delivery Location" means international airspace or such other location to be agreed between the Lessor and the Lessee;

"**DER**" means designated engineering representative;

"**Deregistration Power of Attorney**" means an irrevocable power of attorney from the Lessee authorising the Lessor and/or the Security Agent, as the case may be, to do anything or act or to give any consent or approval which may be required to obtain deregistration of the Aircraft and export the Aircraft from the State of Registration substantially in the form of Schedule 8 (*Form of Deregistration Power of Attorney*) or such other form as is necessary or desirable in the State of Registration;

"**Dollars**" and the sign "\$" and "US\$" mean the lawful currency for the time being of the United States of America and in respect of all payments to be made under this Agreement in Dollars, means funds which are for same day settlement in the New York Clearing House Interbank Payments System (or such other U.S. Dollar funds as may at the relevant time be customary for the settlement in New York City of international banking transactions denominated in United States dollars);

"**EASA**" means the European Aviation Safety Agency and any successor thereof;

"**Engine**" means either or both (as the context may require) of the two (2) engines installed on the Airframe at the Delivery Date and described in Schedule 1 (*Aircraft Description*) (or any other engine which replaces such engine or is substituted therefor in accordance with the terms of this Agreement such that title to such engine is transferred to the Lessor in accordance with this Agreement) whether or not installed on the Airframe or installed or not installed on any other airframe for so long as title thereto shall remain vested in the Lessor in accordance with the terms of this Agreement, together in each case with any and all Parts incorporated in, installed on or attached to, such Engine (or any other engine which replaces such Engine or is substituted therefor in accordance with the terms of this Agreement such that title to such engine is transferred to the Lessor in accordance with this Agreement) when delivered and leased hereunder or from time to time thereafter, or which, after removal therefrom, remain the property of the Lessor and all replacements, renewals and additions made in accordance with the terms of this Agreement;

"**Engine Manufacturer**" means General Electric Company;

"**Engine Manufacturer's Workscope Planning Guide**" means the latest issue of the Engine Manufacturer's Workscope Planning Guide for engines of the same make and model as the Engines;

"**Engine Performance Restoration**" means in respect of an Engine, the performance of off wing engine maintenance and repair accomplished for that Engine in accordance with the Engine Manufacturer's Manual which results in such Engine having, at a minimum, [REDACTED];

"**Engine Warranties**" means the warranties granted by the Engine Manufacturer in relation to the Engines, as more particularly defined in the Engine Warranties Agreement;

"**Engine Warranties Agreement**" means the engine warranties agreement entered or to be entered into, as the context may require, between the Engine

Manufacturer, the Lessee, the Lessor and the Security Agent in relation to the warranties relating to the Engines;

"Event of Default" means any of the events and/or circumstances referred to in Clause 18 (*Events of Default*);

"Excepted Reason" means:

- (a) any Potential Event which is continuing or any of the events specified in clause 7.3(h) of the Loan Agreement; or
- (b) any material breach by any Lessee Party or any Permitted Sublessee of, or any failure by any such party to perform any of its material obligations under, or any material misrepresentation made by any such party in, any Operative Document to which it is a party; or
- (c) the gross negligence or fraudulent or wilful misconduct of any Lessee Party or any Permitted Sublessee with respect to any aspect of the transactions contemplated by, or the performance of any of its obligations under, this Agreement or any of the other Operative Documents to which it is a party; or
- (d) any material act or breach of obligation by any Lessee Party or any Permitted Sublessee or any other person in possession (other than the Lessor or any of its respective agents and permitted assigns if and to the extent it has actual physical possession of the Aircraft) or control of the Aircraft;

"Excluded Country" means (i) Japan, (ii) North Korea, (iii) any country which is subject to any sanctions, restrictions, orders, directives or embargoes, regulations or legislation imposed by the United Nations, the European Union, the United States of America, the United Kingdom, Japan or any Government Entity of the State of Registration and (iv) any other country at any time designated in writing to the Lessee by the Lessor as an "Excluded Country" for the reason of any applicable law in Japan the effect of which prohibits the export and/or use of Boeing aircraft to such country, or an aircraft which is based in, such other country **provided that** the Lessor shall not unreasonably withhold its consent to any request by the Lessee that any country which has previously been designated an Excluded Country shall no longer constitute an Excluded Country for the purposes of this Agreement;

"Excluded Taxes" means any tax excluded under Clause 9.2.2;

"Expiry Date" means [REDACTED];

"FAA" means the Federal Aviation Administration of the United States of America and any successor thereof;

"Facility Agent" means Commerzbank Aktiengesellschaft, Tokyo Branch, in its capacity as facility agent for and on behalf of the Lenders;

"Financing Parties" means the Security Agent, the Facility Agent and the Lenders and **"Financing Party"** means any of them;

"Financing Party Excepted Reason" means:

- (a) any breach by any Financing Party of, or any failure by any Financing Party to perform any of its obligations under, or any misrepresentation made by any Financing Party in, any Operative Document to which it is a party in each case which, if capable of remedy, is not remedied within ten (10) Business Days after notice thereof from the Lessor or the Lessee; or
- (b) the gross negligence or fraudulent or wilful misconduct of any Financing Party with respect to any aspect of the transactions contemplated by, or the performance of any of its obligations under, this Agreement or any of the other Operative Documents to which it is a party; or
- (c) any Financing Party Security Interest which is not discharged within ten (10) Business Days after notice thereof from the Lessor or the Lessee;

"Financing Party Security Interest" means any Security Interest to the extent the same arises in respect of (a) a debt, liability or other obligation (whether financial or otherwise) of any Financing Party (other than any such Security Interest created pursuant to the Operative Documents or incurred in the exercise of rights of the Financing Parties under the Operative Documents), (b) any representation and warranty made by the relevant Financing Party in the Loan Agreement being incorrect or any breach by any Financing Party of its express obligations under any Operative Document or (c) any act or omission of any Financing Party not related to the transactions contemplated by the Operative Documents (but in the case of each of (a), (b) and (c) above, excluding any Security Interest to the extent the same arises as a result of any act, omission, default or misrepresentation or the gross negligence or wilful misconduct of the Lessor, the Managing Partner or the Lessee) or (d) the gross negligence or fraudulent or wilful misconduct of any Financing Party with respect to any aspect of the transactions contemplated by, or the performance of any of its obligations under any Operative Document to which it is a party;

"Fixed Rate" means [REDACTED]% per annum or such other rate as agreed between the Lessor and the Lessee as specified in the Lease Acceptance Certificate;

"Fixed Rental" has the meaning given to it in Exhibit 1 to Schedule 3 (*Rental and Other Amounts*).

"Fixed Rental Date" means the twentieth day of each calendar month in the Fixed Rental Period; **provided, however**, that the Fixed Rental Date for the first Fixed Rental Period shall be the twentieth day of the first calendar month that occurs after the Transition Date.

"Fixed Rental Period" has the meaning given to it in Clause 5.1 (*Fixed Rental Period*).

"Flight Hour" means each hour or part thereof elapsing from the moment the wheels of the Aircraft leave the ground on take off until the wheels of the Aircraft next touch the ground;

"Funding Indemnity Letter" means the funding indemnity letter entered or to be entered into, as the context may require, between the Lessee and the Lessor;

"Geneva Convention" means the Convention on the International Recognition of Rights in Aircraft signed at Geneva, Switzerland on 19 June 1948, and amended from time to time;

"Government Entity" means:

- (a) any national government, political subdivision thereof, or local jurisdiction therein;
- (b) any instrumentality, board, commission, court or agency of any thereof, however constituted; and
- (c) any association, organisation or institution of which any of the above is a member or to whose jurisdiction any thereof is subject or in whose activities any of the above is a participant;

"Grupo Aeromexico" means the Guarantor and any entity of which the Guarantor owns directly or indirectly more than fifty per cent. (50%) of the voting share capital;

"Guarantee" means the guarantee entered or to be entered into, as the context may require, by the Guarantor in favour of the Lessor in respect of, *inter alia*, the obligations of the Lessee under the Operative Documents;

"Guarantor" means Grupo Aeroméxico, S.A.B. de C.V., a corporation (*sociedad anónima bursátil de capital variable*) incorporated under the laws of Mexico;

"Habitual Base" means Mexico;

"Heavy Maintenance Check" means a Structural Check, an Engine Performance Restoration, APU Medium Repair Shop Visit and a Landing Gear Overhaul;

"Holding Company" means, in relation to any person, any other person of which it is a Subsidiary;

"IDERA" means an irrevocable deregistration and export request authorisation pursuant to and for the purposes of the Cape Town Convention;

"Indemnatee" has the meaning given to it in Clause 23.1 (*General Indemnity*);

"Insolvency Event of Default" has the meaning given to it in the Loan Agreement;

"Inspection Agent" means the Lessor or any inspection agent appointed for the purposes of this Agreement by the Lessor and notified to the Lessee in writing from time to time;

"Insurance Claims Threshold" means \$1,000,000 or the equivalent in any other currency;

"Insurances" means any and all contracts or policies of insurance required to be effected and maintained in accordance with the provisions of this Agreement, which expression includes, where the context so admits, any relevant re-insurance(s);

"International Interest" has the meaning given to it in the Cape Town Convention;

"International Registry" has the meaning given to it in the Cape Town Convention;

"Interpolated Screen Rate" means the percentage rate (rounded upwards to four (4) decimal places) *per annum* equal to:

$$S + ((D * (L - S)) / (LD - SD))$$

where:

"L" = the Screen Rate for a period longer than, but as close as possible to, the duration of the relevant period;

"S" = the Screen Rate for a period shorter than, but as close as possible to, the duration of the relevant period;

"LD" = the number of days in the period for which L is quoted;

"SD" = the number of days in the period for which S is quoted;

"D" = the number of days in the relevant period minus SD.

"Irrevocable Instruction to Pay" means the irrevocable instruction to pay issued by the Lessor in favour of the Account Bank on or about the date hereof;

"Kumiai-in" means any person entering into the Nin-i Kumiai Agreement with the other Kumiai-in, and making a cash contribution and/or service contribution to, the Lessor for the purposes of this Agreement, the other Operative Documents and the transactions contemplated hereby and thereby which, as of the date hereof are Yamasa Co., Ltd., Yamasa AMX1 Lease Co., Ltd. and Yamasa AMX2 Lease Co., Ltd., together with any assignee from such person;

"Landing Gear" means the landing gear assembly of the Aircraft, excluding any rotatable parts such as wheels or brakes but including, without limitation, all struts, legs, cylinders pistons and axles;

"Landing Gear Overhaul" means an overhaul of a Landing Gear assembly in accordance with the Landing Gear manufacturer's repair manual that restores such Landing Gear to a "zero time since overhaul" condition in accordance with the Landing Gear manufacturer's repair manual and is performed in accordance with the Landing Gear manufacturer's overhaul specifications and operating criteria (excluding any rotatable components such as wheels, tires, brakes and consumable items);

"Lease Acceptance Certificate" means a certificate substantially in the form set out in Schedule 2;

"Lease Period" means the period during which the Lessee is entitled to the possession and use of the Aircraft in accordance with this Agreement being the period commencing on the Delivery Date and ending on the Expiry Date or any earlier date on which the leasing of the Aircraft hereunder is terminated pursuant to the provisions of this Agreement;

"Lenders" means (a) persons named as Original Lenders in the Loan Agreement; and (b) any bank or financial institution which has become a party to the Loan Agreement as a lender in accordance with the terms of the Loan Agreement, and in each case, to the extent such Lender has not been released from its respective rights and obligations under the Loan Agreement;

"Lessee Parties" means the Lessee and the Guarantor and **"Lessee Party"** means any of them;

"Lessor Event" means any of the following events or circumstances:

- (a) any Insolvency Event of Default;
- (b) the Managing Partner disposes of all or substantially all of its assets and such disposal has a material adverse effect on the Managing Partner's ability to perform its obligations under the Lessor Undertaking Letter (Lessee), **provided that** this paragraph (b) shall not give rise to a Lessor Event unless upon the occurrence of any event referred to in this paragraph (b) and following mitigation and consultation in good faith between the Lessor and the Lessee, the parties cannot agree to replace the Managing Partner or agree to alternative arrangements;
- (c) any breach (other than as a result of the circumstances contemplated in Clauses 8.1.1 and 8.1.2) by any Relevant Person of its obligations under Clause 6.4 (*Quiet Enjoyment*) and such breach continues for more than five (5) Business Days after the Lessor receives a written notice from the Lessee requiring that failure to be remedied;
- (d) any breach (other than as a result of the circumstances contemplated in Clause 8.1.1 and 8.1.2) by any Relevant Person of any of its material obligations to the Lessee under this Agreement and/or any other Operative Document to which it is a party (other than those referred to in paragraph (c) above), and such breach continues for more than thirty (30) days after written notice thereof is given by the Lessee to the Lessor requiring that failure to be remedied and the Lessee reasonably considers that such breach has or is likely to have a material adverse effect on the rights or interests of the Lessee under any Operative Document;
- (e) any representation or warranty made or repeated (or deemed to be repeated) by any Relevant Person under this Agreement and/or any other Operative Document to which it is a party in any document or certificate or statement executed by the Lessor pursuant to any Operative Document is or proves to have been incorrect at the time made or deemed to have

been made in any material respect (other than as a result of a Change in Law) and in respect of such incorrectness which is capable of being corrected, such Relevant Person fails to remedy the same within thirty (30) days after written notice thereof is given by the Lessee to the Lessor and the Lessee reasonably considers that such false or incorrect representation or warranty has or is likely to have a material adverse effect on the ability of the Lessor to perform its obligations under the Operative Documents to which it is a party;

- (f) this Agreement and/or any Operative Document being disaffirmed, repudiated or declared void or invalid by the Lessor, the Parent, Yamasa, the Managing Partner or any Kumiai-in;
- (g) Yamasa failing to observe and perform any of its material obligations to the Lessee set out in the Lessor Undertaking Letter (Lessee) and in respect of such failure which is capable of remedy, Yamasa fails to remedy the same within thirty (30) days after written notice thereof is given by the Lessee to the Lessor requiring that the failure be remedied and the Lessee reasonably considers that such breach has or is likely to have a material adverse effect on the rights or interests of the Lessee under any Operative Document;
- (h) the gross negligence or fraudulent or wilful misconduct of any Relevant Person with respect to any aspect of the transactions contemplated by, or the performance of any of its obligations under, this Agreement or any of the other Operative Documents to which it is a party,

provided that none of the events or circumstances referred to in paragraphs (a) through (g) of this definition of "Lessor Event" shall constitute a Lessor Event if the same arises as a result of, or as a consequence of, an Excepted Reason or a Financing Party Excepted Reason and **provided further that** (A) it shall not be an Insolvency Event of Default if any of the events or circumstances referred to in paragraphs (e), (f), (g) and (h) of clause 16.1 (*Events of Default*) of the Loan Agreement apply to any of the Kumiai-in, other than the Managing Partner, or the Parent (the "**Affected Person**") if the Managing Partner procures that the Affected Person is replaced under the Nin-i Kumiai Agreement with a new parent or ordinary partner (*kumiai-in*), as the case may be, satisfactory to the Lessee no later than fourteen days (14) days after occurrence of the relevant event or circumstance, provided that (i) no other Lessor Event has occurred and is continuing, (ii) the Lessee is satisfied that (a) the existence of the nin-i kumiai constituted by the Nin-i Kumiai Agreement is not prejudiced or impaired, (b) the rights of the Lessee under the Operative Documents are not adversely affected, (c) any replacement parent accedes to the Share Pledges (Lessor) in its capacity as a Parent thereunder and Yamasa provides written confirmation in respect of the continuing effectiveness of the Lessor Undertaking Letter (Lessee) in a form reasonably satisfactory to the Lessee and (d) the Lessee shall not have any greater obligations, or be obliged to pay any greater amount, under the Operative Documents as a result of such replacement, (iii) the Managing Partner has provided to the Lessee Japanese legal and tax opinions in form and substance satisfactory to the Lessee in respect of such replacement and the Operative Documents, (iv) the Managing Partner pays all costs and expenses incurred by the Lessee in connection with any such replacement and (v) the Financing Parties

have not accelerated the Loan in accordance with clause 16 (*Events of Default*) of the Loan Agreement; and (B) it shall not be a Lessor Event if any of the events or circumstances referred to in clause 16.1(i) (*Insolvency of Managing Partner*) of the Loan Agreement occur in respect of the Managing Partner and such person is able to demonstrate to the satisfaction of the Lessee (acting reasonably) prior to or following any applicable grace period referred to therein that the occurrence of such event or circumstance does not and will not have an adverse effect on the financial condition of the Managing Partner or its ability to perform its obligations under the Operative Documents or on the rights and powers of the Lessee under the Operative Documents;

"Lessor Security Interest" means any Security Interest over the Aircraft arising as a result of the acts or omissions of any Relevant Person other than (i) any Security Interest created, contemplated or permitted by or pursuant to any of the Operative Documents or (ii) any Security Interest arising as a result of acts or omissions of the Relevant Person which are permitted or required or contemplated by or pursuant to any Operative Document **provided that** no Security Interest shall constitute a Lessor Security Interest if the same arises as a result of an Excepted Reason, a Financing Party Excepted Reason or is a Permitted Lien (other than one referred to in paragraph (e) of the definition thereof);

"Lessor Support Letter (Lenders)" means the undertaking letter issued or, as the context may require, to be issued by the Parent, Yamasa AMX1 Lease Co., Ltd. and Yamasa AMX2 Lease Co., Ltd. in favour of the Security Agent in respect of the Lessor;

"Lessor Support Letter (Lessee)" means the undertaking letter issued or, as the context may require, to be issued by the Parent, Yamasa AMX1 Lease Co., Ltd. and Yamasa AMX2 Lease Co., Ltd. in favour of the Lessee in respect of the Lessor;

"Lessor Undertaking Letter (Lenders)" means the undertaking letter issued or, as the context may require, to be issued by Yamasa in favour of the Security Agent in respect of the Lessor;

"Lessor Undertaking Letter (Lessee)" means the undertaking letter issued or, as the context may require, to be issued by Yamasa in favour of the Lessee in respect of the Lessor;

"LIBOR" means:

- (a) the applicable Screen Rate for Dollars and for a period equal in length to the relevant period;
- (b) (if no Screen Rate is available for the relevant period), the Interpolated Screen Rate; or
- (c) (if no Screen Rate is available for the relevant currency or the relevant period and it is not possible to calculate an Interpolated Screen Rate), the Reference Bank Rate,

in each case as of 11:00 a.m. (London time) on the Quotation Day and if any such rate is less than zero LIBOR will be deemed to be zero.

"Loan" means the loan made or to be made under the Loan Agreement or the principal amount outstanding for the time being of that loan;

"Loan Agreement" means the loan facility agreement entered or to be entered into, as the context may require, between the Lessor, the Facility Agent, the Security Agent and the persons defined therein as "Lenders";

"Loan Amendment Deed" means a loan amendment deed entered or to be entered into, as the context may require, between, among others, the Lessor, the Facility Agent and the Security Agent.

"Loan Supplement" means, in respect of the Loan, the loan supplement entered or to be entered into, as the context may require, between the Lessor and the Facility Agent, substantially in the form set out in schedule 10 (*Loan Supplement*) of the Loan Agreement;

"Losses" means costs, losses, charges, expenses (including reasonably incurred legal expenses), liabilities, fines, fees, obligations, settlements, demands, claims, actions, suits, penalties, payments, damages, adverse judgments or orders or other sanctions and **"Loss"** shall be construed accordingly;

"Major Checks" means any C Check, multiple of a "C" Check or heavier maintenance visit or segment thereof (including groups of systems, zonal, structural and CPCP maintenance tasks with an MPD threshold in excess of a C Check) in accordance with the Approved Maintenance Programme in effect on the date when such check is carried out;

"Managing Partner" means Yamasa Co., Ltd., whose registered office at 362-1 Takao, Niimi City, Okayama, Japan;

"Mandatory Orders" means all and any Aviation Authority and, in respect of or in connection with Return or the Return Conditions only, FAA and EASA mandatory regulations and service bulletins applicable to the Aircraft, any Engine or any Part;

"Manufacturer" means, in relation to the Aircraft, The Boeing Company, a Delaware corporation;

"Manufacturer Bill of Sale" means, together, the bill of sale(s) in respect of the Aircraft and the related Buyer Furnished Equipment executed or to be executed, as the context may require, by the Manufacturer in favour of the Lessee pursuant to the Purchase Agreement on the date of the transfer of title in respect of the Aircraft by the Manufacturer to the Lessee;

"Manufacturer Filing Bill of Sale" means the Manufacturer Bill of Sale, notarised and apostilled, together with its translation into Spanish for registration purposes before the RAM executed or to be executed, as the context may require, by the Manufacturer in favour of the Lessee on the date of the transfer of title in respect of the Aircraft by the Manufacturer to the Lessee;

"Manufacturer's Maintenance Planning Document" or **"MPD"** means the planning document relating to recommended maintenance of the Aircraft issued by the Manufacturer, as the same may from time to time be amended, modified or supplemented;

"Material Adverse Effect" means a material adverse effect on:

- (a) the financial condition of any Lessee Party;
- (b) the ability of any Lessee Party to perform and comply with any of its obligations as and when required under the terms of this Agreement or any other Operative Document to which such Lessee Party is a party; or
- (c) the validity, legality or enforceability of any Operative Document to which any Lessee Party is a party;

"Mexican Law Pledge" means the first priority Mexican law non-possessory pledge agreement (*contrato de prenda sin transmision de posesión*) in respect of the Aircraft governed by the laws of Mexico to be entered into on the Delivery Date between the Lessor as pledgor and the Security Agent as pledgee;

"Mexico" means the United Mexican States (*Estados Unidos Mexicanos*);

"Minimum Liability Coverage" means \$1,000,000,000 for the Aircraft on each occurrence;

"New York Law Mortgage" means the first priority mortgage in respect of the Aircraft governed by the laws of New York to be entered into on the Delivery Date between the Lessor as mortgagor and the Security Agent as mortgagee;

"Nin-i Kumiai Agreement" means the *Kumiai-keiyaku* (partnership agreement) entered into among the Kumiai-in in connection with the purchase, ownership and leasing of the Aircraft by the Lessor pursuant to this Agreement and the other Operative Documents;

"OEM" means original equipment manufacturer;

"Operative Documents" means (i) this Agreement, the Aircraft Purchase Agreement, the Seller Bill of Sale, the Aircraft Purchase Agreement Acceptance Certificate, the Seller Filing Bill of Sale, the Lessor Undertaking Letter (Lenders), the Lessor Undertaking Letter (Lessee), the Lessor Support Letter (Lenders), the Lessor Support Letter (Lessee), the Loan Agreement, the Loan Supplement, the Utilisation Request, the Irrevocable Instruction to Pay, any Transfer Certificate, the Lease Acceptance Certificate, the Redelivery Acceptance Certificate, the Funding Indemnity Letter, the Delayed Delivery Letter Agreement, the Guarantee, the Security Documents, the Amendment and Restatement Deed, the Loan Amendment Deed and all notices, acknowledgements, consents, certificates, confirmations and other documents from time to time issued or entered into pursuant to or in connection with any Operative Document, (ii) any agreement entered into on or before the Delivery Date between any of the parties to the documents referred to in (i) above for the primary purpose of hedging such party's interest rate exposure under such Operative Documents or compensating any party in connection with those hedging arrangements; and (iii) any other document,

instrument or agreement which is agreed in writing by the Lessor, the Lessee and the Security Agent to be an Operative Document and "**Operative Document**" means any of them;

"**Original Financial Statements**" means, in respect of the Guarantor, its latest audited annual financial statements;

"**Parent**" means Yamasa AMX Ippan Shadan Hojin of c/o Tokyo Kyodo Accounting Office, 1-1, Marunouchi 3-chome, Chiyoda-ku, Tokyo;

"**Part**" means any part, component, appliance, accessory, navigational appurtenance, furnishing (which, for the avoidance of doubt, shall include, without limitation, Buyer Furnished Equipment), module, instrument or other item of equipment (other than complete Engines) that at any time of determination is incorporated or installed in or attached to the Airframe or an Engine or title to which remains or is required to remain vested in the Lessor (but excludes any such items, title to which have passed to the Lessee pursuant to this Agreement);

"**PBH Period**" has the meaning given to it in Clause 5.2 (*PBH Period*);

"**PBH Rental**" has the meaning given to it in Exhibit 1 to Schedule 3 (*Rental and Other Amounts*);

"**PBH Rental Date**" has the meaning given to it in Clause 5.2 (*PBH Period*);

"**Permitted Lien**" means:

- (a) any lien for Taxes not assessed or, if assessed, not yet due and payable, or being contested in good faith by appropriate proceedings;
- (b) any lien of a repairer, mechanic, carrier, hangarkeeper, airport, air navigation authority or other similar lien arising in the ordinary course of business by operation of law in respect of obligations which are not overdue or are being contested in good faith by appropriate proceedings;
- (c) any lien created or permitted by any Operative Document;
- (d) liens arising out of judgments or awards against the Lessee with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and for which a stay of execution has been granted;
- (e) any Lessor Security Interest;
- (f) any Financing Party Security Interest;
- (g) salvage or similar rights of insurers under the Insurances;
- (i) the rights of any Permitted Sublessee under any Permitted Sublease to the extent permitted under Clause 12.7 (*Permitted Subleases*);
- (j) any other lien with respect to which the Lessee shall have provided a bond, guarantee, cash collateral or other similar security which is acceptable to the Lessor and the Security Agent;

- (k) any lien relating to the rights of the Lessor and any Financing Parties and/or related parties to any refinancing or any subsequent or additional financing entered into by the Lessor in connection with the transactions contemplated by the Operative Documents (and for the avoidance of doubt, this shall not permit and shall not be construed to permit the Lessor to enter into such refinancing and/or financing in connection with the transaction contemplated by the Operative Documents),

but only if (in the case of each of (a), (b) and (d)) (i) upon written request, the Lessee can establish to the satisfaction of the Lessor and the Security Agent that adequate resources have been (or will be) provided by the Lessee for the payment of such Taxes, obligations, judgments or awards as and when they fall due and (ii) such proceedings, or the continued existence of such lien, do not give rise to any material risk of the sale, forfeiture or other loss of the Aircraft or any interest therein or of criminal liability on the part of the Lessor or any Financing Party or any other Indemnitee;

"Permitted Sublease" means any sublease of the Aircraft granted in accordance with Clause 12.7 (*Permitted Subleases*).

"Permitted Sublessee" means any commercial air operator or carrier which, at the time the relevant sublease is entered into, is then listed in Schedule 5 (*Permitted Sublessees*) and which is then solvent and not otherwise subject to any winding-up, insolvency or bankruptcy proceedings and with all necessary Authorisations required under the laws of the state or country in which it is incorporated or operates from; **Provided that** any such commercial air operator or carrier shall cease to be a Permitted Sublessee in the event that the country in which such commercial air operator or carrier is incorporated or has its main base of operations is or becomes an Excluded Country; **Provided further that** and notwithstanding anything to the contrary in this definition the Lessor and/or the Security Agent shall have the right at any time to remove any commercial air operator or carrier from Schedule 5 (*Permitted Sublessees*) (but such removal shall not, of itself, require the Lessee to terminate any currently subsisting sublease with such commercial air operator or carrier if the Lessee has no such right to do so under the terms of such sublease); **Provided further that** the Lessee shall have the right at any time to request that any commercial air operator or carrier be added or reinstated to Schedule 5 (*Permitted Sublessees*) and the Lessor and the Security Agent agree to act reasonably and to consider any such request in good faith **provided that** no commercial air operator or carrier shall be added or reinstated to Schedule 5 (*Permitted Sublessees*) unless both the Lessor and the Security Agent so agree and, if any commercial air operator or carrier is added or reinstated to Schedule 5 (*Permitted Sublessees*) in accordance with the foregoing provisions of this paragraph, then Schedule 5 (*Permitted Sublessees*) shall be deemed amended and shall be construed accordingly;

"PMA Part" means a Part which has not been manufactured by the Manufacturer, the Engine Manufacturer or the OEM of the relevant originally installed Part (as applicable) and is not approved by the Manufacturer or the Engine Manufacturer for installation in the Aircraft or an Engine (as applicable).

"Potential Event" means an Event of Default or any event which would, upon the making of a determination, the giving of a notice or the lapse of any relevant grace period or any combination thereof, become an Event of Default;

"Protocol" has the meaning given to it in Clause 15.5 (*Cape Town Convention Registrations*);

"Purchase Agreement" means the agreement (number 03109) relating to the sale and purchase of, *inter alia*, the Aircraft dated 21 July 2006 between the Manufacturer and the Lessee together with the exhibits thereto and all amendments and supplements in relation thereto (as may be amended and supplemented from time to time);

"Purchase Option Date" means the Expiry Date;

"Purchase Option Offer" has the meaning specified in Clause 21.1 (*Election*);

"Purchase Option Price" means the Dollar amount as specified and set out in Exhibit 3 to Schedule 3 (*Rental and Other Amounts*);

"Purchase Option Rejection Threshold" means the Dollar amount as specified and set out in Exhibit 3 to Schedule 3 (*Rental and Other Amounts*);

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two (2) Business Days before the first day of that period, unless market practice differs in the London interbank market for a currency, in which case the Quotation Day for that currency will be determined by the Lessor in accordance with market practice in the London interbank market (and if quotations would normally be given by leading banks in the London interbank market on more than one day, the Quotation Day will be the last of those days);

"RAM" means the Mexican Aeronautic Registry (*Registro Aeronáutico Mexicano*) and any successor Government Entity;

"Recourse Event" has the meaning given to it in clause 35.7 (*Recourse Events*) of the Loan Agreement;

"Redelivery Acceptance Certificate" means a redelivery acceptance certificate to be executed and delivered by the parties at redelivery of the Aircraft to Lessor substantially in the form appearing at Schedule 9 (*Form of Redelivery Acceptance Certificate*);

"Redelivery Check" means the Lessee's next due block "C" check in accordance with the Approved Maintenance Programme during the Lease Period and the revision of the MPD in effect three (3) months prior to the Expiry Date, and shall clear the aircraft of scheduled maintenance for a period of up to [REDACTED];

"Redelivery Location" means a maintenance or storage facility in Mexico as selected by the Lessee, or any other location as agreed between the Lessor and the Lessee;

"Redelivery Maintenance Payment" has the meaning given to it in Exhibit 4 to Schedule 3 (*Rental and Other Amounts*);

"Reference Banks" means the principal London offices of Commerzbank AG, Citibank, HSBC Bank PLC and JPMorgan;

"Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied by each Reference Bank as the rate at which the relevant Reference Bank could borrow funds in the London interbank market in Dollars for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period;

"Relevant Kumiai-in" means each of Yamasa AMX1 Lease Co., Ltd. and Yamasa AMX2 Lease Co., Ltd. for so long as they are Kumiai-in;

"Relevant Person" means the Lessor, the Managing Partner, Yamasa, each Kumiai-in, the Parent, the Inspection Agent, the Remarketing Agent and their respective and any subsequent respective successors, permitted transferees and permitted assigns, officers, directors, servants, agents and employees **provided that** any Financing Party and its and any subsequent successors, transferees and assigns shall not constitute a Relevant Person;

"Remarketing Agent" means the Lessor or any other remarketing agent appointed for the purposes of this Agreement in respect of the Aircraft by the Lessor and notified to the Lessee in writing from time to time;

"Rental" means the PBH Rental and the Fixed Rental, as applicable;

"Rental Payment Date" means each PBH Rental Date and each Fixed Rental Date, as applicable (or, if any such date is not a Business Day, the immediately preceding Business Day);

"Replacement Engine" means an engine of the same manufacturer and model as the Engine installed on the Airframe as of the Delivery Date (or an engine of an improved model suitable for installation and use on the Airframe) in each case which has a value and remaining economic useful life at least equal to, and is in as good operating condition as, the Engine which it is replacing, assuming the Engine originally installed on the Airframe was in the condition and repair required by the terms of this Agreement and which shall have been substituted for the Engine pursuant to Clause 17.2 (*Total Loss with Respect to an Engine; Substitution of Engines*) and have complete Technical Records;

"Requisition Compensation" means any and all moneys or other compensation (other than the proceeds of Insurance) from time to time payable in respect of the Compulsory Acquisition of the Aircraft;

"Return" means the date on which the Aircraft is redelivered or, as the context may require, required to be redelivered to the Lessor in accordance with Clause 20 (*Return of Aircraft*);

"Return Conditions" means the return conditions set out in Schedule 4 (*Return Conditions*);

"Screen Rate" means, in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person

which takes over the administration of that rate) for the relevant currency and period displayed on the appropriate page of the Bloomberg screen (currently BBAM1) or on the appropriate page of such other information service which publishes that rate from time to time in place of Bloomberg. If the agreed page is replaced or the service ceases to be available, the Lessor may (acting reasonably) specify another page or service displaying the appropriate rate after consultation with the Lessee;

"Security Agent" means NTT Finance Corporation in its capacity as security agent for and on behalf of the Financing Parties;

"Security Assignment" means the security assignment entered or to be entered into, as the context may require, between the Lessor as assignor and the Security Agent as assignee (in respect, *inter alia*, of certain rights of the Lessor under this Agreement) together with all notices and acknowledgements to be issued or given thereunder;

"Security Documents" means the Airframe Warranties Assignment, the Engine Warranties Agreement, the Mexican Law Pledge, the New York Law Mortgage, the Assignment of Insurances, the Security Assignment, the Account Pledge Agreement, the Deregistration Power of Attorney, any IDERA issued pursuant to Clause 15.5, each Share Pledge, each notice or acknowledgement required to be given pursuant to any of the foregoing (including any consent required to be given by the Manufacturer in respect of the Airframe Warranties Assignment or the Engine Manufacturer in respect of the Engine Warranties Agreement) and any other document or instrument creating a Security Interest in favour of any Financing Party (and agreed in writing as a **"Security Document"** by the Security Agent and the Lessor);

"Security Interest" means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, right of detention, assignment by way of security or any encumbrance or security interest of any kind securing any obligation of any person or any other type of preferential arrangement (including, without limitation, any trust arrangement, title transfer, retention arrangement and/or other encumbrance having a similar effect) in each case howsoever created or arising;

"Security Period" means the period starting on the Utilisation Date (as defined in the Loan Agreement) and ending on the date on which all of the Lessor's obligations to the Financing Parties under the Operative Documents have been unconditionally and irrevocably paid, performed and discharged in full;

"Seller" means the Lessee.

"Seller Bill of Sale" means the bill of sale in respect of the Aircraft executed or to be executed as the context may require, by the Seller, as seller, in favour of the Lessor, as buyer, pursuant to the Aircraft Purchase Agreement;

"Seller Filing Bill of Sale" means the Seller Bill of Sale, notarised and apostilled, together with its translation into Spanish for registration purposes before the RAM executed or to be executed, as the context may require, by the Seller, as seller, in favour of the Lessor, as buyer, pursuant to the Aircraft Purchase Agreement;

"Share Pledge" means each share pledge in relation to Yamasa AMX1 Lease Co., Ltd. and Yamasa AMX2 Lease Co., Ltd. granted or to be granted, as the context may require, by the Parent in favour of the Security Agent;

"State of Incorporation" means in respect of the Lessee and the Guarantor, Mexico;

"State of Registration" means as at the Delivery Date, Mexico and at any subsequent time during the Lease Period, such state, country or territory in which the Aircraft is registered at such time in accordance with the provisions of this Agreement;

"Stipulated Loss Value" means, with respect to any date, the Dollar amount calculated and payable with respect to such date, as **provided** in Exhibit 2 to Schedule 3 (*Rental and Other Amounts*);

"Structural Check" means, with respect to the Airframe, the 12 Year Structural Check (or the equivalent Structural Check if such 12 Year Structural Check is no longer applicable), where a **"12 Year Structural Check"** means a structural, zonal and systems inspection of the Aircraft (and resulting repairs, if any) which accomplishes all tasks having an interval of twelve (12) years [REDACTED] as per the current revision of the Approved Maintenance Programme and such additional major structural, zonal and systems tasks performed concurrently therewith based upon the performance intervals set out in the then-current revision of the Approved Maintenance Programme or if the Approved Maintenance Programme has been revised in respect of such 12 Year Structural Check, an inspection which is equivalent in scope and content to the foregoing in accordance with the then-current revision of the Approved Maintenance Programme, in order to clear the aircraft for all of its twelve (12) year tasks until the next 12 Year Structural Check;

"Subsidiary" means an entity from time to time (i) of which another has direct or indirect control or owns directly or indirectly more than fifty per cent. (50%) of the voting share capital; or (ii) which is a direct or indirect subsidiary of another under the laws of the jurisdiction of its incorporation;

"Tax Indemnitee" has the meaning given to it in Clause 9.2.1;

"Taxes" or **"taxes"** means all present and future taxes, levies, imposts, duties (including, without limitation, customs duties), withholdings, assessments, fees (including, without limitation, documentary, licence, filing and registration fees) or charges of any nature whatsoever, and wheresoever and by whomsoever imposed, assessed, charged, levied, collected or demanded including, without limitation, value added tax, consumption tax or any other tax in respect of added value or any income (including, without limitation, gross income, minimum, alternative minimum, capital gains income, gross receipts and net receipts), capital, capital gains, franchise, transfer, sales, use, business, occupation, excise, property (whether personal or otherwise), stamp or other taxes, together with any penalties, additions to tax, fines or interest with respect to any of the foregoing; and **"Tax"**, **"tax"**, **"Taxation"** and **"taxation"** shall be construed accordingly;

"**Technical Records**" means all such records, logs, manuals, technical data and other materials and documents relating to the maintenance, modification and repair of the Aircraft required to be maintained by the FAA and the Aviation Authority or the Approved Maintenance Programme or this Agreement and all additions, revisions, renewals and replacements from time to time made thereto;

"**Termination Date**" has the respective meanings given to it in Clause 8 (*Change in Circumstances*) and Clause 19 (*Remedies*);

"**Total Loss**" with respect to the Airframe or any Engine means any of the following events with respect to such property:

- (a) the actual, constructive, compromised, agreed or arranged total loss of the Aircraft, the Airframe or any Engine (including any damage which results in an insurance settlement on the basis of a total loss);
- (b) the Aircraft, the Airframe or any Engine being destroyed, damaged beyond reasonable economic repair or permanently rendered unfit for normal commercial use for any reason whatsoever;
- (c) the Compulsory Acquisition of the Aircraft, the Airframe or any Engine (other than in the case of a requisition for hire or use for a temporary period not exceeding sixty (60) consecutive days by or under the order of any Government Entity of the State of Registration (whether civil, military or de facto) or by any person acting by or purporting to act by the authority of the same);
- (d) the theft or disappearance of the Aircraft, the Airframe or any Engine which shall have resulted in the loss of possession of such property by the Lessee or any Permitted Sublessee thereof for more than sixty (60) consecutive days; or
- (e) the condemnation, hijacking, theft, confiscation, capture, detention or seizure of or the requisition for use or hire of the Aircraft, the Airframe or any Engine (other than where the same amounts to Compulsory Acquisition of the Aircraft, the Airframe or such Engine) which deprives the Lessee or any Permitted Sublessee of the possession and/or use of the Aircraft or the Airframe (or in the case of an Engine, the Engine or the aircraft on which such Engine is installed) for more than sixty (60) consecutive days,

and a Total Loss with respect to the Aircraft shall be deemed to have occurred if a Total Loss has occurred with respect to the Airframe, **provided that** in the case of (c), (d) and/or (e) above if the Airframe or the Aircraft shall be returned to the Lessee in such condition that the Airframe or the Aircraft (as the case may be) qualifies for a certificate of airworthiness from the Aviation Authority prior to the earlier of (i) the Expiry Date and (ii) the Total Loss Payment Date, then such event shall, at the option of the Lessor, not constitute a Total Loss of the Airframe or the Aircraft (as the case may be);

"**Total Loss Payment Date**" has the meaning given to it in Clause 17.1(a);

"**Total Loss Proceeds**" means the proceeds of any insurance, or any compensation (including, for the avoidance of doubt and, without limitation, Requisition Compensation) or similar payment, arising in respect of a Total Loss;

"**Transacting User Entity**" has the meaning given to it in the Cape Town Convention;

"**Transfer Certificate**" means a certificate substantially in the form set out in schedule 4 (*Form of Transfer Certificate*) to the Loan Agreement or any other form agreed between the Facility Agent and the Lessor;

"**Transition Date**" has the meaning given to it in Clause 5.1 (*Fixed Rental Periods*);

"**TUE**" means a Transacting User Entity;

"**Utilisation Request**" means a notice substantially in the form set out in schedule 3 (*Form of Utilisation Request*) to the Loan Agreement;

"**Warranties**" means, together, the Airframe Warranties and the Engine Warranties; and

"**Yamasa**" means Yamasa Co., Ltd., whose registered office is at 362-1 Takao, Niimi City, Okayama, Japan.

1.2 Interpretation

1.2.1 Unless the context otherwise requires, references to:

- (a) this Agreement include the Schedules hereto and references to Clauses or Schedules are, unless otherwise specified, references to Clauses of, and Schedules to, this Agreement and, in the case of a Schedule, to such Schedule as incorporated in this Agreement as substituted from time to time;
- (b) any statutory or other legislative provision shall be construed as including any statutory or legislative modification or re-enactment thereof, or any substitution therefor;
- (c) the term "**Aircraft**" includes any part of the Aircraft, and, where the context so admits, any of the Technical Records and any Engine or Part not then installed or attached, and references to any part of the Aircraft include any Engine and any Part of any Engine;
- (d) the "Lessor", the "Managing Partner", "Yamasa", any "Kumiai-in", the "Parent", any "Relevant Person", any "Lessee Party", the "Lessee", the "Guarantor", the "Security Agent", the "Facility Agent", any "Lender", any "Financing Party", the "Manufacturer", the "Engine Manufacturer" or any other person include any of their respective successors and (subject to the provisions of Clause 24 (*Benefit of Agreement*) and the provisions of the other Operative Documents) permitted assigns and permitted transferees;

- (e) references herein to the rights and/or interests of the "**Lessor as owner**" of the Aircraft or any analogous expression includes a reference to the rights and/or interests of each of the Kumiai-in as owners of the Aircraft, each in accordance with their respective rights and obligations under the Nin-i Kumiai Agreement;
- (f) any agreement, instrument or document include such agreement, instrument or document as the same may from time to time be amended, modified, supplemented, novated or substituted;
- (g) an "**agreement**" also includes a concession, contract, deed, instrument, franchise, license, treaty or undertaking;
- (h) the "**assets**" of any person shall be construed as a reference to the whole or any part of its business, undertaking, claims, property, assets, income and revenues (including any right to receive income or revenues) in each case whether real or personal, movable or immovable, tangible or intangible;
- (i) "**control**", in relation to a body corporate, means the power of a person to secure by means of the holding of shares or the possession of voting power directly or indirectly in or in relation to that or any other body corporate, or by virtue of any powers conferred by the articles of incorporation or association or other document directly or indirectly regulating that or any other body corporate, or otherwise that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person and cognate expressions shall be construed accordingly;
- (j) the "**equivalent**" in one currency (the "**first currency**") as at any date of an amount in another currency (the "**second currency**") shall be construed as a reference to the amount of the first currency which could be purchased with such amount of the second currency at the spot rate of exchange quoted by such bank as the Lessor may reasonably select at or about 11:00 a.m. (Tokyo time) two (2) Tokyo banking days (being a day other than a Saturday or Sunday and which is not a public holiday on which banks and foreign exchange markets are generally open for business in Tokyo) prior to such date for the purchase of the first currency with the second currency for delivery and value on such date;
- (k) "**hereof**", "**herein**" and "**hereunder**" and other words of similar import mean this Agreement as a whole (including the Schedules) and not any particular part hereof;
- (l) "**law**" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, rule, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, request or requirement, or official or judicial interpretation of any of the foregoing, in each case having the force of law and, if not having the force of law, in respect of which compliance is generally customary;

- (m) the word "**person**" or "**persons**" or to words importing persons include, without limitation, any state, divisions of a state, government, individuals, partnerships, corporations, ventures, government agencies, committees, departments, authorities and other bodies, corporate or unincorporated, whether having distinct legal personality or not;
- (n) the "**winding-up**", "**dissolution**", "**administration**", "**liquidation**", "**insolvency**", "**reorganisation**", "**amalgamation**", "**suspension of payments**", "**moratorium**", "**examinership**" or "**bankruptcy**" (and their derivatives and cognate expressions) of any person shall each be construed so as to include the others and any equivalent or analogous proceedings or event under the law of any jurisdiction in which such person is incorporated or any jurisdiction in which such person carries on business; and
- (o) words importing the singular include the plural and vice versa.

1.2.2 Clause headings are for ease of reference only.

1.2.3 Any reference in this Agreement to a time of day shall, unless a contrary indication appears, be a reference to Tokyo time.

1.3 **Cape Town Convention**

1.3.1 Except to the extent expressly otherwise provided herein or therein, any terms of an Operative Document which expressly incorporate any provisions of the Cape Town Convention shall prevail in the case of any conflict with any other provision contained herein or therein.

1.3.2 Unless a contrary indication appears any reference to:

- (a) a provision of the Cape Town Convention is to the English language version of the Consolidated Text which is derived from the Convention and the Protocol being read and interpreted together as a single instrument as required by article 6(1) of the Convention and any reference to the Consolidated Text shall include a reference to the provision of the Convention and/or the Protocol from which such provision is derived; and
- (b) to any person's right or interest to the Aircraft or any agreement relating to the Aircraft includes its Associated Rights in relation to the Aircraft or agreement.

1.3.3 Any provision relating to the Convention, the Cape Town Convention and/or the Protocol shall be read and interpreted, subject to any declarations and limitations of any applicable Contracting State.

1.3.4 Subject to Clause 1.3.3, any reference to any provision of the Cape Town Convention in this Agreement or any other Operative Document which is stated to be governed by English law shall, as applicable, include reference to such provision as incorporated into English law by the Cape Town UK Regulations.

2. REPRESENTATIONS AND WARRANTIES

2.1 Lessee Representations

The Lessee hereby represents and warrants to the Lessor that (subject always to the relevant qualifications as to law contained in the legal opinions to be delivered pursuant to Clauses 3.1 (*Lessor Conditions Precedent*) and 3.2 (*Lessee Conditions Precedent*)) as of the date hereof:

- (a) **Status:** it is a corporation (*sociedad anónima de capital variable*) duly incorporated and validly existing and registered under the laws of its State of Incorporation and has the corporate power under the laws of its State of Incorporation to own its assets, lease or hold assets under lease and carry on its business as it is being conducted;
- (b) **Power and authority:** it has the corporate power under the laws of its State of Incorporation to enter into and perform its obligations under, and has taken all necessary corporate action under the laws of its State of Incorporation to authorise the entry into, performance and delivery of, the Operative Documents to which it is or will be a party and to consummate the transactions contemplated by the Operative Documents to which it is or will be a party and such power and authority has not been revoked or limited in any way;
- (c) **Legal validity:** each Operative Document to which it is or will be a party has been duly authorised, executed and delivered by it and constitutes its legal, valid and binding obligations, enforceable against it in accordance with their respective terms, except insofar as enforceability may be limited by applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and general principles of equity;
- (d) **Governing law and judgments:** in any proceedings taken in its State of Incorporation in relation to the Operative Documents to which it is a party, the choice of English law, the laws of the State of Washington, United States of America and the laws of the State of New York, United States of America (as applicable) to govern the Operative Documents to which it is or will be a party is a valid choice of law and the submission by it to the exclusive or non-exclusive (as applicable) jurisdiction of the courts of England, the State of Washington, United States of America and the State of New York, United States of America (as applicable) will be legal, valid and binding, provided that certain conflict of laws requirements are met;
- (e) **Non-conflict:** the execution and delivery, entry into and performance by it of, and the transactions contemplated by, the Operative Documents to which it is a party do not and will not: (i) conflict with any laws binding on it which would, in the case of any non-Mexican laws only, have a material adverse effect on its ability to perform its obligations under the Operative Documents to which it is a party; or (ii) conflict with its constitutional documents; or (iii) result in default under any document which is binding upon it or any of its assets nor result in the creation of any Security Interest over any of its assets (except for the Security Interests constituted by the Security Documents);

- (f) **Authorisations:** except for (a) the permanent registration of the Aircraft by the AFAC (directly or through the RAM) and the registrations and filings in Mexico described in paragraph (h) below; and (b) the issuance of authorising entry point codes ("**AEP Codes**") by the RAM and the filings with the International Registry referred to in Clause 15.5 (*Cape Town Convention Registrations*), all Authorisations and notifications required by each Lessee Party in connection with the entry into, execution, delivery, performance, legality, validity and enforceability of, the Operative Documents to which it is or will be a party and the transactions contemplated by the Operative Documents to which it is or will be a party, have been (or will on, before or, within the time periods prescribed by the laws of its State of Incorporation, after, the Delivery Date have been) obtained or effected by such Lessee Party (as appropriate) and are (or will on their being obtained or effected be) in full force and effect;
- (g) **No immunity:** each Lessee Party is subject to civil commercial law with respect to its obligations under this Agreement and neither it nor any of its assets is entitled to any right of immunity, and the entry into and performance of the Operative Documents to which it is a party will constitute private and commercial acts;
- (h) **Registrations:** except for (a) any filings as may be noted in the legal opinion to be provided pursuant to Clause 3.1(a)(xi)(3) (*Lessor Conditions Precedent*), (b) the recordation of the Seller Filing Bill of Sale, this Agreement, the Mexican Law Pledge, the Security Assignment and the insurance policies approved by the AFAC covering the Aircraft, each with the RAM and, in the case of the Mexican Law Pledge, with the Sole Registry of Movable Assets (*Registro Único de Garantías Mobiliarias*), (c) the filings with the International Registry referred to in Clause 15.5 (*Cape Town Convention Registrations*); and (d) the delivery of the notice of assignment of insurances to the insurer or the insurance broker under the Assignment of Insurances, in each case, together with the endorsement or annotations of the relevant insurance or reinsurance policies, (i) it is not necessary or prudent under the laws of its State of Incorporation, the State of Registration, the Habitual Base or under the Cape Town Convention in order to ensure the validity, effectiveness, enforceability and admissibility in evidence of the Operative Documents or the performance by the Lessee of any of the obligations or transactions contemplated hereby or thereby or to establish, perfect or protect the rights and interests of the Lessor and the Financing Parties in and to the Aircraft or any Engine or Part that any Operative Document to which it is a party or any instrument relating thereto be filed, registered or recorded or that any other action be taken; and (ii) the rights and interests of the Lessee, the Lessor and the Security Agent in and to the Aircraft have been fully established, perfected and protected under the laws of its State of Incorporation, the State of Registration, the Habitual Base and under the Cape Town Convention;
- (i) **Pari Passu:** under the laws of its State of Incorporation, the obligations of each Lessee Party under the Operative Documents to which it is a party rank at least pari passu with all other present and future unsecured and unsubordinated obligations (including contingent obligations) of such

Lessee Party, with the exception of such obligations as are mandatorily preferred by law and not by virtue of any contract;

- (j) **Taxes:** each Lessee Party has, in accordance with applicable laws, delivered all necessary returns and payments due to the tax authorities in the State of Incorporation, the State of Registration and the Habitual Base, and all other jurisdictions (in respect of which failure to deliver such returns or payment would have a Material Adverse Effect) in which it is required to pay Taxes and/or file tax returns or reports;
- (k) **Accounts:** the Original Financial Statements of the Guarantor have been prepared in accordance with generally accepted accounting principles in the State of Incorporation and fairly represent the financial condition of such Lessee Party as at the date to which they were drawn up;
- (l) **Material Adverse Change:** except for the Bankruptcy Cases, no change has occurred since the date of the Original Financial Statements in the financial condition of any Lessee Party which would have a Material Adverse Effect;
- (m) **No Litigation:** except for the Bankruptcy Cases, no litigation, arbitration or administrative proceedings are pending or, so far as it is aware (after making due and proper enquiry), threatened against any Lessee Party which if adversely determined would have a Material Adverse Effect;
- (n) **No Potential Event:** other than Potential Events arising (i) prior to the commencement of the Bankruptcy Cases or (ii) as a result of the commencement or continuation of the Bankruptcy Cases, no Potential Event has occurred and is continuing or might result from the entry into or performance by any Lessee Party of the Operative Documents to which it is or will be a party;
- (o) **Full Disclosure:** each of the Operative Documents to which any Lessee Party is a party and any other document, certificate or statement furnished to Yamasa, the Lessor or any Financing Party by or on behalf of any Lessee Party in connection with the transactions contemplated hereby or thereby (including, without limitation, financial information) does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein and therein not misleading; all forecasts and opinions contained therein were honestly made on reasonable grounds after due and careful inquiry by such Lessee Party; and there is no fact or circumstance which has not been disclosed by it to Yamasa, the Lessor or the Facility Agent in writing on or before the date of this Agreement and which would have a Material Adverse Effect;
- (p) **Export:** the Deregistration Power of Attorney shall be *prima facie* sufficient authority for the Lessor or the Security Agent to de-register the Aircraft from Mexico and to export the Aircraft out of Mexico, and other than the approval of the AFAC for the deregistration of the Aircraft (including the removal of the Aircraft from the Lessee's air transportation license (*título de concesión de transporte aéreo regular de pasajeros*) and air operator certificate), an export permit from the Ministry of Finance and

Public Credit (*Secretaría de Hacienda y Crédito Público*), a ferry flight permit granted by the AFAC and an export certificate of airworthiness from the AFAC, no Authorisations are necessary to enable the Lessor or the Security Agent, as the case may be, to export the Aircraft from its Habitual Base and to deregister the Aircraft from Mexico having taken possession of the Aircraft in circumstances where an Event of Default shall have occurred and be continuing or any of the Mexican Law Pledge or the New York Law Mortgage shall have become enforceable;

- (q) ***Change of Control***: no Change of Control Event has occurred;
- (r) ***No Depreciation***: the Lessee has not entered into any arrangement with any person other than the Lessor which would allow or purport to allow such person to claim any rights to depreciation in respect of the Aircraft;
- (s) ***No Agreement to Transfer Title***: the Lessee is not a party to any agreement (other than the Purchase Agreement and the Aircraft Purchase Agreement) whereby it agrees to sell or otherwise transfer legal title to the Aircraft and does not hold itself out as having power to sell or otherwise transfer the Aircraft;
- (t) ***Cape Town Convention***: the Lessee is registered as a TUE with the International Registry;
- (u) ***Deregistration Power of Attorney***: the Lessee has not issued a deregistration power of attorney or similar instrument with respect to the Aircraft or either Engine to any person other than the Deregistration Power of Attorney;
- (v) ***IDERA***: the Lessee has not issued an IDERA or similar instrument with respect to the Aircraft or either Engine to any person other than any IDERA required to be issued pursuant to Clause 15.5(a);
- (w) ***No Taxes to Lessor***: the execution, delivery and performance of the Operative Documents will not of themselves result in the Lessor, the Managing Partner or any Kumiai-in or any Financing Party having any liability for Taxes in the State of Incorporation, the State of Registration or the Habitual Base; and
- (x) ***Other Representations***: all other representations and warranties given by any Lessee Party under any Operative Document are true and correct.

2.2 Additional Representations of the Lessee

The Lessee hereby represents and warrants to the Lessor that as of the date hereof neither it nor any of its Affiliates (including any Lessee Party) nor any Permitted Sublessee has provided, or has agreed to provide, any funding directly or indirectly (or any collateral capable of being transformed into funds) to any person for the purposes of:

- (a) any person assuming or guaranteeing all or any part of the Lessee's payment obligations under this Agreement; or
- (b) on-lending such funds to the Lessor.

2.3 Lessor Representations

The Lessor hereby represents and warrants to the Lessee that (subject always to the relevant qualifications as to law contained in the legal opinions to be delivered pursuant to Clauses 3.1 (*Lessor Conditions Precedent*) and 3.2 (*Lessee Conditions Precedent*)) as of the date hereof:

- (a) **Status:** the Lessor is a nin-i kumiai (partnership) validly formed by the Nin-i Kumiai Agreement and existing under the Civil Code of Japan; each of the Kumiai-in is a company duly organized and existing under the laws of Japan and has taken all necessary corporate and legal action to authorize the person who executed and delivered the Nin-i Kumiai Agreement on its behalf and thereby bind such Kumiai-in to all the terms and conditions of the Nin-i Kumiai Agreement;
- (b) **Power and authority and legal validity:** the Managing Partner, acting for and on behalf of the Lessor, is duly qualified and has full power, authority and legal right to execute, deliver and perform this Agreement and the other Operative Documents to which the Lessor is or will be a party and all action necessary to authorize the execution, delivery and performance by the Lessor of this Agreement and the other Operative Documents to which the Lessor is or will be a party has been duly taken and each of this Agreement and the other Operative Documents executed or to be executed by the Lessor constitutes, or when so executed and delivered will constitute, its legal, valid and binding obligation;
- (c) **Non-conflict:** neither the execution and delivery by it of this Agreement or the other Operative Documents executed or to be executed by it, nor the consummation by it of any of the transactions contemplated thereby, nor compliance by it with any of the terms and provisions thereof, (i) requires or will require any approval or consent of any holders of any indebtedness or obligations of it, or (ii) violates or will violate any term or provision of the Nin-i Kumiai Agreement, or contravenes or will contravene any agreement to which it is a party or by which it or its property is bound;
- (d) **Authorisation:** under the laws of Japan, except for the official establishment of dates (*kakutei hizuke*) with respect to the Account Pledge Agreement and routine ex post-facto reporting to be made under the Foreign Exchange and Foreign Trade Law of Japan (Law No. 228 of 1949, as amended) (which the Lessor agrees to do in a timely manner) and as long as the last party to execute and deliver each of the Operative Documents has executed and delivered that document outside of Japan, neither the execution and delivery nor the performance by the Lessor of the obligations contemplated by the Operative Documents to which it is or will be a party requires any consent, approval, order or authorization of, giving of notice to, filing or registration with, payment of any stamp, registration or similar tax to, or taking of any other action in respect of any governmental authority or agency in Japan;
- (e) **Filing:** it is not necessary under the laws of Japan in order to ensure the validity, effectiveness, enforceability and admissibility in evidence of the Operative Documents that any Operative Document or any instrument relating thereto be filed, registered or recorded before or with any court or public office in Japan;

- (f) ***Sovereign Immunity***: in any proceedings taken in Japan in relation to the Operative Documents, the Lessor is not entitled to claim in relation to itself or its assets immunity from suit, attachment, execution or other legal process;
- (g) ***Representations and Warranties***: the representations and warranties made by the Lessor in the Operative Documents to which it is a party are true and accurate;
- (h) ***Place of Business***: the Lessor has not taken any action to establish a place of business in any other jurisdiction other than Japan (other than insofar as the same is deemed to be established by an applicable law as a consequence of the entry into and performance of the Operative Documents, the Nin-i Kumiai Agreement or the transactions contemplated thereby);
- (i) ***Disposals***: other than the Security Interests under the Operative Documents and other than as contemplated or permitted by any of the Operative Documents (including, without limitation, Permitted Liens) it has not disposed of any interest in the Aircraft to any person and it is not a party to any agreement whereby it agrees to sell or otherwise transfer legal title to the Aircraft (other than the Operative Documents);
- (j) ***No Litigation***: there are no pending or, so far as it is aware (after making due and proper enquiry), threatened actions or proceedings before any court or administrative agency or arbitrator which would materially adversely affect the financial condition of the Lessor, the Parent, the Managing Partner or any Kumiai-in or the ability of the Lessor, the Parent, the Managing Partner or any Kumiai-in to perform their respective material obligations under the Operative Documents;
- (k) ***Other Business***: neither of the Relevant Kumiai-in is a party to any business transactions other than as contemplated by the Nin-i Kumiai Agreement, the Operative Documents, and the transactions contemplated by the Operative Documents and arrangements entered into as a result thereof;
- (l) ***No winding-up***: so far as it is aware (after making due and proper enquiry), no person has taken any corporate action for the winding-up, dissolution or re-organisation of, or for the appointment of a receiver or administrative receiver or an administrator, trustee or similar officer with respect to, the Parent, the Managing Partner or any Kumiai-in;
- (m) ***Governing law and jurisdiction***: in any proceedings taken in Japan in relation to the Operative Documents to which it is a party the choice of the laws of England, Japan, Mexico, the State of Washington, United States of America and the State of New York, United States of America (as applicable) to govern the contractual obligations under the Operative Documents to which it is or will be a party is a valid choice of law and the submission by it to the exclusive or non-exclusive (as applicable) jurisdiction of the courts of England, Japan, Mexico, the State of Washington, United States of America and the State of New York, United States of America (as applicable) will be recognised and enforced; and

(n) **No Lessor Event:** no Lessor Event has occurred and is continuing.

2.4 Survival

The representations and warranties contained in Clause 2.1 (*Lessee Representations*), Clause 2.2 (*Additional Representations of Lessee*) and Clause 2.3 (*Lessor Representations*) shall be deemed to be repeated by the Lessee or, as the case may be, the Lessor on and as of the Delivery Date as if made with reference to the facts and circumstances existing on such date, and the rights of the Lessor or, as the case may be, the Lessee in respect thereof shall survive Delivery. The representations and warranties contained in Clause 2.1 (*Lessee Representations*) (other than Clauses 2.1(c), (d), (e), (f), (h), (k), (l), (m), (n), (p), (q), (r), (w) and (x)) and Clause 2.2 (*Additional Representations of Lessee*) shall be deemed to be repeated by the Lessee on and as of each Rental Payment Date as if made with reference to the facts and circumstances existing on such date, and the rights of the Lessor in respect thereof shall survive each Rental Payment Date.

2.5 No Prejudice

The rights of the Lessor or, as the case may be, the Lessee in relation to any misrepresentation or breach of warranty by the Lessee or, as the case may be, the Lessor shall not be prejudiced by any investigation by or on behalf of the Lessor or, as the case may be, the Lessee into the affairs of the Lessee or, as the case may be, the Lessor by the performance of this Agreement and the other Operative Documents or by any other act or thing done or omitted by the Lessor or, as the case may be, the Lessee which would, but for this Clause 2.5 (*No Prejudice*), prejudice such rights.

3. CONDITIONS PRECEDENT

3.1 Lessor Conditions Precedent

The obligations of the Lessor to purchase the Aircraft under the Aircraft Purchase Agreement and to lease the Aircraft to the Lessee under this Agreement shall be subject to the fulfilment (to the satisfaction of the Lessor, acting reasonably) on or prior to the Delivery Date (save as otherwise specified in Clauses 3.1(a)(v) and (x) below) of each of the following conditions (save to the extent that any of the same are waived or deferred by the Lessor in its absolute discretion) (**provided that**, as between the Lessor and the Lessee, however, that satisfaction of any condition precedent that is entirely within the power of the Lessor, the Managing Partner or any Kumiai-in or which relates solely to any of them shall not be a condition precedent to the Lessor's obligations hereunder):

- (a) the Lessor shall have received each of the following documents, each in form and substance acceptable to the Lessor and each in full force and effect:
 - (i) copies of each of the Operative Documents (and all notices, consents and acknowledgements contemplated thereby) to be entered into on or prior to the Delivery Date duly executed by each of the parties thereto, with originals of such documents to be received by the Lessor, each in form and substance acceptable to

the Lessor, as soon as reasonably practicable after the Delivery Date;

- (ii) in respect of each of the Lessee Parties, copies of (a) its respective constitutional documents, (b) an extract minute of the meeting of its directors or other written evidence of appropriate corporate action approving the transaction and corresponding documentation contemplated hereunder, and (c) the power of attorney (if applicable) authorising the execution by the attorneys named therein of the Operative Documents to which it is or will be a party and any notices or other documents to be given pursuant thereto;
- (iii) a certificate of each of the Lessee Parties (signed by an authorised officer) certifying that each copy document relating to it specified in this Clause 3.1 (*Lessor Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement;
- (iv) except for those Authorisations referred to in Clause 3.1(a)(xviii) to (xix) and in Clause 3.4, which shall be completed within the timeframes prescribed thereunder, in respect of each of the Lessee Parties, copies of all Authorisations of any governmental agency or authority and of any of its trustee or holder of any indebtedness or obligations which are required in connection with the execution, delivery and performance of this Agreement and the other Operative Documents to which it is or will be a party ("**Lessee Entities Authorisations**") or confirmation in the legal opinion provided or to be provided, as the context may require, referred to in Clause 3.1(a)(xi)(3) confirming that any necessary Lessee Entities Authorisations have been obtained by the Lessee Parties and have been reviewed by the relevant legal counsel;
- (v) an irrevocable and unconditional notice from the Lessee to the Lessor (copied to the Facility Agent) of the projected delivery date hereunder and the Delivery Date (as defined in the Aircraft Purchase Agreement), the Delayed Delivery Letter Agreement and the Funding Indemnity Letter not later than 11:00 a.m. (Tokyo time) three (3) Business Days (or such shorter period as the Lessor may agree) prior to the date specified in such notice as the Delivery Date;
- (vi) if insurance/reinsurance is to be effected through an insurance/reinsurance broker, an insurance/reinsurance broker's undertaking in such form as may be reasonably acceptable to the Lessor and the Security Agent;
- (vii) copies of certificates of insurance and certificates of reinsurance evidencing that the Aircraft will be insured/reinsured with immediate effect from Delivery in accordance with the provisions of Clause 16 (*Insurance*);
- (viii) at Delivery, a duly executed original of each of the Manufacturer Bill of Sale and the BFE Bill of Sale (if any), each dated the date

of the transfer of title in respect of the Aircraft by the Manufacturer to the Lessee;

- (ix) at Delivery, a duly executed original of each of the Seller Bill of Sale and the Seller Filing Bill of Sale, each dated the Delivery Date;
- (x) [Reserved];
- (xi) [Reserved];
- (xii) an opinion of each of:
 - (1) Clifford Chance, as to English law;
 - (2) Clifford Chance Law Office, as to Japanese law;
 - (3) Nader, Hayaux & Goebel, as to matters of Mexican law (including, without limitation, as to the due capacity and authority of each of the Lessee and the Guarantor to enter into, and the due execution by each of the Lessee and the Guarantor of, the Operative Documents to which each is a party and the transactions contemplated thereby and the registration requirements in respect of the Aircraft and the Operative Documents with the RAM and the Cape Town Convention);
 - (4) internal legal counsel of the Manufacturer;
 - (5) internal legal counsel of the Engine Manufacturer;
 - (6) the Lessor's independent tax adviser in Japan; and
 - (7) counsel acceptable to the Lessor (acting reasonably), if required by the Lessor, as to the validity of the transfer of title to the Aircraft pursuant to the Aircraft Purchase Agreement and the Seller Bill of Sale and the absence of Taxes thereon;
- (xiii) evidence reasonably satisfactory to the Lessor of the acceptance of the appointment of the persons appointed by the Lessee and the Guarantor as its agent for service of process pursuant to the Operative Documents executed or to be executed by the Lessee and the Guarantor and the granting of an irrevocable power of attorney granted in accordance with Mexican law to such agent for service of process for the purposes set forth in Clause 26.2(d);
- (xiv) a copy of the Original Financial Statements, unless such Original Financial Statements are published on the website of the Guarantor;
- (xv) a copy of the Lessee's air operator's certificate (*Certificado de Explotador de Servicios Aéreos*) issued by the Aviation Authority with respect to aircraft of the same type as the Aircraft;

- (xvi) a copy of the Lessee's air carrier's license (*Título de Concesión de Transporte Aéreo Regular de Pasajeros*), as amended from time to time, issued by the Aviation Authority;
- (xvii) a copy of the provisional certificate of registration (*oficio de asignación de matrícula provisional*) issued by the AFAC with respect to the Aircraft;
- (xviii) evidence that the Aircraft has been validly and provisionally registered under the laws of the State of Registration and that all filings, registrations, recordings and other actions have been or will be taken within the timeframes as set out in the Operative Documents which are necessary or advisable to ensure the validity, effectiveness and enforceability of the Operative Documents and to protect the rights and interests of the Lessor as owner and the Security Agent as pledgee (save that it is acknowledged that it shall not be possible for the Mexican Law Pledge, this Agreement, the Seller Filing Bill of Sale, the Security Assignment and the ownership rights of the Lessor and the pledgee rights of the Security Agent to be registered with the Aviation Authority on the Delivery Date and that it shall be sufficient for the parties to position all documents necessary to effect such registration with the RAM such that the registration and/or filing of such documents may be obtained within the timeframes prescribed under this Agreement;
- (xix) evidence of the filing of the Manufacturer Filing Bill of Sale with the RAM;
- (xx) (A) evidence reasonably satisfactory to the Lessor that the Lessee is duly registered as a TUE with the International Registry and has consented to each relevant professional user or professional user entity appointed by the Lessor or the Security Agent for dealings with the International Registry in order to complete the filings with the International Registry referred to in this Agreement; and (B) a copy of the priority search certificates of the International Registry evidencing that there is no International Interest registered in respect of the Airframe or the Engines and that there are no pending applications for the registration of any International Interest in respect of the Airframe or the Engines (other than those specified in Clause 15.5 (*Cape Town Convention Registrations*) of this Agreement);
- (xxi) copies of the Warranties;
- (xxii) a Deregistration Power of Attorney substantially in the form of Schedule 8 (*Form of Deregistration Power of Attorney*), executed before a Mexican notary public by the Lessee in favour of the Lessor and the Security Agent;
- (xxiii) an electronic or digital copy of the Approved Maintenance Programme;

- (xxiv) confirmation from the Lessee that no Change of Control Event shall have occurred;
 - (xxv) no later than five (5) Business Days prior to the Delivery Date, a copy of the Spanish translation of this Agreement, the Seller Filing Bill of Sale and the Security Assignment certified by a court-approved translator acceptable to the Lessor and the Security Agent, for review and approval of the Lessor and the Security Agent; and
 - (xxvi) such other documents as the Lessor and/or the Facility Agent may reasonably request as may be necessary or prudent in respect of the transactions contemplated by this Agreement and the other Operative Documents or to consummate such transactions;
- (b) in addition to the documents referred to above:
- (i) no Excepted Reason shall have occurred and continue to exist on the Delivery Date;
 - (ii) each of the representations and warranties of each of the Lessee Parties in the Operative Documents to which any of such entities is a party shall be true and accurate on the Delivery Date by reference to the facts and circumstances then existing and all information supplied to Yamasa and/or any Kumiai-in and/or the Lessor by any of such entities in compliance or in connection with this Agreement and the transactions contemplated thereby shall be accurate and complete;
 - (iii) the Lessor shall be satisfied that, on the Delivery Date, title to and ownership of each part of the Aircraft shall have been conveyed to the Lessor and the Lessor shall have received good title to and ownership of each part of the Aircraft, free and clear of Security Interests (other than any Security Interests created by or permitted under the Operative Documents);
 - (iv) all of the conditions precedent under the Loan Agreement to the Lenders' obligation to make the Loan available to the Lessor shall have been satisfied or waived;
 - (v) no Total Loss with respect to the Aircraft or any Engine has occurred and no damage with respect to the Aircraft or any Engine has occurred, which, has a material impact on the marketability, utility or value of the Aircraft;
 - (vi) the Lessor shall have received such final debt funding commitments in respect of the transactions contemplated by this Agreement and the other Operative Documents provided in amounts and on terms reasonably acceptable to the Lessor;
 - (vii) there shall have occurred no changes, amendments, enactments or proposals (in any case whether yet in effect or not) after the date of this Agreement in Japanese tax laws or regulations, or in the interpretation or application thereof, which would have a material

adverse effect on Lessor's or Kumiai-in's tax position in the transactions contemplated by this Agreement and by the other Operative Documents in relation to the depreciation of the Aircraft;

- (viii) there has been no Change in Law or other change in the legal, tax, regulatory or economic environment of any applicable jurisdiction after the date hereof which would, in the reasonable opinion of the Lessor, have a material adverse effect on the ability of, or otherwise make it illegal, impossible or impracticable for, any of the Lessor, the Managing Partner or any Kumiai-in, any Lessee Party or the Financing Parties to perform its obligations under any Operative Document or to complete the transactions contemplated therein or have a material adverse effect on the lease economics underlying the transactions contemplated therein;
- (ix) there has been no material adverse change in the jurisdiction or in the financial markets in the jurisdiction in which any of the Relevant Persons, the Lessee Parties or the Financing Parties is incorporated or has its principal place of business;
- (x) there has been no material adverse change, in the reasonable opinion of the Lessor and the Financing Parties, in the business or financial condition of any of the Lessee Parties which would affect its ability to perform its obligations under the Operative Documents to which it is, or will be, a party since the date of its most recent audited annual accounts provided to the Lessor;
- (xi) the Aircraft is in a fully operational condition and capable of normal commercial operations and has no material deficiencies identified during manufacture or pre-Delivery testing which might adversely affect its future operational capability or maintenance;
- (xii) no force majeure event having occurred, such as the outbreak of war, or the occurrence of any event having an unanticipated change in any relevant law or regulation which renders the proposed transaction either illegal, impossible or impracticable to complete for any of the Lessor, the Managing Partner or any Kumiai-in, any Lessee Party or any other party to the Operative Documents;
- (xiii) [Reserved];
- (xiv) all conditions precedent to the Aircraft Purchase Agreement for the benefit of the Lessor (as purchaser) shall have been satisfied or waived by the Lessor in accordance with the terms thereof;
- (xv) any other conditions precedent in any other Operative Document expressed to be for the benefit of the Lessor have been satisfied.

3.2 Lessee Conditions Precedent

The obligations of the Lessee to lease the Aircraft shall be subject to the fulfilment to the reasonable satisfaction of the Lessee, on or prior to the Delivery Date, of the following conditions precedent save to the extent that the same are waived or

deferred by the Lessee in its absolute discretion, (**provided that**, as between the Lessor and the Lessee, however, that satisfaction of any condition precedent that is entirely within the power of any Lessee Party or which relates solely to any of them shall not be a condition precedent to the Lessee's obligations hereunder):

- (a) the Lessee shall have received, all in form and substance acceptable to the Lessee (in the case of the legal opinions referred to in Clause 3.2(a)(iv), in its reasonable opinion):
 - (i) copies of each of the Operative Documents to be entered into by the Lessee, together with the Lessor Undertaking Letter (Lessee) and the Lessor Support Letter (Lessee), on or prior to the Delivery Date duly executed by each of the parties thereto, with originals of such documents to be received by the Lessee, each in form and substance acceptable to the Lessee, as soon as reasonably practicable after the Delivery Date, together with originals of this Agreement, the Mexican Law Pledge, the Security Assignment and the Seller Filing Bill of Sale, each notarised before a Mexican notary public and/or notarised and apostilled;
 - (ii) a certificate of an authorized representative of each of the Managing Partner, the Parent and each Kumiai-in, dated the Delivery Date evidencing the due incorporation of each of the Managing Partner, the Parent and each Kumiai-in, as the case may be, of the Operative Documents to which it is party and attaching a certified true and up-to-date copy of the constitutionally documents (including, without limitation, articles of incorporation (*teikan*) and a certificate of commercial registration (*genzai jikou zenbu shomeisho* or *rireki jikou zenbu shomeisho*)) and a certificate of the seal impression of the registered seal (*inkan shomeisho*) of, and any power of attorney in respect of the Operative Documents issued by, each of the Managing Partner, the Parent and/or each Kumiai-in, as the case may be and, in the case where a person or persons execute this Agreement and the other Operative Documents to which the Managing Partner, the Parent and/or each Kumiai-in are respectively party by hand-written signature on behalf of each of the Managing Partner, the Parent and/or each Kumiai-in, as the case may be, specimen signature of such person or persons;
 - (iii) a copy of the duly executed Nin-i Kumiai Agreement; and
 - (iv) an opinion of each of:
 - (1) Clifford Chance Law Office, as to Japanese law;
 - (2) internal legal counsel of the Manufacturer; and
 - (3) internal legal counsel of the Engine Manufacturer.
- (b) in addition to the documents referred to above:
 - (i) no breach by the Lessor, the Parent, Yamasa, the Managing Partner or any Kumiai-in of any of their respective agreements,

undertakings and covenants hereunder shall have occurred and continue to exist on the Delivery Date;

- (ii) there has been no Change in Law or other change in the legal, tax, regulatory or economic environment of any applicable jurisdiction after the date hereof which would have a material adverse effect on the ability of, or otherwise make it illegal, impossible or impracticable for, any of the Relevant Persons, the Lessee Parties or the Financing Parties to perform its obligations under any Operative Document or to complete the transactions contemplated therein or have a material adverse effect on the lease economics underlying the transactions contemplated therein;
- (iii) each of the representations and warranties of the Lessor, the Parent, the Managing Partner, Yamasa and each Kumiai-in in the Operative Documents to which the Lessor, the Parent, the Managing Partner or such Kumiai-in is a party, as the case may be, shall be true and accurate on the Delivery Date by reference to the facts and circumstances then existing;
- (iv) the Lessee shall have received evidence reasonably satisfactory to the Lessee of the acceptance of the appointment of the person appointed by the Lessor as its agent for service of process pursuant to the Operative Documents executed or to be executed by the Lessor and to which the Lessee is a party;
- (v) [Reserved];
- (vi) no force majeure event having occurred, such as the outbreak of war, or the occurrence of any event having an unanticipated change in any relevant law or regulation which renders the proposed transaction either illegal, impossible or impracticable to complete for any Relevant Person, any Lessee Party or any other party to the Operative Documents;
- (vii) no Lessor Event that is not attributable to any Excepted Reason or any Financing Party Excepted Reason shall have occurred and continue to exist on the Delivery Date;
- (viii) no Total Loss with respect to the Aircraft or any Engine has occurred and no damage with respect to the Aircraft or any Engine has occurred which, has a material impact on the marketability, utility or value of the Aircraft; and
- (ix) any other conditions precedent in any other Operative Document expressed to be for the benefit of the Lessee have been satisfied.

3.3 Conditional Waiver of Conditions Precedent

Each of the Lessor and the Lessee may waive any of such conditions precedent as contemplated in Clause 3.1 (*Lessor Conditions Precedent*) or Clause 3.2 (*Lessee Conditions Precedent*) upon such further terms and subject to such further conditions as the Lessor or the Lessee, as the case may be, may think fit and, if the Lessor or the Lessee, as the case may be, does so, the Lessee or the Lessor, as

the case may be, shall procure that any condition precedent so waived is satisfied in accordance with such further terms and conditions.

3.4 **Conditions Subsequent**

The Lessee shall (at its own expense):

- (a) within five (5) Business Days of the Delivery Date, provide to the Lessor and the Security Agent in a form acceptable to them (each acting reasonably) evidence of the filing of the following Operative Documents with the AFAC:
 - (i) this Agreement;
 - (ii) the Seller Filing Bill of Sale;
 - (iii) the Mexican Law Pledge; and
 - (iv) the Security Assignment;
- (b) within ten (10) Business Days of the Delivery Date, a copy of the official letter(s) granting definitive registration (*Oficio de Asignación de Matrícula Definitiva*) issued by the AFAC with respect of the Aircraft and approving the recordation of the Manufacturer Filing Bill of Sale, the Seller Filing Bill of Sale, this Agreement, the Mexican Law Pledge and the Security Assignment each with the RAM;
- (c) within fifteen (15) Business Days of the Delivery Date, a copy of the definitive certificate of airworthiness (*certificado de aeronavegabilidad estándar*) issued by the AFAC in respect of the Aircraft;
- (d) deliver to the Lessor and the Security Agent (i) not later than ninety (90) days after the Delivery Date, a copy of the permanent certificate of registration (*Certificado de Matrícula Definitivo*) in the name of the Lessee as lessee and also noting the interests of the Lessor as owner and pledgor and the Security Agent as pledgee, and (ii) within ninety (90) Business Days following completion of the filings of each of the Operative Documents referred to in Clause 3.4(a), provide to the Lessor and the Security Agent in a form acceptable to them (each acting reasonably) evidence of registration of each such Operative Documents with the AFAC;
- (e) not later than thirty (30) days after the Delivery Date, deliver to the Lessor and the Security Agent photographic evidence that fireproof plates described in Clause 15.2(g) have been affixed to the Airframe and each of the Engines;
- (f) not later than ninety (90) days after the Delivery Date, deliver or procure the delivery to the Lessor and the Security Agent, a supplemental legal opinion of Nader, Hayaux & Goebel as to the due permanent recordation as required under paragraphs (a), (b) and (c) above; and
- (g) as soon as reasonably practicable and in any event not later than five (5) Business Days after the Delivery Date effect the registrations relating to

the Aircraft with the International Registry in accordance with Clause 15.5(b) (Cape Town Convention Registrations) and provide to the Lessor and the Security Agent copies of the AEP Codes issued by the RAM in respect of each International Interest to be registered with the International Registry pursuant to this Agreement and a copy of the priority search certificates of the International Registry in respect of the Airframe and each Engine evidencing such registrations.

3.5 Undertakings for Conditions Precedent and Conditions Subsequent

Each of the Lessor and the Lessee undertakes that it will take all reasonable steps to ensure that each document to be provided or action to be taken by it which constitutes a condition precedent or a condition subsequent to the obligations of the Lessor or, as the case may be, the Lessee will be provided or taken at the time required.

3.6 Delivery Cut-Off Date

If for any reason Delivery shall not have occurred at or before 11:59 p.m. (Tokyo time) on 28 February 2017 or such later date as the Lessor, the Security Agent and the Lessee may agree, the obligations of the Lessor to purchase the Aircraft under the Aircraft Purchase Agreement and to lease the Aircraft under this Agreement shall (unless otherwise agreed by the Lessor and the Lessee) automatically terminate and the Lessee shall be released from its obligation to lease the Aircraft hereunder, but without prejudice to any other accrued liabilities or obligations of the Lessee.

4. DELIVERY, ACCEPTANCE AND LEASING OF AIRCRAFT

Delivery

- (a) On the Delivery Date the Lessee shall accept the Aircraft from the Lessor in an "as-is, where-is" condition, when and where the Aircraft is delivered to the Lessor at the Delivery Location under the Aircraft Purchase Agreement.
- (b) Upon taking delivery of the Aircraft the Lessee shall deliver a duly executed Lease Acceptance Certificate to the Lessor, which shall be conclusive proof that the Lessee has unconditionally accepted the Aircraft for lease under this Agreement without any reservations whatsoever.
- (c) The Lessor shall not be responsible for any failure to deliver, any delay in or change in the place of delivery of the Aircraft hereunder. Subject to Clause 3 (*Conditions Precedent*), the Lessee shall not be entitled for any reason whatsoever to refuse to accept delivery of the Aircraft under this Agreement, once the Lessor has accepted delivery of the Aircraft under the Aircraft Purchase Agreement.
- (d) The Lessee acknowledges that the Lessor's ability to purchase the Aircraft under the Aircraft Purchase Agreement and to deliver the Aircraft to the Lessee hereunder will be dependent, *inter alia*, on the due and punctual performance by the Manufacturer of its obligations under the Purchase Agreement. If the Manufacturer delays in the delivery of, or fails to deliver, the Aircraft pursuant to the Purchase Agreement for any reason,

whether or not in circumstances entitling the Manufacturer to terminate the Purchase Agreement, the Lessor shall not thereby incur any liability whatsoever to the Lessee under the Aircraft Purchase Agreement or this Agreement and nor shall the Lessee be entitled to terminate this Agreement or the Aircraft Purchase Agreement on the grounds of any such delay. If the Manufacturer terminates or repudiates the Purchase Agreement and/or the Purchase Agreement at any time ceases to be operative, the Lessor shall be entitled at any time after such termination or ceasing to be operative to terminate its obligation to purchase the Aircraft under the Aircraft Purchase Agreement and to lease the Aircraft to the Lessee hereunder.

- (e) The Lessee shall procure that the Aircraft is at the Delivery Location when the Delivery occurs.

5. PAYMENT PROVISIONS

5.1 Fixed Rental Periods

- (a) The Lease Period shall be divided into (i) an initial PBH Period in respect of which PBH Rental shall accrue and be payable, and (ii) after the PBH Period, successive periods (each a "**Fixed Rental Period**") in respect of which Fixed Rental shall accrue and be payable.
- (b) The first Fixed Rental Period shall commence on the date immediately following the last day of the PBH Period (the "**Transition Date**") and each subsequent Fixed Rental Period shall commence on the date immediately following the last day of the previous Fixed Rental Period.
- (c) Each Fixed Rental Period shall be of one month's duration except that (i) if the Transition Date does not occur on the twentieth day of a calendar month, then the first Fixed Rental Period shall be from the date of the Transition Date until the twentieth day of the first calendar month that occurs after the Transition Date and (ii) with respect to the final Fixed Rental Period, if it would not otherwise end on the Expiry Date, it shall end on the Expiry Date.

5.2 PBH Period

- (a) PBH Rental shall be paid from the Amendment Effective Date until the earlier of (i) [REDACTED] and (ii) [REDACTED], as set forth in Exhibit 1 to Schedule 3 (*Rental and Other Amounts*) (the "**PBH Period**").
- (b) For each calendar month (or part thereof) during the PBH Period, the Lessee will provide a utilization report to the Lessor by the [REDACTED] day of the immediately succeeding [REDACTED] day of such calendar month and (ii) [REDACTED] Business Days after [REDACTED] (the "**PBH Rental Date**").

5.3 Rent Date

- (a) During the PBH Period, the Lessee shall pay the PBH Rental to the Lessor in [REDACTED] on each PBH Rental Date.

- (b) During each Fixed Rental Period, the Lessee shall pay Fixed Rental to the Lessor in advance on each Fixed Rental Date **provided, however** that the Fixed Rental for the first Fixed Rental Period shall be payable by the Lessee in arrears (for the avoidance of doubt, on the last day of the first Fixed Rental Period, the Lessee shall pay to the Lessor (i) the last PBH Rental (if such amount is still due and owing on such date), (ii) the Fixed Rental for the first Fixed Rental Period in arrears and (ii) the Fixed Rental for the immediately succeeding Fixed Rental Period in advance).

5.4 **Rental Payments**

- (a) Fixed Rental payable in respect of each Fixed Rental Period shall be the amount set forth in Exhibit 1 to Schedule 3 (*Rental and Other Amounts*).
- (b) PBH Rental payable in respect of the PBH Period shall be calculated as set forth in Exhibit 1 to Schedule 3 (*Rental and Other Amounts*).
- (c) If any Fixed Rental Period has a duration of less than a month, the Fixed Rental payable for that Fixed Rental Period shall be prorated by multiplying the amount of the Fixed Rental for that Fixed Rental Period by a fraction the numerator of which is the number of days in that Fixed Rental Period and the denominator of which is thirty (30).

5.5 **Currency of Payments**

All payments hereunder:

- (a) of amounts of Rental, Stipulated Loss Value and Purchase Option Price shall be made in Dollars; and
- (b) of other amounts to be paid by the Lessee shall be made in the currency in which the same are denominated or, in the case of any Taxes or Losses, in the currency in which the same are suffered or imposed.

5.6 **No Deductions or Withholdings**

All amounts payable by the Lessee under this Agreement shall be paid in full without any set off, counterclaim or any deduction or withholding.

The Lessee's obligations to pay any and all amounts expressed to be payable under this Agreement are absolute and unconditional and shall not be affected by, and no amount expressed to be payable under this Agreement by the Lessee shall cease to be payable or be suspended or the amount thereof be reduced by reason of, any circumstance whatsoever, including without limitation:

- (a) the fact that any Relevant Person or any Financing Party has exercised any of its rights, powers or remedies hereunder or under any other Operative Document;
- (b) subject to Clause 17.1(b), the occurrence of any Total Loss or any event which may (but has not yet) become Total Loss;
- (c) any requisitioning for title, hire or use of the Aircraft, the Airframe, any Engine or any Part;

- (d) the fact that the Aircraft, the Airframe, any Engine or Part has been lost, destroyed or damaged;
- (e) the fact that the Aircraft, the Airframe, any Engine or Part is under inspection by the Lessor or the Security Agent or the Facility Agent or their respective representatives in accordance with this Agreement or is in course of survey, repair, overhaul, maintenance or modification;
- (f) any insolvency, bankruptcy, liquidation, administration, winding-up, examinership, suspension of payments, re-organisation, reconstruction, arrangement, readjustment or rescheduling of debt, dissolution or similar matter affecting the Lessee, the Lessor or any other person;
- (g) any invalidity or unenforceability of any Operative Document or any provision thereof or any Change in Law;
- (h) any breach by any party to any Operative Document of its terms;
- (i) any Lessor Event or Recourse Event;
- (j) any right of set-off, counterclaim, recoupment, defence or other right which either party hereto may have against the other or against any other person or which any other person may have against either party hereto;
- (k) any failure or delay on the part of any party hereto, whether with or without fault on its part, in performing or complying with any of the terms of, or obligations under, this Agreement or any other Operative Document; or
- (l) any other event or circumstance affecting the use, employment or operation of the Aircraft, the Airframe, any Engine or any Part,

provided that nothing in this Clause 5.6 (*No Deductions or Withholdings*) will be construed to limit the Lessee's right to seek damages against the Lessor in the event of the Lessor's breach of this Agreement or to limit the Lessee's rights and remedies against any other person.

5.7 Authorisations for Payments

The Lessee shall obtain or procure that there are obtained all Authorisations which are from time to time required for the making of the payments by the Lessee required by this Agreement and the other Operative Documents to which it is or will be a party on the dates and in the amounts and currency which are stipulated herein and therein, and shall maintain the same or procure that the same are maintained in full force and effect during the Lease Period.

5.8 Default Interest

Without prejudice to the other rights and remedies of the Lessor hereunder, if any amount due and payable by the Lessee hereunder is not received by the Lessor on the due date for payment thereof in the manner herein stipulated, the Lessee shall pay interest on the same for the period starting on (and including) the due date for payment thereof and ending on (but excluding) the date on which the same is received or recovered by the Lessor in full (after as well as before judgment) at the rate(s) from time to time determined under this Clause 5.8 (*Default Interest*). The period between the due date for payment of any sum due and payable

hereunder or thereunder and the date upon which the obligation to pay such sum is discharged shall be divided into successive periods, the duration of which shall be selected by the Lessor (acting reasonably). During each such period (after as well as before judgment) the outstanding balance of the unpaid sum shall bear interest which shall accrue from day to day and on the basis of actual days elapsed and shall be calculated at a rate per annum which is equal to the Default Rate. Any such interest shall be due and payable when the relevant unpaid sum is paid or, if earlier, at the end of each period by reference to which it is calculated.

5.9 **Interest**

Except as otherwise expressly provided in Clause 5.8 (*Default Interest*), all amounts of interest payable under Clause 5.8 (*Default Interest*) shall be calculated on the basis of a year of, where the interest relates to an unpaid amount payable in Dollars, 360 days or, where the amount is payable in another currency, such period as is customary for such currency, and the actual number of days elapsed.

5.10 **Payments on Business Days**

If any payment would otherwise be due on a day which is not a Business Day, it shall be due on the immediately preceding Business Day (without in any case any adjustment of the amount payable unless otherwise provided in this Agreement), **provided that** a payment which only becomes due on demand shall, if otherwise due on a day which is not a Business Day, be due on the immediately succeeding Business Day (and if such payment includes any payment of interest then the amount of interest payable shall be adjusted accordingly).

5.11 **Place of Payment**

All amounts to be paid to the Lessor by the Lessee hereunder or under any other Operative Documents shall be paid (unless specifically otherwise provided in this Agreement or such other Operative Documents) (i) if the relevant amount is payable in Dollars, to the Account or such other account as the Lessor may from time to time designate (with the prior written consent of the Security Agent) to the Lessee in advance in writing, and (ii) if the relevant amount is payable in a currency other than Dollars, to such account as the Lessor may from time to time designate (with the prior written consent of the Security Agent) to the Lessee in advance in writing or, in the case of any such amount which becomes due on demand, to such account designated by the Lessor (with the prior written consent of the Security Agent) in the relevant demand to receive such payment from time to time.

Any amount payable by the Lessee under this Agreement shall be paid by the Lessee in immediately available funds so that it is received for value not later than 11.00 a.m. (Tokyo time) on the due date for payment; provided that PBH Rental may be paid by the Lessee in immediately available funds so that it is received for value not later than 10.00 a.m. (Mexico time) on the due date for payment.

Payments by the Lessee to or for the account of the Lessor or any other person under the indemnities (and any provisions relating to reimbursement and compensation) contained in this Agreement shall be due promptly upon, but in any event not later than, five (5) Business Days after written demand by the Lessor.

5.12 Certificates of Amounts Due

Where a sum in respect of Tax, Losses, liabilities, indemnity claims or similar is to be paid by the Lessee under this Agreement or any other Operative Document or a calculation as to interest due and payable on such sums is necessary, the Lessee is entitled to receive and each party requesting payment by virtue of the terms of this Agreement or any other any Operative Document shall provide to the Lessee a certificate certifying the amount requested (and, as the case may be, calculation of interest) and providing reasonable details of the calculation of the amount payable by the Lessee. Such certificate shall, in the absence of manifest error, be *prima facie* evidence of the amount claimed thereof for the purposes of this Agreement or any other Operative Document.

6. DISCLAIMERS

6.1 "As Is, Where Is"

- (a) NEITHER THE LESSOR, THE MANAGING PARTNER, THE PARENT OR ANY KUMIAI-IN NOR ANY OF THE FINANCING PARTIES MAKES OR GIVES, NOR SHALL THE LESSOR, THE MANAGING PARTNER, THE PARENT OR ANY KUMIAI-IN OR ANY OF THE FINANCING PARTIES BE DEEMED TO HAVE MADE OR GIVEN, AND THE LESSOR (ON BEHALF OF ITSELF AND EACH KUMIAI-IN) HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE (WITHOUT PREJUDICE TO LESSOR'S TITLE WARRANTY UNDER CLAUSE 22.1(C)), AIRWORTHINESS, VALUE, CONDITION, MERCHANTABILITY, DESIGN, OPERATION OR FITNESS FOR USE FOR ANY PURPOSE OF, OR OF ANY INTEREST IN OR TO, THE AIRCRAFT, ANY ENGINE OR ANY PART THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE AIRCRAFT, ANY ENGINE OR ANY PART THEREOF, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK, OR COPYRIGHT, AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE AIRCRAFT, ANY ENGINE OR ANY PART THEREOF.
- (b) THE LESSEE ACKNOWLEDGES AND AGREES THAT: (I) IT ALONE HAS SELECTED THE AIRCRAFT, AND (II) THE WARRANTIES AND GUARANTEES PROVIDED UNDER THE PURCHASE AGREEMENT, THE AIRFRAME WARRANTIES ASSIGNMENT AND THE ENGINE WARRANTIES AGREEMENT ARE IN ALL RESPECTS SATISFACTORY TO THE LESSEE.
- (c) THE LESSEE UNCONDITIONALLY AGREES THAT AS BETWEEN THE LESSOR, THE MANAGING PARTNER, THE PARENT, EACH KUMIAI-IN AND THE FINANCING PARTIES (ON THE ONE HAND) AND THE LESSEE (ON THE OTHER) THE AIRCRAFT, EACH

ENGINE AND EACH PART THEREOF IS TO BE LEASED IN AN "AS IS, WHERE IS" CONDITION AS AT THE DELIVERY DATE AND THROUGHOUT THE LEASE PERIOD AND, EXCEPT AS MAY BE EXPRESSLY STATED IN THIS AGREEMENT OR ANY OPERATIVE DOCUMENT TO WHICH THE LESSOR, THE FINANCING PARTIES AND THE LESSEE ARE ALL PARTY, NO EXPRESS OR IMPLIED CONDITION, UNDERTAKING, WARRANTY OR REPRESENTATION OF ANY KIND HAS BEEN MADE OR IS GIVEN OR SHALL BE DEEMED TO HAVE BEEN MADE OR GIVEN BY THE LESSOR, THE MANAGING PARTNER, THE PARENT, ANY KUMIAI-IN OR ANY FINANCING PARTY OR ANY SERVANT OR AGENT OF ANY OF THEM IN RESPECT OF THE AIRWORTHINESS, VALUE, CONDITION, SAFETY, DESIGN, QUALITY, OPERATION, DESCRIPTION, MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR USE, OPERATION OR ANY PURPOSE OR SUITABILITY OF THE AIRCRAFT, ANY ENGINE OR ANY PART THEREOF OR AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENTS OF ANY PATENT, TRADEMARK, COPYRIGHT OR OTHER PROPRIETARY INTEREST OR AS TO TITLE TO THE AIRCRAFT (WITHOUT PREJUDICE TO LESSOR'S TITLE WARRANTY UNDER CLAUSE 22.1(C)) OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE AIRCRAFT, ANY ENGINE OR ANY PART AND ALL EXPRESS AND IMPLIED CONDITIONS, UNDERTAKINGS, WARRANTIES AND REPRESENTATIONS (OR OBLIGATIONS OR LIABILITY, IN CONTRACT OR IN TORT OR STRICT LIABILITY) IN RELATION TO ANY OF THOSE MATTERS, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, ARE EXPRESSLY EXCLUDED AND THE BENEFIT THEREOF WAIVED BY THE LESSEE.

- (d) DELIVERY BY THE LESSEE TO THE LESSOR OF A LEASE ACCEPTANCE CERTIFICATE SHALL BE CONCLUSIVE PROOF AS BETWEEN THE LESSOR, THE FINANCING PARTIES AND THE LESSEE THAT THE LESSEE'S TECHNICAL EXPERTS HAVE PARTICIPATED IN THE SUPERVISION OF THE MANUFACTURE OF THE AIRCRAFT, HAVE EXAMINED AND INVESTIGATED THE AIRCRAFT, EACH ENGINE AND EACH PART THEREOF AND THAT THE AIRCRAFT, EACH ENGINE AND EACH PART THEREOF IS AIRWORTHY, COMPLETE AND IN GOOD WORKING ORDER, CONDITION AND REPAIR, WITHOUT DEFECT (WHETHER OR NOT DISCOVERABLE), AND OF SATISFACTORY QUALITY, FIT FOR ANY PURPOSE FOR WHICH IT MAY BE INTENDED AND IN EVERY WAY SATISFACTORY TO THE LESSEE.

THE LESSEE SPECIFICALLY ACKNOWLEDGES THAT THE AIRCRAFT IS BEING SOLD BY THE LESSEE TO THE LESSOR UNDER THE AIRCRAFT PURCHASE AGREEMENT AND THAT ON DELIVERY, THE LESSEE WILL BE FULLY AWARE OF THE

STATUS OF THE AIRCRAFT AND ITS CONDITION AND THE
AIRCRAFT WILL THEN BE OPERATED BY THE LESSEE.

The terms of this Clause 6.1 ("*As Is, Where Is*") are without prejudice to any rights the Lessee may have against the Manufacturer or the Engine Manufacturer.

6.2 Deficiencies and Defects

Without prejudice to the obligations of each of the Lessor, the Managing Partner, the Parent and each Kumiai-in and any Financing Party under the Operative Documents, the Lessee agrees that no Relevant Person nor any Financing Party shall be liable for any Loss of any kind or nature caused directly or indirectly by the Aircraft, any Engine or any Part, by any inadequacy of the Aircraft, any Engine or any Part for any purpose or any deficiency or defect therein, by the use, operation or performance of the Aircraft, any Engine or any Part, by any maintenance or repairs to the Aircraft, any Engine or any Part, by any interruption or loss of service or use of the Aircraft, any Engine or any Part or by any loss of business or other consequential damage or any damage whatsoever, howsoever caused.

The Lessee agrees that, in case of deficiencies or defects, it will only bring action against the Manufacturer and the Engine Manufacturer (and not against any Relevant Person or any Financing Party).

6.3 No Liability to Repair

If the Aircraft, any Engine or any Part is lost, confiscated, damaged, destroyed or is otherwise rendered unfit for use or is unavailable for use for any reason whatsoever, no Relevant Person nor any Financing Party shall be liable to repair the same or to supply any parts or equipment in substitution or replacement therefor.

6.4 Quiet Enjoyment

The Lessor covenants that, during the Lease Period, as long as no Event of Default has occurred and is continuing the quiet use, possession and enjoyment of the Aircraft by the Lessee or any Permitted Sublessee shall not be interrupted by any Relevant Person or any person (other than any Financing Party) lawfully acting on behalf of or on the instructions of the Lessor, the Parent, the Managing Partner, Yamasa or any Kumiai-in. The Lessee agrees that the Lessor shall have no liability to the Lessee (whether under this Clause 6.4 (*Quiet Enjoyment*) or otherwise) for or arising out of any interruption or interference by any Financing Party (or any person claiming by, through or under any of them (other than the Lessor)) with the quiet use, possession and enjoyment of the Aircraft by the Lessee or any Permitted Sublessee.

7. LEASE PERIOD

7.1 Lease Period

The Lessor shall lease the Aircraft to the Lessee and the Lessee shall take the Aircraft on lease pursuant to, and on the terms and subject to the conditions of, this Agreement. The leasing of the Aircraft under this Agreement shall commence

on the Delivery Date, and shall terminate on the Expiry Date or any date of earlier termination pursuant to the provisions of this Agreement.

The Lessee hereby irrevocably and unconditionally waives any and all rights which it may now have or which may at any time hereafter be conferred upon it, by applicable law or otherwise, to terminate, cancel, quit or surrender this Agreement, except in accordance with the express terms hereof or as otherwise agreed in writing by the Lessor and the Security Agent.

7.2 Risk

Throughout the Lease Period, the Lessee shall bear all risks of loss, theft, hijacking, condemnation, confiscation, seizure, requisition, damage and destruction of or to the Aircraft, each Engine and every Part thereof, and no such loss, theft, hijacking, condemnation, confiscation, seizure, requisition, damage and destruction nor any Change in Law or other event or circumstance shall impair or frustrate any obligation of the Lessee under this Agreement or any other Operative Document (including, without limitation, as to Rental or other payments), so that all such obligations shall continue in full force and effect **provided that** following a Total Loss of the Aircraft or the Airframe, the Lessee's obligation to pay Rental shall cease as from the Total Loss Payment Date in accordance with and subject to receipt of the Total Loss Proceeds under Clause 17.1(b).

8. CHANGE IN CIRCUMSTANCES

8.1 Illegality, Acceleration of Loan

If, at any time:

- 8.1.1 as a result of any Change in Law, it is or will become unlawful, illegal, prohibited or impossible under the laws of any applicable jurisdiction for a party to this Agreement or any other Operative Document to participate, or continue to participate, in the transactions contemplated by this Agreement or any other Operative Document or to perform any of its material obligations hereunder or thereunder;
- 8.1.2 as a result of any Change in Law, all or any of the material obligations under this Agreement or any other Operative Document, is or are or will become wholly or partly void, illegal, invalid or unenforceable under the laws of any applicable jurisdiction; or
- 8.1.3 the repayment of the Loan shall have been accelerated pursuant to clauses 7 (*Prepayment and Cancellation*) or 16 (*Events of Default*) of the Loan Agreement,

then, if applicable, without prejudice and subject to the provisions of Clause 8.3 (*Mitigation*), the leasing of the Aircraft hereunder:

- (x) may be terminated by either the Lessee or the Lessor (in the case of Clauses 8.1.1 and 8.1.2 above) by at least ten (10) Business Days' (or within such shorter period as is necessary to avoid such circumstance or in the case of

any illegality) notice after the mitigation period referred to in Clause 8.3 (*Mitigation*), or

- (y) shall terminate on the date on which the Loan becomes due and payable (in the case of Clause 8.1.3 above),

and the Lessee shall pay to the Lessor on such date (the "**Termination Date**") on which the leasing of the Aircraft hereunder is terminated under any of the provisions of this Clause 8 (*Change in Circumstances*) an amount equal to the aggregate of:

- (A) the Stipulated Loss Value as at such Termination Date;
- (B) if the Termination Date is also a Rental Payment Date, the Rental payable on such Termination Date;
- (C) all unpaid Rental due and outstanding as at such Termination Date; and
- (D) all other amounts (if any) (to the extent that such amounts are not covered by, nor constitute any part of the sums referred to in sub-paragraphs (A), (B) or (C) above) in the relevant currencies due and owing by the Lessee hereunder or under any other Operative Document to which it is a party on such Termination Date.

Upon a termination of the leasing of the Aircraft under this Agreement pursuant to this Clause 8.1, the Lessor, provided that the Lessor has received all the amounts specified in Clause 8.1 (as applicable), shall transfer title to the Aircraft to the Lessee subject to and in accordance with Clause 22.1 (*Transfer*).

8.2 Increased Costs and Taxes

Lessee shall be entitled to terminate the leasing of the Aircraft (in whole but not in part) by giving not less than twenty (20) Business Days' notice specifying a Termination Date and providing, if requested by the Lessor or the Security Agent, a legal opinion from counsel reasonably acceptable to the Lessor and the Security Agent confirming the details thereof and at the Lessee's cost:

- (a) if, as a result of any Change in Law, Taxes which are not assessable at the date hereof are or, on the making of the next payment, would be required to be deducted or withheld from any amount payable by the Lessee under any Operative Document and the Lessee is or would be obliged to make any increased or additional payment as a result of such deduction or withholding;
- (b) if, as a result of any Change in Law, any Tax becomes or would become payable by the Lessee to the Lessor or any other Tax Indemnitee pursuant to Clause 9 (*Taxes*); or
- (c) if, as a result of any Change in Law, any Tax or increased payment becomes or would become payable by the Lessee to the Lessor pursuant to Clause 23.9 (*Other Payments*);

in which case the Lessee shall in accordance with Clauses 9 (*Taxes*) and 23 (*Indemnities*), as the case may be, pay such Tax and/or make the increased payment already imposed or incurred and shall pay to the Lessor on such Termination Date an amount equal to the aggregate of:

- (A) the Stipulated Loss Value as at such Termination Date;
- (B) if the Termination Date is also a Rental Payment Date, the Rental payable on such Termination Date;
- (C) all unpaid Rental due and outstanding as at such Termination Date; and
- (D) all other amounts (if any) (to the extent that such amounts are not covered by, nor constitute any part of the sums referred to in sub-paragraphs (A), (B) or (C) above) in the relevant currencies due and owing by the Lessee hereunder or under any other Operative Document to which it is a party on such Termination Date.

Upon a termination of the leasing of the Aircraft under this Agreement pursuant to this Clause 8.2, the Lessor, provided that the Lessor has received all the amounts specified in Clause 8.2 (as applicable), shall transfer title to the Aircraft to the Lessee subject to and in accordance with Clause 22.1 (*Transfer*).

8.3 Mitigation

Without in any way limiting, reducing or otherwise qualifying the rights or the obligations of the parties hereto under any provision of this Agreement each party will, upon becoming aware of any event which would entitle such party to terminate the leasing of the Aircraft pursuant to Clauses 8.1.1, 8.1.2 or 8.2 (*Increased Costs and Taxes*) or any event which would result in the acceleration of the Loan pursuant to clause 7.2 (*Illegality*), or paragraphs (c), (d) or (e) of clause 7.3 (*Mandatory Prepayment*) of the Loan Agreement, notify the other party of such event and, at the cost and expense of the Lessee, consult and negotiate in good faith with each other and the Facility Agent (whose costs and expenses shall be for the Lessee's account in all circumstances) for a period not exceeding thirty (30) days (or such shorter period as would terminate two (2) Business Days prior to the date on which any illegality event occurs) with a view to agreeing arrangements which would avoid, minimise or mitigate the effect of such event (including, at the Lessee's cost and expense, the restructuring of the transactions hereby contemplated in a manner which will avoid the effects of such event in question and on terms which the Facility Agent, the Security Agent, the other Financing Parties, the Lessor and the Lessee consider reasonable); **provided that** no such party shall be under any obligation to take any action if, in its reasonable opinion, to do so would, or would be likely, (a) to have an adverse effect upon its tax position, business, operation or financial condition or the financial basis under which, *inter alia*, this Agreement and the other Operative Documents have been entered into (unless, in the case of any adverse effect on such financial basis, or cost or expense, the Lessor and each Financing Party shall have been indemnified or otherwise secured to its satisfaction), or (b) to result in its rights, interests or position under or in relation to the Operative Documents being materially less favourable to it than would otherwise have been the case, or (c) to involve it in any unlawful activity or any activity that is contrary to any official directive,

concession, guideline, request or requirement of any competent authority or contrary to its respective institutional policies or (d) to result in a breach of any of its representations, warranties, covenants or other undertakings under the Operative Documents or any other agreement to which it is, at the time, a party thereto or (e) to have an adverse effect on the registration of the Aircraft, on the Lessor's or any Financing Party's interest in the Aircraft or in this Agreement or (f) to involve any material expense, loss or liability (including advisory transaction expenses) or material tax disadvantage (unless indemnified and/or secured to such party's satisfaction).

8.4 Survival of Obligations

Notwithstanding any other provision hereof, Lessee's and Lessor's obligations under Clauses 5 (*Payment Provisions*), 10 (*Fees and Expenses*), 16.8 (*Continuing Insurance for Indemnity*) and 23 (*Indemnities*) shall survive after the termination of the leasing of the Aircraft hereunder.

8.5 Without Prejudice

The giving of any notice by the Lessee or the Lessor pursuant to Clauses 8.1 (*Illegality, Acceleration of Loan*), 8.2 (*Increased Costs and Taxes*), 21.1 (*Election*) or 23.9 (*Other Payments*) shall be without prejudice to the other rights of Lessor hereunder (including, without limitation, under Clause 19 (*Remedies*)) and the Lessee shall remain obliged to pay and perform all obligations required by this Agreement and the other Operative Documents (including, without limitation, the obligations of the Lessee to pay Rental) and the Lessee shall not be relieved or discharged from any such obligation and such obligation shall not be reduced, limited, prejudiced or qualified by reason of any event or circumstance whatsoever unless and until such obligations have been paid and performed in full by the Lessee and, without prejudice to the generality of the foregoing, any redelivery, return, retaking of possession or sale of the Aircraft contemplated by the provisions of this Agreement or any other action in connection with the Aircraft shall not in any way relieve or discharge the Lessee from, or in any way reduce, limit, prejudice or qualify, the Lessee's obligation to pay all amounts required by this Clause 8 (*Change in Circumstances*) or any other provision of any Operative Document.

9. TAXES

9.1 Withholding Taxes

9.1.1 If the Lessee is required to make any deduction or withholding for or on account of tax from any payment due under this Agreement or any other Operative Document to which the Lessee is a party, the amount of the payment due from the Lessee shall be increased to the extent necessary to ensure that (after the making of any such deduction or withholding and any deduction or withholding required to be made as a consequence of the increase of the amount of such payment) the Lessor (or any other person entitled to receive such payment) receives and retains (free from any liability in respect of any such deduction or withholding) on the due date of such payment a net sum (after taking into account all deductions and withholdings) equal to the sum which it would have received and so

retained had no such deduction or withholding been made or required to be made.

- 9.1.2 If, at any time, the Lessee is required to make any deduction or withholding from any sum payable by it hereunder or under any other Operative Document (or if thereafter there is any change in the rates at which such deductions or withholdings are calculated), the Lessee shall promptly notify the Lessor and the Facility Agent and provide to the Lessor and the Facility Agent reasonable details thereof.
- 9.1.3 If the Lessee makes any payment hereunder or under any other Operative Document in respect of which it is required to make any deduction or withholding, it shall pay the full amount required to be deducted or withheld to the relevant taxation or other authority within the time allowed for such payment under applicable law and upon request by the Lessor or the Facility Agent, shall deliver to such party, as soon as reasonably practicable after it has made such payment to the applicable authority, a copy of any receipt issued by such authority (or other evidence satisfactory to the Lessor or the Facility Agent (as the case may be), each acting reasonably) evidencing the payment to such authority of all amounts so required to be deducted or withheld in respect of such payment.
- 9.1.4 If a relevant Tax Indemnitee determines, in its sole opinion, that it has obtained a credit against, or obtained relief from, or received or obtained any other tax benefit in respect of, any taxes payable by the relevant Tax Indemnitee as a result of any deduction or withholding for or on account of taxes or increased payment made by the Lessee as contemplated by this Clause 9.1 (*Withholding Taxes*), the relevant Tax Indemnitee shall, as soon as reasonably practicable after realising the benefit of any such credit or relief or tax benefit, pay to the Lessee an amount which, after taking account of any further tax liability and tax savings or benefit the relevant Tax Indemnitee realises as a result of the payment thereof, the relevant Tax Indemnitee determines in its sole opinion is equal to the amount of such credit, relief or tax benefit **provided that** any such payment shall leave the relevant Tax Indemnitee in no more and no less favourable a position than it would have been in if the relevant deduction or withholding had not been required to be made and further **provided that** the relevant Tax Indemnitee shall not be obliged under this Clause 9.1.4 to arrange its tax or other affairs in any particular way or to claim or to allocate any credit, relief or benefit received by it to a deduction, withholding or increased payment referred to above in priority to any other matter which may entitle it to any credit, relief or benefit, or to disclose any records or affairs of the relevant Tax Indemnitee to the Lessee, save and insofar as the same are in the public domain.
- 9.1.5 In circumstances where the Lessor suffers any tax in respect of any payment made or to be made by the Lessee under Clause 23.9 (*Other Payments*), the Lessee shall on written demand of the Lessor pay to the Lessor such additional amounts as shall indemnify the Lessor against any liability to such tax or any liability to tax in respect of such additional amount. Without prejudice to the foregoing, if the Lessee is required to make any payment pursuant to this Clause 9.1.5 the Lessor shall take such

action as shall be reasonably appropriate in the circumstances with a view to resisting or mitigating the relevant liability to tax in respect of the relevant payment by the Lessee under Clause 23.9 (*Other Payments*) and shall file such returns and other documentation as may be reasonably required to give effect to the foregoing.

9.2 Tax Indemnity

9.2.1 Subject to Clause 9.2.2, the Lessee hereby agrees to pay and to assume liability for, indemnify and hold harmless each of the Lessor and each other Relevant Person and each Financing Party and their respective and any subsequent respective successors, affiliates, permitted transferees and assigns, officers, directors, servants, agents, employees, attorneys and managers (collectively "**Tax Indemnitees**" and each a "**Tax Indemnitee**") from and against, all and any Taxes which may be imposed or assessed or levied or asserted upon, with respect to or in connection with, or directly or indirectly arising in any manner from:

- (a) the Aircraft, the Airframe, any Engine or any Part or any interest therein; or
- (b) any of the Operative Documents or the transactions contemplated thereby, or other documents related thereto and/or contemplated thereunder (other than the Nin-i Kumiai Agreement), any interest therein or the execution, delivery, performance or enforcement thereof; or
- (c) any breach by any Lessee Party of any of its obligations under this Agreement or under any other Operative Document (including, without limitation, any exercise by the Lessor of any of its rights hereunder or thereunder in relation thereto), any Potential Event or any Event of Default; or
- (d) the purchase, ownership, title, registration, delivery, non-delivery, redelivery, performance, acceptance, non-acceptance, rejection, import, export, re-registration, de-registration, financing, certification, insurance, mortgaging, hypothecating, supply, lease, hire, charter, sub-lease, "wet lease", possession, presence, location, stationing, use, operation, accident, damage, loss, transportation, management, assignment, control, manufacture, design, condition, maintenance, alteration, modification, improvement, refurbishment, repair, service, overhaul, testing, removal, replacement, repossession, foreclosure, substitution, pooling, interchange, storage, sale, remarketing, return, redelivery, transfer, exchange or disposition of the Aircraft, the Airframe, any Engine or any Part or any interest therein or any title thereto or the Technical Records.

9.2.2 Except to the extent that any of the following exclusions (a) to (j) below from the Lessee's liability (or any of the Excluded Taxes therein referred to) arises or is imposed or assessed or levied or asserted solely as a result of an Excepted Reason, the provisions of Clause 9.2.1 shall not apply to,

and the Lessee shall have no liability to any particular Tax Indemnitee under Clause 9.2.1 with respect to:

- (a) taxes imposed upon such Tax Indemnitee in respect of the overall net income, overall capital, net worth, gross income or gross receipts or profit of such Tax Indemnitee, or any Taxes in lieu of the foregoing (it being understood that this clause is without prejudice to the obligations of the Lessee under Clause 9.1) other than any taxes imposed or which would have been imposed by reason of a connection between the relevant Tax Indemnitee and that jurisdiction to the extent arising solely by reason of (i) the operation, use, presence, registration, leasing, stationing or location of, or any modification, alteration, improvement or addition made in, to, upon or in respect of, the Aircraft, the Airframe, and Engine or any Part, (ii) any Event of Default, or (iii) any fraud, gross negligence or willful misconduct of any Lessee Party;
- (b) taxes imposed by a jurisdiction other than the jurisdiction of incorporation of that Tax Indemnitee by reason of such Tax Indemnitee carrying on business in or being treated as carrying on business in, having a branch, agency or permanent establishment in, or being, or becoming or being treated as resident for tax purposes in, such jurisdiction other than any taxes imposed or which would have been imposed by reason of a connection between the relevant Tax Indemnitee and that jurisdiction to the extent arising solely by reason of (i) the operation, use, presence, registration, leasing, stationing or location of, or any modification, alteration, improvement or addition made in, to, upon or in respect of, the Aircraft, the Airframe, and Engine or any Part, (ii) any Event of Default, or (iii) any fraud, gross negligence or willful misconduct of any Lessee Party;
- (c) taxes imposed upon any Tax Indemnitee to the extent resulting from a voluntary sale, assignment, transfer or other disposition by such Tax Indemnitee (or, if such Tax Indemnitee is the Lessor, by the Managing Partner) of its interest in the Aircraft, the Airframe, any Engine or any Part (in this paragraph (c), a **disposal**) (other than a disposal (i) resulting from or in connection with (x) a Permitted Lien (other than, in the case of any of the Lessor, the Managing Partner, Yamasa, each Kumiai-in or the Parent only, a Lessor Security Interest and other than, in the case of any Financing Party only, a Financing Party Security Interest), (y) the exercise of any rights or remedies in connection with an Event of Default or any event or circumstance specified in Clause 8.1 (*Illegality, Acceleration of Loan*) or Clause 8.2 (*Increased Costs and Taxes*); or (ii) permitted, required or contemplated by the Operative Documents) or any of the Operative Documents to which it is a party;
- (d) taxes arising solely as a result of the fraud, gross negligence or wilful misconduct of such Tax Indemnitee (or, if such Tax

Indemnatee is the Lessor, which result from the willful misconduct or gross negligence of the Managing Partner);

- (e) taxes imposed upon such Tax Indemnatee to the extent incurred in respect of any period after the earliest to occur of any of the following events:
 - (1) the purchase of the Aircraft by the Lessee or by a third party pursuant to the terms of this Agreement and the performance in full by the Lessee of its obligations then due hereunder;
 - (2) the return of the Aircraft to the Lessor pursuant to and in accordance with the provisions of this Agreement and the performance in full by the Lessee of its obligations then due hereunder; or
 - (3) the termination of the Lease Period in accordance with Clause 17 (*Loss and Requisition*) following a Total Loss with respect to the Aircraft and the performance in full by the Lessee of its obligations then due hereunder,

unless such taxes are attributable to any event, circumstance or condition occurring prior to such purchase or return or termination;

- (f) taxes imposed upon such Tax Indemnatee to the extent they result from such Tax Indemnatee's (or, if such Tax Indemnatee is the Lessor, the Managing Partner's) representations or warranties contained in the Operative Documents being incorrect in any material aspect or the breach by such Tax Indemnatee (or, if such Tax Indemnatee is the Lessor, by the Managing Partner) of any of its obligations contained in this Agreement or any of the other Operative Documents which is likely to have a material adverse effect on such Tax Indemnatee's ability to perform its material obligations under the Operative Documents to which it is or will be a party, other than, in each case, as a result of an Excepted Reason;
- (g) any taxes to the extent such Tax Indemnatee has actually been indemnified (to the extent so actually indemnified) pursuant to any other provision of any Operative Document;
- (h) any taxes imposed upon such Tax Indemnatee which constitute penalties, additions to Tax, fines or interest which would not have been imposed but for a reasonably avoidable delay or failure by such Tax Indemnatee (or, if such Tax Indemnatee is the Lessor, by the Managing Partner) in filing any tax computations or returns, or other forms or statements, in each case which the Lessee has reasonably requested such Tax Indemnatee (or the Managing Partner) in writing to file, provided that such delay or failure has not been caused or requested by any Lessee Party and the relevant filing would not, in such Tax Indemnatee's opinion, prejudice the

tax position or business affairs of such Tax Indemnitee in the relevant jurisdiction;

- (i) in the case of the Lessor only, taxes arising solely as a result of the existence of any Lessor Security Interest, and in the case of any Financing Party only, taxes arising solely as a result of the existence of any Financing Party Security Interest created by such Financing Party; or
- (j) any taxes to the extent such taxes exceed the amount thereof which such Tax Indemnitee (or, if such Tax Indemnitee is the Lessor, the Managing Partner) would have suffered had such Tax Indemnitee taken all reasonable steps within its control to give timely notice to the Lessee of such taxes or of the event giving rise to such taxes following such Tax Indemnitee (or, if such Tax Indemnitee is the Lessor, the Managing Partner) receiving notification of the imposition of any such taxes.

For the avoidance of doubt, the Lessee has no obligation to indemnify any Relevant Person under this Clause 9.2 (*Tax Indemnity*) for any Loss caused by any law or a Change in Law with respect to Japanese tax depreciation allowances available to any Relevant Person or any change to Japanese corporate income tax rates.

- 9.2.3 If a relevant Tax Indemnitee determines, in its sole opinion, that it has obtained a credit against, or obtained relief from, or received or obtained any other tax benefit in respect of, any taxes payable by the relevant Tax Indemnitee as a result of any taxes paid or indemnified against by the Lessee under Clause 9.2.1, the relevant Tax Indemnitee shall, as soon as reasonably practicable after realising the benefit of such credit or relief or tax benefit, pay to the Lessee an amount which, after taking account of any further tax liability and tax savings or benefit the relevant Tax Indemnitee realises as a result of the payment thereof, the relevant Tax Indemnitee determines in its sole opinion is equal to the amount of such credit, relief or tax benefit **provided that** any such payment shall leave the relevant Tax Indemnitee in no more and no less favourable a position than it would have been in if the relevant Taxes paid or indemnified against under Clause 9.2.1 had not been imposed, assessed, levied or asserted and further **provided that** the relevant Tax Indemnitee shall not be obliged under this Clause 9.2.3 to arrange its tax or other affairs in any particular way or to claim or to allocate any credit, relief or benefit received by it to any taxes or liability to tax referred to above in priority to any other matter which may entitle it to any credit, relief or benefit, or to disclose any records or affairs of the relevant Tax Indemnitee to the Lessee, save and insofar as the same are in the public domain.
- 9.2.4 if at any time any Tax Indemnitee shall pay, voluntarily or otherwise, any taxes which it is obliged to pay and in respect of which the Lessee is required to indemnify any Tax Indemnitee pursuant to this Clause 9.2 (*Tax Indemnity*), the Lessee shall reimburse such Tax Indemnitee within five (5) Business Days of demand together with interest at the rate per annum determined by such Tax Indemnitee to be equal to the Default Rate in

respect of the period from the later of (a) the date on which the Lessor notifies the Lessee that such Tax Indemnatee has paid or will pay the amount of such taxes and (b) the date on which such Tax Indemnatee paid the amount of such taxes, to the date of reimbursement thereof by the Lessee (as well after as before judgement), without prejudice to any of such Tax Indemnatee's rights under any Operative Document for the full amount thereof.

- 9.2.5 Any amounts expressed to be payable by the Lessee to, or to indemnify, any Tax Indemnatee under Clause 9.2.1 shall be paid to the Lessor for the account of that Tax Indemnatee **provided that** any amounts expressed to be payable to, or to indemnify, any Tax Indemnatee under Clause 9.2.1 shall if so directed by the Lessor be paid by the Lessee directly to the relevant tax authority directed by the Lessor and further **provided that** if payment to the Lessor or direct to the relevant tax authority would result in the Lessee incurring any additional liability which it would not incur if payment were made direct to the relevant Tax Indemnatee then the Lessee may make such payment direct to such Tax Indemnatee.

9.3 Contest Rights

If a claim is made against a Tax Indemnatee (such Tax Indemnatee, in each case, being the "**Affected Tax Indemnatee**") for Taxes in respect of which the Lessee is obliged to indemnify the Affected Tax Indemnatee under Clause 9.2 (*Tax Indemnity*), then, **provided** no Potential Event or Excepted Reason has occurred and is continuing, the Affected Tax Indemnatee shall, if requested by the Lessee, consult with the Lessee to consider what action (if any) may properly be taken to contest the imposition of the Tax. Following such consultation, if the Affected Tax Indemnatee determines, in its sole discretion taking into account, *inter alia*, the criteria specified in Clauses 9.3.1 to 9.3.5 (inclusive), that it is willing to contest such Tax then such party will proceed to take such action as it determines to be appropriate (after consultation with the Lessee) **provided** always that:

- 9.3.1 the Lessee shall indemnify the Affected Tax Indemnatee in full on demand in respect of any Losses suffered or incurred by such party as a result of such action;
- 9.3.2 the taking of such action shall not in any way derogate from the Lessee's obligations under the Operative Documents, including, without limitation, its indemnity obligations under Clause 9.2 (*Tax Indemnity*);
- 9.3.3 the Affected Tax Indemnatee shall not be precluded from settling or paying any Tax immediately, notwithstanding the contest action, if it determines that failure to do so would have a material adverse effect on its business;
- 9.3.4 the Affected Tax Indemnatee shall be entitled to terminate or settle any contest action at such time and on whatever basis it considers appropriate, **provided that** if no Potential Event or Excepted Reason is then subsisting the Affected Tax Indemnatee will consult with the Lessee in relation to any such steps; and

9.3.5 failure by any Tax Indemnitee to comply with the provisions of this Clause 9.3 (*Contest Rights*) shall not prejudice or discharge any of the indemnity obligations of the Lessee pursuant to Clause 9.2 (*Tax Indemnity*).

9.4 **Value Added Taxes**

All amounts payable by a party under any Operative Document are exclusive of any value added, turnover, consumption or sales tax or any similar tax or duty which may from time to time be payable on or in respect thereof. If any value added, turnover, consumption or sales tax or any similar tax or duty is payable in respect of any amount payable by a party (in this Clause 9.4 (*Value Added Taxes*), the "**Payee**"), the party making the payment or obliged to make the payment shall (subject to the provisions of Clause 9.2.2 which, except in relation to a payment arising under Clauses 9.1.5 or 23.9 (*Other Payments*), shall apply *mutatis mutandis* to this Clause 9.4 in respect of each Tax Indemnitee separately) pay all such tax or duty and indemnify the Payee and any Financing Party against such tax or duty or any claims for the same.

10. **FEES AND EXPENSES**

10.1 **Initial Costs**

Unless otherwise agreed by the parties hereto in writing, each party shall pay all out of pocket costs, fees and expenses (including the fees and expenses of legal, accounting and other advisers) incurred by it in connection with the negotiation and preparation of this Agreement and the other Operative Documents.

10.2 **Subsequent Costs**

The Lessee shall on demand pay or reimburse the Lessor for all fees and expenses (including, without limitation, legal and accounting fees and expenses) and out of pocket costs and expenses incurred by it (a) in connection with any amendment, alteration, variation, consent or approval requested or required by the Lessee to implement this Agreement or any Operative Document or (b) in connection with any preservation or enforcement of any of the rights of the Lessor, any Indemnitee or Tax Indemnitee hereunder or thereunder.

10.3 **Documentary Taxes**

The Lessee shall promptly pay any stamp or other documentary or registration duties and taxes (other than Excluded Taxes) which are payable in connection with the execution or delivery of any of the Operative Documents or the purchase and sale or leasing of the Aircraft or which any of the Operative Documents or the transactions contemplated thereby may be subject or give rise to (in each case whether imposed on or required to be paid by the Lessor or the Lessee or any other party to the Operative Documents) and shall indemnify each Tax Indemnitee from and against any Losses which it may incur as a result of any delay or omission by the Lessee to pay any such duties or taxes.

11. **UNDERTAKINGS**

11.1 **Lessee's Undertakings**

Except to the extent that the Lessor consents otherwise, the Lessee shall, until all its liabilities and obligations under the Operative Documents have been satisfied:

- (a) not make any substantial change in the nature of the business in which it is engaged and the Lessee shall:
 - (i) preserve its corporate existence (other than in connection with a solvent reconstruction the terms of which have been approved by the Lessor, such approval not to be unreasonably withheld or delayed); and
 - (ii) conduct its business in an orderly manner.
- (b) comply in all material respects with all applicable law including, without limitation, by paying when due all taxes to which it or its assets are assessed or liable except to the extent that they may be contested in good faith by appropriate proceedings for which adequate reserves have been maintained (and for which on written request, the Lessee can provide evidence of such to the satisfaction of the Lessor and the Security Agent) and such proceedings do not involve any danger of the detention, interference with use, operation or sale, forfeiture or loss of the Aircraft;
- (c) promptly:
 - (i) obtain, comply with and do all that is necessary to maintain in full force and effect; and
 - (ii) if so requested, supply certified copies to the Lessor or the Facility Agent of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Operative Documents (including, without limitation, and for the avoidance of doubt, to comply with all rules and regulations of any competent Government Entity in Mexico, with respect to its payment obligations under the Operative Documents) and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Operative Document to which it is a party;
- (d) notify the Lessor and the Facility Agent forthwith upon becoming aware of the occurrence of any Potential Event and provide the Lessor and the Facility Agent with full details of any steps which the Lessee is taking or proposes to take, in order to remedy or mitigate the effect of such Potential Event or other event;
- (e) notify the Lessor and the Facility Agent forthwith upon becoming aware of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any Lessee Party which, if judgement was given against such Lessee Party (and not successfully contested by any Lessee Party) would have a Material Adverse Effect;
- (f) furnish to the Lessor and the Facility Agent:

- (i) as soon as available, but not in any event later than one hundred twenty (120) days after the end of the first half of each of the Guarantor's financial years the unaudited semi-annual consolidated financial statements of the Guarantor (in Mexican pesos and in English) prepared for the most recent previous financial half year certified by the controller or other a qualified financial officer of the Guarantor as being true and correct;
 - (ii) as soon as available, but not in any event later than one hundred and eighty (180) days after the last day of each of the Guarantor's financial years, the audited consolidated financial statements of the Guarantor (in Mexican pesos and in English) for the year ending on such day;
 - (iii) a copy of each notice or circular regarding any material change to the financial condition of the Guarantor issued or provided to the Guarantor's shareholders or creditors as a group at the same time as it is so issued; and
 - (iv) such other information and documents regarding the Guarantor and the Lessee and their business and affairs as the Lessor and the Facility Agent may from time to time reasonably request (having regard to the relevance of such information to such parties' obligations under the Operative Documents), including, without limitation, any information or documents necessary to (x) enable each of the Lessor and the Facility Agent to comply with its tax filing, audit and litigation obligations or (y) to demonstrate that no Change of Control Event has occurred;
- (g) provide to the Lessor semi-annual Aircraft status reports in the form of Schedule 7 (*Condition Report*), and if so requested in writing by the Lessor or the Security Agent from time to time, any other written reports in English as the Lessor or the Security Agent may from time to time reasonably request in writing recording the use, location, maintenance, status, state of repair and condition of the Aircraft, including, without limitation, the hours remaining on the Aircraft and any Engine until the next scheduled check, inspection, overhaul or shop visit, as the case may be, and any other non-confidential reports or other information relating to the Aircraft from time to time reasonably requested in writing by the Lessor or the Security Agent in connection with the leasing of the Aircraft under this Agreement;
- (h) on request, furnish to the Lessor and the Facility Agent evidence satisfactory to the Lessor and the Facility Agent that all Taxes, charges and other outgoings incurred by any Lessee Party with respect to the Aircraft, including, without limitation, all payments due to the relevant air traffic control authorities, have been paid and discharged in full;
- (i) give the Lessor and the Facility Agent not less than forty five (45) days' written notice of the time and location of all structural checks as set out in the Approved Maintenance Programme;
- (j) promptly notify the Lessor and the Facility Agent of:

- (i) any loss, theft, damage or destruction to the Aircraft, any Engine or any Part, or any modification to the Aircraft if the potential cost of repair or of such modification may exceed the Damage Notification Threshold;
 - (ii) any claim or other occurrence upon becoming aware of the same that is likely to give rise to a claim under the Insurances (but in the case of hull claims, only for any claim in excess of the Damage Notification Threshold) and details of any negotiations with the insurance brokers over any such claim;
- (k) provide the Lessor and the Facility Agent with a copy of any notice referred to in paragraph 1.4(h) of Schedule 6 (*Insurance Requirements*) within five (5) Business Days of receipt by the Lessee;
- (l) ensure that the payment obligations of each Lessee Party under the Operative Documents to which it is or will be a party rank or will, upon execution thereof by such Lessee Party, rank at all times at least equally with all its other present and future unsecured payment obligations (including, without limitation, contingent obligations), other than those which are mandatorily preferred by applicable law;
- (m) not enter into any arrangement with any person other than the Lessor which would allow or purport to allow such person to claim any rights to depreciation in respect of the Aircraft;
- (n) ensure that neither it nor any of its Affiliates (including any Lessee Party) will provide any funding directly or indirectly (or any collateral capable of being transformed into funds) to any person for the purposes of:
 - (i) any person assuming or guaranteeing all or any part of the Lessee's payment obligations under this Agreement; or
 - (ii) on-lending such funds to the Lessor;
- (o) duly and punctually perform its obligations under and comply with the terms of the Operative Documents to which it is or will be a party;
- (p) procure that no person (other than any Relevant Person or any Financing Party) will act, with the consent or acquiescence of any Lessee Party, in any manner inconsistent with its obligations under this Agreement and the other Operative Documents;
- (q) ensure that in respect of the person appointed as the Approved Maintenance Performer, that such person has recognised standing and experience, suitable facilities and suitable equipment to perform such services on aircraft and/or engines of the same or improved model as the Aircraft or, in the case of engines, the Engines; and
- (r) not make any changes to the Approved Maintenance Programme (unless required by the Aviation Authority) which constitute a material deviation from the Manufacturer's MPD without the prior written consent of the Lessor.

11.2 Lessor's Undertakings

The Lessor undertakes in favour of the Lessee that it shall:

- (a) preserve its existence as a Nin-i Kumiai and not agree to any modification to the Nin-i Kumiai Agreement, the Kumiai-in or their respective proportions of equity contribution thereunder without the prior written consent of the Lessee, such consent not to be unreasonably withheld or delayed;
- (b) after the date hereof not, without the prior consent of the Lessee, carry on any business other than the acquisition, owning and leasing of the Aircraft, the entry into and performance of the Nin-i Kumiai Agreement, the Operative Documents and the transactions contemplated by the Operative Documents and arrangements entered into as a result thereof and other matters reasonably incidental thereto;
- (c) after the date hereof not, without the prior consent of the Lessee, enter into any contract or agreement with any person or create or incur any liability to any person, in each case except for the entry into, and any liability created or incurred under the Nin-i Kumiai Agreement, the Operative Documents and the transactions contemplated by the Operative Documents and arrangements entered into as a result thereof and each other document required to be executed and delivered by it in accordance with the provisions hereof and thereof, other than such liabilities with respect to taxes, establishment costs, ordinary operating costs and overhead expenses as have arisen or may arise in the ordinary course of carrying on business in compliance with Clause 11.2(b);
- (d) promptly inform the Lessee after becoming aware of the institution or commencement against it of any dispute, litigation, administrative or other proceedings before any judicial, administrative, arbitration or government authority which is likely to have a material adverse effect on its ability to perform its material obligations under the Operative Documents to which it is or will be a party;
- (e) obtain or cause to be obtained, maintain in full force and effect and comply in all material respects with the conditions and restrictions, if any, imposed on or in connection with every Authorisation of any governmental or public body of Japan necessary under the applicable laws of Japan for the continued performance by it of the Operative Documents to which it is or will be a party;
- (f) not sell or dispose of, or purport to sell or dispose of, its interest in the Aircraft, the Airframe, any Engine or any Part (in this paragraph (f), a "disposal") (other than a disposal (i) resulting from or in connection with (x) a Permitted Lien (other than a Lessor Security Interest); (y) the exercise of any rights or remedies in connection with an Event of Default or any event or circumstance specified in Clause 8 (*Change in Circumstances*); or (z) the exercise or performance of any Lessee's rights or obligations hereunder; or (ii) permitted or required by the Operative Documents);

- (g) use reasonable endeavours, in accordance with customary practices in the Lessor's business industry, to mitigate or minimise stamp duty, registration, transfer and other documentary and other similar Taxes in relation to the Operative Documents to the extent that it is reasonably practicable for the Lessor to do so and not otherwise prohibited by applicable law (and at no cost to the Lessor);
- (h) notify the Lessee as soon as practicable after it becomes aware of the occurrence of a Lessor Event and provide the Lessee with the details of any steps it is taking, or proposes to take, in order to remedy or mitigate the effect of such Lessor Event; and
- (i) ensure that each Kumiai-in shall remain a resident in Japan for Japanese tax purposes and not a tax resident in any other jurisdiction, save where any other tax residency is deemed to be established by an applicable law as a consequence of the entry into and performance of the Operative Documents or the transactions contemplated thereby.

11.3 Delegation by Lessee

The Lessee shall remain liable for all of its obligations and liabilities under this Agreement and the other Operative Documents notwithstanding any delegation by the Lessee to another person of any such obligations or liabilities or any reliance by the Lessee to another person to perform or discharge any such obligations or liabilities, whether or not such sub-delegation or reliance is permitted or contemplated by any Operative Document (**provided that** to the extent any such obligation or liability is actually performed or discharged by such other person on the Lessee's behalf, such performance or discharge shall constitute performance or discharge of the corresponding obligation or liability of the Lessee).

11.4 Security Interests

The Lessee shall at all times during the Lease Period:

- (a) not sell or dispose of, or purport to sell or dispose of, or create or permit to arise or exist any Security Interest other than Permitted Liens, over or affecting (a) the Aircraft, any Engine, Part or Technical Records; or (b) any rights, revenues or proceeds derived from the Aircraft, any Engine, Part or Technical Records (other than Requisition Compensation);
- (b) promptly at the Lessee's expense take or procure the taking of such action as may be necessary duly to discharge any such Security Interest if the same shall exist at any time; and
- (c) pay and discharge or cause to be paid and discharged when due and payable or make adequate provision by way of security or otherwise for all debts, damages, claims and liabilities which give or might reasonably be expected to give rise to any Security Interest (other than Permitted Liens) over or affecting the Aircraft, any Engine, Part or Technical Records.

12. OPERATION, USE AND POSSESSION

12.1 Operation of the Aircraft

The Lessee shall:

- (a) comply with the law for the time being in force in any country or jurisdiction which may for the time being be applicable to the Aircraft or, so far as concerns the use and operation of the Aircraft, an owner or operator or Financing Party in respect thereof, and take all reasonable steps to ensure that the Aircraft is not used for any illegal purpose;
- (b) not use the Aircraft in any manner contrary to any recommendation of the manufacturers of the Aircraft, any Engine or any Part or any recommendation or regulation of the Aviation Authority or for any purpose for which the Aircraft is not designed or reasonably suitable;
- (c) ensure that the crew and engineers employed by the Lessee in connection with the operation and maintenance of the Aircraft have the qualifications and hold the licences required by the Aviation Authority and applicable law;
- (d) use the Aircraft solely in commercial or other operations for which the Lessee is duly authorised by the Aviation Authority and applicable law;
- (e) not knowingly use the Aircraft for the carriage of any goods, materials, livestock or items of cargo which could reasonably be expected to cause damage to the Aircraft or which would not be adequately covered by the Insurances, or any item or substance whose possession or carriage is illegal under any applicable law; and comply with any carriage regulations or restrictions from time to time issued by IATA (to the extent not conflicting with the mandatory recommendations or regulations of the Aviation Authority);
- (f) not use the Aircraft for purposes of training, qualifying or re-confirming the status of cockpit personnel except for the benefit of the Lessee's cockpit personnel, and then only if the use of the Aircraft for such purpose is not disproportionate to the use for such purpose of other aircraft of the same type operated by the Lessee;
- (g) not cause or permit the Aircraft or any Engine to proceed to, or remain at, any location in an Excluded Country;
- (h) obtain and maintain in full force all Authorisations for the time being required for the use and operation of the Aircraft;
- (i) not use, operate, or locate the Aircraft or suffer or permit the Aircraft to be used, operated or located in any manner not covered by the Insurances or in any area excluded from coverage by the Insurances or in any manner which would prejudice the interests of the Indemnitees in the Insurances, the Aircraft, any Engine or any Part;
- (j) ensure that the Habitual Base remains the habitual base of the Aircraft unless the Lessor and the Security Agent give their prior written consent to a change thereof (which consent shall not be unreasonably withheld or delayed); and

- (k) not operate, maintain, insure or deal with the Aircraft or any Engine or Part in a manner which discriminates in a material way against the Aircraft or such Engine or Part, when compared with the manner in which the Lessee operates, maintains, insures or deals with similar aircraft, engines or parts in the Lessee's fleet.

12.2 Technical Records

The Lessee shall:

- (a) procure that accurate, complete and current records in accordance with Aviation Authority standards and the requirements of the FAA for Part 129 operators are kept of all flights made by, and all maintenance carried out on, the Aircraft (including in relation to each Engine and Part subsequently installed and before the installation), in such manner and form as the Aviation Authority and/or the FAA may from time to time require and shall disclose the location of all Engines and Parts not installed on the Aircraft. Such records will form part of the Technical Records and the Lessee shall, during the Lease Period, ensure that the Technical Records are maintained and safely stored in accordance with prudent industry practices;
- (b) procure that the main records, including logs and documents so kept or maintained shall be maintained in English (provided that the Lessee can in its sole discretion maintain any such records, logs and documents in duplicate in any other language). The other records, logs and documents so kept or maintained shall be maintained in English or any other language as decided by the Lessee in accordance with the operational or fleet management practices of the Lessee or the requirements of the Aviation Authority and the requirements of the FAA for Part 129 operators. All records, logs and documents so kept shall conform with the regulations of the Aviation Authority and the requirements of the FAA for Part 129 operators, in each case, from time to time in force, and with the prudent practices of public air transport operators (provided that such practices are not contrary to the regulations of the Aviation Authority and the requirements of the FAA for Part 129 operators), and shall disclose the whereabouts of all Engines and Parts not installed on the Airframe. If the Lessor so requests, English translations (certified by the Lessee) of those records, logs and documents kept in a language other than English shall be provided by the Lessee, at its cost, at Return;
- (c) maintain all Technical Records, records, logs, and other materials required by applicable laws in accordance with prudent industry practices so as not to prevent the Lessee from complying with the Return Conditions at Return;
- (d) retain all such Technical Records and other materials so as not to prevent the Lessee from complying with the Return Conditions at Return at the Lessee's principal place of business, and not permit any other person to have possession of or control over the same without the Lessor's prior written consent; and

- (e) maintain in English with an appropriate revision service all manufacturers' manuals delivered with the Aircraft.

12.3 Inspection

- (a) The Lessor or the Security Agent or their respective authorised representatives (each, an "**Inspecting Party**") may, subject to one (1) month's prior written notice to the Lessee and, subject to Clauses 12.3(c) and (e), at no cost to the Lessee, and subject to not more than one such inspection by the Inspecting Parties or any one of them within any one-year period (or at any time without prior notice and at Lessee's cost if an inspection is initiated while an Event of Default has occurred and is continuing, or is to verify rectification of any failure by the Lessee to comply with the provisions of this Agreement), inspect and survey the Aircraft, any Engine or any Part and the Technical Records relating thereto (and may make copies of those parts of such Technical Records as the Inspecting Party may reasonably request) and for such purpose may, subject to any applicable Aviation Authority regulation, travel on the flight deck as observer.
- (b) All such inspections or surveys of the Aircraft referred to in Clause 12.3(a) shall be visual, walk-around inspections, which shall include going on board the Aircraft, but shall not, unless an inspection is initiated while an Event of Default shall have occurred and be continuing, include opening any panels or bays (but such bays and panels which are open on any such date may be inspected) and, in any event, shall be conducted so as not unreasonably to interfere with or cause delay to the Lessee's or any Permitted Sublessee's normal business or the operation, use and maintenance of the Aircraft unless said inspection is initiated while an Event of Default has occurred and is continuing or if the inspection reveals material failure (or is to verify rectification of such failure) by the Lessee to comply with the provisions of this Agreement.
- (c) If an inspection is initiated while an Event of Default has occurred and is continuing; or if the inspection reveals material failure (or is to verify rectification of such failure) by the Lessee to comply with the provisions of this Agreement and if remedial work to the satisfaction of the Lessor and the Security Agent, each acting reasonably, is not already in progress at the time of inspection, the Lessee shall pay to the Lessor or, as the case may be, the Security Agent, on demand all reasonable out-of-pocket expenses incurred by the Inspecting Party in connection with any such visit, inspection or survey referred to in Clause 12.3(a).
- (d) No Inspecting Party shall have any duty to make any such inspection or survey referred to in Clause 12.3(a) or incur any liability or obligation by reason of not making any such inspection.
- (e) If following any such inspection or survey referred to in Clause 12.3(a), repairs are shown to be required, all such repairs shall be made at the Lessee's expense and shall be effected as soon as practicable.
- (f) The Lessee shall make any Permitted Sublease and any sublease permitted by Clause 12.7 (*Permitted Subleases*) of the Aircraft or any Engine entered

into after the date hereof expressly subject to the inspection rights hereunder.

12.4 Air Navigation, Airport and Other Fees and Charges

- (a) The Lessee shall promptly pay or cause to be paid within such period as may be agreed between the Lessee and the relevant Government Entity all licence, registration, navigation and airport fees and charges assessed and demanded by any Government Entity relating to the Aircraft or other aircraft operated by the Lessee or associated with the purchase, ownership, delivery, leasing, possession, use, operation, redelivery of or transfer or title to the Aircraft (unless being contested in good faith and by appropriate proceedings, an adequate bond or similar security has been provided (and for which on written request, the Lessee can provide evidence of such to the satisfaction of the Lessor and the Security Agent) and such proceedings do not involve any danger of the detention, interference with use or operation or sale, forfeiture or loss of the Aircraft).
- (b) If the Aircraft is detained or arrested in connection with outstanding charges incurred during the Lease Period in connection with the fees and charges described in Clause 12.4(a), then, without prejudice to the Lessor's rights under Clause 18 (*Events of Default*), the Lessee agrees that it shall promptly discharge such charges and procure that such detention or arrest is lifted. Neither the Lessor nor any Financing Party shall have any liability whatsoever as a result of any detention or arrest of the Aircraft in respect of any such charges or in relation to such detention or arrest or the lifting thereof.

12.5 Outgoings

As between the Lessor, the Financing Parties and the Lessee, the Lessee shall be responsible for all costs, expenses, charges and other outgoings related to the operation of the Aircraft, and shall promptly pay or cause to be paid:

- (a) all licence and registration fees and other amounts of any nature imposed by any Government Entity with respect to the Aircraft (including, without limitation, the purchase, ownership, delivery, leasing, possession, use, operation, return, sale or other disposition of the Aircraft) and the Operative Documents (including, without limitation, any fees associated with registration of this Agreement, the Manufacturer Filing Bill of Sale, the Seller Filing Bill of Sale, the Mexican Law Pledge and the Security Assignment with the RAM) or any of them; and
- (b) all rent, fees, charges and other amounts in respect of any premises where the Aircraft or any Part thereof is located from time to time (unless being contested in good faith and by appropriate proceedings, an adequate bond or similar security has been provided (and for which on written request, the Lessee can provide evidence of such to the satisfaction of the Lessor and the Security Agent) and such proceedings do not involve any danger of the detention, interference with use or operation or sale, forfeiture or loss of the Aircraft).

12.6 Possession

Subject to Clause 12.7 (*Permitted Subleases*), Clause 12.8 (*Indemnity*) and Clause 12.10 (*Wet-leasing*), the Lessee shall not, without the prior written consent of the Lessor and the Facility Agent (which consent shall not be unreasonably withheld or delayed), lease or sublease (each, for the purposes of this Agreement, a "sublease"), "wet lease" or part with possession or operational control of the Aircraft, the Engines or any Part, except that the Lessee may part with possession:

- (a) with respect to the Aircraft, the Engines or any Part to the relevant manufacturers for testing or similar purposes or to the Approved Maintenance Performer for storage, service, repair, maintenance or overhaul work, or alterations, modifications or additions to the extent required or permitted by this Agreement or required by applicable law; and
- (b) with respect to an Engine or Part, as expressly permitted by this Agreement; and
- (c) with respect to the Aircraft, to a Permitted Sublessee, **provided that** the conditions set out in Clause 12.7 (*Permitted Subleases*) and Clause 12.10 (*Wet-leasing*), as the case may be, are complied with.

12.7 Permitted Subleases

Provided that no Potential Event has occurred and is continuing under this Agreement and subject to the Lessor and the Security Agent being satisfied that each of the conditions specified in paragraphs (a) through (m) of this Clause 12.7 have been fulfilled in relation to such leasing, the Lessee may, without requiring any consents from the Lessor or the Financing Parties, sublease the Aircraft to a Permitted Sublessee by giving the Lessor and the Security Agent at least twenty-one (21) days prior written notice of any proposed sublease (which notice shall include full details of the proposed leasing arrangements). Any proposed sub-lease shall satisfy each of the following conditions:

- (a) the sublease shall be expressly stated to be, and shall remain, subject to, and subordinate to, the rights of the Lessor and the Financing Parties (including as owner or as lessor of the Aircraft or as secured party in respect of the Aircraft) under this Agreement and the other Operative Documents (as applicable) and the term of any such sublease (including renewal rights) shall not extend beyond the end of the Lease Period and shall terminate immediately upon the date upon which the leasing of the Aircraft hereunder terminates or expires, **provided**, however, that if the Lessee has given irrevocable notice of its exercise, in accordance with Clause 21 (*Purchase of Aircraft at Purchase Option Date*), of the purchase option then the term of such sublease may exceed the Lease Period;
- (b) prior to delivery of the Aircraft under the sublease (and as a condition precedent thereto), the Permitted Sublessee shall provide an acknowledgement to the Lessor and the Security Agent, in form and substance satisfactory to the Lessor and the Security Agent, each acting reasonably, confirming its agreement to the terms of Clause 12.7(a) and confirming that its rights to possession of the Aircraft under the sublease will terminate immediately on written notice from the Lessor or the Security Agent that an Event of Default has occurred and the leasing of

the Aircraft is terminated pursuant to the terms of this Agreement and that it will redeliver the Aircraft to the Lessor upon receipt of such written notice;

- (c) no subleasing (including, for the avoidance of doubt, "wet leasing") of the Aircraft shall release the Lessee from its obligations under this Agreement and the other Operative Documents, and the Lessee hereby confirms and agrees that it shall remain fully liable to perform all of its obligations under this Agreement and the other Operative Documents notwithstanding any such subleasing (provided that the performance by the Permitted Sublessee of its obligations under the relevant sublease shall, to the extent of such performance, be regarded as performance by the Lessee of the terms of this Agreement provided further that where performance consists of an agreement or undertaking for further action or performance the Lessee shall remain fully liable for discharge of its obligations until such further action or performance is completed in full);
- (d) the sublease shall require the Permitted Sublessee to operate the Aircraft substantially on the same terms as those set out in this Agreement, maintain the Aircraft on the same terms as those set out in this Agreement and insure the Aircraft on the same basis as set out in this Agreement;
- (e) the sublease shall not permit any further leasing or subleasing of the Aircraft;
- (f) on or prior to the commencement of the sublease, the Lessee shall provide to the Lessor and the Security Agent evidence satisfactory to the Lessor and the Security Agent confirming that the Aircraft will continue to be insured in accordance with this Agreement;
- (g) other than as permitted under Clause 15.3 (*Change of Registration*), the State of Registration and the Habitual Base of the Aircraft will not change without the consent of the Lessor and the Security Agent and shall be the jurisdiction of incorporation of the Permitted Sublessee, unless the Lessor and the Security Agent consent otherwise;
- (h) the Permitted Sublessee shall not, at sublease signature or sublease commencement, be subject to any events of the type set out in Clauses 18 (i), (j), (k) and/or (l) of this Agreement;
- (i) the Permitted Sublessee shall hold all Authorisations required for its use and operation of the Aircraft;
- (j) prior to the delivery of the Aircraft under the sublease, each of the Lessor and the Security Agent shall have received:
 - (i) evidence reasonably satisfactory to it that neither the rights and interests of the Lessor and/or the Security Agent under this Agreement and the other Operative Documents nor the rights of the Lessor and/or the Financing Parties under the Operative Documents will be adversely affected by the subleasing and that such rights and interests will be fully recognised, perfected and protected in connection with the subleasing (and such evidence

shall be in the form of a legal opinion or opinions to be supplied under Clause 12.7(j)(ii)); and

- (ii) a legal opinion from counsel in each jurisdiction in which the Permitted Sublessee is established and has its principal place of business and, if different, in which the Aircraft is based and/or registered, in form and substance and from legal counsel in each case reasonably satisfactory to the Lessor and the Security Agent (the costs of such opinion shall be for the account of the Lessee); and
 - (iii) if reasonably requested, a tax opinion in form and substance and from tax advisers, in each case, reasonably satisfactory to the Lessor and the Security Agent (the costs of such opinion shall be for the account of the Lessee).
- (k) the sublease shall not permit the Aircraft to be based or registered in an Excluded Country;

and provided further that:

- (l) the sublease shall not contain any option, or involve any arrangement economically equivalent to an option, to purchase the Aircraft unless the same is contingent on and subject to the exercise of the purchase option by the Lessee under this Agreement; and
- (m) any such sublease shall provide that any Permitted Sublessee under any such sublease:
 - (i) is not permitted to claim any depreciation allowance in respect of the Aircraft;
 - (ii) does not guarantee the obligations of the Lessee under this Agreement or any of the other Operative Documents or the Lessor under the Loan Agreement or any of the other Operative Documents; and
 - (iii) does not bear or guarantee or participate in any upside benefit in respect of, the residual value of the Aircraft.

The Lessor and the Security Agent shall co-operate with the Lessee (at the Lessee's cost) to assist the Lessee in promptly making any filings, recordings and registrations in the Habitual Base, the State of Registration or the International Registry which are necessary or desirable in order to protect the interests of the Lessor and the Security Agent under this Agreement and the Operative Documents and the rights of the Lessor and the Financing Parties under the Operative Documents to ensure the validity, enforcement or priority thereof and the Lessee shall pay all costs, expenses and liabilities incurred in connection with any re-registration of the Aircraft and such filings, recordings and registrations.

12.8 Indemnity

The Lessee will indemnify the Lessor, the Facility Agent, the Security Agent and the other Financing Parties on demand for all reasonable out-of-pocket expenses

(including reasonable legal fees) incurred in connection with the assessment by the Lessor, the Facility Agent and the Security Agent of the proposal for any sublease or its implementation, including the verification of compliance with the requirements of Clause 12.7 (*Permitted Subleases*).

12.9 **Delivery of Executed Sublease**

The Lessee shall provide the Lessor and the Security Agent with a copy of any executed sublease within five (5) Business Days after the execution thereof **provided**, however, that the Lessee shall be entitled to delete any confidential or commercially sensitive information which does not affect the rights and/or interests of the Lessor or the Financing Parties under any Operative Document. The Lessee will not amend the terms of any sublease which might reasonably be expected to affect the rights and/or interests of the Lessor or the Financing Parties under any Operative Document without the prior written consent of the Lessor and the Security Agent (which consent shall not be unreasonably withheld or delayed).

12.10 **Wet-leasing**

The Lessee may "wet lease" or charter the Aircraft to any person which, at the time the relevant wet-lease is entered into, is solvent and not otherwise subject to any winding-up, insolvency or bankruptcy proceedings and which is not domiciled, resident or incorporated or has its main base of operation in an Excluded Country **provided that** such "wet lease" or charter constitutes an arrangement whereby the Lessee agrees to furnish the Aircraft to a third party pursuant to which the Aircraft (i) shall be operated solely by employees of the Lessee possessing all current certificates and licences that are required by applicable law; (ii) shall be subject to insurance coverage in accordance with the provisions of this Agreement; (iii) shall be maintained by the Lessee in accordance with the Approved Maintenance Programme; and (iv) shall not be subject to any change in its State of Registration or habitual base of the Aircraft from the then Habitual Base;

and provided further that:

- (a) such arrangement is not capable of giving rise to a possessory right in the Aircraft, or any other right which would have priority to the rights of the Lessor hereunder or the Security Agent under the New York Law Mortgage or the Mexican Law Pledge in and to the Aircraft;
- (b) such period shall not be capable of extending beyond the end of the Lease Period and which automatically terminates upon the date upon which the leasing of the Aircraft under this Agreement terminates or expires; and
- (c) any such "wet lease", charter or arrangement shall not permit the Aircraft to be based or registered in an Excluded Country.

13. **MAINTENANCE AND REPAIR**

13.1 **General**

The Lessee shall at its sole cost:

- (a) maintain, check, repair and overhaul the Aircraft in accordance with the Approved Maintenance Programme through the Approved Maintenance Performer and perform all required maintenance including, without limitation, Heavy Maintenance Checks, inspections, structural inspections and corrosion protection and maintain the Aircraft to at least the same standards, with the same care and without discrimination to other Boeing 787-9 aircraft owned, leased or operated by the Lessee;
- (b) maintain the Aircraft in accordance with the standard of maintenance required by applicable standards of the Aviation Authority, and comply with any other rules and regulations of the Aviation Authority which are applicable to passenger category aircraft, and maintain and service the Aircraft in at least the same manner and with at least the same care, including, without limitation, maintenance scheduling, modification status and technical condition, as is the case with respect to similar aircraft owned or otherwise operated by the Lessee, including, without limitation, all maintenance to the Airframe, any Engine or any Part required to maintain all warranties, performance guarantees or service life policies in full force and effect so as to keep the Airframe and each Engine in good operating condition and in the same condition as when delivered to the Lessee, ordinary wear and tear excepted;
- (c) comply with all Aviation Authority mandatory inspection and modification requirements, Airworthiness Directives, Mandatory Orders and similar requirements applicable to the Aircraft, any Engine or Part;
- (d) comply with all applicable laws and the regulations of the Aviation Authority and any Government Entity and other aviation authorities with jurisdiction over the Lessee or the Aircraft, any Engine or Part, and which relate to the maintenance, condition, use or operation of the Aircraft or require any modification or alteration to the Aircraft, any Engine or Part;
- (e) maintain in good standing a current certificate of airworthiness (in the appropriate category for the nature of the operations of the Aircraft) for the Aircraft issued by the Aviation Authority except where the Aircraft is undergoing maintenance, modification or repair required or permitted by this Agreement, and will from time to time provide to the Lessor and the Facility Agent a copy upon request; and
- (f) maintain the Aircraft so as not to prevent the Lessee from complying with the Return Conditions at Return.

All external and all structural repairs shall be in accordance with the Manufacturer's published guidelines and supported by certified documentation evidencing accomplishment in accordance with FAA approved data. FAA approved data means in accordance with the Manufacturer's structural repair manual or the Manufacturer's service bulletin or the Manufacturer's written approval (with a statement of conformity to type certificate data) or FAA Form 8100-9 approval (issued by Boeing under delegation) or in the case of an airframe only utilize an FAA 8110-3 issued by an FAA DER.

The Lessee may install PMA Parts in the Airframe provided they are not "critical parts" as defined in paragraph 3 of Appendix M to FAA Order 8110.42C. The

Lessee shall use only OEM parts or OEM approved parts for the purposes of repairing the Engines and may not install PMA parts in the Engines.

13.2 Manufacturer Warranties

The Lessee and any Permitted Sublessee may enjoy, enforce and exercise the benefit of such rights under any warranty, express or implied, with respect to the Aircraft and the Engines made by the Manufacturer or the Engine Manufacturer in accordance with the provisions of the Airframe Warranties Assignment and the Engine Warranties Agreement, as the case may be.

14. INTERCHANGE AND REPLACEMENT OF ENGINES AND PARTS

14.1 Permanent Replacement of Parts

The Lessee shall promptly procure the replacement of any Part which has become lost, stolen, seized, confiscated, destroyed, damaged beyond economic repair, unserviceable or permanently rendered unfit for use, with a part complying with the following conditions:

- (a) it is an OEM part (except as permitted under Clause 13.1) and is in as good operating condition, has substantially similar hours available until the next scheduled check, inspection, overhaul and shop visit, is of the same make and the same or a more advanced model and is of the same interchangeable modification status as, and of equivalent value and utility to, the replaced Part;
- (b) it has become and remains the property of the Lessor free from any Security Interest (other than Permitted Liens) and subject to the New York Law Mortgage and the Mexican Law Pledge; and
- (c) the Lessee has details as required by the Aviation Authority of its source and maintenance records since its last overhaul for rotatable items and back to birth for life limited items.

14.2 Removal and Interchange of Engines

The Lessee will:

- (a) ensure that no Engine is removed from the Airframe unless it is promptly replaced by an engine of the same model as, or an improved or advanced version of, such Engine and the Lessee has complete details as required by the Aviation Authority as to the source and maintenance records of the replacement engine;
- (b) ensure that any Engine which is not installed on the Aircraft (or an aircraft permitted by paragraph (d) of this Clause 14.2) is, except as expressly permitted by this Agreement, properly and safely stored and insured, and kept free from any Security Interest (other than Permitted Liens);
- (c) from time to time, upon request by the Lessor or the Security Agent, if the Lessor or the Security Agent, as the case may be, believes in its reasonable opinion that its interests as owner or, as the case may be, as mortgagee and pledgee is likely to be materially adversely affected thereby, procure that

any person to whom possession of an Engine is given acknowledges in writing to the Lessor and the Security Agent, in form and substance satisfactory to the Lessor and the Security Agent, that it will respect the interests of the Lessor as owner and the Security Agent as mortgagee and pledgee of the Engine and will not seek to exercise any rights whatsoever in relation to such Engine; and

- (d) be permitted, if no Potential Event is continuing, to install any Engine on an aircraft operated by the Lessee, **provided that** neither (i) the provisions of any applicable law nor (ii) the terms of any lease or other agreement or security to which such aircraft or Engine is subject, prohibit such installation or will have the effect at any time of divesting or impairing the title and interests of the Lessor as owner and the Security Agent as mortgagee and pledgee of such Engine and the Lessor and the Financing Parties under the Operative Documents.

14.3 **Removal and Interchange of Parts**

The Lessee will:

- (a) ensure that no Part is at any time removed from the Aircraft unless it is promptly replaced by a part complying with Clause 14.1 (*Permanent Replacement of Parts*); and
- (b) ensure that any Part which is not installed on the Aircraft (or any other aircraft as expressly permitted by this Agreement) is properly and safely stored and insured, and kept free from any Security Interest (other than Permitted Liens).

14.4 **Temporary Installation of Engines and Parts**

Notwithstanding the provisions of Clauses 14.2 (*Removal and Interchange of Engines*) and 14.3 (*Removal and Interchange of Parts*), the Lessee will be permitted, if no Potential Event is continuing, to install, or permit the installation of, any engine or part on the Aircraft by way of temporary replacement if:

- (a) there is not available to the Lessee at the time and in the place that engine or part is required to be installed on the Aircraft, a replacement engine or, as the case may be, part complying with the requirements of Clause 14.2 (*Removal and Interchange of Engines*) and/or, as the case may be, Clause 14.3 (*Removal and Interchange of Parts*);
- (b) it would result in an unreasonable disruption of the operation of the Aircraft and/or the business of the Lessee to ground the Aircraft until an engine or part, as the case may be, complying with the requirements of Clause 14.2 (*Removal and Interchange of Engines*) and/or, as the case may be, Clause 14.3 (*Removal and Interchange of Parts*) becomes available for installation on the Aircraft; and
- (c) as soon as practicable after installation of the same on the Aircraft, the Lessee removes any such engine or part and replaces it with the Engine or Part replaced by it or by an engine or part, as the case may be, complying with Clause 14.2 (*Removal and Interchange of Engines*) and/or, as the case may be, Clause 14.4 (*Removal and Interchange of Parts*).

14.5 Pooling of Engines and Parts

For so long as no Potential Event shall have occurred and is continuing, the Lessee may lease, let or hire or charter or otherwise part with possession of an Engine or Part (on terms conferring no more than a contractual right against the Lessee but not rights against the Engine or Part) pursuant to pooling arrangements to which the Lessee is a party and which:

- (a) are arrangements involving responsible, solvent scheduled commercial air carriers or aircraft operators or the manufacturers or suppliers of the Aircraft, Engine or Part;
- (b) do not contemplate or effect the transfer of title (legal or beneficial) to the pooled Engine or Part;
- (c) provide that the Security Agent shall, until the end of the Security Period, and thereafter, the Lessor shall, be sole loss payee in respect of any loss or damage to the Engine or Part; and
- (d) do not, in the opinion of the Lessor and the Security Agent, adversely affect the rights and interests of the Lessor and the Security Agent and the other Financing Parties.

14.6 Equipment Changes

- (a) The Lessee shall not make any modification or addition to the Aircraft (each an "**Equipment Change**"), except for an Equipment Change which:
 - (i) is expressly permitted by this Agreement; or
 - (ii) it deems necessary or desirable or consistent with the Lessee's fleet requirements and does not diminish the value, utility, condition, marketability or airworthiness of the Aircraft, or might reasonably be expected to adversely affect the rights of the Lessor as owner and the Security Agent as mortgagee and pledgee of the Aircraft, or would be contrary to the terms of any warranty, indemnity or performance guarantee from a Manufacturer or any supplier, or (in any case) would be contrary to any Mandatory Order or Airworthiness Directive or any other rules and regulations of the FAA, the Aviation Authority or any other competent authority having jurisdiction over the Aircraft applicable to the Aircraft or the Lessee where compliance is mandatory; or
 - (iii) is required by any Mandatory Order or Airworthiness Directive or Manufacturer recommended service bulletin applicable to the Lessee or the Aircraft where such Manufacturer recommended service bulletins are being undertaken or performed by the Lessee on a non-discriminatory basis in connection with other aircraft in the Lessee's aircraft fleet; or
 - (iv) which has the prior written approval of the Lessor and the Security Agent (such consent not to be unreasonably withheld or delayed).

- (b) So long as no Potential Event is continuing, the Lessee may remove any Equipment Change if it can be removed from the Aircraft without materially and/or permanently diminishing or impairing the value, utility, condition, marketability or airworthiness of the Aircraft (for the avoidance of doubt, excluding any effect of the Equipment Change itself on the value, utility or marketability of the Aircraft) and return the Aircraft to its condition before such Equipment Change was made. Upon such removal (if title to such Part constituting such Equipment Change has passed to the Lessor), title to each Part constituting the Equipment Change shall pass to the Lessee **provided that** (i) such Part is in addition to, and not in replacement or substitution for, any Part originally incorporated or installed on or attached to the Aircraft and (ii) such Part is not required to be installed in or attached to the Aircraft in order to comply with the provisions of Clause 14.1 (*Permanent Replacement of Parts*).
- (c) The Lessee will at its own expense take all such steps and execute, and procure the execution of, all such instruments as the Lessor and the Security Agent may reasonably require and which are necessary to ensure that all Engines and Parts installed on the Aircraft whether by way of replacement, as the result of an Equipment Change or otherwise (except those installed pursuant to Clause 14.5 (*Pooling of Engines and Parts*) or any Equipment Change to the extent they are severable from the Aircraft and (i) such Equipment Change is not required by a Mandatory Order or an Airworthiness Directive and (ii) such severance will not adversely affect the value, utility, condition, marketability or airworthiness of the Aircraft (for the avoidance of doubt, excluding any effect of the Equipment Change itself on the value, utility or marketability of the Aircraft)) will on installation, without further act, become property of the Lessor free and clear of all Security Interests (other than Permitted Liens) and become subject to the New York Law Mortgage and the Mexican Law Pledge.
- (d) Any Engine or Part at any time removed from the Aircraft will remain the property of the Lessor subject to the New York Law Mortgage and the Mexican Law Pledge until a replacement has been made in accordance with this Agreement and until title in that replacement has passed, according to applicable laws, to the Lessor subject to this Agreement free of all Security Interests (except Permitted Liens and become subject to the New York Law Mortgage and the Mexican Law Pledge).

15. **TITLE AND REGISTRATION**

15.1 **Lessor's Title**

Throughout the Lease Period, title to the Aircraft shall remain vested in the Lessor subject to the New York Law Mortgage and the Mexican Law Pledge.

15.2 **Registration**

The Lessee shall:

- (a) at the Lessee's cost (other than as specified in Clause 15.2(b) below), take all relevant actions and cooperate as may be necessary to register and to

maintain the registration of the Aircraft in the State of Incorporation (as applicable) and with the Aviation Authority and the International Registry in the name of the Lessor as owner or, in the event that such registration is not possible, in the name of the Lessee or the Permitted Sublessee as the operator, as the case may be, with the Lessor's interests in the Aircraft noted in the register and reflecting the interests of the Security Agent as mortgagee and pledgee to the greatest extent permitted by applicable law;

- (b) at the Lessee's cost, take all relevant actions and cooperate (including, without limitation, making any filing or registration with the Aviation Authority, the International Registry or any other Government Entity or as required to comply with the Cape Town Convention and the Geneva Convention when and where applicable except that, the costs and expenses in opening and maintaining the TUE accounts of the Lessor and the Security Agent shall not be at the Lessee's cost) and execute and deliver all documents (including, without limitation, any amendment of any Operative Document to which the Lessee is a party) as may from time to time be requested by the Lessor or the Security Agent, each acting reasonably:
 - (i) following any modification of the Aircraft, any Engine or any Part or the permanent replacement of any Engine or Part in accordance with this Agreement and the Cape Town Convention, so as to ensure that the rights of the Lessor as owner and the Security Agent as mortgagee and pledgee of the Aircraft apply with the same effect as before; or
 - (ii) to establish, maintain, preserve, perfect and protect the rights of the Lessor as owner and the Security Agent as mortgagee and pledgee of the Aircraft and the rights of the Lessor and the Financing Parties under the Operative Documents and the Cape Town Convention and in particular (without limitation), if in the State of Registration there shall be, or shall be brought into force, any legislative or other provisions giving effect to the Geneva Convention or otherwise relating to recognition of rights in aircraft, the Lessee shall at its own cost forthwith do all such acts as may be necessary to perfect recognition of the rights of the Lessor as owner and the Security Agent as mortgagee and pledgee of the Aircraft and the rights of the Lessor and the Financing Parties under the Operative Documents in accordance with such legislative or other provisions.
- (c) subject to Clause 15.3 (*Change of Registration*), not without the prior written consent of the Lessor and the Security Agent change the State of Registration;
- (d) not do or knowingly permit to be done or omit or knowingly permit to be omitted to be done any act or thing which might reasonably be expected to jeopardise the rights of the Lessor as owner and the Security Agent as mortgagee and pledgee of the Aircraft and the rights of the Lessor and the Financing Parties under the Operative Documents or the Lessor, the Financing Parties and the other Indemnitees as additional insureds, contract parties and/or loss payees (as applicable) under the Insurances;

- (e) on all occasions when the ownership of the Aircraft, any Engine or any Part is relevant, make clear to third parties that title is held by the Lessor subject to the mortgage;
- (f) not at any time (i) represent or hold out any Relevant Person or any Financing Party as carrying goods or passengers on the Aircraft or as being in any way connected or associated with any operation or carriage (whether for hire or reward or gratuitously) which may be undertaken by the Lessee or any Permitted Sublessee; or (ii) pledge the credit of any Relevant Person or any Financing Party;
- (g) ensure that no later than thirty (30) days after the Delivery Date and thereafter at all times during the Lease Period, there is always affixed, and not removed or in any way obscured, a fireproof plate (having dimensions of not less than 10cm x 7cm) in a reasonably prominent position in the cockpit of the Aircraft adjacent to the certificate of airworthiness and on each Engine stating:

"THIS AIRCRAFT/ENGINE IS OWNED BY YAMASA AIRCRAFT AM1 KUMIAI AS LESSOR REPRESENTED BY ITS MANAGING PARTNER YAMASA CO., LTD. AND IS SUBJECT TO A FIRST PRIORITY MORTGAGE AND PLEDGE IN FAVOUR OF NTT FINANCE CORPORATION AS SECURITY AGENT AND LEASED TO AEROVÍAS DE MÉXICO, S.A. DE C.V. ",

and not allow the name of any other person to be placed on the Airframe or any Engine as a designation that might be interpreted as a claim of ownership or of any interest therein, except that any Permitted Sublessee may operate the Aircraft in its or, as the case may be, the Permitted Sublessee's customary airline livery, including its or, as the case may be, the Permitted Sublessee's name and logo;

- (h) not do or permit to be done anything which may reasonably be expected to expose the Aircraft, any Engine or any Part to penalty, forfeiture, impounding, detention, appropriation, damage or destruction and (without prejudice to the foregoing), if any such penalty, forfeiture, impounding, detention or appropriation, damage or destruction occurs, give the Lessor and the Security Agent notice thereof and use best endeavours to procure the immediate release of the Aircraft, any Engine or the Part, as the case may be;
- (i) not abandon the Aircraft, the Engine or any Part; and
- (j) not attempt, or hold itself out as having any power, to sell or otherwise dispose of the Aircraft, any Engine or any Part.

15.3 Change of Registration

If the Lessee shall enter into a Permitted Sublease, the Lessee or such Permitted Sublessee may re-register the Aircraft, in the name of the Permitted Sublessee under the laws of a country other than an Excluded Country, provided that the Permitted Sublessee shall first obtain the written consent of the Lessor and the Security Agent. Such consent shall not be unreasonably withheld and, without

prejudice to the foregoing, if the Aircraft is to be re-registered with a new Aviation Authority then (at the Lessee's expense) the Lessee shall submit a legal opinion to the Lessor and the Security Agent, in form and substance reasonably satisfactory to the Lessor and the Security Agent, of legal counsel practising in the new Aviation Authority's jurisdiction confirming that:

- (a) the terms (including, without limitation, the governing law, service of process and jurisdictional submission provisions thereof) of the Permitted Sublease and the other documents executed and delivered in connection with the Permitted Sublease are legal, valid, binding and (subject to customary qualifications) enforceable in such jurisdiction;
- (b) it is not necessary for the Lessor or the Security Agent to register or qualify to do business in such jurisdiction (assuming that the Lessor or the Security Agent, as the case may be, has no other contacts with such jurisdiction);
- (c) (unless the Permitted Sublessee shall have agreed to provide insurance reasonably satisfactory to the Lessor covering the risk of requisition of use of the Aircraft by the government of such jurisdiction so long as the Aircraft is registered under the laws of such jurisdiction) that the laws of such jurisdiction require fair compensation by the government of such jurisdiction payable in currency freely convertible into Dollars for the loss of use of the Aircraft in the event of the requisition by such government of such use;
- (d) under the laws of the country in which the Aircraft is to be re-registered:
 - (i) the rights of the Lessor as owner of the Aircraft and the rights and Security Interests of the Security Agent under the New York Law Mortgage and the Mexican Law Pledge shall (subject to customary qualifications) be enforceable and not adversely affected; and
 - (ii) the priority of the Security Interests of the Security Agent under the New York Law Mortgage and the Mexican Law Pledge will be recognised; and
- (e) all filings, recordations and other actions necessary to establish, protect and perfect the rights of the Lessor as owner of the Aircraft and the rights and Security Interests of the Security Agent under the New York Law Mortgage and the Mexican Law Pledge shall have been or will be made;
- (f) there is no strict or absolute liability imposed on the Lessor or any Financing Party under the laws of the relevant jurisdiction unless an absolute defence against the same is available to the Lessor and the Financing Parties under the laws of the relevant jurisdiction; and
- (g) to such further effect with respect to such other matters as the Lessor or the Security Agent may reasonably request (but not broader in scope than the opinions delivered on the closing date by counsel to the Lessee).

15.4 Further Assurance

The Lessee shall, at its own expense, do or cause to be done all acts which may be required under the terms of the Cape Town Convention or any applicable law of any jurisdiction in which the Lessee for the time being bases or operates the Aircraft and with the International Registry, as may be necessary to perfect and preserve the rights and interests of the Lessor and each Financing Party in respect of the Aircraft and of the Lessor in respect of this Agreement and under the Cape Town Convention within such jurisdiction.

15.5 Cape Town Convention Registrations

- (a) Upon the request of the Lessor, the Lessee, at its own cost and expense (and for the avoidance of doubt, the costs and expenses in opening and maintaining the TUE accounts of the Lessor and the Security Agent shall not be at the Lessee's cost), shall from time to time, take all relevant actions and cooperate as may be required to ensure that the Lessor, the Security Agent and the other Financing Parties have and/or obtain the fullest benefit(s) and advantage(s) available under the Convention and/or the Protocol, as adopted by Mexico (including, upon specific request of the Lessor or the Security Agent, with respect to the issuance of an IDERA to the extent such instrument becomes recognised in Mexico after the date hereof and all necessary laws, regulations and amendments of laws and regulations, in each case of Mexico relating to such recognition and measures with respect to the filing and acknowledgement of an IDERA have been fully adopted and implemented in Mexico after the date hereof), in connection with their respective rights and interests in and to the Aircraft and any Engine, and under this Agreement and the other Operative Documents, provided that the Lessee shall only be required take any such action or provide any such cooperation subject to, and in accordance with all applicable laws and regulations of Mexico, and, in the case of the issuance of an IDERA, upon the deactivation or termination of the Deregistration Power of Attorney in effect at that time if so required by the applicable laws and regulations of Mexico. For the purposes of this Clause 15.5, the following terms and/or expressions have the following meanings:

"Cape Town Convention" means the Convention on International Interests in Mobile Equipment (the **"Convention"**) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the **"Protocol"**) both signed in Cape Town, South Africa on 16 November 2001, together with any protocols, regulations, rules, orders, agreements, instruments, amendments, supplements or revisions or otherwise, that have or will be subsequently made in connection with the Convention or the Protocol by the "Supervisory Authority" (as defined in the Protocol), the "International Registry" or "Registrar" (as defined in the Convention) or appropriate "registry authority" (as defined in the Protocol) or any other international, or national, body or authority (in each case, utilising the English-language version thereof but subject to any declarations of a Contracting State);

"Cape Town UK Regulations" means the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 by which the Cape Town Convention has been implemented in the United Kingdom;

"**Consolidated Text**" means the Consolidated Text of the Convention and the Protocol attached to Resolution No. 1 of the Final Act of the Diplomatic Conference to adopt the Convention and the Protocol held under the auspices of ICAO and UNIDROIT at Cape Town from 29 October to 16 November 2001;

"**ICAO**" means the International Civil Aviation Organisation;

"**UNIDROIT**" means the International Institute for the Unification of Private Law; and

the terms: "assignment" (for the purposes of this Clause 15.5 only), "Contracting State", "International Interest" and "situated in" shall have the meaning given to them in (or, as appropriate, shall be construed in accordance with) the Consolidated Text;

- (b) Without limiting Clause 15.5(a), the parties agree that the following International Interests, sales and assignments in respect of the Aircraft and/or any Engine, at the cost of the Lessee (and for the avoidance of doubt, the cost and expense in opening and maintaining the TUE accounts of Lessor and Security Agent shall not be at the Lessee's cost), shall be filed with the International Registry promptly following (and in any event not later than five (5) Business Days after) the Delivery Date and shall have the following order of priority (with the first listed having the highest priority under the Cape Town Convention and subsequent interests having decreasing priority), notwithstanding any variation from that order of priority which may appear according to the time of registration of such International Interests, sales and assignments in the records of the International Registry:
 - (i) the International Interests under the New York Law Mortgage with the Security Agent as creditor and the Lessor as debtor;
 - (ii) the International Interests under the Mexican Law Pledge with the Security Agent as creditor and the Lessor as debtor;
 - (iii) the International Interests under this Agreement with the Lessor as creditor and the Lessee as debtor and the transfer of the right to discharge under this Agreement with the Lessor as transferor and the Security Agent as transferee;
 - (iv) the assignment of International Interests under the Security Assignment with the Security Agent as assignee and the Lessor as assignor; and
 - (v) the contract of sale (as defined in the Cape Town Convention) created by the Seller Bill of Sale with the Seller as seller and the Lessor as buyer.

The words "creditor", "debtor", "seller", "buyer", "assignor" and "assignee" in this Clause 15.5(b) are used as such terms are used in the Cape Town Convention to reflect the relevant parties for the purpose of

effecting registration of such International Interest or sale in the International Registry.

- (c) The Lessee hereby consents to the registrations specified in Clause 15.5(b) and agrees that such registrations shall have the order of priority as specified therein or as the Lessor and the Security Agent shall otherwise request. The Lessee agrees to consent, cooperate and to take such actions, insofar as any such consent, cooperation or action of the Lessee is required, as are necessary to timely effect the registrations of such International Interests, sales, assignment or other interest as an International Interest, sale, assignment or other interest with the International Registry in such order.
- (d) The Lessee shall not, without the prior written consent of the Lessor and the Security Agent:
 - (i) initiate or consent to any registrations with the International Registry with respect to the Airframe or any Engine other than the registrations expressly permitted or required by the terms of this Agreement; or
 - (ii) issue a deregistration power of attorney or similar instrument with respect to the Aircraft or any Engine to any person other than the Lessor and the Security Agent; or
 - (iii) issue an IDERA or similar instrument with respect to the Aircraft or any Engine to any person other than the Security Agent or, following the discharge of the New York Law Mortgage and the Mexican Law Pledge, if the Lease Period is continuing, the Lessor.
- (e) The parties hereto agree that, for all purposes under the Cape Town Convention:
 - (i) this Agreement constitutes a separate International Interest with respect to the Airframe and each Engine;
 - (ii) each of the Airframe and each Engine constitutes an Aircraft Object; and
 - (iii) this Agreement constitutes an agreement for the registration of the Airframe and such registration shall be made by the Lessee (or its legal counsel on its behalf) pursuant to this Agreement.
- (f) Each of the parties acknowledges and agrees that for the purposes of the Cape Town Convention (to the extent applicable hereto), separate rights may exist with respect to the Airframe and the Engines.
- (g) The parties hereto agree that, for all purposes under the Cape Town Convention:
 - (i) any Event of Default shall also constitute a "default" for the purposes of the Cape Town Convention (including under Article 17(1) of the Consolidated Text) under this Agreement; and

- (ii) none of the remedies given in favour of the Lessor or the Security Agent or under or pursuant to this Agreement (whether by way of assignment or otherwise) is "manifestly unreasonable" for the purposes of the Cape Town Convention.

16. **INSURANCE**

16.1 **Insurances**

- (a) The Lessee shall, at its own expense, maintain, in full force at all times during the Lease Period (and with respect to Clause 16.8 (*Continuing Insurance for Indemnity*), such longer period as is mentioned therein) the Insurances in respect of the Aircraft complying with the requirements of this Clause 16 and Schedule 6 (*Insurance Requirements*).
- (b) The Insurances shall be subject to such exclusions, as may be approved by the Lessor and the Security Agent, each acting reasonably.
- (c) The Insurances shall be effected either:
 - (i) on a direct basis with leading internationally reputable insurers who normally participate in aviation insurances in the leading international insurance markets and led by leading internationally reputable underwriter(s) approved by the Lessor and the Security Agent, in each case, acting reasonably; or
 - (ii) with a single insurer or group of insurers approved by the Lessor and the Security Agent who does not fully retain the risk but effects reinsurance of all risks insured with reinsurers in the leading international insurance markets and through leading internationally reputable brokers as may be approved by the Lessor and the Security Agent (the "**Reinsurances**").

The insurers referred to in Clauses 16.1(c)(i) and (ii) above shall have an A.M. Best or comparable rating agency rating of at least "A". The Lessor and the Security Agent may require the Lessee to substitute an insurer if A.M. Best or a comparable agency downgrades the rating of such insurer below "A-" (in the case of A.M. Best) or a comparable rating (in the case of a comparable rating agency), in which case Lessee shall provide evidence of the appointment of the new insurer to the Lessor and the Security Agent within thirty (30) calendar days after the date of such notice.

16.2 **AVN67B**

The Lessor agrees that notwithstanding the provisions of this Clause 16 and Schedule 6 (*Insurance Requirements*), the Lessee shall be entitled to maintain insurance in respect of the Aircraft for the purposes of this Agreement which reflects Lloyds' Airline Financing/Lease Contract Endorsement AVN67B (as at the date hereof) ("**AVN67B**"). In the event that any provision of AVN67B conflicts or is otherwise inconsistent with the requirements of this Clause 16 and Schedule 6 (*Insurance Requirements*) then (so long as it shall be general industry practice to insure aircraft financed or leased on the basis of such endorsement) such conflicting or inconsistent provision of AVN67B (as at the date hereof) shall

prevail and such endorsement shall be deemed to satisfy the requirements of this Agreement.

16.3 **Change in Insurance Market**

In the event that there is a change in generally accepted industry-wide practice with respect to the insurance of aircraft of similar type to the Aircraft operating in similar circumstances and markets (whether relating to all, or any of, the types of insurance required to be effected under the foregoing provisions of this Clause 16 and Schedule 6 (*Insurance Requirements*)), the Lessor and the Security Agent, acting reasonably (the Lessor and the Security Agent's independent insurance advisers having consulted with the Lessee's independent insurance advisers prior to the Lessor and the Security Agent making such determination) shall be entitled to stipulate amendments to the Insurances so that:

- (a) the scope and level of cover for the Insurances are maintained in line with the then applicable generally accepted industry-wide practices for such insurances; and
- (b) the interests of the Lessor, the Financing Parties and the Indemnitees continue to be protected on similar terms and scope as provided herein,

provided that, such amendments to the Insurances are reasonably commercially available to the Lessee and are generally accepted by the other air operators operating the aircraft of similar type to the Aircraft in similar circumstances and markets.

16.4 **Change of Broker**

If at any time the Lessor and/or the Security Agent wishes to revoke its approval of any insurer or reinsurer, the Lessor and/or the Security Agent and/or its brokers shall consult with the Lessee and the Lessee's insurers or, if applicable, brokers (as for the time being approved by the Lessor and the Security Agent) regarding whether that approval should, in light of all circumstances at that time and taking into account the nature of the issue or complaint being raised by the Lessor and/or the Security Agent, be revoked to protect the interests of the parties insured. If, following the consultation, the Lessor and/or the Security Agent reasonably considers that any change should be made and the Lessee is able to make the requested change (taking account of market practice in the international aviation insurance markets and all applicable law in the State of Registration), the Lessee shall then promptly arrange or procure the arrangement of alternative cover satisfactory to the Lessor and the Security Agent within a pre-agreed time period.

16.5 **Insurance Covenants**

The Lessee shall:

- (a) ensure that all legal requirements as to insurance of the Aircraft, any Engine or any Part which may from time to time be imposed by the laws of the State of Registration or any state to, from or over which the Aircraft may be flown and the interests of the Lessor and the Financing Parties in the Insurances, in so far as they affect or concern the operation of the

Aircraft, are complied with, and in particular those requirements compliance with which is necessary to ensure that:

- (i) the Aircraft is not in material or likely danger of detention or forfeiture;
 - (ii) the Insurances remain valid and in full force and effect for the benefit of the Lessor and the Financing Parties; and
 - (iii) the interests of the Lessor and the Financing Parties and the other Indemnitees in the Insurances and the Aircraft or any Part are not thereby prejudiced;
- (b) comply with the terms and conditions of each policy of the Insurances and not do, consent or agree to any act or omission which:
 - (i) invalidates or may reasonably be expected to invalidate the interests of the Lessor and the Financing Parties in and under the Insurances; or
 - (ii) renders or may reasonably be expected to render void or voidable the whole or any part of any of the Insurances as against the Lessor and the Financing Parties; or
 - (iii) brings any particular insured liability within the scope of an exclusion or exception to the Insurances;
- (c) not without the prior written approval of the Lessor and the Facility Agent take out any insurance in respect of the Aircraft other than those required under this Agreement where such insurances will prejudice the Insurances or recovery thereunder;
- (d) upon written request, provide to the Lessor and the Security Agent copies of documents evidencing the Insurances **provided always that** such information is not of a nature that that the Lessee is prohibited from disclosing by reason of a duty of confidentiality (not discriminating in respect of this Aircraft) owed by it to the insurers or any other person connected with the Insurances or otherwise prohibited from disclosing by reason of applicable law);
- (e) upon written request, provide to the Lessor and the Security Agent evidence that the Insurance premiums due and payable have been paid;
- (f) not make any modification or alteration to the Insurances material and adverse to the interests of the Lessor or any of the Financing Parties or the other Indemnitees;
- (g) be responsible for any deductible under the Insurances;
- (h) if at any time insurance clause AVN 2000 or its successor is endorsed on the policies of Insurance, ensure that the insurance write back clauses AVN 2001 and AVN 2002 as applicable (or any equivalent clauses) are endorsed on the policies of Insurance required to be maintained under this Agreement and give and comply with all representations, warranties and

undertakings required by the insurers or reinsurers in connection with such clauses;

- (i) provide any other information and assistance in respect of the Insurances which the Lessor and the Security Agent may from time to time reasonably require and which the Lessor and the Security Agent or the Financing Parties cannot, without the assistance or consent of the Lessee, resolve directly with the insurers (**provided always that** such information is not of a nature that the Lessee is prohibited from disclosing by reason of a duty of confidentiality (not discriminating in respect of this Aircraft) owed by it to the insurers or any other person connected with the Insurances or otherwise prohibited from disclosing by reason of applicable law); and
- (j) ensure that not less than 100% (or any other percentage to be agreed by the Lessor and the Security Agent, acting reasonably) of the Insurances are reinsured in the international aviation insurance markets in the London or New York reinsurance market and such reinsurances shall be in a form reasonably satisfactory to the Lessor and the Security Agent.

16.6 **Renewal of Insurances**

The Lessee shall commence renewal procedures at least thirty (30) days prior to expiry of any of the Insurances, and shall provide to the Lessor and the Security Agent:

- (a) if requested by the Lessor and/or the Security Agent at the time, an update of renewal negotiation ten (10) days prior to each expiry date; and
- (b) copies of the certificates of insurance (and, where applicable, certificates of reinsurance), and broker's (and, where applicable, any reinsurance broker's) letter of undertaking in a form reasonably acceptable to the Lessor and the Security Agent, in English, detailing the coverage not later than seven (7) days prior to each renewal date.

16.7 **Failure to Insure**

If the Lessee fails to maintain the Insurances in compliance with this Agreement, the Lessee shall:

- (a) forthwith ground or cause to be grounded the Aircraft and shall keep or procure that the Aircraft be kept grounded until such time as the Insurances shall again be in full force and effect; and
- (b) immediately notify the Lessor and the Security Agent of the non-compliance of the Insurances and provide the Lessor and the Security Agent with full details of any steps which the Lessee is taking or proposes to take, in order to remedy such non-compliance;

and each of the Lessor and the Financing Parties and the other Indemnitees will be entitled but not bound (without prejudice to any other rights of the Lessor and the Security Agent under this Agreement):

- (c) to pay the premiums due or to effect and maintain insurances available to them (being generally on the same terms and scope as the insurances set

out in this Agreement) or otherwise remedy the Lessee's failure in such manner (including, without limitation, to effect and maintain an "owner's interest" policy) as they consider appropriate. Any sums so expended by them will become immediately due and payable by the Lessee to the Lessor and/or the Security Agent, as the case may be, together with interest thereon at the Default Rate, from the date of expenditure up to the date of reimbursement by the Lessee; and

- (d) at any time while such failure is continuing to require the Aircraft to remain at any airport or to proceed to and remain at any airport designated by it until the failure is remedied to its satisfaction.

16.8 Continuing Insurance for Indemnity

The Lessee shall effect and maintain (at no cost to the Lessor, the Financing Parties or the other Indemnitees) aviation liability insurance after the Lease Period with respect to the Lessee's liability under the indemnities set out in this Agreement for a sum not less than the liability insurance amount required hereunder immediately prior to the end of the Lease Period for such period as the Lessor and/or the Security Agent may reasonably require (but in any event for not more than two (2) years after each of the Lessor, the Financing Parties and the Indemnitees cease to have any interest in the Aircraft or, if earlier, until the next "C" Check of the Aircraft after each of the Lessor, the Financing Parties and the Indemnitees cease to have any interest in the Aircraft) which provides for each of the Lessor and the Financing Parties and the other Indemnitees to be named as additional insured. The Lessee's obligation in this Clause 16.8 shall not be affected by the Lessee ceasing to be Lessee of the Aircraft and/or any of the Lessor, the Financing Parties or other Indemnitees ceasing to have any interest in respect of the Aircraft.

16.9 Insurances for Lessee

The Lessee may, at its option and at its sole expense, obtain additional insurance with respect to the Aircraft, provided that no such insurance shall have the effect of suspending, impairing, defeating, invalidating or rendering unenforceable or reducing, in whole or in part, the coverage of or the proceeds payable under any insurance required to be provided and maintained under this Clause 16.

16.10 Application of Insurance Proceeds

As between the Lessor, the Security Agent (on behalf of the Financing Parties) and the Lessee:

- (a) all insurance payments, exclusive of any payments received in excess of the Agreed Value for the Aircraft, received as the result of a Total Loss occurring during the Lease Period shall, until the end of the Security Period, be paid to the Security Agent, and thereafter, to the Lessor;
- (b) all insurance proceeds of any damage or loss to the Aircraft, any Engine or any Part occurring during the Lease Period not constituting a Total Loss and in excess of the Insurance Claims Threshold shall, until the end of the Security Period, be paid to the Security Agent, and thereafter, to the Lessor and applied in payment (or to reimburse the Lessee) for repairs or

replacement property, upon the Security Agent (or, following the end of the Security Period, the Lessor) being satisfied (acting reasonably) that the repairs or replacement have been effected in accordance with this Agreement;

- (c) insurance proceeds in amounts below the Insurance Claims Threshold and any payments in excess of the Agreed Value for the Aircraft may be paid by the insurers towards any settlement claim due to be paid to a repairer or otherwise directly to the Lessee, as the case may be;
- (d) all insurance proceeds in respect of third party liability will, except to the extent paid by the insurers to the relevant third party, be paid (i) to the Security Agent (or, following the end of the Security Period, the Lessor) to be paid directly in satisfaction of the relevant liability or (ii) to the Lessee in reimbursement of any payment so made; and
- (e) notwithstanding paragraphs (a), (b) or (c) of this Clause 16.10, if at the time of the payment of any such insurance proceeds an Event of Default has occurred and is continuing, all such proceeds will be paid to or retained by the Security Agent (or, following the end of the Security Period, the Lessor) to be applied toward payment of any amounts which may be or become payable by the Lessee in such order as the Security Agent (or, following the end of the Security Period, the Lessor) sees fit or as the Security Agent (or, following the end of the Security Period, the Lessor) may elect.

To the extent that insurance proceeds are paid to the Lessee, the Lessee agrees to comply with the foregoing provisions and apply or pay over such proceeds as so required.

17. LOSS AND REQUISITION

17.1 Total Loss with respect to Aircraft

- (a) Upon the occurrence of a Total Loss with respect to the Airframe, or the Airframe and the Engines and/or engines then installed thereon, the Lessee shall forthwith (and in any event within five (5) days after such occurrence) give the Lessor and the Security Agent written notice of such Total Loss, and pay or cause to be paid to the Lessor on the date (the "**Total Loss Payment Date**") which is the earlier of sixty (60) days after the occurrence of the Total Loss and the date on which the Total Loss Proceeds are received, with respect to such Total Loss, but without prejudice to the continuing obligations of the Lessee (as to payment, indemnity or otherwise) under this Agreement and **provided that** Rental in respect of any Rental Payment Date on or after the occurrence of such Total Loss but on or before the Total Loss Payment Date shall remain payable in full, the aggregate of:
 - (i) the Stipulated Loss Value as at the Total Loss Payment Date; and
 - (ii) all amounts of Rental due and unpaid as at the Total Loss Payment Date; and

- (iii) all other amounts (if any) which are then payable by the Lessee under this Agreement or any other Operative Document.
- (b) If the Lessee makes the payments provided for in Clauses 17.1(a)(i), (ii) and (iii) with respect to such Total Loss, then upon payment in full by the Lessee of all those amounts on the Total Loss Payment Date:
 - (i) the obligation of the Lessee to pay Rental for any period commencing on or after the pertinent Total Loss Payment Date shall terminate and the Lease Period shall end; and
 - (ii) the Lessor shall transfer title to the Aircraft subject to and in accordance with Clause 22 (*Transfer Provisions*).

17.2 Total Loss with Respect to an Engine; Substitution of Engines

- (a) If a Total Loss shall have occurred with respect to an Engine that is not a Total Loss with respect to the Airframe, the Lessee shall forthwith (and in any event within five (5) days after such occurrence) give the Lessor written notice of such Total Loss. The Lessee shall within one hundred and eighty (180) days of the occurrence of such Total Loss, but in any event upon or prior to the end of the Lease Period, substitute a Replacement Engine for such Engine. In the event the Lessee has been unable to locate a suitable replacement within such one hundred and eighty (180) day period, but continues to diligently seek such a replacement, the Lessee shall pay any insurance proceeds received in respect of such Total Loss of the Engine to the Lessor on the one hundred and eightieth (180th) day after such Total Loss of the Engine, which amount shall be held by the Lessor in a separate account pledged to the Security Agent until the Lessee acquires a replacement engine and transfers title thereto to the Lessor in accordance with the terms hereof, **provided that** in any event, the Lessee shall within three hundred and sixty (360) days of the occurrence of such Total Loss of the Engine (or if earlier, by the end of the Lease Period), substitute a Replacement Engine for such Engine.
- (b) In either such event described in Clause 17.2(a), immediately upon the effectiveness of such substitution (as provided in Clause 17.2(c)) and, subject to applicable law, without further act:
 - (i) ownership of the Replacement Engine shall thereupon vest in the Lessor (subject only to Permitted Liens) and be subject to the New York Law Mortgage and the Mexican Law Pledge;
 - (ii) ownership of the replaced Engine shall thereupon vest in the Lessee, subject to Clause 17.2(e) and such replaced Engine shall no longer be deemed an Engine hereunder; and
 - (iii) such Replacement Engine shall become subject to this Agreement and be deemed an Engine for all purposes hereof to the same extent as the Engine replaced.
- (c) In order to effect any such substitution described in Clause 17.2(a), the following documents shall be duly authorised, executed and delivered by

the respective party or parties thereto (and recorded, if appropriate) and an executed counterparty of each shall be delivered to the Lessor:

- (i) a supplement to this Agreement covering the Replacement Engine;
 - (ii) a full warranty bill of sale (as to title), which may except Permitted Liens, in form and substance satisfactory to the Lessor, covering the Replacement Engine, executed by the owner thereof in favour of the Lessor;
 - (iii) such evidence of compliance with the insurance provisions of Clause 16 (*Insurance*) with respect to the Replacement Engine as the Lessor may reasonably request; and
 - (iv) a certificate of an authorised officer of the Lessee certifying that the Replacement Engine is of at least equal value, utility and remaining economic useful life, and in as good operating condition, as the Engine it replaces assuming such Engine had been maintained in the condition required hereunder.
- (d) The Lessee shall pay the costs and expenses (including, without limitation, fees and expenses of counsel) of the Lessor incurred in connection with any such substitution described in Clause 17.2(a).
- (e) Upon any such substitution described in Clause 17.2(a), the Lessor shall transfer without recourse or warranty (except for a warranty that the Lessor is conveying the same interest in such Engine as it received on the Delivery Date and the absence of any Lessor Security Interest) all right, title and interest of the Lessor in and to the replaced Engine, subject to the rights of insurers, to the Lessee or its designee "as-is, where-is" and such replaced Engine shall no longer be deemed an Engine hereunder and shall no longer be subject to this Agreement.
- (f) The Lessee shall, at its own cost and expense, provide the Lessor with such documents as the Lessor may reasonably request evidencing such vesting of title in the Lessor referred to in Clause 17.2(b)(i) and shall, at its own cost and expense, do or cause to be done all acts which may be required under the terms of any applicable law of any jurisdiction in which the Replacement Engine was, at the relevant time, situated or deemed to be situated at the time of such substitution (as provided in Clause 17.2(c)) and the State of Registration and under the Cape Town Convention, as may be necessary to perfect and preserve the rights and interests of the Lessor and each Financing Party in respect of the Aircraft and Replacement Engine.

17.3 Non-Insurance Payments Received on Account of a Total Loss

As between the Lessor and the Lessee, any payments on account of a Total Loss (other than insurance proceeds or other payments the application of which is provided for in this Clause 17 (*Loss and Requisition*), or elsewhere in this Agreement, as the case may be) with respect to the Airframe or any Engine or any Part received at any time by the Lessor, the Lessee or any Permitted Sublessee from any governmental authority or other person will be applied as follows:

- (a) in the case of such payments received with respect to a Total Loss of the Airframe, or the Airframe and the Engines and/or engines then installed thereon, so much of such payments as shall not exceed the aggregate of the amounts required to be paid by the Lessee pursuant to Clauses 17.1(a)(i), (ii) and (iii) with respect to such Total Loss, shall be applied in reduction of the Lessee's obligation to pay such amounts, if not already paid by the Lessee, or, if already paid by the Lessee, to reimburse the Lessee for its payment of such amounts (but without duplication of amounts so applied pursuant to Clause 16.10 (*Application of Insurance Proceeds*)), and the balance, if any, of such payments remaining thereafter shall be divided between the Lessor and the Lessee as their respective interests may appear; and
- (b) in the case of such payments received with respect to a Total Loss of an Engine or any Part, such payments shall be paid over to, or retained by, the Lessee or its designee; **provided that**, until the Lessee has so complied with the terms of Clause 17.2 (*Total Loss with Respect to an Engine; Substitution of Engines*), the Lessor may hold (and the Lessee shall promptly pay or cause to be paid to the Lessor) any such payment as security for the performance of the Lessee's obligations under Clause 17.2 (*Total Loss with Respect to an Engine; Substitution of Engines*) with respect to such Total Loss.

17.4 Requisition for Use

- (a) In the event of any (i) hijacking, theft, disappearance or seizure or (ii) requisition for use by any government, so long as it does not constitute a Total Loss of the Airframe or any Engine or engines installed on the Airframe, the Lessee shall promptly notify the Lessor or cause the Lessor to be notified of such hijacking, theft, disappearance, seizure or requisition and all of the Lessee's obligations under this Agreement shall, in any event, continue to the same extent as if such event had not occurred, except to the extent that any failure or delay in repairing or maintaining the Aircraft shall be caused by such hijacking, theft, disappearance, seizure or requisition (**provided** that, the Lessee's obligation to pay Rental and its other payment obligations hereunder shall not be reduced, delayed, or excused in any manner whatsoever by such event).
- (b) So long as no Event of Default shall have occurred and be continuing, any payments received by the Lessor or the Lessee from such government with respect to such requisition of use referred to in Clause 17.4(a)(ii) above during the Lease Period shall be paid over to, or retained by, the Lessee. All payments received by the Lessor or the Lessee from such government for the use of the Airframe or any Engine after the Lease Period shall be paid over to, or retained by, the Lessor.
- (c) In the event of a Total Loss of an Engine resulting from the requisition for use by a government of such Engine (but not the Airframe), the Lessee shall replace or cause to be replaced such Engine hereunder by complying with the terms of Clause 17.2 (*Total Loss with Respect to an Engine; Substitution of Engines*) and any payments received by the Lessor or the Lessee from such government with respect to such requisition shall be paid over to, or retained by, the Lessee or its designee; **provided that**, until the

Lessee has so complied with the terms of Clause 17.2 (*Total Loss with Respect to an Engine; Substitution of Engines*), the Lessor may hold (and the Lessee shall promptly pay or cause to be paid to the Lessor) any such payment as security for the performance of the Lessee's obligations under Clause 17.2 (*Total Loss with Respect to an Engine; Substitution of Engines*) with respect to such Total Loss.

18. EVENTS OF DEFAULT

Each of the following, unless waived by the Lessor in writing, is an Event of Default and a repudiatory breach by the Lessee (but not a termination) of this Agreement and its obligations hereunder (irrespective of whether any such event shall be voluntary or involuntary and howsoever caused or arising):

- (a) ***Non-payment:*** the Lessee fails to make any payment under any Operative Document at the place and in the currency in which it is expressed to be payable within four (4) Business Days of the due date (in the case of Rental payments) and within six (6) Business Days of written notice (in the case of all other payments due and payable under the Operative Documents); or
- (b) ***Insurance:*** the Lessee fails to comply with any provision of Clause 16 (*Insurance*) or Clause 12.1(i) or any of the Insurances required to be maintained under this Agreement are cancelled or terminated or otherwise cease to be in full force and effect for any reason whatsoever, or a notice of cancellation is given in respect of any of such Insurances (and such notice is not discharged or set aside five (5) Business Days prior to the date on which the cancellation or termination of such Insurances is due to take effect) provided that, no Event of Default shall occur if such failure is the result of such insurances not being available on commercial terms and so long as the Aircraft is grounded and safely stored and is not flown during the period and continues at all times to be covered by a "ground risk only" insurance policy complying with the provisions of this Agreement; or
- (c) ***Failure in Accepting Delivery:*** the Lessee fails to accept delivery of the Aircraft if the Aircraft is properly tendered for delivery by the Lessor in accordance with the terms of this Agreement; or
- (d) ***Corporate Existence:*** any Lessee Party fails to maintain its corporate existence; or
- (e) ***Representation:*** any representation or warranty made (or deemed to be repeated) by any Lessee Party in or pursuant to any Operative Document or in any document or certificate or statement executed by such Lessee Party pursuant to any Operative Document is or proves to have been incorrect when made or deemed to be repeated and such incorrectness might reasonably be expected to have a Material Adverse Effect or any of the Lessor's or the Financing Parties' rights and/or interests in, to or under the Aircraft, this Agreement or any of the other Operative Documents might reasonably be expected to be prejudiced or impaired thereby and, if the circumstances giving rise to the breach of such representation or warranty are in the opinion of the Lessor capable of being remedied, such

circumstances are not remedied to the Lessor's satisfaction within thirty (30) days after notice from the Lessor to the Lessee requiring such remedy; or

- (f) **Breach:** other than the obligations the breach of which is referred to elsewhere in this Clause 18, any Lessee Party fails to comply with any other provision of any Operative Document and, if such failure is in the opinion of the Lessor capable of remedy, such failure continues for thirty (30) days after notice from the Lessor to such Lessee Party requiring such remedy; or
- (g) **Authorisations:** any Authorisation required in connection with the Operative Documents, including:
 - (i) any Authorisation required by any Lessee Party to obtain and transfer freely Dollars (or any other relevant currency) out of any relevant country; or
 - (ii) any Authorisation required by any Lessee Party to authorise, or required in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of any Operative Document or the performance by any Lessee Party of its obligations under any Operative Document; or
 - (iii) the registration of the Aircraft, the air operator's certificate of the Lessee or the Aircraft's certificate of airworthiness or the New York Law Mortgage or the Mexican Law Pledge; or
 - (iv) the air transportation licence (*título de concesión*) of the Lessee or any other airline licence or air transport licence required by the Lessee,

is modified in a manner such that any Lessee Party's ability to perform and comply with any of its obligations as and when required under the terms of this Agreement or any other Operative Document to which such Lessee Party is a party is likely to be affected in any material adverse respect or any of the Lessor's or the Financing Parties' rights and/or interests in, to or under the Aircraft, this Agreement or any of the other Operative Documents might reasonably be expected to be prejudiced or impaired thereby, is withheld, or is revoked, suspended, cancelled, withdrawn, terminated or not renewed, or otherwise ceases to be in full force and effect for any reason whatsoever and is not, as applicable, restored, replaced, returned, re-granted or renewed within fifteen (15) Business Days; or

- (h) **Insolvency:** other than in respect of the Bankruptcy Cases,
 - (i) any Lessee Party is unable to pay its debts as they fall due or is insolvent, admits in writing its inability to pay its debts as they fall due or files for *concurso mercantil*; or
 - (ii) any Lessee Party suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness, or any such Lessee Party files for *concurso mercantil*; or

(i) ***Liquidation and Similar Proceedings:***

- (i) a meeting of the shareholders or directors of any Lessee Party is convened to consider a resolution to present an application for *concurso mercantil*, an administration order or to appoint an administrator (whether out of court or otherwise), *conciliador* or *síndico* or any such resolution is passed; or
- (ii) other than in respect of the Bankruptcy Cases, any step (including filing of a petition or affidavit, giving of notice, petition proposal or convening a meeting) is taken with a view to a composition, assignment or arrangement with any creditors of, or the rehabilitation, administration (whether out of court or otherwise), custodianship, liquidation, examinership, protection from creditors, *concurso mercantil* or dissolution or *liquidación* of, any Lessee Party or any other insolvency proceedings involving any Lessee Party; or
- (iii) other than in respect of the Bankruptcy Cases, any order is made or resolution passed for any such composition, assignment, arrangement, rehabilitation, administration (whether out of court or otherwise), custodianship, liquidation, examinership, dissolution, *concurso mercantil* or insolvency proceedings, or any Lessee Party becomes subject to or enters into any of the foregoing; or
- (iv) any liquidator, examiner, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, *conciliador*, *síndico* or similar officer (in each case, whether out of court or otherwise) is appointed in respect of any Lessee Party or its respective directors or any of its respective assets,

provided that it is agreed that there shall be no Event of Default in respect of the matters in Clause 18(i) above:

- (X) if the circumstances arise by virtue of a solvent reconstruction or merger or such other reorganisation or matter previously agreed to in writing by the Lessor and the Security Agent; or
- (Y) if, in respect of any steps taken or order or appointment as referred to in Clause 18(i)(ii), (iii) and (iv) in each case initiated by a person not connected to such Lessee Party:
 - (x) such Lessee Party can satisfy the Lessor that the step taken or the order or appointment, as referred to in such clauses, is frivolous or vexatious and that the same is being disputed in good faith by appropriate legal proceedings by such Lessee Party and that the Aircraft is not endangered, imperilled or liable to seizure, loss or forfeiture as a result of such action; and

- (y) the relevant step or order or appointment (as the case may be) is revoked, set-aside, discharged, vacated or otherwise terminated within thirty (30) days of the commencement of such step or making of such order or appointment (as applicable); or

(j) ***Receiver:***

- (i) an administrative or other receiver or manager, *conciliador* or *síndico* or other insolvency officer (in each case, whether out of court or otherwise in accordance with applicable law) is appointed in respect of any Lessee Party, all or any material part of its assets; or
- (ii) any Lessee Party requests any person to appoint such a receiver or manager (in each case, whether out of court or otherwise); or
- (iii) any other steps are taken to enforce any Security Interest over all or any substantial part of the assets of any Lessee Party; or
- (iv) any attachment, sequestration, distress or execution affects any substantial part of the assets of any Lessee Party, and which is not discharged within ten (10) Business Days,

provided that it is agreed that there shall be no Event of Default in respect of the matters in Clause 18(j)(iii) above if such steps are initiated by a person not connected to such Lessee Party and:

- (x) such Lessee Party can satisfy the Lessor that the step taken is frivolous or vexatious and that the same is being disputed in good faith by appropriate legal proceedings by such Lessee Party and that the Aircraft is not endangered, imperilled or liable to seizure, loss or forfeiture as a result of such action; and
 - (y) the relevant step is revoked, set-aside, discharged, vacated or otherwise terminated within thirty (30) days of the commencement of such step; or
- (k) ***Other Jurisdiction:*** there occurs in relation to any Lessee Party any event in any jurisdiction which corresponds with any of those mentioned in Clauses 18(i), (j) or (k); or
- (l) ***Suspension of Business:*** any Lessee Party ceasing or suspending or threatening to cease or suspend its business (in the case of the Lessee, as a scheduled international air carrier) or any Lessee Party merging or consolidating with any person and the merged or consolidated entity failing to assume such Lessee Party's obligations under the Operative Document to which it is a party; or
- (m) ***Disposal:*** any Lessee Party disposes, conveys or transfers or threatens to dispose, convey or transfer all or a material part of its assets such that its liability to perform and comply with any of its obligations as and when required under the terms of this Agreement or any other Operative

Document to which such Lessee Party is a party is likely to be affected in any material adverse respect; or

- (n) **Attachment:** any attachment, sequestration, seizure, distress or execution affects the Aircraft as a result of any action or omission of any Lessee Party or any Permitted Sublessee and which, provided such Lessee Party or the Permitted Sublessee is taking all available steps to effect such discharge or release, is not discharged or released within ten (10) Business Days; or
- (o) **Rights and Remedies:** any Lessee Party or any other person claiming by or through any Lessee Party challenges the existence, validity, enforceability or priority of the rights of the Lessor as owner, or the Security Agent as mortgagee, pledgee or assignee, of the Aircraft or any Lessee Party repudiates an Operative Document or evidences an intention to repudiate an Operative Document; or
- (p) **Security Documents:** at any time after the Security Period, any Security Document in favour of the Lessor is or becomes wholly or partly invalid or unenforceable and the Lessee has not either (i) remedied the circumstance or issue giving rise to the invalidity or unenforceability, to the satisfaction of the Lessor or (ii) provided alternative Security Interest, or entered into alternative documentation, to the satisfaction of the Lessor, within twenty (20) days of the occurrence of such event. It is agreed that the Lessee shall not be afforded the opportunity to remedy the situation and an immediate Event of Default shall be deemed to have arisen upon the occurrence of the circumstances referred to above, if the Lessor determines that the rights of the Lessor under any Operative Document or with respect to the Aircraft are, or may reasonably be expected to be, materially and adversely prejudiced by a delay in the occurrence of such Event of Default; or
- (q) **Material Adverse Effect:** an event or series of events occurs which has a material adverse effect on the ability of the Lessee or the Guarantor to perform any of its obligations under this Agreement or any other Operative Documents and, unless such material adverse effect is a final ruling incapable of further appeal or is otherwise not capable of remedy, in each case, in the Lessor's reasonable opinion, the Lessee or the Guarantor fails to remedy or otherwise to wholly mitigate or offset, as the case may be, such material adverse effect to the reasonable satisfaction of the Lessor and the Security Agent within thirty (30) days of receipt of written notice from the Lessor to the Lessee and/or the Guarantor requiring the same to be remedied or to be wholly mitigated or offset, as the case may be; or
- (r) **Registration of Aircraft:** the registration of the Aircraft with any Aviation Authority is cancelled or withdrawn except any cancellation or withdrawal as a result of a Total Loss or for the purposes of and where the Aircraft is re-registered with any Aviation Authority in accordance with this Agreement; or
- (s) **Registration of Ownership and Mexican Law Pledge/New York Law Mortgage:** the failure by the Lessee to file all documents in the Lessee's power and control necessary to maintain or procure the maintenance of the

registration of the ownership interest of the Lessor and the Mexican Law Pledge and the New York Law Mortgage with the International Registry, the AFAC (other than in respect of the New York Law Mortgage) and the RAM (other than in respect of the New York Law Mortgage) or in any other relevant jurisdiction at the time stipulated and pursuant to the terms set out in this Agreement and any other Operative Document; or

- (t) ***Return of Aircraft:*** the Lessee fails to return the Aircraft at the time, in the manner, at the place and in the condition required by this Agreement when obliged so to do pursuant to this Agreement;
- (u) ***Condition Subsequent:*** failure by any Lessee Party to comply with its obligations, or provide those documents specified, under Clause 3.4 (*Conditions Subsequent*) or any similar clauses in any other Operative Documents in favour of the Lessor or the Financing Parties, in each case, by the dates specified therein; or
- (v) ***Bankruptcy Cases:*** any one of the following occurs, in each case without prior written consent of the Lessor:
 - (i) the Lessee files a Chapter 11 plan that contemplates the liquidation of all or substantially all of the Lessee's assets; or
 - (ii) the Bankruptcy Cases are dismissed or converted to cases under Chapter 7 of the Bankruptcy Code, or the Lessee files or acquiesces in any motion or other pleading seeking such dismissal or conversion; or
 - (iii) a Chapter 11 trustee is appointed in the Bankruptcy Cases, or the Lessee files or acquiesces in any motion or other pleading seeking such appointment; or
 - (iv) the Lessee files any motion or other pleading seeking to reverse, stay, modify or vacate the approval of the Amendment and Restatement Deed, this Agreement and the transactions contemplated hereby or thereby or any other relief that is inconsistent with the terms of the Amendment and Restatement Deed or this Agreement.

19. REMEDIES

19.1 Termination of Lease Period

If an Event of Default occurs, then at any time thereafter so long as such Event of Default shall be continuing (but without prejudice to any other rights of the Lessor under this Agreement or the other Operative Documents or at law):

- (a) the Lessor may proceed by appropriate court or other action to enforce performance by the Lessee of the applicable undertakings, obligations, covenants and provisions of this Agreement and/or the other Operative Documents and/or to recover damages for the breach thereof; and/or
- (b) the Lessor may serve notice upon the Lessee (a "**Notice of Termination**") terminating the leasing of the Aircraft hereunder and the date specified in

such Notice of Termination (which date may be the date on which such Notice of Termination is issued or any later date) shall, in this Clause 19 (*Remedies*) be the "**Termination Date**"; and/or

- (c) exercise any other right or remedy available under applicable law and/or under the Cape Town Convention, including, without limitation, all rights and remedies under Chapter III of the Consolidated Text (including for the avoidance of doubt those referred to in Article 15(1) and all of 20(1) of the Consolidated Text).

If an Event of Default has occurred and is continuing, and to the extent permitted by applicable law, regulations, rules or declarations in Mexico, the Lessor and the Lessee hereby agree that the Lessor shall not be required to provide notice to the Lessee as set forth in Article IX(6) of the Protocol in connection with a proposal to procure the deregistration and export of any Aircraft without a court order. The Lessee expressly agrees to permit the Lessor to obtain from any applicable court, pending final determination of any claim resulting from an Event of Default that is subsisting, speedy relief in the form of any of the orders specified in Article 13 of the Convention or Article X of the Protocol, as the Lessor shall determine in its sole and absolute discretion, subject to any procedural requirements prescribed by applicable law, regulations or rules in Mexico.

To the extent the Lessor's exercise of remedies is governed by the provisions of the Cape Town Convention as in force in any jurisdiction, the Lessor shall exercise such remedies in a "commercially reasonable manner" as such term is described in Article IX(3) of the Protocol. The Lessee hereby consents to the exercise by the Lessor of the remedies granted herein and in the Cape Town Convention. The Lessee acknowledges and agrees that the Lessor may exercise such of the foregoing remedies as it shall determine in its sole good faith discretion and that none of the foregoing remedies is manifestly unreasonable. The Lessee and the Lessor hereby agree that paragraph 2 of Article 13 of the Convention shall not apply to this Agreement or to the exercise of any remedy by the Lessor under this Agreement or the Convention. Following the occurrence and continuance of an Event of Default, the Lessee agrees to immediately discharge, upon demand by the Lessor in connection with the exercise of any remedies hereunder, any International Interest registered in its favour with the International Registry.

19.2 **Redelivery and Repossession**

If the Lessor gives the Lessee a Notice of Termination then:

- (a) without further notice or demand the Lessor may retake possession of the Aircraft wherever it may be located and for such purpose the Lessor and its agents and representatives may enter upon any land or premises belonging to or in the occupation or under the control of the Lessee or any Permitted Sublessee where the Aircraft or any part thereof may be located and retake possession of and remove the same and do all other things or acts which are in the opinion of the Lessor necessary or advisable to retake possession of the Aircraft, in each case without any responsibility or liability for any Loss or damage caused thereby or in connection therewith (and the Lessee hereby irrevocably authorises the Lessor and its agents and representatives to do any and all of the foregoing); and/or

- (b) the Lessee shall be obliged at its expense, forthwith, to return and redeliver the Aircraft to the Lessor (or any other person specified by the Lessor) in the manner and condition required by, and otherwise in accordance with the provisions of Clause 20 (*Return of Aircraft*).

Nothing shall prejudice, limit or otherwise affect the rights of the Lessor to exercise its rights under Clause 19.1 (*Termination of Lease Period*) or this Clause 19.2 (*Redelivery and Repossession*) (including, without limitation, its rights to retake possession and to require return and redelivery of the Aircraft) immediately upon the giving of a Notice of Termination **provided that** the rights and obligations of the parties hereto under the following provisions of this Clause 19 (*Remedies*) shall survive and continue to apply notwithstanding any such exercise and any such repossession, return and/or redelivery of the Aircraft.

19.3 **Payment on Default Termination**

On the Termination Date the Lessee shall pay to the Lessor an amount equal to the aggregate of:

- (a) the Stipulated Loss Value as at the Termination Date;
- (b) if the Termination Date is also a Rental Payment Date, the Rental payable on such Termination Date;
- (c) all unpaid Rental due and outstanding as at such Termination Date; and
- (d) all other amounts (if any) (to the extent that such amounts are not covered by, nor constitute any part of the sums referred to in sub-paragraphs (a), (b) or (c) above) in the relevant currencies due and owing by the Lessee hereunder or under any other Operative Document to which it is a party on such Termination Date.

Upon a termination of the leasing of the Aircraft under this Agreement pursuant to Clause 19.1(b), the Lessee, **provided that** the Lessor has received all the amounts specified in Clause 19.3(a), (b), (c) and (d), shall be entitled, by written notice to the Lessor (which notice shall be irrevocable) to take title to the Aircraft from the Lessor within thirty (30) days of the Termination Date upon payment of the sum (the "**Termination Price**") which shall be equal to the amount (if any) by which (i) the fair market value of the Aircraft as at the date of such termination (calculated by taking the average of the fair market values of the Aircraft as determined by three (3) independent and reputable appraisal companies ("**Appraisers**") appointed by the Lessor, **provided that** the Lessee shall be given prior notice of the identity of such Appraisers and shall be entitled to appoint one Appraiser in substitution of any such Appraiser)) exceeds (ii) the Stipulated Loss Value applicable to the Termination Date and the Lessor shall transfer title to the Aircraft to the Lessee subject to and in accordance with Clause 22.1 (*Transfer*).

19.4 **No Prejudice**

If the Lessor gives the Lessee a Notice of Termination or the Termination Date occurs then the Lessee shall remain obliged to pay and perform all obligations required by this Clause 19 and the other provisions of this Agreement and the Lessee shall not be relieved or discharged from any such obligation and such obligation shall not be reduced, limited, prejudiced or qualified by reason of any

event or circumstance whatsoever unless and until such obligations have been paid and performed in full by the Lessee and, without prejudice to the generality of the foregoing, any redelivery, return, retaking of possession or sale of the Aircraft contemplated by the provisions of this Clause 19 or any other action in connection with the Aircraft shall not in any way relieve or discharge the Lessee from, or in any way reduce, limit, prejudice or qualify, the Lessee's obligation to pay all amounts required by this Clause 19 or any Operative Document.

20. RETURN OF AIRCRAFT

20.1 Return of Airframe and Engines

Upon the expiry or earlier termination of the Lease Period, (unless the Lessee shall have purchased the Aircraft pursuant to Clause 8 (*Change in Circumstances*), Clause 19 (*Remedies*) or Clause 21 (*Purchase of Aircraft at Purchase Option Date*) or a Total Loss shall have occurred) the Lessee shall return the Aircraft and the Technical Records (which shall be updated and maintained by the Lessee up to the time of Return in accordance with the requirements of this Agreement), at the Lessee's sole cost and expense, to the Redelivery Location. The Lessee shall, at the Lessee's sole cost and expense, procure that at the time of such Return:

- (a) the Aircraft and all Technical Records shall comply with the conditions as provided in Schedule 4 (*Return Conditions*); and
- (b) if (i) the Lessee has not exercised its option to purchase the Aircraft pursuant to Clause 21.1 (*Election*) or (ii) if the Lessor exercises its right to reject the Purchase Option Offer pursuant to Clause 21.2 (*Purchase Option Termination Right*), the Lessee shall pay to the Lessor the Redelivery Maintenance Payment due and owing pursuant to and calculated in accordance with Exhibit 4 (*Redelivery Maintenance Payment*) to Schedule 3 (*Rental and Other Amounts*). For the avoidance of doubt, no Redelivery Maintenance Payment is payable in the event the Lessee shall have purchased the Aircraft pursuant to Clause 8 (*Change in Circumstances*), Clause 19 (*Remedies*) or Clause 21 (*Purchase of Aircraft at Purchase Option Date*) or transfer of title to Lessee shall have occurred pursuant to Clause 17.1 (*Total Loss with respect to Aircraft*).

20.2 Non-Compliance

If at the time of the Expiry Date the Lessee has not fully complied with any of its obligations under this Agreement (including, without limitation, the Return Conditions), or the Lessee fails to make the Aircraft available to the Lessor on a timely basis for inspection and redelivery pursuant to Clause 20.1 (*Return of Airframe and Engines*) and the Return Conditions (whether such failure is due to any act or omission of the Lessee or any other circumstance whatsoever), the Lease Period shall be extended or if the Lease Period has already ended be deemed to be extended until the time when the Aircraft has been redelivered to the Lessor in full compliance with this Agreement, for the sole purpose of enabling such non-compliance or failure to be promptly rectified, and during such extension or deemed extension period:

- (a) the Lessee shall not use the Aircraft in flight operations;

- (b) all the Lessee's obligations and covenants under this Agreement will remain in full force until the Lessee so redelivers the Aircraft, and
- (c) the Lessee shall pay the Lessor the Rental for such extension period on demand at the rate of [REDACTED] of the Rent payable as of the final day of the Lease Period for the first [REDACTED] days of delay and thereafter [REDACTED] of the Rent payable as of the final day of the Lease Period, pro-rated on a daily basis for each day from and including the last day of the Lease Period to and including the date of full compliance by the Lessee with all such provisions.

Any such extension or deemed extension shall not prejudice the right of the Lessor to treat such non-compliance or failure as an Event of Default at any time, and to enforce such rights and remedies as may be available to the Lessor in respect thereof under the terms of this Agreement or applicable law. Without limiting the generality of the foregoing, the Lessee's Rental obligation under paragraph (c) above shall be without prejudice to the rights of the Lessor to terminate the leasing of the Aircraft, to indemnification and to receive any amounts in each case in accordance with the provisions of this Agreement.

20.3 **Acceptance and Acknowledgement**

When the Aircraft complies with the Return Conditions to be complied with before redelivery and the Lessee tenders the Aircraft to the Lessor at the Redelivery Location, the Lessor shall accept redelivery and the Lessor shall deliver to the Lessee the Redelivery Acceptance Certificate confirming that the Lessee has redelivered the Aircraft to the Lessor in accordance with this Agreement.

21. **PURCHASE OF AIRCRAFT AT PURCHASE OPTION DATE**

21.1 **Election**

Upon not less than [REDACTED] months' nor more than [REDACTED] months' prior written notice to the Lessor, the Lessee may, at its option, elect to purchase the Aircraft on the Purchase Option Date (the "**Purchase Option Offer**").

21.2 **Purchase Option Termination Right**

Subject to the terms of the Loan Agreement (as amended by the Amendment and Restatement Deed), the Lessor shall, not less than [REDACTED] months prior to the Purchase Option Date, have the right to reject the Purchase Option Offer, following the notice given by the Lessee in accordance with Clause 21.1 (*Election*), if the Anticipated Fair Market Value of the Aircraft is greater than the Purchase Option Rejection Threshold.

21.3 **Appraisal**

If the Lessor elects to exercise its right to reject the Purchase Option Offer pursuant to Clause 21.2 (*Purchase Option Termination Right*), either party shall, by written notice to the other, require that each party name a reputable independent ISTAT-certified aircraft valuer of international standing. If either party fails to name an appraiser within fifteen (15) days of receipt of such notice

from the other party, the decision of the appraiser named by the other party shall be binding on the parties. Each selected appraiser shall thereafter have a period of fifteen (15) days from the date the second appraiser was named (or if no second appraiser is named, from the date the first appraiser was named) to provide its professional appraisal as to the Anticipated Fair Market Value. If the Anticipated Fair Market Value amount determined by the appraiser providing the lower appraisal is less than ten percent (10%) below the higher appraisal then, the average of such Anticipated Fair Market Value amounts will be the Anticipated Fair Market Value. Otherwise, the two appraisers shall jointly name a third reputable independent ISTAT-certified aircraft valuer of international standing, who shall provide its professional appraisal as to the Anticipated Fair Market Value within fifteen (15) days of being named, and the Anticipated Fair Market Value shall be (i) the Anticipated Fair Market Value amount determined by the third appraiser if such Anticipated Fair Market Value amount falls between the Anticipated Fair Market Value amounts determined by the first two appraisers, (ii) the lower of the two Anticipated Fair Market Value amounts determined by the first two appraisers if the Anticipated Fair Market Value amount determined by the third appraiser is less than such original two Anticipated Fair Market Value amounts, and (iii) the higher of the two Anticipated Fair Market Value amounts determined by the first two appraisers if the Anticipated Fair Market Value amount determined by the third appraiser is higher than such original two Anticipated Fair Market Value amounts. If the two appraisers named by the parties are unable to agree on a third appraiser within five (5) Business Days, Lessee or Lessor may apply to a court of competent jurisdiction to name the third appraiser. Lessee and Lessor shall each pay the costs and expenses of the appraiser named by it, and shall share equally the costs and expenses of the third appraiser (if applicable). For purposes of this Clause 21.3 and the appraisals to be performed, the Aircraft shall be presumed to be in a full-life maintenance condition.

21.4 **Purchase**

Any Purchase Option Offer which has not been rejected by the Lessor in accordance with Clause 21.2 (*Purchase Option Termination Right*) shall be irrevocable and shall oblige the Lessee to purchase the Aircraft on the Purchase Option Date and to pay to the Lessor on the Purchase Option Date the aggregate of the following amounts:

- (a) the Purchase Option Price;
- (b) all unpaid Rental due and outstanding as at the Purchase Option Date;
- (c) all other amounts (if any) (to the extent that such amounts are not covered by, nor constitute any part of the sums referred to in sub-paragraphs (a), or (b) above) in the relevant currencies due and owing by the Lessee hereunder or under any other Operative Document to which it is a party on the Purchase Option Date; and
- (d) all costs (including, without limitation, legal fees) reasonably incurred by the Lessor and Financing Parties in connection with the termination of the leasing of the Aircraft and the release and discharge of the Security Documents.

21.5 Completion

If the Lessor receives the amounts specified in Clause 21.4 (*Purchase*) in full on the Purchase Option Date and **provided** the Lessee shall have paid any and all Taxes incurred by the Lessor in connection with such purchase by the Lessee of the Aircraft together with all other amounts which are then payable by the Lessee under the Operative Documents or which become due as a result of the above payments and the termination of the leasing of the Aircraft hereunder, the Lessor shall, at the cost of the Lessee, transfer title to the Aircraft on the Purchase Option Date, subject to and in accordance with Clause 22 (*Transfer Provisions*).

22. TRANSFER PROVISIONS

22.1 Transfer

If on any date (in this Clause 22 (*Transfer Provisions*) the "**Transfer Date**"), the Lessor has received in full the amounts specified in Clause 8.1 (*Illegality, Acceleration of Loan*), Clause 8.2 (*Increased Costs and Taxes*), Clause 17.1 (*Total Loss with respect to Aircraft*), Clause 19.3 (*Payment on Default Termination*) or Clause 21 (*Purchase of Aircraft at Purchase Option Date*) in accordance with the terms thereof and has received all other amounts (if any) then payable by the Lessee to the Lessor under the Operative Documents, the Lessor shall transfer to the Lessee (or to any nominee of the Lessee notified in writing by the Lessee to the Lessor) on or as soon as reasonably practicable after such Transfer Date all of the Lessor's right, title and interest in and to the Aircraft and such transfer shall be:

- (a) on an "as is, where is" basis, and no express or implied condition, warranty or representation of any kind shall be made or given by the Lessor or any Financing Party or any of their respective officers, employees or agents in relation to the airworthiness, condition, design, merchantability, fitness for use or operation of, or otherwise in relation to, the Aircraft, and all express and implied conditions, warranties and representations (or obligations or liability, in contract or in tort) in relation to any such matters, expressed or implied, statutory or otherwise, shall be expressly excluded (other than the Lessor's warranty in Clause 22.1(c));
- (b) on terms that all costs and expenses (including, without limitation, all stamp, documentary, value added, turnover, transfer, consumption and sales or similar Taxes and all other Taxes) relating to the sale and/or purchase of the Aircraft and/or to the termination of the leasing of the Aircraft and/or to the release and discharge of the Security Documents and/or to the transfer of title of the Aircraft to the Lessee or execution and delivery of any bill of sale or other instrument, agreement or document shall be borne by the Lessee; and
- (c) without recourse or warranty (except for the Lessor's warranty that it has such title to the Aircraft as was transferred to it by the Lessee under the Aircraft Purchase Agreement, free of Lessor Security Interests),

and on such Transfer Date the leasing of the Aircraft hereunder and the Lease Period shall terminate but subject always to Clause 19 (*Remedies*), Clause 8.5 (*Without Prejudice*) and Clause 23.3 (*Continuation of Indemnities*). The Lessor

shall also, without representation or warranty whatsoever and at no cost to the Lessor, reassign to the Lessee such right, title and interest as it may then have in and to the Warranties as was assigned to the Lessor pursuant to the Airframe Warranties Assignment and the Engine Warranties Agreement.

22.2 Bill of Sale

The Lessor shall, upon purchase of the Aircraft by the Lessee (or any such nominee) execute and deliver to the Lessee (or any such nominee) a bill of sale and such other documents as the Lessee shall reasonably request to evidence the transfer of title to the Aircraft from the Lessor to the Lessee (or any such nominee), **provided that** the Lessor shall only be obliged to deliver the original Manufacturer Bill of Sale and the original Seller Bill of Sale to the Lessee if the Lessor has not then been required to deliver the same to the Security Agent.

22.3 Exoneration

If any provision of this Agreement in any circumstance provides for the transfer of, or requires the Lessor to transfer, title to the Aircraft to the Lessee or any other person and such transfer is not or cannot be made or perfected by reason of (a) any action taken or improperly omitted by or any breach by any Financing Party under or in connection with any of the Operative Documents (including, without limitation, any failure by any Financing Party to release any security constituted by any Security Document in circumstances where they are or any of them is obliged to do so); or (b) any Event of Default (any such circumstance as is referred to in (a) or (b) being an "**Applicable Circumstance**"), then, to the extent only that such transfer is not or cannot, for that reason, be so made or perfected, the Lessor shall not be in breach of such provision of this Agreement and shall have no liability to the Lessee arising out of such failure to transfer or unperfected transfer. If any transfer of title to the Aircraft provided for or required under any provision of this Agreement is not or cannot be made or perfected at any time by reason of any Applicable Circumstance then as soon as such transfer or perfection is no longer prevented by such or any other Applicable Circumstance such transfer shall be made or perfected in accordance with such provision of this Agreement.

23. INDEMNITIES

23.1 General Indemnity

Subject to Clause 23.2 (*Exceptions to General Indemnity*), the Lessee hereby agrees at all times to indemnify and hold the Lessor and each other Relevant Person and each Financing Party and their respective and any subsequent respective successors, affiliates, transferees, assigns, officers, directors, servants, agents, employees, attorneys and managers (collectively "**Indemnitees**" and each an "**Indemnitee**") harmless from and against all and any Losses of whatsoever kind and nature and regardless of when the same shall arise (whether prior to, during, or after termination of, the Lease Period) which may from time to time or at any time be imposed on, suffered or incurred by or asserted against any Indemnitee (whether or not any such Losses are also indemnified or insured against by any other person) relating to, arising out of or resulting from (whether directly or indirectly):

- (a) the purchase, ownership, title, registration, delivery, non-delivery, redelivery, performance, acceptance, non-acceptance, rejection, import, export, re-registration, de-registration, financing, certification, insurance, mortgaging, hypothecating, supply, lease, hire, charter, sub-lease, "wet lease", possession, presence, location, stationing, use, operation, accident, damage, loss, transportation, management, assignment, control, manufacture, design, condition, maintenance, alteration, modification, improvement, refurbishment, repair, service, overhaul, testing, removal, replacement, repossession, foreclosure, substitution, pooling, interchange, storage, sale, remarketing, return, redelivery, transfer, exchange or disposition of the Aircraft, the Airframe, any Engine or any Part or any interest therein or any title thereto or the Technical Records or destruction of or damage to any property, or death or injury of, or other Loss of whatsoever nature suffered by, any person caused by, relating to or arising from or out of any of the foregoing matters (either in the air or on the ground) whether or not such Losses may be attributable to any defect (including, without limitation, latent or other defects whether or not discoverable) in the Aircraft, the Airframe, any Engine or any Part or any interest therein or any title thereto or the Technical Records or attributable to the design, testing or use thereof or from any maintenance, service, repair, overhaul, or to any other reason whatsoever (whether similar to any of the foregoing or not);
- (b) any design, article or material in the Aircraft, the Airframe, any Engine or any Part or any interest therein or any title thereto or the Technical Records or the operation or use thereof constituting or being alleged to constitute an infringement of patent, trademark, copyright, design or any other proprietary right or a breach of any obligation of confidentiality owed to any person in respect of any of the matters referred to in this paragraph (b); or
- (c) after notice has been given to the Lessee (provided that no notice shall be required if a Potential Event has occurred and is continuing), preventing or attempting to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture or detention of the Aircraft, any Engine or any Part, or in securing the release of the Aircraft, any Engine or any Part; or
- (d) any Total Loss in relation to the Aircraft, the Airframe, any Engine or Part (excluding Losses incurred by any Indemnatee to the extent such Indemnatee is compensated from any insurance proceeds or if the Stipulated Loss Value has been paid in accordance with this Agreement); or
- (e) any act or omission which invalidates or which renders voidable any of the Insurances,

If a claim is made against an Indemnatee (such Indemnatee, in each case, being the "**Affected Indemnatee**") which is likely to result in Losses to such Affected Indemnatee in respect of which the Lessee is obliged to indemnify the Affected Indemnatee under this Clause 23.1 (*General Indemnity*), then, **provided** no Potential Event or Excepted Reason has occurred and is continuing, the Affected Indemnatee shall, if requested by the Lessee, consult with the Lessee to consider

what action (if any) may properly be taken to contest such a claim. Following such consultation, if the Affected Indemnatee determines, in its sole discretion taking into account, *inter alia*, the criteria specified in paragraphs (i) to (v) (inclusive), that it is willing to contest such a claim then such party will proceed to take such action as it determines to be appropriate (after consultation with the Lessee) **provided** always that:

- (i) the Lessee shall indemnify the Affected Indemnatee in full on demand in respect of any Losses suffered or incurred by such party as a result of such action;
- (ii) the taking of such action shall not in any way derogate from the Lessee's obligations under the Operative Documents, including, without limitation, its indemnity obligations under this Clause 23.1 (*General Indemnity*);
- (iii) the Affected Indemnatee shall not be precluded from settling or paying any amount immediately, notwithstanding the contest action, if it determines that failure to do so would have a material adverse effect on its business;
- (iv) the Affected Indemnatee shall be entitled to terminate or settle any contest action at such time and on whatever basis it considers appropriate, **provided that** if no Potential Event or Excepted Reason is then subsisting the Affected Indemnatee will consult with the Lessee in relation to any such steps; and
- (v) failure by any Indemnatee to comply with the provisions hereof shall not prejudice or discharge any of the indemnity obligations of the Lessee pursuant to this Clause 23.1 (*General Indemnity*).

Any amount payable by the Lessee under this Clause 23.1 (*General Indemnity*) shall be paid in the currency in which the relevant Indemnatee suffered the relevant Loss.

23.2 Exceptions to General Indemnity

Except to the extent that any of the following exclusions (a) through (j) below from the Lessee's liability (or any of the excluded Losses therein referred to) arises or is imposed on, suffered or incurred by or asserted against such Indemnatee as a result of a Potential Event or an Excepted Reason, the provisions of Clause 23.1 (*General Indemnity*) shall not apply, and the Lessee shall have no liability to any particular Indemnatee under Clause 23.1 (*General Indemnity*) with respect to any Losses:

- (a) arising as a result of a voluntary sale, assignment, transfer or other disposition by an Indemnatee of its interest in the Aircraft, the Airframe, any Engine or any Part (in this paragraph (a), a "**disposal**") (other than a disposal (i) resulting from or in connection with (x) a Permitted Lien (other than, in the case of a Relevant Person only, a Lessor Security Interest and other than, in the case of any Financing Party only, a Financing Party Security Interest); (y) the exercise of any rights or remedies in connection with an Event of Default or any event or circumstance specified in Clause 8 (*Change in Circumstances*); or (z) the exercise or performance of any

Lessee's rights or obligations hereunder; or (ii) permitted or required by the Operative Documents); or

- (b) imposed upon such Indemnitee to the extent incurred in respect of any period after the earliest to occur of any of the following events:
 - (i) the purchase of the Aircraft by the Lessee or by a third party pursuant to the terms of this Agreement and the performance in full by the Lessee of its obligations then due hereunder;
 - (ii) the return of the Aircraft to the Lessor pursuant to and in accordance with the provisions of this Agreement and the performance in full by the Lessee of its obligations then due hereunder; or
 - (iii) the termination of the Lease Period in accordance with Clause 17 (*Loss and Requisition*) following a Total Loss with respect to the Aircraft and the performance in full by the Lessee of its obligations then due hereunder,

unless such Losses are attributable to any event, circumstance or condition occurring prior to such purchase or return or termination; or

- (c) arising solely as a result of the fraud, gross negligence or wilful misconduct of such Indemnitee (or, if such Indemnitee is the Lessor, arising solely as a result of the fraud, gross negligence or wilful misconduct of the Managing Partner); or
- (d) which result solely from such Indemnitee's (or, if such Indemnitee is the Lessor, which result from the Managing Partner's) representations or warranties contained in the Operative Documents being incorrect in any material respect or the breach by such Indemnitee (or, if such Indemnitee is the Lessor, by the Managing Partner's) of any of its obligations contained in this Agreement or any of the other Operative Documents; or
- (e) constituting the ordinary and usual operating and overhead expenses of such Indemnitee; or
- (f) constituting a Tax or loss of Tax benefit (it being understood that Clause 9 (*Taxes*) provides for the Lessee's liability in respect of such matters); or
- (g) in the case of any Relevant Person only, to the extent such Losses arise solely as a result of the existence of any Lessor Security Interest, and in the case of any Financing Party only, to the extent such Losses arise solely as a result of the existence of any Financing Party Security Interest created by such Financing Party; or
- (h) which the Lessor has expressly agreed to bear pursuant to Clause 10.1 (*Initial Cost*).
- (i) which are Losses that have been fully and finally settled and paid or reimbursed to the relevant Indemnitee under the insurances required under this Agreement; or

- (j) for which such Indemnitee has actually been indemnified (to the extent so actually indemnified) pursuant to any other provision of any Operative Document.

23.3 Continuation of Indemnities

The rights of the Lessor, each Indemnitee and each Tax Indemnitee in respect of each and every indemnity contained in this Agreement, subject to the express provisos and exceptions thereto (if any), shall continue in full force and effect in favour of each such person notwithstanding the expiry or termination of this Agreement, the Lease Period or the leasing hereunder for any reason whatsoever, and notwithstanding any breach by the Lessor, the Lessee or any other person of the terms of this Agreement or any other Operative Documents, any cessation of business of, dissolution of, or any change in the constitution of the Lessor, any Indemnitee, any Tax Indemnitee or the Lessee, or any other fact, event or circumstance of any kind whatsoever, whether similar to any of the foregoing or not.

23.4 Indemnity Payments made without deduction or withholding

- (a) Any sum payable by the Lessee under this Agreement by way of indemnity, compensation or reimbursement shall be made on an after-tax basis and shall include such amount as may be necessary to indemnify and hold the Lessor and any relevant Indemnitee or Tax Indemnitee harmless on a net-after tax basis from all taxes required to be paid by it with respect to or as a result of the payment of such sum and without any deduction or withholding.
- (b) If and to the extent that any sum (the "**indemnity sum**") constituting (directly or indirectly) an indemnity, compensation or reimbursement to the Lessor or any relevant Indemnitee or Tax Indemnitee but paid by the Lessee to any person other than the Lessor or such Indemnitee or Tax Indemnitee, shall be treated as subject to tax in the hands of the Lessor or such Indemnitee or Tax Indemnitee, the Lessee shall pay to the Lessor for its own account or the account of the relevant Indemnitee or Tax Indemnitee, as the case may be, such amount as (after taking into account any tax suffered or to be suffered by the Lessor or such Indemnitee or Tax Indemnitee in respect of such payment) shall be sufficient to indemnify the Lessor or such Indemnitee or Tax Indemnitee from and against any tax suffered by it in respect of the indemnity sum.

23.5 Taxes on Refunds

If and to the extent that any Tax Indemnitee is required to make any payment to the Lessee hereunder out of or calculated by reference to the amount of any Total Loss proceeds, insurance proceeds, requisition proceeds, sale proceeds or any other amount received by the Tax Indemnitee, the Tax Indemnitee shall be entitled to retain therefrom for its own account such amount as shall ensure that the Tax Indemnitee suffers no Loss (by reason of any tax, suffered or to be suffered in respect of such receipt) in consequence of its making any such payment and the Lessee shall indemnify the Lessor on demand against any such Loss.

23.6 Payments

Any amounts expressed to be payable by the Lessee under this Clause 23 (*Indemnities*) to, or to indemnify (a) any Financing Party, any Tax Indemnatee or Indemnatee in respect of a Financing Party shall be paid to the Security Agent or as it directs or (b) any Indemnatee or Tax Indemnatee other than any Financing Party or any Tax Indemnatee or Indemnatee not in respect of a Financing Party shall be paid to the Lessor (for its own account or for the account of the relevant Indemnatee or Tax Indemnatee) **provided that** if payment to the Lessor would result in the Lessee incurring any additional liability which it would not incur if payment were made direct to the relevant Indemnatee or Tax Indemnatee then the Lessee may make such payment direct to the relevant Indemnatee or Tax Indemnatee.

23.7 **Default Indemnity**

The Lessee shall indemnify the Lessor upon demand against any and all Losses of whatsoever kind and nature which may from time to time or at any time be imposed on, suffered or incurred by or asserted against the Lessor relating to, arising out of or resulting from (whether directly or indirectly) any breach by the Lessee of any of its obligations under this Agreement or under any other Operative Document (including, without limitation, any exercise by the Lessor or any Indemnatee of any of its rights hereunder or thereunder in relation thereto), any Potential Event or any Event of Default.

23.8 **Currency Indemnity**

All payments referred to herein shall be denominated in the currency designated for such payment pursuant to the relevant Schedule or Exhibit setting forth such payment or pursuant to the relevant Clause of this Agreement or the other Operative Documents providing for such payment. This is an international transaction in which the specification of the currency of payments and the time of payments is of the essence. The payments required to be made under this Agreement shall not be discharged by an amount paid in any currency other than the designated currency of such payments, whether pursuant to a judgment or otherwise, to the extent that the amount so paid on prompt conversion to the designated currency (as quoted in Tokyo) does not yield the amount of the designated currency due hereunder. In the event that any payment required to be made by one party (the "**defaulting party**"), whether pursuant to a judgment or otherwise, does not, when paid and converted, result in payment of the correct amount of the designated currency due and payable by the defaulting party, the other party shall have a separate cause of action for the amount of any such shortfall and the defaulting party shall pay such additional amounts as may be necessary to compensate any person entitled to such payment for such shortfall.

23.9 **Other Payments**

The Lessee covenants, undertakes and agrees that it will pay to the Lessor on written demand of the Lessor amounts equal to any and all amounts (other than principal, scheduled interest and default interest (in respect of principal and scheduled interest)) which may from time to time become payable or be expressed to be payable by the Lessor to any Financing Party or in respect of which any Financing Party or any other Indemnitees (as defined in the Loan Agreement) is expressed to be indemnified by the Lessor under or pursuant to the Loan

Agreement and the other Operative Documents (whether or not the Lessor has already paid any such amount and whether or not the obligation of the Lessor to pay any such amount is limited by the provisions of Clause 35 (*Security and Recourse*) of the Loan Agreement or any similar provision of any other Operative Document). Any such amount shall be paid in the currency in which such amount is payable or expressed to be payable and in accordance with the provisions of the Loan Agreement and the other Operative Documents.

23.10 **After-Tax Basis**

If any payment which the Lessee is obliged to pay to the Lessor under Clause 23.9 (*Other Payments*) proves to be insufficient, as a result of taxation thereon, for the Lessor to discharge any corresponding liability to any Financing Party, the Lessee shall on demand of the Lessor pay to the Lessor such additional sum in the currency of such liability as is equal to (but not greater than) the amount which (after taking into account any taxation thereon) is required to make up the deficit.

23.11 **Costs**

Where:

- (a) the Lessor's performance of any obligation under the Loan Agreement or any of the other Operative Documents requires or results in the incurring of any cost or expense by the Lessor (whether or not the relevant obligation is expressed (in whatever terms) to be owed by the Lessor at its cost or expense or is subject to the Lessor being indemnified against any cost or expense); or
- (b) in any Operative Document any obligation of any Financing Party is expressed (in whatever terms) to be owed to the Lessor at no cost or expense to such Financing Party or at the cost or expense of the Lessor or is subject to such Financing Party or the Lessor being indemnified against any cost or expense,

the Lessee will on demand of the Lessor pay to the Lessor such amount as may be necessary (in the case of (a) above) to ensure that the Lessor is able to perform its obligation at no cost or expense to the Lessor or (in the case of (b) above) to enable the Lessor to pay each Financing Party's costs or expenses in complying with such obligation **provided that** the Lessee shall not be required to pay any amount referred to in the foregoing provisions of this Clause 23.11 which (i) any Financing Party has expressly agreed in any Operative Document to pay to the Lessor and is not otherwise expressed to be indemnified in respect thereof by the Lessee in any Operative Document or otherwise, and (ii) without prejudice to the rights of the Lessor under Clause 23.9 (*Other Payments*), any amount arising as a result of a Recourse Event.

23.12 **Loan Agreement Withholding Tax**

- (a) If:
 - (i) any deduction or withholding for or on account of taxes is or would be required to be made from any payment by the Lessor to or for the account of any Financing Party under any Operative Document

(such requirement and the amount required to be deducted or withheld, in this Clause 23.12, a "**Tax Liability**"); and

- (ii) as at the date occurring five (5) Business Days before the latest date (in this Clause 23.12, the "**Latest Date**") upon which the Lessor is required to account to the relevant tax authorities in respect of such Tax Liability, the Lessor has not received funds (free of any Security Interest) paid by the Financing Parties or any of them under clause 9.9 (*Relevant Tax Liability*) of the Loan Agreement in respect of, and in an amount sufficient to enable the Lessor to satisfy and discharge, such Tax Liability (**provided that** the foregoing shall not impose any obligation on any Financing Party beyond the obligations of such Financing Party under clause 9.9 (*Relevant Tax Liability*) of the Loan Agreement) then,

the Lessor shall notify the Lessee (together with details of such amounts (if any) already received by the Lessor from the Financing Parties or any of them under clause 9.9 (*Relevant Tax Liability*) of the Loan Agreement in respect of such Tax Liability, in this Clause 23.12 called "**Relevant Received Amounts**") and on the date which is three (3) Business Days before the Latest Date the Lessee shall pay to the Lessor an amount equal to such Tax Liability minus such Relevant Received Amounts.

23.13 Refunds

If the Lessor shall receive any payment (a "**Credit Payment**") from any Financing Party pursuant to any provision of the Loan Agreement, calculated by reference to any amount paid by the Lessor under any Operative Document which amount has been funded by any payment made by the Lessee to the Lessor pursuant to this Agreement, the Lessor will, as soon as it is reasonably practicable following receipt thereof, pay to the Lessee, or request such Financing Party to pay to the Lessee, such amount of such Credit Payment.

23.14 No Double Payment

If the Lessee is required to make a payment to the Lessor under Clause 23.9 (*Other Payments*) to enable the Lessor to make a payment to a Financing Party, then to the extent that such Financing Party has fully and indefeasibly received the relevant payment, the Lessee's obligations to make payments under Clause 23.9 (*Other Payments*) in respect of that amount shall, to the extent of the amount received by the Financing Party, be discharged. Notwithstanding anything to the contrary in this Agreement, the Lessee shall not be required to pay any amount of interest on any amount which is required to be paid by the Lessee under Clause 23.9 pursuant to Clause 5.8 (a "**Lease Default Interest Amount**") to the extent that an amount of interest up to such Lease Default Interest Amount has accrued on such amount under clause 8.2 of the Loan Agreement.

24. BENEFIT OF AGREEMENT

24.1 Enures and Binds

This Agreement and the other Operative Documents shall bind and enure to the benefit of the Lessor and the Lessee and their respective and any subsequent respective successors and permitted assigns and permitted transferees.

24.2 Lessee May Not Assign

The Lessee may not assign or transfer all or any of its rights or obligations under this Agreement or any of the other Operative Documents and any purported such assignment and/or transfer in breach of this Clause 24.2 shall be wholly null and void.

24.3 Lessor Assignment

- (a) The Lessor may not assign or transfer all or any of its rights or obligations under this Agreement or any of the other Operative Documents without the prior written consent of the Lessee (such consent not to be unreasonably withheld or delayed).
- (b) The Lessee hereby consents to any assignment by the Lessor of certain of its rights hereunder and under the other Operative Documents to the Security Agent pursuant to the Security Documents and to the exercise of any of the rights of the Security Agent pursuant to the Security Documents.

25. FURTHER PROVISIONS

25.1 Further Assurances

The Lessee agrees from time to time and at its own cost and expense to do and perform such other and further acts and execute and deliver any and all such other agreements, instruments and documents as may be required by law or reasonably requested by the Lessor or the Security Agent to establish, maintain and protect the rights and remedies of the Lessor and/or the Financing Parties, as the case may be, and to carry out and effect the intent and purpose of this Agreement and the other Operative Documents.

25.2 Rights Cumulative, Waivers

The rights, powers and remedies **provided** in this Agreement and the other Operative Documents are cumulative and are in addition to, and not exclusive of, any rights, powers and remedies **provided** by law. The rights, powers and remedies of any party (whether arising under this Agreement, any other Operative Document or **provided** by law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing signed by such party; and in particular any failure to exercise or any delay in exercising any of such rights, powers and remedies shall not operate as a waiver or variation of that or any other such right, power or remedy; any defective or partial exercise of any of such rights, powers and remedies shall not preclude any other or further exercise of that or any other such right, power or remedy; and no act or course of conduct or negotiation on the part of any party or on its behalf shall in any way preclude it from exercising any such right, power or remedy or constitute a suspension or any variation of any such right, power or remedy.

25.3 Delegation

The Lessor may delegate to the Security Agent and to any other person or persons who the Lessor does not know at the time of such delegation to be in competition with the Lessee in its capacity as a scheduled air carrier or employed by any person so in competition, all or any of the rights, powers, remedies or discretions vested in it by this Agreement and any such delegation may be made upon such terms and conditions as the Lessor in its absolute discretion thinks fit. The Lessor shall replace any such person if it is informed by the Lessee (acting reasonably) that such person is in competition with the Lessee in its capacity as a scheduled air carrier.

25.4 Application of Payments During Existence of Event of Default

Any amount referred to in this Agreement which is payable to the Lessee shall not be paid to the Lessee, or, if it has been previously paid directly to the Lessee, shall not be retained by the Lessee (and shall be paid to or received by the Lessee to be held in trust for the Lessor), if at the time of such payment an Event of Default shall have occurred and be continuing, but shall be paid to and held by the Lessor as security for the obligations of the Lessee under this Agreement, and shall be applied towards payment of the Lessee's obligations under this Agreement, and at such time as there shall not be continuing any such Event of Default such amount (to the extent not so applied) shall be paid over to the Lessee or its designee.

25.5 Evidence of Indebtedness

Save where expressly otherwise provided in this Agreement, any certificate or determination by the Lessor or any Financing Party as to any rate of interest or as to any amount payable under this Agreement shall be for the purposes of this Agreement and the other Operative Documents prima facie evidence of the amount thereof.

25.6 Application of Moneys

If any sum paid or recovered in respect of the obligations or liabilities of the Lessee under this Agreement is less than the aggregate amount then due, the Lessor may apply such sum in such manner and order as the Lessor shall determine.

25.7 Variation

The provisions of this Agreement shall not be amended or modified otherwise than by an instrument in writing executed by the Lessor and the Lessee. The Lessor agrees that it will not modify or amend any of the Operative Documents without the prior written consent of the Lessee and the Financing Parties. The Lessee agrees that it will not modify or amend any of the Operative Documents without the prior written consent of the Lessor and the Financing Parties.

25.8 Notices

Every notice, request, direction or other communication under this Agreement shall:

- (a) be in writing delivered personally or by international courier service or fax;

(b) be deemed to have been received:

- (i) in the case of a fax, at the time of the confirmed transmission report stating the correct facsimile number and number of pages sent and that such transmission is "OK" or equivalent (**provided** always that if these conditions are not met before 4:00 p.m. (local time) within normal business hours on a business day in the country of the addressee it shall be deemed to have been received at the opening of business on the next such business day); and
- (ii) in the case of a letter, when actually delivered if delivered before 4:00 p.m. (local time) on a business day in the country of the addressee and otherwise on the next such business day; and

(c) be sent:

- (i) to the Lessor at:
c/o Yamasa Co., Ltd.
2-20-6 Fukutomi-higashi
Minami-ku, Okayama City
Okayama 702-8033
Japan

Facsimile: +81 86 262 3292
Attention: Aircraft Leasing Department

with a copy to:

Yamasa Co., Ltd.
Nikko Building 3F
2-15-12, Higashi-ueno
Taito-ku
Tokyo 110-0015
Japan

Facsimile: +81 3 3837 2360
Attention: Aircraft Leasing Department

- (ii) to the Lessee at:

Aerovías de México, S.A. de C.V.
Paseo de la Reforma No. 445, piso 11,
Col. Cuauhtemoc, CP: 06500,
Ciudad de México, México

Facsimile: +52 55 91325079
Attention: Ricardo Sánchez Baker (Chief Financial Officer)

With copy to:

Aerovías de México, S.A. de C.V.
Paseo de la Reforma No. 445, piso 8,
Col. Cuauhtemoc, CP: 06500,

Ciudad de México, México

Facsimile: +52 55 91325079

Attention: General Counsel

provided always that failure to serve the copy of any notice on any addressee other than the Lessor, the Facility Agent, the Security Agent and the Lessee, as the case may be, shall not otherwise invalidate the serving of the notice on the primary addressee.

25.9 Electronic communication

- (a) Any communication to be made between the parties under or in connection with the Operative Documents may be made by electronic mail or other electronic means, if the parties:
 - (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (b) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (c) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the parties will be effective only when actually received in readable form.

25.10 Invalidity of any Provision

If, at any time, any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the applicable law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the applicable law of any other jurisdiction shall in any way be affected or impaired thereby.

25.11 Lessor Right to Remedy

If the Lessee fails to comply with any provision of this Agreement, the Lessor may, without being in any way obliged to do so or to treat, and without prejudice to any right of the Lessor to treat, that non-compliance as an Event of Default, effect compliance on behalf of the Lessee, whereupon the Lessee shall indemnify the Lessor in respect of any amount thereby expended by the Lessor together with all Losses (including, without limitation, legal fees and expenses) incurred in connection therewith.

25.12 English Language

Except as otherwise expressly agreed in this Agreement or any of the other Operative Documents, all notices, communications, including, but not limited to, Technical Records and financial statements and reports under or in connection with this Agreement and the other Operative Documents shall (unless in relation to any condition precedent or condition subsequent, as may otherwise be agreed),

be in the English language or, if in any other language, shall be accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail unless the document is a constitutional, statutory or other official document and **provided** that in the case of any filings, actions or proceedings before any Mexican Government Entity, the text of the Spanish translation shall prevail.

25.13 Counterparts

This Agreement may be executed in any number of counterparts and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall be deemed to constitute a full and original agreement for all purposes.

25.14 Time of Essence

Subject to any express period of grace set out in this Agreement, time shall be of the essence as regards the performance by the parties of their respective obligations under this Agreement.

25.15 Confidentiality

At all times during the continuance of this Agreement and the other Operative Documents and after the termination hereof (howsoever caused), each of the parties hereto or any person who becomes a party hereto, whether or not any such party or person ceases to be a party hereto, shall not, without the express prior written consent of the other parties, issue any press release in relation to the transactions evidenced by this Agreement and the other Operative Documents, or disclose to any other person (other than another party to an Operative Document), the Operative Documents or the business, financial or other covenants and/or information contained in or supplied in connection with this Agreement or any other Operative Document and the transactions contemplated hereby or thereby or any other agreement entered into after the date hereof by any party hereto or in connection with this Agreement or any other Operative Document, or release synopses, summaries, explanations, copies or drafts of any such document which disclose or reveal the detailed terms thereof (or any of them) **provided**, that the parties shall be entitled, without any such consent, to disclose, to the extent reasonably required or necessary:

- (a) in connection with any proceedings arising out of or in connection with this Agreement or any of the other Operative Documents; or
- (b) if required to do so by an order of a court of competent jurisdiction whether in pursuance of any procedure for discovery of documents or otherwise; or
- (c) pursuant to any law or regulation having the force of law; or
- (d) if required so to do, to any fiscal, monetary, tax, regulatory, governmental or other competent authority; or
- (e) to the auditors, legal, insurance or other professional advisors or insurers or underwriters of any member of the group of companies of which such party is a member **provided that**, the recipient is obliged to keep the relevant information confidential; or

- (f) if required to do so in order to obtain any permits, consents, licences which such party is required to obtain pursuant to, or for the purposes of the Operative Documents; or
- (g) if any of the same is or shall become publicly known otherwise than as a result of a breach of such party of this Clause 25.15; or
- (h) in any manner expressly permitted by any of the Operative Documents; or
- (i) to any successor, assignee or transferee, risk or other participant, actual or potential merger partner or purchaser of the Aircraft permitted or contemplated pursuant to this Agreement, the New York Law Mortgage or the Mexican Law Pledge, such information about the parties hereto, the Aircraft and the Lessee's operations thereof and the transactions contemplated hereby as the relevant party considers appropriate, subject to it first obtaining from such successor, assignee, transferee, participant or purchaser a confidentiality undertaking in terms corresponding to this Clause 25.15.

26. LAW AND JURISDICTION

26.1 Law

This Agreement (including the arbitration agreement contained in it) and any non-contractual obligations arising from, out of or in connection with this Agreement are governed by and shall be construed in accordance with, English law.

26.2 Jurisdiction

- (a) Both parties agree that the courts of England are to have non-exclusive jurisdiction to settle any disputes that may arise in connection with the legal relationships established by this Agreement (including, without limitation, claims for set-off or counterclaim) and any other Operative Document or otherwise arising in connection with this Agreement and any other Operative Document. Both parties hereby irrevocably and unconditionally submit to the jurisdiction of the courts of England and agree that the courts of England are the most appropriate and convenient courts in which to settle any dispute and, accordingly, that they will not argue to the contrary. Both parties also irrevocably and unconditionally submit to the jurisdiction of the competent courts of the State of Registration and the competent courts of any jurisdiction in which the Aircraft may be located from time to time.
- (b) Without prejudice to Clause 26.2(a), the Lessee hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Agreement to the giving of any relief (including interim relief) or the issue of any process in connection with such action or proceeding including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding, and without prejudice to the generality of the foregoing, the Lessor shall be entitled to seek such conservatory or similar interim relief regarding:

- (i) the preservation and safe-keeping of the Aircraft or any Part including, without limitation, any application for an order to ground the Aircraft, an order relating to the custody and insurance of the Aircraft or any Part or an injunction preventing or restricting the Lessee, the Guarantor or any third party, including any of their respective subsidiaries, parents, group companies, employees, officers, agents or servants, from taking possession of, operating, leasing or agreeing to lease, selling or agreeing to sell, encumbering or otherwise dealing with the Aircraft or any Part or from prejudicing the interest of the Lessor or any Financing Party in the Aircraft or in any Part; and
 - (ii) the delivery or recovery of the Aircraft or any Part, wheresoever located, and its transfer to an acceptable location, in the opinion of the Lessor, which may involve a transfer to another jurisdiction and its de-registration and export from the State of Registration, as necessary.
- (c) The Lessor hereby irrevocably designates, appoints and empowers TMF Corporate Services Limited whose address for the time being is 6 St. Andrew Street, 5th Floor, London EC4A 3AE United Kingdom to receive and acknowledge for it and on its behalf any writ, summons, order, judgment or other notice of legal process issued out of the courts of England in any legal action or proceeding arising out of or in connection with this Agreement and any other Operative Document and in the event of the termination of such appointment the Lessor undertakes promptly to appoint another agent for service of process satisfactory to the Lessee and, failing such appointment by the Lessor within fourteen (14) days, the Lessee shall be entitled (and is hereby authorised) to appoint an agent on behalf of the Lessor.
- (d) The Lessee hereby irrevocably designates, appoints and empowers NCR National Corporate Research (UK) Limited whose address for the time being is 1st Floor, 6 Bevis Marks, London EC3A 7BA, England to receive and acknowledge for it and on its behalf any writ, summons, order, judgment or other notice of legal process issued out of the courts of England in any legal action or proceeding arising out of or in connection with this Agreement and any other Operative Document and in the event of the termination of such appointment the Lessee undertakes promptly to appoint another agent for service of process satisfactory to the Lessor and, failing such appointment by the Lessee within fourteen (14) days, the Lessor shall be entitled (and is hereby authorised) to appoint an agent on behalf of the Lessee.
- (e) The Lessor and the Lessee irrevocably waive any objections to the courts of England on the ground of venue or forum non conveniens or any similar grounds.
- (f) The Lessor and the Lessee irrevocably consent to service of process by mail or in any other manner permitted by the relevant law.
- (g) The Lessee hereby waives, and agrees not to assert, by way of motion, as a defence, or otherwise, in any such suit, action or proceeding, the defence

of sovereign immunity, any claim that it is not personally subject to the jurisdiction of the above-named courts by reason of sovereign immunity or otherwise or that it is immune from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, or any objection on the grounds of venue or forum non conveniens or any similar grounds. Each of the Lessee and the Lessor agrees that in any proceedings in England this waiver shall have the fullest scope permitted by the English State Immunity Act 1978 and that this waiver is intended to be irrevocable for the purposes of such Act.

26.3 **Cape Town Immunity**

Without limiting the generality of Clause 26.2, and to the extent permitted by applicable law, regulations, rules or declarations in Mexico, the Lessee hereby waives in accordance with Article XXII of the Protocol and Article 57 of the Consolidated Text any sovereign immunity from service of process, jurisdiction, suit, judgment, award, set-off, counterclaim, attachment, enforcement or execution in connection with Clause 26.2 (*Jurisdiction*) or relating to the enforcement of rights and interests relating to the Aircraft, the Airframe and/or any Engine.

26.4 **Third Parties**

Any person which is a Relevant Person, a Financing Party, an Indemnatee, a Tax Indemnatee or an Additional Insured from time to time and is not a party to this Agreement shall be entitled to enforce such terms of this Agreement as provide for the obligations of the Lessee to such Financing Party, Indemnatee, Tax Indemnatee or Additional Insured, as the case may be, in each case, subject to the provisions of Clauses 26.1 (*Law*) and 26.2 (*Jurisdiction*) and the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**"). The Third Parties Act applies to this Agreement as set out in this Clause 26.4 (*Third Parties*). Save as **provided** above, a person who is not a party to this Agreement has no right to use the Third Parties Act to enforce any term of this Agreement and, subject to the other provisions of the other Operative Documents, the parties to this Agreement do not require the consent of any third party (including, without limitation, any Indemnatee, Tax Indemnatee or Additional Insured who is not a party to this Agreement) to amend or rescind this Agreement at any time.

IN WITNESS WHEREOF this Agreement has been duly executed by the duly authorised representatives of the parties hereto on the date first above written.

**SCHEDULE 1
AIRCRAFT DESCRIPTION**

Aircraft Manufacturer:	The Boeing Company
Model:	787-9
Serial Number:	43861
Registration Mark:	XA-ADD

Engines

Engine Manufacturer:	General Electric Company
Model:	GEnx-1B74/75/P2G01
Serial Number: Certificate	as set out in the Lease Acceptance

APU

Manufacturer:	as set out in the Lease Acceptance Certificate
Model:	as set out in the Lease Acceptance Certificate
Part Number:	as set out in the as set out in the Lease Acceptance Certificate
Serial Number:	as set out in the Lease Acceptance Certificate

Landing Gear

Manufacturer:	The Boeing Company
Left Main Landing Gear:	as set out in the Lease Acceptance Certificate
Right Main Landing Gear:	as set out in the Lease Acceptance Certificate
Nose Landing Gear:	as set out in the Lease Acceptance Certificate

SCHEDULE 2
FORM OF LEASE ACCEPTANCE CERTIFICATE

[•] 2017

THIS ACCEPTANCE CERTIFICATE (this "**Lease Acceptance Certificate**") dated [•] 2017 is executed and delivered pursuant to clause 4 (*Delivery, Acceptance and Leasing of Aircraft*) of an aircraft lease agreement dated [•] 2017 (the "**Aircraft Lease Agreement**") between Yamasa Aircraft AM1 Kumiai as lessor (the "**Lessor**") and Aerovías de México, S.A. de C.V. as lessee ("**Lessee**").

Terms used herein shall have the meaning given to such terms in the Aircraft Lease Agreement in accordance with the terms thereof.

- (1) The Lessee confirms that the Aircraft (including the Engines) specified below has been delivered by the Lessor to the Lessee and irrevocably and unconditionally accepted by the Lessee from the Lessor as of [•] 2017 at [•] in accordance with, and for all purposes of, the Aircraft Lease Agreement.
- (2) The Lessee confirms that the Lease Period has commenced and henceforth the Aircraft will be subject to the terms and conditions of the Aircraft Lease Agreement.
- (3) The Lessee confirms that the Aircraft has been examined by its duly appointed and authorised representatives and that the Aircraft, each Engine and the APU were marked with the respective manufacturer's serial numbers set forth in Annex I to this Lease Acceptance Certificate.
- (4) The Lessee confirms that the conditions precedent referred to in clause 3.2 (*Lessee Conditions Precedent*) of the Aircraft Lease Agreement have been met (or waived) to the Lessee's satisfaction.
- (5) The Lessee confirms that as at the date hereof:
 - (a) no Total Loss with respect to the Aircraft or any Engine has occurred and no damage with respect to the Aircraft or any Engine has occurred, which has a material impact on the marketability, utility or value of the Aircraft; and
 - (b) the representations set out in clause 2.1 (*Lessee Representations*) and clause 2.2 (*Additional Representations of the Lessee*) of the Aircraft Lease Agreement are true and accurate with reference to the facts and circumstances existing on the date hereof.
- (6) [Reserved].
- (7) This Lease Acceptance Certificate and any non-contractual obligations arising from, out of or in connection with it are governed by and shall be construed in accordance with English law.
- (8) Each of the parties hereto agrees that the terms of clause 26 (*Law and Jurisdiction*) of the Aircraft Lease Agreement shall apply to this Lease Acceptance Certificate *mutatis mutandis*.

IN WITNESS WHEREOF this Lease Acceptance Certificate has been duly executed by the duly authorised representatives of the parties hereto on the date first above written.

Lessee:

SIGNED for and on behalf of:
AEROVÍAS DE MÉXICO, S.A. de C.V.
By:

Name:
Title:

Lessor:

SIGNED for and on behalf of:
YAMASA AIRCRAFT AM1 KUMIAI
represented by its Managing Partner,
Yamasa Co., Ltd.

By:

Name:
Title:

Annex I

AIRCRAFT DESCRIPTION

Aircraft

Aircraft Manufacturer: The Boeing Company
Model: 787-9
Serial Number: 43861
Registration Mark: XA-ADD

Engines

Engine Manufacturer: General Electric Company
Model: GEnx-1B74/75/P2G01
Serial Number: Position 1: 956842
Position 2: 956845

APU

Manufacturer: Hamilton Sunstrand
Model: APS5000A
Part Number: 7002907H08
Serial Number: PWC-Z925638

Landing Gear

Manufacturer: The Boeing Company
Left Main Landing Gear: Part Number: 510Z1210-503
Serial Number: S0000VG61
Right Main Landing Gear: Part Number: 510Z1210-504
Serial Number: S0000VG62
Nose Landing Gear: Part Number: 520Z1110-503
Serial Number: S0000V83S

Annex II

SCHEDULE 3 TO THE AIRCRAFT LEASE AGREEMENT

RENTAL AND OTHER AMOUNTS

The attached Exhibits 1 and 2 set out the amounts of the Rental and the Stipulated Loss Value, respectively. All amounts set out in the attached Exhibits shall be payable in Dollars.

EXHIBIT 1
RENTAL

[Reserved]

EXHIBIT 2
STIPULATED LOSS VALUE

No.	(1) Rental Payment Date	(2) Stipulated Loss Value
		(\$)
0	[•]	[•]
1	[•]	[•]
2	[•]	[•]
3	[•]	[•]
4	[•]	[•]
5	[•]	[•]
6	[•]	[•]
7	[•]	[•]
8	[•]	[•]
9	[•]	[•]
10	[•]	[•]
11	[•]	[•]
12	[•]	[•]
13	[•]	[•]
14	[•]	[•]
15	[•]	[•]
16	[•]	[•]
17	[•]	[•]
18	[•]	[•]
19	[•]	[•]
20	[•]	[•]
21	[•]	[•]
22	[•]	[•]

23	[•]	[•]
24	[•]	[•]

1. Each payment of Stipulated Loss Value shall be computed as of each of the applicable dates set forth in the table above ("**Applicable Dates**") which fall on the Delivery Date and the Rental Payment Dates and shall, subject to paragraph 2 below, consist of the Dollar amount listed in the column entitled "Stipulated Loss Value" in the table above opposite the Delivery Date or relevant Rental Payment Dates (the "**Stipulated Loss Value**").
2. Stipulated Loss Value amounts listed in the table above are quoted exclusive of the Rental due on the relevant Applicable Dates which fall on the Rental Payment Dates included in the table above.
3. The Stipulated Loss Value amounts specified in this Exhibit 2 are applicable only to the respective Applicable Dates in relation to which they are specified. In the event that Stipulated Loss Value shall be required to be paid and computed as of a day (the "**due date**") which is not shown in the table above then the Stipulated Loss Value shall be the sum of the aggregate of (i) the Stipulated Loss Value set forth opposite the Applicable Date immediately preceding such due date and (ii) interest thereon calculated at the Fixed Rate per annum for the number of days from and including such immediately preceding Applicable Date up to and excluding such due date, and calculated on the basis of the actual number of days elapsed and a three hundred and sixty (360) day year.

SCHEDULE 3
RENTAL AND OTHER AMOUNTS (CONFIDENTIAL)

The attached Exhibits 1, 2, 3 and 4 set out the amounts of (i) the Rental, (ii) the Stipulated Loss Value, (iii) the Purchase Option Price and the Purchase Option Rejection Threshold and (iv) the Redelivery Maintenance Payment, respectively. All amounts set out in the attached Exhibits shall be payable in Dollars.

EXHIBIT 1 **RENTAL**

Fixed Rental

For each Fixed Rental Period during the Lease Period, the amount of \$[REDACTED] shall be payable on each Fixed Rental Date during the Lease Period (the "**Fixed Rental**").

PBH Rental

During the PBH Period, "**PBH Rental**" for a calendar month will be calculated in accordance with the following formula:

[REDACTED]

where:

[REDACTED]

Aeromexico Historical Utilization for Boeing 787-9 Aircraft

AC Type	Jan- 19	Feb- 19	Mar- 19	Apr- 19	May- 19	Jun- 19	Jul- 19	Aug- 19	Sep- 19	Oct- 19	Nov- 19	Dec- 19
	FH	FH	FH	FH	FH	FH	FH	FH	FH	FH	FH	FH
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

EXHIBIT 2
STIPULATED LOSS VALUE

(1)	(2)
Date	Stipulated Loss Value (\$)
[REDACTED]	[REDACTED]

1. Each payment of Stipulated Loss Value shall be computed as of each of the applicable dates set forth in the table above ("**Applicable Dates**") which fall on the Rental Payment Dates and shall, subject to paragraph 2 below, consist of the Dollar amount listed in the column entitled "Stipulated Loss Value" in the table above opposite the relevant Rental Payment Dates (the "**Stipulated Loss Value**").
2. Stipulated Loss Value amounts listed in the table above are quoted exclusive of the Rental due on the relevant Applicable Dates which fall on the Rental Payment Dates included in the table above.
3. The Stipulated Loss Value amounts specified in this Exhibit 2 are applicable only to the respective Applicable Dates in relation to which they are specified. In the event that Stipulated Loss Value shall be required to be paid and computed as of a day (the "**due date**") which is not shown in the table above then the Stipulated Loss Value shall be the sum of the aggregate of (i) the Stipulated Loss Value set forth opposite the Applicable Date immediately preceding such due date and (ii) interest thereon calculated at the Fixed Rate per annum for the number of days from and including such immediately preceding Applicable Date up to and excluding such due date, and calculated on the basis of the actual number of days elapsed and a three hundred and sixty (360) day year.

EXHIBIT 3

PURCHASE OPTION PRICE

If the Lessee exercises its option to purchase the Aircraft under Clause 21.1 (*Election*) the Purchase Option Price shall be \$[REDACTED].

If the Lessor exercises its right to reject the Purchase Option Offer under Clause 21.2 (*Purchase Option Termination Right*), the Purchase Option Rejection Threshold shall be \$[REDACTED].

EXHIBIT 4

REDELIVERY MAINTENANCE PAYMENT

A. Redelivery Maintenance Payment

At Return, Lessee shall pay Lessor an amount equal to the total sum of the Structural Check Equivalency Charge, Engine Equivalency Charge, Engine LLP Equivalency Charge, APU Equivalency Charge and Landing Gear Equivalency Charge (the "**Redelivery Maintenance Payment**").

B. Structural Check Equivalency Charge

The Structural Check Equivalency Charge for the 12 Year SC shall be calculated pursuant to the following formula:

$$A = (W/B) \times (C)$$

where:

A is the Structural Check Equivalency Charge for the 12 Year SC.

W is the market cost of the 12 Year SC based on (i) Lessee's costs for a Boeing 787 12 Year SC over the previous [REDACTED] years; or (ii) if not enough data is available or if Lessee and Lessor are in dispute on such cost, then the average of [REDACTED] recent invoices for such work from reputable maintenance providers who are FAA/EASA approved repair stations to accomplish such a Structural Check, [REDACTED] to be provided by Lessee, and [REDACTED] to be provided by Lessor.

B is the total interval of calendar months (or Cycles or Flight Hours, if applicable) between 12 Year SCs for that aircraft type based on Lessee's historic practices for Boeing 787 in its fleet.

C is, as applicable, the actual number of calendar months, Cycles or Flight Hours as of the Redelivery Date since the last 12 Year SC (or if there has not been any 12 Year SC prior to the Redelivery Date, then since new).

C. Landing Gear Equivalency Charge

The Landing Gear Equivalency Charge shall be calculated pursuant to the following formula:

$$A = (W/B) \times (C)$$

where:

A is the Landing Gear Equivalency Charge.

W is the market cost of accomplishing a Landing Gear Overhaul in respect of the Landing Gear based on (i) Lessee's costs for a Boeing 787 Landing Gear Overhaul over the previous [REDACTED] years; or (ii) if not enough data is available or if Lessee and Lessor are in dispute on such cost, then the average of [REDACTED] recent invoices for such work from reputable maintenance providers who are FAA/EASA approved repair stations to accomplish such a Landing Gear

Overhaul, [REDACTED] to be provided by Lessee, and [REDACTED] to be provided by Lessor.

B is the total interval of calendar months (or Cycles or Flight Hours, if applicable) between Landing Gear Overhauls for that Landing Gear based on Lessee's historic practices for Boeing 787 in its fleet.

C is, as applicable, the actual number of calendar months, Cycles or Flight Hours elapsed as of the Redelivery Date since the last Landing Gear Overhaul (or if there has not been any Landing Gear Overhaul prior to the Redelivery Date, then since new).

D. Engine LLP Equivalency Charge

The Engine LLP Equivalency Charge in respect of an Engine LLP shall be calculated pursuant to the following formula:

$$A = (W/B) \times (C)$$

where:

A is the Engine LLP Equivalency Charge for that Engine LLP.

W is Engine Manufacturer's published list price for that Engine LLP at the time of redelivery.

B is the then current Cycle life limit for that Engine LLP as referenced in the Engine Manufacturer's Maintenance Manual Chapter 5; **provided, however**, (i) if Lessor has accepted an extended hard life Cycle limit pursuant to Clause E of Schedule 4 (*Return Conditions*) for that Engine LLP, then such extended hard life Cycle limit shall be used instead, or (ii) if Lessee is able to transfer the warranted ultimate life from the OEM, then such ultimate life shall be used instead, whichever is longer.

C is the actual number of Cycles accumulated by that Engine LLP since new.

E. Engine Equivalency Charge

The Engine Equivalency Charge shall be calculated pursuant to the following formula:

$$A = (W/B) \times (C)$$

where:

A is the Engine Equivalency Charge for that Engine Major Module

W is the market cost of accomplishing an Engine Performance Restoration in respect of an Engine Major Module on an Engine based on (i) Lessee's costs for a Boeing 787 Engine Performance Restoration over the previous [REDACTED] years; or (ii) if not enough data is available or if Lessee and Lessor are in dispute on such cost, then the average of [REDACTED] recent invoices for such work from reputable maintenance providers who are FAA/EASA approved repair stations to accomplish such an Engine Performance Restoration, [REDACTED] to be provided by Lessee, and [REDACTED] to be provided by Lessor.

B is the total interval of Flight Hours between Engine Performance Restorations for that Engine Major Module based on Lessee's historic practices for Boeing 787 in its fleet.

C is, as applicable, the actual number of Flight Hours elapsed as of the Redelivery Date since the last Engine Performance Restoration of that Engine Major Module (or if there has not been any Engine Performance Restoration of that Engine Major Module prior to the Redelivery Date, then since new).

F. APU Equivalency Charge

The APU Equivalency Charge shall be calculated pursuant to the following formula:

$$A = (W/B) \times (C)$$

where:

A is the APU Equivalency Charge.

W is the market cost of accomplishing an APU Medium Repair Shop Visit in respect of the APU based on (i) Lessee's costs for a Boeing 787 APU Medium Repair Shop Visit over the previous [REDACTED] years; or (ii) if not enough data is available or if Lessee and Lessor are in dispute on such cost, then the average of [REDACTED] recent invoices for such work from reputable maintenance providers who are FAA/EASA approved repair stations to accomplish such an APU Medium Repair Shop Visit, [REDACTED] to be provided by Lessee, and [REDACTED] to be provided by Lessor.

B is the total interval of calendar months (or Cycles or Flight Hours, if applicable) between an APU Medium Repair Shop Visit for that APU based on Lessee's historic practices for Boeing 787 in its fleet.

C is, as applicable, the actual number of calendar months, Cycles or Flight Hours elapsed as of the Redelivery Date since the last APU Medium Repair Shop Visit (or if there has not been any APU Medium Repair Shop Visit prior to the Redelivery Date, then since new).

For the avoidance of doubt, such Maintenance Redelivery Payments are additional to Lessee's obligation to return the Aircraft in compliance with the Return Conditions as set out in Schedule 4 (*Return Conditions*).

SCHEDULE 4 RETURN CONDITIONS

At Return, Lessee shall redeliver the Aircraft to Lessor for technical acceptance (the "**Technical Acceptance**") at the Redelivery Location in compliance with the conditions specified below, and when Lessee has complied with such conditions Lessor shall execute and deliver to Lessee the Redelivery Acceptance Certificate confirming delivery of the Aircraft to Lessor. For the avoidance of doubt, there shall be no requirements for the redelivery condition of the Aircraft other than those specified in this Schedule.

During the period commencing [REDACTED] months and ending no less than [REDACTED] months prior to the Expiry Date, Lessee and Lessor will agree to conduct a pre-redelivery meeting for the purpose of reviewing and agreeing upon the workscope for the Redelivery Check and, if applicable, any Engine, APU, or Landing Gear shop visit. Lessor and Lessee shall each commit sufficient resources to the Return process to achieve Return by the Expiry Date.

With respect to any discrepancies between the condition of the Aircraft and Technical Records and the Return Conditions described herein [REDACTED], Lessee and Lessor may mutually agree, subject to the provisions outlined in Clause I (*Maintenance Carry-Overs*) of this Schedule, that Lessee will have the option of either correcting such discrepancy at its own expense or providing compensation in lieu of such correction in an amount to be mutually agreed upon by Lessee and Lessor.

A. Registration & Certification, Maintenance Programme & Airworthiness Directives

The Aircraft shall be registered with the AFAC of Mexico (the "**Aviation Authority**") in the name of Lessor unless such registration cannot be maintained because of the failure of Lessor to comply with the citizenship or other eligibility requirements for registration of the Aircraft. Lessee shall [REDACTED]. Upon redelivery, the Aircraft shall be [REDACTED]. Lessee will provide an Export Certificate of Airworthiness (at Lessor's cost and expense) and a valid and subsisting export license within twenty four (24) hours following Technical Acceptance of the Aircraft but, in any case, not later than Redelivery of the Aircraft to Lessor hereunder.

The Aircraft shall be in compliance with Lessee's Approved Maintenance Programme, which shall be based on the latest MPD as of the date that is three (3) months prior to Return.

Lessee will comply with any Airworthiness Directives that require compliance within [REDACTED] days following the Expiry Date (the "**AD Compliance Period**"), with the cost of such Airworthiness Directives requiring compliance (i) up to and including the Expiry Date to be for Lessee's account and (ii) from (but excluding) the Expiry Date to ninety (90) days following the Expiry Date [REDACTED]. [REDACTED].

All no-charge vendor's and manufacturer's service bulletin kits ordered and received by the Lessee for the Aircraft but unused and not installed therein shall be returned with the Aircraft, as part of the Aircraft at the time of Return, and shall be loaded by the Lessee on board the Aircraft.

B. General Condition

The Aircraft shall be (a) in good operating condition, normal wear and tear excepted, (b) clean by international commercial airline standards, (c) in a passenger configuration, (d) with equipment, components and systems (including, without limitation, Cabin IFE), fully functional and operating within limits under the Approved Maintenance Programme and the Manufacturer's maintenance manual, and (e) equipped with the two title Engines duly installed thereon. The Aircraft shall be in compliance with Lessee's corrosion prevention and control program, in compliance with the latest ETOPS CMP, and at the latest software update (e-enabling).

All structural repairs shall be permanent repairs in accordance with Manufacturer's structural repair manual or Manufacturer's service bulletin or Manufacturer's written approval and FAA approval. Flush composite repairs rather than external skin repairs shall have been accomplished in all aerodynamically sensitive areas and in all areas where a flush repair option exists, **provided, however**, that such flush repair shall not be required where the Manufacturer has recommended that an approved flush repair option should not be used. No DER repair may be utilized unless previously approved by Lessor.

No PMA Parts shall be installed on the Airframe other than as permitted in accordance with this Agreement.

Provided that Lessor makes itself available sufficiently in advance of Return to facilitate the following without causing any delay in Redelivery, Lessee shall provide reasonable assistance, support and access (including providing reasonable and timely support of trained personnel and access to any necessary digital media interface tooling, maintenance laptops, data loaders and similar digital ground support equipment) to Lessor in advance of the Redelivery of the Aircraft to facilitate Lessor to transfer the digital configuration, control and ownership of the Aircraft's modifiable software either to Lessor or to Lessor's next lessee.

C. Redelivery Check

The Airframe shall have completed, within [REDACTED] days prior to Return, the Redelivery Check, and following such Redelivery Check the Aircraft shall not be used in commercial passenger operations.

D. Landing Gear Minimum

Each of the nose and main Landing Gear shall have no fewer than [REDACTED] remaining (the "**Landing Gear Hard Time Minimum**") until the next scheduled performance restoration visit under the Maintenance Programme (any such visit, a "**Landing Gear Performance Restoration Visit**") as measured by Flight Hour, Cycle or calendar day, whichever is applicable and most limiting. Each tire shall have at least [REDACTED] per cent. ([REDACTED]%) tread remaining. The Landing Gear brakes will each have an average of at least [REDACTED] per cent. ([REDACTED]%) life remaining before their removal with no individual brake having less than [REDACTED] per cent. ([REDACTED]%) service life remaining.

E. Engine LLP Minimum

No Engine LLP shall have fewer than [REDACTED] Cycles remaining to reaching the then manufacturer's published Chapter 5 life limit (the "**Engine LLP Hard Life Cycle Minimum**"). Notwithstanding the foregoing, Lessee may request of Lessor, and Lessor shall consider in good faith, the allowance of an extended hard life Cycle limit that may be achieved via the incorporation of a service bulletin or other action that may only be incorporated on-wing post-redelivery.

F. Engine Performance Restoration Hard Time Minimum

Each Engine shall have no fewer than [REDACTED] performance restoration visit of such Engine under the Approved Maintenance Programme and based on manufacturer recommendations (any such visit, an "**Engine Performance Restoration Visit**"), as measured by Lessee's expected time on wing, after the demonstration flight, to such next sequential Engine Performance Restoration Visit for engines in Lessee's fleet of the same make and model. [REDACTED].

G. Components

Each time controlled component [REDACTED] will have no less than [REDACTED] months [REDACTED] or the equivalent Flight Hours or Cycles, whichever is applicable, based on Lessee's average utilization, remaining to the next scheduled removal, shop inspection or overhaul. Any such time controlled component having an MPD interval of less than [REDACTED] months or the equivalent Flight Hours or Cycles, whichever is applicable, based on Lessee's average utilization, shall have a full replacement interval remaining until its next shop inspection, removal or overhaul. Each replaced component installed during the Lease Period will be supported by an EASA Form 1 or FAA Form 8130-3 Certification or approved FAA or EASA equivalent.

H. Auxiliary Power Unit Minimum

The APU shall be [REDACTED], as evidenced by an APU condition test performed in accordance with the Manufacturer's maintenance manual, and shall have at least one-third of its time remaining based on Lessee's mean time between removals. The APU LLPs shall have no fewer than 5,000 Cycles remaining.

I. [REDACTED]

If the Aircraft is scheduled to be [REDACTED].

[REDACTED]

J. Paint and Special Markings

The Aircraft paint will be in the condition as removed from airline service, with Lessee's identification marks removed or painted over. Lessee shall at Return pay Lessor an amount equal to Lessee's average cost to complete the painting of its livery on aircraft of the same type as the Aircraft, based on the average of [REDACTED] recent invoices or quotations for the same.

K. Records

No less than [REDACTED] months prior to the targeted Redelivery Check induction date, Lessee will provide for the review of Lessor all Technical Records and,

provided that all such Technical Records are made available to Lessor at the commencement of the [REDACTED] month period, Lessor will provide to Lessee its response and findings on such Technical Records at least [REDACTED] days prior to the targeted Redelivery Check date. Following the Redelivery Check and prior to the Technical Acceptance, Lessee shall, at Lessee's expense, deliver to Lessor all Technical Records updated to the time of Redelivery (including, but not limited to, Engines, APU and Landing Gear [REDACTED]) [REDACTED].

L. Borescope Inspections; Power Assurance Runs

After the demonstration flight and before the Technical Acceptance of the Aircraft, a video borescope inspection of the APU, as well as a hot and cold section video borescope inspection of each Engine and its modules, shall be performed in accordance with the Manufacturer's maintenance manual and a power assurance run for each Engine shall be performed in accordance with the Manufacturer's maintenance manual by Lessee or its representative at [REDACTED]. Lessee will record the Engine power assurance test conditions and results on the Redelivery Acceptance Certificate. Lessee will correct any discrepancies in accordance with the guidelines set out by the OEM manufacturer which may be discovered during such inspection. In addition, Lessee will provide Lessor the latest trend data for each Engine, based on the last [REDACTED] months of operation, or since its last Engine Performance Restoration Visit if such event occurred within the [REDACTED]. [REDACTED]. If the parties [REDACTED], Lessor and Lessee will [REDACTED]. [REDACTED].

M. Demonstration Flight

At Lessor's request, Lessee will perform, at its expense, and in accordance with a mutually agreed acceptance flight procedure, a demonstration flight lasting no more than two hours for the purpose of demonstrating the satisfactory operation of the Aircraft with no more than [REDACTED] of Lessor, or of the next operator, on board during such flight, subject to consent of the Aviation Authority. If the demonstration flight reveals any discrepancies from the Return Conditions, Lessee will correct them prior to Return or, in mutual agreement between Lessee and Lessor, pay compensation to Lessor in accordance with Section I (*Maintenance Carry-Overs*).

N. Liens

The Aircraft shall be free and clear of Security Interests (other than any Lessor Security Interests and Financing Party Security Interests).

O. Fuel

Lessee shall have no obligation to provide any fuel or oil with respect to the Aircraft at redelivery, provided that any fuel or oil remaining on board the Aircraft on Return shall be the property of Lessor without charge.

P. Inspection

The Aircraft inspection shall occur during the Redelivery Check. During the Redelivery Check, Lessor and/or its representatives will have an opportunity to observe functional and operational system checks, in accordance with Lessee's procedures, as they are performed, and to perform a visual inspection of the Aircraft only in those areas that

are visible during the Redelivery Check and concurrently as the inspection tasks are being performed by Lessee.

Appendix A to Schedule 4

Return Condition - Document List

A. Certificates

Certificate of Airworthiness

Current Aircraft Registration

C of A for Export (if applicable)

Noise Limitation Certificate (AFM page)

Radio Station License

Aircraft deregistration confirmation

Burn Certificates – Cabin Interiors – as follows:

Certification of compliance with the fire blocking requirements for the following:-

- Seat cushions*
- Back rest cushions*
- Dress covers*
- Carpets
- Curtains
- Interior Surfaces (if refurbished)

*Including "in combination" burn certification

B. Aircraft Maintenance Status Summaries

Certified current Time in Service (Hours & Cycles) and maintenance status (Last Done Next Due).

Certified status of Airworthiness Directives including method of compliance.

Certified status of Service Bulletin Status including method of compliance.

Certified status of CMR & ALI.

Certified status of CPCP (if applicable).

Certified inventory of Hard Time Components (Fitted listing).

Certified inventory of OC/CM Components (Fitted listing).

Certified status of all non-SB and Major Modifications/STC's including acceptable State of Manufacture Certification.

Certified status of Check/Inspection History & Current Status of Checks with titles and description.

List of Deferred Maintenance items.

List of Out of Phase Checks, Special Requirements, Time Limited Repairs (if any).

Aircraft Incident Clearance Statement

Aircraft Non PMA/DER Statement.

Structural repairs and damage (including Dent & Buckle Chart) with description and repair instructions.

C. Aircraft Maintenance Records

Technical Logs

"A" Checks.

"C" Checks.

All Major Checks.

CPCP Tasks (if applicable) with MPD Task Card reference.

Periodic Tasks.

Dirty Finger Print Certification – AD's with clear reference to AD, S/B and method of compliance.

Dirty Finger Print Certification – SB's with clear reference to method of compliance.

Dirty Finger Print Certification – All other modification with clear reference to method of compliance. Last Weight Report including Schedule.

Compass Swing Report.

Last Test Flight Report.

Certified ETOPS compliance report (if applicable).

Dirty Finger Print certification - All Structural repairs/structural damage with dirty fingerprint copy and repair instructions. If outside SRM limitations, a FAA form 8110-3 or EASA form 1 shall be provided.

Details of State of Manufacture certification basis – All non-SRM Structural repairs.

Aircraft Log Book(s) if applicable.

D. Configuration Status

Approved and certified LOPA.

Galley Drawings/Component OHM.

Emergency Equipment Drawing/Listing.

Loose Equipment Inventory.

Inventory Listing of Avionics installed Units.

E. Aircraft Historical Records

C of A (Export) from State of Manufacture.

Manufacturer's AD Report.

Manufacturer's Inspection Report, Initial Equipment list.

Manufacturer's repair/alteration report.

Manufacturer's SB Report.

Service Difficulty Reports (if any).

Aircraft Historical Log.

Last Flight Data Recorder Read-Out & Corrections.

Weighing report.

F. Engine Records

Certified Statement of Status of Each Engine.

AD Compliance Report and Compliance Documents.

Manufacturer's Modifications & SB Status.

In-house Modifications (if applicable).

Certified LLP Listing, including back to birth information.

Certified listing of installed units.

Manufacturer Delivery Document.

Complete copies of all historical engine/module Shop Visit Reports, including compliance records of all maintenance performed.

State of Manufacture LLP Traceability.

Conditioning Monitoring Report for the last 12 months of operation.

Engine Log Book/Master Records of Installation/Removals.

Last Borescope Report, including video.

Test Cell Run Report.

Last On-Wing Ground Run.

Certified Statement that Engines are not involved in an Accident.

Approved Release to Service Certification for installed rotables utilising FAA form 8130 and EASA form 1.

Approved ETOPS compliance report (if applicable).

G. APU

Certified Statement on Status of APU (if applicable).

Certified SB Compliance Report/AD Status Report.

Approved Release to Service Certification for installed units utilising FAA form 8130 or EASA form 1.

APU Log Book/Master Record of Installation/Removals.

Complete copies of all APU Shop Visit Reports & Reason for Removal.

Statement of APU Hours to Aircraft Flying Hours.

LLP Status and Full Traceability to birth.

APU Borescope Report.

Last On-Wing/Health Check Data sheets (if applicable).

Last Test Cell Run.

Approved ETOPS compliance report.

[REDACTED]

H. Component Records

Approved Release to Service Certification for Hard Time Components utilising FAA form 8130 or EASA form 1.

Approved Release to Service Certification for OC/CM Components.

I. Landing Gears

Approved Release to Service Certification for major assemblies on each Gear utilising FAA form 8130 or EASA form 1.

Approved LLP Listings for each Gear (with Full Traceability to Birth).

Last Shop Visit Report (OH), including compliance records and traveller sheets.

[REDACTED]

J. Manuals

All Manufacturers' Manuals delivered with the Aircraft under the Lease updated to the latest revision standard (applicable as at the Return Occasion) as may be reasonably requested by Lessor.

In digital format:

Airplane Flight Manual.

Flight Crew Operating Manual (OPS Manual).

Weight & Balance Manual.

Quick Reference Handbook (QRH).

WDM.

IPC.

Aircraft Maintenance Manual.

Component Maintenance Manuals.

Aircraft Schematics Manual.

Aircraft Wiring List.

K. Miscellaneous

Approved Maintenance Programme.

Maintenance Programme Specifications (Operator's).

Reference Material for Interpretation of Status Summaries, or cross-reference for Part Number.

SCHEDULE 5
PERMITTED SUBLESSEES

[REDACTED]

SCHEDULE 6 INSURANCE REQUIREMENTS

1.1 Types of Insurance

The Insurances required to be maintained are as follows:

- (a) **Hull All Risks** of loss or damage whilst flying and on the ground with respect to the Airframe and the Engines on an agreed value basis for the Agreed Value and with a deductible not exceeding \$1,000,000 (or such other amount agreed by the Lessor and the Security Agent from time to time);
- (b) **Hull War and Allied Perils** (in accordance with LSW555D or its equivalent) with respect to the Aircraft and for the Agreed Value from time to time, (subject to applicable annual aggregate limits) being such risks excluded from the Hull All Risks Policy and covering the perils of (1) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power, or attempts at usurpation of power; (2) strikes, riots, civil commotions or labour disturbances; (3) any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting there from is accidental or intentional; (4) any malicious act or act of sabotage; (5) confiscation, under the order of any government (whether civil, military or de facto) and/or public or local authority other than the government of the State of Registration and (6) hijacking or any unlawful seizure or wrongful exercise of control of the Aircraft or crew in flight (including any attempt at such seizure or control) made by any person or person on board the Aircraft acting without the consent of the Lessee;
- (c) **Spare All Risks (including War and Allied Risk)** (except when on the ground or in transit other than by air) property insurance on all Engines and Parts when not installed on the Aircraft on an "agreed value" basis for their full replacement value and including engine test and running risks, subject to applicable deductibles; and
- (d) **Aircraft Third Party, Property Damage, Passenger, Baggage, Cargo and Mail and Airline General Third Party (including Products) Legal Liability** (including war and allied perils to the extent customarily available) for a combined single limit (bodily injury/property damage) for an amount not less than the Minimum Liability Coverage for the time being for any one occurrence, each aircraft (but in respect of products legal liability, this limit may be an aggregate limit for any and all losses occurring during the currency of the policy), as per the wording of AVN52E with such additional cover or proof of additional cover and/or a Mexican government indemnity as necessary to be provided by the Lessee to satisfy the aforementioned limit.

1.2 Terms of Hull and Spares Insurance

All required hull and spares insurance, so far as it relates to the Aircraft, will:

- (a) **Additional Insureds:** name each of the Lessor, the Managing Partner, Yamasa, the Parent, each Kumiai-in, the Inspection Agent, the Remarketing Agent and the Financing Parties as contract parties and additional insureds for their respective rights and interests;
- (b) **Loss Payee:** provide that the Security Agent shall, until the end of the Security Period and thereafter, the Lessor shall, in each case to the extent possible, be the loss payee in respect of all insurance proceeds of loss to the Aircraft, any Engine or any Part (and, in each case, being subject to Clause 16.10 (*Application of Insurance Proceeds*)); and
- (c) **50/50 Provision:** if separate Hull "all risks" and "war risks" insurances are arranged, include a 50/50 provision in accordance with market practice (AVS 103 is the current London market language).

1.3 Terms of Liability Insurance

All required liability insurances will:

- (a) **Additional Insureds:** name each of the Lessor, the Managing Partner, Yamasa, the Parent, each Kumiai-in, the Inspection Agent, the Remarketing Agent and the Financing Parties as contract parties and in addition (together with their respective and any subsequent respective successors, affiliates, transferees, assigns, officers, directors, servants, agents, employees, attorneys and managers) name each of the foregoing as additional insureds for their respective rights and interests warranted in respect of each to itself only, no operational interest (the "**Additional Insureds**");
- (b) **Severability:** include a severability of interests clause which provides that the insurance, except for the limit of liability, will operate to give each insured the same protection as if there was a separate policy issued to each insured; and
- (c) **Primary Policy:** contain a provision confirming that the policy is primary without right of contribution and the liability of the insurers will not be affected by any other insurance of which the Lessor, any Financing Party, any other Additional Insured or the Lessee have the benefit so as to reduce the amount payable to the additional insureds under such policies.

1.4 Terms of All Insurances

All Insurances will:

- (a) **Prudent Industry Practice:** be provided by a first-class insurer and be in accordance with normal industry practice of persons operating aircraft similar to the Aircraft in similar circumstances;;
- (b) **Dollars:** provide cover denominated in Dollars;

- (c) **Worldwide:** operate on a world-wide basis subject to such limitations and exclusions as are customary in the London international insurance markets for commercial passenger airlines;
- (d) **Acknowledgment:** acknowledge that the insurer is aware of this Agreement and that the Aircraft is owned by the Lessor and (as the case may be) that the insurances are subject to a security assignment in favour of the Lessor or the Security Agent;
- (e) **Breach of Warranty:** provide that, in relation to the interests of each of the Additional Insureds, the Insurances will not be invalidated by any act or omission by the Lessee, or any other person other than the respective Additional Insureds seeking protection and shall insure the interests of each of the Additional Insureds regardless of any breach or violation by the Lessee, or any other person other than the respective Additional Insured seeking protection of any warranty, declaration or condition, contained in such Insurances;
- (f) **Subrogation:** provide that the insurers will waive any rights of subrogation against the Additional Insureds. Upon indemnification of an additional insured under Insurances, the insurers may, with the consent of such Additional Insured (such consent not to be unreasonably withheld) exercise subrogation rights;
- (g) **Premiums:** provide that the Additional Insureds will have no obligation or responsibility for the payment of any premiums due and that the insurers will not exercise any right of set-off or counter-claim in respect of any premium due against the respective interests of the Additional Insureds other than outstanding premiums relating to the Aircraft, any Engine or Part the subject of the relevant claim;
- (h) **Cancellation/Change:** provide that the Insurances will continue unaltered for the benefit of the Additional Insureds for at least thirty (30) days after written notice of any cancellation, change, event of non-payment of premium or instalment thereof has been sent by the insurer to the Lessee, or where an insurance broker is appointed, to the insurance broker who shall promptly send on such notice to the Lessee except in the case of war risks for which seven (7) days (or such lesser period as is or may be customarily available in respect of war risks or allied perils) will be given, or in the case of war between the five (5) great powers or nuclear peril for which termination is automatic. Notice shall be deemed to commence from the date such notice is given by the insurers if given by fax in accordance with the requirements of this Agreement for service of notice and communications. Such notice will not, however, be given at the normal expiry date of the policy; and
- (i) **Deductibles**
 - (i) The Lessee shall be responsible for any and all deductibles under the Insurances. The Lessee may, at its option and cost, effect Insurances against deductibles from payments under the Insurances; and

- (ii) The deductible for (i) Hull All Risks is \$1,000,000 or such other amount agreed by the Lessor and the Security Agent (having regard to the level of deductible as is customary in the international insurance markets for aircraft the same type as the Aircraft), (ii) Spares is \$100,000 or such other amount agreed by the Lessor and the Security Agent (having regard to the level of deductible as is customary in the international insurance markets for aircraft the same type as the Aircraft) and (iii) for all other Insurances, as may be customary in accordance with industry practice.

1.5 Reinsurance

Where applicable, the Reinsurances will:

- (a) be on the same terms as the original insurances and will include the provisions of Clause 16 (*Insurances*) and this Schedule;
- (b) provide that, notwithstanding any bankruptcy, insolvency, liquidation, dissolution or similar proceedings affecting the reinsured, the reinsurers' liability will be to make such payments as would have fallen due under the relevant policy of reinsurance if the reinsured had (immediately before such bankruptcy, insolvency, liquidation, dissolution or similar proceedings) discharged its obligations in full under the original insurance policies in respect of which the then relevant policy of reinsurance has been effected; and
- (c) contain a "cut-through" clause in substantially the following form (or reasonably otherwise, satisfactory to Lessor):

"The Reinsurers and the Reinsured hereby mutually agree that in the event of any claim arising under the reinsurances in respect of a Total Loss or other claim, as provided by the Aircraft Lease Agreement dated [•] and made between Lessor and Lessee, such claim is to be paid to the person named as loss payee under the primary insurances. The Reinsurers will in lieu of payment to the Reinsured, its successors in interest and assigns pay to the person named as loss payee under the primary insurances effected by the Reinsured that portion of any loss due for which the Reinsurers would otherwise be liable to pay the Reinsured (subject to proof of loss), it being understood and agreed that any such payment by the Reinsurers will (to the extent of such payment) fully discharge and release the Reinsurers from any and all further liability in connection therewith; subject to such provisions not contravening any applicable law".

SCHEDULE 7 CONDITION REPORT

<p><u>AIRCRAFT HALF-YEARLY REPORT</u></p> <p><i>Operator</i> </p> <p><i>Lessor:</i> Yamasa Aircraft AM1 Kumiai</p>		<p style="text-align: right;"><u>FOR</u></p> <p style="text-align: right;"><u>PERIOD</u></p> <p style="text-align: right;"><u>ENDED:</u> </p> <p><i>Model:</i> B787-9</p> <p><i>Registration:</i> </p> <p><i>Serial Number:</i> 43861</p>	
<p>AIRFRAM</p> <p>E</p> <p><i>Hours/minutes</i> / </p> <p><i>Cycles:</i> </p>	<p><u><i>During</i></u></p> <p><u><i>Period</i></u></p>	<p><u><i>Since New</i></u></p> <p> / </p>	
<p>ORIGINAL ENGINES</p> <p><i>Serial number of original engine:</i> </p> <p><i>Serial number currently installed¹:</i> </p> <p>²<i>Total Hours Since New</i> / </p> <p><i>Total Cycles Since New</i> </p> <p><i>Hours during period:</i> / </p> <p><i>Cycles during period:</i> </p> <p><i>Last SV (s)</i> </p> <p><i>Date</i> </p> <p><i>Level of Last SV</i> </p> <p><i>Hours at last shop visit:</i> / </p> <p><i>Cycles at last shop visit:</i> </p> <p><i>Engine cycle limit at last SV:</i> </p> <p><i>Limiting part</i> </p> <p><i>Next planned SV (date/workslope)</i> </p>	<p><u><i>Position 1</i></u></p>	<p><u><i>Position 2</i></u></p>	
<p>APU</p> <p><i>Serial Number of original APU:</i> </p> <p><i>Location of Original APU:</i> </p>			

¹ Please clarify in the report whether the currently installed engine is a temporary replacement (i.e. a spare) or a permanent replacement (e.g. because of Engine Total Loss) of the original engine. If either one or both of the Engines (as defined in the Lease Agreement) are not fitted to the Aircraft then please provide the serial number and registration of the Aircraft to which the Engine(s) are fitted or, alternatively, the name and address of the current storage or maintenance location of the Engine(s).

² The details in this section from this footnote onwards should relate to the engine owned by the Lessor (rather than a temporary replacement).

Serial number currently installed³:

APU
hrs/cyc

Aircraft
hrs/cyc

⁴Total Hours Since New

Total Cycles Since New

Hours during period:

Cycles during period:

Last SV

Date

Level of Last SV

APU Hours at last shop visit:

APU cycle limit at last SV:

Next planned SV
(date/workslope)

APU Cyc:

Part:

TECHNICAL ACTIVITY

For each Engine / APU / Landing Gear Removals/Installations (if any):

Off

On

Component:

Serial Number:

Date:

Total Hours since new:

Total Cycles since new:

Aircraft FH

Aircraft FC

Reason:

Airframe Major Checks during period:

Check(s),

Date of completion

Aircraft FH

Next Planned; check, date,
FH/FC

Aircraft
FC:

(like STC, cabin re-arrangement, repair outside SRM, etc)

(Major) Modifications:

Mod:

Date:

Aircraft FH

Aircraft FC

³ Please see comment in Footnote 1.

⁴ Please see comment in Footnote 2.

Next Planned; mod, date, FH/FC

Note on Technical Activities:

- Technical activity during period : please indicate applicable Airframe, APU, Engine or Landing Gear Hours/Blocks Hours and applicable Airframe, APU, Engine or Landing Gear Cycles
- Airframe Major Checks: please mention all major checks performed, if applicable, (C-check and above) including the structural inspection checks
- Engine, APU or Landing Gear Maintenance – please indicate cause
- Other Significant Repairs or modifications – please indicate cause or damage
- Service Bulletins or Airworthiness Directives, Inspections and Terminations, or Engineering Modifications Completed on the Aircraft – please indicate performed

We certify that the above information is true, correct and complete as of _____

Aerovías de México, S.A. de C.V.

By:

Title:

SCHEDULE 8
FORM OF DEREGISTRATION POWER OF ATTORNEY

PODER ESPECIAL

Aerovías de México, S.A. de C.V. ("Aeromexico" o el "poderdante"), representada en este acto por [_____] y por [_____] , en cumplimiento de lo dispuesto en el contrato de arrendamiento de aeronave celebrado el [_____] de 2017, entre Yamasa Aircraft AM1 Kumiai, representada por su Socio Administrador, Yamasa Co., Ltd. ("Arrendador"), como arrendador, y Aeromexico, como arrendatario, (el "Contrato") cuyo objeto constituye el arrendamiento de una aeronave marca Boeing, modelo 787-9, con número de serie del fabricante 43861 y dos motores marca General Electric, modelo GEnx-1B74/75/P2G01 con números de serie [_____] y [_____] , respectivamente (la "Aeronave"), otorga en favor del Arrendador, de NTT Finance Corporation (el "Agente de Garantías") en su carácter de agente de garantías de conformidad con cierto Contrato de Crédito de fecha [_____] de 2017 celebrado por, *inter alia*, el Arrendador, como Acreditado y el Agente de Garantías, como agente de garantías, así como en favor de Nader, Hayaux y Goebel, S.C., en cada caso, para ser ejercido por conducto de cualquiera de sus representantes o apoderados (en lo sucesivo los "Apoderados" y cada uno un "Apoderado"), un poder especial irrevocable para pleitos y cobranzas y para actos de administración, para ser ejercitado de manera conjunta o separada con las facultades especiales que conforme a la ley requieran cláusula especial, de conformidad con los términos de los dos primeros párrafos del artículo 2554 (dos mil quinientos cincuenta y cuatro) del Código Civil Federal de los Estados Unidos Mexicanos ("México") y sus

SPECIAL POWER OF ATTORNEY

Aerovías de México, S.A. de C.V. ("Aeromexico" or the "grantor"), herein represented by [_____] and by [_____] , in compliance with the aircraft lease agreement entered into on [_____] , 2017, between Yamasa Aircraft AM1 Kumiai, represented by its Managing Partner, Yamasa Co., Ltd. ("Lessor"), as Lessor and Aeromexico as Lessee (the "Agreement") which purpose constitutes the lease of one Boeing aircraft model 787-9, bearing manufacturer's serial number 43861, with two General Electric model GEnx-1B74/75/P2G01 engines bearing serial numbers [_____] and [_____] , respectively, (the "Aircraft"), grants in favor of Lessor and of NTT Finance Corporation (the "Security Agent") in its capacity as security agent under that certain Loan Agreement dated as of [___], 2017 entered into by and among, *inter alia*, Lessor, as Borrower and the Security Agent, as security agent, as well as in favor of Nader, Hayaux y Goebel, S.C., in each case, to be exercised through any of its representatives or attorneys-in-fact (hereinafter the "Attorneys-in-fact" and each an "Attorney-in-Fact"), an irrevocable special power of attorney for litigation and collections and for administration acts, to be exercised jointly or separately with the special authority that by law requires a special clause, in accordance with the terms of the first two paragraphs of article 2554 (two thousand five hundred and fifty four) of the Federal Civil Code of the United Mexican States ("México") and its concordant articles in the several codes ruling in the states of Mexico.

artículos concordantes de los diversos códigos que rigen en los estados de México.

Cada uno de los Apoderados única y exclusivamente podrá ejercer los poderes otorgados para llevar a cabo cualquiera de las siguientes acciones: (i) solicitar y obtener la baja del registro y marcas de nacionalidad y matrícula (cancelación de registro) de la Aeronave del registro correspondiente ya sea en el Registro Aeronáutico Mexicano o de su equivalente en los Estados Unidos de América; (ii) solicitar a la Dirección General de Aeronáutica Civil de México o a su equivalente de los Estados Unidos de América, que comuniquen la cancelación de la matrícula a cualquier autoridad nacional o extranjera; (iii) solicitar y obtener la baja a la Aeronave de los permisos de operación del otorgante ante la Dirección General de Aeronáutica Civil, (iv) solicitar y obtener de la misma autoridad la autorización para el vuelo de traslado de la misma al extranjero; (v) realizar todos los trámites necesarios y conducentes para la exportación de la Aeronave y a la transportación de la misma fuera del territorio de México o de cualquier otra jurisdicción en que la misma se encuentre o llegue a encontrarse; (vi) notificar la terminación del Contrato al Registro Aeronáutico Mexicano o a cualquier otra autoridad para los fines conducentes; y (vii) llevar a cabo cualquier acto o trámite relacionado con cualquier transacción relacionada con el Contrato o la Aeronave y, respecto de los mismos, interponerse y desistirse de cualquier acción o procedimiento incluido el amparo; para promover acusaciones penales, para actuar como coadyuvante del Ministerio Público, para articular y la liberar posiciones, y conceder el perdón, para liberar los procedimientos iniciados y suscribir transacciones.

Única y exclusivamente para los fines para los que es otorgado el presente poder especial, los Apoderados, de manera enunciativa mas no limitativa tendrán todas las facultades

Each of the Attorneys-in-fact may exercise the granted powers solely and exclusively in order to conduct any of the following actions: (i) to request and obtain the cancellation of the Aircraft registration marks from the corresponding registry whether in the Mexican Aeronautic Registry or in its equivalent in the United States of America; (ii) to request to the General Directorate of Civil Aeronautics of Mexico, or to its equivalent in the United States of America to communicate the cancellation of the registration to any national or foreign authority; (iii) to request and obtain the removal of the Aircraft from the grantor's operating permits before the General Directorate of Civil Aeronautics; (iv) to request and to obtain authorization from the same authority for the ferry flight thereof to a foreign country; (v) to perform all the necessary and related formalities for the exportation of the Aircraft and the transportation thereof out of the territory of Mexico or from any other jurisdiction where the same may be located or where it may be found; (vi) to notify the termination of the Agreement to the Mexican Aeronautic Registry or to any other authority for the corresponding effects; and (vii) to perform all acts or filings in connection with any transaction related to the Agreement or the Aircraft and, in respect thereto, to file and abandon any action or proceeding including the "amparo"; to promote criminal accusations, to act as coadjutor of the office of the Public Prosecutor, to articulate and release positions, and grant pardon, release of initiated proceedings and enter into settlements.

Solely and exclusively for the purposes for which this special power of attorney is granted, each Attorney-in-fact, including without limitation, shall be authorised to

necesarias para representar al otorgante ante todas y cualesquiera autoridades ya sean federales, estatales o municipales de México y/o de los Estados Unidos de América, incluyendo de manera enunciativa mas no limitativa la Dirección General de Aeronáutica Civil de la Secretaría de Comunicaciones y Transportes, el Registro Aeronáutico Mexicano dependiente de la Dirección General de Aeronáutica Civil, la Dirección General de Aduanas de la Secretaría de Hacienda y Crédito Público, la Administración de Aduanas de los Estados Unidos de América, la Administración de Aviación Federal de los Estados Unidos de América y el Departamento de Transporte de los Estados Unidos de América y/o cualesquiera otras entidades, agencias o autoridades que en el futuro asuman las funciones de las anteriormente citadas.

represent the grantor before all and any federal, state or municipal authorities of Mexico and/or of the United States of America, including, but not limited to, the General Directorate of Civil Aeronautics of the Ministry of Communications and Transport, the Mexican Aeronautic Registry dependant of the General Directorate of Civil Aeronautics, the General Directorate of Customs of the Ministry of Finance and Public Credit, the Customs Administration of the United States of America, the Federal Aviation Administration of the United States of America and the Department of Transportation of the United States of America and/or any other entities, agencies or authorities that in the future may assume the functions of the aforementioned.

Para todos los efectos previstos en este poder, el término Aeronave incluirá: (a) cualesquiera motores instalados en la Aeronave o que en el futuro sustituyan a los anteriormente citados de acuerdo con los términos del Contrato; y (b) cualesquiera partes, equipo, accesorios, componentes, registros y documentación instalados en la Aeronave o que en el futuro puedan ser instalados en sustitución de los mismos conforme al Contrato o bien que sean pertenecientes a la Aeronave.

For all effects contained in this power of attorney, the term Aircraft shall include: (a) any engines installed on the Aircraft or that in the future may substitute above cited in accordance with the terms of the Agreement; and (b) any parts, equipment, accessories, components, records and documentation installed on the Aircraft or which in the future may be installed in substitution of the same pursuant to the Agreement or that may belong to the Aircraft.

Este poder se confiere con el carácter de irrevocable en términos del artículo 2596 del Código Civil Federal en virtud de que su otorgamiento ha sido acordado como una condición dentro del Contrato.

This power of attorney is granted with irrevocable status pursuant to Article 2596 of the Federal Civil Code, by virtue of the fact that the granting hereof has been agreed as a condition in the Agreement.

Este poder solo podrá ser ejercido en caso de Caso de Incumplimiento (como se define en el Contrato) o de terminación del Contrato.

This power of attorney may be exercised only upon an Event of Default (as defined in the Agreement) which is continuing or termination of the Agreement.

Este Poder se otorga para ser ejercitado en México y/o en los Estados Unidos de América o en cualquier otra jurisdicción en que se localice la Aeronave.

This power of attorney is granted to be exercised in Mexico and/or in the United States of America or in any other jurisdiction where the Aircraft is located.

Finalmente, el otorgante conviene además en no otorgar ningún otro poder similar al contenido en el presente instrumento para la realización de los actos previstos en el mismo con respecto a la Aeronave, en favor de persona alguna distinta de los Apoderados mencionados en el presente.

Lastly, the grantor further agrees to not grant any other powers of attorney similar to the one contained in this instrument for the performance of the acts foreseen herein with respect to the Aircraft, in favour of any person other than the Attorneys-in-fact mentioned in this document.

Este poder se otorga en español con una traducción al inglés, la cual será considerada como exacta en todas sus partes.

This power of attorney is granted in Spanish with a translation in English, which shall be considered as accurate in all its parts.

SCHEDULE 9
FORM OF REDELIVERY ACCEPTANCE CERTIFICATE

This Redelivery Acceptance Certificate (this "**Certificate**") is delivered at the time and on the date set forth below by Yamasa Aircraft AM1 Kumiai (the "**Lessor**") to Aerovías de México, S.A. de C.V. (the "**Lessee**") pursuant to the Amended and Restated Aircraft Lease Agreement dated _____ (as amended, modified or supplemented from time to time, the "**Lease**") in respect of one (1) Boeing model B787-9 aircraft bearing manufacturer's serial number 43861 together with two (2) General Electric Company model GENX-1B74/75/P2G01 engines bearing manufacturer's serial numbers _____ and _____ (the "**Aircraft**"). The capitalized terms used in this Redelivery Acceptance Certificate shall have the respective meanings given to such terms in the Lease.

The Lessor hereby confirms that as at _____ hours on _____ at _____:

- (a) the Aircraft satisfies the redelivery requirements of Schedule 4 (*Return Conditions*) of the Lease in all respects;
- (b) redelivery of the Aircraft (including the Engines) has been accepted by the Lessor; and
- (c) the Lease Period of the Lease has terminated.

This Redelivery Acceptance Certificate may be executed and delivered by the parties hereto in separate counterparts.

This Redelivery Acceptance Certificate is executed and delivered by the parties at _____.

[SIGNATURES ON FOLLOWING PAGE]

SCHEDULE 10

BENCHMARK REPLACEMENT

Notwithstanding anything to the contrary herein or in any other Operative Documents:

- (a) the parties to this Agreement acknowledge that, on 5 March 2021, the Financial Conduct Authority ("**FCA**"), the regulatory supervisor of ICE Benchmark Administration Limited (which is the administrator of USD LIBOR) ("**IBA**"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month and 12-month USD LIBOR tenor settings. On the earlier of (i) the date that all Available Tenors of USD LIBOR have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (ii) the Early Opt-in Effective Date, if the then-current Benchmark is LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Operative Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Operative Document;
- (b) upon the occurrence of a Benchmark Transition Event, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Operative Document in respect of any Benchmark setting at or after 5:00 p.m. (Tokyo time) on the fifth (5th) Business Day after the date on which notice of such Benchmark Replacement is provided to the Lessee without any amendment to, or further action or consent of any other party to, this Agreement or any other Operative Document;
- (c) in connection with the implementation and administration of a Benchmark Replacement, the Lessor will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Operative Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to the Operative Documents;
- (d) the Lessor will promptly notify the Lessee of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Lessor or, pursuant to this Schedule 10 (including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action) will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party to the Operative Documents, except, in each case, as expressly required pursuant to this Schedule 10; and
- (e) at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or LIBOR), then the Lessor may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (ii) the Lessor may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

For the purposes of this Schedule 10:

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an interest period or (b) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

"Benchmark" means, initially, LIBOR; **provided that** if a replacement of the Benchmark has occurred pursuant to this Schedule 10, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"Benchmark Replacement" means, for any Available Tenor:

- (a) for the purposes of paragraph (a) above, the first alternative set forth below that can be determined by the Lessor:
 - (i) the sum of: (A) Term SOFR and (B) 0.11448% (11.448 basis points) for an Available Tenor of one-month's duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months' duration, and 0.42826% (42.826 basis points) for an Available Tenor of six-months' duration; or
 - (ii) the sum of: (A) Daily Simple SOFR and (B) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of USD LIBOR with a SOFR-based rate having approximately the same length as the interest payment period specified in paragraph (a) above; and
- (b) for the purposes of paragraph (b), the sum of (i) the alternate benchmark rate and (ii) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Lessor and the Lessee as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for Dollar denominated syndicated credit facilities at such time,

provided that, if the Benchmark Replacement as determined pursuant to paragraph (a) or (b) above would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement and the other Operative Documents.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day", the timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Lessor decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Lessor in a manner substantially consistent with market practice (or, if the Lessor decides that adoption of any portion of such

market practice is not administratively feasible or if the Lessor determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Lessor decides is reasonably necessary in connection with the administration of this Agreement and the other Operative Documents).

"Benchmark Transition Event" means, with respect to any then-current Benchmark other than LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Lessor in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; provided that if the Lessor decides that any such convention is not administratively feasible for the Lessor, then the Lessor may establish another convention in its reasonable discretion.

"Early Opt-in Effective Date" means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date on which notice of such Early Opt-in Election is provided to the Lessee.

"Early Opt-in Election" means the occurrence of:

- (a) a notification by the Lessor to the Lessee that at least five currently outstanding Dollar denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review); and
- (b) the joint election by the Lessor and the Lessee to trigger a fallback from LIBOR.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"SOFR" means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org> (or any successor source for the

secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).

"Term SOFR" means, for the applicable corresponding tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"USD LIBOR" means the London interbank offered rate for Dollars.

IN WITNESS WHEREOF, the parties hereto have caused this Redelivery Acceptance Certificate to be executed in their respective corporate names by their duly authorized representatives as of the day and year first above written.

Lessee

AEROVÍAS DE MÉXICO, S.A. de C.V.

By:

Lessor⁵

YAMASA AIRCRAFT AM1 KUMIAI

By:

⁵ Signature to be notarized by a Mexican notary public and/or notarized and apostilled

The Lessor:

SIGNED by _____
as attorney for
YAMASA AIRCRAFT AM1 KUMIAI
represented by its Managing Partner,
Yamasa Co., Ltd.

By:

Name:

Title:

The Lessee:

SIGNED by _____
as attorney for
AEROVÍAS DE MÉXICO, S.A. DE C.V.

By:

Name:

Title:

Exhibit B

Summary of Terms of Amended Aircraft Lease

Material Terms: Form of Amended and Restated Aircraft Lease Agreement	
Leased Aircraft	One Boeing 787-9 aircraft
MSNs	MSN 43861
Term	The Lease Period shall commence on the Amendment Effective Date and end on [REDACTED].
Power-by-the-Hour Period	PBH Rental shall be paid from the Amendment Effective Date until [REDACTED].
Power-by-the-Hour Pricing	<p>During the PBH Period, PBH Rental for a calendar month will be calculated in accordance with the following formula:</p> $W = [\text{REDACTED}]$ <p>where:</p> $W: [\text{REDACTED}]$
Monthly Rent per Aircraft	For each Fixed Rent Period during the Base Lease Term, the amount of [REDACTED] shall be payable on each Fixed Rent Date during the Lease Period.