

**Hearing Date and Time: January 12, 2022 at 10:00 a.m. (Prevailing Eastern Time)**  
**Objection Date and Time: January 9, 2022 at 12:00 p.m. (Prevailing Eastern Time)**

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

**In re:**

**GRUPO AEROMÉXICO, S.A.B. de C.V., et al.,  
Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 20-11563 (SCC)**

**(Jointly Administered)**

**NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING CERTAIN DEBTORS TO IMPLEMENT CERTAIN TRANSACTIONS  
WITH BRASILMEX LEASING, LLC AND RELATED PARTIES, INCLUDING  
(I) ASSUMPTION OF CERTAIN AIRCRAFT LEASES (ON AN AMENDED BASIS),  
(II) ENTRY INTO NOVATION DOCUMENTS, ANCILLARY DOCUMENTS,  
TERMINATION DOCUMENTS, AEROVÍAS GUARANTIES, AND AMENDED AND  
RESTATED FINANCING STIPULATION, AND (III) THE CLAIMS SETTLEMENT**

**PLEASE TAKE NOTICE** that, on December 29, 2021, the above-captioned debtors and  
debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order  
Authorizing Certain Debtors To Implement Certain Transactions with Brasilmex Leasing, LLC*

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<sup>1</sup> 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.

*and Related Parties, Including (I) Assumption of Certain Aircraft Leases (on an Amended Basis), (II) Entry into Novation Documents, Ancillary Documents, Termination Documents, Aerovías Guaranties, and Amended and Restated Financing Stipulation, and (III) the Claims Settlement* (the “**Motion**”). A hearing on the Motion is scheduled to be held on **January 12, 2022 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**”),<sup>2</sup> 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](http://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.

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<sup>2</sup> 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>.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the Motion 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](http://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 **January 9, 2022 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: December 29, 2021  
New York, New York

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

**In re:**

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

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 20-11563 (SCC)**

**(Jointly Administered)**

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING CERTAIN  
DEBTORS TO IMPLEMENT CERTAIN TRANSACTIONS WITH BRASILMEX  
LEASING, LLC AND RELATED PARTIES, INCLUDING (I) ASSUMPTION OF  
CERTAIN AIRCRAFT LEASES (ON AN AMENDED BASIS), (II) ENTRY INTO  
NOVATION DOCUMENTS, ANCILLARY DOCUMENTS, TERMINATION  
DOCUMENTS, AEROVÍAS GUARANTIES, AND AMENDED AND  
RESTATED FINANCING STIPULATION, AND (III) THE CLAIMS SETTLEMENT**

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:

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<sup>1</sup> 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.

- a. authorizing, but not directing, certain of the Debtors to:
  - i. assume the Aircraft Leases (as defined below) relating to ten Embraer E190 aircraft bearing manufacturer's serial numbers 19000408, 19000455, 19000466, 19000499, 19000518, 19000525, 19000531, 19000546, 19000552, and 19000557 (collectively, with the related engines, parts, equipment, and appurtenances, the "**Aircraft**"), each on an amended basis and substantially consistent with the terms and conditions set forth in the form of amended lease (the "**Form Lease**")<sup>2</sup> attached to the Proposed Order (as defined herein) as Exhibit 1 (collectively, the "**Amended Aircraft Leases**") and enter into the Amended Aircraft Leases;
  - ii. enter into the Novation Documents, the Ancillary Documents, the Termination Documents, and the Aerovías Guaranties (each as defined herein); and
  - iii. enter into the amended and restated financing stipulation, a copy of which is attached to the Proposed Order as Exhibit 2 (the "**Amended and Restated Financing Stipulation**"), and the related transactions; and
- b. approving the Claims Settlement (as defined herein).

This Motion is supported by the *Declaration of Jeffrey S. Craine in Support of (A) Debtors' Motion for Entry of an Order Authorizing Certain Debtors To Implement Certain Transactions with Brasilmex Leasing, LLC and Related Parties, Including (I) Assumption of Certain Aircraft Leases (on an Amended Basis), (II) Entry into Novation Documents, Ancillary Documents, Termination Documents, Aerovías Guaranties, and Amended and Restated Financing Stipulation, and (III) the Claims Settlement and (B) Related Sealing Motion* (the "**Craine 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

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<sup>2</sup> A summary of the material terms of the Form Lease is attached hereto as **Exhibit B**.

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 363, 364, 365, 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) certain of the Debtors to (i) assume the Aircraft Leases (each on an amended basis on terms substantially consistent with those set forth in the Form Lease) and enter into the Amended Aircraft Leases and (ii) enter into (A) the Deed of Novation and Amendment among Aerovías de México, S.A. de C.V. (“**Aerovías**”), as existing borrower, Brasilmex Leasing, LLC (the “**Lessor**”), as new borrower, Federative Republic of Brazil through *Secretaria Especial de Comércio Exterior e Assuntos Internacionais do Ministério da Economia (SECINT-ME)*, formerly *Secretaria de Assuntos Internacionais do Ministério da Fazenda (Sain)*, through the *Fundo de Garantia à Exportação – FGE* (as successor to *Banco Nacional de Desenvolvimento Econômico e Social – BNDES*), as lender, and Wilmington Trust Company (the “**WTC**”), not in its individual capacity but solely as security trustee (the “**Loan Novation**”), (B) the Aircraft Lease Novation and Amendment Agreement among Aerovías, as existing lessor, Aerolitoral, S.A. de C.V. (“**Aerolitoral**”), as lessee, and the Lessor, as new lessor (the “**Lease Novation**” and, together with

the Loan Novation, the “**Novation Documents**”), (C) the Aerovías Guaranties, (D) the Amended and Restated Financing Stipulation, (E) the acknowledgment of each Collateral Assignment between Lessor, as assignor, and WTC, not in its individual capacity but solely as security trustee, as assignee, and agreed and acknowledged by Aerolitoral in respect of the Amended Aircraft Leases (the “**Collateral Assignments**”), (F) any and all other agreements, instruments, certificates, or documents related to or to be delivered under the Novation Documents, the Collateral Assignments, or the Amended Aircraft Leases (collectively, with the Collateral Assignments, the “**Ancillary Documents**”), (G) the Termination Documents, and (H) the related transactions 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.<sup>3</sup>

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

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<sup>3</sup> On July 2, 2020, the Court entered similar orders for the other Debtors on their respective case 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 and 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 October 30, 2020, the Debtors filed their *Motion for Approval of Stipulations*

*and Orders Between Debtors and Counterparties Concerning Certain Aircraft Financing Agreements* [ECF No. 601] (the “**Financing Stipulation Motion**”), pursuant to which the Debtors sought approval of certain stipulations between certain Debtors and certain of the Counterparties<sup>4</sup> concerning certain Agreements and Equipment (each as defined in the Financing Stipulation Motion). Broadly speaking, the stipulations entered into in connection therewith minimized the Debtors’ costs and the Counterparties’ administrative claims under the Agreements. The Court entered an order approving the Financing Stipulation Motion [ECF No. 650] and so ordered the underlying stipulations [ECF Nos. 651–53, 692–94], including stipulations related to the Aircraft and the Aircraft Leases (as defined herein) [ECF No. 835] (the “**Financing Stipulation**”).

11. 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,<sup>5</sup> and subsequently entered each of the orders related thereto.<sup>6</sup> Pursuant to such orders, the Debtors (a) added 28 new aircraft to

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<sup>4</sup> As used in this Motion and the Proposed Order, “Counterparties” shall have the meaning ascribed to it in the Amended and Restated Financing Stipulation.

<sup>5</sup> See Hr’g Tr. (April 30, 2021), 29:17–23 and 37:13–16.

<sup>6</sup> See ECF Nos. 1141–42, 1145, 1154, 1156–57, 1160–62.

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.

12. The Court has also entered additional orders authorizing the Debtors to either enter into new aircraft and equipment leases and/or assume existing aircraft and equipment leases on an amended basis. *See* ECF Nos. 984, 1100, 1544, 1572–73, 1579, 1659, 1693, 1759, 1891, 1932, 1934, 1939, 1941, 2004, 2006, 2024, 2068, 2082, 2128, 2130, 2144, 2152–54.

### **C. The Proposed Transactions**

13. Over the last several months, the Debtors have continued negotiating with existing lessors and financiers, and potential lessors and financiers 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.

14. Collectively, Aerovías currently leases the Aircraft pursuant to that certain Aircraft Finance Lease Agreement, dated February 22, 2011, by and between the Lessor, as lessor, and Aerovías, as lessee (as amended and supplemented by those certain agreements listed as items 4 through 13, and 35 in Exhibit A to the Amended and Restated Financing Stipulation, the “**Finance Lease Agreements**” and, all documents listed in Exhibit A to the Amended and Restated Financing Stipulation shall be collectively referred to herein as the “**Exhibit A Documents**”). Grupo Aeroméxico guarantees Aerovías’s obligations under the Finance Lease Agreements (the “**Grupo Guaranty**”). Aerovías subleases the Aircraft to Aerolitoral pursuant to that certain Aircraft Sublease Agreement, dated February 22, 2011, between Aerovías, as sublessor, and Aerolitoral, as sublessee (as amended and supplemented by those certain agreements listed as items 25 through 34 of the Exhibit A Documents, the “**Subleases**” and, together with the Finance

Lease Agreements, the “**Aircraft Leases**”).

15. As a result of arm’s length and good faith negotiations, certain of the Debtors have reached a series of integrated agreements with the Counterparties to restructure this arrangement as described below.

16. Certain of the Debtors and the Counterparties have agreed to mutually amend the Aircraft Leases and their relationship (as necessary or appropriate) to better align with the Debtors’ long-term business plan. To this end, the existing leasing structures will collapse at the Debtor level such that, among other things, (a) Aerovías will novate the Subleases to the Lessor pursuant to the Lease Novation, (b) the Debtors will enter into documents terminating the Finance Lease Agreements and the Grupo Guaranty (the “**Termination Documents**”),<sup>7</sup> (c) Aerolitoral will lease the Aircraft directly from the Lessor (pursuant to the Amended Aircraft Leases), and (d) Aerovías will guarantee Aerolitoral’s obligations under the Amended Aircraft Leases (the “**Aerovías Guaranties**”). In order to facilitate the foregoing transactions, the Debtors also seek authorization to enter into the Amended and Restated Financing Stipulation, which largely serves the purpose of (y) extending the term of the Financing Stipulation and (z) obligating Aerolitoral to abide by all of the covenants, undertakings, and obligations of the “Lessee” contained in the Form Lease for each Aircraft Lease pending the effectiveness of the corresponding Amended Aircraft Lease. 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 with improved terms, conditions, and near-term cash flow projections as compared to the existing Aircraft Leases.

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<sup>7</sup> It is the intent of the parties that the Grupo Guaranty shall terminate upon entry of the Proposed Order, while the Finance Lease Agreements shall be assumed upon entry of the Proposed Order and terminate with respect to each applicable Aircraft upon the effectiveness of the Amended Aircraft Lease for such Aircraft.

17. Furthermore, the Counterparties and the Debtors agree that, subject to the Debtors' compliance with the terms of (a) the Aircraft Leases and (b) the Financing Stipulation until the Amended and Restated Financing Stipulation is effective and then the Amended and Restated Financing Stipulation, the assumption of the Aircraft Leases, each on an amended basis and substantially consistent with the terms and conditions set forth in the Form Lease, would not give rise to an obligation to make any cash payments at the time of assumption to cure any defaults under the Aircraft Leases under section 365(b)(1)(A) of the Bankruptcy Code.

18. In conjunction with the assumption of the Aircraft Leases, each on an amended basis on terms substantially consistent with those set forth in the Form Lease, the Debtors seek to resolve all pre-assumption claims against the Debtors relating to any of the Aircraft Leases, the Exhibit A Documents, the Grupo Guaranty, or the Aircraft in the Chapter 11 Cases. To this end, the parties have agreed that, upon the entry of the Order and the effectiveness of the Amended and Restated Financing Stipulation, (a) the Lessor, on behalf of itself and any other party (including the Counterparties) with an interest in any of the Aircraft Leases, the Exhibit A Documents, the Grupo Guaranty, or the Aircraft, will have new allowed non-priority general unsecured claims in the final aggregate amount of \$16,000,000 against each of the bankruptcy estates of Grupo Aeroméxico and Aerovías and (b) all other claims relating to the Aircraft Leases, the Exhibit A Documents, the Grupo Guaranty, or the Aircraft, including, without limitation, the claims numbered 686–691, shall be expunged (the “**Claims Settlement**”<sup>8</sup>). For the avoidance of doubt,

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<sup>8</sup> It is the intent of the parties that the claims allowed against Grupo Aeroméxico and Aerovías pursuant to this Claims Settlement would be classified in and afforded treatment (a) under class 3(a) of the Debtors' *Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [ECF No. 2293] filed on December 10, 2021, if confirmed, (b) under the class, to the extent one exists, that provides for separate classification for claimants with recourse claims against both Aerovías and Grupo Aeroméxico in any other chapter 11 plan of the Debtors, or (c) in any chapter 11 plan filed by the Debtors that does not provide for separate classification for claimants with recourse claims against both Aerovías and Grupo Aeroméxico, that is no worse than the treatment given to the non-priority general unsecured claims of any other aircraft lessor whose claims run solely against the applicable Debtor.

the claims allowed pursuant to the Claims Settlement shall constitute the only pre-assumption claims relating to the Aircraft Leases, the Exhibit A Documents, the Grupo Guaranty, or the Aircraft allowed in the Chapter 11 Cases.

19. In determining to enter into the foregoing 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,<sup>9</sup> and the Ad Hoc Group of Unsecured Claimholders.<sup>10</sup>

### **Basis for Relief**

#### **A. The Court Should Authorize the Assumption of the Aircraft Leases (on an Amended Basis) and Entry into the Novation Documents, the Ancillary Documents, the Termination Documents, the Aerovías Guaranties, and the Amended and Restated Financing Stipulation under Sections 363(b), 364, 365, and 105(a) of the Bankruptcy Code**

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

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<sup>9</sup> 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].

<sup>10</sup> As used in this Motion, “Ad Hoc Group of Unsecured Claimholders” refers to the group identified in the *Second Amended Verified Statement of the Ad Hoc Group of Unsecured Claimholders Pursuant to Bankruptcy Rule 2019* [ECF No. 2244].

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).

21. 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.

22. 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 Nostas Assoc. v. Costich (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 (MG), 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).

23. 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.

24. Further, entry into the Novation Documents, the Ancillary Documents, the Termination Documents, the Aerovías Guaranties, the Amended and Restated Financing Stipulation, and the related transactions (to the extent that such entry uses estate property) is a justified exercise of the Debtors’ business judgment, pursuant to section 363 of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code empowers a court to allow a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d



141, 143 (2d Cir. 1992) (holding that “a judge determining a § 363(b) application [must] expressly find from the evidence presented before him . . . a good business reason to grant such an application”); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Glob. Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a motion under section 363(b) of the Bankruptcy Code is “good business reason”).

25. The business judgment rule is satisfied “when the following elements are present: (1) a business decision, (2) disinterestedness, (3) due care, (4) good faith, and (5) according to some courts and commentators, no abuse of discretion or waste of corporate assets.” *In re Integrated Res.*, 147 B.R. at 656 (internal quotations omitted). In fact, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also In re Integrated Res., Inc.*, 147 B.R. at 656 (holding that a party opposing a debtor’s exercise of its business judgment has the burden of rebutting the presumption of validity). Indeed, courts in this district have consistently and appropriately been loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence and will uphold a board’s decisions as long as they are attributable to any “rational business purpose.” *Id.*

26. Moreover, to the extent that the Aerovías Guaranties or the other contemplated transactions implicate section 364 of the Bankruptcy Code, the Debtors have established that entry into the contemplated transactions 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)).

27. Finally, 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).

28. 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 363(b), 364, 365(a), and 105(a) of the Bankruptcy Code. As described above and in the Craine 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 Leases, the Exhibit A Documents, 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 set forth in the Amended Aircraft Leases and the Amended and Restated Financing Stipulation, that are in line with the Debtors' long-term business plan. In addition, the proposed transactions will (a) create operational flexibility for the Debtors, as they contemplate, among other things, a deferral of fixed rental payments that affords the Debtors an improved cash flow profile during the remainder of the amended leasing terms for each Aircraft Lease, (b) allow the Debtors to retain and operate ten existing Aircraft in their fleet, and (c) position the Debtors to potentially reject other costly aircraft or equipment that are not as attractive for the long-term fleet.

29. In light of the foregoing, the Debtors respectfully submit that the assumption of the Aircraft Leases (each on an amended basis on terms substantially consistent with those set forth in the Form Lease), and entry into the Amended Aircraft Leases, the Novation Documents, the Ancillary Documents, the Termination Documents, the Aerovías Guaranties, the Amended and Restated Financing Stipulation, and the related transactions, (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, (c) would further serve to maximize value for the benefit of all creditors, and (d) represent the best available transactions under the circumstances of the Chapter 11 Cases. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to (x) assume the Aircraft Leases (each on an amended basis on terms substantially consistent with those set forth in the Form Lease) and enter into the Amended Aircraft Leases, (y) enter into the Novation Documents, the Ancillary Documents, the Termination Documents, the Aerovías Guaranties, the Amended and Restated Financing

Stipulation, and the related transactions, and (z) perform all of the obligations contemplated by the foregoing documents and transactions.

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

30. By this Motion, the Debtors also seek approval of the Claims Settlement between the Counterparties and the Debtors for the allowance of claims stemming from the amendment of the Aircraft Leases' terms and the withdrawal of other claims against the Debtors in the Chapter 11 Cases relating to the Aircraft Leases, the Exhibit A Documents, the Grupo Guaranty, or the Aircraft.

31. 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).

32. 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).

33. 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.

34. 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 Debtors’ obligations to the Counterparties, the amounts of the Counterparties’ claims, and any amounts mitigating the quantum of those claims, the parties negotiated a consensual resolution settling on the agreed final amounts for the Claims Settlement.<sup>11</sup> 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

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<sup>11</sup> Pursuant to the Claims Settlement, secured claims in the aggregate amount of at least \$583,884,114 will be withdrawn. Furthermore, certain of the Withdrawn Claims (as defined in the Proposed Order) also include the assertion of unliquidated amounts.

and independent advisors of the Debtors and the Counterparties that will (a) eliminate the need for a costly claims dispute and (b) unlock distributable value for the Debtors' unsecured creditors by liquidating the Counterparties' claim 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**

35. 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; (f) the Ad Hoc Group of Unsecured Claimholders; and (g) 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**

36. 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: December 29, 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  
Joshua Y. Sturm

*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.<sup>1</sup>**

**Chapter 11**

**Case No. 20-11563 (SCC)**

**(Jointly Administered)**

**ORDER AUTHORIZING CERTAIN DEBTORS TO IMPLEMENT  
CERTAIN TRANSACTIONS WITH BRASILMEX LEASING, LLC AND  
RELATED PARTIES, INCLUDING (I) ASSUMPTION OF CERTAIN  
AIRCRAFT LEASES (ON AN AMENDED BASIS), (II) ENTRY INTO  
NOVATION DOCUMENTS, ANCILLARY DOCUMENTS, TERMINATION  
DOCUMENTS AEROVÍAS GUARANTIES, AND AMENDED AND RESTATED  
FINANCING STIPULATION, AND (III) THE CLAIMS SETTLEMENT**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an order (this “**Order**”), (a) authorizing (but not directing) certain of the Debtors to (i) assume the Aircraft Leases (each on an amended basis on terms substantially consistent with those set forth in the Form Lease attached hereto as **Exhibit 1**), and (ii) enter into (A) the Novation Documents, (B) the Ancillary Documents, (C) the Termination Documents, (D) the Aerovías Guaranties, (E) the Amended and Restated Financing Stipulation (attached hereto as **Exhibit 2**), and (F) the related transactions, and (b) approving the Claims Settlement, each as set forth more fully in the Motion and the Craine 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*

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<sup>1</sup> 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.

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

*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 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 January 12, 2022 (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 hereby granted, and the transactions contemplated by the Motion are hereby approved, to the extent set forth herein.
2. Pursuant to sections 363(b) of the Bankruptcy Code, the Debtors are authorized to (a) enter into the Novation Documents, the Ancillary Documents, the Termination Documents, the Aerovías Guaranties, the Amended and Restated Financing Stipulation, and the related transactions and (b) pay all amounts and otherwise perform all obligations thereunder.
3. Pursuant to and in accordance with section 365 of the Bankruptcy Code, the Debtors (as appropriate or necessary) are authorized (but not directed) to (a) assume each

Aircraft Lease (on an amended basis on terms substantially consistent with those set forth in the Form Lease) and enter into the Amended Aircraft Leases and (b) pay all amounts and otherwise perform all obligations under the Amended Aircraft Leases. Upon the effectiveness of the Amended Aircraft Leases, in accordance with its terms, the Amended Aircraft Leases shall be deemed assumed by the appropriate Debtors without the need for further notice or action by the Debtors or the Counterparties or a further order of the Court. Upon entry of this Order, the Finance Lease Agreements shall be deemed assumed and shall terminate with respect to each applicable Aircraft upon the effectiveness of the Amended Aircraft Lease for such Aircraft.

4. Subject to the Debtors' continued compliance with the terms of (a) the applicable Aircraft Lease and (b) the Financing Stipulation until the Amended and Restated Financing Stipulation is effective and then the Amended and Restated Financing Stipulation, the cure payment required by section 365(b) of the Bankruptcy Code upon assumption of the applicable Amended Aircraft Lease shall be \$0.00.

5. The Debtors are authorized (but not directed) to execute, deliver, provide, implement, and fully perform any and all obligations, instruments, and papers necessary or advisable to implement the transactions, including, without limitation, as provided for or contemplated in the Amended Aircraft Leases, the Novation Documents, the Ancillary Documents, the Termination Documents, the Aerovías Guaranties, and/or the Amended and Restated Financing Stipulation, and such obligations shall constitute administrative expenses of the applicable Debtor(s)' estate(s) pursuant to sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code.

6. The Claims Settlement is (a) integral and necessary to the Brasilmex 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 and the Counterparties.

7. In accordance with the Claims Settlement, and subject to paragraph 4 of this Order, the Lessor shall be allowed new non-priority general unsecured claims in the final aggregate amount of \$16,000,000 against each of the bankruptcy estates of Grupo Aeroméxico and Aerovías on account of all pre-assumption claims relating to the Aircraft Leases, the Exhibit A Documents, the Grupo Guaranty, or the Aircraft in the Chapter 11 Cases (or any subsequent chapter 7 case in the event of conversion) (collectively, the "**Allowed Claims**"). For the avoidance of doubt, the amount of the Claims Settlement shall constitute the only pre-assumption claims relating to the Aircraft Leases, the Exhibit A Documents, the Grupo Guaranty, or the Aircraft allowed in the Chapter 11 Cases; *provided, however*, that the Lessor may recover from the Debtors until it has received payment in full on account of the Allowed Claims, but, for the avoidance of doubt, the Lessor (a) shall only be entitled to recover up to the aggregate amount of \$16,000,000 on account of all of the Allowed Claims, (b) shall not be entitled to receive duplicative distributions from multiple Debtors on account of the Allowed Claims aggregating to more than \$16,000,000, and (c) shall promptly return any such duplicative excess distributions to the applicable Debtor if received. Upon allowance, none of the Allowed Claims shall be (either directly or indirectly) subject to any challenge, objection, counterclaim, or offset for any reason, or subject to any objection or avoidance or recovery action under section 502(d), 542, 544, 547, 548, 549, 550, 551, or 553 of the Bankruptcy Code.

The Allowed Claims are freely transferrable and the Claimants may take commercially reasonable actions in furtherance of any potential transfer of such claims without further order of this Court. The Allowed Claims shall be classified in and afforded treatment (x) under class 3(a) (Aerovías and Grupo Aeroméxico Recourse Claims) of the *Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [ECF No. 2293] filed on December 10, 2021, if confirmed, (y) under the class, to the extent one exists, that provides for separate classification for claimants with recourse claims against both Aerovías and Grupo Aeroméxico in any other chapter 11 plan of the Debtors, or (z) in any chapter 11 plan filed by the Debtors that does not provide for separate classification for claimants with recourse claims against both Aerovías and Grupo Aeroméxico, that is no worse than the treatment given to the non-priority general unsecured claims of any other aircraft lessor whose claims run solely against the applicable Debtor.

8. In accordance with the Claims Settlement, any and all claims against the Debtors relating to the Aircraft Leases, the Exhibit A Documents, the Grupo Guaranty, or the Aircraft (other than the Allowed Claims) shall be expunged, including, without limitation, the following claims (collectively, the “**Withdrawn Claims**”):

Claim/Schedule Number	Claimant	Debtor	Withdrawn Claim Amount
686	Federative Republic of Brazil through <i>Secretaria Especial de Comércio Exterior e Assuntos Internacionais do Ministério da Economia (SECINT-ME)</i>	Aerovías	\$97,314,019
687 / 561105340	Wilmington Trust Company, as Security Trustee	Aerovías	\$97,314,019
688	Federative Republic of Brazil through <i>Secretaria Especial de Comércio Exterior e Assuntos Internacionais do Ministério da Economia (SECINT-ME)</i>	Grupo Aeroméxico	\$97,314,019

689	Wilmington Trust Company, as Security Trustee	Grupo Aeroméxico	\$97,314,019
690	Federative Republic of Brazil through <i>Secretaria Especial de Comércio Exterior e Assuntos Internacionais do Ministério da Economia (SECINT-ME)</i>	Aerolitoral	\$97,314,019
691	Wilmington Trust Company, as Security Trustee	Aerolitoral	\$97,314,019
<b>Total:</b>			<b>\$583,884,114</b>

9. The Allowed Claims shall be automatically allowed, and the Withdrawn Claims shall be automatically withdrawn, upon entry of this Order and the effectiveness of the Amended and Restated Financing Stipulation, and no further notice or action shall be required of the Counterparties or the Debtors to effectuate the allowance or withdrawal, as applicable, of such claims. From and after the entry of this Order and the effectiveness of the Amended and Restated Financing Stipulation, 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.

10. 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 Counterparties and all other persons asserting interests in the Aircraft Leases, the Exhibit A Documents, the Novation Documents, the Ancillary Documents, the Termination Documents, the Aerovías Guaranties, the Aircraft, the Amended and Restated Financing Stipulation, or the Financing Stipulation.

11. 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.

12. 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, the Aircraft Leases, the Amended Aircraft Leases, the Aircraft, the Novation Documents, the Ancillary Documents, the Termination Documents, the Aerovías Guaranties, or the Amended and Restated Financing Stipulation.

Dated: \_\_\_\_\_, 2022  
New York, New York

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THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Form Lease**



**DATED AS OF [●], 2021**

**BRASILMEX LEASING, LLC**  
**as Lessor**

**and**

**AEROLITORAL, S.A. DE C.V.,**  
**as Lessee**

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**AMENDED AND RESTATED AIRCRAFT LEASE  
AGREEMENT  
RELATING TO THE LEASING OF ONE EMBRAER  
ERJ 190-100 LR MODEL AIRCRAFT  
MSN [●]<sup>1</sup>  
EQUIPPED WITH TWO GENERAL ELECTRIC CF34-  
10E6 ENGINES**

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<sup>1</sup> **Note to Draft:** Relevant MSN, ESNs and registration mark to be inserted.

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## AMENDED AND RESTATED AIRCRAFT LEASE AGREEMENT

**THIS AGREEMENT** is made as of [●], 2021

### **BETWEEN:**

**BRASILMEX LEASING, LLC**, a limited liability company organized under the laws of the State of Delaware, whose main office is at 1100 North Market Street, Wilmington, DE 19890-1605 (“**Lessor**”); and

**AEROLITORAL, S.A. DE C.V.**, a company organized and existing under the Laws of the United Mexican States and having its principal office at Paseo de la Reforma, No. 243, Piso 25, Colonia Cuauhtémoc, Alcaldía Cuauhtémoc, Mexico City, 06500, Mexico (“**Lessee**”).

It is agreed as follows:

### 1. **INTERPRETATION**

#### 1.1 **Definitions**

In this Agreement, unless the context otherwise requires, capitalized words and expressions shall have the respective meanings given to them in Clause 1 (*Defined Terms*) of Schedule 1 (*Definitions and Construction*).

#### 1.2 **Construction**

The conventions on construction and usage set out in Clause 2 (*Construction and Usage*) of Schedule 1 (*Definitions and Construction*) shall apply to this Agreement.

#### 1.3 **Clauses and Schedules**

References in this Agreement to clauses or schedules are, unless otherwise specified, references to clauses of and schedules to this Agreement and together the clauses and schedules shall constitute this Agreement. Certain provisions including conditions precedent and representations and warranties have been placed in the schedules and shall take effect as part of this Agreement.

### 2. **AGREEMENT TO LEASE**

Subject to and in accordance with the terms and conditions of this Agreement, Lessor agrees to lease the Aircraft to Lessee and Lessee agrees to take the Aircraft on lease from Lessor for the Term. Pursuant to (a) that certain Funding Agreement dated as of February 18, 2011 (the “**Funding Agreement**”) between Aerovías de México, S.A. de C.V. (“**Aeromexico**”), as borrower, Grupo Aeroméxico S.A.B. de C.V., as guarantor, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES (“**BNDES**”), as lender; (b) that certain Security Trust Deed (the “**Security Trust Deed**”) dated as of February 18, 2011 between Aeromexico, as borrower, Lessor, as owner, Brasilmex Leasing Statutory Trust, as owner parent, BNDES, as lender, and the Security Trustee; (c) that certain Borrower Parent Guarantee dated as of March 1, 2011 by Grupo Aeroméxico S.A.B. de C.V., as guarantor, in favor of the Security Trustee; and (d) the other Operative Documents (as defined in the Security Trust Deed) (together with the Funding Agreement, the Security Trust Deed and the Borrower Parent Guarantee, the “**Loan Documents**”), the parties entered into a term loan facility (the “**BNDES Facility**”) to finance ten (10) Embraer ERJ 190-100 aircraft registered in Mexico, including the Aircraft. By a Transfer Agreement dated December 24, 2020 (the “**Transfer Agreement**”), between BNDES and the Federative Republic of Brazil through *Secretaria Especial de Comércio Exterior e Assuntos Internacionais do Ministério da Economia (SECINT-ME)*, formerly *Secretaria De Assuntos Internacionais Do Ministério Da Fazenda (SAIN)*, through the

*Fundo De Garantia À Exportação - FGE* (The Fund For Export Credit Guarantee) (the “**Ministry of Economy**”), BNDES transferred all of its right, benefits, and obligations under the BNDES Facility to the Ministry of Economy. Lessor and Aeromexico previously entered into an Aircraft Finance Lease Agreement dated February 22, 2011, as supplemented by the Finance Lease Supplement dated [●] (as further amended, supplemented and/or modified prior to the date hereof, the “**Prior Finance Lease**”). Aeromexico and Lessee previously entered into an Aircraft Sublease Agreement dated February 22, 2011, as supplemented by the Sublease Supplement dated [●] (as amended, supplemented and/or modified prior to the date hereof, the “**Prior Lease**”), relating to, *inter alia*, the Aircraft. Contemporaneously with the Lease Commencement Date, (a) Lessor and Aeromexico will terminate the Prior Finance Lease and (b) Aeromexico, as assignor, Lessor, as assignee, and Lessee, as lessee, will enter into the Lease Novation Agreement whereby Lessor will become the “Lessor” under the Prior Lease, as amended and restated hereby. The parties acknowledge and agree that this Agreement amends and restates the Prior Lease, to the extent it relates to the Aircraft, in its entirety effective as of the Lease Commencement Date.<sup>2</sup>

### 3. **DELIVERY**

#### 3.1 **Delivery and Acceptance**

- (a) It is acknowledged by Lessee that the Aircraft was delivered to and accepted by Lessee under the Prior Lease on the Original Delivery Date and is currently in the possession of Lessee and no physical delivery of the Aircraft by Lessor to Lessee will be required at Lease Commencement Date. It is further acknowledged by Lessee that the Aircraft has been in the possession and operation of Lessee and that, subject to satisfaction of the conditions precedent set forth in Clauses 1 and 3 of Schedule 3 (*Conditions Precedent*), Lessor shall lease the Aircraft to Lessee and Lessee shall have no right to reject the Aircraft under this Agreement due to any defects or deficiencies in its condition on the date hereof or on the Lease Commencement Date. Without prejudice to Clause 3 of Schedule 3 (*Conditions Precedent*), execution of the Lease Commencement Date Confirmation by Lessee shall constitute conclusive proof as between Lessor and Lessee that Lessee has irrevocably and unconditionally accepted the Aircraft under this Agreement without any reservations or exceptions whatsoever.
- (b) Lessor and Lessee will use commercially reasonable efforts to [REDACTED]. If the [REDACTED], [REDACTED], and each of the parties hereto unconditionally and irrevocably agrees to evidence the same by signing and delivering its executed counterpart of the Lease Commencement Date Confirmation to each of the other parties hereto, provided that the failure of any party to deliver its signed counterpart shall not [REDACTED].

#### 3.2 **Risk**

Throughout the Term, Lessee shall be responsible for all risks associated with or relating to the Aircraft, including for any loss of or damage to the Aircraft. In recognition of the foregoing, and notwithstanding Lessor’s rights under this Agreement, Lessee acknowledges and agrees that, as between Lessor and Lessee, Lessee (a) is in sole operational control of the Aircraft and is in the business of operating commercial aircraft, (b) is solely responsible for the condition, inspection, maintenance, repair, oversight, operation and security of the Aircraft and compliance with all requirements of applicable Regulations, and (c) has not relied upon, and shall not rely upon, any

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<sup>2</sup> **Note to Draft:** Relevant dates to be inserted.

statement, act, or omission of Lessor (or Owner) in connection with the use, operation, maintenance, repair, condition or security of the Aircraft, except as may be agreed by Lessor.

#### 4. **TERMINATION DATE AND RENEWAL OPTION**

##### 4.1 **Termination Date**

The Termination Date shall be the Expiry Date, provided that:

- (a) if Lessor, acting in accordance with Clause 19.2 (*Lessor's Rights*) of this Agreement, terminates or cancels the leasing of the Aircraft to Lessee under this Agreement, the date of such termination or cancellation shall be the Termination Date and Clause 19.2 (*Lessor's Rights*) shall apply;
- (b) if the Aircraft or the Airframe suffers a Total Loss, the Termination Date shall be the date when Lessor receives the full amount of the Agreed Value; provided that Lessee shall still be obligated to pay to Lessor all other amounts then due and payable under this Agreement;
- (c) if the period referred to in clause (d) of the definition of Total Loss extends beyond the Expiry Date, the last day of such period shall be the Termination Date;
- (d) if the Term is extended pursuant to Clause 18.2 (*Non-Compliance*), the Termination Date shall be the date on which the Aircraft is redelivered to Lessor pursuant to such Clause 18.2 (*Non-Compliance*); and
- (e) if the leasing of the Aircraft is terminated in accordance with Clause 19.5 (*Illegality*), the date of such termination shall be the Termination Date.

In any event, Rent shall continue to accrue and be payable until the Termination Date or until the Redelivery Date (in accordance with Clause 18.1(d) (*Redelivery*)), unless otherwise agreed herein.

##### 4.2 **Renewal Options**

##### 4.2.1 **Renewal Notice**

- (a) Lessee shall have the right to extend the Term of this Agreement by [REDACTED] months for operational reasons (the "**Operational Extension**") by providing Lessor a written notice detailing the operational reason for such extension signed by Lessee at least [REDACTED] days prior to the scheduled Expiry Date (including, for the avoidance of doubt, if such Expiry Date has been extended pursuant to Clause 4.2.1(b)). All terms and conditions of this Agreement in effect immediately prior to the commencement of an Operational Extension shall remain in full force and effect during any Operational Extension, unless Lessor and Lessee expressly agree otherwise in writing.
- (b) Notwithstanding the Operational Extension in Clause 4.2.1(a), Lessee shall have an additional right to extend the Term of this Agreement up to [REDACTED] successive times by providing Lessor a Renewal Notice signed by Lessee at least [REDACTED] days prior to the Expiry Date (including, for the avoidance of doubt, if such Expiry Date has been extended pursuant to Clause 4.2.1(a)). A Renewal Notice shall set forth (i) Lessee's decision to extend the leasing of the Aircraft for the relevant Renewal Lease Term and (ii) Lessee's decision as to the duration of such Renewal Lease Term which shall be for a [REDACTED] year to [REDACTED] year period.
- (c) Notwithstanding anything to the contrary in this Agreement or any other Operative

Document:

- (i) no Renewal Notice shall be binding on Lessor or oblige Lessor to extend the leasing of the Aircraft hereunder for any Renewal Lease Term, and shall be considered not to have been given, if any Event of Default shall have occurred and be continuing on and as of the date of any such notice; and
- (ii) any Renewal Notice shall be irrevocable and shall constitute an unconditional obligation of Lessee to extend the leasing of the Aircraft hereunder for the Renewal Lease Term to which such Renewal Notice relates.

#### 4.2.2 **Renewal Rent and Documentation**

- (a) Upon receipt of a Renewal Notice, as provided in Clause 4.2.1 (*Renewal Notice*), Lessee and Lessor shall enter into good faith negotiations with respect to the amount to be paid by Lessee as Rent during the applicable Renewal Lease Term. Whether the amount of the Rent is agreed between Lessee and Lessor within thirty (30) days of the receipt of the Renewal Notice or the amount of Rent is established pursuant to Clause 4.2.2(b), the amount of Rent shall be documented in an amendment to this Agreement within a further period of thirty (30) days, which shall be in form and substance reasonably acceptable to Lessee and Lessor. Thereupon, (i) Lessee and Lessor shall promptly execute and deliver such lease amendment and (ii) Lessee shall procure that Lessee Guarantor executes and delivers a confirmation of the Lessee Guarantee in respect of this Agreement as so amended in form and substance acceptable to Lessor acting reasonably, (iii) Lessee shall provide (A) written evidence of appropriate corporate action authorizing execution and delivery of such amendment and by Lessee Guarantor authorizing execution and delivery of such confirmation of the Lessee Guarantee, (B) evidence of the issuance of each approval, license and consent which may be required in connection with such amendment and such confirmation and (C) opinions from Lessee's and Lessee Guarantor's in-house counsel addressed to Lessor with respect to such amendment and such confirmation, including that all necessary filings and registrations with respect thereto have been or promptly will be made in the State of Registration and, if different, the State of Incorporation, which opinions shall be reasonably satisfactory to Lessor; and (iv) Lessor shall provide (A) written evidence of appropriate corporate action by Lessor authorizing the execution and delivery of such amendment and (B) evidence of the issuance of each approval, license and consent which may be required in connection with such amendment and such confirmation.
- (b) If, within thirty (30) days of the receipt of the Renewal Notice, Lessee and Lessor are unable to reach an agreement as to the amount to be paid by Lessee as Rent in respect of any Renewal Lease Term either party may, by written notice to the other, require that each party name an internationally recognized aircraft appraiser from the list of appraisers included in Clause 6 (*Approved Appraisers*) of Part A of the Financial Terms Annex, which list may be updated from time to time by an agreement in writing between Lessor and Lessee if any of the appraisers cease to exist. If either party fails to name an appraiser within fifteen (15) days of receipt of notice from the other party to the effect that such appraisers are required, the decision of the appraiser named by the other party shall control and 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 fair market monthly rent (the "**FM Rent**") that a willing lessor and a willing lessee would negotiate on an arms-length basis for the lease of the Aircraft for the Renewal Lease

Term taking into account the Redelivery Conditions and the Redelivery Maintenance Payment. If the FM Rent determined by the appraiser providing the lower appraisal is less than [REDACTED] percent ([REDACTED]%) below the higher appraisal then, the average of such FM Rents will be the Rent in respect of the Renewal Lease Term to be paid by Lessee. Otherwise, the two appraisers shall jointly name a third internationally recognized aircraft appraiser from the list of appraisers included in Clause 6 (*Approved Appraisers*) of Part A of the Financial Terms Annex, who shall provide its professional appraisal as to the FM Rent within fifteen (15) days of being named, and the Rent in respect of the Renewal Lease Term shall be (i) the FM Rent determined by the third appraiser if such FM Rent amount falls between the FM Rent amounts determined by the first two appraisers, (ii) the lower of the two FM Rent amounts determined by the first two appraisers if the FM Rent determined by the third appraiser is less than such FM Rent amounts, and (iii) the higher of the two FM Rent amounts determined by the first two appraisers if the FM Rent amount determined by the third appraiser is higher than such FM Rent 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. For purposes of this Clause 4.2.2(b) and the appraisals to be performed, the Aircraft shall be presumed to be in the condition required under this Agreement.

- (c) On the commencement date of each Renewal Lease Term (i) if the Rent payable during such Renewal Lease Term is less than the Rent that was payable hereunder before that renewal, the amount of the required Security Deposit shall be such lesser amount during that Renewal Lease Term and Lessor shall reimburse Lessee a portion of the Security Deposit equal to the difference between the Rent payable immediately prior to such Renewal Lease Term and the Rent for such Renewal Lease Term (the “**SD Difference**”) and the amount of the required Security Deposit shall be such lesser amount during that Renewal Lease Term and (ii) if the Rent for such Renewal Lease Term is greater than the Rent that was payable immediately prior to such Renewal Lease Term, Lessee shall increase the Security Deposit by an amount equal to the SD Difference and the amount of the required Security Deposit shall be such greater amount during that Renewal Lease Term.
- (d) All terms and conditions of this Agreement during the Base Lease Term shall remain in full force and effect during any Renewal Lease Term, unless Lessor and Lessee expressly agree otherwise in writing.

## 5. **RENT**

### 5.1 **Fixed Rent Periods**

- (a) The Term shall be divided into (i) an initial PBH Period and (ii) after the PBH Period, successive periods (each a “**Fixed Rent Period**”) in respect of which Fixed Rent shall accrue and be payable.
- (b) The first Fixed Rent Period shall commence on the date immediately following the PBH Period (the “**Transition Date**”) and each subsequent Fixed Rent Period shall commence on the date immediately following the last day of the previous Fixed Rent Period.
- (c) Each Fixed Rent Period shall be of one (1) month’s duration except that (i) if the Transition Date does not occur on the first day of a calendar month, then the first Fixed Rent Period



shall be from the date of such Transition Date until the date immediately preceding the next Fixed Rent Date and (ii) with respect to the final Fixed Rent Period, if it would not otherwise end on the Expiry Date, it shall end on the Expiry Date.

**5.2 PBH Period**

- (a) The PBH Rent shall be paid from the date hereof until the earlier of (i) [REDACTED] and (ii) [REDACTED] (the “**PBH Period**”).
- (b) For each calendar month (or part thereof) during the PBH Period during the Term, Lessee will provide a utilization report to Lessor by the [REDACTED] day of the immediately succeeding [REDACTED] day of such calendar month and (ii) [REDACTED] Business Days after [REDACTED] (the “**PBH Rent Date**”).

**5.3 Rent Date**

- (a) During the PBH Period, Lessee shall pay the PBH Rent to Lessor in [REDACTED] on each PBH Rent Date.
- (b) Other than during the PBH Period, during the Term, Lessee shall pay Fixed Rent to Lessor in [REDACTED] on each Fixed Rent Date.

**5.4 Rent**

- (a) Fixed Rent payable in respect of each Fixed Rent Period shall be the amount set forth in Clause 1 (*Base Lease Term and Rent*) of Part A of the Financial Terms Annex.
- (b) PBH Rent payable in respect of the PBH Period shall be calculated as set forth in Clause 1 (*Base Lease Term and Rent*) of Part A of the Financial Terms Annex.
- (c) If any Fixed Rent Period has a duration of less than a month, the Fixed Rent payable for that Fixed Rent Period shall be prorated by multiplying the amount of the Fixed Rent for that Fixed Rent Period by a fraction the numerator of which is the number of days in that Fixed Rent Period and the denominator of which is thirty (30).

**6. SECURITY DEPOSIT**

**6.1 Lessee Payment**

Lessor acknowledges that prior to the date hereof it received from Lessee the Prior Security Deposit in cash in the amount set forth in Clause 2 (*Security Deposit*) of Part A of the Financial Terms Annex. Lessor shall apply a portion of the Prior Security Deposit to constitute the Security Deposit hereunder in the amount set forth in Clause 2 (*Security Deposit*) of Part A of the Financial Terms Annex and shall apply any remaining Prior Security Deposit to any prepetition claim against the bankruptcy estates of Lessee, Aeromexico or Grupo Aeroméxico S.A.B. de C.V. including, the Prepetition Damages Claim, and towards any other amounts which remain due and payable to Lessor under the Prior Lease, Prior Finance Lease or Funding Agreement.

**6.2 Lessor Payment**

Lessor shall, within [REDACTED] Business Days after the Termination Date, pay to Lessee an amount equal to the Security Deposit (less the sum of amounts applied pursuant to Clause 6.3(b) (*Concerning the Security Deposit*) and not replenished or paid to Lessee under Clause 6.5(a) (*Letter of Credit*)); provided that Lessor shall not be obliged to pay any such amount to Lessee for so long

as any obligation then falling due for performance has not been fully discharged or performed and provided further that so long as no Event of Default has occurred and is continuing, in the event Lessee is required to pay the Redelivery Maintenance Payment, Lessee may elect to set-off the amount of the cash Security Deposit then held by Lessor against the Redelivery Maintenance Payment.

### 6.3 Concerning the Security Deposit

- (a) The Security Deposit shall be the sole, absolute and unconditional property of Lessor, may be freely commingled by Lessor with its other funds and dealt with by Lessor in such manner as Lessor may see fit and Lessor will not hold any such funds as agent or on trust for Lessee or in any similar fiduciary capacity. If and to the extent that, under applicable Law in any relevant jurisdiction, the Security Deposit is considered to be the property of Lessee, the Security Deposit shall be held by Lessor as security for the timely performance by Lessee of its obligations under the Operative Documents or any Companion Agreement to which Lessee is a party and Lessee hereby grants a Security Interest in and pledge of the Security Deposit, and including all proceeds thereof and general intangibles (including payment intangibles) relating thereto, including any right to payment of an amount equal to the Security Deposit by Lessor to Lessee hereunder, to Lessor as secured party for itself. No interest shall be earned, paid or repaid in respect of the Security Deposit.
- (b) Following the occurrence of an Event of Default or a Companion Agreement Event of Default which is continuing, in addition to all rights and remedies of Lessor elsewhere in this Agreement or under Law, Lessor may, on behalf of itself or on behalf of any of its Affiliates, immediately or at any time thereafter, without notice to Lessee, use or apply an amount equal to all or part of the Security Deposit in or towards the payment or discharge of any matured obligation owed by Lessee under this Agreement or any Companion Aircraft, in such order as Lessor sees fit and/or exercise any other right or remedy of a secured creditor upon a default provided in the UCC.
- (c) If Lessor exercises any of the rights described in Clause 6.3(b):
  - (i) Lessee shall, upon a demand in writing from Lessor, immediately and in any event within [REDACTED] Business Days of such demand, pay in immediately available funds an amount sufficient to restore the Security Deposit to the level at which it stood immediately prior to such exercise; and
  - (ii) such use, application or retention shall not be deemed a cure of any Event of Default unless such use, application or retention was sufficient to cure such Event of Default or Companion Agreement Event of Default (or Lessee has otherwise cured the same) and Lessee has restored the Security Deposit to the level at which it stood immediately prior to such exercise.
- (d) It is hereby agreed that the Security Deposit shall not constitute an agreed liquidated damages amount.

### 6.4 Provision of Letter of Credit

Lessee may, following execution of this Agreement and at any time during the Term, in lieu of the cash Security Deposit or any other existing Letter of Credit, deliver to Lessor a Letter of Credit substantially in the form set out in Schedule 11 (*Form of Letter of Credit*) or as otherwise approved by Lessor from time to time, acting reasonably (the "**Letter of Credit**"), provided that no Event of

Default is continuing. Such Letter of Credit shall in any event:

- (a) be denominated in and payable in Dollars and be payable in an amount of not less than the Security Deposit required hereunder;
- (b) be issued by a bank with a long-term unsecured debt rating of [REDACTED] with Standard & Poor's or [REDACTED] with Moody's (the "Acceptable LC Bank Rating") or confirmed by such a bank;
- (c) be an irrevocable standby Letter of Credit payable on demand without proof or evidence of entitlement of loss required at an office in [REDACTED] or [REDACTED] or in another location satisfactory to Lessor, and shall be capable of being drawn by Lessor directly at sight, by facsimile, or post at such office;
- (d) without prejudice to Clause 6.4(c) (*Provision of Letter of Credit*), be capable of being drawn if a replacement Letter of Credit is not provided in accordance with Clause 6.5 (*Letter of Credit*);
- (e) have a non-cancelable term of at least three hundred and sixty-five (365) days or, if less a non-cancellable term extending [REDACTED] days beyond the Expiry Date; and
- (f) be freely transferable to any assignee or transferee of Lessor without any fees or costs charged to Lessor or such assignee or transferee.

Notwithstanding anything to the contrary in this Agreement, each Pre-Approved LC Bank shall be considered an acceptable issuing or confirming bank for any Letter of Credit.

#### 6.5 Letter of Credit

- (a) If Lessee provides Lessor with a Letter of Credit in accordance with the terms of Clause 6.4 (*Provision of Letter of Credit*), then on receipt of such Letter of Credit Lessor shall return any cash Security Deposit paid by Lessee to Lessor pursuant to Clause 6.1 (*Lessee Payment*) less any amounts Lessor has deducted from the Security Deposit as permitted under this Agreement to Lessee no later than [REDACTED] Business Days after receipt of the Letter of Credit.
- (b) If Lessee provides Lessor with a Letter of Credit in accordance with the terms of Clause 6.4 (*Provision of Letter of Credit*), Lessee shall ensure that a Letter of Credit remains in place throughout the Term or any relevant part thereof; provided, however, that Lessee may replace a Letter of Credit with a cash Security Deposit and so long as no Event of Default shall have occurred and be continuing, Lessee shall have the right to put in place a replacement Letter of Credit in accordance with the terms of Clause 6.4 (*Provision of Letter of Credit*). Lessor will return to Lessee the original of the replaced Letter of Credit as soon as reasonably practicable (and in any event within [REDACTED] Business Days) following receipt of a cash Security Deposit or a replacement Letter of Credit.
- (c) Lessee shall procure the renewal of or new issue of a Letter of Credit no later than [REDACTED] days (the "**LC Renewal Date**") prior to the stated expiry date of any then current Letter of Credit.
- (d) If Lessee fails to put in place a replacement Letter of Credit by the LC Renewal Date in accordance with Clause 6.5(c) and has not notified Lessor that Lessee will replace the same with a cash Security Deposit of like amount by such LC Renewal Date and thereafter does

not otherwise in fact replace the Letter of Credit with such cash Security Deposit not later than [REDACTED] Business Days prior to the stated expiry date of such Letter of Credit, Lessor shall be entitled to drawdown on the Letter of Credit for the full amount thereof and such monies so drawn shall thenceforth be held by Lessor as provided below.

- (e) If at any time the long term unsecured debt rating of the issuing bank or (if applicable) the confirming bank in respect of the Letter of Credit falls below the Acceptable LC Bank Rating then, Lessee shall promptly and in any event within [REDACTED] Business Days of receipt of written demand from Lessor, either (1) provide Lessor with a replacement Letter of Credit complying with Clause 6.4 (*Provision of Letter of Credit*); or (2) provide a cash Security Deposit that meets the requirements of, and in accordance with the provisions of, Clause 6.1 (*Lessee Payment*), in which event, upon receipt of such replacement Letter of Credit or cash Security Deposit Lessor will return the original Letter of Credit to Lessee as soon as reasonably practicable (and in any event within [REDACTED] Business Days) following receipt of such replacement Letter of Credit or cash Security Deposit.
- (f) Lessor may assign or pledge its interest in the proceeds of the Letter of Credit to any Financing Party and may transfer its interest under the Letter of Credit to any assignee or transferee of Lessor's interests as permitted by Clause 21.2 (*Lessor Transfer*) (and Lessee shall at Lessor's cost perform such acts and deliver such instruments as Lessor may reasonably request in order to carry out and effect any such assignment, pledge or transfer).
- (g) Lessor shall be entitled to make any number of demands under the Letter of Credit at any time following any Event of Default which is continuing or pursuant to Clause 6.5(d). Any amounts drawn under the Letter of Credit shall be treated as if they were a cash Security Deposit under Clause 6.3 (*Concerning the Security Deposit*).
- (h) If in accordance with Clause 6.3 (*Concerning the Security Deposit*), Lessor applies any amount (the "Paid Amount") drawn down under the Letter of Credit, then Lessee shall immediately and in any event within [REDACTED] Business Days of demand, either: (i) cause an additional Letter of Credit to be issued and delivered to Lessor complying with the requirements of Clause 6.4 (*Provision of Letter of Credit*) in an amount equal to the Paid Amount and expiring on the same date as the existing Letter of Credit, or (ii) pay to Lessor in immediately available funds an amount equal to the Paid Amount so that Lessor shall at all times have on an aggregate basis the benefit of a Letter of Credit and/or a cash Security Deposit in the amount of the Security Deposit pursuant to Clause 6 (*Security Deposit*).
- (i) If at any time any Letter of Credit delivered to Lessor shall cease to constitute the legal, valid and binding obligations of the issuer thereof or any applicable confirming bank enforceable in accordance with its terms, or amounts payable under any Letter of Credit shall cease to be freely available for drawing, Lessee shall forthwith notify Lessor upon becoming aware of such circumstance(s) and as soon as practicable and in any event within [REDACTED] Business Days after becoming aware of such circumstances or after written demand from Lessor either (i) deliver to Lessor a replacement Letter of Credit complying with the requirements set out in Clause 6.4 (*Provision of Letter of Credit*) or (ii) deliver to Lessor a cash Security Deposit in an amount equal to the undrawn face value of the Letter of Credit, to be held by Lessor in accordance with Clause 6.3 (*Concerning the Security Deposit*), whereupon Lessor shall redeliver to Lessee the first above mentioned Letter of Credit not later than [REDACTED] Business Days following receipt of such replacement

Letter of Credit or, as the case may be, cash Security Deposit.

- (j) Subject to the payment, performance and discharge in full of all of Lessee's obligations under each of the Operative Documents to which Lessee is a party, Lessor shall within [REDACTED] Business Days of the Termination Date return to Lessee any Letter of Credit. The provisions of this Clause 6.5(j) shall survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Agreement and/or the leasing of the Aircraft hereunder.

## **7. PAYMENTS**

### **7.1 Account for Lessee Payments**

All payments by Lessee to Lessor under the Operative Documents will be made for value on the due date in Dollars in immediately available funds by SWIFT or wire transfer to the account set out below or to such other account as Lessor may from time to time notify Lessee in writing five (5) Business Days prior to a date for a payment hereunder; provided that the payment and/or indemnity obligations of Lessee under the Operative Documents, measured as of the date any such change is effective, shall not be increased solely as a result of the designation of such other account:

<b>Bank:</b>	[REDACTED]
<b>Branch</b>	[REDACTED]
<b>Account No:</b>	[REDACTED]
<b>Swift Code:</b>	[REDACTED]
<b>Beneficiary:</b>	[REDACTED]

### **7.2 Default Interest**

If Lessee fails to pay any amount payable to Lessor under this Agreement on the due date, Lessee shall pay to Lessor on demand from time to time interest at the Default Rate (both before and after judgment) on that amount, from the due date to the date of payment in full. All such interest will be compounded monthly and calculated on the basis of the actual number of days elapsed in the month and assuming a thirty (30) day month and a three hundred sixty (360) day year.

### **7.3 Absolute Obligations**

- (a) This Agreement is a net lease. Lessee's obligations to pay Rent and to perform any of its other obligations pursuant to this Agreement are absolute and unconditional and shall be paid and performed in full when due without reduction, deduction, set-off, recoupment, claim or counter claim, and Lessor shall have all of the rights and benefits of a lessor under a lease to which Section 2A-407 of the UCC applies as provided therein. Lessee may not regard its obligations as cancelled, terminated, suspended, reduced or altered (and waives to the greatest extent permitted by applicable Laws any rights which it may have at any time to cancel, terminate, suspend, reduce or alter such obligations) by reason of any contingency or circumstance whatsoever, including (but not limited to):
  - (i) any right of set-off, counterclaim, recoupment, reduction, reimbursement, claim, defense or other right which Lessee may have against Lessor, any Indemnitee, the

Manufacturer, any other vendor, or against any other Person;

- (ii) any unavailability of the Aircraft for any reason or interruption of or interference with Lessee's use, operation or possession of the Aircraft;
  - (iii) any defect in title, airworthiness, condition, design, operation of or use of the Aircraft, merchantability, fitness for any purpose, registration of the Aircraft or any damage to or (subject to the provisions of Clause 16.1 (*Total Loss*)) loss or destruction of the Aircraft;
  - (iv) any insolvency, bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against Lessor or Lessee or any other Person;
  - (v) any invalidity or unenforceability of or other defect in this Agreement; and,
  - (vi) any other cause or circumstance which but for this provision would or might otherwise have the effect of terminating, canceling, suspending, abating, reducing, deferring or in any way affecting any obligation of Lessee under this Agreement, including to lease the Aircraft or pay Rent. Lessee acknowledges and agrees that it has used its own judgment in selecting the Aircraft, and has not relied on Lessor or on any information supplied by Lessor, and that Lessor is not a manufacturer of or dealer in aircraft.
- (b) Each payment of Rent made by Lessee shall be final. Lessee will not seek to recover all or any part of any payment of Rent for any reason whatsoever except for manifest error.
- (c) The provisions of this Clause 7.3 shall not be construed to limit Lessee's right to institute separate legal proceedings for direct damages or otherwise pursue remedies for direct damages against Lessor in the event of Lessor's breach of the terms of this Agreement or to limit Lessee's rights and remedies against any other Person.

#### 7.4 **Currency Indemnity**

- (a) If, under any applicable Law, whether as a result of a judgment or the liquidation of a party or for any other reason, any payment under or in connection with the Operative Documents is made or is recovered in a currency (the "**other currency**") other than the currency (the "**contractual currency**") in which it is payable pursuant to the Operative Documents then, to the extent that the payment (when converted into the contractual currency at the rate of exchange on the date of payment or, in the case of a liquidation, the latest date for the determination of liabilities permitted by the applicable Law) falls short of the amount unpaid under the Operative Documents, the payor shall as a separate and independent obligation, fully indemnify the party entitled to receive such payment against the amount of the shortfall. For the purposes of this sub-clause "rate of exchange" means the rate at which the payor is able on the relevant date to purchase the contractual currency in New York with the other currency.
- (b) Each party waives any right it may have in any jurisdiction to pay any amount under any Operative Document in a currency other than that in which such amount is expressed to be

payable.

**7.5 Application of Payments by Lessor**

If any sum paid to Lessor or recovered by Lessor in respect of the liabilities of Lessee under this Agreement is less than the amount then due, Lessor may apply that sum to amounts that are then due from Lessee under the Operative Documents in such proportions and order and generally in such manner as Lessor may determine in its reasonable discretion.

**7.6 Lessor's Determination of Amounts Due**

Any certificate or determination by Lessor as to any rate of interest or as to any other amount payable under this Agreement shall, in the absence of manifest error, be prima facie evidence of the amount so payable.

**7.7 Business Day Convention**

If any payment due under this Agreement (including any payment of Rent) would otherwise be due on a day which is not a Business Day, it shall be due on the [REDACTED] Business Day, or, if that Business Day falls in the following month, in the following year, or after the Termination Date, on the Business Day immediately before such date.

**7.8 Retention of Certain Payments**

Any amount referred to in any Operative Document which is payable to or retainable by Lessee shall not be paid to or retained by Lessee at any time when an Event of Default shall have occurred and be continuing, but instead such amount shall be paid to or held by Lessor as security to be held and applied in accordance with the provisions of this Agreement. At such time as there shall not be continuing any Event of Default, such amount shall be paid to Lessee to the extent not applied in accordance with the preceding sentence. Where Lessor would, but for this Clause 7.8 or any similar provision, be obliged to make any payment to Lessee, Lessor may elect to make such payment but shall be entitled to deduct or withhold from such payment any amount then due and payable under the Operative Documents with prior electronic or written notice to Lessee.

**7.9 Invoices**

Lessor shall provide Lessee with an electronic or paper invoice and supporting documentation before any payment to be made by Lessee to Lessor under the Operative Documents is due (including with respect to the payment of Rent and the Security Deposit), but failure to issue an invoice or the non-receipt of any such invoice shall not affect Lessee's obligation to make such payment.

**8. LESSOR COVENANTS**

**8.1 Quiet Enjoyment**

Lessor agrees that, provided no Event of Default has occurred and is continuing and provided that this Agreement shall not have been otherwise terminated, none of Lessor, any other Lessor Party and any Person claiming by, through or under it or any other Lessor Party (including any Financing Party) shall take or cause to be taken any action to interfere with Lessee's or any Permitted Sublessee's right to use, possession and quiet enjoyment of the Aircraft. The foregoing shall not, however, prevent Lessor, or its successors, assigns and transferees, from exercising any rights or

remedies under the Operative Documents.

## 8.2 **Lessor Obligations following Termination Date**

Subject to the payment, performance and discharge in full of all of Lessee's obligations under this Agreement, Lessor shall within [REDACTED] Business Days of the Termination Date:

- (a) pay to Lessee a portion of any Rent paid to Lessor to the extent such portion is attributable to the period falling after, but excluding, the Termination Date; and
- (b) pay to Lessee as an independent obligation an amount equal to the Security Deposit in accordance with Clause 6.2 (*Lessor Payment*) or return the Letter of Credit in accordance with Clause 6.5(j) (*Letter of Credit*), whichever is applicable;

provided that, if any Event of Default has occurred and is continuing, Lessor may hold and apply any such amounts in or toward the cure of such Event of Default and, at such time as no Event of Default is in existence, shall pay the unapplied portion thereof, if any, to Lessee.

## 8.3 **Lessor Obligations regarding Tax Information**

Lessor shall provide to Lessee the information described in Clause 20.6(c) (*Information regarding Taxes*), as and when required pursuant to such Clause 20.6(c) (*Information regarding Taxes*).

## 8.4 **Lessor Obligations Regarding AD Cost Sharing**

Subject to Clause 7.8 (*Retention of Certain Payments*), if Lessee performs an Airworthiness Directive on the Aircraft on a terminating action basis (or to the highest level of compliance available) prior to the expiration of the Term and the cost of performing such Airworthiness Directive on the Aircraft exceeds US\$[REDACTED], Lessor shall, promptly following receipt of an invoice and documentation supporting the cost of performing such Airworthiness Directives on the Aircraft, reimburse Lessee for a portion of such cost determined in accordance with the formula set forth in Clause 5 (*AD Cost Sharing*) of Part A of the Financial Terms Annex.

# 9. **LESSEE COVENANTS**

## 9.1 **Performance**

- (a) Lessee shall perform and comply with its undertakings, covenants and other agreements in this Agreement at all times during the Term.
- (b) Lessee shall remain liable to Lessor for all of Lessee's obligations and liabilities under this Agreement notwithstanding any delegation by Lessee to another Person of any such obligations or liabilities or any reliance by Lessee on another Person to perform or discharge any such obligations or liabilities, whether or not such delegation or reliance is permitted or contemplated by this Agreement (including any Permitted Sublessee and the related sublease under Clause 10.3 (*Subleasing*)); provided that to the extent any such obligation or liability is actually performed or discharged by such other Person on Lessee's behalf, such performance or discharge shall constitute performance or discharge of the corresponding obligation or liability of Lessee.
- (c) Lessee will take commercially reasonable steps to ensure that no Person (other than Lessor, Owner or any Financing Party) acts in any manner inconsistent with Lessee's obligations



under this Agreement.

- (d) Lessee will cause any Post-Closing Authorizations and Filings to be made or obtained as provided in the definition of such term and by the deadline provided in Clause 5 of Schedule 3 (*Conditions Precedent and Post-Closing Matters*).

## 9.2 **Information – General and Financial**

Lessee shall:

- (a) furnish to Lessor:
  - (i) save where such information is available on Lessee's or Lessee Guarantor's website, upon Lessor's request, Lessee's and Lessee Guarantor's consolidated management accounts of Lessee and Lessee Guarantor (comprising a balance sheet and profit and loss statement) prepared for the most recent previous financial quarter;
  - (ii) by making the same available on its website or directly to Lessor if not posted on its website, no later than [REDACTED] days after the last day of each financial year of Lessee and Lessee Guarantor, their audited consolidated balance sheet and cash flow statement as of such day and their audited consolidated profit and loss statement for the year ending on such day; and
  - (iii) to the extent that Lessee is permitted by applicable Law and is not bound by confidentiality undertakings to third parties, such other information concerning the business or financial affairs of Lessee and/or Lessee Guarantor as Lessor may from time to time reasonably request; provided, however, that under no circumstances shall Lessee or Lessee Guarantor be required to provide Lessor with financial or operational forecasts;
- (b) promptly notify Lessor of (i) the occurrence of any Total Loss, (ii) any event which is likely to result in a claim under the Insurances in excess of the Damage Notification Threshold and the status of any negotiations with the insurance brokers over any such claim or (iii) if an Event of Default has occurred and is continuing, any event which is likely to result in a claim under the Insurances and the status of any negotiations with the insurance brokers over any such claim;
- (c) promptly notify Lessor of the occurrence of any Event of Default;
- (d) provide Lessor, upon reasonable request but no more than once per calendar year (except when an Event of Default has occurred and is continuing, in which case without any such limitation), with the current status of all charges incurred by Lessee in connection with the Aircraft, including those invoiced by airports and air traffic control authorities, and with its current location and operational status; and
- (e) within [REDACTED] days after receipt by Lessee of a request by Lessor (or such shorter period as may be set forth in any written request by any Government Entity for information or documents), Lessee shall furnish in writing to Lessor such information or documents within its possession or which are reasonably available to Lessee or obtainable by Lessee at no cost to it (or at Lessor's cost) (or copies thereof certified as correct by an authorized officer of Lessee) regarding the Aircraft as may reasonably be requested by Lessor or as may be required to enable Lessor, Owner any Financing Party or any Affiliate thereof to

file any report or document required to be filed by it with any Government Entity because of its ownership or other interest in the Aircraft, the Airframe or the Engines.

### 9.3 **Operation of the Aircraft**

Lessee shall:

- (a) operate the Aircraft solely for commercial purposes;
- (b) not use or operate the Aircraft in violation of or contrary to any Regulation applicable to it or the Aircraft; provided that, the foregoing shall not prohibit Lessee from operating the Aircraft temporarily in any manner or location in the event of an emergency;
- (c) not knowingly permit any items to be on or transported by the Aircraft if it is prohibited by any Regulation for such item to be on or transported by the Aircraft;
- (d) not use or operate the Aircraft for any purpose for which the Aircraft is not designed or for any purpose other than primarily in passenger service in passenger configuration, or in a manner inconsistent with the Manufacturers' manuals or the Aviation Authority directives;
- (e) not use the Aircraft for purposes of training, qualifying or re-confirming the status of cockpit personnel except for the benefit of 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 or similar type operated by Lessee in any twelve (12) month period;
- (f) not use or operate the Aircraft or suffer or permit the Aircraft to be used or operated in any manner when the Insurances are not in full force and effect, and 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 (and without limiting the foregoing, Lessee will not use, operate or locate the Aircraft or permit it to be used, operated or located in any area of recognized or threatened hostilities when the war risk Insurances are not in full force and effect and applicable thereto); provided that, the foregoing shall not prohibit Lessee from operating the Aircraft temporarily in any such locations in the event of an emergency situation; and
- (g) not operate, maintain, modify, insure or deal with the Aircraft or any Engine or Part in a manner which adversely discriminates against the Aircraft or such Engine or Part, when compared with the manner in which Lessee operates, maintains, modifies, insures or deals with similar aircraft, engines or parts in Lessee's fleet.

### 9.4 **General Covenants, Compliance and Outgoings**

Lessee shall:

- (a) at all times during the Term maintain (i) its business as a commercial scheduled air carrier; (ii) its corporate existence (except as permitted by Clause 9.7 (*Lessee Existence*)); and (iii) in full force and effect, all consents, licenses, authorizations, approvals, permits, rights and privileges material to its business or to the performance of its obligations under this Agreement;
- (b) comply with all Regulations required for the making of payments, and the performance by

Lessee of its other obligations under this Agreement and the Operative Documents;

- (c) not cause or permit the Aircraft to proceed to, or remain at, any location in an Excluded Country, except on a temporary basis in the event of an emergency situation, unless the same are permitted pursuant to applicable consents, exemptions or licenses which have been obtained or apply in respect thereof;
- (d) promptly pay or cause to be paid when due (i) all license, registration, navigation and airport fees and charges assessed and demanded by any Government Entity and/or any other air navigation authority in accordance with applicable Regulations relating to the Aircraft and (ii) all costs, expenses, charges, fees (including, without limitation, license and registration fees), Taxes and other outgoings related to the operation, storage, maintenance, leasing or registration of the Aircraft, which in either case if not paid when due could result in a Security Interest which is not a Permitted Lien being imposed on the Aircraft; and
- (e) comply with all applicable Laws and implement appropriate procedures concerning security measures to protect the Aircraft and its passengers from theft, destruction, hijacking, bombing or other acts of terrorism.

#### 9.5 **Registration and Protection**

- (a) Lessee shall to the greatest extent permitted by applicable Law and at its own cost and expense (unless otherwise expressly set forth herein) and subject to Lessee's receipt from Lessor of any documentation required by the Aviation Authority or any applicable Regulation (provided always that Lessee shall request such necessary documentation from Lessor in a timely manner):
  - (i) so long as Lessor continues to be eligible for such registration, keep the Aircraft registered with the AFAC in the name of Lessor as owner thereof and not take or permit any action contrary to the continued registration of the Aircraft with the AFAC in the name of Lessor other than (A) with Lessor's prior written approval which will not be unreasonably withheld or (B) in connection with a sublease of the Aircraft to a Permitted Sublessee;
  - (ii) subject to Clause 9.5(a)(iii), cooperate with Lessor in relation to the registration and recordation with the AFAC and any other relevant public record (or as required to comply with the Cape Town Convention or the Geneva Convention where applicable) of (A) the Aircraft and this Agreement (or particulars thereof) and/or (B) the interest of Lessor as owner and lessor and, at Lessor's cost, the rights of any Financing Parties having a Security Interest in respect of the Aircraft or this Agreement (as the case may be) on such public record;
  - (iii) cause any supplements and amendments to be promptly filed and recorded with the AFAC and any other relevant public record (or as required to comply with the Cape Town Convention or the Geneva Convention where applicable); and
  - (iv) at Lessor's cost make and cooperate with Lessor in relation to the making of any changes to the registrations referred to at (i), (ii) or (iii) above as may be necessary or advisable (and are consistent with the provisions of this Agreement) to take account of any change permitted by this Agreement in ownership of the Aircraft any Engine or Part (including any permanent replacement of any Engine or Part)

or any change in the financing of the Aircraft.

- (b) Lessee shall not without the prior written consent of Lessor change the State of Registration other than as permitted pursuant to Clause 9.5(a)(i) and, following the termination of any sublease of the Aircraft during which the Aircraft is registered in a jurisdiction other than Mexico, Lessee shall also have the right without Lessor consent to re-register the Aircraft with the AFAC in the name of Lessor as owner.
- (c) Lessee shall from time to time, do or cause to be done any and all acts and things which may be required or desirable (in the discretion of Lessor acting reasonably, but in each case consistent with the provisions of this Agreement and the other Operative Documents to which Lessee is a party) which are requested in writing by Lessor, acting reasonably, to ensure that Lessor, and, at Lessor's cost, the Financing Parties, if any, have or obtain the fullest benefit(s) of the Cape Town Convention and/or the Protocol as in effect in the State of Registration in connection with the Aircraft and any Engine, including (but not limited to):
  - (i) any matters connected with registering, perfecting, preserving and/or enhancing any International Interest(s) or other registrable interests vested in Lessor or the Financing Parties with respect to the Aircraft and/or any Engine and constituted by this Agreement;
  - (ii) constituting any International Interest(s) or other registrable interests to be vested in Lessor or the Financing Parties with respect to the Aircraft and/or any Engine in connection with this Agreement;
  - (iii) entry into agreements (subordination or otherwise) to protect, perfect and/or enhance and/or improve the priority of any International Interest(s) or other registrable interests referred to in the foregoing Clauses 9.5(c)(i) and/or (ii); and
  - (iv) taking all relevant actions and cooperating as may be requested by Lessor in writing with respect to the issuance of an IDERA in favor of Lessor (or if requested, the Financing Parties Representative) to the extent such instrument becomes recognized in Mexico after the date hereof and all necessary Regulations implementing 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; provided that Lessee shall only be required to take any such action or provide any such cooperation subject to, and in accordance with all applicable laws and regulations of Mexico, and upon the deactivation of the Deregistration Power of Attorney in effect at that time.
- (d) Lessee and Lessor agree that for all purposes of the Cape Town Convention, (i) this Agreement, and any sublease under the terms of this Agreement, will constitute a separate International Interest with respect to the Airframe and/or each Engine, and (ii) the Airframe and each Engine constitute Aircraft Objects.
- (e) The costs and expenses in opening and maintaining the Transacting User Entity accounts for Lessee shall be borne by Lessee, but the costs and expenses in opening and maintaining the Transacting User Entity accounts of the Lessor Parties and any Financing Party shall

be borne by the Lessor Parties or the Financing Parties, as the case may be.

#### 9.6 Title and other Property and Security Interests

Lessee shall:

- (a) affix, and maintain in a prominent position, a fireproof plate (having dimensions of not less than 10 cm. x 7 cm.) on each Engine and in the cockpit or cabin of the Aircraft stating:  
  
“THIS [AIRCRAFT/ENGINE] IS OWNED BY BRASILMEX LEASING, LLC AND IS LEASED TO AEROLITORAL, S.A. DE C.V. [AND IS SUBJECT TO A SECURITY INTEREST/LIEN IN FAVOR OF (THE FINANCING PARTIES REPRESENTATIVE)]”,<sup>3</sup>  
  
provided, that the replacement of any such fireproof plates required due to changes of ownership or lienholders shall be arranged and paid for by Lessor; and Lessee shall install any such plate within [REDACTED] days after Lessor delivers such replacement fireproof plates. If requested by Lessor, Lessee shall provide reasonable assistance in arranging the procurement of the replacement fireproof plates (at Lessor’s cost).
- (b) not at any time (i) represent to others that Lessor, Owner or the Financing Parties are in any way connected with or responsible for any operation of the Aircraft or the business of Lessee or carriage (whether for hire or reward or gratuitously) which may be undertaken by Lessee; or (ii) pledge the credit of Lessor or the Financing Parties;
- (c) not hold itself out to any third party as owner of the Aircraft or any part of it, and 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 Owner;
- (d) not abandon the Aircraft, any Engine or any Part or intentionally do or permit to be done anything which may expose the Aircraft or any part of it to the risk of damage, destruction, arrest, confiscation, seizure, deposit, attachment, forfeiture, impounding, detention or appropriation;
- (e) not grant to any person other than Lessor or Financing Parties Representative an IDERA or a deregistration power of attorney with respect to the Airframe or any Engine, and the granting of an IDERA to Lessor or Financing Parties Representative shall be subject to Clause 9.5(c)(iv) (*Registration and Protection*);
- (f) not allow the Aircraft, any Engine or any Part to become or remain subject to any Security Interest (other than Permitted Liens) and promptly at Lessee’s expense take such action as may be necessary to discharge any such Security Interest other than Permitted Liens if the same shall exist at any time; or
- (g) not consent to any interests conflicting with (whether or not taking priority over) the interests of Lessor, Owner or any Financing Party to be registered at the International Registry without the prior written consent of Lessor, Owner (if different than Lessor) or

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<sup>3</sup> **Note to Draft:** To be updated to reflect language included in the fireproof plates currently installed in the Aircraft.

such Financing Party (as the case may be).

**9.7 Lessee Existence**

Lessee will preserve its corporate existence, will not sell, lease, transfer or otherwise dispose of all or substantially all of its assets (in one or in any series of transactions) to any Person and will continue to be a regularly scheduled, commercial airline; provided that Lessee may sell, lease, transfer or otherwise dispose of all or substantially all of its assets (in one or a series of transactions) to any Person or merge or consolidate with any Person in a transaction in which it is not the surviving Person if the following conditions are satisfied:

- (a) Lessee has provided Lessor with thirty (30) days prior written notice of such transaction and know your customer information in respect of the proposed Surviving Entity which is reasonably satisfactory to Lessor;
- (b) the Person acquiring such assets or the Person surviving such merger or consolidation (in either case, the "Surviving Entity") assumes all of the rights and obligations of Lessee under the Operative Documents to which Lessee is a party;
- (c) the tangible net worth of the Surviving Entity is equal to or greater than the tangible net worth of Lessee immediately prior to such merger or consolidation, except where (if the Surviving Entity's tangible net worth would be lower than such prior tangible net worth of Lessee), this does not and could not reasonably be expected to cause an Event of Default or have a material adverse effect on the ability of the Surviving Entity to comply with its obligations under the Operative Documents;
- (d) the Surviving Entity is duly organized and validly existing under the laws of its state of organization;
- (e) the Surviving Entity shall execute and deliver to Lessor an agreement, in form and substance reasonably satisfactory to Lessor, by which the Surviving Entity assumes the due and punctual performance and observance of each covenant and condition of Lessee under this Agreement and agrees to be bound thereby (such assumption of obligations to be legal, valid, binding and enforceable, except as enforcement of such agreement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting the rights of creditors generally and general principles of equity);
- (f) Lessee shall have delivered to Lessor (and any Financing Parties) (i) a certificate of an officer stating that all conditions set forth in this Clause 9.7 in respect of such consolidation, merger, conveyance, transfer or lease have been satisfied and (ii) an opinion of external counsel selected by Lessor and reasonably acceptable to Lessee to the effect that the assumption agreement described in clause (e) above has been duly authorized, executed and delivered by the Surviving Entity, constitutes its legal, valid and binding obligation and is enforceable against such Surviving Entity in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by principles of equity;
- (g) the Lessee Guarantee shall remain in full force and effect notwithstanding such merger or consolidation;
- (h) Lessor and/or Owner shall not incur any additional obligations, risks or liabilities, nor have its rights under this Agreement diminished as a result of such transfer of assets, merger or

consolidation;

- (i) the right, title and interest of Lessor, Owner and any Financing Parties in and to the Aircraft shall not be adversely affected by the Surviving Entity's acquisition of such assets or by such merger or consolidation, and Lessor shall have received such assurances with respect thereto as it may reasonably request;
- (j) the Surviving Entity shall execute and deliver to Lessor and/or file such recordations and filings with any Government Entity (including the Aviation Authority) and such other documents as Lessor shall reasonably deem to be necessary or advisable (including, without limitation, to preserve and protect the interests of Lessor, Owner and the Financing Parties) to evidence, or in connection with, such transfer of assets, merger or consolidation; and
- (k) prior to and immediately after giving effect to such transfer of assets, merger or consolidation, no Event of Default shall have occurred and be continuing.

Lessee shall pay all reasonable costs and expenses incurred by Lessor, Owner (if different than Lessor) and, if applicable, any Financing Party (including all reasonable legal fees and expenses) in relation to any such transfer of assets, merger or consolidation following receipt of an invoice and supporting documentation in respect thereof.

#### 9.8 **Recognition of Rights**

Lessee shall procure, when applicable, that any Person to whom possession of the Aircraft, the Airframe or any Engine is given (other than Manufacturers or Approved Maintenance Providers) in accordance with the provisions of this Agreement acknowledges in writing within a mortgage or lease or other agreement between Lessee and such Person or otherwise, that it will respect the interests of the owner and lessor of the Aircraft, the Airframe or such Engine, as applicable and the interests of the Financing Parties in respect of such Aircraft, the Airframe or such Engine and will not seek to exercise any rights whatsoever in relation to such Aircraft, Airframe or Engine. Lessor hereby acknowledges, on behalf of itself, the other Lessor Parties and any Financing Parties, and for the benefit of any holder of an interest in an engine that may at any time be attached to the Airframe, that it will respect the interests of such holders of interests and will not seek to exercise any rights whatsoever in relation to such engine.

### 10. **POSSESSION, SUBLEASING AND POOLING**

#### 10.1 **Possession**

Lessee will not, without the prior written consent of Lessor (not to be unreasonably withheld or delayed), sublease or otherwise part with possession of the Aircraft, any Engine or any Part, except that Lessee shall have the right to deliver possession of the Aircraft, the Engines or any Part without Lessor's consent:

- (a) with respect to the Aircraft, the Engines or any Part, to the relevant Manufacturer or Approved Maintenance Performer for testing, modification, maintenance, repair, overhaul

or other work to the extent required or permitted by this Agreement;

- (b) on a wet lease which complies with Clause 10.2 (*Wet Leasing*);
- (c) on a sublease which complies with Clause 10.3 (*Subleasing*); and
- (d) with respect to an Engine or Part as expressly permitted by this Agreement.

#### 10.2 **Wet Leasing**

Lessee shall be permitted to wet lease or charter the Aircraft to a third party provided that under the terms of such wet lease or charter:

- (a) the Aircraft shall be operated solely by regular employees of Lessee possessing all current certificates and licenses that are required by applicable Regulations;
- (b) the Aircraft shall remain subject to the insurance coverage required under Clause 15 (*Insurance*) or such other insurance coverage as is approved by Lessor;
- (c) the Aircraft shall be maintained by Approved Maintenance Performers in accordance with the Maintenance Program and Lessee's normal maintenance practices;
- (d) the Aircraft shall not be subject to any change in its State of Registration;
- (e) such wet lease or charter is expressly subordinated to this Agreement and the rights of Lessor and the Financing Parties hereunder and to the Aircraft;
- (f) such wet lease or charter shall not cause Lessor or Owner to be in violation of any Regulation of the United Nations, the European Union or the United States of America;
- (g) the Aircraft will neither be based or operated in or to any Excluded Country; and
- (h) the duration of such wet lease or charter (including all extensions and renewals) does not extend beyond the then scheduled Expiry Date.

#### 10.3 **Subleasing**

Lessee may, (i) [REDACTED] or (ii) with the written consent of Lessor (not to be unreasonably withheld or delayed), sublease the Aircraft to any Person not described in clause (i) above. Any proposed sublease shall satisfy each of the following conditions:

- (a) either (i) the sublease shall state that it is subject and subordinate to this Agreement, and the sublessee shall execute an acknowledgment addressed to Lessor, Owner and any Financing Party Representative confirming the foregoing and acknowledging that the sublease will terminate on or before the Termination Date; or (ii) if Lessor notifies Lessee that Lessor's counsel in the relevant jurisdiction is of the opinion that a sublease assignment is necessary or advisable in such jurisdiction, Lessee shall grant Lessor, Owner or Financing Parties Representative (as applicable) a security assignment (in form and substance reasonably satisfactory to Lessor, Owner and Financing Parties Representative) assigning all of Lessee's rights, title and interest to, in and under such sublease to Lessor, Owner or the Financing Parties Representative, as applicable;
- (b) the proposed sublessee must be a commercial air carrier or air operator holding a valid air



operator's certificate;

- (c) no Event of Default shall have occurred and be continuing at the time of commencement of such sublease or would result as a consequence of such sublease;
- (d) Lessee shall have given not less than thirty (30) days' prior written notice to Lessor of its intention to enter into any sublease agreement or arrangement (which notice shall include a description of the proposed subleasing arrangements including the identity of the proposed sublessee, the term of the sublease and the proposed delivery date under the sublease) and Lessee shall have provided to Lessor (i) at least ten (10) days' prior to execution of the sublease agreement, a copy of the draft sublease agreement and the draft insurance certificate (it being acknowledged that in any event (A) Lessee may redact the amount of Rent and all other economic terms, (B) the conditions below are required to be satisfied prior to commencement of the relevant sublease and (C) the evidence and/or documentation specified below shall be required to be provided to Lessor prior to commencement of the relevant sublease so as to give Lessor a reasonable period of time to review the same), and (ii) prior to the execution of such sublease agreement, know your customer information in respect of the proposed sublessee which is satisfactory to Lessor to the extent such information is requested by Lessor;
- (e) the sublease shall not permit the sublessee to take any action inconsistent with the requirements and obligations of Lessee under this Agreement and shall require the sublessee to operate the Aircraft on substantially similar or more favorable terms as those set out in this Agreement, including without limitation, Clause 9.3 (*Operation of the Aircraft*), Clause 11.4 (*Maintenance and Repair*), and if the sublessee is to maintain Insurances rather than Lessee, Clause 15 (*Insurance*);
- (f) the sublease shall not permit any further subleasing, wet leasing or charter of the Aircraft other than wet leasing on substantially similar terms or more favorable terms as those set out in Clause 10.2 (*Wet Leasing*);
- (g) the sublease shall not have a term which extends or is capable of extending beyond the then scheduled Expiry Date;
- (h) on or prior to the commencement of the sublease Lessee shall provide to Lessor evidence satisfactory to Lessor confirming that the Aircraft will continue to be insured in accordance with this Agreement;
- (i) the sublessee under the sublease shall not at the time of commencement of the relevant sublease be insolvent or otherwise be subject to any events of the type set out in clauses (i) through (k) of Clause 19.1 (*Events*);
- (j) the sublessee under the sublease shall hold all certificates, licenses, permits and authorizations required for its use and operation of the Aircraft;
- (k) if the Aircraft is to be registered in a new State of Registration in connection with a sublease or the termination of a sublease, Lessee shall procure that all filings, recordings and registrations are made to the extent necessary (i) to deregister the Aircraft from the registry maintained by the then existing State of Registration, (ii) to register the Aircraft in the new State of Registration in the name of Owner as owner (and if that is not possible, in the name of Lessor, Lessee or the sublessee with the interests of Owner, Lessor and Lessee noted in the registry) in accordance with and to the extent permitted by applicable Law in the new

State of Registration, and (iii) to register, record, protect and/or perfect the Security Interest of any Financing Parties Representative in the new State of Registration in accordance with and to the extent permitted by applicable Law in the new State of Registration. Lessor, Owner and the applicable Financing Party Representative shall receive a legal opinion from legal counsel in the new State of Registration confirming that the rights and interests of the Lessor, the Owner and the applicable Financing Party Representative in the Aircraft and this Agreement will be recognized under the laws of the new State of Registration and Lessee shall provide any documentation or assurances reasonably requested by Lessor in connection with such confirmation. Lessor shall co-operate and procure that the Financing Parties co-operate with Lessee upon reasonable request by Lessee to assist Lessee and/or the sublessee, as the case may be, in promptly making any filings, recordings and registrations in the existing State of Registration and, if applicable, any new State of Registration which are necessary in connection with any subleasing or change in the State of Registration. Lessee shall pay all reasonable and documented out-of-pocket costs and expenses incurred by Lessor and any Financing Party in connection with such opinion, filings, recordings and registrations (and no sublease shall be permitted unless and until such filings, recordings and registrations have been made or arrangements have been made to effect the same following the delivery of the Aircraft under the sublease);

- (l) Lessee shall provide Lessor with a copy of the executed sublease and any amendments thereto within five (5) Business Days after the execution of such sublease or such amendments; such copy may be in electronic form, it being agreed that Lessee may redact the amount of Rent and all other economic terms; and
- (m) no subleasing of the Aircraft shall release Lessee from its obligations under this Agreement, and Lessee hereby confirms and agrees that it shall remain fully liable to perform all of its obligations under this Agreement notwithstanding any such subleasing and shall be primarily liable for any act or omission of any sublessee in connection with any such subleasing; provided Lessee's obligations hereunder shall be satisfied to the extent performed by a sublessee.

#### 10.4 **Pooling**

##### (a) **Pooling of Engines**

Lessee shall not permit any Engine to become subject to pooling or interchange arrangements or permit any Engine to go out of its possession pursuant to any such arrangement unless:

- (i) no Event of Default has occurred and is continuing;
- (ii) the installation of the Engine on a Pool Aircraft (as defined below) is in accordance with the provisions of an engine pooling arrangement on terms that are customary in the airline industry with the Engine Manufacturer or with an Approved Maintenance Performer or with other responsible, solvent commercial air carriers which, among other things, contains the following requirements:
  - (A) the Engines will only be installed on an aircraft (a "Pool Aircraft") with which it is compatible;
  - (B) the arrangements under which the Pool Aircraft are owned or operated ensure that title to any Engine installed on that aircraft remains vested in

Owner following the installation of the Engine on that Pool Aircraft and shall not jeopardize Lessor's, Owner's or any Financing Party's rights in that Engine;

- (C) the arrangements under which the Pool Aircraft is insured would permit the recovery by Lessor or Owner of an amount at least equal to the full replacement value of that Engine upon the Total Loss of that Pool Aircraft (including the Engine) when the Engine is installed thereon;
- (D) is entered into in the ordinary course of Lessee's business; and
- (E) the Engine is re-installed on the Airframe prior to the Expiry Date unless it is replaced by a Replacement Engine in accordance with Clause 12.6 (*Permanent Replacement of Engines and Parts*).

**(b) Pooling of Parts**

Lessee shall not permit any Part to become subject to pooling or interchange arrangements, or allow any Part to go out of its possession pursuant to any such arrangement, except pursuant to an arrangement whereby:

- (i) a record of the location of any Part will be kept and made available to Lessor at any time on request;
  - (ii) title to the Part which has gone out of Lessee's possession pursuant to such arrangement shall remain with Owner until returned to Lessee or replaced with a Replacement Part in accordance with Clause 12.6 (*Permanent Replacement of Engines and Parts*);
  - (iii) the Part is re-installed on the Aircraft prior to the Expiry Date unless it is replaced by a Replacement Part in accordance with Clause 12.6 (*Permanent Replacement of Engines and Parts*);
  - (iv) is entered into in the ordinary course of Lessee's business; and
  - (v) is on terms that are customary in the airline industry.
- (c) Notwithstanding any such pooling arrangements, Lessee shall ensure that all provisions of this Agreement applicable to the Engine or Part being pooled are complied with, and Lessee shall continue to be responsible to Lessor for performance of all of Lessee's obligations.

**11. TECHNICAL REPORTING, AIRCRAFT DOCUMENTS, INSPECTION, MAINTENANCE AND REPAIR**

**11.1 Maintenance Status Report**

Throughout the Term, Lessee shall:

- (a) provide Lessor within [REDACTED] days after the end of each calendar month, a technical report for the Aircraft in the form of Schedule 16 (*Form of Maintenance Status Report*) which must have all requested information completed and [REDACTED] and the details of [REDACTED]; and
- (b) give Lessor at least [REDACTED] months written notice as to the time and location of all

Heavy Maintenance Checks.

## 11.2 Aircraft Documents

Lessee shall:

- (a) keep accurate, complete and current records (which records shall form part of the Aircraft Documents and, notwithstanding that such records may be generated by Lessee, shall be deemed to be the property of Lessor and leased to Lessee hereunder) as listed in Schedule 7 (*Aircraft Documents at Redelivery*) or as may otherwise be required by the Aviation Authority, the Maintenance Program and all applicable Regulations and FAR 129;
- (b) maintain all technical Aircraft Documents in English (except for the (i) cockpit log book which may be maintained in a bilingual version of Spanish and English and (ii) cabin rectification log book which may be maintained in Spanish) in Lessee's format (which may be microfiche, microfilm or digital and/or electronic format or any other form);
- (c) promptly furnish to Lessor all such information as Lessor may from time to time reasonably request regarding the Aircraft or any part thereof, its use, registration, location and condition;
- (d) retain and store such Aircraft Documents, as required by the Aviation Authority, the Manufacturers, Maintenance Program and all applicable Regulations and other materials at either (i) Lessee's or any Permitted Sublessee's principal place of business, (ii) the facility of an Approved Maintenance Performer or (iii) a storage location under Lessee's or any Permitted Sublessee's control, and not permit any other Person (other than an Approved Maintenance Performer or a Permitted Sublessee) to have possession of or control over the same without Lessor's prior written consent; and
- (e) give full electronic access to Lessor of any digital copies of Aircraft Documents.

## 11.3 Inspection

- (a) Upon Lessor's request, Lessee shall arrange that (i) at any reasonable time during the Term (but no more than once per calendar year), (ii) following the occurrence and continuance of an Event of Default (but no more than [REDACTED] per event) or (iii) [REDACTED], Lessor or its authorized representatives (which may include representatives of the Financing Parties or, in the case of clause (iii) above, [REDACTED]) may inspect the Aircraft and the Aircraft Documents, as provided herein and Lessee shall provide all reasonable assistance and co-operation in connection with such inspection (including facilitating access to the Aircraft and the Aircraft Documents). If the physical records are stored by any third party, Lessee will provide a letter granting access to the records for Lessor or its authorized representatives. Any such inspections shall not unreasonably interfere with Lessee's normal business operations and inspections of the Aircraft shall be limited to a visual, walk-around inspection which may include going on board the Aircraft but shall not include the opening of any panels, bays or disassembly of any components. During any such inspection, Lessor may, at its own expense, make copies of the Aircraft Documents.
- (b) Each such inspecting Person shall be solely responsible for its cost of conducting an inspection (including all reasonable out-of-pocket expenses and insurance coverage) unless (i) an inspection follows the occurrence and continuance of an Event of Default, in

which case such inspection will be at Lessee's cost, or (ii) an inspection reveals that Lessee has failed to comply in any material respect with its obligations under this Agreement, in which case any follow up inspection required to verify that remedial work has been completed will be at Lessee's cost.

- (c) Lessor shall not have any duty or obligation to inspect the Aircraft and Lessor shall not incur any liability as a result of non-exercise of any inspection rights in this Clause 11.3.
- (d) Any inspection of the Aircraft (including any Aircraft Documents) shall be solely for Lessor's information and failure to notify Lessee of any discrepancies thereafter shall not imply that Lessee is in compliance with this Agreement, its maintenance provisions or applicable Law.

#### 11.4 **Maintenance and Repair**

Lessee shall, or shall procure that an Approved Maintenance Performer shall, maintain, overhaul and repair the Aircraft so that at all times during the Term:

- (a) the Aircraft is kept airworthy in all respects and in good operating condition and repair except while the Aircraft is undergoing maintenance, modification or repair required or permitted by this Agreement;
- (b) Lessee has a current and valid 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 Lessee will from time to time provide to Lessor a copy thereof within ten (10) days of Lessor's request;
- (c) the Aircraft is maintained in accordance with the Maintenance Program through an Approved Maintenance Performer and in at least the same manner and with at least the same care as is the case with respect to similar aircraft owned, leased or otherwise operated by Lessee or, if the Aircraft is being subleased, the Permitted Sublessee (taken as a whole), and as if Lessee were to retain and continue operating the Aircraft in its fleet after the Termination Date, including maintenance scheduling, modification status and technical condition, and all maintenance to the Airframe, any Engine or any Part required to maintain all warranties applicable to the Aircraft in full force and effect in accordance with their terms;
- (d) the Aircraft complies with all Regulations, Mandatory Orders and Airworthiness Directives having a compliance date during the Term regardless of upon whom such requirements are imposed;
- (e) Lessee and the Aircraft are each in compliance with any other applicable Regulation which relates to the maintenance, condition, use or operation of the Aircraft or requires any modification or alteration to the Aircraft, any Engine or Part regardless of upon whom such requirements are imposed; and
- (f) any replacement of an Engine or Part in the course of maintenance is in accordance with Clause 12 (*Replacement and Interchange of Engines and Parts*).

#### 11.5 **Maintenance Program**

- (a) Lessee shall at all times ensure that the Aircraft is subject to a maintenance program which

is approved by the Aviation Authority and based on the Manufacturer's Maintenance Planning Document (the "**Maintenance Program**").

- (b) Upon Lessor's request, Lessee shall furnish to Lessor a copy of the then most current version of the preamble and matrix from the Maintenance Program.

#### 11.6 **Engine Health Monitoring; Electronic Information.**

In the event Lessee elects to participate in the Engine Manufacturer's Health Monitoring Program, Lessee will not object if Lessor seeks access from the Engine Manufacturer to its reports or data relating to the Engines, provided there is no cost to Lessee. In addition, if Lessee subscribes to the Airframe Manufacturer's on-line electronic information database and maintains on that system an updated record of the aircraft service bulletins and other configuration embodiment status and to the extent permissible as a result of future developments by the Airframe Manufacturer, Airworthiness Directives, structural repairs and maintenance planning data compliance status, Lessee will not object if Lessor seeks access to such on-line system with respect to the Aircraft, provided there is no additional cost to Lessee.

### 12. **REPLACEMENT AND INTERCHANGE OF ENGINES AND PARTS**

#### 12.1 **Replacement of Engines and Parts**

- (a) Lessee shall have the right at its option [REDACTED], on written notice to Lessor, to permanently replace any Engine with a Replacement Engine or replace any Part with a Replacement Part by complying with the terms of Clause 12.6 (*Permanent Replacement of Engines and Parts*). In the case of an Engine replacement, such written notice shall be given to Lessor upon the earlier of (i) at least [REDACTED] days' prior to the scheduled substitution date or (ii) at least [REDACTED] days [REDACTED], except in connection with a Total Loss of an Engine or failure of an Engine to meet the Redelivery Conditions.
- (b) Lessee shall promptly replace or procure the replacement of any Part which has become time, cycle or calendar-expired, lost, stolen, seized, confiscated, destroyed, damaged beyond economic repair, unserviceable or permanently rendered unfit for use, in accordance with Clause 12.6 (*Permanent Replacement of Engines and Parts*).
- (c) Lessee shall be entitled to install and permit the installation of engines and parts on the Aircraft other than the Engines and Parts provided that:
  - (i) a permanent replacement of an Engine or Part shall be in accordance with Clause 12.6 (*Permanent Replacement of Engines and Parts*);
  - (ii) a temporary replacement of an Engine shall be in accordance with Clause 12.3 (*Installation of other engines*); and
  - (iii) a temporary replacement of a Part shall be in accordance with Clause 12.4 (*Installation of other parts*).

#### 12.2 **Removed Engines and Parts**

Lessee shall be entitled to remove and permit the removal of an Engine or Part from the Aircraft

provided that:

- (a) such Removed Engine or Removed Part:
  - (i) is (A) installed on another aircraft in accordance with Clause 12.5 (*Installation of Engines and Parts on Other Aircraft*), (B) properly and safely stored, or (C) in the possession of an Approved Maintenance Performer for repair, maintenance, modification and/or refurbishment in accordance with this Agreement;
  - (ii) is kept free of Security Interests (other than Permitted Liens);
  - (iii) continues to be covered by the Insurances; and
  - (iv) remains the property of Owner unless and until there has been a permanent replacement in accordance with Clause 12.6 (*Permanent Replacement of Engines and Parts*) and unless and until title to that Replacement Engine or Replacement Part, as applicable, has passed to Owner pursuant to and in accordance with this Agreement; and
- (b) Lessee complies with Clause 9.8 (*Recognition of Rights*) with respect to any Removed Engine and Removed Part.

Lessee shall ensure that any Removed Engine or Removed Part is reinstalled on the Aircraft or permanently replaced by a Replacement Engine or Replacement Part in accordance with Clause 12.6 (*Permanent Replacement of Engines and Parts*) by no later than the Termination Date.

#### 12.3 **Installation of other engines**

Lessee may only install and permit the installation of an engine on the Airframe that is not a permanent replacement in accordance with Clause 12.6 (*Permanent Replacement of Engines and Parts*) if:

- (a) such engine is suitable for operation on the Airframe;
- (b) such engine is owned by or leased or conditionally sold to Lessee or a Permitted Sublessee or in Lessee's or a Permitted Sublessee's possession pursuant to a pooling arrangement;
- (c) such installation does not create, or permit to exist, any Security Interests on the Aircraft (other than Permitted Liens and any Security Interests that apply only to such engine); and
- (d) the Insurances for the Aircraft are not adversely affected.
- (e) No later than the Termination Date, Lessee shall remove any engine that is not an Engine and replace it with the relevant Removed Engine or a Replacement Engine in accordance with Clause 12.6 (*Permanent Replacement of Engines and Parts*).

#### 12.4 **Installation of other parts**

Lessee may install and permit the installation of any part on the Aircraft that is not a permanent replacement pursuant to Clause 12.6 (*Permanent Replacement of Engines and Parts*) if:

- (a) as soon as reasonably practicable after a part is installed on the Aircraft, but before the Termination Date, Lessee removes that part and replaces it with the relevant Removed Part or a part that is a permanent replacement pursuant to Clause 12.6 (*Permanent Replacement*

*of Engines and Parts*); and

- (b) the Insurances for the Aircraft are not adversely affected.

#### 12.5 **Installation of Engines and Parts on Other Aircraft**

- (a) Lessee shall only be entitled to install or permit the installation of a Removed Engine or Removed Part on another aircraft (the “**Other Aircraft**”) if such aircraft is operated by Lessee or a Permitted Sublessee or a Person that is a party to a pooling arrangement in accordance with Clause 10.4 (*Pooling*) and if:
  - (i) such installation will not cause an Event of Default;
  - (ii) subject to Clause 12.6 (*Permanent Replacement of Engines and Parts*), Owner remains the owner of the Removed Engine or Removed Part unless and until it is permanently replaced pursuant to Clause 12.6 (*Permanent Replacement of Engines and Parts*) and the Removed Engine or Removed Part does not thereby become subject to a Security Interest (other than a Permitted Lien) and remains subject to this Agreement; and
  - (iii) neither the provisions of applicable Law nor the terms of any lease, pooling arrangement or other agreement or Security Interest to which the Other Aircraft is subject, (A) prohibit such installation, or (B) require that the Removed Engine or Removed Part become the property of a Person other than Owner and/or subject to any Security Interest, or (C) will have the effect at any time of divesting or impairing the title and interests of Owner as owner and Lessor as lessor of the Removed Engine or Removed Part (or the rights of the Financing Parties under any Security Interest or assignment in respect of the Removed Engine or Removed Part).
- (b) Lessee shall ensure that any Removed Engine or Removed Part is reinstalled on the Aircraft or permanently replaced by a Replacement Engine or Replacement Part in accordance with Clause 12.6 (*Permanent Replacement of Engines and Parts*) by no later than the Termination Date.

#### 12.6 **Permanent Replacement of Engines and Parts**

- (a) If an Engine is to be permanently replaced in accordance with Clause 12.1(a) (*Replacement of Engines and Parts*), Lessee shall procure that good and marketable title to a Replacement Engine free and clear of all Security Interests other than Permitted Liens is conveyed to Owner and that such Replacement Engine is subject to this Agreement whereupon the Replacement Engine shall be an Engine hereunder and the replaced Engine shall cease to be an Engine and title to the replaced Engine shall vest in Lessee. The parties shall supply to each other all such title documents as the other may reasonably require to evidence and perfect such transfer of title in accordance with all applicable Laws (including the provision if requested by the other party of bills of sale, any amendments or supplements to this Agreement and legal opinions), and where the Cape Town Convention applies, the parties shall procure the prompt registration of the transfers of title at the International Registry.
- (b) Upon installation of a Replacement Part on the Airframe or any Engine, that Replacement Part shall without further act be deemed transferred to and owned by Owner and subject to this Agreement, and the replaced Part shall be deemed transferred to and owned by Lessee



and cease to be a Part hereunder.

- (c) Lessee shall provide the following in respect of a Replacement Engine: (i) run up per applicable maintenance manuals, (ii) trend analysis report review and (iii) latest borescope inspection per engine manual criteria.

## 12.7 Equipment Changes

- (a) Lessee may from time to time make or permit Equipment Changes as it may consider desirable in the proper conduct of its business; provided that each Equipment Change (i) is approved by the Aviation Authority, and (ii) (A) is required by the Aviation Authority or the FAA, or (B) is a change to or modification of the cabin configuration, the in-flight entertainment system or the Wi-Fi system or connection, or (C) has been approved by Lessor in writing, or (D) does not and will not:
  - (i) result in (A) a breach of Lessee's obligations under this Agreement, (B) any expense payable by Lessor or Owner or (C) any change in the category or status of the Aircraft for purposes of any laws of the State of Registration or of the Aviation Authority;
  - (ii) materially diminish or impair the value, utility or airworthiness of the Aircraft; or
  - (iii) have a cost, in the aggregate for all Equipment Changes, in excess of US\$[REDACTED] in [REDACTED] Dollars, with such amount to be escalated by [REDACTED] percent ([REDACTED]%) per annum on each anniversary of the Original Delivery Date after the Lease Commencement Date.
- (b) Title to any equipment installed on the Aircraft pursuant to an Equipment Change after the Lease Commencement Date that is owned by Lessee will on installation, without further act, vest in Owner and shall be a Part subject to this Agreement free and clear of all Security Interests (other than Permitted Liens). Lessee will at its own expense take all such steps and execute, and procure the execution of, all such instruments as Lessor may reasonably require and which are necessary to ensure that title so passes to Owner according to all applicable Laws.
- (c) So long as no Event of Default has occurred and is continuing, Lessee may remove and retain any Equipment Change to the extent it is severable from the Aircraft and (i) such Equipment Change is not required by a Mandatory Order or an Airworthiness Directive, (ii) such severance will not adversely affect the value, utility, condition or airworthiness of the Aircraft in comparison to its value, utility, condition or airworthiness prior to the installation of such Equipment Change, and (iii) such Equipment Change did not constitute directly or by function a replacement of a Part or Parts installed on the Aircraft on the Original Delivery Date unless the Part or Parts so replaced are reinstalled on the Aircraft. Title to all parts, components, equipment and furnishings comprising any such removed Equipment Change will, on such removal, vest in Lessee free from any claim of Lessor or Security Interest of the Financing Parties and all such parts, components, equipment and furnishings shall cease to be Parts subject to this Agreement. For the avoidance of doubt, Lessee shall be entitled to remove any seats or in-flight entertainment equipment installed by Lessee provided that (i) it is severable from the Aircraft and (ii) Lessee reinstalls the seats and/or in-flight entertainment equipment ([REDACTED]) that was [REDACTED]

on the [REDACTED].

**12.8 Lessee Title**

Following (a) transfer of title of a Replacement Engine or Replacement Part in accordance with Clause 12.6(a) and (b) (*Replacement of Engines and Parts*) respectively, or (b) removal of an Equipment Change in accordance with Clause 12.7(c) (*Equipment Changes*), title to the replaced Engine or Part or removed Equipment Change will, pass to Lessee on an "AS IS, WHERE IS" basis, without recourse, representation or warranty, except that Lessor shall represent and warrant to Lessee that Owner has conveyed to Lessee such title to such replaced Engine or Part or Equipment Change as was conveyed to Owner free and clear of all Lessor Liens, and Lessor will (at Lessee's request and cost) provide such documents as Lessee may reasonably require to evidence and perfect such transfer of title in accordance with all applicable Laws (including the provision, if required, to Lessee of bills of sale), and where the Cape Town Convention applies, cooperate with the prompt registration of the transfers of title at the International Registry.

**13. MANUFACTURER'S WARRANTIES**

- (a) During the Term, Lessor hereby makes available to Lessee, and authorizes Lessee to exercise, at Lessee's cost, such rights as Lessor or Owner may have under any warranty with respect to the Aircraft, any Engine or any Part made by any manufacturer, vendor, sub-contractor or supplier (including compensation that is actually received by Lessor or Owner for loss of use of the Aircraft during the Term), to the extent that the same have not otherwise been made available to Lessee pursuant to any other agreement; provided, that if an Event of Default has occurred and is continuing, any cash payments in respect of any warranty claim shall be subject to Clause 7.8 (*Retention of Certain Payments*).
- (b) Lessee shall give Lessor prompt written notice of any warranty claim in respect of the Aircraft which is expected to exceed the Damage Notification Threshold.
- (c) Lessee shall take all steps and execute all documents as are necessary at the end of the Term to ensure that the benefit of any warranties to which this Clause 13 applies and which have not expired is vested in Lessor or Owner including all claims thereunder (whether or not perfected and not including any claims relating to Lessee's loss of use and operation of the Aircraft); provided, that in the event Lessee is required to pursue any such claims, Lessee will agree to do so only upon receipt of satisfactory indemnification for costs and expenses from Lessor.

**14. INDEMNITIES**

**14.1 General**

Lessee agrees to assume liability for (as between itself and the Indemnitees), and to defend and indemnify and hold harmless each of the Indemnitees against any and all Losses (without duplication):

- (a) which may at any time be suffered or incurred by any Indemnatee directly or indirectly as a result of, arising from or connected with (i) the manufacture, ownership, possession, delivery, purchase, sale, transfer, importation, transportation, pooling, interchange, leasing, subleasing, wet leasing, chartering, storage, registration, insurance, replacement, maintenance, modification, refurbishment, condition, service, repair, overhaul, control, management, use, operation, exportation or redelivery of the Aircraft, any Engine or Part

(either in the air or on the ground), whether or not such Losses may be attributable to any defect in the Aircraft, any Engine or any Part or to its design, testing or use or otherwise, and regardless of whether it arises out of or is attributable to any act or omission, negligent or otherwise, of any Indemnatee; or (ii) any Security Interest (other than any Permitted Liens) in respect of the Aircraft, any Engine or Part;

- (b) which arise as a result of the prevention or attempt to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture of the Aircraft or in securing release of the Aircraft, unless the foregoing occurs as a result of a Lessor Lien; or
- (c) which may at any time be suffered or incurred as a consequence of any design, testing, use of any article or material in the Aircraft, any Engine or any Part, including any defect therein (regardless of whether it is discoverable) or its operation or use constituting an infringement of patent, copyright, trademark, design or other proprietary right,

but excluding any Loss in relation to a particular Indemnatee to the extent that such Loss:

- (i) arises solely as a result of the Gross Negligence or willful misconduct of such Indemnatee; or
- (ii) is attributable to a Lessor Tax or a Lessor Lien; or
- (iii) is, or is in respect of any claim for, a Tax, which shall instead be subject to Clause 20 (*Taxation*); or
- (iv) arises solely as a result of acts or events which occur after the Aircraft has been redelivered to Lessor in compliance with Clause 18 (*Redelivery*) and is no longer subject to this Agreement, unless any such act or event is attributable to an act, omission, event or circumstance which occurred during the Term; or
- (v) is attributable to the breach by any Indemnatee of this Agreement or any other Operative Document or any misrepresentation made herein but excluding any such breach or misrepresentation to the extent it is attributable to or arises out of a breach or misrepresentation by Lessee or Lessee Guarantor under any Operative Document; or
- (vi) constitutes the ordinary and usual operating and overhead expenses of an Indemnatee; or
- (vii) arises in respect of any voluntary sale, assignment, conveyance, transfer or other disposition by any Indemnatee of (A) the Aircraft, an Engine or any interest therein that is not a replacement thereof under this Agreement or (B) any interest in this Agreement or any other Operative Document;
- (viii) is in respect of any claim for currency indemnification, which shall instead be subject to Clause 7.4 (*Currency Indemnity*);
- (ix) represents or results from any decline in the market value of the Aircraft; provided such decline does not result from any breach by Lessee of its obligations under this Agreement;
- (x) represents or results from a failure of such Indemnatee to realize any anticipated

profit;

- (xi) is a Loss for which Lessor or any other Indemnatee has expressly agreed to be responsible under any other provision of this Agreement or any other Operative Document;
- (xii) represents or arises solely out of a claim by any Financing Party against any Lessor Party or its Affiliates; or
- (xiii) is indemnified against elsewhere in this Agreement or any other Operative Document.

#### 14.2 Notification and Contest

Each Indemnatee intending to claim any amounts from Lessee pursuant to Clause 14.1 (*General*), shall promptly notify Lessee in writing of any matter of which such Indemnatee, has received written notice and for which Lessee is obligated to indemnify under this Clause 14 (*Indemnities*) (each a “**Claim**”); provided, however, the delay or failure of such Indemnatee to give notice to Lessee in accordance with this Clause 14.2 will not discharge or release Lessee from any of its indemnity obligations under Clause 14.1 (*General*) except, and only to the extent, that such delay or failure constitutes gross negligence or willful misconduct, or such Indemnatee actually knew or reasonably should have known that such written notice is for a Claim for which Lessee is obligated to indemnify such Indemnatee pursuant to Clause 14.1 (*General*) and such delay or failure prejudices Lessee’s right to defend any such Claim or results in an increase in the amount which Lessee is required to indemnify (in such case to the extent of such increase). Lessor (and/or any other Indemnatee seeking indemnification, as the case may be) and Lessee shall, if and for so long as no Event of Default is continuing, then consult with one another in good faith for a period not exceeding fifteen (15) Business Days in order to determine what action (if any) may reasonably be taken to avoid or mitigate such Claim. Following such consultation, Lessee shall have the right to take all reasonable action (on behalf, and, if necessary, in the name, of Lessor and/or such other Indemnatee) in order to resist, defend or settle (provided such settlement is accompanied by payment) any claims by third parties giving rise to such Claim, providing always that the following conditions are met or (as the case may be) complied with:

- (a) Lessor (and/or any other such Indemnatee) shall have received a written acknowledgment from Lessee satisfactory to it (acting reasonably) of Lessee’s responsibility for all expenses, costs, or other Losses incurred by any Indemnatee arising out of or related to the Claim and such contest and if Lessor or relevant Indemnatee is required by law to pay the Claim, Lessee shall comply with its obligation to indemnify Lessor or such Indemnatee in respect thereof;
- (b) no Event of Default has occurred which is continuing;
- (c) such contest will not result in any danger of the sale, forfeiture or loss of, or the creation of any Security Interest (other than any Permitted Lien) on, the Aircraft; and
- (d) such contest does not involve any risk of criminal liability for Lessor or any other Indemnatee.

Where Lessee or its insurers undertake the defense of an Indemnatee with respect to a Claim, no additional legal fees or expenses of such Indemnatee in connection with such defense of such Claim shall be indemnified hereunder unless such fees or expenses were incurred at the request of Lessee

or such insurers or were incurred prior to Lessee's assumption of the defense of such Claim; provided that, if in the written opinion of counsel to such Indemnatee an actual or potential material conflict of interest exists such that it is advisable for such Indemnatee to be represented by separate counsel, the reasonable fees and expenses of such separate counsel shall be borne by Lessee. Subject to the requirements of any policy of insurance, any Indemnatee may participate at its own expense in any judicial proceeding controlled by Lessee or an insurer pursuant to the preceding provisions, and such participation shall not constitute a waiver of the indemnification provided in this Clause 14 (*Indemnities*).

**14.3 Refunds**

Any sums paid by Lessee to Lessor and/or any other Indemnatee in respect of any Claim pursuant to Clauses 14.1 (*General*) and 14.2 (*Notification and Contest*) shall be paid subject to the condition that, in the event that Lessor or such Indemnatee (whichever received the payment) is subsequently reimbursed in respect of that Claim by any other Person, Lessor or such Indemnatee (whichever received the payment) shall promptly pay to Lessee an amount equal to the sum received by Lessor (not to exceed the sum paid to it by Lessee), including any interest on such amount to the extent attributable thereto and actually received by Lessor or such Indemnatee, less any Tax payable by Lessor or such Indemnatee in respect of such reimbursement and less any costs and expenses incurred by Lessor or such Indemnatee in obtaining such reimbursement (to the extent that Lessor or such Indemnatee has not been reimbursed for such costs and expenses by Lessee).

**14.4 Subrogation**

Upon the payment in full of any indemnity pursuant to this Clause 14 (*Indemnities*) by Lessee, Lessee will be subrogated to any right of the relevant Indemnatee in respect of the matter against which such indemnity has been made.

**14.5 Duration**

The indemnities and obligations contained in this Agreement will continue in full force after the expiration, cancellation or other termination of this Agreement notwithstanding any breach or repudiation of this Agreement by Lessor or Lessee or the termination of the leasing of the Aircraft under this Agreement.

**15. INSURANCE**

**15.1 Insurances**

- (a) Lessee shall, at its own expense, obtain and maintain the Insurances in full force during the Term and thereafter and, in each case, as required by this Agreement which shall have such deductibles and be subject to such exclusions as may (in each case) be permitted by this Agreement or as otherwise approved by Lessor (acting reasonably) and with such insurers, brokers and underwriters complying with Clause 15.1(b). Such Insurances shall be on terms substantially similar to (or better than) the insurance carried by Lessee on similar aircraft in its fleet and of the type usually carried by airlines engaged in the same or a similar business, similarly situated with Lessee.
- (b) The Insurances shall be effected either:
  - (i) on a direct basis with insurers of recognized standing who normally participate in aviation insurances in the leading international insurance markets and led by

reputable underwriter(s) and through brokers of recognized standing; or

- (ii) with a single insurer or group of insurers who do not meet the requirements of Clause 15.1(b)(i) but who effect substantial reinsurance with reinsurers who normally participate in aviation insurances in the leading international insurance markets and through brokers each of recognized standing.
- (c) If Lessor or its advisors consider that there has been any event or claim in any one policy year which reduces the remaining aggregate coverage of the Insurances required to be in place under paragraph 1(a) of Schedule 5 (*Insurance Requirements*) to an amount which is below the Minimum Liability Coverage, Lessor shall be entitled, after consultation with Lessee as to any alternative action which may be taken, to require the aggregate coverage of such Insurances to be reinstated to an amount not less than the Minimum Liability Coverage.
- (d) If Lessee has not reinstated such Insurances as required by Lessor pursuant to Clause 15.1(c) above, Lessor shall be entitled to require the Aircraft to remain at any airport, or to proceed to and remain at any airport mutually acceptable to Lessee and Lessor (or, failing any such agreement, as directed by Lessor) with customary ground risks coverage (whereupon Lessee shall ensure compliance with such requirement) until Lessee shall have reinstated the Minimum Liability Amount of implemented at Lessee's expense any amendments to the terms of the Insurances required under paragraph 1(a) of Schedule 5 (*Insurance Requirements*) or such other changes which Lessor considers are required to ensure that the interests of Lessor, Owners and the Financing Parties are adequately protected.

## 15.2 Requirements

Requirements as to the Insurances are as specified in this Clause 15 (*Insurance*) and in Schedule 5 (*Insurance Requirements*).

## 15.3 Insurance Covenants

Lessee shall:

- (a) comply with the terms and conditions of each policy of the Insurances and any applicable Regulations and not do, consent or agree to any act or omission which:
  - (i) invalidates the Insurances; or
  - (ii) renders void or voidable the whole or any part of any of the Insurances; or
  - (iii) brings any particular insured liability within the scope of an exclusion or exception to the Insurances;

provided that the foregoing shall not prohibit Lessee from operating the Aircraft temporarily in any manner or location in the event of an emergency;

- (b) not, without the prior written consent of Lessor (acting reasonably) take out any insurance or procure any reinsurance in respect of the Aircraft other than those required to be maintained by Lessee under this Agreement unless relating solely to liability insurance,

hull total loss, business interruption, profit commission and deductible risk;

- (c) on request, provide to Lessor such documents and information as may be reasonably requested by Lessor (i) in respect of claims made under the insurances or (ii) evidencing payment of Insurance premiums (including daily status updates of payment or non-payment of premiums after issuance of any notice of cancellation for failure to pay premiums until such time as the policy is reinstated);
- (d) if at any time insurance clause AVN 2000A or its successor is endorsed on the policies of Insurance, ensure that the insurance write back clauses AVN 2001A and AVN 2002A 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; and
- (e) provide any other information and assistance in respect of the Insurances which Lessor may from time to time reasonably request.

#### 15.4 **Renewal of Insurances**

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

- (a) confirmation of completion of renewal prior to each insurance expiry date; and
- (b) certificates of insurance (and where appropriate certificates of reinsurance), and a brokers' and any reinsurance brokers' letter of undertaking in a form acceptable to Lessor in English, detailing the coverage and confirming the insurers' (and any reinsurers') agreement to the specified insurance requirements of this Agreement as early as practicable prior to each renewal date.

#### 15.5 **Failure to Insure**

If Lessee fails to maintain the Insurances in compliance with this Agreement, Lessor will be entitled but not bound (without prejudice to any other rights of Lessor under this Agreement):

- (a) to pay the premiums due or to effect and maintain insurances satisfactory to it or otherwise remedy Lessee's failure in such manner (including, without limitation to effect and maintain an owner's interest policy) as Lessor considers appropriate, and any sums so expended by Lessor will become immediately due and payable by Lessee to Lessor together with interest thereon at the Default Rate, from the date of expenditure by Lessor up to the date of reimbursement by Lessee; and
- (b) at any time while such failure is continuing to require the Aircraft to remain grounded until the failure is remedied to its satisfaction.

#### 15.6 **Continuing Insurance for Indemnity**

Except in case of a Total Loss, for a period ending on the earlier of the two year anniversary of the Termination Date and the next due B Check after the Termination Date, Lessee shall effect and maintain for the benefit of the Indemnitees ongoing product liability and completed operations insurance in respect of the risks and liabilities covered by the insurance required by paragraph 1(d) of Schedule 5 (*Insurance Requirements*). Additionally, if required to provide such insurance

pursuant to a transfer in accordance with Clause 21.2 (*Lessor Transfer*) that provides for any transferring Indemnitee to be named as an additional insured, Lessee shall effect and maintain for the benefit of such Indemnities ongoing product liability and completed operations insurance in respect of the risks and liabilities covered by the insurance required by paragraph 1(d) of Schedule 5 (*Insurance Requirements*) for a period ending on the earlier of the two year anniversary of such transfer and the next due B Check after such transfer.

**15.7 Application of Insurance Proceeds**

As between Lessor and Lessee all insurance proceeds shall be paid in accordance with Schedule 5 (*Insurance Requirements*).

**15.8 AVN 67B**

Lessor confirms that notwithstanding the provisions of this Clause 15 (*Insurance*) and Schedule 5 (*Insurance Requirements*), Lessee shall be entitled to maintain insurance in respect of the Aircraft for the purposes of this Agreement which reflects the then current Lloyds' endorsement AVN 67B or any successor Lloyds' endorsement. In the event that any provision of the then current AVN 67B or any successor Lloyds' endorsement conflicts or is otherwise inconsistent with the requirements of this Clause 15 (*Insurance*) and Schedule 5 (*Insurance Requirements*), then (so long as it shall be general industry practice to insure aircraft financed or leased on the basis of any such endorsement) such conflicting or inconsistent provision of AVN 67B or any successor Lloyds' endorsement (as at the date hereof) shall prevail and such endorsement shall be deemed to satisfy the requirements of this Agreement.

**16. LOSS, DAMAGE AND REQUISITION**

**16.1 Total Loss**

- (a) If a Total Loss of the Aircraft or Airframe occurs during the Term, Lessee shall pay the Agreed Value to Lessor on or prior to the earlier of:
  - (i) [REDACTED] days after the Total Loss Date in respect of that Total Loss (subject to Lessor using its commercially reasonable efforts to agree and execute a release agreement in form and substance satisfactory to the relevant insurers and reinsurers); and
  - (ii) [REDACTED] Business Days after the date of receipt of insurance proceeds in respect of that Total Loss.
- (b) Subject to the rights of any insurers and reinsurers or other third parties, upon irrevocable payment in full to Lessor of the Agreed Value and all other amounts which may be or become payable to Lessor under this Agreement, Lessor shall cause Owner to transfer to Lessee all of Owner's right, title and interest in and to the Aircraft including any Engines and Parts not installed when the Total Loss occurred, on an "AS IS, WHERE IS" basis and without recourse, representation or warranty (except a representation and warranty that Owner is transferring such title to the Aircraft as the transferee from the Airframe Manufacturer received from the Airframe Manufacturer free from all Lessor Liens), and Lessor shall provide such documents as Lessee may reasonably require to evidence and perfect such transfer of title in accordance with all applicable Laws (including the provision, if required, to Lessee of bills of sale and removal of any International Interests



created by this Agreement from the International Registry).

- (c) Upon a Total Loss of any Engine not involving a Total Loss of the Airframe, Lessee shall give Lessor prompt written notice thereof, and Lessee shall replace the Engine that suffered the Total Loss by procuring that title to a Replacement Engine is conveyed to Owner in accordance with Clause 12.6 (*Permanent Replacement of Engines and Parts*) within [REDACTED] days of the Total Loss Date in respect of such Total Loss.

## 16.2 Requisition

- (a) During any requisition for use or hire of the Aircraft, any Engine or any Part which does not constitute a Total Loss:
  - (i) the Rent and other amounts payable under this Agreement will not be suspended or abated either in whole or in part, and Lessee will not be released from any of its other obligations under the Agreement (other than operational obligations with which Lessee is unable to comply solely by virtue of the requisition);
  - (ii) so long as no Event of Default has occurred and is continuing, Lessee shall be entitled to any rent or fees paid by the requisitioning authority in respect of the Term;
  - (iii) Lessee shall, as soon as practicable after the end of any such requisition, cause the Aircraft to be put into the condition required by this Agreement; and
  - (iv) Lessor shall be entitled to all compensation payable by the requisitioning authority in respect of any change in the structure, state or condition of the Aircraft arising during the period of requisition, and Lessor shall apply such compensation in reimbursing Lessee for the cost of complying with its obligations under this Agreement in respect of any such change, provided that, if any Event of Default has occurred and is continuing, Lessor may apply the compensation in or towards settlement of any amounts owing by Lessee under this Agreement.

## 17. DISCLAIMERS

**LESSOR AND LESSEE AGREE THAT THE DISCLAIMERS, WAIVERS AND CONFIRMATIONS SET FORTH IN CLAUSES 17.1 (EXCLUSION) TO 17.5 (CONFIRMATION) SHALL APPLY AT ALL TIMES DURING THE TERM.**

### 17.1 Exclusion

THE AIRCRAFT HAS BEEN LEASED HEREUNDER "AS IS, WHERE IS", AND LESSEE AGREES AND ACKNOWLEDGES THAT:

- (a) LESSOR AND THE OTHER INDEMNITEES WILL HAVE NO LIABILITY IN RELATION TO, AND NEITHER LESSOR NOR ANY OTHER INDEMNITEE HAS MADE OR GIVEN NOR WILL BE DEEMED TO HAVE MADE OR GIVEN (WHETHER BY VIRTUE OF HAVING DONE OR FAILED TO DO ANY ACT, OR HAVING ACQUIRED OR FAILED TO ACQUIRE ANY STATUS UNDER OR IN RELATION TO THIS AGREEMENT OR OTHERWISE), ANY WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, WITH RESPECT TO, THE AIRCRAFT OR ANY ENGINE OR PART UNDER THIS AGREEMENT INCLUDING THE TITLE, DESCRIPTION, AIRWORTHINESS, COMPLIANCE WITH

SPECIFICATIONS, OPERATION, MERCHANTABILITY, QUALITY, FREEDOM FROM INFRINGEMENT OF PATENT OR OTHER PROPRIETARY RIGHTS, THE ACCURACY, VALIDITY, TRACEABILITY OR COMPLETENESS OF ANY AIRCRAFT DOCUMENTS, THE FITNESS FOR ANY PARTICULAR USE OR PURPOSE, VALUE, DURABILITY, CONDITION, OR DESIGN, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP, THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, OR AS TO ANY OTHER MATTER WHATSOEVER, EXPRESS OR IMPLIED (INCLUDING ANY IMPLIED WARRANTY ARISING FROM A COURSE OF PERFORMANCE OR DEALING OR USAGE OR TRADE) WITH RESPECT TO THE AIRCRAFT, ANY ENGINE OR ANY PART OR ANY SERVICES PROVIDED BY LESSOR UNDER THIS AGREEMENT; PROVIDED THAT THIS CLAUSE A SHALL NOT APPLY TO LESSOR'S REPRESENTATION AND WARRANTY SET FORTH IN CLAUSE 2(g) OF SCHEDULE 2; AND

- (b) NEITHER LESSOR NOR ANY OTHER INDEMNITEE SHALL HAVE ANY OBLIGATION OR LIABILITY WHATSOEVER TO LESSEE (WHETHER ARISING IN CONTRACT OR IN TORT, AND WHETHER ARISING BY REFERENCE TO NEGLIGENCE OR STRICT LIABILITY OR OTHERWISE) FOR:
  - (i) ANY LIABILITY, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY THE AIRCRAFT OR ANY ENGINE OR BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN OR BY ANY OTHER CIRCUMSTANCE IN CONNECTION THEREWITH;
  - (ii) THE USE, OPERATION OR PERFORMANCE OF THE AIRCRAFT OR ANY RISKS RELATING THERETO;
  - (iii) ANY INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATED PROFITS OR ANY OTHER DIRECT, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE; OR
  - (iv) THE DELIVERY, OPERATION, SERVICING, MAINTENANCE, REPAIR, IMPROVEMENT OR REPLACEMENT OF THE AIRCRAFT, ANY ENGINE OR ANY PART.

## 17.2 Waiver

LESSEE HEREBY WAIVES, AS BETWEEN ITSELF AND LESSOR AND EACH OTHER INDEMNITEE, ALL ITS RIGHTS IN RESPECT OF ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, ON THE PART OF LESSOR OR ANY OTHER INDEMNITEE AND ALL CLAIMS AGAINST LESSOR AND ANY OTHER INDEMNITEE HOWSOEVER AND WHENEVER ARISING AT ANY TIME IN RESPECT OF OR OUT OF THE MATTERS EXPRESSLY WAIVED IN CLAUSE 17.1 (*EXCLUSION*). LESSEE FURTHER AGREES THAT ITS ONLY RIGHT WITH RESPECT TO A DEFAULT BY LESSOR UNDER THIS AGREEMENT IS TO MAKE A CLAIM AGAINST LESSOR FOR ACTUAL DAMAGES RESULTING DIRECTLY THEREFROM. LESSEE HEREBY WAIVES ANY AND ALL OTHER RIGHTS OR REMEDIES IT MAY HAVE UNDER ARTICLE 2A OF THE UCC (INCLUDING WITHOUT LIMITATION 2A-211, 2A-406 AND 2A-508 THROUGH 2A-522)

AS IN EFFECT IN THE STATE OF NEW YORK, OR OTHERWISE.

**17.3 Disclaimer of Consequential Damages**

EACH PARTY HEREBY AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, IT SHALL NOT BE ENTITLED TO RECEIVE AND HEREBY DISCLAIMS AND WAIVES ANY RIGHT THAT IT MAY OTHERWISE HAVE TO RECOVER LOST PROFITS, LOST REVENUE OR OTHER CONSEQUENTIAL, SPECIAL INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES AS A RESULT OF ANY BREACH OR ALLEGED BREACH BY ANY OTHER PARTY OF ANY OF THE AGREEMENTS CONTAINED IN THIS AGREEMENT OR THE OTHER OPERATIVE DOCUMENTS.

**17.4 No Duties**

LESSEE ACKNOWLEDGES AND AGREES THAT LESSOR HAS NO FIDUCIARY OR OTHER DUTIES TO LESSEE WHATSOEVER, AND THAT LESSOR'S ONLY OBLIGATIONS TO LESSEE ARE THOSE OBLIGATIONS EXPRESSLY SET FORTH HEREIN.

**17.5 Confirmation**

LESSEE CONFIRMS THAT IT IS FULLY AWARE OF THE PROVISIONS OF THIS CLAUSE 17 (*DISCLAIMERS*) AND ACKNOWLEDGES THAT RENT AND OTHER AMOUNTS PAYABLE UNDER THIS AGREEMENT HAVE BEEN CALCULATED TAKING ITS PROVISIONS INTO ACCOUNT.

**18. REDELIVERY**

**18.1 Redelivery**

- (a) On the Required Redelivery Date, Lessee shall (unless a Total Loss has occurred) redeliver the Aircraft and Aircraft Documents (which shall include each of the documents referred to in Schedule 7 (*Aircraft Documents at Redelivery*)) to Lessor at Lessee's expense at the Redelivery Location in accordance with the procedures, and in compliance with the conditions set forth, in Schedule 8 (*Redelivery Conditions*).
- (b) Lessee shall, at the request of Lessor (acting reasonably), promptly assist Lessor in taking all steps necessary to remove this Agreement from the registry of the Aviation Authority and effecting deregistration of the Aircraft and its export from the country where the Aircraft is situated and taking any other steps necessary to enable the Aircraft to be redelivered to Lessor in accordance with this Agreement.
- (c) On the Redelivery Date, Lessee shall pay to Lessor the Redelivery Maintenance Payment due and owing pursuant to and calculated in accordance with Part B (*Redelivery Maintenance Payment*) of the Financial Terms Annex. For the avoidance of doubt, no Redelivery Maintenance Payment is payable in the event of an Aircraft or Airframe Total Loss.
- (d) Notwithstanding any other provision hereof to the contrary, Lessee shall not be obligated to pay Rent in respect of any period after the date on which the Aircraft complies with the conditions set forth in Schedule 8 (*Redelivery Conditions*) to be complied with at or immediately prior to redelivery and Lessee has tendered the Aircraft for redelivery to

Lessor at the Redelivery Location.

## 18.2 Non-Compliance

- (a) If on the Required Redelivery Date, the condition of the Aircraft does not comply with this Agreement (regardless of the circumstance), then:
  - (i) Lessee shall rectify the non-compliance and/or compensate Lessor as contemplated by Schedule 8 (*Redelivery Conditions*) and to the extent that the non-compliance (including failure to pay any sum in lieu of compliance as permitted by the terms of Schedule 8 (*Redelivery Conditions*)) extends beyond the Expiry Date, the Term will be automatically extended solely for the purpose of enabling such non-compliance to be rectified;
  - (ii) Lessee shall not use the Aircraft in flight operations except such operations directly related to the redelivery of the Aircraft to Lessor;
  - (iii) all Lessee's obligations and covenants under this Agreement will remain in full force until Lessee so redelivers the Aircraft; and
  - (iv) Lessee shall pay to Lessor monthly in arrears Rent in an amount equal to the Rent due immediately before the Required Redelivery Date for the first [REDACTED] days of delay and [REDACTED] percent ([REDACTED]%) of Rent thereafter, prorated to reflect the actual days elapsed in respect of the period during which the Term is so extended.
- (b) If on the Required Redelivery Date, the condition of the Aircraft does not comply with this Agreement (regardless of the circumstance), then Lessor may elect (either on first tender of the Aircraft for redelivery or at any time during a period of extension pursuant to Clause 18.2(a)(i)) to accept redelivery of the Aircraft notwithstanding non-compliance with Clause 18.1 (*Redelivery*) or Schedule 8 (*Redelivery Conditions*), in which case Lessee shall pay Lessor its reasonable and documented costs of putting the Aircraft into the condition required by this Agreement. Any discrepancies between the condition of the Aircraft and Aircraft Documents and the Redelivery Conditions resolved by payment of compensation pursuant to the third paragraph of Schedule 8 (*Redelivery Conditions*) or Clause L of Schedule 8 (*Redelivery Conditions*) shall not constitute non-compliance for purposes of this Clause 18.2.

## 18.3 Export Documents

After redelivery of the Aircraft, and if requested by Lessor and subject to Lessor's cooperation therewith, Lessee shall provide to Lessor, at Lessee's cost and expense (except as set forth in the following clause (a)), all documents necessary to export the Aircraft from the State of Registration (including, without limitation, a valid and subsisting (a) export license, and (b) if provided by the State of Registration, an export certificate of airworthiness for the Aircraft, at Lessor's cost and expense) required in relation to the deregistration of the Aircraft with the Aviation Authority or the re-registration of the Aircraft with another aviation authority.

## 18.4 Acceptance and Acknowledgement

When the Aircraft complies with the conditions set forth in Schedule 8 (*Redelivery Conditions*) to be complied with before redelivery and Lessee tenders the Aircraft to Lessor at the Redelivery Location, Lessor shall accept redelivery and Lessor shall deliver to Lessee the Redelivery

Acceptance Certificate confirming that Lessee has redelivered the Aircraft to Lessor in accordance with this Agreement; provided that Lessor's failure to execute such Redelivery Acceptance Certificate shall not affect the cessation of Lessee's Rent payment obligations in accordance with Clause 18.1(d) (*Redelivery*).

**18.5 Cooperation with Remarketing**

During the [REDACTED] months immediately preceding the Expiry Date, Lessee shall co-operate in all reasonable respects with the efforts of Lessor to lease or sell the Aircraft, including, without limitation, permitting potential lessees or purchasers to inspect the Aircraft and the records relating thereto provided that the same shall not interfere with Lessee's use or maintenance of the Aircraft or require Lessee to incur out-of-pocket expenses for which it is not reimbursed and Lessor shall use commercially reasonable efforts to minimize the number and frequency of such inspections.

**19. EVENTS OF DEFAULT**

**19.1 Events**

Each of the following events will constitute an Event of Default, a "default" under the Cape Town Convention and a breach of this Agreement by Lessee:

- (a) **Non-payment:** Lessee fails to make any payment of Rent under this Agreement within [REDACTED] Business Days after such payment is due, or Lessee fails to make any other payment when due hereunder within [REDACTED] Business Days after Lessee receives written notice that such payment is due and has not been paid in accordance with the terms hereof; or
- (b) **Letter of Credit:** Lessee fails to provide a replacement Letter of Credit or a cash Security Deposit when required under Clauses 6.5(e) or (i) (*Letter of Credit*); or
- (c) **Insurance:**
  - (i) Lessee fails to maintain or cause to be maintained the Insurances as required by Clause 15 (*Insurance*) or Schedule 5 (*Insurance Requirements*); or
  - (ii) A notice of cancellation is given in respect of any Insurances required by Clause 15 (*Insurance*) or Schedule 5 (*Insurance Requirements*) and the same is not renewed or replaced in satisfaction of the requirements of Clause 15 (*Insurance*) or Schedule 5 (*Insurance Requirements*) at least [REDACTED] Business Days prior to such cancellation, provided that it shall not constitute an Event of Default under this Clause 19.1(c) if:
    - (A) any failure by Lessee to comply with the terms of Clause 15 (*Insurance*) or Schedule 5 (*Insurance Requirements*) for reasons other than any act or omission of Lessee (including but not limited to failure to pay any premium for, or to comply with any other condition of, such insurances);
    - (B) the cancellation of the insurances is part of a wider program of cancellations by the insurer as a result of an event or series of events affecting the aviation insurance market generally;
    - (C) the Aircraft is grounded for the period for which such insurances are not

in place;

- (D) the Aircraft continues to be covered by ground risk insurance (for at least the Agreed Value) approved by Lessor (acting reasonably);
  - (E) Lessee continues to maintain legal liability insurances to the extent available with a minimum liability coverage of US\$300,000,000 or such lower amount as approved by Lessor (acting reasonably); and
  - (F) as soon as such cover becomes generally available in the aviation insurance market, Lessee effects replacement insurances complying with the requirements of Clause 15 (*Insurance*) and Schedule 5 (*Insurance Requirements*).
- (iii) The Aircraft is operated at a time or in a place where any insurance required by Clause 15 (*Insurance*) and Schedule 5 (*Insurance Requirements*) is not in effect, unless such operation is temporary in nature and due to an emergency situation.
- (d) **Liens:** Lessee fails to comply with Clause 9.6(f) and such failure continues for a period of [REDACTED] Business Days after written notice from Lessor to Lessee; provided, that so long as there is no material risk of sale, forfeiture or loss of the Aircraft or imposition of criminal liability on Lessor or Owner, Lessee shall have an additional [REDACTED] days to remedy such failure if such failure is capable of remedy and Lessee is diligently seeking to rectify such failure;
- (e) **Breach:** Lessee or Lessee Guarantor fails to comply with any other provision of this Agreement or any other Operative Document (other than (i) the Prior Lease or (ii) any failure that relates to a period of time before the execution of this Agreement) and such failure continues for [REDACTED] days after written notice from Lessor to Lessee; provided, that Lessee shall have an additional [REDACTED] days to remedy such failure if such breach is capable of remedy and Lessee or Lessee Guarantor is diligently seeking to rectify the breach; or
- (f) **Representation:** any representation or warranty made by Lessee or Lessee Guarantor in or pursuant to this Agreement or any other Operative Document (other than (i) the Prior Lease or (ii) any failure that relates to a period of time before the execution of this Agreement) is or proves to have been incorrect in any material respect when made or deemed made and such incorrectness has a materially adverse effect on the rights or interests of Lessor or the ability of Lessee or Lessee Guarantor to perform its obligations hereunder or under any other Operative Document and the circumstances giving rise to the breach of such representation or warranty are not remedied to Lessor's satisfaction within [REDACTED] days after notice to Lessee from Lessor requiring such remedy; provided that Lessee shall have an additional [REDACTED] days to remedy such breach if the breach is capable of remedy and Lessee or Lessee Guarantor is diligently seeking to remedy the breach; or
- (g) [REDACTED]; or
- (h) **Authorizations:**
- (i) any authorization required to be obtained by Lessee to authorize, or required in connection with, the execution, delivery, validity, enforceability or admissibility

in evidence of this Agreement or the performance by Lessee of its obligations under this Agreement; or

- (ii) the registration of the Aircraft or the Aircraft's certificate of airworthiness; or
- (iii) any airline license or air transport license required by Lessee;

is withheld, or is revoked, suspended, cancelled, withdrawn, terminated or not renewed, or otherwise ceases to be in full force and is not, as applicable, restored, replaced, returned, re-granted or renewed; provided, that so long as there is no material risk of sale, forfeiture or loss of the Aircraft or imposition of criminal liability on Lessor or Owner, Lessee shall have [REDACTED] Business Days to restore, replace, return, reinstate or renew, as applicable, such consent, authorization, registration, license, certificate, approval or declaration, as applicable; provided, further, that in the case of any consent, authorization, license, certificate, approval, registration or declaration necessary to enable Lessee to operate as a commercial air carrier, the Aircraft is not operated by Lessee until the circumstances are so remedied; or

(i) **Insolvency:**

Other than in respect of the Bankruptcy Cases, Lessee or Lessee Guarantor is, or is deemed for the purposes of any relevant Law to be, generally unable to pay its debts as they fall due or to be insolvent, or admits in writing its inability to pay its debts generally as they fall due.

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

In respect of the Chapter 11 cases and proceedings initially filed by Lessee and its affiliates on July 1, 2020 under the lead case no. 20-11563 with the Bankruptcy Court, any of such cases are dismissed prior to the confirmation of a plan of reorganization or converted to a chapter 7 case, or a chapter 11 trustee is appointed.

Other than in respect of the Bankruptcy Cases:

- (i) after Lessee's or Lessee Guarantor's request therefore, any order (including an order for relief) is made or resolution passed or petition filed for any such composition, assignment, arrangement, rehabilitation, administration (whether out of court or otherwise), custodianship, reorganization, liquidation, dissolution or insolvency or bankruptcy proceedings, or Lessee or Lessee Guarantor becomes subject to or enters into any of the foregoing; provided that if a creditor of Lessee or Lessee Guarantor files an involuntary petition for Lessee's or Lessee's Guarantor bankruptcy or liquidation, such petition has been in effect and unstayed for at least [REDACTED] days; or
- (ii) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, examiner or similar officer (in each case, whether out of court or otherwise) is appointed, or an assignment for the benefit of creditors is made, or an order for relief under the bankruptcy laws of any jurisdiction is requested by Lessee or Lessee Guarantor and granted or entered, in respect of Lessee or Lessee Guarantor or any of their respective assets; or
- (iii) an administrative or other receiver or manager or other insolvency officer (in each case, whether out of court or otherwise) is appointed at the request of Lessee or

Lessee Guarantor in respect of Lessee or Lessee Guarantor or any material part of their respective assets; or

- (iv) an involuntary case or proceeding is commenced in a court of competent jurisdiction against Lessee or Lessee Guarantor seeking liquidation, reorganization, control, supervision or other relief with respect to Lessee or Lessee Guarantor or its debts under any insolvency law or seeking the appointment of a trustee, examiner, liquidator, administrator, receiver, custodian or similar official of Lessee or Lessee Guarantor or any material part of the business or assets of Lessee or Lessee Guarantor and such involuntary case or other proceeding shall remain un-dismissed and un-stayed for a period of [REDACTED] days.
- (k) **Other Jurisdiction:** there occurs in relation to Lessee or Lessee Guarantor any event in any jurisdiction which corresponds with any of the events mentioned in Clause 19.1(j) (*Liquidation and Similar Proceedings*), other than in respect of the Bankruptcy Cases; or
- (l) **Suspension of Business:** Lessee suspends or ceases or announces its intention to suspend or cease to carry on all or substantially all of its business; or
- (m) **Disposal:** Lessee conveys, leases or otherwise transfers or disposes of all or substantially all of its property and assets to or consolidates or merges with or into any other Person (and Lessee is not the surviving Person) except as permitted under Clause 9.7 or unless Lessee has obtained Lessor's prior written consent; or
- (n) **Redelivery:** Lessee fails to redeliver the Aircraft to Lessor on the Required Redelivery Date in accordance with Clause 18 (*Redelivery*); provided that to the extent that there is a failure to redeliver the Aircraft in accordance with Clause 18.1 (*Redelivery*) due to any discrepancies identified and agreed between Lessor and Lessee and Lessee is diligently seeking to rectify such discrepancies, such failure shall not be considered as an Event of Default for the purposes of this Clause 19.1; or
- (o) **Rights and Remedies:** Lessee or any other Person lawfully claiming by or through Lessee successfully challenges the existence, validity, enforceability or priority of the rights of Owner as owner or Lessor as lessor of the Aircraft or the Financing Parties under any Security Interest or assignment in respect of the Aircraft or of this Agreement.

Notwithstanding anything herein to the contrary, Lessor agrees that the existence or continuance of the Bankruptcy Cases shall not be considered as an Event of Default for the purposes of this Clause 19.1 and shall not give rise to any [REDACTED] referenced in Clause 19.1(f) (*Cross-Default*) of this Agreement.

## 19.2 Lessor's Rights

- (a) **Lessor Rights and Remedies:** If an Event of Default occurs and for so long as it continues, Lessor may at its option (and without prejudice to any of its other rights or remedies under this Agreement or available under applicable Law, including under the Cape Town Convention as adopted and implemented in the State of Registration, including, all rights and remedies under Chapter III of the Cape Town Convention and Chapter II of the Protocol as adopted and implemented in the State of Registration), at any time thereafter while such Event of Default is continuing (and subject to compliance with any mandatory



requirement of applicable Law then in effect):

- (i) by notice to Lessee and with immediate effect, terminate or cancel the leasing of the Aircraft or, if such leasing has not yet commenced, terminate or cancel Lessor's obligations under this Agreement (but, in each case, without prejudice to any continuing obligations of Lessee under this Agreement (including to provide Insurance, maintain and repair the Aircraft and/or redeliver the Aircraft at the location and in the condition required hereunder)), whereupon all rights of Lessee under this Agreement shall cease; and/or
- (ii) prohibit Lessee from removing any Engine, Part or Equipment Change from the Aircraft without the prior written consent of Lessor or on such terms and conditions as Lessor may provide in writing to Lessee (the right to issue such prohibition order contained in this Clause 19.2(a)(ii) shall be exercisable by written notice from Lessor to Lessee while an Event of Default is continuing and such prohibition order shall cease automatically once all Events of Default have been cured); and/or
- (iii) proceed by appropriate court action or actions to enforce performance of this Agreement and/or to recover damages for the breach of this Agreement; and/or
- (iv) either:
  - (A) to the extent permitted by Law take possession of the Aircraft, for which purpose and to the extent permitted by Law, Lessor may enter any premises belonging to or in the occupation of or under the control of Lessee where the Aircraft may be located, or cause the Aircraft to be redelivered to Lessor at the Redelivery Location (or such other location as Lessor may require), and Lessor is hereby irrevocably by way of security for Lessee's obligations under this Agreement appointed attorney for Lessee in causing the redelivery or in directing the pilots of Lessee or other pilots to fly the Aircraft to that airport and will have all the powers and authorizations necessary for taking that action; or
  - (B) require Lessee to redeliver the Aircraft to Lessor at the Redelivery Location ([REDACTED]);

provided that, irrespective of which remedy or remedies Lessor pursues, Lessee shall not be relieved of its obligations under Clause 18 (*Redelivery*).

Lessee and Lessor hereby agree that Lessor shall not be required to provide notice to Lessee as set forth in Article IX(6) of the Protocol in connection with a proposal to procure the de-registration and export of the Aircraft without a court order after termination of the leasing of the Aircraft under this Agreement. Lessee expressly agrees to permit Lessor to obtain from any applicable court, pending final determination of any claim resulting from an Event of Default hereunder, speedy relief in the form of any of the orders specified in Article 13 of the Cape Town Convention and Article X of the Protocol as Lessor shall determine, subject to any procedural requirements proscribed by applicable Laws. Lessor and Lessee hereby expressly agree that for purposes of this Agreement, other Operative Documents, and paragraph 2 of Alternative B of Article XI of the Protocol, the insolvency administrator or Lessee, as applicable, shall give Lessor the notice required by said

paragraph 2 within [REDACTED] days following a request by Lessor. Lessee hereby consents to the exercise by Lessor of the remedies granted herein and in the Cape Town Convention (in accordance with the terms of the Cape Town Convention). Following termination of the leasing of the Aircraft under this Agreement, Lessee agrees, upon demand by Lessor, to immediately consent to a discharge of any registration made with the International Registry in Lessee's favor.

- (b) **Sale or Re-Lease of Aircraft:** If an Event of Default occurs and the leasing of the Aircraft hereunder is terminated, Lessor or Owner may sell or re-lease or otherwise deal with the Aircraft at such time and in such manner as Lessor considers appropriate in its sole discretion, free and clear of any interest of Lessee, as if this Agreement had never been entered into.
- (c) **Deregistration/Removal of Lease from Registry:** If an Event of Default occurs and for so long as it continues and the leasing of the Aircraft hereunder has been terminated, Lessor may, to the extent permitted by applicable law and regulations, and Lessee shall at the request of Lessor promptly assist Lessor to, take all steps necessary to remove this Agreement from the registry of the Aviation Authority and to effect deregistration of the Aircraft and its export from the country where the Aircraft is for the time being situated and any other steps necessary to enable the Aircraft to be redelivered to and re-leased or sold by Lessor or Lessor in accordance with this Agreement.
- (d) **Payments:** If an Event of Default occurs, Lessor may require that Lessee pay to Lessor, and Lessee shall be liable for and immediately pay to Lessor, and Lessor may proceed by appropriate court action or actions to recover, any or all of the following amounts:
  - (i) [REDACTED];
  - (ii) [REDACTED]; and
  - (iii) [REDACTED].
- (e) **Interest:** Require Lessee to pay, and Lessee shall pay to Lessor, interest on all unpaid amounts at the Default Rate, from the due date until the date of payment in full.
- (f) **Security Deposit:** Apply (and/or draw under the Letter of Credit and apply) an amount equal to all or part of the Security Deposit to any amounts owing or to be owing to Lessor under this Agreement.
- (g) **No Exclusive Remedy:** No remedy referred to in this Clause 19.2 is intended to be exclusive, but, to the extent permissible under this Agreement or under applicable Law and provided that there shall be no duplication, each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor or Owner at law or in equity or under the Cape Town Convention and in Lessor's sole and absolute discretion; and the exercise by Lessor or Owner of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor or Owner of any or all of such other remedies. No waiver by Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any future subsequent Event of Default.

### 19.3 Lessor's Right To Remedy

Following the occurrence of an Event of Default, Lessor may, without being in any way obliged to do so or responsible for so doing and without prejudice to the ability of Lessor to treat such

non-compliance as an Event of Default, effect compliance on behalf of Lessee, whereupon Lessee shall become liable to pay immediately any sums expended by Lessor together with all costs and expenses (including legal costs) in connection with the non-compliance.

#### 19.4 Mitigation

Lessor shall use commercially reasonable efforts to mitigate any of its losses, costs or expenses for which Lessee is liable under this Clause 19 (*Events of Default*), provided that Lessor shall not be obliged to take any step that, in its reasonable opinion, is likely to prejudice Lessor nor is Lessor obliged to achieve any particular result from taking any steps under this Clause 19.4.

#### 19.5 Illegality

- (a) If at any time there is a Change in Law binding upon Lessee or Lessor in its jurisdiction of incorporation or where it has its principal office or in any jurisdiction in which any action is required to be performed by it for the purposes of any Operative Document which renders, or which will render, it unlawful for (i) Lessee to perform any of its material obligations or to exercise any of its material rights under any Operative Document or (ii) Lessor to lease the Aircraft to Lessee or perform its quiet enjoyment obligation or any payment obligation hereunder (an “**Illegality Event**”), Lessor or Lessee (as the case may be) shall forthwith provide written notice of the Illegality Event to the other party.
- (b) Lessor and Lessee shall, for a period of [REDACTED] days from the date of such notice, or such shorter period ending on the Business Day prior to the date on which such Illegality Event takes place, negotiate in good faith to mitigate the effects of such Illegality Event with a view to restructuring the transaction in a manner such that the leasing of the Aircraft to Lessee may continue on the same commercial terms as under the Operative Documents, including, without limitation, by way of amendment, novation or replacement to any Operative Document.
- (c) If Lessor and Lessee are unable to restructure the transaction as contemplated in Clause 19.5(b) within the time period set forth therein, either party may by notice in writing to the other party terminate the leasing of the Aircraft under this Agreement, such termination to take effect on the latest date on which the relevant party may continue to perform such obligations or be a party to such document without being in breach of applicable Laws or regulations, whereupon Lessee shall forthwith redeliver the Aircraft to Lessor (i) where the Illegality Event arises solely as a result of a Change in Law in the Lessor’s jurisdiction, in “as is, where is” condition (and otherwise maintained in compliance with Clause 11 (*Technical Reporting, Aircraft Documents, Inspection, Maintenance and Repair*)), or (ii) where sub-clause (i) does not apply, in accordance with the Redelivery Conditions.

Lessor and Lessee shall bear their own costs and expenses arising out of any negotiations or restructuring pursuant to this Clause 19.5.

### 20. TAXATION

#### 20.1 Gross-up

- (a) All payments by Lessee under or in connection with this Agreement shall be made without set-off or counterclaim, free and clear of and without deduction for or on account of all

Taxes unless Lessee is required by Law to make any such deduction or withholding.

- (b) All Taxes (other than Lessor Taxes) in respect of payments under this Agreement shall be for the account of Lessee and shall be paid by Lessee within the period for payment permitted by Law.
- (c) If any Taxes are required to be deducted or withheld from any amount payable hereunder, Lessee shall:
  - (i) if such Tax is not a Lessor Tax, pay such additional amounts, in the same currency as such payment as may be necessary in order that the amount of such payment received on the date of such payment, after deduction or withholding for all such Taxes (including any deduction or withholding with respect to such additional amount), will be equal to the amount that such Tax Indemnitee would have received if such Taxes had not been deducted or withheld;
  - (ii) pay to the relevant authority within the period for payment permitted by applicable Laws the amount necessary to comply with its legal obligations in respect of such deduction or withholding; and
  - (iii) furnish to each Tax Indemnitee evidence of payment to the relevant authority of all amounts deducted or withheld as aforesaid, which evidence may be provided by certification of such payment by a responsible officer of Lessee if it is not possible to obtain a receipt or certification from the relevant Tax authority.
- (d) If any payment is made by Lessee under Clause 20.1(c) or Clause 20.3 (*Tax Indemnity*), and a Tax Indemnitee in good faith determines that it has actually received a credit against, or relief or remission for, or repayment or a refund of, any Tax paid or payable by such Tax Indemnitee in respect of or calculated with reference to Taxes or deduction or withholding giving rise to such payment by Lessee, such Tax Indemnitee shall, to the extent that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment and without leaving such Tax Indemnitee in any worse position than the position it would have been in had such deduction or withholding not been required to be made or Tax imposed (after taking into account the payment by the Tax Indemnitee pursuant to this Clause 20.1(d)), pay to Lessee such amount as such Tax Indemnitee shall in good faith have determined to be attributable to the relevant Taxes, deduction or withholding; provided, that if at the time of such payment an Event of Default shall have occurred and be continuing, such amount shall be held by Lessor as security for the obligations of Lessee under this Agreement and, during the continuation of such Event of Default, shall be applied to the satisfaction of any amounts due to Lessor under this Agreement, and, at such time as the Event of Default shall be cured, the remainder of such amount shall be paid to Lessee.

Nothing in this Clause 20.1(d) shall:

- (i) interfere with the right of Lessor to arrange its tax affairs in whatever manner it thinks fit and, in particular, but without limitation, Lessor shall not be under any obligation to claim credit, relief, remission or repayment from or against its corporate profits, income or similar Tax liability in respect of the amount of any such Taxes, deduction or withholding in priority to any other claims, reliefs, credits

or deductions available to Lessor; or

- (ii) oblige Lessor to disclose any information relating to its Tax affairs, Tax returns or any computations in respect thereof.

## 20.2 **Covenant to Pay Taxes**

Lessee shall promptly pay when due:

- (a) all Taxes (other than Lessor Taxes) imposed by any Government Entity with respect to the Aircraft, including without limitation the ownership, presence, delivery, leasing, possession, use, operation, maintenance, storage, registration, redelivery, import, export, sale or other disposition of the Aircraft; and
- (b) all Taxes (other than Lessor Taxes) in respect of any premises where the Aircraft, any Engine or any Part thereof is located from time to time,

except to the extent that such payment is being contested in good faith by appropriate proceedings, in respect of which adequate resources have been provided by Lessee and non-payment of which does not give rise to any material risk of the Aircraft, the Engines or any interest therein being sold, forfeited, impounded or otherwise lost or any risk of criminal liability on the part of Lessor or any Financing Party.

## 20.3 **Tax Indemnity**

- (a) Lessee agrees to be liable for, and to indemnify and hold harmless each Tax Indemnitee against all Taxes (other than Lessor Taxes) levied or imposed against or upon or incurred by any Tax Indemnitee or Lessee or the Aircraft and relating to or attributable to Lessee, this Agreement, or the Aircraft or directly or indirectly in connection with the manufacture, assembly, installation, possession, delivery, purchase, sale, transfer, location, existence, importation, transportation, pooling, interchange, leasing, subleasing, wet leasing, chartering, storage, registration, insurance, mortgaging, replacement, maintenance, modification, refurbishment, condition, service, repair, overhaul, control, management, ownership, presence, use, operation, exportation, abandonment, removal or redelivery of the Aircraft, any Engine or any Part or any part thereof or any rent, receipts, insurance proceeds, earnings, income, gains or other amounts arising therefrom or pursuant to the Operative Documents, the making of any Equipment Change or the execution, delivery, filing, registration, recording, performance, or enforcement of any Operative Document or any other document executed and delivered by Lessor, Lessee, Lessee Guarantor or another Tax Indemnitee in connection with or relating to the Operative Documents, in each case as supplemented or amended in accordance with the terms thereof (including, without limitation, in connection with the occurrence and continuance of any Event of Default or with the recovery of possession of any Aircraft while any Event of Default is continuing or the carrying out of any work or inspections required for ensuring that the condition of any Aircraft complies with this Agreement).
- (b) The provisions of Clause 20.3(a) shall not apply to, and Lessee shall have no liability to any Tax Indemnitee in respect of, any Tax to the extent that such Tax (a “**Lessor Tax**”):
  - (i) arises solely as a result of the Gross Negligence or willful misconduct any Tax

Indemnatee; or

- (ii) is imposed as a result of a Lessor Lien; or
- (iii) is imposed with respect to any period commencing or event occurring before the Aircraft was delivered to Lessee under the Prior Lease or after the Aircraft has been redelivered to Lessor and is no longer subject to this Agreement unless such Tax is attributable to any act, omission, event or circumstance which occurred during the Term and would not have constituted a "Lessor Tax" had it arisen during the Term; or
- (iv) arises solely from the breach by any Tax Indemnatee of this Agreement but excluding any such breach which is attributable to or arises out of any Event of Default or to the extent such breach is caused by the Lessee's non-compliance or misrepresentation under this Agreement or Lessee Guarantor's non-compliance or misrepresentation under any of the Operative Documents; or
- (v) is imposed as a result of any connection between that Tax Indemnatee and the jurisdiction imposing the Tax that is unrelated to the transactions contemplated by this Agreement or the other Operative Documents or the use or operation of the Aircraft by Lessee or any Permitted Sublessee, or the location or registration of the Aircraft by Lessee or any Permitted Sublessee; or
- (vi) is imposed or levied on or measured by or with respect to the net income, profits, capital gains, capital, net worth or franchise tax (not including sales, use, rental, ad valorem, license, property, stamp, value added or GTT) of any Tax Indemnatee by any Government Entity in the United States of America or Brazil or any jurisdiction where any Tax Indemnatee (A) is organized or incorporated, (B) is a resident under the Law of that jurisdiction for Tax purposes (other than any jurisdiction in which it is resident solely as a result of the transactions contemplated by the Operative Documents, the operation, presence or registration of the Aircraft or other presence of Lessee, Lessee Guarantor or any Permitted Sublessee) or (C) has a principal place of business; or
- (vii) is imposed in connection with the sale, transfer, assignment (whether legal or equitable) or other disposition by any Tax Indemnatee or Lessor Party of any or all of its rights, title and interest in or with respect to the Aircraft, the Airframe, any Engine or any Part or this Agreement or any other Operative Document, except for any such sale, transfer, assignment or other disposition made in connection with or as a result of (A) an exercise of rights or remedies during the continuance of an Event of Default, (B) an Event of Loss, (C) any substitution, replacement, maintenance, repair, overhaul, pooling, modification, alteration or improvement of the Aircraft, the Airframe, any Engine or any Part, or (D) Lessee's request; or
- (viii) is a claim for interest, penalties or additions to tax that is imposed on such Tax Indemnatee due to the failure of any Tax Indemnatee to file any relevant tax return or tax computation that such Tax Indemnatee was obliged to file by the applicable law in its jurisdiction of organization or with respect to GTT unless relating to a Tax otherwise indemnified pursuant to this Clause 20.3 and imposed as a result of Lessee's breach of Clause 20.3(c); or
- (ix) is imposed on such Tax Indemnatee with respect to its employees or independent

contractors; or

- (x) results from a change by any Tax Indemnitee or Lessor Party of its principal place of business, participating office, jurisdiction of organization or tax residence, except to the extent such change is made at the request of Lessee or Lessee Guarantor in order to eliminate or reduce an indemnity obligation of Lessee under this Agreement or in the other Operative Documents; or
  - (xi) is imposed on any Assignee (A) if such Tax would not have been imposed on the Lessor, or (B) to the extent such Tax exceeds the Tax that would have been imposed on the Lessor; provided that this exclusion shall not apply in the calculation of the after-tax basis calculation of any indemnity payment nor to or a person who acquires the interest of the Lessor in connection with an Event of Default; or
  - (xii) is imposed on or payable by any Tax Indemnitee that would not have been imposed or payable but for the existence of the Financing Documents except Taxes imposed as a result of (A) the gross negligence or willful misconduct of Lessee or any other user of the Aircraft or (B) a breach by Lessee or Lessee Guarantor of any of its representations or covenants under this Agreement or the other Operative Documents.
- (c) Lessee also agrees to be liable for, and to indemnify and hold harmless each Tax Indemnitee and each Financing Party against, all Taxes levied or imposed against or upon or incurred by such Tax Indemnitee or Financing Party as of the Lease Commencement Date, and by reference to the facts and circumstances then existing, directly relating to or attributable to the execution and closing of the Loan Novation Agreement, the Lease Novation Agreement or otherwise in connection with the deemed sale of the Aircraft to Lessor as of the Lease Commencement Date pursuant to the transactions contemplated by the Operative Documents.
- (d) Lessee will provide each Tax Indemnitee such information as may reasonably be requested by such Tax Indemnitee to enable it to fulfill its Tax filing or other information reporting requirements with respect to the transactions contemplated by this Agreement. If any report, return or statement is required to be made with respect to any Tax which is subject to indemnification under this Clause 20.3, Lessee will promptly notify Lessor of the requirement, and:
- (i) if permitted by applicable Law, make and file in a timely manner such report, return or statement (except for any report, return or statement that Lessor has notified Lessee that Lessor or any other Tax Indemnitee intends to prepare and file), prepare such return in such manner as will indicate Owner as owner and Lessor as lessor of the Aircraft if required or appropriate, and provide Lessor upon request with a copy of each such report, return or statement filed by Lessee, or
  - (ii) if Lessee is not permitted by applicable Law to file any such report, return or statement, Lessee will prepare and deliver to Lessor a proposed form of such report, return or statement within a reasonable time prior to the time such report,

return or statement is to be filed.

#### 20.4 Notice and Contest Rights.

- (a) If a written notice of any claim is made against any Tax Indemnatee for any Taxes for which Lessee is required to pay or against which Lessee is required to indemnify such Tax Indemnatee pursuant to Clause 20.3(a) or (c) (*Tax Indemnity*) or Clause 20.1 (*Gross-Up*), such Tax Indemnatee shall promptly notify Lessee thereof in writing; provided that a failure to so notify will not diminish, or relieve Lessee of, any obligations thereunder, except to the extent Lessee's or such Tax Indemnatee's successful defense of such claim is materially prejudiced thereby or Lessee's liability for costs or Taxes is materially increased. If reasonably requested by Lessee in writing within thirty (30) days of Lessee's receipt of notice of such claim, and to the extent that there are means available by which to do so, such Tax Indemnatee shall, provided that no Event of Default shall have occurred and be continuing, in good faith diligently contest by pursuing all administrative appeals in the name of such Tax Indemnatee or, in such Tax Indemnatee's discretion if requested by Lessee, contest in the name of Lessee (or permit Lessee, in such Tax Indemnatee's discretion if requested by Lessee, to contest in the name of Lessor) the validity, applicability or amount of such Taxes by (i) resisting payment thereof, if practicable, (ii) paying the same only under protest, if protest is necessary and proper or (iii) if payment shall be made, seeking a refund thereof in appropriate administrative proceedings; provided that (A) prior to taking such action Lessee shall have agreed to indemnify, and shall indemnify on demand, such Tax Indemnatee in a manner reasonably satisfactory to such Tax Indemnatee for all costs and expenses which such Tax Indemnatee may incur in connection with contesting such claim (including all reasonable legal and accountants' fees and disbursements and the amount of any interest, penalties or additions to tax which may be payable as a result of contesting such claim), (B) such Tax Indemnatee shall have determined in good faith that such contest shall not result in any material risk of sale, forfeiture or loss of, or creation of any Lien on, the Aircraft or any risk of criminal liability for the Tax Indemnatee, (C) if such contest is to be initiated by the payment of, and the claiming of a refund for, such Taxes, Lessee shall have advanced to such Tax Indemnatee sufficient funds (on an interest-free basis and, if such Tax Indemnatee shall have determined in good faith that such advance results in taxable income to such Tax Indemnatee, on an after-tax basis) to make such payment, (D) such Tax Indemnatee shall have received an opinion of independent tax counsel selected by such Lessee and reasonably acceptable to Tax Indemnatee that a reasonable basis exists for such contest, (E) in the case of a contest conducted by a Tax Indemnatee and not Lessee, the amount of the potential indemnity for which Lessee may be liable to pay such Tax Indemnatee under Clause 20.3(a) or (c) (*Tax Indemnity*) exceeds US\$25,000 or the equivalent thereof and (F) the contest is not for a Tax, the imposition of which has been previously contested by Lessee or such Tax Indemnatee, and such contest (including all allowable appeals) was decided adversely to Lessee or such Tax Indemnatee and no change in facts or Law has occurred since then. Nothing contained in this Clause 20.4(a) shall require any Tax Indemnatee to contest, or permit Lessee to contest in the name of such Tax Indemnatee, a claim which such Tax Indemnatee would otherwise be required to contest pursuant to this Clause 20.4(a) if such Tax Indemnatee shall waive payment by Lessee of any amount that might otherwise be payable by Lessee under Clause 20.3(a) or (c) (*Tax Indemnity*) in connection with such claim.
- (b) Each Tax Indemnatee agrees that it shall, as soon as reasonably practicable after it becomes



aware of any circumstances which shall, or could reasonably be expected to, become the subject of a claim for indemnification by such Tax Indemnatee pursuant to Clause 20.3(a) or (c) (*Tax Indemnity*) or require Lessee to indemnify or pay an amount under Clause 20.5 (*Value Added Tax*) or make an increased payment pursuant to Clause 20.1 (*Gross-Up*), notify Lessee in writing accordingly, provided that a failure to so notify will not diminish, or relieve Lessee of, any obligations hereunder or diminish the rights of the Tax Indemnatee. Similarly, Lessee shall, as soon as reasonably practicable after it becomes aware of any circumstances which shall, or would reasonably be expected to, result in a claim for indemnification under Clause 20.3(a) or (c) (*Tax Indemnity*) or require Lessee to indemnify or pay an amount under or Clause 20.5 (*Value Added Tax*) or make an increased payment pursuant to Clause 20.1 (*Gross-up*), notify Lessor in writing accordingly. Provided no Event of Default is then continuing, Lessor and Lessee shall then consult with one another in good faith, for a period of up to thirty (30) days in order to determine what action (if any) may reasonably be taken to mitigate or avoid the incidence of the relevant Taxes (and Lessee shall pay Lessor's reasonable out of pocket expenses (including legal fees) in relation to any such consultations). Lessor shall then take such steps as it agreed during such consultation to take for that purpose, provided always that (i) it is fully indemnified by Lessee to Lessor's satisfaction (acting reasonably) for so doing, (ii) it shall not be required to take, or omit to take, any action, if the effect of such action or omission would reasonably be expected to adversely affect Lessor or would be contrary to applicable law, (iii) Lessor shall not be responsible for or obliged to achieve any particular result from the taking of such steps and (iv) nothing in this Clause 20.4(b) shall require Lessor to disclose its Tax returns or Tax records or interfere with its tax affairs or, in each case, those of its Affiliates.

#### 20.5 **Value Added Tax**

- (a) For the purposes of this Clause 20.5:
  - (i) “**VAT**” means value added tax and any goods and services, sales or turnover tax, imposition or levy of a like nature; and
  - (ii) “**supply**” includes anything on or in respect of which VAT is chargeable.
- (b) Lessee shall pay to each Tax Indemnatee (without duplication) or the relevant taxing authority, as the case may be, the amount of any VAT chargeable in respect of any supply for VAT purposes under this Agreement except to the extent such VAT is a Lessor Tax.
- (c) Each amount stated as payable by Lessee under this Agreement is exclusive of VAT (if any), and if VAT is payable in respect of any amount as aforesaid, Lessee shall pay all such VAT and shall indemnify each Tax Indemnatee against any claims for the same (and where appropriate Lessee shall increase the payments which would otherwise be required to be made under this Agreement so that such Tax Indemnatee is left in the same position as it would have been in had no VAT been payable); and Lessee shall provide evidence to such Tax Indemnatee, if available, in respect of payment of any such VAT.

#### 20.6 **Information regarding Taxes**

- (a) If Lessee is required by any applicable Laws, or by any third party, to deliver any report or return in connection with any Taxes, Lessee shall complete the same and shall state therein (if appropriate) that Lessee is exclusively responsible for the use and operation of the Aircraft and for any Taxes arising therefrom, and Lessee shall, on request supply a copy of

the report or return to Lessor.

- (b) Lessee shall within thirty (30) days after Lessor's written request, furnish to Lessor evidence reasonably satisfactory to Lessor of payment of all Taxes arising in connection with or as a result of the transactions contemplated by this Agreement requiring payment within any PBH Rent Period or Fixed Rent Period, including, without limitation, copies of receipts from the relevant Government Entities for payments of withholding taxes, any Sales Taxes, any VAT and payment of customs duties.
- (c) Prior to the Lease Commencement Date and as soon as reasonably practicable following a request from Lessee, but in any case within the first sixty (60) days of each calendar year during the Term (to the extent any certification that was previously delivered has expired or is no longer valid), Lessor or if different, the Rent beneficiary or beneficial owner of Lessor, shall deliver to Lessee a certification from the appropriate governmental tax authority confirming Lessor's (or, if applicable, such Rent beneficiary's or beneficial owner's) residency for tax purposes in its jurisdiction of tax residence, being in a jurisdiction with which Mexico has an income tax treaty for the avoidance of double taxation, and provided it remains the practice of the relevant governmental tax authority to provide such certification. In addition to the foregoing, Lessor agrees to furnish, and to procure that any other relevant Tax Indemnitee furnishes, from time to time to Lessee or to such other Person as Lessee may designate, at Lessee's request and expense, such other duly executed and properly completed forms by each Tax Indemnitee as such Tax Indemnitee may be permitted and legally able to deliver and as may be necessary or appropriate in order to claim any reduction of, or exemption from, any Tax which Lessee may be required to indemnify against hereunder, unless such Tax Indemnitee determines that furnishing such forms would or could reasonably be expected to have an adverse effect on the business or operations of such Tax Indemnitee.

#### 20.7 **Taxation of Indemnity Payments**

- (a) If and to the extent that any sums payable to any Indemnitee or any Tax Indemnitee by Lessee under this Agreement by way of indemnity or otherwise under this Agreement are insufficient, by reason of any Taxes payable in respect of those sums, for such Indemnitee or such Tax Indemnitee to discharge the corresponding liability to the relevant third party (including any taxation authority), or to reimburse such Indemnitee or such Tax Indemnitee for the cost incurred by it to a third party (including any taxation authority), Lessee shall pay to such Indemnitee or such Tax Indemnitee such sum as will after the tax liability has been fully satisfied leave that Indemnitee or such Tax Indemnitee with the same after-tax amount as it would have been entitled to receive in the absence of that liability.
- (b) If and to the extent that any sums constituting (directly or indirectly) an indemnity or other payment under this Agreement to an Indemnitee or a Tax Indemnitee but paid by Lessee to any Person other than such Indemnitee or such Tax Indemnitee are treated as taxable in the hands of such Indemnitee or such Tax Indemnitee, Lessee shall pay to such Indemnitee or such Tax Indemnitee such sum as will, after the tax liability has been fully satisfied at the applicable marginal rate in such jurisdiction, indemnify such Indemnitee or such Tax Indemnitee to the same extent as it would have been indemnified in the absence of such liability.

#### 20.8 **Notification**

Each Tax Indemnitee shall notify Lessee as soon as reasonably practicable in writing of any Taxes

of which such Tax Indemnitee has received written notice from a Tax authority as being payable and for which Lessee is obligated to indemnify or pay under this Clause 20 (*Taxation*) (each a “**Tax Claim**”); provided, however, the delay or failure of such Tax Indemnitee to give notice to Lessee in accordance with this Clause 20.8 will not discharge or release Lessee from any of its indemnity obligations under Clause 20 (*Taxation*) except, and only to the extent, that such delay or failure results in additional amounts payable by Lessee which amounts would not have been imposed in the absence of such delay.

#### 20.9 **Verification**

At Lessee’s written request within thirty (30) days following Lessee’s receipt of any Tax Indemnitee’s claim for an indemnity pursuant to this Clause 20 (*Taxation*), or of an amount otherwise payable on an after-Tax basis pursuant to this Agreement, the amount of such claim shall be subject to confidential verification in writing by an internationally recognized firm of certified public accountants selected by Lessee and reasonably acceptable to such Tax Indemnitee. The accounting firm shall be requested to complete its review within thirty (30) days of Lessee’s request for such verification. The computations of such accounting firm shall (a) be delivered simultaneously to Lessee and such Tax Indemnitee and (b) absent prima facie error, be final, binding and conclusive upon Lessee and such Tax Indemnitee. If Lessee pays any indemnity in whole or in part before completion of the verification procedure, appropriate adjustments will be made promptly after completion of the verification procedure to take into account any redetermination of the indemnity by the accounting firm. The fee and disbursements of such accounting firm shall be paid by Lessee unless such verification shall disclose an error in such Tax Indemnitee’s claimed indemnity amount in favor of such Tax Indemnitee exceeding ten percent, in which case such fee and disbursements shall be paid by such Tax Indemnitee. Lessee and such Tax Indemnitee shall cooperate with such accounting firm and (subject to such accounting firm’s execution of a confidentiality agreement reasonably satisfactory to Lessee and such Tax Indemnitee) shall supply such accounting firm with all information reasonably necessary to permit such review and determination.

#### 20.10 **Duration**

The obligations and indemnities contained in this Clause 20 (*Taxation*) shall continue in full force after the expiration, cancellation or termination of this Agreement notwithstanding any breach or repudiation of this Agreement by Lessor or Lessee or the termination of the leasing of the Aircraft under this Agreement.

### 21. **ASSIGNMENT AND TRANSFER**

#### 21.1 **By Lessee**

Except as expressly permitted by the terms hereof (including without limitation, Clause 10.3 (*Subleasing*)) Lessee will not assign, delegate or otherwise transfer (voluntarily, involuntarily, by operation of law or otherwise) any of its rights or obligations under this agreement or create or permit to exist any Security Interest over any of its rights under this Agreement, and any attempt to do so will be null and void.

#### 21.2 **Lessor Transfer**

- (a) Without any consent of Lessee other than as provided in Clause 21.2(d), Lessor and/or Owner may at its own expense assign or grant a Security Interest over the Aircraft or any interest therein and/or Lessor and/or Owner may assign or grant a Security Interest over all

or any part of its rights under this Agreement and any other Operative Document or any interest therein, in either case, by way of security to any other Person (an “Assignee”); provided that:

- (i) Lessor shall promptly notify Lessee in writing of any proposed assignment and all relevant details with respect thereto;
- (ii) (A) such assignment or Security Interest shall not increase any of Lessee’s risk, obligations, responsibilities, liabilities, and costs (including Taxes for which Lessee is responsible pursuant to Clause 20 (*Taxation*)) related to the transactions contemplated by this Agreement, and shall not reduce any of Lessee’s rights and benefits related thereto as based on applicable laws in effect as of the date of such transfer or assignment, and (B) Lessee will not incur any obligation or liability of any kind as a result of such transaction; provided that, it is agreed that a change in the number of additional insureds and Indemnitees shall not be considered such an increase;
- (iii) prior to any such assignment or Security Interest becoming effective, the Assignee shall execute and deliver to Lessee an undertaking containing terms substantially similar to Clause 8.1 (*Quiet Enjoyment*) to the effect that neither it nor any Person claiming by, through or under it will disturb the quiet use, possession and enjoyment of the Aircraft by Lessee or any Permitted Sublessee during the Term so long as no Event of Default is continuing;
- (iv) if the Security Deposit is assigned or charged or subject to a Security Interest in favor of the Assignee or if any Assignee is to be named as the beneficiary under any Letter of Credit, the Assignee shall acknowledge that the Security Deposit under its control shall only be applied in accordance with the provisions of this Agreement and that it will not draw under that Letter of Credit except in accordance with the terms of this Agreement and that proceeds of any such drawings shall only be applied in accordance with the provisions of this Agreement. All costs and expenses of such assignment or grant of a Security Interest or change of the beneficiary under any Letter of Credit shall be for the account of Lessor and Assignee shall not be entitled to request any changes to the Letter of Credit (other than to reflect the Assignee or its designee as a beneficiary) or any changes to the issuing bank;
- (v) as at the date of such assignment and under the laws then in effect in the State of Incorporation, it shall not be unlawful for Lessee to lease an aircraft financed by a Person organized under the laws of the country where the Assignee is organized, and the Assignee shall provide to Lessee representations and warranties in respect of itself on the terms set forth in Clause 22.16 (*True Lease*);
- (vi) the Assignee and each of the other Financing Parties on whose behalf the Assignee is acting is not an airline, other commercial aircraft operator, freight forwarder, a Person engaged in the business of parcel transport by air or an Affiliate of any of the foregoing or a competitor of Lessee; and
- (vii) if the Assignee is not reasonably experienced in the business of commercial aircraft leasing, it shall agree with Lessee that upon the enforcement of its rights under the relevant security documents it shall contract with such a Person experienced in the

business of commercial aircraft leasing to manage this Agreement.

- (b) Without any consent of Lessee other than as provided in Clause 21.2(d), Lessor may at its own expense transfer the Aircraft and its interest therein and/or transfer and/or assign all or any part of its rights and obligations under this Agreement and any other Operative Document to any Person (a “**Transferee**”); provided that:
- (i) Lessor shall promptly notify Lessee in writing of any proposed transfer and all relevant details with respect thereto;
  - (ii) the Transferee shall assume all payment and other obligations of Lessor under this Agreement and any other Operative Documents to which Lessor is a party;
  - (iii) if the Transferee is not assuming the obligations of Lessor under this Agreement or becoming the “Lessor” under this Agreement as assigned or novated, it shall execute and deliver to Lessee an undertaking containing terms substantially similar to Clause 8.1 (*Quiet Enjoyment*) to the effect that neither it nor any Person claiming by, through or under it will disturb the quiet use, possession and enjoyment of the Aircraft by Lessee or any Permitted Sublessee during the Term so long as no Event of Default is continuing;
  - (iv) the Transferee shall confirm and agree that such transfer or assignment shall not increase any of Lessee’s risk, obligations, responsibilities, liabilities and costs (including Taxes for which Lessee is responsible pursuant to Clause 20 (*Taxation*)) related to the transactions contemplated by this Agreement and shall not reduce any of Lessee’s rights and benefits related thereto, as based on applicable laws in effect as of the date of such transfer or assignment; provided that, it is agreed that a change in the number of additional insureds and Indemnitees shall not be considered such an increase;
  - (v) at the time of such transfer or assignment, the Transferee shall provide to Lessee representations and warranties on the terms set forth in Clause 22.16 (*True Lease*) and Clause 2 of Schedule 2 (*Representations and Warranties*);
  - (vi) at the time of such transfer or assignment, the Transferee (A) shall have a tangible net worth of not less than US\$[REDACTED] (or the Transferee’s obligations to Lessee in respect of the Aircraft under this Agreement and the other Operative Documents shall be guaranteed on terms acceptable to Lessee by a Person that has a tangible net worth of not less than US\$[REDACTED], in either case, such net worth to be evidenced by audited financial statements of the Transferee or guarantor, as applicable, or, if not available, a certificate of net worth of a responsible officer of such Person, the Transferee or such guarantor, as the case may be, certifying as to such net worth and such other evidence as is reasonably acceptable to Lessee; (B) shall be an experienced lessor in commercial aircraft leasing or will have appointed an experienced servicer in commercial aircraft leasing; (C) is not an airline, other commercial aircraft operator, a freight forwarder, a Person engaged in the business of parcel transport by air or an Affiliate of any of the foregoing or otherwise a direct competitor of Lessee; and (D) is a tax resident of a jurisdiction with which Mexico has entered into a treaty to avoid the double imposition of Taxes; and
  - (vii) at the date of such transfer and under the laws then in effect in the State of

Incorporation, it shall not be unlawful for Lessee to lease an Aircraft owned or leased by a Person organized under the laws of the country where the Transferee is organized.

- (c) Lessee shall upon request from Lessor and at the expense of Lessor cooperate in effecting any assignment or transfer referred to in Clause 21.2(a) or (b) and will execute, and procure that Lessee Guarantor executes, any agreements or other instruments reasonably requested by Lessor in form and substance reasonably satisfactory to Lessee (including, without limitation, any supplement or amendment to or novation of this Agreement) and if the transfer involves the assumption by the Transferee of any of Lessor's obligations under this Agreement or the other Operative Documents to which Lessee is a party, release Lessor from the obligations so assumed and will execute such certificates and shall provide such corporate documents as shall be reasonably requested by Lessor for the purposes of Lessor obtaining a legal opinion in respect of Lessee's due execution and due authorization of the transfer documents. Lessor agrees to reimburse Lessee for its costs and expenses (including, without limitation reasonable attorney fees) and any Taxes thereon, and other reasonable out-of-pocket costs and expenses and any Taxes thereon, in connection with any assignment or transfer referred to in Clause 21.2(a) or (b).
- (d) For the purpose of Article 33(1) of the Cape Town Convention and Article XV of the Protocol, and without prejudice to the preceding provisions of this Clause 21.2 to the extent applicable, Lessee hereby consents in advance to the transfer of the associated rights and related international interests in respect of any assignment or sale by Lessor or Owner or the granting of any Security Interest by Lessor or Owner in accordance with this Agreement (and for the avoidance of doubt, no additional consent by Lessee will be required in connection with any such assignment of associated rights, the related international interests and the related right to discharge such international interest pursuant to the Cape Town Convention).
- (e) Except as permitted in this Clause 21.2, Lessor will not assign or otherwise transfer (voluntarily, involuntarily, by operation of law or otherwise) any of its rights in and to the Aircraft or any of its rights and obligations under any Operative Document or permit to exist any Security Interest over any of the foregoing, and any attempt to do so will be null and void *ab initio*.

## 22. MISCELLANEOUS PROVISIONS

### 22.1 Rights Cumulative, Waivers

The rights of Lessor under this Agreement may be exercised as often as Lessor considers appropriate (except as otherwise expressly stated herein), are cumulative and are in addition to its rights under any Law. The rights of Lessor against Lessee or in relation to the Aircraft (whether arising under this Agreement or any Law) cannot be waived or varied other than by an express waiver or variation in writing. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right; and no act or course of conduct or negotiation on Lessor's part or on its behalf shall in any way preclude it from exercising any such right or constitute a suspension or any variation of

any such right.

## **22.2 Delegation**

Lessor may delegate to any Person or Persons all or any of its rights, powers or discretions vested in it by this Agreement, and any such delegation may be made upon such terms and conditions and subject to such regulations (including power to sub-delegate) as Lessor deems fit; provided, however, that notwithstanding any such delegation, Lessor shall at all times remain primarily liable for the obligations of “Lessor” hereunder.

## **22.3 Expenses**

Each of Lessor and Lessee shall pay its own costs and expenses (including legal fees) in connection with the negotiation of this Agreement and the other Operative Documents. Lessee shall pay to Lessor on demand all expenses (including legal, professional, and out-of-pocket expenses) incurred or payable by Lessor in connection with the enforcement or preservation of any of Lessor’s rights or remedies under this Agreement in connection with and following any Event of Default. On the Lease Commencement Date, Lessee will issue, at no cost to Lessor, a customary in-house legal opinion as to Mexican law matters. If Lessor requires an external Mexican legal opinion, Lessor shall be responsible for the cost of obtaining such legal opinion from Mexican counsel of its choosing. For the avoidance of doubt, the cost of registering the Aircraft (if not already registered) will be borne by Lessee.

## **22.4 Provisions of Cape Town Convention**

Except to the extent expressly provided herein, any terms of this Agreement which expressly incorporate any provisions of the Cape Town Convention shall prevail in the case of any conflict with any other provision contained herein. Each of the parties hereto acknowledges and agrees that for purposes of the Cape Town Convention (to the extent applicable hereto), separate rights may exist with respect to the Airframe and Engines.

## **22.5 Time of Essence**

The time stipulated in this Agreement for all payments by Lessee to Lessor and for the prompt performance of Lessee’s other obligations under this Agreement are of the essence of this Agreement.

## **22.6 Entire Agreement**

This Agreement and the other Operative Documents constitute the sole and entire agreement between Lessor and Lessee in relation to the leasing of the Aircraft and supersede all previous agreements in relation to that leasing. Any amendments to this Agreement must be in writing and signed on behalf of Lessor and Lessee.

## **22.7 Rights of Third Parties**

- (a) All rights expressed to be granted to each Indemnatee or Tax Indemnatee (other than Lessor) under this Agreement are given to Lessor on behalf of that Indemnatee or Tax Indemnatee, and each Indemnatee or Tax Indemnatee is an express third party beneficiary hereof. Except for Lessor, each Indemnatee and each Tax Indemnatee, no other Person shall be a third party beneficiary of this Agreement.
- (b) Any Tax Indemnatee or Indemnatee who is not a party to this Agreement may enforce the

terms of this Agreement expressed to be for its benefit or given by Lessee to or in favor of such Tax Indemnatee or Indemnatee.

- (c) All terms of this Agreement may be varied, amended or otherwise released by an agreement between Lessor and Lessee without reference to any Indemnatee or Tax Indemnatee.
- (d) If an Indemnatee or Tax Indemnatee is not a party to this Agreement, Lessee may require such Indemnatee or Tax Indemnatee to agree in writing, in a form reasonably acceptable to Lessee, to the terms of Clause 14 (*Indemnities*) and Clause 20 (*Taxation*), as the case may be, prior to making any payments to such Indemnatee or Tax Indemnatee under Clause 14 (*Indemnities*) or Clause 20 (*Taxation*), as the case may be.

## 22.8 Counterparts

This Agreement may be executed in two or more counterparts each of which will be deemed an original but all of which together will constitute one and the same agreement.

## 22.9 Language

All notices, requests, direction and other communications to be given under this Agreement will be in English. Unless otherwise provided herein, all documents delivered to Lessee and Lessor pursuant to this Agreement will be in English or, if not in English, will be accompanied by a certified English translation (except for Lessee's organizational documents, corporate approvals and other authorizations or documents issued by any authority). If there is any inconsistency between the English version of this Agreement and any version in any other language, the English version will prevail.

## 22.10 Confidentiality

This Agreement, the terms hereof and all non-public information obtained by a party about any party are confidential and are among Lessor, Owner (if different from Lessor), Servicer and Lessee only. Lessor, Owner (if different from Lessor), Servicer and Lessee shall not, and shall procure that their respective officers, employees and agents shall not, disclose the contents of this Agreement or such nonpublic information to any third party (other than (a) to such party's or its Affiliates' auditors, legal advisors, regulators, financial advisors and rating agencies; (b) in connection with any filing or disclosure of this Agreement in accordance with, or as required by, any applicable Regulation; (c) in connection with Lessor's or Owner's potential sale, financing, refinancing of or related to the Aircraft and/or transfer or assignment of this Agreement; provided that any recipient of any such confidential information in such case shall as a condition precedent to receipt of the information execute and deliver a confidentiality agreement containing terms no less stringent than the terms of this Clause 22.10; or (d) as required for enforcement by either party of its rights and remedies with respect to this Agreement), without the prior written consent of the other party. If any disclosure will result in the Agreement becoming publicly available, Lessor and Lessee will cooperate with one another to obtain confidential treatment or limit the scope of disclosure as to the commercial terms and other material provisions of this Agreement. Notwithstanding the foregoing, Lessee may disclose this Agreement (i) as may be required to obtain the Bankruptcy Court's approval of this Agreement; or (ii) to the U.S. Trustee, the Unsecured Creditors Committee, the Ad Hoc Bondholders Group, the Ad Hoc Group of Claimholders or the entities providing the debtor-in-possession financing to Lessee, its Affiliates and any of their



respective related persons.

**22.11 Invalidity of any Provision**

If any provision of this Agreement becomes invalid, illegal or unenforceable in any respect under any Law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**22.12 Survival**

All indemnities, representations and warranties of Lessee and Lessor shall survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Agreement and/or the leasing of the Aircraft hereunder.

**22.13 Further Assurance**

- (a) Each of the parties agrees to perform (or procure the performance of) all further acts and things within its control, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by applicable Laws or as may be necessary or reasonably desirable to implement and/or give effect to this Agreement and the transactions contemplated by this Agreement.
- (b) Except as otherwise expressly set forth herein, the out-of-pocket costs and expenses of performing the acts contemplated by Clause 22.13(a) shall be borne by the requesting party.

**22.14 No Brokers**

Except for SkyWorks Capital, LLC (whose fees and expenses are the sole responsibility of Lessee), each of the parties represents and warrants to the other that it has not paid, agreed to pay, or caused to be paid directly or indirectly to any Person in any form, any commission percentage contingent fee, brokerage or other similar payments of any kind, in connection with the establishment or operation of this Agreement. Each party agrees to indemnify and hold the other harmless from and against any and all claims, suits, damages, costs and expenses (including, reasonable legal fees and expenses) asserted by any agent, broker or other third party for any commission or compensation of any nature whatsoever based upon this Agreement or the Aircraft, if such claim, suit, damage, cost or expense arises out of any breach by the indemnifying party, its employees or agents of this Clause 22.14.

**22.15 Chattel Paper**

To the extent, if any, that this Agreement constitutes chattel paper (as such term is defined in the UCC as in effect in any applicable jurisdiction), no Security Interest in this Agreement may be created through the transfer or possession of any counterpart other than the original counterpart, which shall be identified as the counterpart designated as the "chattel paper original" on the signature page of this Agreement by the Financing Parties Representative (if any) or Lessor, as the case may be.

**22.16 True Lease**

The parties intend and agree that this Agreement:

- (a) constitutes a "true lease", and not a "security interest" as defined in Section 1-201(37) of

the UCC;

- (b) constitutes a “true lease” for United States federal income tax purposes; and
- (c) confers only a leasehold interest on Lessee in and to the Aircraft on and subject to the terms of this Agreement, and no ownership or other interest with respect to the Aircraft is provided to Lessee under this Agreement.

Lessee shall not file a tax return that is inconsistent with the provisions of this Clause 22.16.

#### 22.17 **Know Your Customer/OFAC Compliance**

- (a) Each party represents, warrants and agrees that neither it nor any of its Affiliates is in violation of any Law relating to terrorism or money laundering enacted or promulgated by the United Nations, the European Union, the United States of America or Mexico (“**Anti-Terrorism Laws**”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “**Executive Order**”), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (the “**Patriot Act**”).
- (b) Each party represents, warrants and agrees that it is not any of the following:
  - (i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
  - (ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
  - (iii) a person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or
  - (iv) a person that is named as a “special designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control (“**OFAC**”) at its official website or any replacement website or other replacement official publication of such list, or a person owned or controlled by, or acting for or on behalf of, any such person.
- (c) Each party represents, warrants and agrees that it does not and for the Term shall not (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in Clause 22.17(b), (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any similar laws of Mexico, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

#### 22.18 **USA Patriot Act Notice**

Lessee agrees that pursuant to the requirements of the Patriot Act, Lessor may obtain, verify, and record information from Lessee that identifies Lessee, which information may include the name and address of Lessee, and its officers, directors and shareholders, and other information that will

allow Lessor to identify Lessee in accordance and for purposes of compliance with the Patriot Act.

**22.19 Prepetition General Unsecured Damage Claims**

Notwithstanding anything to the contrary set forth herein or in any other Operative Document, the parties agree and stipulate that (a) the Lessor, on behalf of itself and the Security Trustee under the Funding Agreement shall be deemed to hold allowed general unsecured non-priority prepetition claims against the bankruptcy estates of each of Aerovias and Grupo Aeromexico S.A.B. de C.V., in the final aggregate amount of US\$16,000,000 (the “**Prepetition Damages Claim**”) as damages for any prepetition breach, default or termination event under the Prior Lease, the Prior Finance Lease and any Loan Document in connection with the Aircraft and the Companion Aircraft (the “**Prepetition Breaches**”) or for any modification as contemplated herein or in any other Operative Documents, *provided, however*, that the Lessor may recover from the Debtors Aerovias and Grupo Aeromexico S.A.B. de C.V. until it has received payment in full on account of the Prepetition Damages Claim, but, for the avoidance of doubt, the Lessor (i) shall only be entitled to recover up to the aggregate amount of \$16,000,000 on account of all of the Prepetition Damages Claim, (ii) shall not be entitled to receive duplicative distributions from Aerovias and Grupo Aeromexico on account of the Prepetition Damages Claim aggregating to more than \$16,000,000, and (iii) shall promptly return any such duplicative excess distributions to Aerovias or Grupo Aeromexico if received, (b) no breach, default, termination event or other like consequence will arise hereunder based upon the Prepetition Breaches or based upon the filing or continuance of the Bankruptcy Cases themselves other than as set forth in Clause 19.1(j) of this Agreement, (c) the Prepetition Damages Claim shall be classified in and afforded treatment (x) under class 3(a) of the *Debtors’ Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [ECF No. 2293] filed on December 10, 2021 or afforded similar treatment, if confirmed, (y) under the class, to the extent one exists, that provides for separate classification for claimants with recourse claims against both Aerovías and Grupo Aeroméxico in any other chapter 11 plan of the Debtors, or (z) in any chapter 11 plan filed by the Debtors that does not provide for separate classification for claimants with recourse claims against both Aerovías and Grupo Aeroméxico, that is no worse than the treatment given to the non-priority general unsecured claims of any other aircraft lessor whose claims run solely against Grupo Aeromexico or Aerovias, as applicable, and (d) the Prepetition Damages Claim is freely transferable by the Lessor Parties, in whole or in part, at any time before or after the confirmation of Lessee’s Chapter 11 plan of reorganization.

**23. NOTICES; ELECTRONIC SIGNATURES**

23.1 Every notice, request, direction or other communication under this Agreement shall be in English and be in writing delivered personally or sent with an internationally recognized courier service or by electronic mail (including PDF) and shall be deemed to have been received:

- (a) in the case of a letter when delivered personally or where sent with an internationally recognized courier service, on the date shown as the delivery date (or, if delivery was refused, the date of such refusal) in the records of the Person who effected such delivery; or
- (b) in the case of an electronic mail, at the time of dispatch with confirmed receipt,

provided always that where delivery by hand or by electronic email occurs after 6:00 p.m. on a Business Day, or on a day which is not a Business Day, service shall be deemed to occur at

9:00 a.m. on the next Business Day.

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

To Lessor at:

Address: Brasilmex Leasing, LLC  
c/o Brasilmex Leasing Statutory Trust  
1100 North Market Street  
Wilmington, DE 19890-1605  
  
Facsimile: (302) 636-4140  
  
Attention: Corporate Trust Administration  
  
*with a copy to the Ministry of Economy at:*

Address: Subsecretaria de Financiamento ao Comércio Exterior  
Esplanada dos Ministérios, Bloco J, 9º Andar,  
Sala 914 - CEP 70053-900 - Brasília/DF  
  
Attention: Lázaro Lima  
  
Email: lazaro.lima@economia.gov.br  
  
*with a copy to the Foley Hoag LLP at:*

Address: Foley Hoag LLP  
1301 Avenue of the Americas  
25<sup>th</sup> Floor  
New York, NY US 10019  
  
Attention: Alison Bauer  
  
Facsimile: 646.929.5599  
  
Email: abauer@foleyhoag.com

**To Lessee at:**

Address: Aerolitoral, S.A. de C.V.  
Paseo de la Reforma, No. 243, Piso 25  
Colonia Cuauhtémoc  
Alcaldía Cuauhtémoc  
  
Mexico City, 06500  
Mexico  
  
Attention: Legal Department and Fleet Department  
Facsimile: 52-55-9132-5079  
Email: malvarez@aeromexico.com;  
amnotificacionesjuridico@aeromexico.com

or any substitute address, email address or fax number or department or officer as the relevant party

may notify to the other party by not less than five (5) Business Days' notice.

- 23.3 In connection with the performance of their respective duties hereunder, each party may give notices, consents, directions, approvals, instructions and requests to, and otherwise communicate with, each other using electronic means, including email transmission to such email addresses as each such party shall designate to the other parties, and, if necessary or if requested by the other party or parties, with an "electronic signature" or other "electronic record" (as such terms are defined in the New York State Electronic Signatures and Records Act). Delivery of an executed counterpart of this Agreement or any other Operative Document by facsimile, email, "electronic signature" or other "electronic record" will be deemed as effective as delivery of an originally executed counterpart. Any party delivering an executed counterpart of this Agreement or any other Operative Document by facsimile, email, "electronic signature" or other "electronic record" will also deliver an originally executed counterpart thereof, but the failure of any party to deliver an originally executed counterpart of this Agreement or any other Operative Document will not affect the validity or effectiveness of this Agreement or such other Operative Document.

24. **GOVERNING LAW, JURISDICTION AND WAIVER OF JURY TRIAL**

24.1 **Governing Law**

PURSUANT TO AND IN ACCORDANCE WITH SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, THE PARTIES HERETO AGREE THAT THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT, AND ALL ISSUES CONCERNING THE RELATIONSHIP OF THE PARTIES HEREUNDER AND THE ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AS APPLIED TO CONTRACTS TO BE PERFORMED WHOLLY WITHIN THE STATE OF NEW YORK (EXCLUSIVE OF SECTION 7-101 OF THE NEW YORK GENERAL OBLIGATIONS LAW WHICH IS INAPPLICABLE TO THIS AGREEMENT) WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLES. THE PARTIES AGREE THAT THIS AGREEMENT WAS DELIVERED IN THE STATE OF NEW YORK.

THE FOREGOING ELECTION OF THE LAWS OF THE STATE OF NEW YORK IS WITHOUT PREJUDICE TO THE RIGHT OF LESSOR TO APPLY THE LAWS OF THE FEDERAL DISTRICT OF MEXICO TO ANY REPOSSESSION OR OTHER ENFORCEMENT OF RIGHTS UNDER THIS AGREEMENT WHILE THE AIRCRAFT IS LOCATED IN MEXICO.

24.2 **Jurisdiction**

Pursuant to and in accordance with Section 5-1402 of the New York General Obligations Law, Lessee and Lessor each irrevocably agrees that (a) the United States District Court for the Southern District of New York sitting in The Borough of Manhattan and any New York state court sitting in the County of New York, New York, and all related appellate courts, and (b) the courts of the jurisdictions in which the Aircraft at the relevant time is located in the case of enforcement proceedings in respect of remedies hereunder, have exclusive jurisdiction to settle any disputes arising out of or relating to this Agreement or any of the other Operative Documents and submits itself and its property to the jurisdiction of the foregoing courts with respect to such dispute, hereby

waiving any other jurisdictions which may be available thereto by reason of domicile or otherwise.

#### 24.3 **Process Agent**

- (a) Without prejudice to any other mode of service, Lessee:
  - (i) appoints Cogency Global Inc., at 10 E. 40th Street, 10th Floor, New York, New York 10016, as its agent for service of process relating to any proceedings before the New York courts described in Clause 24.2 (*Jurisdiction*) in connection with this Agreement and agrees to maintain the process agent in New York notified to Lessor;
  - (ii) agrees that failure by a process agent to notify Lessee of the process shall not invalidate the proceedings concerned; and
  - (iii) consents to the service of process relating to any such proceedings by prepaid mailing or by personal delivery of a copy of the process to Lessee's agent at the address identified in Clause 24.3(a)(i) or by facsimile or prepaid mailing by air mail, certified or registered mail, or by personal delivery, of a copy of the process to Lessee at the address set forth in Clause 23.2 (*Notices; Electronic Signatures*).

#### 24.4 **Waiver of Objections**

Each of Lessee and Lessor:

- (a) waives to the fullest extent permitted by Law any objection which it may now or hereafter have to the courts referred to in Clause 24.2 (*Jurisdiction*) on grounds of inconvenient forum or otherwise as regards proceedings in connection with this Agreement;
- (b) waives to the fullest extent permitted by Law any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in the courts referred to in Clause 24.2 (*Jurisdiction*); and
- (c) to the extent permitted by applicable law, agrees that a judgment or order of any court referred to in Clause 24.2 (*Jurisdiction*) in connection with this Agreement is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction as if made by the highest court in that other jurisdiction and accordingly neither Lessee nor Lessor will seek to, nor be entitled to, contest and/or delay and/or obstruct registration or enforcement of any such judgment and/or award and/or order on grounds of public policy or otherwise.

#### 24.5 **No Alternative Jurisdictions**

This Clause 24 (*Governing Law, Jurisdiction and Waiver of Jury Trial*) shall survive, continue to take full effect and not merge in any order or judgment and this Clause 24.5 prohibits either party to bring proceedings against the other in connection with this Agreement or any other Operative Document in any court other than as provided in Clause 24.2 (*Jurisdiction*).

#### 24.6 **Waiver of Sovereign Immunity and Other Defenses**

Each of Lessee and Lessor irrevocably and unconditionally:

- (a) agrees that if the other brings legal proceedings against it or its assets in relation to this Agreement no sovereign or other immunity from such legal proceedings (which will be

deemed to include suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment, other attachment, the obtaining of judgment, execution of a judgment or other enforcement or legal process or remedy) will be claimed by or on behalf of itself or with respect to its assets;

- (b) waives any such right of immunity which it or its assets now has or may in the future acquire and agrees that the foregoing waiver shall have the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976 of the United States of America and is intended to be irrevocable for the purposes of such Act; and
- (c) waives any requirement, of any kind whatsoever, for the other party to provide any form of security in respect of the payment of any damages, costs, expenses or any other financial obligation resulting from the commencement or prosecution of proceedings or the making of or service of any order and Lessee undertakes (i) not to challenge the validity of any proceedings or the making of any orders without any requirement for the provision of such security, (ii) to advise any court upon the other party's request that it requires no such security, and (iii) to provide security itself for any third party claims arising out of or in connection with such proceedings and/or orders.

**24.7 Waiver of Jury Trial**

EACH OF LESSEE AND LESSOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS TO A JURY TRIAL IN RESPECT OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THE LESSOR/LESSEE RELATIONSHIP BEING ESTABLISHED, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF LESSOR AND LESSEE REPRESENTS AND WARRANTS THAT EACH HAS REVIEWED AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH ITS LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS CLAUSE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

*[Signature Page Follows]*

**IN WITNESS WHEREOF** Lessor and Lessee have executed and delivered this Agreement in the State of New York, U.S.A., both as of the date shown at the beginning of this Agreement.

**Aerolitoral, S.A. de C.V.,**

*Lessee*

**Brasilmex Leasing, LLC,**

*Lessor*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TO THE EXTENT IF ANY THAT THIS DOCUMENT CONSTITUTES CHATTEL PAPER UNDER THE UNIFORM COMMERCIAL CODE, NO SECURITY INTEREST IN THIS DOCUMENT MAY BE PERFECTED THROUGH THE POSSESSION OF ANY ORIGINAL OR COPY HEREOF OTHER THAN THAT MARKED "CHATTEL PAPER ORIGINAL".



**CHATTEL PAPER ORIGINAL**

**IN WITNESS WHEREOF** Lessor and Lessee have executed and delivered this Agreement in the State of New York, U.S.A., both as of the date shown at the beginning of this Agreement.

**Aerolitoral, S.A. de C.V.,**

*Lessee*

**Brasilmex Leasing, LLC,**

*Lessor*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TO THE EXTENT IF ANY THAT THIS DOCUMENT CONSTITUTES CHATTEL PAPER UNDER THE UNIFORM COMMERCIAL CODE, NO SECURITY INTEREST IN THIS DOCUMENT MAY BE PERFECTED THROUGH THE POSSESSION OF ANY ORIGINAL OR COPY HEREOF OTHER THAN THAT MARKED "CHATTEL PAPER ORIGINAL".

## DEFINITIONS AND CONSTRUCTION

### Defined Terms

The following words and expressions shall have the respective meanings set forth below:

“**Acceptable LC Bank Rating**” has the meaning given to it in Clause 6.4(b) (*Provision of Letter of Credit*);

1. “**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, any Person directly or indirectly controlling, controlled by, or under common control with such first Person; and a Person shall be deemed to control another Person if such first Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, contract or otherwise;

“**Agreed Form**” means the form agreed between Lessor and Lessee;

“**Agreed Value**” has the meaning provided in Clause 4 (*Insurance and Default Matters*) of Part A of the Financial Terms Annex;

“**Agreement**” means this Amended and Restated Aircraft Lease Agreement together with its Schedules;

“**Aircraft**” means the aircraft described in Schedule 6 (*Description of Aircraft*), including all buyer furnished equipment and in-flight entertainment equipment installed thereon (which term includes where the context admits a separate reference to all Engines, Parts and Aircraft Documents);

“**Aircraft Documents**” means the documents, data, aircraft manuals and technical records relating to the Aircraft on the Original Delivery Date and any other documents and records referred to in Clause 11.2 (*Aircraft Documents*) and Schedule 7 (*Aircraft Documents at Redelivery*) and all additions, renewals, revisions and replacements from time to time made thereto in accordance with this Agreement;

“**Aircraft Object**” has the meaning given to such term in the Consolidated Text;

“**Airframe**” means the Aircraft, excluding the Engines and the Aircraft Documents;

“**Airframe Manufacturer**” means Embraer S.A.;

“**Airframe Warranty Assignment**” means the airframe warranty assignment entered into or to be entered into between Lessor and Lessee, and the related consent and agreement between Lessor, Lessee and the Airframe Manufacturer, in respect of the Aircraft in the Agreed Form;

“**Airworthiness Directive**” or “**AD**” means any and all State of Manufacture airworthiness directives and/or State of Registration airworthiness directives and/or airworthiness directives issued by the AFAC;

“**AMM**” means, from time to time, the latest revision of the Airframe Manufacturer’s approved maintenance manual for the Aircraft;

“**Anti-Terrorism Laws**” has the meaning given to it in Clause 22.17 (*Know Your Customer/OFAC*);

*Compliance);*

**“Approved Maintenance Performer”** means (a) for all Heavy Maintenance Checks, any shop visit for an Engine, the APU or any Landing Gear or the overhaul of any serialized components and all major modifications, any maintenance facility approved by (i) the Aviation Authority and (ii) either EASA or the FAA and (b) for all lower-level checks, repairs and maintenance, any maintenance facility approved by the Aviation Authority which may be Lessee so long as Lessee has the requisite licenses and approvals;

**“APU”** means the auxiliary power unit installed on the Aircraft on the Original Delivery Date and any replacement auxiliary power unit installed in accordance with this Agreement title to which is vested in Lessor in accordance with this Agreement;

**“APU Equivalency Charge”** means the APU Equivalency Charge, if any, calculated pursuant to Part B (*Redelivery Maintenance Payment*) of the Financial Terms Annex;

**“APU Hour”** means each hour or part thereof (rounded to the nearest minute) elapsing from the moment the APU is started to the moment when the APU is shut down;

**“APU Manufacturer”** means Pratt & Whitney (formerly Hamilton Sundstrand);

**“APU Medium Repair Shop Visit”** means, with respect to the APU, a level of work that includes, at a minimum, (a) [REDACTED]; (b) [REDACTED]; and (c) [REDACTED];

**“Assignee”** has the meaning given to it in Clause 21.2(a) (*Lessor Transfer*);

**“Aviation Authority”** means the AFAC and the RAM for so long as the State of Registration is Mexico, and, if the Aircraft is registered in another State of Registration, the authorities, government departments, committees or agencies which under the laws of that 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;

**“B Check”** means a “BASIC” check in accordance with the Lessee approved Maintenance Program or equivalent with the Embraer MPD in effect on the date when such check is carried out;

**“Back to Birth Traceability”** means in respect of any Part or part, original documentary evidence specifying the part number and the unique serial number of such Part or part, and providing a detailed full operational history record acceptable to an FAA or EASA regulatory standard but in any event having the following: (a) the Original Delivery Document where Original Delivery Document means (i) for a part delivered new as a spare part, the manufacturer’s airworthiness document (FAA Form 8130-3 or EASA Form One (to the extent such EASA form is permitted by the FAA and the Maintenance Program)) showing the part number and serial number, (ii) for a part delivered new installed on an assembly, the manufacturer’s assembly bill of material listing showing part number, serial number, assembly serial number and where relevant the as-delivered model and thrust rating; and (b) a removal/installation (‘on/off’) transaction history detailing an unbroken record of the Flight Hours and Cycles elapsed at each relevant thrust rating (for Engine Life Limited Parts) from new up to current;

**“Bankruptcy Cases”** means the Chapter 11 cases and proceedings initially filed by Lessee and its affiliates on July 1, 2020 under the lead case no. 20-11563 with the Bankruptcy Court and all affiliated and associated

filings and proceedings in any other court or jurisdiction relating to such cases;

“**Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York;

“**Base Lease Term**” has the meaning given to such term in Clause 1 (*Base Lease Term and Rent*) of Part A of the Financial Terms Annex;

“**Business Day**” means any day (other than a Saturday or Sunday) on which banks are open for business in New York City and Mexico City;

“**Cape Town Convention**” means The Convention on International Interests in Mobile Equipment, concluded in Cape Town, South Africa, on November 16, 2001 (utilizing the English-language version thereof as in effect in Mexico on the Lease Commencement Date), and references to the Cape Town Convention will include the Protocol as appropriate, and for so long as the Aircraft is registered in Mexico, references to the Cape Town Convention refer to the Cape Town Convention as adopted and implemented in Mexico;

“**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 or regulation, in each case in any applicable jurisdiction or any change in or any new or further or different interpretation or application of any thereof in any court, and in each case from that existing as at the Lease Commencement Date;

“**Claim**” has the meaning given to it in Clause 14.2 (*Notification and Contest*);

“**Code**” means the U.S. Internal Revenue Code of 1986 (as amended) and the U.S. Treasury Regulations promulgated thereunder;

“**Companion Agreement**” means each aircraft lease agreement entered into between Lessor (or an Affiliate of Lessor) as lessor and Lessee as lessee as of the date hereof with respect to the leasing of Companion Aircraft;

[REDACTED];

“**Companion Aircraft**” means each aircraft operating in Lessee’s fleet that are owned or commonly controlled by Lessor or any of its Affiliates, which shall include the Embraer ERJ 190-100 LR aircraft bearing manufacturer’s serial numbers [●], [●] and [●], other than the Aircraft;<sup>4</sup>

“**Conditions Precedent**” means the conditions specified in Schedule 3 (*Conditions Precedent*);

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

“**CPCP**” means corrosion prevention and control program in accordance with the Lessee approved Maintenance Program or equivalent with the Embraer MPD in effect six (6) months prior to the date when the relevant check is carried out;

“**Cycle**” means one take-off and landing of the Aircraft or, in respect of any Engine or Part temporarily

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<sup>4</sup> **Note to Draft:** Insert as applicable.

installed on another airframe, one take-off and landing of that other airframe;

**“Damage Notification Threshold”** has the meaning provided in Clause 3 (*Damage Notification Threshold*) of Part A of the Financial Terms Annex;

**“Default Interest”** means any interest paid or payable pursuant to Clause 7.2 (*Default Interest*);

**“Default Rate”** has the meaning given such term in Clause 4 (*Insurance and Default Matters*) of Part A of the Financial Terms Annex;

**“Deregistration Power of Attorney”** means the irrevocable power of attorney from Lessee authorizing Lessor 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 upon termination of the Lease as a result of an Event of Default;

**“Discount Rate”** has the meaning set forth in Clause 4 (*Insurance and Default Matters*) of Part A of the Financial Terms Annex;

**“Dollars”, “\$” and “US\$”** means the lawful currency of the United States of America and, in relation to all payments in dollars to be made under or pursuant to this Agreement, in immediately available funds;

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

**“Engine”** means, whether or not for the time being installed on the Aircraft:

- (a) the engines specified in the Acceptance Certificate; or
- (b) any engine which has replaced that engine, title to which has, or should have, passed to Lessor in accordance with this Agreement, including, without limitation, any Replacement Engine,

and in each case includes all modules and Parts from time to time belonging to or installed in that engine but excludes any properly replaced engine title to which has, or should have, passed to Lessee pursuant to this Agreement;

**“Engine Equivalency Charge”** means the Engine Equivalency Charge calculated pursuant to Part B (*Redelivery Maintenance Payment*) of the Financial Terms Annex;

**“Engine LLP Equivalency Charge”** means the Engine LLP Equivalency Charge, if any, calculated pursuant to Part B (*Redelivery Maintenance Payment*) of the Financial Terms Annex;

**“Engine Major Module”** means, at any time, any of the major modules of an Engine and which are defined as Engine Major Modules in the Engine Manufacturer’s Maintenance Manual as in effect at that time;

**“Engine Manufacturer”** means General Electric Company;

**“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 performance or higher workscope sections of the Engine Manufacturer’s Maintenance Manual which results in such Engine having, at a minimum, [REDACTED];

**“Engine Warranties Assignment”** means the engine warranty and/or product support assignment entered into on the Delivery Date between Lessor and Lessee, and the related consent and agreement between

Lessor, Lessee and the Engine Manufacturer, in respect of the Engines in the Agreed Form;

**“Equipment Change”** means any modification in or alteration and addition to the Aircraft;

**“Equivalency Charges”** means the Structural Check Equivalency Charge, Engine Equivalency Charge, Engine LLP Equivalency Charge, APU Equivalency Charge and Landing Gear Equivalency Charge.

**“Event of Default”** means any event or circumstance specified in Clause 19.1 (*Events*);

**“Excluded Country”** means any country to which the export and/or use of Embraer aircraft is not permitted under any sanctions, orders or legislation from time to time promulgated by any of the United Nations, the European Union, the United States of America or any Government Entity of the State of Registration the effect of which prohibits or restricts the export and/or use of Embraer aircraft to and from and within to such country;

**“Executive Order”** has the meaning given to it in Clause 22.17 (*Know Your Customer/OFAC Compliance*);

**“Expiry Date”** means the scheduled last day of the Base Lease Term or if a Renewal Lease Term is then in effect, the scheduled last day thereof, in each case as may be extended by an Operational Extension;

**“FAA”** means the Federal Aviation Administration of the United States of America and any successor thereof;

**“FAR”** means the Federal Aviation Regulations set forth in Title 14 of the United States Code of Federal Regulations;

**“Financial Terms Annex”** means Schedule 4, which contains financial terms that shall be redacted in the counterpart of this Agreement that is filed for recordation with any Aviation Authority or any other Government Entity;

**“Financing Documents”** means each present and/or future document which is from time to time related to any financing of the Aircraft (including for such purpose any mortgage or leasing arrangements whether or not constituting a financing and any documents ancillary thereto);

**“Financing Parties”** means (i) the Ministry of Economy, (ii) Wilmington Trust Company, not in its individual capacity but solely as security trustee and (iii) any Person or Persons from time to time notified by Lessor to Lessee as providing financing to Lessor in respect of Lessor’s acquisition, ownership or leasing of the Aircraft, whether by way of loan, head lease or otherwise and shall include the Financing Parties Representative;

**“Financing Parties Representative”** means, (i) as of the Lease Commencement Date, the Security Trustee and (ii) the Person or Persons that from time to time represent the Financing Parties as agent, trustee, secured party, security trustee, or in another similar capacity, the identity of which Lessor from time to time notifies Lessee as being a Financing Parties Representative;

**“Fixed Rent”** has the meaning given to it in Clause 1 (*Base Lease Term and Rent*) of Part A of the Financial Terms Annex

**“Fixed Rent Date”** means the first day of each calendar month in the Fixed Rent Period; provided, however, that the first Fixed Rent Date shall be the Transition Date;

**“Fixed Rent Period”** has the meaning given to it in Clause 5.1 (*Fixed Rent Periods*);

**“Flight Hour”** means each hour or part thereof (rounded to the nearest minute) elapsing from the moment

at which the wheels of the Aircraft leave the ground on the take-off of the Aircraft until the wheels of the Aircraft touch the ground on the landing of the Aircraft following such take-off, or in the case of any Engine or Part installed on another aircraft means each hour or part thereof (rounded to the nearest minute) elapsing from the moment at which the wheels of that aircraft leave the ground on take-off of that aircraft until the wheels of that aircraft touch the ground on the landing of that aircraft following such take-off;

“**FM Rent**” has the meaning given to it in Clause 4.2.2(b) (*Renewal Rent and Documentation*);

“**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;
- (c) any association, organization, or institution of which any of the above is a member or to whose jurisdiction any of the above is subject or in whose activities any of the above is a participant; and
- (d) to the extent that an airport, ground handling or air navigation service is not run or provided by an entity which falls within clauses (a) through (c) above, such relevant entity, body, corporate, organization or institution;

“**Gross Negligence**” means, in relation to an Indemnatee or Tax Indemnatee, gross negligence as determined under New York Law;

“**Grupo Aeromexico**” means Grupo Aeroméxico S.A.B. de C.V. and any entity of which Grupo Aeroméxico S.A.B. de C.V. owns directly or indirectly more than fifty per cent (50%) of the voting share capital;

“**GTT**” means the tax imposed by section 887 of the Code on the gross transportation income of nonresident aliens and foreign corporations;

“**Heavy Maintenance Check**” means a B Check, a Structural Check, Engine Performance Restoration, APU Medium Repair Shop Visit and a Landing Gear Overhaul [REDACTED];

“**IDERA**” means an irrevocable deregistration and export request authorization pursuant to and for the purposes of the Cape Town Convention;

“**Indemnitees**” means each of Lessor Parties, the Servicer, the Financing Parties, the Trust Company and each of their respective shareholders, members, managers, partners, Affiliates, contractors, trustees, beneficiaries, directors, officers, servants, agents, representatives, employees, successors, assigns and transferees;

“**Insurances**” means insurances and any reinsurances in respect of the Aircraft described in and complying with the requirements of Clause 15 (*Insurance*) and Schedule 5 (*Insurance Requirements*);

“**International Interest**” has the meaning given to such term in the Consolidated Text;

“**International Registry**” has the meaning given to such term in the Consolidated Text;

“**Landing Gear**” means the complete strut assembly, consisting of the inner and outer cylinders of each main landing gear and nose landing gear and all associated parts that comprise each landing gear assembly,

as listed in the Aircraft Documents including side struts, braces, and uplock and downlock mechanisms but excluding, without limitation, rotatable parts such as wheels, tires, brakes, transducers and switch assemblies, title to which is vested in Owner;

**“Landing Gear Equivalency Charge”** means the Landing Gear Equivalency Charge, if any, calculated pursuant to Part B (*Redelivery Maintenance Payment*) of the Financial Terms Annex;

**“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);

**“Law”** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, request or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of Persons to whom the directive, regulation, request or requirement is addressed);

**“LC Renewal Date”** has the meaning given to it in Clause 6.5(c) (*Letter of Credit*);

**“Lease Commencement Date”** means the date determined in accordance with Clause 3.1 (*Delivery and Acceptance*);

**“Lease Commencement Date Confirmation”** means a lease commencement date confirmation to be executed and delivered by the parties substantially in the form appearing in Schedule 9;

**“Lease Novation Agreement”** means the Aircraft Lease Novation and Amendment Agreement dated on or around the date hereof among Lessee Guarantor, as existing lessor, Lessee, as lessee, and Lessor, as new lessor.

**“Lessee Conditions Precedent”** means the Conditions Precedent to be satisfied by Lessee, listed at Clause 1 of Schedule 3 (*Conditions Precedent*);

**“Lessee Guarantee”** means the New York law guarantee of the obligations of Lessee under this Agreement and the other Operative Documents, substantially in the form of Schedule 13 (*Form of Lessee Guarantee*) hereto, granted by the Lessee Guarantor in favor of Lessee;

**“Lessee Guarantor”** means Aerovías de México, S.A. de C.V.;

**“Lessor Conditions Precedent”** means the Conditions Precedent to be satisfied by Lessor, listed at Clause 3 of Schedule 3 (*Conditions Precedent*);

**“Lessor Lien”** means:

- (a) any Security Interest in respect of the Aircraft from time to time created by, through or under any Lessor Party or any Affiliate of any Lessor Party in connection with the financing of the Aircraft;
- (b) any other Security Interest in respect of the Aircraft which results from (i) acts of or claims against any Lessor Party, any Affiliate of any Lessor Party, any Financing Party or any Affiliate of any Financing Party not related to the transactions contemplated by or permitted under this Agreement or the other Operative Documents, or (ii) any indebtedness, liability or other obligation arising by, through or under any Lessor Party, any Affiliate of any Lessor Party, any Financing Party or any Affiliate of any Financing Party that is not the subject of any Lessee’s indemnity, payment or



reimbursement obligation under this Agreement; and

(c) any Security Interest in respect of the Aircraft for Lessor Taxes;

**“Lessor Party”** means each of Lessor and Owner;

**“Lessor Taxes”** means Taxes specified in Clause 20.3(b) (*Tax Indemnity*);

**“Letter of Credit”** means a letter of credit provided pursuant to and in accordance with Clause 6.4 (*Provision of Letter of Credit*);

**“Life Limited Part”** or **“LLP”** means any Part that has a pre-determined life limit as mandated by Manufacturer, the Aviation Authority, the FAA or EASA which requires any such Part to be discarded upon reaching such life limit;

**“Loan Novation Agreement”** means the Deed of Novation and Amendment dated on or around the date hereof among Guarantor, as existing borrower, Lessor, as new borrower, the Ministry of Economy, as lender, and the Security Trustee.

**“Loss”** means any loss, liability, action, claim, proceeding, judgment, penalty, fine, damages, fee, cost or expense (including legal fees and expenses, including legal fees and expenses incurred to enforce any applicable indemnity);

**“Maintenance Program”** has the meaning given to it in Clause 11.5 (*Maintenance Program*);

[REDACTED];

**“Mandatory Orders”** means all and any Aviation Authority and FAA mandatory orders and Regulations applicable to the Aircraft, any Engine or any Part;

**“Manufacturer”** means, in relation to the Airframe, the Airframe Manufacturer or, in relation to the Engines, the Engine Manufacturer or in relation to any Part, the manufacturer of that Part;

**“Manufacturer’s Maintenance Manual”** means the individual manuals or maintenance data sets published by the Aircraft, Engine and Parts Manufacturer (as the case may be);

**“Manufacturer’s Maintenance Planning Document”** or **“MPD”** means the planning document relating to recommended maintenance of the Aircraft issued by Manufacturer, including the airworthiness limitation section, as the same may from time to time be amended, modified or supplemented;

**“Maximum Deductible Amount”** has the meaning provided in Clause 4 (*Insurance and Default Matters*) of Part A of the Financial Terms Annex;

**“Mexico”** means the United Mexican States;

**“Minimum Liability Coverage”** has the meaning provided in Clause 4 (*Insurance and Default Matters*) of Part A of the Financial Terms Annex;

**“Ministry of Economy”** has the meaning set forth in Clause 2 (*Agreement to Lease*);

**“OEM”** means in relation to any Part or part the original equipment manufacturer or the original type

certification bidder of such Part or part;

“**OFAC**” has the meaning given to it in Clause 22.17 (*Know Your Customer/OFAC Compliance*);

“**Operational Extension**” has the meaning set forth in Clause 4.2.1(a) (*Renewal Notice*)

“**Operative Documents**” means (a) this Agreement, the Original Acceptance Certificate, the Lease Commencement Date Confirmation, any Renewal Notice, the Airframe Warranty Assignment, the Engine Warranties Assignment, any IDERA issued pursuant to the terms hereof, the Deregistration Power of Attorney, the Lessee Guarantee, the Financing Documents, the Lease Novation Agreement, the Effective Time Notice (Lease Novation) (as defined in the Lease Novation Agreement), the Loan Novation Agreement and the Effective Time Notice (Loan Novation) (as defined in the Loan Novation Agreement), together with (b) any schedules, documents, notices or certificates from time to time executed or issued by Lessee pursuant hereto or thereto and (c) any side letters, supplements, amendments or modifications to any of the foregoing from time to time executed or agreed to by Lessee which (other than in the case of amendments to Operative Documents, which shall automatically be Operative Documents), are agreed in writing by Lessor and Lessee to be Operative Documents for the purposes of this Agreement;

“**Original Acceptance Certificate**” means the certificate of acceptance dated [●] delivered to Lessor by Lessee under the Prior Lease;<sup>5</sup>

“**Original Delivery Date**” means [●];<sup>6</sup>

“**Other Aircraft**” has the meaning given to it in Clause 12.5(a) (*Installation of Engines and Parts on Other Aircraft*);

“**Owner**” means Lessor or such other party as notified to Lessee by Lessor from time to time.

“**Paid Amount**” has the meaning given to it in Clause 6.5(h) (*Letter of Credit*);

“**Part**” means, whether or not for the time being installed on the Aircraft:

- (a) any component, furnishing or equipment (other than a complete Engine) furnished with the Aircraft on the Original Delivery Date; and
- (b) any other component, furnishing or equipment (other than a complete Engine) title to which has, or should have, passed to Lessor pursuant to this Agreement;

but excludes any such items title to which has, or should have, passed to Lessee pursuant to this Agreement. For the avoidance of doubt, Part includes the APU;

“**Patriot Act**” has the meaning given to it in Clause 22.17 (*Know Your Customer/OFAC Compliance*);

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

“**PBH Rent**” has the meaning given to it in Clause 1 (*Base Lease Term and Rent*) of Part A of the Financial

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<sup>5</sup> **Note to Draft:** Insert as applicable.

<sup>6</sup> **Note to Draft:** Insert as applicable.

Terms Annex;

**"PBH Rent 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 and for which there are adequate reserves under applicable accounting rules; or
- (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; or
- (c) any Lessor Lien; or
- (d) any lien arising out of any judgment or award against Lessee provided such judgment or award is discharged, vacated or the execution thereof stayed pending appeal within thirty (30) days of the date of entry thereof and so long as during any such period such judgment or award does not involve any material risk of the sale, forfeiture or other loss of the Aircraft or any risk of criminal or material civil liability against Lessor or any other Indemnitees;
- (e) any lien arising from the Operative Documents; and
- (f) any rights of a Permitted Sublessee under a sublease or a Person participating in a pooling arrangement contemplated by Clause 10.4 (*Pooling*);

but only if (in the case of both (a) and (b)) (i) adequate reserves have been taken by Lessee for the payment of such Taxes or obligations; 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 any material risk of criminal liability or material civil liability against Lessor or any other Indemnitee;

**"Permitted Sublessee"** means a sublessee permitted pursuant to the terms of Clause 10.3 (*Subleasing*);

**"Person"** means any individual, firm, partnership, joint venture, trust, corporation, Government Entity, corporate or business association, committee, department, authority or any other entity, incorporated or unincorporated, whether having distinct legal personality or not, or any member of the same and Persons shall be construed accordingly;

**"Pool Aircraft"** has the meaning given to it in Clause 10.4(a)(ii)(A) (*Pooling*);

**"Post-Closing Authorizations and Filings"** means the authorizations, registrations, documents, filings and other items to be delivered or provided by Lessee after the Lease Commencement Date pursuant to Clause 5 of Schedule 3 (*Conditions Precedent and Post-Closing Matters*);

**"Pre-Approved LC Bank"** means Standard Chartered Bank, Bank of New York, BNP Paribas USA New York Branch, Harris N.A., HSBC N.Y., JPMorgan Chase Bank, U.S. Bank, Comerica Bank, Keybank National Association, Fifth Third Bank, MUFG N.A., and Banco Bilbao Vizcaya Argentaria S.A., New York;

**"Prepetition Breaches"** has the meaning given to the term in Clause 22.19 (*Prepetition General Unsecured Damage Claims*) of this Agreement;

**"Prepetition Damages Claim"** has the meaning given to the term in Clause 22.19 (*Prepetition General*

*Unsecured Damage Claims*);

**“Prior Lease”** has the meaning given to the term in Clause 2 (*Agreement to Lease*) of this Agreement;

**“Prior Maintenance Reserves”** means any maintenance reserves paid by Lessee to Lessor under the Prior Lease and not otherwise paid to Lessee by Lessor pursuant to the terms of the Prior Lease or this Agreement as more particularly described in Clause 0 (*Prior Maintenance Reserves*) of Part A of the Financial Terms Annex;

**“Prior Security Deposit”** means any cash provided by Lessee to Lessor as a Security Deposit (as defined in the Prior Lease) under the Prior Lease as more particularly described in Clause 2 (*Security Deposit*) of Part A of the Financial Terms Annex;

**“Protocol”** means the Protocol to the Convention on Matters Specific to Aircraft Equipment, signed in Cape Town, South Africa on 16 November 2001;

**“RAM”** means the Mexican Aeronautical Registry (*Registro Aeronáutico Mexicano*) or any other Mexican Government Entity succeeding to its functions;

**“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 15 (*Form of Redelivery Acceptance Certificate*);

**“Redelivery Check”** means Lessee’s next due “base” check in accordance with the Maintenance Program during the Term and the revision of the MPD in effect six (6) months prior to the Expiry Date, and includes all inspections, checks and work up to and including those required every [REDACTED];

**“Redelivery Conditions”** means the condition set forth in Schedule 8 (*Redelivery Conditions*);

**“Redelivery Date”** means the date on which the Aircraft is redelivered by Lessee to Lessor in accordance with the terms of this Agreement;

**“Redelivery Location”** means a maintenance or storage facility in Mexico selected by Lessee or such other location as may be agreed by Lessor and Lessee;

**“Redelivery Maintenance Payment”** has the meaning set forth in Part B (*Redelivery Maintenance Payment*) of the Financial Terms Annex;

**“Regulation”** means any Law or regulation (including any internal corporate regulation), official directive or recommendation, requirement or contractual undertaking which applies to Lessee, Lessee Guarantor or the Aircraft;

**“Removed Engine”** means any Engine not installed on the Airframe so long as title thereto remains vested in Lessor in accordance with the terms of this Agreement;

**“Removed Part”** means any Part not installed on the Aircraft so long as title thereto remains vested in Lessor in accordance with the terms of this Agreement;

**“Renewal Lease Term”** means, if applicable, any renewal of the Term pursuant to Clause 4.2 (*Renewal Option*) for a period of [REDACTED], [REDACTED] or [REDACTED] months duration;

**“Renewal Notice”** a notice substantially in the form of Schedule 10 (*Form of Renewal Notice*) delivered

by Lessee to Lessor pursuant to Clause 4.2.1 (*Renewal Notice*);

“**Rent**” means the PBH Rent and the Fixed Rent;

“**Replacement Engine**” means in respect of any Engine to be replaced under this Agreement, an engine that (a) is of the same manufacturer and model (or at Lessee’s option an improved model) as that Engine; (b) taking into account [REDACTED]; (c) is capable of being installed on the Airframe without impairing the value or utility of the Airframe; and (d) is delivered with the FAA Form 8130-3, EASA Form One or similar form identifying the serial number of such engine and [REDACTED] and such other parts installed on such engine to the extent the same would be required under Schedule 7 (*Aircraft Documents at Redelivery*) at redelivery of the Aircraft to Lessor at the end of the Term; and in respect of which title is capable of passing to Lessor free and clear of all Security Interests other than Permitted Liens;

“**Replacement Part**” means in respect of any Part to be replaced under this Agreement, a component furnishing or part that (a) is certified in accordance with FAR Part 145 or its equivalent successor for installation on the Aircraft; (b) [REDACTED]; (c) [REDACTED]; and (d) [REDACTED]; and in respect of which title is capable of passing to Lessor free and clear of all Security Interests other than Permitted Liens;

“**Required Redelivery Date**” means the Termination Date (other than a Termination Date of the type described in Clause 4.1(b) (*Termination Date*)) without regard to any extension of the Term pursuant to Clause 18.2 (*Non-Compliance*);

“**Sales Taxes**” means sales, use, rental, value added, goods and services and similar Taxes;

“**SD Difference**” has the meaning given to it in Clause 4.2.2(c) (*Renewal Rent and Documentation*);

“**Security Deposit**” means the amount provided in Clause 2 (*Security Deposit*) of Part A of the Financial Terms Annex;

“**Security Interest**” means any mortgage, charge, pledge, lien, encumbrance, assignment, lease, sublease, hypothecation, right of set-off or any other agreement or arrangement having the effect of conferring security or creating an encumbrance;

“**Security Trustee**” means Wilmington Trust Company, not in its individual capacity but solely as security trustee.

“**Servicer**” means such Person experienced in aircraft leasing as is designated by Lessor from time to time;

“**State of Incorporation**” means Mexico;

“**State of Manufacture**” means Brazil;

“**State of Registration**” means Mexico or any other country in which the Aircraft is from time to time registered in accordance with Clause 9.5 (*Registration and Protection*);

“**Structural Check Equivalency Charge**” means the Structural Check Equivalency Charge, if any, calculated pursuant to Part B (*Redelivery Maintenance Payment*) of the Financial Terms Annex;

“**Structural Checks**” means, with respect to the Airframe, a Structural Check, and shall be construed to imply either the 20,000 Cycles SC, the 72 Month SC, the 96 Month SC and the 120 Month SC (or the equivalent Structural Check if such 20,000 Cycles SC, the 72 Month SC, the 96 Month SC and the 120

Month SC are no longer applicable), where:

- (a) **“20,000 Cycles SC”** means a structural inspection of the Aircraft which accomplishes all tasks having an interval of 20,000 Cycles as per the current revision of the Maintenance Program; and
- (b) **“72 Month SC”** means a CPCP inspection of the Aircraft which accomplishes all tasks having an interval of seventy two (72) months as per the current revision of the Maintenance Program;
- (c) **“96 Month SC”** means a CPCP inspection of the Aircraft which accomplishes all tasks having an interval of ninety six (96) months as per the current revision of the Maintenance Program;
- (d) **“120 Month SC”** means a CPCP inspection of the Aircraft which accomplishes all tasks having an interval of one hundred and twenty (120) months as per the current revision of the Maintenance Program;

**“Subsidiary”** means, in reference to any Person:

- (a) in relation to any reference to accounts, any company whose accounts are consolidated with the accounts of such Person in accordance with accounting principles generally accepted under accounting standards of such Person’s jurisdiction of organization; and
- (b) for any other purpose, an entity from time to time over which such Person has direct or indirect control and owns directly or indirectly more than 50 per cent of the voting share capital of such entity or of which it has the ability directly or indirectly to appoint or remove more than 50 per cent of the directors with voting rights or officers of such entity or of which it has the ability to give effective directions with respect to and control the management and operational and financial policies and decisions of such entity which the directors or other equivalent officers of such entity are obliged to comply;

**“Surviving Entity”** has the meaning given to it in Clause 9.7(b) (*Lessee Existence*);

**“Tax Claim”** has the meaning given to it in Clause 20.8 (*Notification*);

**“Tax Indemnatee”** means each of the following: (a) Lessor, (b) Owner and (c) each of their respective successors, permitted assigns, Affiliates, officers, directors, employees, representatives, servants, transferees and agents;

**“Taxes”** means all present and future taxes, levies, imposts, duties or charges of any nature whatsoever, and wheresoever imposed, including (without limitation) value added tax or any similar tax and any franchise, transfer, sales, use, business, occupation, excise, personal property, real property, stamp, gross income, net income, GTT, personal property, fuel, leasing, occupational, turnover, excess profits, excise, gross receipts, franchise, registration, license, corporation, capital gains, export/import, income, levies, imposts, withholdings or other taxes or duties of any nature whatsoever (or any other amount corresponding to any of the foregoing) now or hereafter imposed, levied, collected, withheld or assessed by any national, state, regional or foreign taxing or fiscal authority or agency, together with any penalties, additions to tax, fines or interest thereon (whether or not disputed), and Tax and Taxation shall be construed accordingly;

**“Term”** means the period commencing on the Lease Commencement Date and ending on the Termination Date and shall include the Base Lease Term and, if applicable, any Renewal Lease Term or Operational Extension;

**“Termination Date”** means the date determined in accordance with Clause 4.1 (*Expiry Date*);

**“Total Loss”** means, with respect to the Aircraft (including for the purposes of this definition the Airframe)

or an Engine:

- (a) the actual, constructive, compromised, arranged or agreed total loss of the Aircraft or any Engine (including any damage to the Aircraft or any Engine or requisition for use or hire which results in an insurance settlement on the basis of a total loss); or
- (b) the Aircraft or any Engine being destroyed, damaged beyond economic repair or permanently rendered unfit for normal use for any reason whatsoever; or
- (c) the requisition of title, confiscation, forfeiture or other compulsory acquisition of title for any reason of the Aircraft or any Engine by the government of the State of Registration or any other authority (whether de jure or de facto); or
- (d) the hi-jacking, theft, disappearance, seizure (other than any seizure resulting from a breach by Lessor of its covenant of quiet enjoyment set forth in Clause 8.1 (*Quiet Enjoyment*)) or requisition for use or hire of the Aircraft or any Engine which deprives any Person permitted by this Agreement to have possession and/or use of the Aircraft of its possession and/or use for more than (i) [REDACTED] consecutive days in case of such hi-jacking, theft or disappearance, or (ii) [REDACTED] consecutive days in case of such seizure or requisition of use or hire.

**“Total Loss Date”** means with respect to the Aircraft (including for the purposes of this definition, the Airframe) or an Engine:

- (a) in the case of an actual total loss or destruction, damage beyond economic repair of the Aircraft or any Engine, or the Aircraft or an Engine being rendered permanently unfit, the date on which such loss, destruction, damage or rendition occurs (or, if the date of loss or destruction is not known, the date on which the Aircraft or Engine was last heard of);
- (b) in the case of a constructive, compromised, arranged or agreed total loss of the Aircraft or any Engine, whichever shall be the earlier of (i) the date being [REDACTED] days after the date on which notice claiming such total loss is issued to the insurers or brokers, and (ii) the date on which such loss is agreed or compromised by the insurers;
- (c) in the case of requisition for title, confiscation, forfeiture or other compulsory acquisition or similar event of the Aircraft or any Engine by the government of the State of Registration or any other authority, the date on which the same takes effect; or
- (d) in the case of hi-jacking, theft, disappearance, seizure or requisition for use or hire of the Aircraft or any Engine, the earlier of (i) the last day of the period referred to in clause (d) of the definition of Total Loss and (ii) the date on which the insurers make payment on the basis of a Total Loss;

**“Transferee”** has the meaning given to it in Clause 21.2(b) (*Lessor Transfer*);

**“Transition Date”** has the meaning given to it in Clause 5.1(b) (*Fixed Rent Periods*);

**“Trust Company”** means Wilmington Trust Company, a Delaware trust company, in its individual capacity.

**“UCC”** means the Uniform Commercial Code as enacted in the State of New York or, if the laws of another

state of the United States of America so provide, as enacted in such state; and

“VAT” has the meaning given to it in Clause 20.5 (*Value Added Tax*).

**Construction and Usage**

2. (i) References in this Agreement to:
- (a) any statutory or other legislative provision shall be construed as including any statutory or legislative modification or re-enactment thereof, or any provision enacted in substitution therefor;
  - (b) “Lessor”, “Owner”, “Lessee Guarantor” or “Lessee” includes any assignee or successor in title to Lessor, Owner, Lessee Guarantor or Lessee respectively (subject to the provisions of Clause 21 (*Assignment and Transfer*));
  - (c) any deed, agreement or instrument shall include any such deed, agreement or instrument as may from time to time be amended, supplemented or substituted;
  - (d) an “agreement” also includes a concession, contract, deed, franchise, license, treaty or undertaking (in each case, whether oral or written);
  - (e) the “assets” of any Person shall be construed as a reference to the whole or any part of its business, undertaking, property, assets and revenues (including any right to receive revenues);
  - (f) “month” is a reference to a period which starts on one day in a calendar month and ends on the day immediately preceding the numerically corresponding day in the next calendar month, except that if there is no numerically corresponding day in that next month it shall end on the last day of that next month (and references to “months” shall be construed accordingly); and
  - (g) “includes,” “including”, “include” or similar terms shall not be construed as limiting and shall mean “including, without limitation”.
- (ii) Headings are for ease of reference only.
- (iii) Where the context so admits, words importing the singular number only shall include the plural and vice versa, and words importing neuter gender shall include the masculine or feminine gender.



## REPRESENTATIONS AND WARRANTIES

### Lessee's Representations and Warranties

Lessee represents and warrants to Lessor on the date of execution of this Agreement by reference to the facts and circumstances existing on such date that:

1. (a) **Status:** Lessee is a company duly incorporated and validly existing under the laws of the State of Incorporation;
- (b) **Power and Authority:** subject to approval by the Bankruptcy Court of the transactions contemplated by this Agreement, (i) Lessee has the company power and authority to carry on its business as presently being conducted and to enter into and perform its obligations under this Agreement and each other Operative Document to which Lessee is a party, (ii) Lessee has taken all necessary company action to authorize the entry into, performance and delivery of, this Agreement and each other Operative Document to which Lessee is a party, and (iii) this Agreement and each other Operative Document to which Lessee is a party has been duly executed and delivered by Lessee;
- (c) **Legal validity:** subject to approval by the Bankruptcy Court of the transactions contemplated by this Agreement, this Agreement and each other Operative Document to which Lessee is a party constitutes (or when executed and delivered will constitute) legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with its terms, except insofar as enforceability may be limited by (i) applicable bankruptcy and/or similar laws affecting creditors' rights generally, or (ii) general principles of equity;
- (d) **Non-conflict:** the entry into and performance by Lessee of, and the transactions contemplated by, this Agreement and each other Operative Document to which Lessee is a party do not: (i) conflict with any Laws or Regulations applicable to Lessee; or (ii) conflict with the organizational documents of Lessee; or (iii) conflict with or result in default under any document which is binding upon Lessee or any of its assets nor result in the creation of any Security Interest over any of its assets (other than as contemplated hereby and thereby);
- (e) **Licenses and permits:** Lessee holds all material licenses, certificates, permits and approvals necessary for the conduct of its business and the performance of its obligations under this Agreement and each other Operative Document to which Lessee is a party;
- (f) **Approvals and Consents:** subject to approval by the Bankruptcy Court of the transactions contemplated by this Agreement, all authorizations, approvals, consents and notifications required by Lessee in connection with the entry into, performance, validity and enforceability of, this Agreement and each other Operative Document to which Lessee is a party and the transactions contemplated by this Agreement and each other Operative Document to which Lessee is a party, have been obtained or effected (as appropriate) and are in full force and effect;
- (g) **Registrations and Filings:** except for the Post-Closing Authorizations and Filings, no filing or recording of any instrument or document is necessary under the laws of the State of Incorporation or the State of Registration in order to ensure the validity, effectiveness and enforceability of this Agreement or to establish, perfect or protect the rights and

interests of Lessor in the Aircraft and this Agreement against Lessee;

- (h) **Excluded Countries:** Lessee does not hold a contract or other obligation to operate the Aircraft to or from any country which is an Excluded Country unless applicable consents, exemptions or licenses have been obtained or apply in respect of such contracts, obligations or operations;
- (i) **No Litigation:** except as related to the Bankruptcy Cases, no litigation, arbitration or administrative proceedings are pending or, to Lessee's or Lessee Guarantor's knowledge, threatened before any court or administrative agency against Lessee or Lessee Guarantor which, could reasonably be expected to have a material adverse effect upon Lessee's or Lessee Guarantor's ability to perform its obligations under this Agreement or any other Operative Document;
- (j) **No Event of Default:** other than in respect of any Event of Default as it relates to (1) the period of time before the Bankruptcy Cases or (2) the filing or continuance of the Bankruptcy Cases, no Event of Default has occurred and is continuing or will result from the entry into or performance of this Agreement by Lessee;
- (k) **Pari Passu:** the obligations of Lessee under this Agreement or any other Operative Document are direct, general and unconditional obligations and rank at least *pari passu* with all other present and future unsecured and unsubordinated obligations (including contingent obligations) of Lessee, with the exception of such obligations as are mandatorily preferred by Law and not by virtue of any contract; and
- (l) **No Immunity:** Lessee is subject to civil commercial law with respect to its obligations under this Agreement and each other Operative Document, neither Lessee nor any of its assets are entitled to any right of immunity and the entry into and performance of this Agreement or any other Operative Document by Lessee constitute private and commercial acts.

2.

### **Lessor's Representation and Warranties**

Lessor represents and warrants to Lessee on the date of execution of this Agreement by reference to the facts and circumstances existing on such date that:

- (a) **Status:** Lessor is a limited liability company organized under and subject to the laws of the State of Delaware;
- (b) **Power and Authority:** (i) Lessor has the power and authority to carry on its business as presently being conducted and to enter into and perform its obligations under this Agreement, and each of other Operative Document to which it is a party, (ii) Lessor has taken all necessary corporate action to authorize the entry into, the delivery of, and the performance by it of this Agreement and each other Operative Document to which it is a party, and (iii) this Agreement and each other Operative Document to which Lessor is a party has been duly executed and delivered by Lessor;
- (c) **Legal Validity:** this Agreement and each other Operative Document to which Lessor is a party constitutes its valid, legal and binding obligation enforceable against it in accordance with its terms except insofar as enforceability may be limited by (i) applicable bankruptcy and similar laws afflicting creditors' rights generally or (ii) general principles of equity;
- (d) **Non-conflict:** the entry into and performance by Lessor of, and the transactions

contemplated by, this Agreement and each other Operative Document to which it is a party, does not and will not: (i) conflict with any Laws or Regulations applicable to Lessor; or (ii) conflict with the constitutional documents of Lessor; or (iii) conflict with or result in default under any document which is binding upon Lessor or any of Lessor's assets; or (iv) result in the creation of any Security Interest over any of Lessor's assets other than Lessor Liens in favor of the Financing Parties Representative;

- (e) **Approvals and Consents:** no consent, approval, order or authorization of, or giving of notice to, or registration with, or taking of any other action in respect of any state or local governmental authority or agency or any United States federal governmental authority is required for the execution and delivery of or the carrying out by Lessor of any of the transactions contemplated by this Agreement or any other Operative Document to which Lessor is a party, other than any such consent, approval, order, authorization registration, notice or action as has been duly obtained, given or taken;
- (f) **No Litigation:** no litigation, arbitration or administration proceedings are pending or to Lessor's knowledge threatened before any court or administrative agency against Lessor which could reasonably be expected to have a material adverse effect upon Lessor's ability to perform its respective obligations under this Agreement or any other Operative Document; and
- (g) **Title:** Lessor (or, if different, Owner) has good and marketable title to the Aircraft, free of all Security Interests arising by, through or under any Lessor Party other than Lessor Liens in favor of the Financing Parties Representative.

3. **Survival**

The representations and warranties pursuant to Clauses 1 and 2 of this Schedule 2 shall survive the execution of this Agreement.

## CONDITIONS PRECEDENT AND POST-CLOSING MATTERS

### Conditions Precedent to be satisfied by Lessee

1. Lessor's obligations to lease the Aircraft to Lessee on the terms and conditions set forth herein is subject to the satisfaction of the Conditions Precedent set out in Clause 1 of this Schedule 3 (the "**Lessee Conditions Precedent**"). All documents delivered to Lessor pursuant to Clause 1 of this Schedule 3 will be at Lessee's cost and in English (other than any organizational documents and any approvals, consents, filings and other official documents issued by Mexican governmental authorities, which may be in Spanish).

Lessee shall provide Lessor with a duly executed copy of the Lessee Guarantee on the date of this Agreement.

On or before the Lease Commencement Date, Lessee shall provide the following each in full force as of the Lease Commencement Date and each in form and substance satisfactory to Lessor (acting reasonably):

- (a) **Corporate Documents:** (1) a copy of the following items of Lessee: (i) the organizational documents of Lessee, (ii) an abstract of the resolutions of the board of directors of Lessee or other written evidence of appropriate corporate action authorizing the execution, delivery and performance of this Agreement and the leasing of the Aircraft thereunder and appointing a specified Person or Persons to execute each Operative Document to which Lessee is a party on its behalf and (c) a specimen of the signature of each Person authorized to execute this Agreement on behalf of Lessee and (2) a copy of the following items of Lessee Guarantor: (i) the organizational documents of Lessee Guarantor, (ii) an abstract of the resolutions of the board of directors of Lessee Guarantor or other written evidence of appropriate corporate action authorizing the execution, delivery and performance of the Operative Documents to which the Lessee Guarantor is party and appointing a specified Person or Persons to execute the same on their behalf and (c) a specimen of the signature of each Person authorized to execute this Operative Documents on behalf of Lessee Guarantor;
- (b) **Officer's Certificate:** (1) a certificate of an officer or director of Lessee certifying that on the Lease Commencement Date: (i) the documents provided in Clause 1(a)(i) of this Schedule 3 are true and complete copies of such items and have not be modified or amended and are in full force and effect; (ii) no Event of Default has occurred or would be caused by the leasing of the Aircraft to Lessee pursuant to this Agreement; and (iii) all of the representations and warranties of Lessee under the Operative Documents that are entered into on the Lease Commencement Date are true and correct and (2) a certificate of an officer or director of Lessee Guarantor certifying that on the Lease Commencement Date: (i) the documents provided in Clause 1(a)(2)(i) of this Schedule 3 are true and complete copies of such items and have not be modified or amended and are in full force and effect; and (iii) all of the representations and warranties of Lessee Guarantor under the Operative Documents that are entered into or prior to on the Lease Commencement Date are true and correct;
- (c) **Bankruptcy Court Order:** a final, nonappealable order entered by the Bankruptcy Court authorizing Lessee's and Lessee Guarantor's entry into the transactions contemplated under this Agreement and the termination of the Prior Finance Lease;

- (d) **Opinion:** (1) a legal opinion issued by Lessee's in-house legal counsel substantially in the Agreed Form concerning matters relating to the Lessee and Lessee Guarantor and to the delivery and registration of the Aircraft and (2) at Lessor's sole cost, an opinion from Lessor's legal counsel in the State of Registration in a form acceptable to Lessor;
- (e) **Insurance:** a certificate of insurance and, if applicable, reinsurance evidencing the due compliance by Lessee with the insurances required to be maintained pursuant to this Agreement together with a broker's letter of undertaking;
- (f) **Approvals and Consents:** evidence of the issue of each authorization, approval, consent and notification other than the Post-Closing Authorizations and Filings which may be required in relation to, or in connection with the performance by Lessee or Lessee Guarantor of any of their obligations hereunder or under the other Operative Documents to which it is a party or, if no such approvals are required, a statement to that effect included in the legal opinion described in Clause 1(d) of this Schedule 3;
- (g) **Operative Documents:** Lessor shall have received copies of this Agreement and the other Operative Documents to which Lessee is a party, in each case, duly executed by Lessee; and
- (h) **International Registry:** Lessee shall have granted "Professional User Authorizations" to International Registry counsel for purposes of making filings on the International Registry reflecting the transactions contemplated hereby.

2. **Waiver:** Each of the Conditions Precedent set out in Clause 1 of this Schedule 3 is for the sole benefit of Lessor and may be waived or deferred by Lessor in whole or in part with or without conditions.

3. **Conditions Precedent to be Satisfied by Lessor:** Lessee's willingness to lease the Aircraft from Lessor on the terms and conditions set forth herein is subject to the satisfaction of the Conditions Precedent set out in this Clause 3 to this Schedule 3 (the "**Lessor Conditions Precedent**"). All documents delivered to Lessee pursuant to this Clause 3 of this Schedule 3 will be at Lessor's cost and in English.

On or before the Lease Commencement Date, Lessor shall provide the following each in full force as of the Lease Commencement Date and each in form and substance satisfactory to Lessee (acting reasonably):

- (a) **Corporate Documents:** a copy of (A) the organizational documents of Lessor, (B) an abstract of the resolutions of the board of directors of Lessor which may be standing resolutions sufficient to authorize officers or others to execute and deliver the Operative Documents entered into as of the Lease Commencement Date to which Lessor is a party and (C) a specimen of the signature of each Person authorized to execute the Agreement and each other Operative Document entered into as of the Lease Commencement Date on behalf of Lessor;
- (b) **Officer's Certificate:** a certificate of an officer or director of Lessor certifying that on the Lease Commencement Date: (A) the documents provided in Clause 3(a)(i) of this Schedule 3 by Lessor are true and complete copies of such items and have not be modified or amended and are in full force and effect; and (B) all of the representations and warranties of Lessor in the Operative Documents entered into as of the Lease Commencement Date are true and correct;

- (c) **Approvals and Consents:** evidence of the issue of each authorization, approval, consent and notification other than the Post-Closing Authorizations and Filings which may be required in relation to, or in connection with the performance by Lessor of any of its obligations hereunder or any Operative Document (if any); and
- (d) **Operative Documents.** Lessee shall have received: (i) a copy of this Agreement duly executed by Lessor, and (iii) copies of the other Operative Documents duly executed by the parties thereto (other than Lessee).

**Waiver:** Each of the Conditions Precedent set out in Clause 3 of this Schedule 3 is for the sole benefit of Lessee and may be waived or deferred by Lessee in whole or in part with or without conditions.

4. **Post-Closing Matters:** Lessee shall:

- 5. (a) within [REDACTED] Business Days after the later of: (i) Lease Commencement Date, and (ii) receipt by Lessee of necessary documents from Lessor, including, if required, a ratified and apostilled copy of this Agreement, provide evidence to Lessor of the filing of this Agreement with the AFAC;
- (b) within [REDACTED] Business Days after the Lease Commencement Date, provide to Lessor a certified translation of this Agreement;
- (c) within [REDACTED] Business Days of delivery, a copy of the official letter(s) granting registration issued by the AFAC with respect of the Aircraft and approving the recordation of this Agreement with the RAM;
- (d) deliver to Lessor not later than [REDACTED] days after the Lease Commencement Date (or such longer period as may be required giving consideration to any delays or closures arising from COVID-19), a copy of an updated permanent certificate of registration (*Certificado de Matrícula Definitivo*) in the name of Lessee as lessee and also noting the interests of the Lessor as owner;
- (e) as soon as reasonably practicable and in any event not later than [REDACTED] Business Days after the Lease Commencement Date effect the registrations relating to the Aircraft with the International Registry in accordance with Clause 9.5 (*Registrations and Protection*) and provide to Lessor 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; and
- (f) within [REDACTED] Business Days of the Lease Commencement Date, evidence of the filed UCC Form 1 financing statement with respect to this Agreement.

**FINANCIAL TERMS ANNEX (CONFIDENTIAL)**  
**(NOT FOR FILING WITH THE AVIATION AUTHORITY)**

Schedule 4

**BASE LEASE TERM RENT AND CERTAIN DEFINITIONS**

**Base Lease Term and Rent**

The Base Lease Term shall commence on the Lease Commencement Date and end on [●].<sup>7</sup>

1. **Fixed Rent**

For each Fixed Rent Period during the Base Lease Term, the amount of [●]<sup>8</sup> shall be payable on each Fixed Rent Date during the Base Lease Term (the “**Fixed Rent**”).

**PBH Rent**

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

[REDACTED]

where:

[REDACTED]

2. **Security Deposit**

“**Prior Security Deposit**” means US\$[●].<sup>9</sup>

3. Subject to Clause 6 (*Security Deposit*), from and after the Lease Commencement Date, the Security Deposit shall be equal to one (1) month’s Fixed Rent. The amount of the Security Deposit will be adjusted during each Renewal Lease Term pursuant to Clause 4.2.2(c) (*Renewal Rent and Documentation*).

**Damage Notification Threshold**

4. For the purposes of Clause 9.2(b) (*Information – General and Financial*) and Schedule 5 (*Insurance Requirements*):

“**Damage Notification Threshold**” means US\$[REDACTED].

**Insurance and Default Matters**

For the purposes of Clause 15 (*Insurance*) and Schedule 5 (*Insurance Requirements*):

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<sup>7</sup> **Note to Draft:** To be inserted as agreed in the LOI.

<sup>8</sup> **Note to Draft:** To be inserted as agreed in the LOI.

<sup>9</sup> **Note to Draft:** [REDACTED]

“**Agreed Value**” means in the case of the Aircraft, US\$[●]; [REDACTED].<sup>10</sup>

“**Minimum Liability Coverage**” means no less than US\$[REDACTED], each occurrence, each aircraft or such higher amount as Lessee may carry from time to time in respect of other aircraft in its fleet;

“**Maximum Deductible Amount**” means no more than US\$[REDACTED].

“**Default Rate**” means [REDACTED] percent ([REDACTED]%) per annum.

“**Discount Rate**” means [REDACTED] percent ([REDACTED]%) per annum.

#### AD Cost Sharing

5. Lessor will reimburse Lessee for the portion of the cost of incorporating each Airworthiness Directive on the Aircraft as determined in accordance with the following formula:

[REDACTED]

where:

[REDACTED]

#### Approved Appraisers

6. The appraisers for purposes of Clause 4.2.2(b) (*Renewal Rent and Documentation*) are: Cirium, AVITAS, Inc., The Aircraft Value Analysis Company (AVAC) Limited, MBA Aviation, IBA Group and Oriel.

7. **Aeromexico Historical Utilization for ERJ 190 (2019)**

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
8. E190	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

#### Prior Maintenance Reserves

Prior Maintenance Reserves as at the Lease Commencement Date equals [●] held in cash by Lessor.<sup>11</sup>

<sup>10</sup> Note to Draft: [REDACTED]

<sup>11</sup> Note to Draft: [REDACTED]



## **REDELIVERY MAINTENANCE PAYMENT**

### **A. Redelivery Maintenance Payment**

The “**Redelivery Maintenance Payment**” shall be determined as follows:

- (i) calculate the total net sum (which may be a negative number) of the Structural Check Equivalency Charge, <sup>Part B</sup> Engine Equivalency Charge, Engine LLP Equivalency Charge, APU Equivalency Charge and Landing Gear Equivalency Charge;
- (ii) [REDACTED];
- (iii) if the sum of (i) and (ii) is a positive number, then Lessee shall owe Lessor such amount as the Maintenance Redelivery Payment. If such sum is a negative number, then Lessee shall not owe any Maintenance Redelivery Payment. For the avoidance of doubt, in no event will Lessor be required to pay any Maintenance Redelivery Payment to Lessee.

For the avoidance of doubt, the Redelivery Maintenance Payment may be offset by the Security Deposit pursuant to Clause 6.2 (*Lessor Payment*).

For the purposes of calculating the Redelivery Maintenance Payments, the condition of the Aircraft as of July 1, 2020 is set forth in Schedule 17 (*Petition Date Condition*).

**FOR REFERENCE ONLY**, three examples of the calculation of the Redelivery Maintenance Payment are provided, in each case [REDACTED].

Example 1:

[REDACTED]

Example 2:

[REDACTED]

Example 3:

[REDACTED]

In addition, for additional illustrative purposes, mathematical examples of the Redelivery Maintenance Payment are included in Schedule 18 (*Redelivery Maintenance Payment Calculations*).

### **B. Structural Check Equivalency Charge**

The Structural Check Equivalency Charge for each of the Structural Checks shall be calculated pursuant to the following formula:

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

where:

A is the Structural Check Equivalency Charge for such Structural Check.

**W** is the cost of such Structural Check based on Embraer's annual published maintenance economics costs for such Structural Check for an Embraer ERJ 190.

**B** is the total interval of calendar months (or Cycles or Flight Hours, if applicable) between such Structural Checks for that aircraft type based on Lessee's historic practices for Embraer ERJ 190 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 such Structural Check (or if there has not been any such Structural Check prior to the Redelivery Date, then since new).

**E** is, as applicable, the actual number of calendar months elapsed (or Cycles or Flight Hours, if applicable) as of [REDACTED] since the last such Structural Check (or if there has not been any such Structural Check prior to [REDACTED], then since [REDACTED]).

**C. Landing Gear Equivalency Charge**

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

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

where:

**A** is the Landing Gear Equivalency Charge.

**W** is the cost of accomplishing a Landing Gear Overhaul in respect of the Landing Gear based on Embraer's annual published maintenance economics costs for an Embraer ERJ 190 Landing Gear Overhaul.

**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 the Manufacturer's Maintenance Planning Document.

**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).

**E** is, as applicable, the actual number of calendar months elapsed (or Cycles or Flight Hours, if applicable) as of [REDACTED] since the last Landing Gear Overhaul (or if there has not been any Landing Gear Overhaul prior to of [REDACTED], then since [REDACTED]).

**D. Engine LLP Equivalency Charge**

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

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

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.

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

**E** is, as applicable, the actual number of Cycles as of [REDACTED].

**E. Engine Equivalency Charge**

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

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

where:

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

**W** is the cost of accomplishing an Engine Performance Restoration in respect of an Engine based on the Engine Manufacturer's annual published maintenance cost guide for a General Electric CF34 Engine Performance Restoration.

**B** is the total interval of Flight Hours between Engine Performance Restorations for that Engine based on the Engine Manufacturer's annual published maintenance interval for a General Electric CF34 Engine Performance Restoration.

**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 (or if there has not been any Engine Performance Restoration of that Engine prior to the Redelivery Date, then since new).

**E** is, as applicable, the actual number of Flight Hours as of [REDACTED] 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 [REDACTED], then since [REDACTED]).

**F. APU Equivalency Charge**

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

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

where:

**A** is the APU Equivalency Charge.

**W** is the cost of accomplishing an APU Medium Repair Shop Visit in respect of the APU based on Embraer's annual published maintenance economics costs for an Embraer ERJ 190 APU Medium Repair Shop Visit.

**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 Embraer ERJ 190 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).

**E** is, as applicable, the actual number of calendar months elapsed (or Cycles or Flight Hours, if applicable) as of [REDACTED] since the last APU Medium Repair Shop Visit (or if there has not been any APU Medium Repair Shop Visit prior to [REDACTED], then [REDACTED]).

[REDACTED]

## INSURANCE REQUIREMENTS

### Types of Insurance

The Insurances required ~~Schedule 5~~ contained are as follows:

1. (a) Hull All Risks of loss or damage while flying and on the ground with respect to the Aircraft on an agreed value basis for the Agreed Value and with a deductible not exceeding the Maximum Deductible Amount each claim, or such other amount agreed by Lessee and Lessor from time to time, it being agreed that any deductible in excess of the Maximum Deductible Amount may be covered by a deductible buy-down;
- (b) Hull War and Allied Perils, being such risks excluded from the Hull All Risks Policy to the fullest extent available from the leading international insurance markets, including confiscation and requisition by the State of Registration, for the Agreed Value;
- (c) 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 cost and including engine test and running risks;
- (d) Aircraft Third Party, Property Damage, Passenger, Baggage, Cargo and Mail and Airline General Third Party (including Products) Legal Liability for a combined single limit (bodily injury/property damage) of an amount not less than the Minimum Liability Coverage for the time being for any one occurrence each aircraft (but in respect of products and personal injury liability, this limit shall be an aggregate limit for any and all losses occurring during the currency of the policy). War and Allied Risks are also to be covered under the policy to the fullest extent available from the leading international insurance markets (which coverage shall include but not be limited to an extended war risk coverage endorsement equivalent to the terms of AVN52E but for a combined single limit of an amount not less than the Minimum Liability Coverage).

### 2. Terms of Hull Insurance

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

- (a) **Additional Assureds:** name each Indemnatee, and each of their respective successors and assigns, for their respective rights and interests;
- (b) **Settlement of Losses:** name Lessor (or, if Lessor so notifies Lessee, the Financing Parties Representative) as (sole) Loss Payee for the Agreed Value in respect of any Total Loss of the Aircraft or Airframe for an amount equal to the Agreed Value, and provided that any such Total Loss will be settled with Lessor (or, if applicable, the Financing Parties Representative) and will be payable in Dollars directly to Lessor (or, if applicable, the Financing Parties Representative) as sole Loss Payee (or, if applicable, the Financing Parties Representative) may direct and further provided that where proceeds do not relate to a Total Loss of the Aircraft or the Airframe such proceeds will be applied in accordance with Clause 6(b) of this Schedule 5 and where the loss does not exceed the Damage Notification Threshold and Lessor has not notified the insurers to the contrary due to the continuance of an Event of Default, the loss will be settled with and paid to Lessee;

- (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 market language); and
- (d) **No option to Replace:** confirm that the insurers are not entitled to replace the Aircraft in the event of an insured Total Loss.

### Terms of Liability Insurance

All required liability insurances will:

- 3. (a) **Additional Insureds:** name the Indemnitees and the Financing Parties Representative (if any) for their respective rights and interests;
- (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;
- (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 any Indemnatee or Lessee may have the benefit so as to reduce the amount payable to the additional insureds under such policies.

### Terms of All Insurances

- 4. All Insurances will to the extent not inconsistent with AVN67B (or any subsequent endorsement generally accepted by lessors and lenders in respect of insuring leased and financed aircraft operated by commercial air carriers):
  - (a) **Industry Practice:** be in accordance with best industry practice in the leading aviation insurance markets;
  - (b) **Dollars:** provide cover denominated in dollars and any other currencies which Lessor may reasonably require in relation to liability insurance;
  - (c) **Worldwide:** operate on a worldwide basis subject to such limitations and exclusions as are customary in insurance coverages carried by major Central American air carriers operating aircraft of the same type as the Aircraft;
  - (d) **Acknowledgement:** acknowledge the insurer is aware of this Agreement and that the Aircraft is owned by Owner and to the extent applicable mortgaged to the Financing Parties Representative (if any);
  - (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 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 Lessee, or any other Person other than the respective additional insureds seeking protection of any warranty, declaration or condition, contained in such Insurances;
  - (f) **Subrogation:** provide that the insurers will hold harmless and waive any rights of recourse against the additional assureds or to be subrogated to any rights of Lessor, Owner, the Financing Parties Representative (if any), or Lessee;

- (g) **Premiums:** provide that the additional insureds will have no obligation or responsibility for the payment of any premiums due (but reserve the right to pay the same should any of them elect so to do) 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 days after written notice by registered mail or fax of any cancellation, change, event of non-payment of premium or installment thereof has been sent by insurer(s) to Lessor, the Financing Parties Representative (if any), or where an insurance broker is appointed to the insurance broker who shall promptly send on such notice to Lessor and the Financing Parties Representative (if any), except in the case of war risks for which seven 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 great powers or nuclear peril for which termination is automatic;
- (i) **Reinsurance:** reinsurance, as applicable, shall be placed with reinsurers and through brokers, in each case satisfying the requirements of Clause 15.1(b)(ii) (*Insurances*) and such reinsurance will:
  - (i) be on the same terms as the original insurances and will include the provisions of this Schedule 5;
  - (ii) provide that notwithstanding any bankruptcy, insolvency, liquidation, dissolution or similar proceedings of or affecting the reinsured that 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
  - (iii) contain a "cut-through" clause in the following form (or otherwise reasonably satisfactory to Lessor):

**"The Reinsurers hereby agree (at the request and with the agreement of the Reinsured) that in the event of any valid claim arising hereunder the Reinsurers shall in lieu of payment to the Reinsured, its successors in interest and assigns pay to the person named as loss payee in accordance with Loss Payable Clause under the original insurances effected by the Insured 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 shall fully discharge and release the Reinsurers from any and all further liability with such claim.**

**The Reinsurers reserve the right to set off against any claim payable hereunder in accordance with this clause any outstanding premiums due on the reinsurance in respect of the Aircraft.**

**Payment shall be made under this reinsurance notwithstanding any bankruptcy, insolvency, liquidation or dissolution of the Reinsured, and/or**

**that the original Insurer has made no payment under the original insurance policies.**

**Subject any payment due under this clause shall not contravene any law or decree of the Government of Mexico or any other applicable jurisdiction;”**

- (j) **Initiating Claims:** contain a provision entitling Lessor, Owner or any insured party to initiate a claim under any policy in the event of the refusal or failure of Lessee to do so; and
- (k) **Indemnities:** accept and insure the indemnity provisions of this Agreement.

### **Deductibles**

Lessee shall be responsible for any and all deductibles under the Insurances.

### **Application of Insurance Proceeds**

- 5. The Insurances will be endorsed to provide for payment of proceeds as follows:
- 6.
  - (a) **Total Loss:** all insurance payments received as the result of a Total Loss occurring during the Term will be paid to or as directed by Lessor and Lessor will pay the balance of those amounts to Lessee after deduction of the Agreed Value and all other amounts which may be or become payable by Lessee to Lessor under this Agreement;
  - (b) **Other Loss/Damage:** all insurance proceeds of any property, damage or loss to the Aircraft, any Engine or any Part occurring during the Term not constituting a Total Loss will be applied in payment (or to reimburse Lessee) for repairs or replacement property upon Lessor being satisfied (acting reasonably) that the repairs or replacement have been effected in accordance with this Agreement;
  - (c) **Liability Proceeds:** all insurance proceeds in respect of third party liability will be paid directly in satisfaction of the relevant liability or to Lessee in reimbursement of any payment so made; and
  - (d) **Default:** notwithstanding the foregoing Clauses 6(a) and (b) of this Schedule 5, if at the time of the payment of any such insurance proceeds under the insurances required under Clause 1(a), (b) or (c) of this Schedule 5 an Event of Default has occurred and is continuing, all such proceeds will be paid to or retained by Lessor to be applied toward payment of any amounts which may be or become payable by Lessee pursuant to this Agreement in such order as Lessor may elect with any remainder after payment of all amounts payable hereunder or thereunder to be paid to Lessee.
- 7. To the extent that insurance proceeds are paid to Lessee, Lessee agrees to comply with the foregoing provisions and apply or pay over such proceeds as so required.

### **Contracts**

As of the Lease Commencement Date, the following Financing Documents shall be listed as contracts on the insurance and reinsurance certificates:



[●]<sup>12</sup>

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<sup>12</sup> **Note to Draft:** List/description of Financing Documents to be confirmed.

**DESCRIPTION OF AIRCRAFT**

13

<b>Aircraft Type</b>	<b>Schedule 6</b>	<b>ERJ 190-100 LR</b>
<b>MTOW</b>		<b>[•] [lbs/kg]</b>
<b>MLW</b>		<b>[•] [lbs/kg]</b>
<b>MZFW</b>		<b>[•] [lbs/kg]</b>
<b>Engines (2)</b>		<b>CF34-10E6</b>
<b>Configuration</b>		<b>[•]</b>
<b>[Winglets</b>		<b>[Yes/No]]</b>
<b>ETOPS</b>		<b>[•] min</b>
<b>Alternate C.G.</b>		<b>[Yes/No]</b>
<b>Landing Category</b>		<b>[CAT IIIB]</b>

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<sup>13</sup> **Note to Draft:** Update as applicable.

### **AIRCRAFT DOCUMENTS AT REDELIVERY**

The following documentation and information is part of the Aircraft, and is the property of Lessor. All documentation shall have the necessary stamps, endorsements, certifications and signatures where appropriate. All documentation requiring a quality control certification shall be signed by Lessee's quality control representative.

Lessee may maintain all Aircraft Documents (or any subset thereof) in electronic format; provided that Lessee shall send to Lessor all documentation requiring necessary stamps, endorsements, certifications and signatures in hard copy format. For the avoidance of doubt, any electronic format that has been approved by the Aviation Authority will be acceptable instead of hard copies.

All records listed in this Part shall be provided notwithstanding any policies of the Aviation Authority that may allow the disposal of such records.

#### **Certificates**

1.
  - (a) Certificate of Airworthiness;
  - (b) Certificate of Registration;
  - (c) Aircraft De-Registration Confirmation (if applicable);
  - (d) Export Certificate of Airworthiness issued by the last country of registry (if applicable);
  - (e) Noise Limitation Certificate (AFM page) (if applicable);
  - (f) Radio License Certificate;
  - (g) Type Certificate Data Sheet (TCDS);
  - (h) Material Flammability Certification;
  - (i) Latest Maintenance Release Certificate;
  - (j) Burn Certificates (Cabin Interiors)
- 2.

#### **Manuals (but only to the extent that the below was supplied by the Manufacturer on or prior to the Original Delivery Date)**

- (a) Aircraft Flight Manual;
- (b) Weight and Balance Control and Cargo Loading Manual and Supplements;
- (c) Operations Manual (Manufacturer's generic);
- (d) Quick Reference Handbook (Manufacturer's generic);
- (e) Structural Repair Manual;
- (f) Aircraft Maintenance Manual;

- (g) Component Overhaul Manuals, (MM, IPC, SRM) for the following cabin BFE, if such BFE is not factory installed and included in the Aircraft Documents:
  - (i) Galleys;
  - (ii) Coffee Makers, Ovens, Hot Jugs and other galley equipment;
  - (iii) Lavatories;
  - (iv) Toilet Assemblies;
  - (v) Closets;
  - (vi) Class Dividers;
  - (vii) Passenger Seats;
- (h) Aircraft Illustrated Parts Catalog (I.P.C.) (operator customized);
- (i) Operator part number to manufacturer part number cross reference, if operator maintains its own part numbering system;
- (j) Aircraft Wiring Diagrams/Wiring Diagram Manual & Wiring Practices Manual;
- (k) Electrical Standard Practice Manual;
- (l) Troubleshooting Manual;
- (m) Engine shop manual;
- (n) APU shop manual;
- (o) Fault Isolation Manual;
- (p) Schematics Manual;
- (q) Summary of Lessee's Maintenance Program;
- (r) List of Certification Maintenance Requirements;
- (s) Master Minimum Equipment List;
- (t) Configuration Deviation List;
- (u) Fault Reporting Manual (if applicable);
- (v) Maintenance Planning Document;
- (w) Aircraft Fueling Manual;
- (x) Maintenance Task Cards
- (y) Power Plant Build-up Manual.

**Airworthiness Directives Documentation**

3. (a) The Aircraft shall have all records associated with AD compliance:
- (i) A complete and current applicable AD status list of the Airframe and each appliance, Engine and APU Airworthiness Directive applicable to the Aircraft. This list shall include, but not be limited to:
- (A) AD number and revision number;
- (B) AD title;
- (C) Aircraft serial number, Engine serial number, APU serial number, as applicable;
- (D) Engineering documentation reference;
- (E) Manufacturer's Service Bulletin reference and cross-references where appropriate;
- (F) Specify terminated or repetitive status;
- (G) Date of initial accomplishment;
- (H) Date of last maintenance accomplishment, if repetitive;
- (I) The means by which compliance was accomplished (either by means of repetitive inspections, modifications or terminating action); and
- (J) Details of any alternate means of compliance, including references, intervals, and applicability;
- (b) The list shall be typed, [REDACTED];
- (c) Legible copies of the [REDACTED]. [REDACTED]. [REDACTED], signature of a certified mechanic and/or inspector, and/or the mechanics/inspector's certificate number or repair station number of the mechanic accomplishing the work. [REDACTED] and the operator's internal maintenance form used to document [REDACTED];
4. (d) [REDACTED]; and
- (e) [REDACTED].

**Engineering Documentation**

- (a) A current list of Engine and APU Service Bulletins, Engineering Orders, major repairs and Supplemental Type Certificates accomplished on each Engine and the APU. A current list of Airframe Engineering Orders, major repairs and Supplemental Type Certificates accomplished on the Airframe. For appliances, a current list of AD related Service Bulletins, major repairs, Supplemental Type Certificates and Engineering Orders are required;
- (b) Legible copies of the [REDACTED], to include the following:
- (i) SB number and revision number;

- (ii) SB title;
- (iii) Aircraft serial number, Engine serial number, APU serial number, appliance serial number as applicable;
- (iv) Engineering documentation reference;
- (v) Manufacturer's Service Bulletin reference and cross-references where appropriate;
- (vi) Specify terminated or repetitive status;
- (vii) Date of accomplishment of each portion of such engineering document;
- (viii) Date of last maintenance accomplishment, if repetitive;
- (ix) Statement of the means by which compliance was accomplished (e.g., modified, repaired, inspected);
- (c) [REDACTED];
- (d) [REDACTED];
- (e) [REDACTED];
- (f) [REDACTED]; and
- (g) [REDACTED]

5. **Aircraft Maintenance Status Summaries**

- (a) Certified current Time in Service (Flight Hours & Cycles);
- (b) Certified maintenance status of the Aircraft, including Aircraft serial number, hours, cycles and days since Heavy Maintenance Checks and applicable time remaining to Heavy Maintenance Checks;
- (c) Certified status of structural tasks, including SSI (including last accomplished and next due);
- (d) Certified status of CPCP (including last accomplished and next due), where the CPCP is not part of the Manufacturer's SSI program;
- (e) Certified current status for all Life Limited Parts and hard time components for the Airframe, Landing Gears, Engines and APU, including back-to-birth history for all Landing Gear and Engine Life Limited Parts and, to the extent any Engine Life Limited Parts ("Engine LLPs") have been used in higher rated engines, a summary of the Flight Hours and Cycles consumed on each such Engine LLP by use on such higher rated engines(s);
- (f) Certified listing of Aircraft, Landing Gear, Engine and APU hard time components & LLPs status by P/N – S/N – Description Position – TSO - TSN, CSO – CSN, Total time, Total Cycles, next Due Time;
- (g) Certified status of all non-SB and Major Modifications/STC's including acceptable State of Manufacture Certification and/or equivalent FAA or EASA approval;

- (h) List of out of Phase Checks, Service Bulletins requiring continuous surveillance and Special Requirements (if any);
- (i) Declaration of Aircraft Accident/Incident Report, if applicable; and
- (j) Daily Utilization Report with hours and cycles flown by the Aircraft since beginning of operation (could be in excel format).

**Aircraft Maintenance Records**

- 6. (a) Aircraft & Pilot maintenance log from the past [REDACTED] months (or longer if Lessee is required by the Aviation Authority to retain such records for a period of more than [REDACTED] months);
- (b) Cabin maintenance log (if maintained separately from the Aircraft maintenance log) from the past [REDACTED] months (or longer if Lessee is required by the Aviation Authority to retain such records for a period of more than [REDACTED] months);
- (c) B Checks- Complete work card packages, tally sheets, material data sheets and maintenance releases for the last complete cycle of B Checks (or equivalent);
- (d) Complete work card packages, tally sheets, material data sheets and maintenance releases for all Structural Checks;
- (e) Documentation and records concerning the last Aircraft major structural inspection including CPCP Tasks and Structural Sampling Inspection;
- (f) Last Weight & Balance Report including Schedule;
- (g) Compass Swing Report (if applicable);
- (h) Last Test Flight Report (if applicable);
- (i) [REDACTED];
- (j) [REDACTED];
- 7. (k) Weighing reports; and

**Configuration Status**

- (a) FAA or EASA approved and certified LOPA;
- (b) [REDACTED];
- (c) Emergency, Safety and Loose Equipment Layout/Listing showing description, quantity, manufacturer, part number and location;
- (d) Inventory Listing of Avionics installed units;
- (e) List of applicable STC's;
- (f) Aircraft Inspection Record;
- (g) Buyer Furnished Equipment List (if applicable and including, but not limited to seats, galley, lavatories, entertainment, cargo handling, emergency equipment.); and

- (h) Electrical Load Analysis documents and data but only if supplied by the Manufacturer on or prior to the Original Delivery Date.

**Engine Records**

- (a) Engine Data Submittal;
- (b) Current Disk Sheet (LLP Sheet) [REDACTED];
- 8. (c) Complete historical engine/ module shop visit reports and Engine Module Performance Restoration reports, for all Engine Module Performance Restorations;
- (d) [REDACTED];
- (e) On Wing Repair records;
- (f) Engine Log Book / Master Records of Installation/Removals;
- (g) Last Borescope Report, including video if available;
- (h) Test Cell Run Report (if applicable);
- (i) Certified Statement that Engines are not involved in an accident/incident;
- (j) Certified "On-Watch" statement;
- (k) List of "On-Watch Items" items requiring repetitive inspections;
- (l) [REDACTED];
- (m) Engine Trend Monitoring data for the last 12 months of operation (if applicable);
- (n) Last engine run and power assurance report;
- (o) [REDACTED];
- (p) Each LLP will have [REDACTED]. Notwithstanding, any LLPs replaced during the term of the lease will have the most recent FAA Form 8130-3 tag or EASA Form One, as applicable, used to install such LLP into the applicable Engine or module;
- (q) [REDACTED]:
  - (i) [REDACTED];
  - 9. (ii) [REDACTED];
  - (iii) [REDACTED]; and
- (r) [REDACTED];

**APU**

- (a) Certified Statement on Status of APU;
- (b) [REDACTED];
- (c) Approved Release to Service Certification for installed units;



- (d) APU Log Book/ Master Record of Installation/ Removals;
- (e) APU shop visit reports & reason for removal, for all APU shop visits;
- (f) [REDACTED];
- (g) Statement of APU hours to Aircraft Flying hours (if applicable);
- (h) APU Borescope Report;
- (i) Last Test Run Report;
- (j) [REDACTED];
- (k) [REDACTED];
- (l) [REDACTED];
- (m) [REDACTED]; and
- (n) [REDACTED].

**Components**

- 10.
  - (a) FAA Form 8130-3 or EASA Form One for Hard Time Components;
  - (b) FAA Form 8130-3 or EASA Form One for on-condition and condition monitored components;
  - (c) Certified Quick Engine Change (QEC) rotatable parts list and FAA Form 8130-3 or EASA Form One for each QEC rotatable part;
- 11.

**Landing Gear**

- (a) [REDACTED];
  - (b) [REDACTED];
  - (c) Last shop visit report;
- 12.
  - (d) LLP status report; and
  - (e) Landing Gear Log Cards.

**Damage and Repairs**

- (a) [REDACTED];
- (b) All repairs will be in accordance with the Manufacturer's Maintenance Manual and Manufacturer's Structural Repair Manual, or will have Manufacturer's or FAA or EASA approved data.
- (c) [REDACTED]:
  - (i) [REDACTED]; and
  - (ii) [REDACTED].

- (d) Copies of applicable Engineering Orders (EOs);
- (e) Copies of applicable Supplemental Type Certificates (STCs);
- (f) Copies of applicable Alternative Means of Compliance (AMOC).

**Software**

- 13.
- (a) A certified listing of onboard loadable software and databases to include the following:
    - (i) ATA chapter;
    - (ii) nomenclature;
    - (iii) part number;
    - (iv) revision date;
    - (v) expiration date; and
  - (b) Procedures for obtaining downloadable software from the internet, if applicable.

## **REDELIVERY CONDITIONS**

On the Redelivery Date, Lessee shall redeliver the Aircraft to Lessor at the Redelivery Location in compliance with the conditions specified below (other than post redelivery obligations specified in Clause A below), and when Lessee <sup>Schedule 8</sup> has complied with such conditions Lessor shall execute and deliver to Lessee the Redelivery Acceptance Certificate confirming redelivery 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 8 and Schedule 7. Immediately after the Redelivery Date and subject to [REDACTED], Lessee shall [REDACTED].

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 Redelivery process to achieve Redelivery by the Expiry Date.

With respect to any discrepancies between the condition of the Aircraft and Aircraft Documents and the Redelivery Conditions described herein [REDACTED], Lessee and Lessor agree, subject to the provisions outlined in [REDACTED], 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 Program & Airworthiness Directives**

The Aircraft shall be registered with the AFAC of Mexico (the “**Aviation Authority**”) in the name of Lessor. Lessee shall use reasonable efforts to assist Lessor in de-registering the Aircraft and obtaining a Certificate of De-registration for the Aircraft; however, the obligation to obtain de-registration shall remain with Lessor. Upon redelivery, the Aircraft shall be [REDACTED]. Lessee will provide an Export Certificate of Airworthiness following redelivery of the Aircraft to Lessor hereunder.

The Aircraft shall be in compliance with Lessee’s Maintenance Program, which shall be based on the latest Manufacturer’s Maintenance Planning Document as of the date that is six (6) months prior to induction into the Redelivery Check and approved by the Aviation Authority.

Lessee will comply with any ADs that require compliance within [REDACTED] days following the last day of the Term, with the cost of performing such AD requiring compliance after the last day of the Term to be for the account of Lessor and paid to Lessee upon execution of the Redelivery Acceptance Certificate. [REDACTED].

### **B. General Condition**

The Aircraft shall (a) be in good operating condition and consistent with Lessee’s in-service operational standards, normal wear and tear excepted, (b) be deep cleaned by international commercial airline standards, (c) be in a passenger configuration, (d) with equipment, components and systems fully functional and operating within limits under the Maintenance Program and the Aircraft Maintenance Manual, (e) have all [REDACTED], (f) equipped with two Engines (which may be Replacement Engines) duly installed thereon, (g) [REDACTED], (h) [REDACTED], (i) [REDACTED], (j) [REDACTED]. The Aircraft shall be in compliance with Lessee’s corrosion prevention and control program.

**C. Cabin Interior and Cockpit**

All [REDACTED] shall be clean, secure, in good and operational condition (normal wear and tear excepted).

[REDACTED] shall be [REDACTED] in accordance with the Maintenance Program.

[REDACTED] shall be in good condition (normal wear and tear excepted) and clean, as well as complying with [REDACTED].

[REDACTED] shall be fully serviceable and in good condition.

[REDACTED] shall have [REDACTED].

[REDACTED] shall be operational.

**D. [REDACTED]**

The Aircraft shall be satisfactory to Lessor per a [REDACTED] inspection, which shall be performed by Lessee in accordance with the AMM (Aircraft Maintenance Manual) after the Aircraft is removed from service. A written report shall be made available together with the Aircraft. Any discrepancy found shall have been corrected prior to the return.

**E. [REDACTED]**

The Aircraft shall be satisfactory to Lessor per a [REDACTED] inspection, which shall be performed in accordance with the AMM (Aircraft Maintenance Manual) after the Aircraft is removed from service. A written report shall be made available together with the Aircraft. Any discrepancy found shall have been corrected prior to the return.

**F. Redelivery Check**

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

**G. Landing Gear Minimum**

Each of the nose and main Landing Gear shall have no fewer than [REDACTED] months remaining (the "**Landing Gear Hard Time Minimum**") until the next scheduled Landing Gear Overhaul as measured by Flight Hour, Cycle or calendar day, whichever is applicable and most limiting. Each tire shall have at least [REDACTED] percent ([REDACTED]%) tread remaining. The Landing Gear brakes will each have an average of at least [REDACTED] percent ([REDACTED]%) life remaining before their removal with no individual brake having less than [REDACTED] percent ([REDACTED]%) service life remaining.

**H. 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.

**I. Engine Performance Restoration Hard Time Minimum**

Each Engine shall have no fewer than [REDACTED] performance restoration visit of such Engine under the Maintenance Program and based on Engine Manufacturer recommendations (any such visit, an “**Engine Performance Restoration Visit**”), as measured by Lessee’s expected time on wing to such next sequential Engine Performance Restoration Visits for engines in Lessee’s fleet of the same make and model as the Engines. [REDACTED].

**J. 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 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.

**K. Auxiliary Power Unit Minimum**

The APU (including each LLP within the APU) shall have no fewer than [REDACTED] APU Hours remaining until the next APU Medium Repair Shop Visit under the Maintenance Program, based on the APU Manufacturer’s recommendations and as measured by Lessee’s expected time installed on aircraft to such next sequential APU Medium Repair Shop Visit in Lessee’s fleet of the same make and model.

**L. Maintenance Carry-Overs**

If the Aircraft is scheduled to be [REDACTED]. Lessee and Lessor shall agree, acting reasonably, [REDACTED]. Any [REDACTED] which cannot be deferred until the next Structural Check will be corrected or performed by Lessee at its expense prior to the Redelivery Date.

If the Aircraft is scheduled to be [REDACTED].

**M. 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 Redelivery 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.

**N. Records**

No less than [REDACTED] months prior to the targeted Redelivery Check induction date, Lessee will provide for the review of Lessor all up-to-date Aircraft Documents and, provided that all such Aircraft Documents are made available to Lessor at the commencement of the [REDACTED] month period, Lessor will provide to Lessee its response and findings on such Aircraft Documents at least [REDACTED] days prior to the targeted Redelivery Check date. All Aircraft Documents shall [REDACTED], except to the extent any Aircraft Documents require updating following compliance with these Redelivery Conditions, in which case such Aircraft Documents will be delivered within [REDACTED] days after the Redelivery Date.

**O. Borescope Inspections; Power Assurance Runs**

A hot and cold section video borescope inspection of each Engine and its modules in accordance with the Manufacturer’s AMM and a power assurance run for each Engine in accordance with the AMM

shall be performed at or before the Redelivery Date 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, at its sole cost and expense, any discrepancies in accordance with the guidelines set out by the Engine 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 if such event occurred within the [REDACTED]. [REDACTED]. If the parties [REDACTED], Lessor and Lessee will [REDACTED].

**P. 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 Redelivery Conditions, Lessee will correct them or pay compensation to Lessor in accordance with the third paragraph of this Schedule 8.

**Q. Liens**

The Aircraft shall be free and clear of Security Interests (other than any Lessor's Liens).

**R. 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 the Redelivery Date shall be the property of Lessor without charge.

**S. 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.

**FORM OF LEASE COMMENCEMENT DATE CONFIRMATION**

**LEASE COMMENCEMENT DATE CONFIRMATION**

Brasilmex Leasing, LLC (“**Lessor**”) and Aerolitoral, S.A. de C.V., (“**Lessee**”) hereby agree as follows:

This Lease Commencement Date Confirmation (the “**Confirmation**”) is entered into for purposes of the Amended and Restated Aircraft Lease Agreement dated [●] (the “**Lease**”) relating to the Embraer ERJ 190-100 LR aircraft bearing manufacturer’s serial number [●], registration mark [●] equipped with two General Electric CF34-10E6 engines bearing ESNs [●] and [●] (the “**Aircraft**”).

1.

Terms used in this Confirmation shall have the meanings given them in the Lease.

2.

Each of Lessee and Lessor confirms that the conditions precedent on its part contained in the Lease have been satisfied or waived and that the leasing of the Aircraft contemplated in the Lease has

3.

commenced and the Commencement Date is this \_\_\_\_ day of \_\_\_\_\_, 2021.

[SIGNATURE PAGE FOLLOWS]

**Brasilmex Leasing, LLC**  
as Lessor

By: \_\_\_\_\_  
Name:  
Title:

**Aerolitoral, S.A. de C.V.**  
as Lessee

By: \_\_\_\_\_  
Name:  
Title:



## FORM OF RENEWAL NOTICE

[Lessee Letterhead]

To: Brasilmex Leasing, LLC (Schedule 10)  
1100 North Market Street  
Wilmington, DE 19890-1605

Cc: [●] (“**Lessee Guarantor**”)  
[Address]

\_\_\_\_\_, 20\_\_

Re: Renewal Notice in respect of One Embraer ERJ 190-100 LR Aircraft bearing manufacturer’s serial number [●] (the “**Aircraft**”)

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Aircraft Lease Agreement dated [●] (as further amended, modified or supplemented from time to time, the “**Lease**”) between Lessor and Aerolitoral, S.A. de C.V. (“**Lessee**”) in respect of the Aircraft. Capitalized terms not defined herein shall have the meanings provided in the Lease.

In accordance with Clause 4.2.1 (*Renewal Notice*) of the Lease, Lessee hereby exercises its right to extend the Term of the leasing of the Aircraft under the Lease for a Renewal Lease Term of [REDACTED] year[s] commencing on [●] and ending [●] which as of the date hereof shall be the Expiry Date.

This notice is a Renewal Notice. It is irrevocable and is an Operative Document.

**Aerolitoral, S.A. de C.V.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and Agreed:

**Brasilmex Leasing, LLC**

Lessor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FORM OF LETTER OF CREDIT**

[\_\_\_\_\_]

Letter of Credit No. \_\_\_\_\_ Schedule 11

Beneficiary: [●], and its successors and assigns

Attention: [●]

Applicant: [●]

Expiry: [●]

Place: \_\_\_\_\_

Payable: [●] at sight

Dear Sir or Madam:

WE HEREBY ESTABLISH IN YOUR FAVOR, AT THE REQUEST AND FOR THE ACCOUNT OF [●] (THE “**COMPANY**”), OUR IRREVOCABLE TRANSFERABLE STANDBY LETTER OF CREDIT IN THE AMOUNT OF [●] DOLLARS (THE “**STATED AMOUNT**”) AVAILABLE ON PRESENTATION OF A SIGHT DRAFT DRAWN ON US AT SIGHT IN THE FORM OF THE EXHIBIT A HERETO SIGNED BY THE BENEFICIARY.

DRAWINGS MAY ALSO BE PRESENTED TO US BY FACSIMILE TRANSMISSION TO FACSIMILE NUMBER [●] (EACH SUCH DRAWING, A “FAX DRAWING”); PROVIDED, HOWEVER, THAT A FAX DRAWING WILL NOT BE EFFECTIVELY PRESENTED UNTIL YOU CONFIRM BY TELEPHONE OUR RECEIPT OF SUCH FAX DRAWING BY CALLING US AT TELEPHONE NUMBER [●]. IF YOU PRESENT A FAX DRAWING UNDER THIS LETTER OF CREDIT YOU DO NOT NEED TO PRESENT THE ORIGINAL OF ANY DRAWING DOCUMENTS, AND IF WE RECEIVE ANY SUCH ORIGINAL DRAWING DOCUMENTS THEY WILL NOT BE EXAMINED BY US. IN THE EVENT OF A FULL OR FINAL DRAWING THE ORIGINAL STANDBY LETTER OF CREDIT MUST BE RETURNED TO US BY OVERNIGHT COURIER.

MULTIPLE AND PARTIAL DRAWING(S) ARE PERMITTED UNDER THIS LETTER OF CREDIT; PROVIDED, HOWEVER, THAT THE TOTAL AMOUNT OF ANY PAYMENT(S) MADE UNDER THIS LETTER OF CREDIT WILL NOT EXCEED THE TOTAL AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT.

WE HEREBY AGREE WITH YOU THAT DRAFT(S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS CREDIT SHALL BE DULY HONORED IF PRESENTED TOGETHER WITH DOCUMENT(S) AS SPECIFIED ABOVE AT OUR OFFICE LOCATED AT [●] ON OR BEFORE THE ABOVE STATED EXPIRY DATE, OR ANY EXTENDED EXPIRY DATE IF APPLICABLE.

THIS LETTER OF CREDIT WILL BE AUTOMATICALLY REDUCED BY ANY PAYMENTS MADE, UNTIL THE STATED AMOUNT IS REDUCED TO ZERO.

THIS LETTER OF CREDIT IS SUBJECT TO AND GOVERNED BY [“UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS” (2007 REVISION) I.C.C. PUBLICATION NO.

600][INTERNATIONAL STANDBY PRACTICES 1998 (ISP98) IC.C. PUBLICATION NO. 590] AND, TO THE EXTENT NOT INCONSISTENT THEREWITH, THE LAWS OF THE STATE OF NEW YORK.

THIS LETTER OF CREDIT IS TRANSFERABLE ONE OR MORE TIMES, BUT IN EACH INSTANCE ONLY TO A SINGLE TRANSFEREE AND ONLY IN THE FULL AMOUNT AVAILABLE TO BE DRAWN UNDER THE LETTER OF CREDIT AT THE TIME OF SUCH TRANSFER. ANY SUCH TRANSFER MAY BE EFFECTED ONLY THROUGH [●] AND ONLY UPON PRESENTATION TO US AT OUR PRESENTATION OFFICE SPECIFIED HEREIN OF A DULY EXECUTED TRANSFER REQUEST IN THE FORM ATTACHED HERETO AS EXHIBIT B, WITH INSTRUCTIONS THEREIN IN BRACKETS COMPLIED WITH, TOGETHER WITH THE ORIGINAL OF THIS LETTER OF CREDIT AND ANY AMENDMENT THERETO. ALL CHARGES IN CONNECTION WITH ANY TRANSFER OF THIS LETTER OF CREDIT ARE FOR THE BENEFICIARY'S ACCOUNT.

WE ARE SUBJECT TO VARIOUS LAWS, REGULATIONS AND EXECUTIVE AND JUDICIAL ORDERS (INCLUDING ECONOMIC SANCTIONS, EMBARGOES, ANTI-BOYCOTT, ANTI-MONEY LAUNDERING, ANTI-TERRORISM, AND ANTI-DRUG TRAFFICKING LAWS AND REGULATIONS) OF THE U.S. AND OTHER COUNTRIES THAT ARE ENFORCEABLE UNDER APPLICABLE LAW. WE WILL NOT BE LIABLE FOR OUR FAILURE TO MAKE, OR OUR DELAY IN MAKING, PAYMENT UNDER THIS LETTER OF CREDIT OR FOR ANY OTHER ACTION WE TAKE OR DO NOT TAKE, OR ANY DISCLOSURE WE MAKE, UNDER OR IN CONNECTION WITH THIS LETTER OF CREDIT (INCLUDING, WITHOUT LIMITATION, ANY REFUSAL TO TRANSFER THIS LETTER OF CREDIT) THAT IS REQUIRED BY SUCH LAWS, REGULATIONS, OR ORDERS.

THIS IRREVOCABLE LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. THIS UNDERTAKING IS INDEPENDENT OF AND SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED, OR INCORPORATED BY REFERENCE TO ANY DOCUMENT, CONTRACT, OR AGREEMENT REFERENCED HEREIN.

ALL COMMUNICATIONS UNDER THIS LETTER OF CREDIT SHALL BE ADDRESSED TO:

Issuing Bank

Bank Name: [●]

Bank Address: [●]

Contact Name: [●]

Tel: [●]

Fax: [●]

Yours faithfully

[●]

By: \_\_\_\_\_

Name:

Title:

**Exhibit A to  
Letter of Credit No. \_\_\_\_\_**

**SIGHT DRAFT**

Irrevocable Letter of Credit No. [●] Date of Draft: [●] 20[●]

To the Order of [●]

Pat [●] Dollars

At SIGHT by wire transfer of such amount to the account of [\_\_\_\_\_] at [Bank, Address]

(ABA number: [\_\_\_\_\_] ; account number: [\_\_\_\_\_])

**DRAWN UNDER [ISSUING BANK] LETTER OF CREDIT NO. [●]**

To: [ISSUING BANK]  
[Presentment Address]

**[Beneficiary]**

By: \_\_\_\_\_

Name:

Title:

*[Endorse on bank]*

**EXHIBIT B**

**TRANSFER REQUEST OF IRREVOCABLE STANDBY**

LETTER OF CREDIT NUMBER: \_\_\_\_\_

TO: *[Issuing Bank]*.

DATE: \_\_\_\_\_

*[Insert Issuing Bank Address]*

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY OF THE ABOVE DESCRIBED LETTER OF CREDIT (THE "TRANSFEROR") HEREBY IRREVOCABLY TRANSFERS ALL ITS RIGHTS UNDER THE LETTER OF CREDIT AS AMENDED TO THIS DATE (THE "CREDIT") TO THE FOLLOWING TRANSFEREE (THE "TRANSFEREE"):

\_\_\_\_\_  
NAME OF TRANSFEREE

\_\_\_\_\_  
ADDRESS

BY THIS TRANSFER, ALL RIGHTS OF TRANSFEROR IN THE LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE, AND THE TRANSFEREE SHALL BE THE SOLE BENEFICIARY OF THE LETTER OF CREDIT, POSSESSING ALL RIGHTS PERTAINING THERETO, INCLUDING, BUT NOT LIMITED TO, SOLE RIGHTS RELATING TO THE APPROVAL OF ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS OR OTHER AMENDMENTS, AND WHETHER NOW EXISTING OR HEREAFTER MADE. YOU ARE HEREBY IRREVOCABLY INSTRUCTED TO ADVISE FUTURE AMENDMENT(S) OF THE LETTER OF CREDIT TO THE TRANSFEREE WITHOUT THE TRANSFEROR'S CONSENT OR NOTICE TO THE TRANSFEROR.

ENCLOSED ARE THE ORIGINAL LETTER OF CREDIT AND THE ORIGINAL(S) OF ALL AMENDMENTS TO DATE. ALSO ENCLOSED IS OUR OFFICIAL OR CERTIFIED CHECK IN THE AMOUNT OF \$ \_\_\_\_\_ IN PAYMENT OF YOUR TRANSFER COMMISSION OF [ $\bullet$ ] % OF THE TRANSFER AMOUNT, MINIMUM \$[ $\bullet$ ] MAXIMUM \$[ $\bullet$ ] OR WE AUTHORIZE YOU TO DEBIT OUR ACCOUNT NUMBER \_\_\_\_\_ WITH YOU FOR THE AMOUNT OF YOUR TRANSFER COMMISSION OF [ $\bullet$ ] % OF THE TRANSFER AMOUNT, MINIMUM \$[ $\bullet$ ] MAXIMUM \$[ $\bullet$ ].

THE TRANSFEROR WARRANTS TO YOU THAT THIS TRANSFER AND THE TRANSACTION(S) HEREUNDER WILL NOT CONTRAVENE ANY FEDERAL LAWS OR REGULATIONS OF THE UNITED STATES NOR THE LAWS OR REGULATIONS OF ANY STATE THEREOF. PLEASE NOTIFY THE TRANSFEREE OF THIS TRANSFER AND OF THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT AS TRANSFERRED. THIS TRANSFER WILL BECOME EFFECTIVE

UPON [*LC Issuing Bank*]'S WRITTEN NOTIFICATION TO THE TRANSFEREE THAT SUCH TRANSFER WAS EFFECTED.

\_\_\_\_\_  
(TRANSFEROR'S NAME)

BY:\_\_\_\_\_

PRINTED NAME:\_\_\_\_\_

TITLE:\_\_\_\_\_

PHONE NUMBER:\_\_\_\_\_

THE BANK SIGNING BELOW GUARANTEES THAT THE TRANSFEROR'S SIGNATURE IS GENUINE AND THAT THE INDIVIDUAL SIGNING THIS TRANSFER REQUEST HAS THE AUTHORITY TO DO SO:

\_\_\_\_\_  
(BANK'S NAME)

BY:\_\_\_\_\_

PRINTED NAME:\_\_\_\_\_

TITLE:\_\_\_\_\_

[A CORPORATE NOTARY ACKNOWLEDGMENT OR A CERTIFICATE OF AUTHORITY WITH CORPORATE SEAL IS ACCEPTABLE IN LIEU OF A BANK GUARANTEE]

**[RESERVED]**

**Schedule 12**

## FORM OF LESSEE GUARANTEE

**THIS GUARANTEE** is made as of [●], 2021

**BETWEEN:** Schedule 13

**AEROVÍAS DE MÉXICO, S.A. DE C.V.**, a company organized and existing under the Laws of the United Mexican States and having its principal office at Paseo de la Reforma, No. 243, Piso 25, Colonia Cuauhtémoc, Alcaldía Cuauhtémoc, Mexico City, 06500, Mexico (“**Guarantor**”); and

**BRASILMEX LEASING, LLC**, a limited liability company organized under the laws of the State of Delaware, whose main office is at 1100 North Market Street, Wilmington, DE 19890-1605 (“**Lessor**”).

It is agreed as follows:

### 1. INTERPRETATION

#### 1.1 Definitions

In this Guarantee, unless the context otherwise requires, (a) capitalized words and expressions shall have the respective meanings given to them in the Lease, and (b) the following words and expressions have the respective meanings set forth below:

“**Guaranteed Amounts**” means any and all amounts whatsoever which any of the Lease Documents provide are to be paid by Lessee to Lessor at any time, including, for the avoidance of doubt, amounts payable by Lessee to Lessor on behalf of other Indemnitees, and references to the Guaranteed Amounts include references to any part of them;

“**Guaranteed Obligations**” means the covenants, agreements and obligations, howsoever defined, of Lessee under or in connection with the Lease Documents, including, the obligation to pay the Guaranteed Amounts;

“**Lease**” means the Amended and Restated Aircraft Lease Agreement dated [●] (as amended, assigned and supplemented from time to time) pursuant to which Lessor has leased the Aircraft to Lessee;

“**Lease Documents**” means the Operative Documents (other than this Guarantee) as defined in the Lease and any other agreement which Lessee and Lessor agree in writing to be an Operative Document; and

“**Lessee**” means Aerolitoral, S.A. de C.V., a company organized and existing under the Laws of the United Mexican States and having its principal office at Paseo de la Reforma, No. 243, Piso 25, Colonia Cuauhtémoc, Alcaldía Cuauhtémoc, Mexico City, 06500, Mexico.

#### 1.2 Construction

The conventions on construction and usage set out in the Lease shall apply to this Guarantee.

### 2. GUARANTEE

#### 2.1 Guarantee

In consideration of Lessor acting under or in connection with the Lease Documents and agreeing



to lease the Aircraft to Lessee thereunder and for other good and valuable consideration (the receipt and sufficiency whereof Guarantor hereby acknowledges), Guarantor hereby unconditionally and irrevocably:

- (a) guarantees to Lessor the accuracy of each of the representations and warranties of Lessee set forth in the Lease Documents and prompt performance by Lessee of all the Guaranteed Obligations including the payment by Lessee on the due date of the Guaranteed Amounts in accordance with the Lease Documents; and
- (b) (as principal debtor and not merely as surety) undertakes to Lessor that, if and each time that Lessee does not make payment of any amount of the Guaranteed Amounts or does not perform any of the other Guaranteed Obligations (as guaranteed under Clause 2.1(a)) in each case in accordance with the Lease Documents, Guarantor shall promptly pay to Lessor the amount not so paid or, as the case may be, perform or procure the performance of the Guaranteed Obligation which is not so performed, in each case upon first demand by Lessor.

This Guarantee is an absolute, unconditional, continuing guarantee of payment and performance and not of collectibility, as more fully described herein.

## **2.2 Acceptance**

Guarantor acknowledges having received a copy of the Lease Documents and confirms its awareness and acceptance of the provisions thereof.

## **3. INDEMNITY**

Guarantor irrevocably and unconditionally undertakes to Lessor as a separate, additional, continuing and primary obligation to indemnify Lessor, upon first written demand (to be payable by a reasonable and specified payment date in such written demand), for all payment of the Guaranteed Amounts and all losses, claims, costs, charges and expenses arising from the failure of Lessee to make payment of any Guaranteed Amounts or to perform any of the Guaranteed Obligations under or in accordance with the Lease Documents or this Guarantee.

## **4. CONTINUING GUARANTEE**

The guarantee constituted by this Guarantee shall be continuing and shall extend to the ultimate balance of the Guaranteed Amounts and to the performance in full of all the Guaranteed Obligations, regardless of any intermediate payment or discharge in whole or in part or any performance in part of such Guaranteed Amounts or Guaranteed Obligations.

## **5. DISCHARGE AND RELEASE**

### **5.1 No Termination Right**

Guarantor may not terminate this Guarantee by notice to Lessor or otherwise.

### **5.2 Release**

At such time as the Guaranteed Amounts have been unconditionally paid in full and Lessee has performed all the Guaranteed Obligations, Lessor shall, subject to Clauses 5.1 and 5.3, at

Guarantor's request discharge or release Guarantor by written instrument signed by Lessor.

**5.3 Condition to Release**

Any discharge or release referred to in Clause 5.2 and any composition or arrangement which Guarantor may effect with Lessor shall be deemed to be made subject to the condition that such composition or arrangement will be void if any payment or security which Lessor has received or may receive from any Person in respect of the Guaranteed Amounts or Guaranteed Obligations is set aside, refunded or reduced under any applicable Law or proves to have been invalid. If such condition is satisfied, Lessor shall be entitled to recover from Guarantor on demand the value of such security or the amount of any such payment which has been so set aside, refunded or reduced as if such discharge, release, composition or arrangement had not been effected.

**5.4 Reinstatement**

If any payment made by Lessee to Lessor prior to, or made pursuant to an agreement made prior to, the release of this Guarantee is later rescinded or declared void by reason of any Law, this Guarantee shall be reinstated in full force and effect and the liability of Guarantor hereunder shall be computed as if such moneys had never been paid.

**6. WAIVER OF DEFENSES**

**6.1 Survival of Obligations**

To the extent permitted by applicable Law, the liabilities and obligations of Guarantor under this Guarantee shall remain in force notwithstanding any act, omission, neglect, event or matter whatsoever (other than the unconditional and irrevocable payment in full of the Guaranteed Amounts and the full performance of the Guaranteed Obligations), and the foregoing shall apply, without limitation, in relation to:

- (a) anything which would have discharged Guarantor (wholly or in part) whether as surety, co-obligor or otherwise or which would have afforded Guarantor any legal or equitable defense;
- (b) any winding up, dissolution, reconstruction or reorganization, legal limitation, incapacity or lack of corporate power or authority or other circumstances of, or any change in the constitution or corporate identity or loss of corporate identity by, Lessee or any other Person; and
- (c) anything which renders Lessee's obligations invalid or unenforceable under any of the Lease Documents.

**6.2 No Impairment**

Without limiting Clause 6.1, none of the liabilities or obligations of Guarantor under this Guarantee shall be impaired or affected by any event or circumstance, including without limitation,

- (a) by Lessor:
  - (i) agreeing with Lessee any amendment (including an extension of the Term of the Lease), variation or departure (however substantial or material) of or from any of the Lease Documents or any term thereof so that any such variation or departure (including any which may have been made before the signing of this Guarantee) shall, whatever its nature, be binding upon Guarantor in all circumstances,

notwithstanding that it may increase or otherwise affect the liability of Guarantor;  
or

- (ii) releasing or granting any time or any indulgence of any kind to Lessee or any third party (including, without limitation, the waiver of any preconditions for leasing under, or of any breach of, any of the Lease Documents), or entering into any transaction or arrangements whatsoever with or in relation to Lessee and/or any third party; or
- (iii) taking, accepting, varying, dealing with, enforcing, abstaining from enforcing, surrendering or releasing any security, right of recourse, set off or combination or other right or interest held by Lessor for the Guaranteed Amounts and the other Guaranteed Obligations in such manner as it or they think fit; or
- (iv) claiming, proving for, accepting or transferring any payment in respect of the Guaranteed Amounts and the other Guaranteed Obligations in any composition by, or winding up of, Lessee and/or any third party or abstaining from so claiming, proving for, accepting or transferring; or
- (b) any defect in the title, compliance with specifications, condition, design, operation or fitness for use of or any damage to or loss or destruction of, the Aircraft, or any interruption or cessation in the use of the Aircraft or any portion thereof by Lessee or any other party for any reason whatsoever regardless of the duration thereof, whether or not resulting from accident and whether or not without fault on the part of Lessee or any other party; or
- (c) any permitted or non-permitted assignment of any Lease Document by Lessee or any merger or consolidation of Lessee or Guarantor or any Affiliate into or with any other entity, or any sale, lease or transfer of any of the assets of Lessee or Guarantor; or
- (d) any change in the corporate relationship between Lessee and Guarantor, or any termination of such relationship; or
- (e) the imposition or operation of any currency exchange controls in any country; or
- (f) any right of setoff, recoupment, deduction or counterclaim or any other defense which Guarantor or any other party may now or hereafter have against Lessor or any other party; or
- (g) any other condition, event or circumstance which might otherwise constitute a legal or equitable discharge, release or defense of a surety or guarantor or otherwise, or which might otherwise limit recourse against Guarantor, (other than payment and performance in full of the Guaranteed Obligations or, as otherwise agreed in writing by Lessor).

### 6.3 **Waivers of Notices, Etc.**

To the maximum extent permitted by applicable Law, Guarantor hereby waives: (a) diligence, presentment, demand, protest or notice of any kind whatsoever with respect to this Guarantee or the Guaranteed Obligations, including (i) notice of acceptance of this Guarantee, (ii) notice of nonpayment or nonperformance of any of the Guaranteed Obligations and (iii) all notices required by statute, rule of law or otherwise now or hereafter in effect to preserve any rights against Guarantor, (b) any right to the enforcement, assertion or exercise against Lessee or any other party or the Aircraft or any other collateral security for the Guaranteed Obligations of any right, power, privilege or remedy conferred in any Lease Document or otherwise, (c) any requirement to exhaust

any remedies, and (d) any requirement of promptness in commencing suit against any party who may be or become liable thereon.

7. **DEMANDS**

Demands under this Guarantee may be made from time to time, and the liabilities and obligations of Guarantor under this Guarantee may be enforced, irrespective of:

- (a) whether any demands, steps or proceedings are being or have been made or taken against Lessee and/or any third party; or
- (b) whether or in what order any security to which Lessor may be entitled in respect of the Guaranteed Amounts and the other Guaranteed Obligations is enforced.

8. **REPRESENTATIONS AND WARRANTIES**

Guarantor represents and warrants to Lessor on the date of execution of this Guarantee by reference to the facts and circumstances existing on such date that:

- (a) **Status:** Guarantor is a company duly incorporated and validly existing under the laws of the State of Incorporation;
- (b) **Power and Authority:** subject to approval by the Bankruptcy Court of the transactions contemplated by this Guarantee, (i) Guarantor has the company power and authority to carry on its business as presently being conducted and to enter into and perform its obligations under this Guarantee, (ii) Guarantor has taken all necessary company action to authorize the entry into, performance and delivery of, this Guarantee, and (iii) this Guarantee has been duly executed and delivered by Guarantor;
- (c) **Legal validity:** subject to approval by the Bankruptcy Court of the transactions contemplated by this Guarantee constitutes (or when executed and delivered will constitute) legal, valid and binding obligations of Guarantor, enforceable against Guarantor in accordance with its terms, except insofar as enforceability may be limited by (i) applicable bankruptcy and/or similar laws affecting creditors' rights generally, or (ii) general principles of equity;
- (d) **Non conflict:** the entry into and performance by Guarantor of, and the transactions contemplated by, this Guarantee do not: (i) conflict with any Laws or Regulations applicable to Guarantor; or (ii) conflict with the organizational documents of Guarantor; or (iii) conflict with or result in default under any document which is binding upon Guarantor or any of its assets nor result in the creation of any Security Interest over any of its assets (other than as contemplated hereby and thereby);
- (e) **Ranking:** the obligations of Guarantor under this Guarantee rank, or will upon execution thereof by Guarantor rank, at least pari passu with all other present and future unsecured and unsubordinated obligations (including contingent obligations) of Guarantor; and
- (f) **Approvals and Consents:** subject to approval by the Bankruptcy Court of the transactions contemplated by this Guarantee, all authorizations, approvals, consents and notifications required by Guarantor in connection with the entry into, performance, validity and enforceability of, this Guarantee and the transactions contemplated by this Guarantee, have

been obtained or effected (as appropriate) and are in full force and effect.

9. **UNDERTAKINGS**

Guarantor undertakes for the benefit of Lessor, from the date of this Guarantee until the Guaranteed Amounts have been unconditionally and irrevocably paid and discharged in full and the other Guaranteed Obligations have been performed in full to the satisfaction of Lessor, as follows:

- (a) to furnish to Lessor:
  - (i) save where such information is available on Guarantor's website, upon Lessor's request, the consolidated management accounts of Guarantor (comprising a balance sheet and profit and loss statement) prepared for the most recent previous financial quarter;
  - (ii) by making the same available on its website or directly to Lessor if not posted on its website, no later than one hundred and eighty (180) days after the last day of each financial year of Guarantor, its audited consolidated balance sheet and cash flow statement as of such day and its audited consolidated profit and loss statement for the year ending on such day; and
  - (iii) to the extent that Guarantor is permitted by applicable Law and is not bound by confidentiality undertakings to third parties, such other information concerning the business or financial affairs of Guarantor as Lessor may from time to time reasonably request; provided, however, that under no circumstances shall Guarantor be required to provide Lessor with financial or operational forecasts;
- (b) to do all acts and things (including, without limitation, making any filing or registration with any Government Entity) and execute and deliver, notarize, file, register and record all documents as may be reasonably required by Lessor from time to time:
  - (i) upon or following any change or proposed change in the ownership or financing of the Aircraft in accordance with the terms of the Lease; or
  - (ii) to establish, maintain, preserve, perfect and protect the rights of Lessor under this Guarantee,in each case, at the cost of Lessor.
- (c) to preserve its corporate existence, not sell, lease, transfer or otherwise dispose of all or substantially all of its assets (in one or in any series of transactions) to any Person and continue to be a regularly scheduled, commercial airline; provided that Guarantor may sell, lease, transfer or otherwise dispose of all or substantially all of its assets (in one or a series of transactions) to any Person or merge or consolidate with any Person in a transaction in which it is not the surviving Person if the following conditions are satisfied:
  - (i) Guarantor has provided Lessor with thirty (30) days prior written notice of such transaction and know your customer information in respect of the proposed Surviving Entity which is reasonably satisfactory to Lessor;
  - (ii) the Person acquiring such assets or the Person surviving such merger or consolidation (in either case, the "**Surviving Entity**") assumes all of the rights and

obligations of Guarantor under the Operative Documents to which Guarantor is a party;

- (iii) the tangible net worth of the Surviving Entity is equal to or greater than the tangible net worth of Guarantor immediately prior to such merger or consolidation, except where (if the Surviving Entity's tangible net worth would be lower than such prior tangible net worth of Guarantor), this does not and could not reasonably be expected to cause an Event of Default or have a material adverse effect on the ability of the Surviving Entity to comply with its obligations under the Operative Documents;
- (iv) the Surviving Entity is duly organized and validly existing under the laws of its state of organization;
- (v) the Surviving Entity shall execute and deliver to Lessor an agreement, in form and substance reasonably satisfactory to Lessor, by which the Surviving Entity assumes the due and punctual performance and observance of each covenant and condition of Guarantor under this Guarantee and agrees to be bound thereby (such assumption of obligations to be legal, valid, binding and enforceable, except as enforcement of such agreement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting the rights of creditors generally and general principles of equity);
- (vi) Guarantor shall have delivered to Lessor (and any Financing Parties) (i) a certificate of an officer stating that all conditions set forth in this Clause 9(c) in respect of such consolidation, merger, conveyance, transfer or lease have been satisfied and (ii) an opinion of external counsel selected by Lessor and reasonably acceptable to Guarantor to the effect that the assumption agreement described in clause (v) above has been duly authorized, executed and delivered by the Surviving Entity, constitutes its legal, valid and binding obligation and is enforceable against such Surviving Entity in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by principles of equity;
- (vii) Lessor and/or Owner shall not incur any additional obligations, risks or liabilities, nor have its rights under this Agreement diminished as a result of such transfer of assets, merger or consolidation;
- (viii) the right, title and interest of Lessor, Owner and any Financing Parties in and to the Aircraft shall not be adversely affected by the Surviving Entity's acquisition of such assets or by such merger or consolidation, and Lessor shall have received such assurances with respect thereto as it may reasonably request;
- (ix) the Surviving Entity shall execute and deliver to Lessor and/or file such recordations and filings with any Government Entity (including the Aviation Authority) and such other documents as Lessor shall reasonably deem to be necessary or advisable (including, without limitation, to preserve and protect the interests of Lessor, Owner and the Financing Parties) to evidence, or in connection with, such transfer of assets, merger or consolidation; and
- (x) prior to and immediately after giving effect to such transfer of assets, merger or consolidation, no Event of Default shall have occurred and be continuing.

Guarantor shall pay all reasonable costs and expenses incurred by Lessor, Owner (if different than Lessor) and, if applicable, any Financing Party (including all reasonable legal fees and expenses) in relation to any such transfer of assets, merger or consolidation following receipt of an invoice and supporting documentation in respect thereof.

**10. PAYMENTS**

**10.1 Payments**

All payments by Guarantor to Lessor under this Guarantee will be made for value on the due date in Dollars in immediately available funds by SWIFT or wire transfer to the account set out below or to such other account as Lessor may from time to time notify Guarantor in writing five (5) Business Days prior to a date for a payment hereunder; provided that the payment and/or indemnity obligations of Guarantor under this Guarantee, measured as of the date any such change is effective, shall not be increased solely as a result of the designation of such other account:

<b>Bank:</b>	Banco do Brasil S.A.
<b>Branch</b>	1607-1 - Governo
<b>Account No:</b>	170-500-8
<b>Swift Code:</b>	BRASBRRJBHE
<b>Beneficiary:</b>	Fundo de Garantia à Exportação – FGE.
	Unidade Gestora: 170356
	CNPJ: 031151050001-84.

**10.2 No Withholding**

If any Taxes are required to be deducted or withheld from any amount payable hereunder, Guarantor shall:

- (a) if such Tax is not a Lessor Tax, pay such additional amounts, in the same currency as such payment as may be necessary in order that the amount of such payment received on the date of such payment, after deduction or withholding for all such Taxes (including any deduction or withholding with respect to such additional amount), will be equal to the amount that the recipient of Guarantor's payment would have received if such Taxes had not been deducted or withheld;
- (b) pay to the relevant authority within the period for payment permitted by applicable Laws the amount necessary to comply with its legal obligations in respect of such deduction or withholding; and
- (c) furnish to the recipient of Guarantor's payment evidence of payment to the relevant authority of all amounts deducted or withheld as aforesaid, which evidence may be provided by certification of such payment by a responsible officer of Guarantor if it is not possible to obtain a receipt or certification from the relevant Tax authority.

**10.3 Currency Indemnity**

- (a) If, under any applicable Law, whether as a result of a judgment or the liquidation of a party

or for any other reason, any payment under or in connection with this Guarantee is made or is recovered in a currency (the “**other currency**”) other than the currency (the “**contractual currency**”) in which it is payable pursuant to this Guarantee then, to the extent that the payment (when converted into the contractual currency at the rate of exchange on the date of payment or, in the case of a liquidation, the latest date for the determination of liabilities permitted by the applicable Law) falls short of the amount unpaid under this Guarantee, Guarantor shall as a separate and independent obligation, fully indemnify Lessor against the amount of the shortfall. For the purposes of this sub-clause “rate of exchange” means the rate at which Guarantor is able on the relevant date to purchase the contractual currency in New York with the other currency.

- (b) Guarantor waives any right it may have in any jurisdiction to pay any amount under this Guarantee in a currency other than that in which such amount is expressed to be payable.

## 11. **ASSIGNMENT**

### 11.1 **Guarantor**

Guarantor will not assign, delegate or otherwise transfer any of its rights or obligations under this Guarantee or create or permit to exist any Security Interest over any of its rights or obligations under this Guarantee.

### 11.2 **Assignment by Lessor**

Guarantor agrees that if Lessor at any time during the subsistence of this Guarantee assigns its rights under the Lease to any Person under and in accordance with the terms of the Lease, Lessor may assign its rights under this Guarantee, to the extent that they relate to the Lease Documents, to such Person. Guarantor will promptly execute all documents reasonably requested by Lessor to effect, perfect, record or implement any such assignment, and will promptly comply with any other reasonable requests of Lessor, its successors and assigns in respect of any such assignment, in each case, at the cost of Lessor, as long as it does not increase Guarantor’s obligations.

## 12. **MISCELLANEOUS PROVISIONS**

### 12.1 **Rights Cumulative, Waivers**

The rights of Lessor under this Guarantee may be exercised as often as Lessor considers appropriate (except as otherwise expressly stated herein), are cumulative and are in addition to its rights under any Law. The rights of Lessor against Guarantor (whether arising under this Guarantee or any Law) cannot be waived or varied other than by an express waiver or variation in writing. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right; and no act or course of conduct or negotiation on Lessor’s part or on its behalf shall in any way preclude it from exercising any such right or constitute a suspension or any variation of any such right.

### 12.2 **Delegation**

Lessor may delegate to any Person or Persons all or any of its rights, powers or discretions vested in it by this Guarantee, and any such delegation may be made upon such terms and conditions and



subject to such regulations (including power to sub-delegate) as Lessor deems fit.

**12.3 Amendments**

Any amendments to this Guarantee must be in writing and signed on behalf of Lessor and Guarantor.

**12.4 Counterparts**

This Guarantee may be executed in two or more counterparts each of which will be deemed an original but all of which together will constitute one and the same agreement.

**12.5 Invalidity of any Provision**

If any provision of this Guarantee becomes invalid, illegal or unenforceable in any respect under any Law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**12.6 Notices**

(a) Every notice, request, direction or other communication under this Guarantee shall be in English and be in writing delivered personally or sent with an internationally recognized courier service or by electronic mail (including PDF) and shall be deemed to have been received:

(i) in the case of a letter when delivered personally or where sent with an internationally recognized courier service, on the date shown as the delivery date (or, if delivery was refused, the date of such refusal) in the records of the Person who effected such delivery; or

(ii) in the case of an electronic mail, at the time of dispatch with confirmed receipt,

provided always that where delivery by hand or by electronic email occurs after 6:00 p.m. on a Business Day, or on a day which is not a Business Day, service shall be deemed to occur at 9:00 a.m. on the next Business Day.

(b) Every notice, request, direction or other communication under this Guarantee shall be sent:

To Lessor at:

Address: Brasilmex Leasing, LLC  
c/o Brasilmex Leasing Statutory Trust  
1100 North Market Street  
Wilmington, DE 19890-1605

Facsimile: (302) 636-4140

Attention: Corporate Trust Administration

*with a copy to the Ministry of Economy at:*

Address: Subsecretaria de Financiamento ao Comércio Exterior  
Esplanada dos Ministérios, Bloco J, 9º Andar,

Sala 914 - CEP 70053-900 - Brasília/DF

Attention: Lázaro Lima

Email: lazaro.lima@economia.gov.br

**To Guarantor at:**

Address: Aerovías de México, S.A. de C.V.  
Paseo de la Reforma, No. 243, Piso 25  
Colonia Cuauhtémoc  
Alcaldía Cuauhtémoc

Mexico City, 06500  
Mexico

Attention: Legal Department and Fleet Department

Facsimile: 52-55-9132-5079

Email: malvarez@aeromexico.com;  
amnotificacionesjuridico@aeromexico.com

or any substitute address, email address or fax number or department or officer as the relevant party may notify to the other party by not less than five (5) Business Days' notice.

**13. GOVERNING LAW, JURISDICTION AND WAIVER OF JURY TRIAL**

**13.1 Governing Law**

PURSUANT TO AND IN ACCORDANCE WITH SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, THE PARTIES HERETO AGREE THAT THIS GUARANTEE AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS GUARANTEE, AND ALL ISSUES CONCERNING THE RELATIONSHIP OF THE PARTIES HEREUNDER AND THE ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AS APPLIED TO CONTRACTS TO BE PERFORMED WHOLLY WITHIN THE STATE OF NEW YORK (EXCLUSIVE OF SECTION 7-101 OF THE NEW YORK GENERAL OBLIGATIONS LAW WHICH IS INAPPLICABLE TO THIS GUARANTEE) WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLES. THE PARTIES AGREE THAT THIS GUARANTEE WAS DELIVERED IN THE STATE OF NEW YORK.

THE FOREGOING ELECTION OF THE LAWS OF THE STATE OF NEW YORK IS WITHOUT PREJUDICE TO THE RIGHT OF LESSOR TO APPLY THE LAWS OF THE FEDERAL DISTRICT OF MEXICO TO ANY REPOSSESSION OR OTHER ENFORCEMENT OF RIGHTS UNDER THIS GUARANTEE WHILE THE AIRCRAFT IS LOCATED IN MEXICO.

**13.2 Jurisdiction**

Pursuant to and in accordance with Section 5-1402 of the New York General Obligations Law, Guarantor and Lessor each irrevocably agrees that (a) the United States District Court for the Southern District of New York sitting in The Borough of Manhattan and any New York state court sitting in the County of New York, New York, and all related appellate courts, and (b) the courts of the jurisdictions in which the Aircraft at the relevant time is located in the case of enforcement

proceedings in respect of remedies hereunder, have exclusive jurisdiction to settle any disputes arising out of or relating to this Guarantee and submits itself and its property to the jurisdiction of the foregoing courts with respect to such dispute, hereby waiving any other jurisdictions which may be available thereto by reason of domicile or otherwise.

**13.3 Process Agent**

Without prejudice to any other mode of service, Guarantor:

- (a) appoints Cogency Global Inc., at 10 E. 40th Street, 10th Floor, New York, New York 10016, as its agent for service of process relating to any proceedings before the New York courts described in Clause 24.2 in connection with this Guarantee and agrees to maintain the process agent in New York notified to Lessor;
- (b) agrees that failure by a process agent to notify Guarantor of the process shall not invalidate the proceedings concerned; and
- (c) consents to the service of process relating to any such proceedings by prepaid mailing or by personal delivery of a copy of the process to Guarantor's agent at the address identified in Clause 13.3 or by facsimile or prepaid mailing by air mail, certified or registered mail, or by personal delivery, of a copy of the process to Guarantor at the address set forth in Clause 12.6.

**13.4 Waiver of Objections**

Each of Guarantor and Lessor:

- (a) waives to the fullest extent permitted by Law any objection which it may now or hereafter have to the courts referred to in Clause 24.2 on grounds of inconvenient forum or otherwise as regards proceedings in connection with this Guarantee;
- (b) waives to the fullest extent permitted by Law any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Guarantee brought in the courts referred to in Clause 24.2; and
- (c) to the extent permitted by applicable law, agrees that a judgment or order of any court referred to in Clause 24.2 in connection with this Guarantee is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction as if made by the highest court in that other jurisdiction and accordingly neither Guarantor nor Lessor will seek to, nor be entitled to, contest and/or delay and/or obstruct registration or enforcement of any such judgment and/or award and/or order on grounds of public policy or otherwise.

**13.5 No Alternative Jurisdictions**

This Clause 13 shall survive, continue to take full effect and not merge in any order or judgment and this Clause 24.5 prohibits either party to bring proceedings against the other in connection with this Guarantee in any court other than as provided in Clause 24.2.

**13.6 Waiver of Sovereign Immunity and Other Defenses**

Each of Guarantor and Lessor irrevocably and unconditionally:

- (a) agrees that if the other brings legal proceedings against it or its assets in relation to this Guarantee no sovereign or other immunity from such legal proceedings (which will be

deemed to include suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment, other attachment, the obtaining of judgment, execution of a judgment or other enforcement or legal process or remedy) will be claimed by or on behalf of itself or with respect to its assets;

- (b) waives any such right of immunity which it or its assets now has or may in the future acquire and agrees that the foregoing waiver shall have the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976 of the United States of America and is intended to be irrevocable for the purposes of such Act; and
- (c) waives any requirement, of any kind whatsoever, for the other party to provide any form of security in respect of the payment of any damages, costs, expenses or any other financial obligation resulting from the commencement or prosecution of proceedings or the making of or service of any order and Guarantor undertakes (i) not to challenge the validity of any proceedings or the making of any orders without any requirement for the provision of such security, (ii) to advise any court upon the other party's request that it requires no such security, and (iii) to provide security itself for any third party claims arising out of or in connection with such proceedings and/or orders.

#### 13.7 **Waiver of Jury Trial**

EACH OF GUARANTOR AND LESSOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS TO A JURY TRIAL IN RESPECT OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTEE OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THE LESSOR/GUARANTOR RELATIONSHIP BEING ESTABLISHED, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF LESSOR AND GUARANTOR SEE REPRESENTS AND WARRANTS THAT EACH HAS REVIEWED AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH ITS LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS GUARANTEE. IN THE EVENT OF LITIGATION, THIS CLAUSE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF** this Guarantee has been executed by Guarantor and is intended to be and is hereby delivered on the date specified above.

**Aerovías de México, S.A. de C.V.,**

*Guarantor*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted by:

**Brasilmex Leasing, LLC,**

By Brasilmex Leasing Statutory Trust, as Manager

By Wilmington Trust Company, not in its individual capacity but solely as Trustee

*Lessor*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[RESERVED]**

**Schedule 14**

### FORM OF REDELIVERY ACCEPTANCE CERTIFICATE

This Redelivery Acceptance Certificate (this "Certificate") is delivered at the time and on the date set forth below by Brasilmex Leasing, LLC (the "Lessor") to Aerolitoral, 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) Embraer ERJ 190-100 LR aircraft bearing manufacturer's serial number [●] together with two (2) General Electric CF34-10E6 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.

Lessor hereby confirms that as at \_\_\_\_\_ hours on \_\_\_\_\_ at \_\_\_\_\_:

- (a) the Aircraft satisfies the redelivery requirements of Schedule 8 (*Redelivery Conditions*) of the Lease in all respects;
- (b) redelivery of the Aircraft (including the Engines) has been accepted by Lessor; and
- (c) the Term of the Lease has terminated.

Lessor and Lessee hereby confirm that the payments provided in Annex 1 hereto are due in accordance with the terms of the Lease.

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 \_\_\_\_\_.

[SIGNATURE PAGES FOLLOW]



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.

BRASILMEX LEASING, LLC<sup>14</sup>

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

AEROLITORAL, S.A. DE C.V.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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<sup>14</sup> Signature to be notarized by a Mexican notary public and/or notarized and apostilled.

ANNEX I

PAYMENT AND ADJUSTMENT AMOUNTS DUE AT REDELIVERY<sup>15</sup>

Upon redelivery, the following is due from the Lessor to the Lessee:

1. Clause 6.2 (*Lessor Payment*) of the Lease (return of Security Deposit) \$\_\_\_\_\_

Upon redelivery, the following is due from the Lessee to the Lessor:

1. Equivalency Charges under Part B (*Redelivery Maintenance Payment*) of the Financial Terms Annex:
  - a. Structural Check Equivalency Charge: (+/-)\$\_\_\_\_\_
  - b. Engine Equivalency Charge: (+/-)\$\_\_\_\_\_
  - c. Engine LLP Equivalency Charge: (+/-)\$\_\_\_\_\_
  - d. APU Equivalency Charge: (+/-)\$\_\_\_\_\_
  - e. Landing Gear Equivalency Charge: (+/-)\$\_\_\_\_\_
- Net sum of Equivalency Charges:** \$\_\_\_\_\_
2. [REDACTED] \$\_\_\_\_\_
3. [REDACTED] \$\_\_\_\_\_
4. [REDACTED] \$\_\_\_\_\_

**Net Payments from Lessee to Lessor:** \$\_\_\_\_\_

Payments to Lessor should be made to the following Account Details:

Beneficiary Name:

Beneficiary Bank:

Swift Code:

Sort Code:

Account No:

IBAN:

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<sup>15</sup> **Note to Draft:** Annex to be revised for applicable payments.

# **FORM OF MAINTENANCE STATUS REPORT**

## **AIRCRAFT SUMMARY REPORT**

Schedule 16

**Report Period from \_\_\_\_\_ to \_\_\_\_\_**

<b>Aircraft Specification</b>	
<b>Manufacturer</b>	
<b>Type</b>	
<b>Model</b>	
<b>Serial number</b>	
<b>Date of Manufacture</b>	
<b>Current Registration</b>	
<b>Current Operator</b>	
<b>Aircraft Operating Limitation</b>	

<b>Airframe Status</b>	
<b>Total Airframe Hours</b>	
<b>Total Airframe Cycles</b>	

<b>Main Engines (Currently Installed)</b>		
<b>Manufacturer</b>		
<b>Position</b>		
<b>Part number</b>		
<b>Serial number</b>		
<b>Time Since New</b>		
<b>Cycles Since New</b>		
<b>Time Since OH</b>		
<b>Cycles Since OH</b>		
<b>Last OH Date</b>		

Main Engines		
Manufacturer		
Aircraft or Location		
Position		
Part number		
Serial number		
Time Since New		
Cycles Since New		
Time Since OH		
Cycles Since OH		
Last OH Date		

Auxiliary Power Unit	
Manufacturer	
Position	
Part number	
Serial number	
Flight Time Since New	
Flight Cycles Since New	
Time Since OH	
Cycles Since OH	
Last OH Date	
APU Hours Since New	
APU Cycles Since New	

Landing Gears			
Manufacturer			
Position			
Part number			
Serial number			
Time Since New			
Cycles Since New			
Time Since OH			
Cycles Since OH			
Last OH Date			

# **PETITION DATE CONDITION<sup>16</sup>**

(July 1, 2020)

## **Airframe**

### **Schedule 17**

MSN	[●]
Build Date	[Date]
Last []Y HMV Date (or, if none, Build Date)	[Date]
Last []Y HMV Date (or, if none, Build Date)	[Date]
Total FH since New	##,###
Total FC since New	##,###

## **Landing Gear**

NLG Serial Number:	
NLG - Last Overhaul Date (or, if none, Build Date)	[Date]
NLG - FC since Overhaul or since New	##,###
Right MLG Serial Number:	
Right MLG - Last Overhaul Date (or, if none, Build Date) Right MLG - FC since Overhaul or since New	[Date] ##,###
Left MLG Serial Number:	
Left MLG- Last Overhaul Date (or, if none, Build Date)	[Date]
Left MLG - FC since Overhaul or since New	##,###

## **APU**

Last Repair Date (or, if none, Build Date)	[Date]
APUH Since Repair (or, if none, since new)	##,###

## **Engine ESN [●]**

### **FH since New or PR**

[Module 1]	##,###
[Module 2]	##,###
[Module 3]	##,###

## **Engine ESN [●] (LLPs)**

### **FC since New**

[LLP 1]	##,###
[LLP 2]	##,###
[LLP 3]	##,###
[LLP 4]	##,###

<sup>16</sup> **Note to Draft:** AMX to provide Petition Date condition.

[LLP 5]	[[#,###]
[LLP 6]	[[#,###]
[LLP 7]	[[#,###]
[LLP 8]	[[#,###]
[LLP 9]	[[#,###]
[LLP 10]	[[#,###]
[LLP 11]	[[#,###]
[LLP 12]	[[#,###]
[LLP 13]	[[#,###]
[LLP 14]	[[#,###]
[LLP 15]	[[#,###]
[LLP 16]	[[#,###]
[LLP 17]	[[#,###]
[LLP 18]	[[#,###]

**Engine ESN [●] FH since New or PR**

[Module 1]	[[#,###]
[Module 2]	[[#,###]
[Module 3]	[[#,###]

**Engine ESN [●] (LLPs) FC since New**

[LLP 1]	[[#,###]
[LLP 2]	[[#,###]
[LLP 3]	[[#,###]
[LLP 4]	[[#,###]
[LLP 5]	[[#,###]
[LLP 6]	[[#,###]
[LLP 7]	[[#,###]
[LLP 8]	[[#,###]
[LLP 9]	[[#,###]
[LLP 10]	[[#,###]
[LLP 11]	[[#,###]
[LLP 12]	[[#,###]
[LLP 13]	[[#,###]
[LLP 14]	[[#,###]
[LLP 15]	[[#,###]
[LLP 16]	[[#,###]
[LLP 17]	[[#,###]
[LLP 18]	[[#,###]

**REDELIVERY MAINTENANCE PAYMENT CALCULATIONS**

**FOR REFERENCE ONLY**

**A. Redelivery Maintenance Payment Calculations**

[REDACTED]



**FOR REFERENCE ONLY**

**B.** [REDACTED]

**Exhibit 2**

**Amended and Restated Financing Stipulation**

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

*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.<sup>1</sup>**

**Chapter 11**

**Case No. 20-11563 (SCC)**

**(Jointly Administered)**

**AMENDED STIPULATION AND ORDER BETWEEN CERTAIN DEBTORS AND  
COUNTERPARTIES CONCERNING CERTAIN EQUIPMENT**

This amended stipulation (this “**Amended and Restated Financing Stipulation**”) is entered into on the date hereof by and among Aerovías de México, S.A. de C.V. (“**Aerovías**”) and each of the parties set forth in Exhibit A hereto (the “**Counterparties**” and, the Counterparties together with Aerovías, the “**Parties**”) with respect to the agreements and the equipment (the “**Aircraft**”), in each case, listed on Exhibit A hereto. This Amended and Restated Financing Stipulation amends and restates, and supersedes in its entirety, that certain *Stipulation and Order*

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<sup>1</sup> 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; 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.

*Between Certain Debtors and Counterparties Concerning Certain Equipment* [ECF No. 835]  
dated January 8, 2021 entered into among the Parties.

**Recitals**

A. On June 30, 2020 (the “**Petition Date**”), Aerovías and certain of its affiliates as debtors and debtors in possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (as amended or modified, the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”).

B. Contemporaneously with entering into this Amended and Restated Financing Stipulation, the Debtors have filed that certain *Debtors’ Motion for Entry of an Order Authorizing Certain Debtors To Implement Certain Transactions with Brasilmex Leasing, LLC and Related Parties, Including (I) Assumption of Certain Aircraft Leases (on an Amended Basis), (II) Entry into Novation Documents, Ancillary Documents, Termination Documents, Aerovías Guaranties, and Amended and Restated Financing Stipulation, and (III) the Claims Settlement* (the “**Motion**”),<sup>2</sup> pursuant to which the Debtors are seeking the entry of a court order (the “**Proposed Order**” and, if entered, the “**Assumption Order**”) (a) authorizing (but not directing) certain of the Debtors to (i) assume the Aircraft Leases (each on an amended basis on terms substantially consistent with those set forth in the Form Lease, attached hereto as **Exhibit B**) and (ii) enter into (A) the Novation Documents, (B) the Ancillary Documents, (C) the Termination Documents, (D) the Aerovías Guaranties, (E) the Amended and Restated Financing Stipulation, and (F) the related transactions and (b) approving the Claims Settlement.

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

C. The Amended Aircraft Lease for each Aircraft provides that the Lease Commencement Date (as defined therein) will occur upon satisfaction of certain conditions and in any event no later than a date certain set forth therein, and the Debtors and the Counterparties are entering into this Amended and Restated Financing Stipulation to document the terms that will govern their relationship with respect to each Aircraft until the corresponding Lease Commencement Date.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the Parties, intending to be legally bound, stipulate and agree as follows:

1. For each Aircraft, this Amended and Restated Financing Stipulation is effective for the period from the date of the Court's entry of this Amended and Restated Financing Stipulation through the earlier to occur of (i) the Lease Commencement Date, as defined in the corresponding Amended Aircraft Lease, and (ii) such other date as the Counterparties and the Debtors may agree in writing with respect to each Aircraft (such period of effectiveness, the "**Stipulation Period**").

2. During the Stipulation Period for each Aircraft, (i) Aerovías shall comply, or shall cause that Aerolitoral complies, with all provisions in the Amended Aircraft Lease (including, without limitation, all of the covenants, undertakings, and obligations of "Lessee" contained therein for such Aircraft), and shall be bound by the terms thereof regarding events of default and the exercise of remedies thereunder, in each case as if Aerovías were a party thereto as "Lessee" and as if the "Lease Commencement Date" under such Amended Aircraft Lease had already occurred, and (ii) the Lessor shall, and the Counterparties shall procure that the Lessor does, abide by all of the covenants, undertakings, and obligations of "Lessor" contained in the Amended

Aircraft Lease for such Aircraft as if Aerovías were a party thereto as “Lessee” and as if the “Lease Commencement Date” under such Amended Aircraft Lease had already occurred.

3. During the Stipulation Period, the performance by Aerovías and the Counterparties of the terms and conditions set forth in this Amended and Restated Financing Stipulation and the Assumption Order shall satisfy any and all of their respective obligations (both monetary or performance based, or in each case the lack thereof) under the Aircraft Leases.

4. Except as provided in this Amended and Restated Financing Stipulation, all rights of the Parties are hereby reserved and preserved. All rights of the Parties provided in this Amended and Restated Financing Stipulation shall survive the termination of the Amended and Restated Financing Stipulation.

5. Notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, this Amended and Restated Financing Stipulation shall be binding upon the Parties hereto and their respective successors, assigns and (with respect to those Counterparties that are trusts or trustees) trust beneficiaries who so direct or authorize the trusts or trustee of the trusts to enter into this Amended and Restated Financing Stipulation.

6. This Amended and Restated Financing Stipulation and the form of Amended Aircraft Lease may only be modified in writing, signed by the applicable Parties or their duly appointed agents. In the event of any pre-assumption conflict or inconsistency between any provision of any Aircraft Lease, on the one hand, and any provision of this Amended and Restated Financing Stipulation, on the other hand, the provisions of this Amended and Restated Financing Stipulation shall control.

7. This Amended and Restated Financing Stipulation may be executed in one or more counterparts, by facsimile, electronic transmission, or otherwise, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

8. This Amended and Restated Financing Stipulation shall be effective immediately upon approval by the Court. 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 any issues arising out of or relating to this Amended and Restated Financing Stipulation.

SO ORDERED:

Dated: \_\_\_\_\_, 2022  
New York, New York

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THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

Stipulated and agreed to by:

Dated: New York, New York  
\_\_\_\_\_, 2022

AEROVÍAS DE MÉXICO, S.A. DE C.V.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:



Dated: \_\_\_\_\_, 2022

FEDERATIVE REPUBLIC OF BRAZIL through  
*SECRETARIA ESPECIAL DE COMÉRCIO  
EXTERIOR E ASSUNTOS INTERNACIONAIS DO  
MINISTÉRIO DA ECONOMIA (SECINT-ME),*  
formerly *SECRETARIA DE ASSUNTOS  
INTERNACIONAIS DO MINISTÉRIO DA  
FAZENDA (SAIN)*, through the *FUNDO DE  
GARANTIA À EXPORTAÇÃO - FGE*

By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2022

BRASILMEX LEASING, LLC

By Brasilmex Leasing Statutory Trust, as Manager

By Wilmington Trust Company, not in its  
individual capacity but solely as Trustee

By: \_\_\_\_\_

Name:

Title:

Dated: \_\_\_\_\_, 2022

WILMINGTON TRUST COMPANY, not in its  
individual capacity, but solely as security trustee

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

## **EXHIBIT A**

### **Counterparties**

1. Federative Republic of Brazil through *Secretaria Especial de Comércio Exterior e Assuntos Internacionais do Ministério da Economia (SECINT-ME)*, formerly *Secretaria De Assuntos Internacionais Do Ministério Da Fazenda (Sain)*, through *the Fundo De Garantia À Exportação – FGE* (as successor to Banco Nacional de Desenvolvimento Econômico e Social – BNDES), as lender (the “**Lender**”)
2. Brasilmex Leasing, LLC, as owner, lessor and guarantor (the “**Lessor**”)
3. Wilmington Trust Company, not in its individual capacity, but solely as security trustee (the “**Security Trustee**”)

### **Equipment**

1. One (1) Embraer model ERJ 190-100 LR airframe bearing manufacturer’s serial number 19000408 and Mexican registration mark XA-MAC, together with two (2) General Electric model CF34-10E6 engines respectively bearing manufacturer’s serial numbers 994980 and 994981 (“**MSN 19000408**”).
2. One (1) Embraer model ERJ 190-100 LR airframe bearing manufacturer’s serial number 19000455 and Mexican registration mark XA-DAC, together with two (2) General Electric model CF34-10E6 engines respectively bearing manufacturer’s serial numbers 424177 and 424178 (“**MSN 19000455**”).
3. One (1) Embraer model ERJ 190-100 LR airframe bearing manufacturer’s serial number 19000466 and Mexican registration mark XA-HAC, together with two (2) General Electric model CF34-10E6 engines respectively bearing manufacturer’s serial numbers 994544 and 424191 (“**MSN 19000466**”).
4. One (1) Embraer model ERJ 190-100 LR airframe bearing manufacturer’s serial number 19000499 and Mexican registration mark XA-ACC, together with two (2) General Electric model CF34-10E6 engines respectively bearing manufacturer’s serial numbers 424264 and 424266 (“**MSN 19000499**”).
5. One (1) Embraer model ERJ 190-100 LR airframe bearing manufacturer’s serial number 19000518 and Mexican registration mark XA-ACE, together with two (2) General Electric model CF34-10E6 engines respectively bearing manufacturer’s serial numbers 424316 and 424317 (“**MSN 19000518**”).
6. One (1) Embraer model ERJ 190-100 LR airframe bearing manufacturer’s serial number 19000525 and Mexican registration mark XA-ACI, together with two (2) General Electric model CF34-10E6 engines respectively bearing manufacturer’s serial numbers 424333 and 424336 (“**MSN 19000525**”).
7. One (1) Embraer model ERJ 190-100 LR airframe bearing manufacturer’s serial number 19000531 and Mexican registration mark XA-ACJ, together with two (2) General Electric model CF34-10E6 engines respectively bearing manufacturer’s serial numbers 424349 and 424351 (“**MSN 19000531**”).
8. One (1) Embraer model ERJ 190-100 LR airframe bearing manufacturer’s serial number 19000546 and Mexican registration mark XA-ACM, together with two (2)

- General Electric model CF34-10E6 engines respectively bearing manufacturer's serial numbers 424383 and 424385 ("**MSN 19000546**").
9. One (1) Embraer model ERJ 190-100 LR airframe bearing manufacturer's serial number 19000552 and Mexican registration mark XA-ACN, together with two (2) General Electric model CF34-10E6 engines respectively bearing manufacturer's serial numbers 424396 and 424398 ("**MSN 19000552**").
  10. One (1) Embraer model ERJ 190-100 LR airframe bearing manufacturer's serial number 19000557 and Mexican registration mark XA-ACT, together with two (2) General Electric model CF34-10E6 engines respectively bearing manufacturer's serial numbers 424411 and 424414 ("**MSN 19000557**").

Each of MSN 19000408, MSN 19000455, MSN 19000466, MSN 19000499, MSN 19000518, MSN 19000525, MSN 19000531, MSN 19000546, MSN 19000552 and MSN 19000557 shall be referred to as an "**Aircraft**".

### **Agreements**

1. Funding Agreement dated February 18, 2011, by and between Aerovías de México, S.A. de C.V., as borrower, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender (the "**Funding Agreement**").
2. Security Trust Deed dated February 18, 2011, among Aerovías de México, S.A. de C.V., as borrower, Brasilmex Leasing, LLC, as owner, Brasilmex Leasing Statutory Trust, as owner parent, Wilmington Trust Company, not in its individual capacity, but solely as security trustee, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender (the "**Security Trust Deed**").
3. Aircraft Finance Lease Agreement dated February 22, 2011, by and between Brasilmex Leasing, LLC, as lessor, and Aerovías de México, S.A. de C.V., as lessee (the "**Finance Lease Agreement**")
4. Finance Lease Supplement dated March 1, 2011, by and between Brasilmex Leasing, LLC, as lessor, and Aerovías de México, S.A. de C.V., as lessee, in respect of MSN 19000408.
5. Finance Lease Supplement dated August 5, 2011, by and between Brasilmex Leasing, LLC, as lessor, and Aerovías de México, S.A. de C.V., as lessee, in respect of MSN 19000455.
6. Finance Lease Supplement dated September 2, 2011, by and between Brasilmex Leasing, LLC, as lessor, and Aerovías de México, S.A. de C.V., as lessee, in respect of MSN 19000466.
7. Finance Lease Supplement dated December 9, 2011, by and between Brasilmex Leasing, LLC, as lessor, and Aerovías de México, S.A. de C.V., as lessee, in respect of MSN 19000499.
8. Finance Lease Supplement dated February 17, 2012, by and between Brasilmex Leasing, LLC, as lessor, and Aerovías de México, S.A. de C.V., as lessee, in respect of MSN 19000518.
9. Finance Lease Supplement dated March 28, 2012, by and between Brasilmex Leasing, LLC, as lessor, and Aerovías de México, S.A. de C.V., as lessee, in respect of MSN 19000525.
10. Finance Lease Supplement dated April 20, 2012, by and between Brasilmex

- Leasing, LLC, as lessor, and Aerovías de México, S.A. de C.V., as lessee, in respect of MSN 19000531.
11. Finance Lease Supplement dated May 25, 2012, by and between Brasilmex Leasing, LLC, as lessor, and Aerovías de México, S.A. de C.V., as lessee, in respect of MSN 19000546.
  12. Finance Lease Supplement dated June 22, 2012, by and between Brasilmex Leasing, LLC, as lessor, and Aerovías de México, S.A. de C.V., as lessee, in respect of MSN 19000552.
  13. Finance Lease Supplement dated July 20, 2012, by and between Brasilmex Leasing, LLC, as lessor, and Aerovías de México, S.A. de C.V., as lessee, in respect of MSN 19000557.
  14. Loan Supplement dated March 1, 2011, by and between Aerovías de México, S.A. de C.V., as borrower, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender, in respect of MSN 19000408.
  15. Loan Supplement dated August 5, 2011, by and between Aerovías de México, S.A. de C.V., as borrower, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender, in respect of MSN 19000455.
  16. Loan Supplement dated September 2, 2011, by and between Aerovías de México, S.A. de C.V., as borrower, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender, in respect of MSN 19000466.
  17. Loan Supplement dated December 9, 2011, by and between Aerovías de México, S.A. de C.V., as borrower, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender, in respect of MSN 19000499.
  18. Loan Supplement dated February 17, 2012, by and between Aerovías de México, S.A. de C.V., as borrower, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender, in respect of MSN 19000518.
  19. Loan Supplement dated March 28, 2012, by and between Aerovías de México, S.A. de C.V., as borrower, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender, in respect of MSN 19000525.
  20. Loan Supplement dated April 20, 2012, by and between Aerovías de México, S.A. de C.V., as borrower, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender, in respect of MSN 19000531.
  21. Loan Supplement dated May 25, 2012, by and between Aerovías de México, S.A. de C.V., as borrower, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender, in respect of MSN 19000546.
  22. Loan Supplement dated June 22, 2012, by and between Aerovías de México, S.A. de C.V., as borrower, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender, in respect of MSN 19000552.
  23. Loan Supplement dated July 20, 2012, by and between Aerovías de México, S.A. de C.V., as borrower, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender, in respect of MSN 19000557.
  24. Aircraft Sublease Agreement dated February 22, 2011, entered into between Aerovías de México, S.A. de C.V., as sublessor, and Aerolitoral, S.A., de C.V., as sublessee.
  25. Sublease Supplement dated March 1, 2011, by and between Aerovías de México, S.A. de C.V., as sublessor, and Aerolitoral, S.A., de C.V., as sublessee, in respect

- of MSN 19000408.
26. Sublease Supplement dated August 5, 2011, by and between Aerovías de México, S.A. de C.V., as sublessor, and Aerolitoral, S.A., de C.V., as sublessee, in respect of MSN 19000455.
  27. Sublease Supplement dated September 2, 2011, by and between Aerovías de México, S.A. de C.V., as sublessor, and Aerolitoral, S.A., de C.V., as sublessee, in respect of MSN 19000466.
  28. Sublease Supplement dated December 9, 2011, by and between Aerovías de México, S.A. de C.V., as sublessor, and Aerolitoral, S.A., de C.V., as sublessee, in respect of MSN 19000499.
  29. Sublease Supplement dated February 17, 2012, by and between Aerovías de México, S.A. de C.V., as sublessor, and Aerolitoral, S.A., de C.V., as sublessee, in respect of MSN 19000518.
  30. Sublease Supplement dated March 28, 2012, by and between Aerovías de México, S.A. de C.V., as sublessor, and Aerolitoral, S.A., de C.V., as sublessee, in respect of MSN 19000525.
  31. Sublease Supplement dated April 20, 2012, by and between Aerovías de México, S.A. de C.V., as sublessor, and Aerolitoral, S.A., de C.V., as sublessee, in respect of MSN 19000531.
  32. Sublease Supplement dated May 25, 2012, by and between Aerovías de México, S.A. de C.V., as sublessor, and Aerolitoral, S.A., de C.V., as sublessee, in respect of MSN 19000546.
  33. Sublease Supplement dated June 22, 2012, by and between Aerovías de México, S.A. de C.V., as sublessor, and Aerolitoral, S.A., de C.V., as sublessee, in respect of MSN 19000552.
  34. Sublease Supplement dated July 20, 2012, by and between Aerovías de México, S.A. de C.V., as sublessor, and Aerolitoral, S.A., de C.V., as sublessee, in respect of MSN 19000557.
  35. Amendment Agreement No. 2 dated August 5, 2011, by and between Brasilmex Leasing, LLC, as lessor, and Aerovías de México, S.A. de C.V., as lessee.
  36. Deed of Amendment dated May 29, 2020, among Aerovías de México, S.A. de C.V., as lessee, Grupo Aeromexico S.A.B. de C.V., as borrower parent, Brasilmex Leasing, LLC, as lessor, Brasilmex Leasing, LLC, as owner, Brasilmex Leasing Statutory Trust, as owner parent, Wilmington Trust Company, not in its individual capacity, but solely as security trustee, and Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as original lender (the “**Deferral Agreement**”).
  37. Transfer Agreement dated December 24, 2020, between Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as transferor, and Federative Republic of Brazil through *Secretaria Especial de Comércio Exterior e Assuntos Internacionais do Ministério da Economia (SECINT-ME)*, formerly *Secretaria De Assuntos Internacionais Do Ministério Da Fazenda (Sain)*, through the *Fundo De Garantia À Exportação – FGE*, as transferee.
  38. Notice of Transfer dated December 24, 2020, from Banco Nacional de Desenvolvimento Econômico e Social – BNDES, as transferor, and Federative Republic of Brazil through *Secretaria Especial de Comércio Exterior e Assuntos Internacionais do Ministério da Economia (SECINT-ME)*, formerly *Secretaria De*

Assuntos Internacionais Do Ministério Da Fazenda (Sain), through the *Fundo De Garantia À Exportação – FGE*, as transferee, to Aerovías de México, S.A. de C.V., as borrower, Brasilmex Leasing, LLC, as owner, Brasilmex Leasing Statutory Trust, as owner parent, and Wilmington Trust Company, not in its individual capacity, but solely as security trustee.

39. Any and all other operative documents relating to the Aircraft, including, without limitation, all lease agreements, loan agreements, funding agreements, security agreements, indentures, all parties agreements, participation agreements, intercreditor agreements, guarantee agreements and indemnity agreements, as applicable, and any amendments, supplements, side letters, novations or assignments pertaining to any of the foregoing.



**EXHIBIT B**

Form of Amended Aircraft Lease

[Attached]

**Exhibit B**

**Summary of Terms of Form Leases**

<b>Material Terms: Form of Amended and Restated Aircraft Lease Agreement</b>	
<b>Leased Aircraft</b>	Ten Embraer ERJ 190-100 LR aircraft
<b>MSNs</b>	MSN 19000408 MSN 19000455 MSN 19000466 MSN 19000499 MSN 19000518 MSN 19000525 MSN 19000531 MSN 19000546 MSN 19000552 MSN 19000557
<b>Term</b>	The Base Lease Term shall commence on the Lease Commencement Date and end on [REDACTED].
<b>Power-by-the-Hour Period</b>	The PBH Rent shall be paid from the Lease Commencement Date until [REDACTED].
<b>Power-by-the-Hour Pricing</b>	During the PBH Period, PBH Rent for a calendar month will be calculated in accordance with the following formula: W = [REDACTED] where: W: [REDACTED]
<b>Monthly Rent per Aircraft</b>	For each Fixed Rent Period during the Base Lease Term, the amount of [REDACTED] shall be payable on each Fixed Rent Date during the Base Lease Term.