

Hearing Date and Time: October 21, 2021 at 9:00 a.m. (Prevailing Eastern Time)
Objection Date and Time: October 18, 2021 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.¹**

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING DEBTOR AEROVÍAS DE MÉXICO, S.A. DE C.V. TO ASSUME
(ON AN AMENDED BASIS) THAT CERTAIN LEASE AGREEMENT AND
(II) APPROVING THE CLAIMS SETTLEMENT WITH WINGS 35115 LLC**

PLEASE TAKE NOTICE that, on October 7, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order (I) Authorizing Debtor Aerovías de México, S.A. de C.V. To Assume (On an Amended Basis) that Certain Lease Agreement and (II) Approving the Claims Settlement with Wings 35115 LLC* (the

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

“**Motion**”). A hearing on the Motion is scheduled to be held on **October 21, 2021 at 9:00 a.m.** (**prevailing Eastern Time**) (the “**Hearing**”) before the Honorable Judge Shelley C. Chapman, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”), or at such other time as the Court may determine.

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

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

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

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion shall be in writing, shall comply with the Federal Rules of Bankruptcy Procedure and the Local

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

Bankruptcy Rules for the Southern District of New York, shall be filed with the Court by (a) attorneys practicing in the Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov) and (b) all other parties in interest, in accordance with the customary practices of the Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 and the *Order Establishing Certain Notice, Case Management, and Administrative Procedures*, entered on July 8, 2020 [ECF No. 79], so as to be filed and received no later than **October 18, 2021 at 12:00 p.m. (prevailing Eastern Time)** (the “**Objection Deadline**”).

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

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

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Dated: October 7, 2021
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

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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.¹

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING DEBTOR
AEROVÍAS DE MÉXICO, S.A. DE C.V. TO ASSUME (ON AN AMENDED BASIS)
THAT CERTAIN LEASE AGREEMENT AND (II) APPROVING THE CLAIMS
SETTLEMENT WITH WINGS 35115 LLC**

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

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

25, 2010 (the “**Aircraft Lease**”), on an amended basis in accordance with the terms and conditions set forth in that certain Amended and Restated Aircraft Lease Agreement (the “**Amended Aircraft Lease**”) and (ii) approving the Claim Settlement (as defined herein). The Amended Aircraft Lease is attached to the Proposed Order (as defined herein) as Exhibit 1 and a summary of the material terms thereof is attached hereto as Exhibit B. This Motion is supported by the *Declaration of Matthew Landess in Support of (A) Debtors’ Motion for Entry of an Order (I) Authorizing Debtor Aerovías de México, S.A. de C.V. To Assume (On an Amended Basis) that Certain Lease Agreement and (II) Approving the Claims Settlement with Wings 35115 LLC and (B) Related Sealing Motion* (the “**Landess Declaration**”) filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

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

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

Relief Requested

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

Background

A. General Background

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

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

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

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

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

B. The Debtors’ Fleet Optimization Process

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

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

order approving the Equipment Stipulation Motion [ECF No. 396] and so ordered the underlying stipulations. [ECF Nos. 399–429, 475, 491, 502].

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

11. The Court has also entered additional orders authorizing the Debtors to either enter into new aircraft leases and/or assume existing aircraft leases on an amended basis. *See* ECF Nos. 984, 1100, 1544, 1572–73, 1659, 1693, 1759.

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

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

C. The Amended Aircraft Lease and the Claims Settlement

12. Over the last several months, the Debtors have continued negotiating with existing lessors and potential lessors of additional aircraft and equipment to obtain the best terms available for the aircraft and equipment that will be necessary for the Debtors to pursue their long-term business plan and to optimize their anticipated fleet upon emergence from the Chapter 11 Cases.

13. As a result of arm's length and good faith negotiations, the Debtor Lessee has reached an agreement with Wings 35115 LLC (the "**Lessor**") to (a) assume the Aircraft Lease relating to a Boeing B737-852 aircraft bearing manufacturer's serial number 35115 (together with the related engines, parts, equipment, and appurtenances, the "**Aircraft**"), which the Debtor Lessee currently operates as part of its existing fleet, on an amended basis in accordance with the terms and conditions set forth in the Amended Aircraft Lease and (b) resolve any and all claims against the Debtors in the Chapter 11 Cases relating to the Aircraft or the Aircraft Lease belonging to the Lessor (collectively with its affiliates, the "**Claimants**"⁵), each as described herein, in the Amended Aircraft Lease, and in the Landess Declaration.

14. The Amended Aircraft Lease sets forth the commercial terms between the Lessor and the Debtor Lessee. By agreeing to such terms, the Debtors have achieved certainty in maintaining the Aircraft in their fleet on terms that fit the Debtors' short- and long-term needs and with improved economics and terms and conditions as compared to the existing Aircraft Lease. The Aircraft will come at attractive economics and ownership costs. Moreover, the Lessor and the Debtor Lessee have agreed that, subject to the Debtors' continued compliance with the terms of the Aircraft Lease, the assumption of the Aircraft Lease on an amended basis, in accordance

⁵ For the avoidance of doubt, "Claimants" includes, without limitation, the claimant holding claim numbered 268 and scheduled claim 561105670.

with the terms and conditions set forth in the Amended Aircraft Lease, would not give rise to an obligation to make any cash payment at the time of assumption (other than payments for post-petition obligations of the Debtors to the Lessor) to cure any defaults under the Aircraft Lease under section 365(b)(1)(A) of the Bankruptcy Code.

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

16. In conjunction with this transaction, the Debtors seek to resolve any and all claims against the Debtors relating to the Aircraft and the Aircraft Lease in the Chapter 11 Cases (the “**Claims Settlement**” and, together with the Amended Aircraft Lease, the “**Wings Transactions**”). To this end, the parties have agreed that (a) the Lessor, on behalf of itself and all other Claimants, shall have an allowed non-priority, general unsecured, prepetition claim, in the aggregate amount of \$2,629,322.70 against the Debtor Lessee (the “**Allowed Claim**”) on account of all prepetition claims in respect of the Aircraft and the Aircraft Lease against the Debtors in the Chapter 11 Cases belonging to the Claimants And (b) the Allowed Claim shall not be subject to any setoff, reduction, defense, recoupment, or withholding (except as may be required by law). Without prejudice to any claims arising under the Amended Aircraft Lease, the Allowed Claim shall constitute the only prepetition general unsecured claim of the Claimants relating to the Aircraft allowed in the Chapter 11 Cases.

17. In determining to enter into the Wings 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, and the Ad Hoc Group of Senior Noteholders.⁶

Basis for Relief

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

18. 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 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).

19. 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

⁶ 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].

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.

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

21. 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.

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

23. The Debtors respectfully submit that the relief requested herein is fair, equitable, reasonable, and in the best interests of the Debtors’ estates and is, thus, justified under sections 365(a) and 105(a) of the Bankruptcy Code. As described above and in the Landess Declaration, the Debtors are seeking to reset their fleet and attendant costs to a market level. As part of this process, the Debtors are evaluating their fleet of aircraft and equipment, reviewing the relevant underlying leases and agreements, and, to the extent prudent, negotiating amendments to such leases and agreements for aircraft and equipment that the Debtors desire to maintain. In doing so, the Debtors compared the Aircraft Lease and the Aircraft to available alternatives and ultimately negotiated (at arm’s length, in good faith, and in consultation with their key stakeholders) new economically favorable terms, as memorialized in the Amended Aircraft Lease, that are in line with the Debtors’ long-term business plan. In addition to the improved costs and better terms and conditions as compared to the Aircraft Lease, the Amended Aircraft Lease also will create operational flexibility for the Debtors, as it will allow the Debtors to retain and operate an existing aircraft in their fleet and would position the Debtors to potentially reject other aircraft or equipment that are not as attractive for the long term fleet. Finally, the Debtors have determined (based on

the exercise of their sound business judgment) that the terms of the Amended Aircraft Lease represent the best available transaction under the circumstances of the Chapter 11 Cases (and is superior to at least some of their prepetition aircraft leases).

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

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

25. By this Motion, the Debtors also seek approval of the Claims Settlement between the Claimants and the Debtors for the allowance of a certain claim stemming from the amendment of the Aircraft Lease's terms, while expunging all other claims belonging to the Claimants against the Debtors in the Chapter 11 Cases.

26. A court should exercise its discretion to approve settlements "in light of the general public policy favoring settlements." *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998). Indeed, courts in this district have made clear that "[a]s a general matter, 'settlements and compromises are favored in bankruptcy as they minimize costly litigation and further parties' interests in expediting the administration of the bankruptcy estate.'" *In re Republic Airways Holdings, Inc.*, No. 16-10429 (SHL), 2016 WL 2616717, at *3 (Bankr. S.D.N.Y. May 4,

2016) (citing *In re Dewey & LeBouef LLP*, 478 B.R. 626, 640 (Bankr. S.D.N.Y. 2012)); *see also Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 455 (2d Cir. 2007).

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

28. Furthermore, when assessing whether or not to approve a settlement, “the court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation” nor decide the issues of law or fact raised by the settlement. *See In re Purofied Down Prods.*, 150 B.R. at 522. Instead, a court should “canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (alteration in original) (citations omitted). In this regard, courts have found that “[t]he ‘reasonableness’ of [a] settlement depends upon all factors, including probability of success, the length and cost of the litigation, and the extent to which the settlement is truly the product of ‘arms-length’ bargaining, and not fraud or collusion.” *In re Ionosphere Clubs, Inc.*, 156 B.R. at 428.

29. The Debtors respectfully submit that the Claims Settlement satisfies the range of reasonableness test described above. Rather than engage in costly and value-destructive litigation

over the Debtor Lessee's obligations to the Claimants, the amounts of the Claimants' claims, and any amounts mitigating the quantum of those claims, the parties negotiated a consensual resolution settling on \$2,629,322.70 as the agreed aggregate amount for the Claims Settlement. Any efforts by the Debtors, through litigation or otherwise, to resolve such disputes would be time-consuming and expensive, and would delay any distribution to the creditor beneficiaries of the Debtors' estates. A failure to resolve the matters at issue at this time could negatively impact the Debtors and their estates. The Claims Settlement is the product of arm's length and good faith bargaining among the separate and independent advisors of the Debtors and the Lessor that will (a) eliminate the need for a costly claims dispute and (b) unlock distributable value for the Debtors' unsecured creditors by liquidating the Claimants' prepetition claims against the Debtors. Lastly, a number of the Debtors' key stakeholders, including the respective advisors to the Committee and the Ad Hoc Group of Senior Noteholders, have no objection to the relief requested herein. Accordingly, the Debtors respectfully submit that the proposed Claims Settlement is fair and equitable, would be in the best interests of the Debtors' estates, creditors, and other stakeholders, and should be approved.

Notice

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

No Prior Request

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

[Remainder of page intentionally left blank]

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

Dated: October 7, 2021
New York, New York

DAVIS POLK & WARDWELL LLP

By: /s/ Timothy Graulich

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*Counsel to the Debtors
and Debtors in Possession*

Exhibit A

Proposed Order

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

In re:

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

Debtors.¹**

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**ORDER (I) AUTHORIZING DEBTOR AEROVÍAS DE MÉXICO, S.A. DE C.V.
TO ASSUME (ON AN AMENDED BASIS) THAT CERTAIN LEASE
AGREEMENT AND (II) APPROVING THE CLAIMS SETTLEMENT WITH
WINGS 35115 LLC**

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

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

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

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 October 21, 2021 (the “**Hearing**”)]; and upon [the record of the Hearing, and upon] all of the proceedings had before the Court; and after due deliberation the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having found that the relief granted herein is in the best interests of the Debtors, their creditors, and all other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. The Debtors are authorized (but not directed), pursuant to section 365 of the Bankruptcy Code, to (a) assume the Aircraft Lease on an amended basis in accordance with the terms and conditions set forth in the Amended Aircraft Lease and (b) pay all amounts and otherwise perform all obligations under the Amended Aircraft Lease in accordance with the terms thereof. The Aircraft Lease, as amended, shall be deemed assumed by the Debtors upon the effectiveness of the Amended Aircraft Lease in accordance with its terms, and upon such effectiveness the Amended Aircraft Lease shall be in full force and effect and the Debtor Lessee shall be obligated to perform all of its obligations thereunder without need for further notice or action by the Debtor Lessee or the Lessor or further order of the Court.

3. The Debtors are authorized (but not directed) to enter into, and perform their obligations under, all exhibits, addenda, and other agreements contemplated by the Amended Aircraft Lease without further approval of the Court.

4. The Debtors and the Lessor are authorized (but not directed) to execute, deliver, provide, implement, and fully perform any and all obligations, instruments, and papers provided for or contemplated in the Amended Aircraft Lease and to take any and all actions to implement the Amended Aircraft Lease in accordance with the terms thereof.

5. Subject to the Debtor Lessee's continued compliance with the terms of the Amended Aircraft Lease, the cure payment required by section 365(b)(1)(A) of the Bankruptcy Code upon assumption of the Amended Aircraft Lease shall be \$0.00.

6. From and after the effective date of the Amended Aircraft Lease, the obligations of the Debtors under the Amended Aircraft Lease shall constitute administrative expenses of the Debtors' estates pursuant to sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code.

7. The automatic stay under section 362 of the Bankruptcy Code is vacated and modified to the extent necessary to implement and effectuate the terms of the Amended Aircraft Lease. Upon the occurrence and during the continuance of an event of default under the Amended Aircraft Lease, the Lessor may file with the Court and deliver to the Debtors and the Committee a written notice (a "**Termination Notice**") effective as of five business days after its filing and delivery (the "**Remedies Period**"). Upon the expiration of the Remedies Period, the automatic stay in the Chapter 11 Cases shall be deemed lifted and the Lessor may exercise any remedies or enforcement actions provided for under the Amended Aircraft Lease without the need for further notice (other than as expressly

provided in the Amended Aircraft Lease) or authorization from the Court. During the Remedies Period, the Debtors or the Committee may seek an emergency hearing at which either may contest the fact that an event of default under the Amended Aircraft Lease has occurred and is continuing. The Remedies Period shall automatically extend to the conclusion of such a hearing and the issuance of a ruling on the matters contested thereat.

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

9. In accordance with the Claims Settlement, the Lessor shall be allowed the following non-priority general unsecured claim against the Debtor Lessee in its Chapter 11 Case (or any subsequent chapter 7 case in the event of conversion) (the "**Allowed Claim**"):

Claimant	Treatment	Allowed Claim Amount
Wings 35115 LLC	Allowed	\$2,629,322.70
	Total	\$2,629,322.70

10. In accordance with the Claims Settlement, all other claims against the Debtors relating to the Aircraft or Aircraft Lease belonging to any of the Claimants in the Chapter 11 Cases are hereby deemed withdrawn (collectively, the "**Withdrawn Claims**"), including, without limitation, claim numbered 268.

11. The Allowed Claim of the Lessor shall be automatically allowed, and the Withdrawn Claims of the Claimants shall be automatically withdrawn, upon the effectiveness of the Amended Aircraft Lease, and no further notice or action shall be

required of the Lessor, any Claimant, or the Debtors to effectuate the allowance or withdrawal, as applicable, of such claims upon such occurrence. From and after the effective date of the Amended Aircraft Lease, Epiq Corporate Restructuring, LLC is authorized to update the claims register to reflect the terms of this Order, including, among other things, reflecting the allowance of the Allowed Claim and the withdrawal of the Withdrawn Claims as set forth in this Order.

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

13. 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, their creditors, their respective affiliates, successors, and assigns, and any affected third parties, including, but not limited to, the Lessor and all other persons asserting interests in the relevant aircraft.

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

Dated: _____, 2021
New York, New York

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Amended Aircraft Lease

DATED AS OF [____], 2021

**WINGS 35115 LLC,
as Lessor**

and

**AEROVÍAS DE MÉXICO, S.A. DE C.V.,
as Lessee**

**AMENDED AND RESTATED AIRCRAFT LEASE
AGREEMENT
RELATING TO THE LEASING OF ONE BOEING
737-852 MODEL AIRCRAFT
MSN 35115
EQUIPPED WITH TWO CFM56-7B27 ENGINES**

CONTENTS

Clause	Page
1. Interpretation.....	1
2. Agreement to Lease.....	1
3. Delivery.....	2
4. Termination Date and Renewal Option.....	2
5. Rent.....	5
6. <i>[Reserved]</i>	6
7. Payments.....	6
8. Lessor Covenants.....	9
9. Lessee Covenants.....	9
10. Possession, Subleasing and Pooling.....	16
11. Technical Reporting, Aircraft Documents, Inspection, Maintenance and Repair.....	19
12. Replacement and Interchange of Engines and Parts.....	23
13. Manufacturer's Warranties.....	28
14. Indemnities.....	29
15. Insurance.....	32
16. Loss, Damage and Requisition.....	34
17. Disclaimers.....	35
18. Redelivery.....	38
19. Events of Default.....	39
20. Taxation.....	46
21. Assignment and Transfer.....	53
22. Miscellaneous Provisions.....	56
23. Notices; electronic signatures.....	61
24. Governing Law Jurisdiction and Waiver of Jury Trial.....	62
Schedule 1 Definitions and Construction.....	67
Schedule 2 Representations and Warranties.....	82
Schedule 3 Conditions Precedent and Post-Closing Matters.....	86
Schedule 4 Financial Terms Annex (Confidential).....	90
Schedule 5 Insurance Requirements.....	94
Schedule 6 Description of Aircraft.....	99
Schedule 7 Aircraft Documents at Redelivery.....	100
Schedule 8 Redelivery Conditions.....	110
Schedule 9 Form of Lease Commencement Date Confirmation.....	114

Schedule 10 Form of Renewal Notice 116

Schedule 11 [*Reserved*]..... 118

Schedule 12 [*Reserved*]..... 119

Schedule 13 [REDACTED]..... 120

Schedule 14 [REDACTED]..... 121

Schedule 15 Form of Redelivery Acceptance Certificate 122

Schedule 16 Form of Maintenance Status Report 125

Schedule 17 Petition Date Condition 128

Schedule 18 Description of Prior Lease..... 129

AMENDED AND RESTATED AIRCRAFT LEASE AGREEMENT

THIS AGREEMENT is made as of [____], 2021

BETWEEN:

Wings 35115 LLC, a limited liability company organized under the laws of Delaware, whose main office is at 4695 MacArthur Court, Suite 1400, Newport Beach, California, U.S.A. ("**Lessor**"); and

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 ("**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 1.1 of Schedule 1 (*Definitions and Construction*).

1.2 Construction

The conventions on construction and usage set out in Clause 1.2 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. Lessor and Lessee have previously entered into an Aircraft Lease Agreement dated June 25, 2010 between Lessee as lessee and ALC Blarney Aircraft Limited as lessor ("**Original Lessor**"), as supplemented pursuant to Side Letter Number One to Aircraft Lease Agreement dated as of June 29, 2010 ("**Side Letter No. 1**") between Original Lessor and Lessee, as assigned, assumed and amended pursuant to the Assignment, Assumption and Amendment Agreement dated as of October 25, 2011 (the "**First Assignment, Assumption and Amendment Agreement**") among Original Lessor as prior lessor, ALC Warehouse Ireland Limited as new lessor ("**Prior Lessor**") and Lessee as lessee, as further assigned, assumed and amended pursuant to the Second Assignment, Assumption and Amendment Agreement dated as of October 6, 2014 (the "**Second Assignment, Assumption and Amendment Agreement**") among Prior Lessor as prior lessor, Original Lessor as new lessor and Lessee as lessee, as further assigned, assumed and amended pursuant to the Third

Assignment, Assumption and Amendment Agreement dated as of June 23, 2015 (the “**Third Assignment, Assumption and Amendment Agreement**”) among Original Lessor as prior lessor, Lessor as new lessor and Lessee as lessee, as amended pursuant to Amendment No. 1 to Lease Agreement 35115 dated January 25, 2017 (“**Amendment No. 1**”) between Lessor and Lessee, as further amended pursuant to Amendment No. 2 to Lease Agreement 35115 dated May 1, 2018 (“**Amendment No. 2**”) between Lessor and Lessee, as further amended pursuant to Amendment No. 3 to Lease Agreement 35115 dated September 28, 2018 (“**Amendment No. 3**”) between Lessor and Lessee, as further amended pursuant to Amendment No. 4 to Lease Agreement 35115 dated February 7, 2020 (“**Amendment No. 4**”) between Lessor and Lessee, and as further amended pursuant to Amendment No. 5 to Lease Agreement 35115 dated April 6, 2020 (“**Amendment No. 5**”) between Lessor and Lessee (as assigned, amended, supplemented or otherwise modified from time to time, as more particularly described on Schedule 18 attached hereto, the “**Prior Lease**”). The parties acknowledge and agree that this Agreement amends and restates the Prior Lease in its entirety.

3. **DELIVERY**

3.1 **Delivery and Acceptance**

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 on the Lease Commencement Date and no physical delivery of the Aircraft by Lessor to Lessee will be required on the 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 Clause 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. 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.

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 statement, act, or omission of Lessor in connection with the use, operation, maintenance, repair, condition or security of the Aircraft, except as may be agreed separately in writing 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; 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 1.1(d) hereof).

4.2 **Renewal Options**

4.2.1 **Renewal Notice**

- (a) Lessee shall have the right to extend the Term of this Agreement by up to [REDACTED] months (the “**Operational Extension**”) by providing Lessor a written notice 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) below). All terms and conditions of this Agreement during the Base Lease Term 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] 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) above). 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 Material Default or 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*) above, 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, which amount shall equal the prevailing fair market rental value at such time. 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) Lessor shall procure that Lessor Guarantor executes and delivers a confirmation of the Lessor Guarantee in respect of this Agreement as so amended in form and substance acceptable to Lessee acting reasonably, (iii) Lessee shall provide (x) written evidence of appropriate corporate action authorizing execution and delivery of such amendment, (y) evidence of the issuance of each approval, license and consent which may be required in connection with such amendment and (z) an opinion from Lessee's in-house counsel addressed to Lessor with respect to such amendment, including that all necessary filings and registrations with respect thereto have been or promptly will be made in the State of Registration and the State of Incorporation, which opinion shall be reasonably satisfactory to Lessor; and (iv) Lessor shall provide (x) written evidence of appropriate corporate action by Lessor authorizing the execution and delivery of such amendment and by Lessor Guarantor authorizing execution and delivery of such confirmation of the Lessor Guarantee, (y) evidence of the issuance of each approval, license and consent which may be required in connection with such amendment and such confirmation and (z) an opinion from Lessor Guarantor's counsel with respect to such amendment and such confirmation, addressed to Lessee which opinion shall be reasonably satisfactory to Lessee.
- (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 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 10% 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 independent, internationally recognized aircraft appraiser from the list of appraisers included in Clause 6 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 or deemed 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) [Reserved]

(d) All other 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 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 (iii) 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 Lease Commencement Date until [REDACTED], as set forth in Part 1 of the Financial Terms Annex (the “**PBH Period**”).
- (b) For each calendar month (or part thereof) in the PBH Period during the Term, Lessee will provide a utilization report to Lessor by the [REDACTED] day of the immediately succeeding calendar month and make a payment of the PBH Rent by the later of (x) the [REDACTED] day of such calendar month and (y) [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 arrears 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 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 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 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 Rent Period and the denominator of which is 30.

6. [Reserved]

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 in Clause 6 of Schedule 4Part A of the Financial Terms Annex 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.

7.2 Default Interest

If any party hereto fails to pay any amount payable under this Agreement on the due date, such party shall pay to the other party 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 all 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 after the Lease Commencement Date*)) 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) [*Reserved*]
- (d) 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.

Lessor will not be obliged to pay any amounts to Lessee (or at Lessee's direction) under this Agreement so long as any sums which are then due from Lessee under this Agreement remain unpaid and any such amounts which would otherwise be due may be used to offset any amounts owed by Lessee under this Agreement.

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 next following 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. Payments of Rent due on a day which is not a Business Day shall be due on the immediately succeeding Business Day.

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 a Material 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 Material Default or 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 before any payment to be made by Lessee to Lessor under the Operative Documents is due (including with respect to the payment of Rent), 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, each of its respective successors and assigns and any Person lawfully 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 Agreements.

8.2 **Lessor Obligations following Termination Date**

Lessor shall within three (3) Business Days of the Termination Date 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; provided that, if any Default has occurred and is continuing, Lessor may hold and apply any such amounts in or toward the cure of such Default and, at such time as no 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) hereof, as and when required pursuant to such Clause.

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 [REDACTED], Lessor shall, promptly following receipt of an invoice and documentation supporting the cost of performing such Airworthiness Directives on the Aircraft, reimburse Lessee a portion of such cost determined in accordance with the formula set forth in Clause 4 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. All such undertakings and covenants shall, except where expressly otherwise stated, be performed at the expense of Lessee.

- (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 cause any Post-Closing Authorizations and Filings to be made or obtained as 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) 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, 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
 - (ii) 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 as Lessor may from time to time reasonably request; provided, however, that under no circumstances shall Lessee be required to provide Lessor with financial or operational forecasts;
- (b) on request, inform Lessor as to the current location of the Airframe and Engines, the serial number and owner of any engine installed on the Airframe and the serial number, registration mark and owner of any airframe on which an Engine is installed;
- (c) promptly notify Lessor of the occurrence of any Total Loss or of any event which is likely to result in repair costs or a claim under the Insurances in excess of the Damage Notification Threshold; and
- (d) promptly notify Lessor of the occurrence of any Event of Default.

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 (it being understood and agreed that if the Aircraft is initially grounded in a jurisdiction that is in

violation of or contrary to any Regulation applicable to it or the Aircraft, Lessee shall, as soon as possible, relocate the Aircraft to a permitted jurisdiction);

- (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 (it being understood and agreed that if the Aircraft is initially grounded at such a location Lessee shall, as soon as possible, relocate the Aircraft to a jurisdiction where the Insurances are in full force and effect); 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 (it being understood and agreed that if the Aircraft is initially grounded in an Excluded Country

Lessee shall, as soon as possible, relocate the Aircraft to a jurisdiction that is not an Excluded Country), 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 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 FAA 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 FAA in the name of Lessor other than (x) with Lessor's prior written approval which will not be unreasonably withheld or (y) in connection with a sublease of the Aircraft to a Permitted Sublessee in accordance with Clause 10.3;
 - (ii) subject to clause (iii) below, cooperate with Lessor in relation to the registration and recordation with the FAA and any other relevant public record (or as required to comply with the Cape Town Convention or the Geneva Convention where applicable) of (x) the Aircraft and the Operative Documents (or particulars thereof) and/or (y) 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 the Operative Documents (as the case may be) on such public record; and
 - (iii) cause any supplements and amendments to be promptly filed and recorded with the FAA 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 of the Aircraft 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 the United States of America, Lessee shall also have the right without Lessor consent to re-register the Aircraft with the FAA 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 or 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 Clause 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 (i) customary in commercial aircraft financing transactions in the United States of America or (ii) recognized in the United States of America 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 the United States of America 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 the United States of America, 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 WINGS 35115 LLC”;

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.
- (b) not at any time (i) represent to others that Lessor 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 Lessor;
- (d) not abandon the Aircraft, any Engine or any Part;
- (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);
- (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; and
- (g) not consent to any interests conflicting with (whether or not taking priority over) the interests of Lessor as lessor and owner or any Financing Party to be registered at the International Registry without the prior written consent of Lessor, or 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;

- (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 (as determined by Lessor in its reasonable discretion) 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 the State of Incorporation, the United States of America, any province of the Dominion of Canada, any member of the European Union or another jurisdiction consented to in writing by Lessor, such consent not to be unreasonably withheld or delayed;
- (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) the Surviving Entity shall execute and deliver to Lessor and/or file such recordations and filings with any Government Entity (including the Aviation Authority) or public record 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 and the Financing Parties) to evidence, or in connection with, such transfer of assets, merger or consolidation; and
- (g) 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 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, any Engine or any Part 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 title and ownership interests of Lessor in the Aircraft, the Airframe, such Engine or such Part, as applicable and the interests of the Financing Parties in respect of such Aircraft, the Airframe, such Engine or such Part and will not seek to exercise any rights whatsoever in relation to such Aircraft, Airframe, Engine or Part. 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 title of such holders of interests and will not seek to exercise any rights whatsoever in relation to such any engine; provided, that such undertaking shall not limit the exercise by Lessor of its rights under this Agreement.

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) 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 and in no event shall any chartering or wet leasing of the Aircraft extend beyond the Termination Date; and
- (f) 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, (x) [REDACTED] or (y) with the written consent of Lessor (not to be unreasonably withheld or delayed), sublease the Aircraft to any Person not described in subclause (x) 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 and any Financing Parties 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 or Financing Parties Representative (as applicable) a security assignment (in form and substance reasonably satisfactory to Lessor and Financing Parties Representative) assigning all of Lessee's rights, title and interest to, in and under such sublease to Lessor, 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) the sublease term shall not be scheduled to continue past the then scheduled Expiry Date;
- (d) 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;
- (e) 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 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 (x) Lessee may redact the amount of Rent and all other economic terms, (y) the conditions set forth in this Clause 10.3 are required to be satisfied prior to commencement of the relevant sublease and (z) the evidence and/or documentation specified in this Clause 10.3 shall be required to be provided to Lessor, and if applicable to Financing Parties Representative, prior to commencement of the relevant sublease so as to give such Persons a reasonable period of time to review the same);
- (f) 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*);
- (g) 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;
- (h) the sublease shall not have a term which extends or is capable of extending beyond the then scheduled Expiry Date;
- (i) 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;

- (j) 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 (f) through (h) of Clause 19.1 (*Events*);
- (k) the sublessee under the sublease shall hold all certificates, licenses, permits and authorizations required for its use and operation of the Aircraft;
- (l) Lessor shall consent in writing to any change in the jurisdiction in which the Aircraft is registered (such consent not to be unreasonably withheld or delayed), and 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 Lessor as owner (and if that is not possible, in the name of Lessee or the sublessee with the interests of 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 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 costs, expenses and liabilities incurred by Lessor and any Financing Party in connection with such 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);
- (m) 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;
- (n) 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;
- (o) the subleasing (A) shall not increase any of Lessor's risk, obligations, responsibilities, liabilities, and costs related to the transactions contemplated by this Agreement, and shall not reduce any of Lessor's rights and benefits related thereto, and (B) Lessor will not incur any obligation or liability of any kind as a result of such subleasing; and
- (p) each of Lessor and Lessee may request additions or deletions to the list of Pre-Approved Sublessees on **Error! Reference source not found.** from time to time and each party shall consider such proposed addition or deletion, as the case may be, in good faith.

10.4 **Pooling of Engines and Parts**

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

- (a) no Event of Default has occurred and is continuing;
- (b) the installation of the Engine or Part on a Pool Aircraft (as defined below) is in accordance with the provisions of an engine or Parts pooling arrangement with the applicable Manufacturer or with an Approved Maintenance Performer or with other responsible, solvent commercial air carriers;
- (c) the Engines or Parts will only be installed on an aircraft (a “**Pool Aircraft**”) with which it is compatible;
- (d) title to any Engine or Part remains vested in Lessor and any such pooling arrangement shall not jeopardize Lessor’s or any Financing Party’s rights in that Engine or Part unless and until such Engine or Part is replaced with a Replacement Engine or Replacement Part, as applicable, in accordance with Clause 12.6;
- (e) Lessee has entered into the pooling agreement or arrangement in the ordinary course of its airline business;
- (f) the arrangements under which the Pool Aircraft is insured would permit the recovery by Lessor of an amount at least equal to the full replacement value of that Engine or Part upon the Total Loss of that Pool Aircraft (including the Engine or Part) when the Engine or Part is installed thereon; and
- (g) the Engine or Part is re-installed on the Airframe prior to the Expiry Date unless it is replaced by a Replacement Engine or Replacement Part, as applicable, in accordance with Clause 12.6 (*Permanent Replacement of Engines and Parts*); and
- (h) a record of the location of any Engine or Part will be kept and made available to Lessor at any time on request.

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 [REDACTED] and the details of [REDACTED]; and
- (b) give Lessor at least [REDACTED] months written notice as to the time and location of all Major 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*) and 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 cockpit and 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; and
- (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.
- (e) Lessee acknowledges and agrees that the Aircraft Documents are the sole and exclusive property of Lessor, and Lessee only has a leasehold interest in the Aircraft Documents and is entitled to retain the same during the Lease Term. At the end of the Lease Term in the ordinary course or upon the earlier termination or cancellation of this Agreement for any reason whatsoever, Lessee shall arrange for the Aircraft Documents to be returned to Lessor together with the Aircraft as provided in Clause 18 and Schedule 7.
- (f) During the term of this Agreement, if Lessee intends to store all or any part of the physical copies of the Aircraft Documents with a records management company or at any premises that is not owned by Lessee, then Lessee shall provide advance notice of its intention to do so and shall enter into a tripartite agreement with Lessor and such records management company or the owner of such premises (such person, the "**Aircraft Documentation Counterparty**") in a form and on terms to be agreed by Lessor, Lessee and the Aircraft Documentation Counterparty (the "**Aircraft Documents Letter Agreement**"). For the avoidance of doubt, an Aircraft Documents Letter Agreement is required to be entered into every time there is a change in the Aircraft Documentation Counterparty. Lessee further agrees that it will be prudent and exercise due care in its selection of the Aircraft Documentation Counterparty, which shall be a reputable company, and shall ensure that its agreement with such Aircraft Documentation Counterparty for the storage of the Aircraft Documents shall include provisions requiring each box containing any item of the Aircraft Documentation that is stored with the Aircraft Documentation Counterparty to be clearly labeled with the Aircraft and the Engines serial number, as the case may be, to include the legend "owned by [Name of Lessor]" and to be in compliance with any FAA tagging requirements; provided, that failure of all or any part of the Aircraft Documents to be properly labeled will not prejudice the right, title and interest of Lessor in the Aircraft Documents.

- (g) In consideration of the foregoing, Lessor agrees that the rights contemplated by the Aircraft Documents Letter Agreement will only be exercised by Lessor when an Event of Default has occurred and is continuing. Lessee hereby agrees that if Lessor, as part of the exercise of its rights contemplated by the foregoing sentence, makes any payment to the Aircraft Documentation Counterparty that was due from Lessee under its agreement with the Aircraft Documentation Counterparty, and that Lessee is not disputing in good faith, Lessor shall be entitled to seek reimbursement of such amount from Lessee and Lessee shall pay all such amounts to Lessor with five (5) days of receipt of an invoice from Lessor, and failure to do so shall constitute an Event of Default hereunder.

11.3 Inspection

- (a) Upon Lessor's request, Lessee shall arrange that at any reasonable time during the Term (but no more than once per calendar year, unless 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 not count for purposes of this limitation), Lessor or its authorized representatives (which may include representatives of the Financing Parties) 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 disrupt Lessee's normal business operations and inspections of the Aircraft shall be limited to a 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 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 or arising out of such inspection 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

- (a) 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:
 - (i) 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;

- (ii) 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;
 - (iii) 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 so that all maintenance to the Airframe, any Engine or any Part is completed that is required to maintain all warranties applicable to the Aircraft in full force and effect in accordance with their terms;
 - (iv) 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;
 - (v) 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
 - (vi) 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*).
- (b) Lessor shall be entitled but not obligated to have representatives present during the performance of any Heavy Maintenance Event to observe all aspects of such performance, including the workscope thereof. If required by the Approved Maintenance Performer, Lessee shall give written authorization to the Approved Maintenance Performer granting Lessor and its representatives access to the Heavy Maintenance Event and all documents generated in connection with such Heavy Maintenance Event.
 - (c) Lessee acknowledges that Lessee is required to pay to the Approved Maintenance Performer the full cost of and to perform (or cause to be performed) any check, shop visit, overhaul or other maintenance required by the Maintenance Program, whether or not Lessor is required to make any payments pursuant to Clause G of Part B of the Financial Terms Annex, and any costs incurred by Lessee in performing any such check, shop visit, overhaul or other maintenance required by the Maintenance Program shall be for Lessee's account solely.

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 reasonable request, Lessee shall furnish to Lessor, at a maximum of once per calendar year, a copy of the then most current version of the Maintenance Program, provided there have been changes to the Maintenance Program since the previous version was provided to Lessor.

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 [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 at least [REDACTED] days' prior to the [REDACTED]. Notwithstanding the foregoing provisions of this Clause 12.1(a), Lessee shall not substitute any Engine during the [REDACTED] period prior to the Expiry Date unless (i) the Engine suffers [REDACTED] or (ii) if the Engine [REDACTED], and in each case Lessee replaces such Engine with a Replacement Engine in accordance with the requirements of 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 (x) installed on another aircraft in accordance with Clause 12.5 (*Installation of Engines and Parts on Other Aircraft*), (y) properly and safely stored, or (z) 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 Lessor 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 Lessor 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) no Material Event of Default has occurred and is continuing;
- (b) such engine is suitable for operation on the Airframe;
- (c) 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;
- (d) the terms of any lease, conditional sale agreement or security agreement, as the case may be, covering such engine will not have the effect of prejudicing the title and interest of Lessor in and to the Aircraft (including its Engines and Parts);
- (e) the secured party, lessor or conditional vendor, as the case may be, of such engine has confirmed and acknowledged in writing (which confirmation and acknowledgment may be contained in the lease, conditional sale agreement or security agreement covering such engine) to Lessor that it will recognize the respective rights, title and interest of Lessor in and to the Aircraft (including its Engines and Parts) and that it will not seek to exercise any rights whatever in relation thereto, and Lessee so agrees to the extent that title is held by it; and
- (f) the Insurances for the Aircraft are not adversely affected.

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.

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) such part is suitable for operation on the Airframe;
- (b) the terms of any lease, conditional sale agreement or security agreement, as the case may be, covering such part will not have the effect of prejudicing the title and interest of Lessor in and to the Aircraft (including its Engines and Parts);
- (c) as soon as reasonably practicable after a part is installed on the Aircraft, but before the earlier of the next due C Check and 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
- (d) the Insurances for the Aircraft are not adversely affected.

No later than the Termination Date, Lessee shall remove any part that is not a Part and replace it with the relevant Removed Part or a Replacement Part in accordance with Clause 12.6.

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 and if:
 - (i) no Material Event of Default has occurred and is continuing and such installation will not cause a Material Event of Default;
 - (ii) Lessor 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;
 - (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, (x) prohibit such installation, or (y) have the effect of granting any rights in the Removed Engine or Removed Part to any Person other than Lessor and/or subjecting the Removed Engine or Removed Part to any Security Interest, or (z) will have the effect at any time of divesting or impairing the title and interests of Lessor as owner and 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); and

- (iv) Lessee complies with Clause 9.8 (*Recognition of Rights*) with respect to any Removed Engine and 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, 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 Lessor and that such Replacement Engine is subject to this Agreement and any Security Interest of the Financing Parties 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 party may reasonably require to evidence and perfect such transfer of title in accordance with all applicable Laws (including the provision if requested by Lessor 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, title to that Replacement Part shall without further act be deemed transferred to and owned by Lessor free and clear of all Security Interests other than Permitted Liens and subject to this Agreement and any Security Interest of the Financing Parties. In the case of a part that is replacing a Part in an Engine the part is an OEM Approved Part unless otherwise allowed per this Agreement, or unless Lessee has obtained Lessor's prior written approval to use a non-OEM Approved Part. Any proposed repair to a Part in an Engine, Landing Gear or APU that has not been approved by the OEM must also be approved by Lessor prior to performance of the repair.

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) (w) is required by the Aviation Authority or the FAA, or (x) is a change to or modification of the cabin configuration, the inflight entertainment system or the Wi-Fi system or connection, or (y) has been approved by Lessor in writing, or (z) does not and will not:
 - (1) result in (A) a breach of Lessee's obligations under this Agreement, (B) any expense payable by Lessor 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;
 - (2) materially diminish or impair the value, utility or airworthiness of the Aircraft; or

- (3) have a cost (including Parts, labor and materials) in excess of [REDACTED].
- (b) Lessor may review Lessee's proposed designs, plans, engineering drawings and diagrams, and flight and maintenance manual revisions for any proposed Equipment Change. If requested by Lessor, Lessee will furnish Lessor (at Lessee's expense) with (i) such documents in final form and any other documents required by applicable Law as a result of an Equipment Change and (ii) written confirmation (in form and substance reasonably satisfactory to Lessor) of each vendor of any Equipment Change of the full and unconditional right of Lessor and any subsequent operator of the Aircraft (or any part thereof) to use any equipment installed on the Aircraft pursuant to such Equipment Change. All Equipment Changes made to the Aircraft will be properly documented in the Aircraft Documents and be fully approved by the Aviation Authority.
- (c) Title to any equipment installed on the Aircraft pursuant to an Equipment Change after the Lease Commencement Date that is owned by Lessee or installed in connection with a permanent or structural Equipment Change will on installation, without further act, vest in Lessor 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 to ensure that title so passes to Lessor according to all applicable Laws.
- (d) 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 that was [REDACTED] on the [REDACTED].

12.8 Lessee Title

Following (i) transfer of title of a Replacement Engine or Replacement Part in accordance with Clause 12.6(a) and (b) respectively, or (ii) removal of an Equipment Change in accordance with Clause 12.7(d), 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 (at Lessee's request) represent and warrant to Lessee that it has conveyed to Lessee such title to such replaced Engine or Part or Equipment Change as was conveyed to it 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) Notwithstanding this Agreement, Lessor will remain entitled to the benefit of each warranty, express or implied, and any unexpired customer and/or product support given or provided in respect of the Aircraft, any Engine or Part by any manufacturer, vendor, maintenance performer, subcontractor or supplier. With effect from Delivery and for the duration of the Term, Lessor hereby authorizes Lessee to pursue any claim thereunder, at Lessee's cost (including compensation for loss of use of the Aircraft during the Term) such rights as Lessor may have under any warranty with respect to the Aircraft, to the extent that the same have not otherwise been made available to Lessee pursuant to any other agreement, and Lessee agrees diligently to pursue any such claim that arises at its own cost; provided, that if a Material Default or 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) So long as no Material Default or Event of Default has occurred and is continuing, all proceeds of any warranty claim as is referred to in this Clause 13 shall be paid directly to Lessee if:
 - (i) the claim is less than \$100,000; or
 - (ii) the claim relates to defects affecting the Aircraft which Lessee has rectified and reasonably satisfactory evidence of such rectification shall have been supplied to Lessor; or
 - (iii) the claim relates to compensation for loss of use of the Aircraft, an Engine or any Part during the Term; or
 - (iv) the claim relates to costs incurred by Lessee in pursuing such claim (whether or not proceeds of such claim are payable to Lessee).

In all other cases, the proceeds of any warranty claim shall be paid directly to Lessor at the account set forth in Clause 7.1 (*Account for Lessee Payments*).

- (d) Lessee shall take all steps and execute all documents as are reasonably requested by Lessor at the end of the Term to ensure that the benefit of any warranties to which this Clause 13 applies, together with all of Lessee's rights regarding the Aircraft under any warranty (express or implied), service policy, maintenance or product agreement provided by any maintenance and overhaul agencies, subcontractors, suppliers or vendors to the extent that such rights are assignable, in each case which have not expired are vested in Lessor 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 do so only upon receipt of reasonably satisfactory indemnification for costs and expenses from Lessor. Lessee will cause its maintenance contracts with each Approved Maintenance Performer that

performs the required redelivery maintenance on the Aircraft needed to meet the Redelivery Conditions to contain a provision, satisfactory in form and substance to Lessor, expressly stating that all warranties (express or implied) and product support is made for the benefit of Lessor and its assigns and may be relied upon and enforced directly by Lessor and its assigns without the involvement of Lessee.

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 the manufacture, ownership, possession, delivery, 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;
- (b) which arise out of any act or omission of Lessee that invalidates or that renders voidable any of the Insurances;
- (c) 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
- (d) 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) is attributable to the Gross Negligence or willful misconduct of any 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) is attributable to acts or events which occur before the Lease Commencement Date or 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 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 (x) the Aircraft, an Engine or any interest therein that is not a replacement thereof under this Agreement or (y) any interest in this Agreement or any other Operative Document, in each case unless such sale, assignment, conveyance, transfer or other disposition occurs as a consequence of an Event of Default; or
- (viii) is in respect of any claim for currency indemnification, which shall instead be subject to Clause 7.4; or
- (ix) represents or results from any decline in the market value of the Aircraft unrelated to any failure by Lessee to perform its obligations under this Agreement; or
- (x) represents or results from a failure of such Indemnatee to realize any anticipated profit; or
- (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; or
- (xii) represents or arises out of a claim by any Financing Party against any Lessor Party or its Affiliates provided that such claim is not directly related to an Event of Default which has occurred and is continuing under this Agreement; 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 (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 except, and only to the extent, that such delay or failure constitutes gross negligence or willful misconduct, or such Indemnatee actually knew or 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, and subject to the prior written consent of, of Lessor and/or such other Indemnitee) in order to resist, defend or settle (provided such settlement is accompanied by payment) any claims by third parties giving rise to such Claim, provided always that the following conditions are met or (as the case may be) complied with:

- (i) Lessor (and/or any other such Indemnitee) 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 Indemnitee arising out of or related to the Claim and such contest and if Lessor or relevant Indemnitee is required by law to pay the Claim, Lessee shall comply with its obligation to indemnify Lessor or such Indemnitee in respect thereof;
- (ii) no Event of Default has occurred which is continuing;
- (iii) 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
- (iv) such contest does not involve any risk of criminal liability for Lessor or any other Indemnitee.

Where Lessee or its insurers undertake the defense of an Indemnitee with respect to a Claim, no additional legal fees or expenses of such Indemnitee 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 Indemnitee an actual or potential material conflict of interest exists such that it is advisable for such Indemnitee 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 Indemnitee 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.

14.3 **Refunds**

Any sums paid by Lessee to Lessor and/or any other Indemnitee 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 Indemnitee (whichever received the payment) is subsequently reimbursed in respect of that Claim by any other Person, Lessor or such Indemnitee (whichever received the payment) shall, so long as no Default has occurred and is continuing, 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 Indemnitee, less any Tax payable by Lessor or such Indemnitee in respect of such reimbursement and less any costs and expenses incurred by Lessor or such Indemnitee in obtaining such reimbursement (to the extent that Lessor or such Indemnitee 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 by Lessee, Lessee will be subrogated to any right of the relevant Indemnitee 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).
- (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 one or more internationally recognized and reputable underwriter(s) and through brokers of recognized standing; or
 - (ii) with a single or group of internationally recognized and reputable insurers who do not meet the requirements of clause (i) above but who effect reinsurance of not less than ninety-five per cent. (95%) of all risks insured by the original Insurances with reputable, third party reinsurers through experienced and independent brokers, each of recognized standing, who normally participate in aviation insurances in the leading international insurance markets.

15.2 Requirements

Requirements as to the Insurances are as specified in this Clause 15 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 within seven (7) days after 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 C 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 Indemnatee to be named as an additional insured, Lessee shall effect and maintain for the benefit of such 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*) for a period ending on the earlier of the two year anniversary of such transfer and the next due C 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 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 for so long as it remains the general aviation insurance market practice to insure equipment financed or leased on the basis of such 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 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 after the Lease Commencement Date

- (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] 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 transfer to Lessee all of Lessor'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 Lessor is transferring good title to the Aircraft free from all Lessor Liens), and Lessor shall, at Lessee's expense, 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 Lessor 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 WILL BE LEASED HEREUNDER "AS IS, WHERE IS", AND LESSEE AGREES AND ACKNOWLEDGES THAT:

- (a) LESSEE'S ACCEPTANCE OF THE AIRCRAFT IN ACCORDANCE WITH CLAUSE 3 SHALL BE CONCLUSIVE EVIDENCE THAT LESSEE HAS FULLY INSPECTED THE AIRCRAFT AND EVERY PART THEREOF AND THAT THE AIRCRAFT, THE ENGINES, THE PARTS AND THE AIRCRAFT DOCUMENTS ARE TECHNICALLY ACCEPTABLE TO LESSEE, INDEPENDENT OF AND WITHOUT RELIANCE ON ANY STATEMENT OR REPRESENTATION MADE BY LESSOR, ANY OTHER LESSOR PARTY, OR ANY AFFILIATE, AGENT, EMPLOYEE OR CONTRACTOR THEREOF, AND SATISFY THE AIRCRAFT SPECIFICATION AND ARE IN SUITABLE CONDITION FOR ACCEPTANCE BY LESSEE EXCEPT AS MAY OTHERWISE BE ACKNOWLEDGED IN WRITING BY LESSOR.
- (b) 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 (b) SHALL NOT APPLY TO LESSOR'S REPRESENTATION AND WARRANTY SET FORTH IN CLAUSE 2(vii) OF SCHEDULE 2; AND
- (c) 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 MATTER 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 **Conclusive Proof**

LESSEE ACKNOWLEDGES AND AGREES THAT DELIVERY BY LESSEE TO LESSOR OF THE LEASE COMMENCEMENT DATE CONFIRMATION CONSTITUTES CONCLUSIVE PROOF AS BETWEEN LESSOR AND LESSEE (i) THAT LESSEE EXAMINED AND INVESTIGATED THE AIRCRAFT, (ii) THAT THE AIRCRAFT AND THE AIRCRAFT DOCUMENTS WERE SATISFACTORY TO LESSEE IN ALL RESPECTS AND COMPLIED IN ALL RESPECTS WITH THE CONDITION REQUIRED ON THE LEASE

COMMENCEMENT DATE UNDER THE LEASE, (iii) THAT LESSEE HAS IRREVOCABLY AND UNCONDITIONALLY ACCEPTED THE AIRCRAFT FOR LEASE HEREUNDER WITHOUT ANY RESERVATIONS WHATSOEVER AND (iv) THAT LESSOR RELIED ON SUCH CIRCUMSTANCES IN DELIVERING THE AIRCRAFT AND THE AIRCRAFT DOCUMENTS TO LESSEE.

17.6 Confirmation

LESSEE CONFIRMS THAT IT IS FULLY AWARE OF THE PROVISIONS OF THIS CLAUSE 17 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 of Schedule 4 (*Redelivery Maintenance Payment*). 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 [REDACTED].

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 [REDACTED], 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 I of Schedule 8 (*Redelivery Conditions*) shall not constitute non-compliance for purposes of this Clause 18.2.

18.3 Export Documents

Upon 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 sub-clause (y)), all documents necessary to export the Aircraft from the State of Registration (including, without limitation, a valid and subsisting (x) export license, and (y) if provided by the State of Registration, an export certificate of airworthiness for the Aircraft, at Lessor's cost and expense) or 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 [REDACTED].

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

Lessee will promptly notify Lessor if Lessee becomes aware of the occurrence of any Default or Event of Default. 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) **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 two (2) Business Days prior to such cancellation, *provided that* it shall not constitute an Event of Default under this sub-clause (b) if:
 - (A) any failure by Lessee to comply with the terms of Clause 15 (*Insurance*) or Schedule 5 (*Insurance Requirements*) solely 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 in a jurisdiction reasonably acceptable to Lessor 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 \$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.
- (c) **Breach:** (a) Lessee (i) fails to rectify the non-compliance of the Aircraft with the conditions of Schedule 8 or redeliver the Aircraft to Lessor in accordance with Schedule 8 or (ii) transfers possession of the Airframe or any Engine to another Person other than

as permitted by this Agreement or (b) Lessee fails to comply with any other provision of this Agreement or any other Operative Document (other than any failure that relates to a period of time before the execution of this Agreement) and such failure continues for thirty (30) days after written notice from Lessor to Lessee; provided, that Lessee shall have an additional sixty (60) days to remedy such failure if such breach is not by its nature capable of remedy within such thirty (30) day period and Lessee is diligently seeking to rectify the breach; or

- (d) **Representation:** any representation or warranty made by Lessee in or pursuant to this Agreement or any other Operative Document is or proves to have been incorrect in any material respect when made or deemed made and the circumstances giving rise to the breach of such representation or warranty are not remedied to Lessor's satisfaction within thirty (30) days after notice to Lessee from Lessor requiring such remedy; provided that Lessee shall have an additional sixty (60) days to remedy such breach if the breach is not by its nature capable of remedy within such 30 (thirty) day period and Lessee is diligently seeking to remedy the breach; or

- (e) **Authorizations:**

- (i) any authorization required 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 within ten (10) Business Days; provided 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

- (f) **Insolvency:**

- (i) Other than in respect of the Chapter 11 Cases, Lessee is, or is deemed for the purposes of any relevant Law to be, 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; or
- (ii) Other than in respect of the Chapter 11 Cases, Lessee suspends making payments on all or any class of its debt or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness; or

- (g) **Liquidation, Concurso Mercantil, and Similar Proceedings:**

- (i) other than in respect of the Chapter 11 Cases, Lessee passes a resolution or takes any step (including filing of a petition or application to the court or affidavit, giving of notice, petition proposal or convening a meeting or giving notice) with a view

to a composition, assignment or arrangement with its creditors of, or the rehabilitation, administration (whether out of court or otherwise), custodianship, reorganization, liquidation, protection from creditors or dissolution of, Lessee or any other insolvency or bankruptcy proceedings involving Lessee; or

- (ii) other than in respect of the Chapter 11 Cases, 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, *concurso mercantile*, *quiebra* or *reorganization*, liquidation, dissolution or insolvency or bankruptcy proceedings, or Lessee becomes subject to or enters into any of the foregoing; provided that if a creditor of Lessee files an involuntary petition for Lessee's bankruptcy or liquidation, such petition shall remain undischarged, undismissed or unstayed for at least [REDACTED] days; or
- (iii) 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 other than in respect of the Chapter 11 Cases, an order for relief under the bankruptcy laws of any jurisdiction is requested by Lessee and granted or entered, in respect of Lessee or any of its assets; or
- (iv) 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 in respect of Lessee or any material part of its assets; or
- (v) an involuntary case or proceeding is commenced in a court of competent jurisdiction against Lessee seeking liquidation, reorganization, control, supervision or other relief with respect to Lessee 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 any material part of the business or assets of Lessee and, provided Lessee does not consent or acquiesce to or approve of such involuntary case or proceeding, such involuntary case or other proceeding shall remain undischarged, undismissed or unstayed for a period of [REDACTED] days; or
- (vi) any one of the following occurs, in each case without prior written consent of the Lessor: (A) Lessee files a Chapter 11 plan that contemplates the liquidation of all or a substantial portion of Lessee's assets; (B) the Chapter 11 Cases are converted to cases under Chapter 7 of the Bankruptcy Code, or Lessee files or acquiesces in any motion or other pleading seeking such conversion; (C) a trustee or examiner is appointed in the Chapter 11 Cases, or Lessee files or acquiesces in any motion or other pleading seeking such appointment; or (D) Lessee files any motion or other pleading seeking to reverse, stay, modify or vacate the approval of this Agreement and the transactions contemplated hereby or any other relief that is inconsistent with the terms of this Agreement; or
- (h) **Other Jurisdiction:** there occurs in relation to Lessee any event in any jurisdiction which corresponds with any of the events mentioned in Clause 19.1(g); or

- (i) **Suspension of Business:** Lessee or any of its material Affiliates suspends or ceases to carry on all or a substantial part of its business; or
- (j) **Cross Default:** an event of default (however described) occurs under any lease, conditional sale, installment sale or forward purchase agreement between Lessor or any of its Affiliates and Lessee or any of its Affiliates; or
- (k) **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 Lessor as owner or 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 no Event of Default for purposes of this Clause 19.1 of this Agreement shall arise solely as a result of (i) the commencement or continuance of the Chapter 11 Cases and (ii) Events of Default arising prior to commencement of the Chapter 11 Cases.

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, ground the Aircraft so that Lessee shall cease flight operation of the Aircraft (including the Engines), 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, in the case of any such termination or cancellation, 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:

- (x) 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
- (y) 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*).

[REDACTED].

- (b) **Sale or Re-Lease of Aircraft:** If an Event of Default occurs and the leasing of the Aircraft hereunder is terminated, Lessor 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 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 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];
 - (iii) [REDACTED];
 - (iv) [REDACTED];
 - (v) [REDACTED]; and
 - (vi) [REDACTED].

- (e) **Interest:** If an Event of Default occurs, Lessor may 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) **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 at law or in equity or under the Cape Town Convention and in Lessor's sole and absolute discretion; and the exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor 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.

To the fullest extent permitted by Applicable Law, each of Lessor and Lessee hereby agrees that no rights or remedies referred to in Article 2A of the Uniform Commercial Code shall be conferred upon either Lessor or Lessee unless otherwise expressly granted in this Agreement.

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, 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.

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 (x) Lessee to perform any of its material obligations or to exercise any of its material rights under any Operative Document or (y) 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 as in effect prior to such Illegality Event, 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(d) 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 (the “**Illegality Effective 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. Upon the Illegality Effective Date:

(i) where the Illegality Event arises as a result of a Change in Law in the Lessor’s jurisdiction of incorporation or where it has its principal office, and such change in Change in Law does not relate to any other jurisdiction, in each case in the reasonable opinion of Lessor (or Lessor’s counsel), Lessee shall [REDACTED]; and

where paragraph (i) above does not apply, Lessee shall forthwith redeliver the Aircraft to Lessor at the Redelivery Location in accordance with the procedures, and in compliance with the conditions set forth, in Schedule 8 (*Redelivery Conditions*). The provisions of Clause 19.2 shall apply in respect of any such termination as if the reference therein to an “Event of Default” was a reference to an “Illegality Event”.

(d) 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 from the relevant Tax authority.

- (d) If any payment is made by Lessee under Clause 1.1(c) or Clause 20.3, and a Tax Indemnatee 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 Indemnatee in respect of or calculated with reference to Taxes or deduction or withholding giving rise to such payment, such Tax Indemnatee 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 Indemnatee in any worse position than that in which it would have been had such deduction or withholding not been required to be made, pay to Lessee such amount as such Tax Indemnatee shall in good faith have determined to be attributable to the relevant Taxes, deduction or withholding.

Nothing in this Clause 20.1(d) shall:

- (i) interfere with the right of Lessor or any other Tax Indemnatee to arrange its tax affairs in whatever manner it thinks fit and, in particular, but without limitation, neither Lessor nor any other Tax Indemnatee shall be under any obligation to claim credit, relief, remission or repayment from or against its corporate profits or similar Tax liability in respect of the amount of any such deduction or withholding; or
- (ii) oblige Lessor to disclose any information relating to its Tax affairs 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 reserves have been set aside by Lessee and non-payment of which does not give rise to any material risk of the Aircraft or any interest therein being sold, forfeited 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 Indemnatee against all Taxes (other than Lessor Taxes) levied or imposed against or upon any Tax Indemnatee or Lessee or any sublessee or the Aircraft and relating to or attributable to Lessee, this Agreement, or the Aircraft or directly or indirectly in connection with the possession, delivery, purchase, sale, transfer, location, existence, importation, transportation, pooling, interchange, leasing, subleasing, wet leasing, chartering, storage, registration, insurance, replacement, maintenance, modification, refurbishment, condition,

service, repair, overhaul, control, management, ownership, presence, use, operation, exportation or redelivery of the Aircraft, any Engine or any Part or any part thereof or any rent, receipts, insurance proceeds, income or other amounts arising therefrom, or the making of any Equipment Change.

- (b) The provisions of Clause 1.1(a) shall not apply to, and Lessee shall have no liability to any Tax Indemnatee 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 has been delivered to Lessee 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 Default; 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 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 of any Tax Indemnatee by any Government Entity in the United States of America or Ireland or any jurisdiction where any Tax Indemnatee (x) is organized or incorporated, (y) is a resident under the Law of the jurisdiction for Tax purposes or (z) has a principal place of business; but, with the respect to clause (y) above, excluding any Tax imposed by any government or taxing authority of any jurisdiction if and to the extent that such residency results solely from the use, operation, presence or registration of the Aircraft in the jurisdiction imposing the Tax; 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; or
 - (viii) 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 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; or
 - (xi) is imposed on any Assignee to the extent such Tax would not have been imposed on the Lessor, or exceeds the Tax that would have been imposed on the Lessor, in each case based on the applicable law in effect at the time of the transfer of the Aircraft to the Assignee pursuant to Clause 21.2; or
 - (xii) is imposed on or payable by any Tax Indemnitee solely due to and which 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 of any of its representations or covenants under this Agreement.
- (c) 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 or the Financing Documents. 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 Lessor as owner and lessor of the Aircraft if required or appropriate, and provide Lessor upon request 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 Indemnitee for any Taxes for which Lessee is required to pay or against which Lessee is required to indemnify such Tax Indemnitee pursuant to Clause 20.3(a) or Clause 20.1, such Tax Indemnitee 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 Indemnitee's successful defense of such claim is prejudiced thereby or Lessee's liability for costs or Taxes is 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 Indemnitee 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 Indemnitee or, in such Tax Indemnitee's discretion if requested by Lessee, contest in the name of Lessee (or permit Lessee, in such Tax Indemnitee'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, (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) Lessee shall have delivered to such Tax Indemnatee written acknowledgement of Lessee's obligation to indemnify such Tax Indemnatee for the Tax being contested if the contest is not successful unless the resolution of such contest demonstrated that the contested Tax is a Lessor Tax, (F) 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) exceeds US\$25,000 or the equivalent thereof and (G) 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, (H) such Tax Indemnatee shall not be obliged to take any step that, in its reasonable opinion, would be contrary to applicable law nor is such Tax Indemnatee obliged to achieve any particular result from taking any steps under this clause and (I) nothing in this Clause 20.4(a) shall require such Tax Indemnatee to disclose any confidential tax information or unreasonably interfere with its tax affairs beyond the extent necessary to comply with the foregoing obligations. 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 Clause 20.3(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) 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 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, 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 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 or interfere with its tax affairs.

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 Indemnitee (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 Indemnitee 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 Indemnitee 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 Indemnitee, 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, 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 practicable following a request from Lessee, but in any case within the first sixty (60) days of each calendar year during the Term, Lessor or if different the Rent beneficiary (which, if the Lessor, is a grantor trust shall mean the beneficiary of such trust), shall deliver to Lessee a certification from the appropriate governmental tax authority confirming Lessor's (or, if applicable, such Rent beneficiary's) residency for tax purposes in its jurisdiction of tax residence, being in the United States of America, Ireland or any 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. For the avoidance of doubt, the foregoing requirement may be satisfied by a certificate on U.S. Internal Revenue Service Form 6166, unless any other form or certificate will be required by Law or the relevant tax treaty. In addition to the foregoing, Lessor agrees to use commercially reasonable efforts to furnish, and to procure that any other relevant Tax Indemnatee uses commercially reasonable efforts to furnish, from time to time to Lessee or to such Government Entity or agent of Lessee as Lessee may designate, at Lessee's request and expense, such other duly executed and properly completed forms by each Tax Indemnatee as such Tax Indemnatee 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 Indemnatee determines that furnishing such forms would or could reasonably be expected to have an adverse effect on the business or operations of such Tax Indemnatee.

20.7 Taxation of Indemnity Payments

- (a) If and to the extent that any sums payable to any Indemnatee or any Tax Indemnatee 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 Indemnatee or such Tax Indemnatee to discharge the corresponding liability to the relevant third party (including any taxation authority), or to reimburse such Indemnatee or such Tax Indemnatee for the cost incurred by it to a third party (including any taxation authority), Lessee shall pay to such Indemnatee or such Tax Indemnatee such sum as will after the tax liability has been fully satisfied leave that Indemnatee or such Tax Indemnatee 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 Indemnatee or a Tax Indemnatee but paid by Lessee to any Person other than such Indemnatee or such Tax Indemnatee are treated as taxable in the hands of such Indemnatee or such Tax Indemnatee, Lessee shall pay to such Indemnatee or such Tax Indemnatee such sum as will, after the tax liability has been fully satisfied at the applicable marginal rate in such jurisdiction, indemnify such Indemnatee or such Tax Indemnatee to the same extent as it would have been indemnified in the absence of such liability.

20.8 Notification

Each Tax Indemnatee shall notify Lessee in writing of any Taxes of which such Tax Indemnatee 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; provided, however, the delay or failure of such Tax Indemnatee 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 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 Indemnatee's claim for an indemnity pursuant to this Clause 20, 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 (i) be delivered simultaneously to Lessee and such Tax Indemnitee and (ii) 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 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, Lessor may at its own expense assign or grant a Security Interest over the Aircraft or any interest therein and/or Lessor 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, based on the Applicable Laws in effect as of the date of such assignment or Security Interest, and (B) Lessee will not incur any obligation or liability of any kind as a result of such transaction based on the Applicable Laws

in effect as of the date of such assignment or Security Interest; provided that, it is agreed that (1) a change in the number of additional insureds and Indemnitees, (2) Lessee's obligation to execute and deliver any documentation in connection with such assignment or Security Interest and (3) routine costs and expenses incurred by Lessee in connection with such assignment or Security Interest 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*) hereof 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) 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 22.17;
 - (v) 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
 - (vi) 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; provided that if the Assignee represents that it leases, owns or is a lender in respect of more than twenty (20) commercial aircraft on the date of such assignment, it shall be deemed to be reasonably experienced in the business of commercial aircraft leasing.
- (b) Without any consent of Lessee, 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 Document 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*) hereof 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 (1) a change in the number of additional insureds and Indemnitees, (2) Lessee's obligation to execute and deliver any documentation in connection with such transfer or assignment and (3) routine costs and expenses incurred by Lessee in connection with such transfer or assignment 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 22.17 hereof and Clause 2 of Schedule 2 (with such changes as are appropriate to reflect the different entity and jurisdiction of formation of the Transferee);
 - (vi) at the time of such transfer or assignment, the Transferee (A) shall have a tangible net worth of not less than [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 reasonably acceptable to Lessee by a Person that has a tangible net worth of not less than [REDACTED]), in either case, such net worth to be evidenced by a certificate of net worth of a responsible officer of such Transferee or such guarantor, as the case may be, certifying as to such net worth and such other evidence as is reasonably requested by Lessee; (B) shall be an experienced lessor in commercial aircraft leasing or will have appointed an experienced servicer in commercial aircraft leasing (and for such purposes, an entity with at least [REDACTED] commercial aircraft or more in its portfolio or under its management will be conclusively presumed to be an experienced lessor or experienced servicer); (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 subclause (a) or (b) above and will execute 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, upon receipt of documentary evidence, reasonably satisfactory

to Lessor, 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 subclause (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 the granting of any Security Interest by Lessor 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*.
- (f) Nothing in this Clause 21.2 shall impose any conditions or restrictions on Lessor's rights following termination of the leasing of the Aircraft due to an Event of Default.

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 by Lessor. 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 the other Operative Documents, 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 (or its designee) 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 (without duplication) 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.

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 the consent of to any Indemnatee, 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 or by 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 and Lessee only. Lessor 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) as required 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 potential sale, financing, refinancing of or related to the Aircraft and/or transfer or assignment of this Agreement (including, for the avoidance of doubt, any transaction contemplated by Clause 21.2 (*Lessor Transfer*)); 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, Unsecured Creditors Committee 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; and
- (b) Except as otherwise expressly set forth herein, the out-of-pocket costs and expenses of performing the acts contemplated by sub-clause (a) above 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) to the extent applicable, 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, to its knowledge, any of its Affiliates, directors, officers, agents or employees is in violation of any Law relating to Sanctions, terrorism, corruption, bribery or money laundering enacted or promulgated by the United Nations, the European Union, the United States of America, Mexico or any other jurisdiction applicable to Lessor, Lessee, any sublessee, the Financing Parties or the Aircraft, as the case may be (collectively, “**Anti-Terrorism/Corruption 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**”), or is or has engaged in any conduct that would provide a basis for it to be designated as a subject of Sanctions, and no action, suit or proceeding by or before any court or governmental or regulatory agency, authority or body or any arbitrator with respect to any of the foregoing is pending or, to its knowledge, threatened.
- (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.
- (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 the preceding clause (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 [REDACTED]

[REDACTED].

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 so long as the sender does not receive an automated message indicating that such electronic mail was not delivered,

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: Wings 35115 LLC
c/o Wings Capital Partners LLC
4659 MacArthur Court, Suite 1400
Newport Beach, California 92660
U.S.A.
Telephone: +1 949-339-3900
Facsimile: +1 949 423 1409
Attention: Contract Notices
Email: contractnotices@wingscap.com

To Lessee 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.

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 effective as delivery of an originally executed counterpart. Any party delivering an executed counterpart of this Agreement or any other Operative Document by facsimile or email will also deliver an originally executed counterpart thereof (except Lessor (or the Financing Parties Representative) shall retain possession of the counterpart designated as the “chattel paper original”), 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 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, any New York state court sitting in the County of New York, New York, and all related appellate courts, (b) the courts of Mexico City, Mexico, and (c) the courts of any jurisdiction where Lessee or Lessor are domiciled, where the assets of Lessee or Lessor may be found or where the Aircraft may be located, in each case as the party bringing an action or proceeding may elect, shall have jurisdiction to settle any disputes arising out of or relating to this Agreement or any of the other Operative Documents, and Lessee and Lessor each 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) above 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.

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 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*) above.

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 (x) not to challenge the validity of any proceedings or the making of any orders without any requirement for the provision of such security, (y) to advise any court upon the other party's request that it requires no such security, and (z) 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 24.7 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.

Aerovías de México, S.A. de C.V.,
Lessee

Wings 35115 LLC,
Lessor

By: _____

By: _____

Name: _____

Name: _____

Title: _____

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.

Aerovías de México, S.A. de C.V.,
Lessee

Wings 35115 LLC,
Lessor

By: _____

By: _____

Name: _____

Name: _____

Title: _____

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".

SCHEDULE 1 DEFINITIONS AND CONSTRUCTION

Defined Terms

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

“Acceptance Certificate” means an estoppel and acceptance certificate dated June 29, 2010, issued by Lessee under the Prior Lease;

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; provided that for purposes of Clause 10.3 (*Subleasing*), **“Affiliate”** means any Grupo Aeromexico (as defined herein) entity;

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

“Agreed Value” has the meaning provided in 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 (which term includes where the context admits a separate reference to all Engines, Parts and Aircraft Documents);

“Aircraft Documentation Counterparty” has the meaning given to such term in Clause 11.2(f) (*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 Documents Letter Agreement” has the meaning given to such term in Clause 11.2(f) (*Aircraft Documents*);

“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 The Boeing Company;

“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 airworthiness directive issued by the FAA or the Aviation Authority applicable to the Airframe, any Engine, any Part or the Aircraft Documents;

“Allowed Claim” has the meaning given to the term in Clause **Error! Reference source not found.** of this Agreement;

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

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

“Approved Maintenance Performer” means (a) for all Major 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 Lease Commencement 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 of the Financial Terms Annex (*Redelivery Maintenance Payment*);

“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 Honeywell International Inc.;

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

“Aviation Authority” means the FAA for so long as the State of Registration is the United States of America, 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;

“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: (i) the Original Delivery Document where Original Delivery Document means (x) 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, (y) 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 (ii) 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 Code" means title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*;

"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 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;

"C Check" means a block "C" check in accordance with the Maintenance Program in effect on the date when such check is carried out;

"Cape Town Convention" means The Convention on International Interests in Mobile Equipment, concluded in Cape Town, South Africa, on November 16, 2001 (utilizing the version thereof as in effect in the United States of America 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 the United States of America, references to the Cape Town Convention refer to the Cape Town Convention as adopted and implemented in the United States of America;

"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 of competent jurisdiction, and in each case from that existing as at the Lease Commencement Date;

"Chapter 11 Cases" means the Chapter 11 cases commenced by Lessee and its affiliates on June 30, 2020 and pending in the Bankruptcy Court under the lead case no. 20-11563 and all affiliated and associated filings and proceedings in any other court or jurisdiction relating to such cases;

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

"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;

“**Cycle**” means one take-off and landing of the Aircraft or, in respect of any Engine or Part temporarily installed on another airframe, one take-off and landing of that other airframe;

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

“**Default**” means any Event of Default and any event which with the giving of notice, lapse of time, determination of materiality or fulfilment of other condition or any combination of the foregoing would constitute an Event of Default;

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

“**Default Rate**” has the meaning given such term in Part A of the Financial Terms Annex;

“**Delivery**” means delivery of the Aircraft on lease by Lessor to Lessee pursuant to the Acceptance Certificate;

“**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 Part A of the Financial Terms Annex;

“**Dollars**”, “**\$**”, “**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, if any, calculated pursuant to Part B of the Financial Terms Annex (*Redelivery Maintenance Payment*);

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

“**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 or WPG as in effect at that time;

“Engine Manufacturer” means CFM International, Inc.;

“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 or, if available, the WPG which results in such Engine having, at a minimum, [REDACTED];

“Engine Thrust Rating” means the “Engine Thrust Rating” of the Engines as set out in Schedule 6 (*Description of Aircraft*);

“Engine Warranties Assignment” means the engine warranty and/or product support assignment entered into or to be entered into 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 of, or alteration or addition to, the Aircraft;

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

“Excluded Country” means any country to which the export and/or use of the 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 the 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 [REDACTED] 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 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 the Security Trustee and any 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 of Part A of the Financial Terms Annex;

“**Fixed Rent Date**” means the first day of each calendar month in the Fixed Rent Period as confirmed in the Effective Time Supplement, and the Termination Date; 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(a) (*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);

“**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 that Lessee utilizes in the ordinary course of its commercial passenger operations is not run or provided by an entity which falls within sub-paragraph (a) – (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;

“**Heavy Maintenance Event**” means [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 the Lessor Parties, the Financing Parties 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 installed on the Aircraft on the Lease Commencement Date, 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 Lessor;

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

“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);

“Lease Commencement Date” means the date on which the Lease Commencement Date Confirmation is signed and delivered by Lessor and Lessee;

“Lease Commencement Date Confirmation” means an Lease Commencement Date Confirmation to be executed and delivered by the parties upon satisfaction (or waiver) of all Conditions Precedent, substantially in the form appearing in Schedule 9;

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

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

“Lessor Guarantee” means the New York law guarantee of the obligations of Lessor under this Agreement and the other Operative Documents, substantially in the form of **Error! Reference source not found.** hereto, granted by the Lessor Guarantor in favor of Lessee;

“Lessor Guarantor” means WAVE 2017-1 LLC, a Delaware limited liability company;

“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 by a Lessor Party;
- (b) any other Security Interest in respect of the Aircraft which results from (x) 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 operation of the Aircraft or the transactions contemplated by or permitted under this Agreement or the other Operative Documents, or (y) 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 indemnity, payment or reimbursement obligation under this Agreement; and
- (c) any Security Interest in respect of the Aircraft for Lessor Taxes;

[REDACTED];

“Lessor Party” means each of Lessor, Servicers, Security Trustee (solely in its capacity as such under the Financing Documents) and Lessor Guarantor.

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

“Letter of Quiet Enjoyment” means a letter of quiet enjoyment dated on or about the Lease Commencement Date in form and substance reasonably satisfactory to Lessee and the Security Trustee, issued by the Security Trustee and delivered to Lessee in respect of the Notice and Acknowledgement of Security Assignment;

“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;

“Loss” means any loss, liability, action, claim, proceeding, judgment, penalty, fine, damages, fee, cost or expense (including legal fees and expenses generally and, for the avoidance of doubt, specifically those incurred to enforce any applicable indemnity);

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

“Major Checks” means a C Check, a Structural Check, a shop visit of an Engine or the APU involving its removal from an airframe, an Engine Performance Restoration and a Landing Gear Overhaul;

“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, 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;

“Material Default” means any event which with the giving of notice, lapse of time, determination of materiality or fulfilment of other condition or any combination of the foregoing would constitute a Material Event of Default;

“Material Event of Default” means an Event of Default under Clauses 19.1(a), (b), (c) with respect to clause (a) thereof, (e) with respect to clauses (ii) and (iii) thereof, (f), (g), (h) and (i).

“Maximum Deductible Amount” has the meaning provided in Part A of the Financial Terms Annex;

“Mexico” means the United Mexican States;

“Mexican Aeronautical Registry” means the Mexican Aeronautical Registry;

“Minimum Liability Coverage” has the meaning provided in Part A of the Financial Terms Annex;

“Notice and Acknowledgement of Security Assignment” means that certain notice and acknowledgement of security assignment dated on or about the Lease Commencement Date between Lessor and Lessee;

“OEM” means in relation to any Part or part the original equipment manufacturer or the original type certification bidder of such Part or part;

“OEM Approved Part” means a part manufactured by an OEM, or a part designed and manufactured by an entity other than the OEM pursuant to a parts manufacturer approval issued or approved by the Aviation Authority and the relevant OEM;

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

“Operational Extension” has the meaning set forth in 4.2(a) (*Renewal Notice*);

“Operative Documents” means (a) this Agreement, the 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 Notice and Acknowledgement of Security Assignment, the Letter of Quiet Enjoyment, the Deregistration Power of Attorney, the Financing Documents and the Lessor Guarantee, 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 or any other document or agreement from time to time executed and 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 Delivery Date” means June 29, 2010, the date on which Delivery occurred;

“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 Clause 5.2 of this Agreement;

“PBH Rent” has the meaning given to it Clause 5.2 of this Agreement;

“PBH Rent Date” has the meaning given to it Clause 5.2 of this Agreement;

“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; 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 Indemnites;
- (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;

but only if (in the case of both (a) and (b)) (i) adequate reserves have been set aside by Lessee for the payment of such Taxes or obligations in accordance with generally accepted accounting principles and practices applicable in the State of Incorporation; 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;

“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 Sublessee” means any airline or air operator from time to time listed on **Error! Reference source not found.** which may be amended from time to time pursuant to Clause 10.3(p);

“Prime Rate” means the rate of interest from time to time announced by JPMorgan Chase Bank (or its successors) in New York as its prime commercial lending rate;

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

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

“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;

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

“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 contiguous United States of America designated by Lessor or such other location as may be agreed by Lessor and Lessee;

“Redelivery Maintenance Payment” has the meaning set forth in Part B 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 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];

“Renewal Notice” a notice substantially in the form of Schedule 10 delivered by Lessee to Lessor pursuant to Clause 4.2.1 (*Renewal Option*);

“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 (i) is of the same manufacturer and model (or at Lessee’s option an improved model) as that Engine; (ii) taking into account [REDACTED]; (iii) is capable of being installed on the Airframe without impairing the value or utility of the Airframe; and (iv) is delivered with the FAA Form 8130-3, EASA Form One or similar form identifying the serial number of such engine and a non-incident statement in respect of such engine, and in respect of which Lessee has documentation of the source, which Lessee may share with Lessor subject to any applicable confidentiality undertakings with relevant third parties, and maintenance records for all parts installed on such engine [REDACTED]; 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 (i) is certified in accordance with FAR Part 145 or its equivalent successor for installation on the Aircraft; (ii) is [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (vi) [REDACTED]; and (vii) [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)) 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;

“Sanctions” means any economic or trade sanctions, laws, regulations, embargoes, freezing provisions, prohibitions or restrictive measures relating to trading, doing business, investment, exporting, financing or making assets available (or other activities similar to or connected with any of the foregoing), administered, enacted, enforced or imposed by law or regulation on any Excluded Country;

“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 Wells Fargo Bank, National Association, not in its individual capacity but solely as security trustee;

“Servicers” means Wings Capital Partners LLC and Wings Capital Partners Aviation Ireland Limited;

“State of Incorporation” means Mexico;

“State of Registration” means the United States of America 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 of the Financial Terms Annex (*Redelivery Maintenance Payment*);

“Structural Checks” means, with respect to the Airframe, a Structural Check, and shall be construed to mean either the 9 Year SC or the 12 Year SC (or the equivalent Structural Check if such 9 Year SCs and 12 Year SCs are no longer applicable), where:

- (a) **“9 Year SC”** means a structural, zonal and systems inspection of the Aircraft (and resulting repairs, if any) which accomplishes all tasks having an interval of nine (9) years as per the then-current revision of the Maintenance Program and such additional major structural, zonal and systems tasks performed concurrently therewith as may then be due based upon the performance intervals set out in the then-current revision of the Maintenance Program or if the Maintenance Program has been revised in respect of such Structural Check, an inspection which Lessor agrees in writing is equivalent in scope and content to the foregoing in accordance with the then-current revision of the Maintenance Program; and
- (b) **“12 Year SC”** means a structural, zonal and systems inspection of the Aircraft (and resulting repairs, if any) which accomplishes all tasks having an interval of twelve (12) years as per the then-current revision of the Maintenance Program and such additional major structural, zonal and systems tasks performed concurrently therewith as may then be due based upon the performance intervals set out in the then-current revision of the Maintenance Program or if the Maintenance Program has been revised in respect of such Structural Check, an inspection which Lessor agrees in writing is equivalent in scope and content to the foregoing in accordance with the then-current revision of the Maintenance Program;

“Tax Indemnatee” means Lessor, the Financing Parties and their respective successors and permitted assigns;

“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, 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 or regional taxing or fiscal authority or agency, together with any penalties, additions to tax, fines or interest thereon, 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, the State of Incorporation or any other Government Entity or 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) 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 ninety (90) consecutive days or one hundred eighty (180) days beyond the scheduled Expiry Date in the case of requisition for use or hire by the government of the State of Registration;

“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 for normal use for any reason whatsoever, 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 ninety (90) 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, 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;

“UCC” means the Uniform Commercial Code as enacted in the State of New York;

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

“WPG” means the Engine Manufacturer’s CFM56-7B Maintenance Workslope Planning Guide.

Construction and Usage

- (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;
 - 2. (b) “Lessor”, “Servicers”, “Security Trustee”, “Lessor Guarantor” or “Lessee” includes any assignee or successor in title to Lessor, Servicer, Security Trustee, Lessor 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.

SCHEDULE 2 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:

- (i) **Status:** Lessee is a limited liability stock corporation of variable capital (*sociedad anónima de capital variable*) duly constituted under the laws of the State of Incorporation;
1.

(ii) **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;
- (iii) **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;
- (iv) **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 Permitted Liens);
- (v) **Licenses and permits:** Lessee holds all 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;
- (vi) **Approvals and Consents:** subject to approval by the Bankruptcy Court of the transactions contemplated by this Agreement, all authorizations, approvals, consents, registrations 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 (or will on their being obtained or effected be) in full force and effect;
- (vii) **Registrations and Filings:** except for the Post-Closing Authorizations and Filings, no filing or recording of any instrument or document or any other action 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 or any Financing Party in the Aircraft and this Agreement and the other Operative Documents against Lessee;

- (viii) **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;
- (ix) **Know Your Customer/OFAC Compliance:** Each of Lessee and any sublessee is in compliance with the representations and warranties set forth in Clause 22.17 (*Know Your Customer/OFAC Compliance*). The ownership, operation, possession, use, leasing or any other dealing in respect of the Aircraft by Lessee does not contravene any Sanctions or Anti-Terrorism/Corruption Laws or provide a basis for it to be designated as a subject of Sanctions or Anti-Terrorism/Corruption Laws, and the making or receipt of any payments by or on behalf of Lessee pursuant to the Operative Documents or pursuant to any Permitted Sublease does not contravene any Sanctions or Anti-Terrorism/Corruption Laws;
- (x) **No Litigation:** other than the Chapter 11 Cases and proceedings related thereto, no litigation, arbitration or administrative proceedings are pending or, to Lessee's knowledge, threatened before any court or administrative agency against Lessee which, could reasonably be expected to have a material adverse effect upon Lessee's ability to perform its obligations under this Agreement or any other Operative Document;
- (xi) **No Event of Default:** other than Events of Default arising (1) under the Prior Lease prior to commencement of the Chapter 11 Cases or (2) solely as a result of the filing or continuance of the Chapter 11 Cases, no Event of Default has occurred and is continuing or will result from the entry into or performance of this Agreement by Lessee;
- (xii) **Pari Passu:** the obligations of Lessee under this Agreement or any other Operative Document are (i) 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 (ii) subject to approval of the Bankruptcy Court of the transactions contemplated by this Agreement, shall constitute administrative expense obligations of the Lessee in the Chapter 11 Cases;
- (xiii) **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;
- (xiv) **Financial Statements:** The audited consolidated financial statements of Lessee and its subsidiaries most recently delivered to Lessor:
 - (A) have been prepared in accordance with generally accepted accounting principles and practices applicable in the State of Incorporation; and
 - (B) fairly present the consolidated financial condition of Lessee and its subsidiaries as at the date to which they were drawn up and the consolidated results of operations of Lessee and its subsidiaries for the periods covered by such statements;

- (xv) **Choice of Law:** The choice by Lessee of the governing law as set out in Clause 24.1 to govern this Agreement and the submission by Lessee to the jurisdiction of the courts as set out in Clause 24.2 are valid and binding;
- (xvi) **Insurances:** On the Lease Commencement Date, the Insurances will not be subject to any Security Interest except as may be created pursuant to the Operative Documents;
- (xvii) **Air Traffic Control:** Other than in respect of the period of time before commencement of the Chapter 11 Cases, Lessee is not in default in the payment of any sums due by Lessee to any air traffic control or airport authority in respect of any aircraft operated by Lessee; and
- (xviii) **Cape Town Registration:** Lessee is a transacting user entity, has appointed an administrator and has designated Daugherty, Fowler, Peregrin, Haught & Jenson as its professional user entity.

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:

- (i) **Status:** Lessor is a limited liability company duly formed and validly existing under the laws of the State of Delaware, United States of America;
- 2. (ii) **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 limited liability company action to authorize the entry into, the delivery of, and the performance by it of this Agreement and each other Operative Document to which Lessor 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;
- (iii) **Legal Validity:** this Agreement and each other Operative Document to which Lessor is a party constitutes (or when executed and delivered will constitute) 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;
- (iv) **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, do 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 nor 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;
- (v) **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 of America federal governmental authority or agency 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;

- (vi) **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
- (vii) **Title:** Lessor 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.

Survival

The representations and warranties pursuant to Clauses 1 and 2 of this Schedule 2 (*Representations and Warranties*) shall survive the execution of this Agreement.

3.

SCHEDULE 3
CONDITIONS PRECEDENT AND POST-CLOSING MATTERS

Conditions Precedent to be satisfied by Lessee

Lessor's obligations to lease the Aircraft to Lessee under this Agreement 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).

1. (a) 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):
 - (i) **Corporate Documents:** a copy of the following items of Lessee: (a) the organizational documents of Lessee, (b) a copy 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;
 - (ii) **Officer's Certificate:** a certificate of an officer or director of Lessee certifying that on the Lease Commencement Date: (a) the documents provided in Clause 1(a)(i) are true and complete copies of such items and have not be modified or amended and are in full force and effect; (b) no Event of Default has occurred or would be caused under any document which is binding upon Lessee or any of its assets by the leasing of the Aircraft to Lessee pursuant to this Agreement; and (c) 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;
 - (iii) **Bankruptcy Court Order:** an order entered by the Bankruptcy Court, in form and substance satisfactory to Lessor in its reasonable discretion, authorizing Lessee's entry into this Agreement and the transactions contemplated hereby and approving the assumption by Lessee of this Agreement pursuant to section 365 of the Bankruptcy Code, which order shall be in full force and effect, not subject to any conditions that have not been satisfied or waived in accordance with the terms thereof and not have been reversed, stayed, modified or vacated;
 - (iv) **Opinion:** a legal opinion issued by Lessee's in-house legal counsel substantially in the Agreed Form concerning Mexican law matters relating to the delivery and registration of the Aircraft;
 - (v) **Filings and Registrations:** evidence that the Aircraft has been validly registered under the laws of the State of Registration and that all filings,

registrations, recordings and other actions have been taken or made that are necessary or advisable to ensure the validity, effectiveness and enforceability of the Operative Documents and to protect the property rights of Lessor in the Aircraft;

- (vi) **Licenses:** copies of Lessee's concession, air operator's certificate and all other licenses, certificates and permits required by Lessee in relation to, or in connection with, the operation of the Aircraft;
- (vii) **Insurances:** certificates of insurance, certificates of reinsurance, a Brokers Letter of Undertaking from the insurance broker and the reinsurance broker and other evidence satisfactory to Lessor that Lessee is and will be in compliance with the provisions of this Agreement as to Insurances on and after the Lease Commencement Date;
- (viii) **Money Laundering:** such documents and information as Lessor or the Financing Parties may require from Lessee in respect of its "know your customer", anti-money laundering, economic sanctions checks and any other similar requirements, and all such checks and requirements shall be satisfactory to Lessor (acting reasonably);
- (ix) **Acceptance by Process Agent:** a letter from the process agent appointed by Lessee pursuant to Clause 24.3 accepting its appointment;
- (x) **Operative Documents:** Lessor shall have received copies of this Agreement and the other Operative Documents, in each case duly executed and, if necessary, notarized by Lessee, including the original chattel paper counterpart of this Agreement; and
- (xi) **Approvals and Consents:** evidence of the issue of each authorization, approval, license, 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 of any of its 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(a)(iv) of this Schedule.

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.

- 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 of 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.
- 2.
 - 3. (a) 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):

- (i) **Corporate Documents:** (1) a copy of (x) the organizational documents of Lessor, (y) the resolutions of the board of directors (or the equivalent) or other written evidence of appropriate corporate action of Lessor which may be standing resolutions sufficient to authorize officers or others to execute and deliver this Agreement and the other Operative Documents entered into as of the Lease Commencement Date to which Lessor is a party on behalf of Lessor and (z) a specimen of the signature of each Person authorized to execute the Agreement and each other Operative Document on behalf of Lessor; and (2) a copy of (x) the organizational documents of Lessor Guarantor, (y) the resolutions of the board of directors (or equivalent) of Lessor Guarantor or other written evidence of appropriate corporate action authorizing the execution, delivery and performance of the Lessor Guarantee and appointing a specified Person or Persons to execute the same on its behalf and (z) a specimen of the signature of each Person authorized to execute each the Lessor Guarantee on behalf of Lessor Guarantor; and
- (ii) **Officer's Certificate:** (i) 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)(1) 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 under the Operative Documents entered into as of the Lease Commencement Date are true and correct and (ii) a certificate of an officer or director of Lessor Guarantor certifying that on the Lease Commencement Date the documents provided in Clause 3(a)(i)(2) 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 Guarantor under the Lessor Guarantee are true and correct.
- (iii) **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 or Lessor Guarantor of any of their obligations hereunder or under any Operative Document (if any);
- (iv) **Opinion:** opinions issued by counsel to each of Lessor and Lessor Guarantor, in each case addressed to Lessee and confirming the existence of such Person, the due execution by such Person, of this Agreement and each other Operative Document entered into as of the Lease Commencement Date to which such Person is a party and as to such other matters as may reasonably be requested;
- (v) **Operative Documents:** Lessee shall have received copies of this Agreement and the other Operative Documents, in each case duly executed and, if necessary, notarized by Lessor and Lessor Guarantor, as applicable; and
- (vi) **Net Worth Certificate:** A certificate from Lessor Guarantor executed by one of its Managers confirming that Lessor Guarantor has a minimum tangible net worth of at least ten million Dollars (US\$10,000,000)

exclusive of the aggregate equity it is committing to invest in the Aircraft dated on the Lease Commencement Date.

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.

Post-Closing Matters: Lessee shall:

4. (a) within [REDACTED] Business Days after the later of (i) the Lease Commencement Date and (ii) the receipt by Lessee of the necessary documents from Lessor, including a notarized and apostilled copy of this Agreement, or a ratified copy of this Agreement duly ratified before a Mexican notary public, such ratified copy which Lessor shall pay for at its own costs, provide evidence to
5. (a) Lessor of the filing of this Agreement with the Mexican Aeronautical Registry.
- (b) within [REDACTED] Business Days after the Lease Commencement Date, provide to Lessor a certified translation of this Agreement;
- (c) within [REDACTED] Business Days, provide to Lessor a copy of the official letter(s) granting registration issued by the Mexican Aeronautical Registry with respect to the Aircraft and approving the recordation of this Agreement;
- (d) as soon as reasonably practicable and in any event not later than [REDACTED] Business Days after the Lease Commencement Date give consent to Lessor to effect the registrations relating to the Aircraft with the International Registry in accordance with Clause 9.5 (*Registration and Protections*) and provide to Lessor a copy of the priority search certificates of the International Registry in respect of the Airframe and each Engine evidencing such registrations; and
- (e) within [REDACTED] days of the Lease Commencement Date, Lessee shall confirm to Lessor the fireproof plates are affixed to the Aircraft in accordance with Clause 9.6(a).

SCHEDULE 4
FINANCIAL TERMS ANNEX (CONFIDENTIAL)

(NOT FOR FILING WITH THE AVIATION AUTHORITY)

PART A
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 [REDACTED]. The rent payable for the period from the Original Delivery Date until the PBH Period shall be as set forth in the Prior Lease.

Fixed Rent

1. For each Fixed Rent Period during the Base Lease Term, the amount of [REDACTED] shall be payable on each Fixed Rent Date.

PBH Rent

During the PBH Period, PBH Rent for a calendar month (or part thereof) will be based on the individual utilization of the Airframe and each Engine comprising the Aircraft and be calculated in accordance with the following formula:

[REDACTED]

Damage Notification Threshold

For the purposes of this Agreement:

“Damage Notification Threshold” means [REDACTED].

2. **Insurance and Default Matters**

For the purposes of this Agreement:

“Agreed Value” means in the case of the Aircraft [REDACTED]; [REDACTED].

“Minimum Liability Coverage” means no less than [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 [REDACTED].

“Default Rate” means [REDACTED].

“Discount Rate” means [REDACTED].

AD Cost Sharing

[REDACTED].

Approved Appraisers

The appraisers for purposes of Clause 4.2.2(b) of this Agreement are: Cirium, Ascend FlightGlobal Consultancy, AVITAS, Inc., Aircraft Value Analysis Company (AVAC) Limited and MBA Aviation.

6. Account Details

[REDACTED].

PART B
REDELIVERY MAINTENANCE PAYMENT

A. Redelivery Maintenance Payment

On the Redelivery Date, Lessee shall pay Lessor an amount equal to the total net sum of the Structural Check Equivalency Charge, Engine Equivalency Charge, Engine LLP Equivalency Charge, APU Equivalency Charge and Landing Gear Equivalency Charge (the “**Redelivery Maintenance Payment**”). Such Redelivery Maintenance Payment amounts for all components comprising the Aircraft will be aggregated as follows:

- a. if the condition of a particular component at the Redelivery Date is worse than its condition as at July 1, 2020, Lessee will owe the corresponding amount to Lessor;
- b. if the condition of a particular component at the Redelivery Date is better than its condition as at July 1, 2020, the corresponding amount will be netted against any other amounts Lessee may owe to Lessor under clause (a) above; and
- c. if the result of such netting is a positive figure, Lessee will pay such positive amount to Lessor; otherwise, unless otherwise set forth below, if the result of such netting is zero or a negative number, neither Lessor nor Lessee will owe any Redelivery Maintenance Payment to the other; provided, however, that, Lessor shall owe Lessee a Redelivery Maintenance Payment to the extent such netting calculation results in a negative number solely as a result of the inclusion of any Adjusted Component in the Redelivery Maintenance Payment calculation (as defined below) and subject to Clause **Error! Reference source not found.** below.

B. Structural Check Equivalency Charge

- (a) The Structural Check Equivalency Charge for the 9 Year SC shall be calculated pursuant to the following formula:

[REDACTED].

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

[REDACTED].

C. Landing Gear Equivalency Charge

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

[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:

[REDACTED].

E. Engine Equivalency Charge

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

[REDACTED].

F. APU Equivalency Charge

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

[REDACTED];

For each of the above payment items, the invoices or quotations provided by Lessee or Lessor shall contain sufficient detail so as to evidence that such invoice or quotation reflects the relevant workscope in a manner to be consistent with the required performance restoration visit or check. 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*).

G. [REDACTED]

[REDACTED].

SCHEDULE 5 INSURANCE REQUIREMENTS

Types of Insurance

The Insurances required to be maintained are as follows:

- (a) Hull and Spares 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;
1.
 - (b) Hull, Spares, 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 or the State of Incorporation, for the Agreed Value;
 - (c) All Risks (including War and Allied Risk) 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).

Terms of Hull and Spares Insurance

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

- (a) **Additional Assureds:** name the Indemnitees as additional assureds 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;
- 2.

- (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);
- (d) **Third Party Engines:** confirm that if the insured has installed an engine owned by a third party on the Aircraft either (a) the Hull Insurance will automatically increase to such higher amount as is necessary in order to satisfy both Lessor's requirement to receive the Agreed Value in the event of a Total Loss and the amount required by the third party engine owner; or (b) separate additional insurance on such engine will attach in order to satisfy separately the requirement of the insured to such third party owner; and
- (e) **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:

- (a) **Additional Insureds:** name the Indemnitees as additional insureds 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;
- 3.
- (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

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) **Dollars:** provide cover denominated in dollars and any other currencies which Lessor may reasonably require in relation to liability insurance;
- 4.
- (b) **Worldwide:** be in accordance with best industry practice and cover at least such risks as are customarily insured against in the airline industry 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;
 - (c) **Acknowledgement:** acknowledge the insurer is aware of this Agreement and that the Aircraft is owned by Lessor and to the extent applicable mortgaged to the Financing Parties Representative (if any);
 - (d) **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;

- (e) **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 the Indemnitees or Lessee;
- (f) **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;
- (g) **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 the Indemnitees, or where an insurance broker is appointed to the insurance broker who shall promptly send on such notice to the Indemnitees, 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;
- (h) **Reinsurance:** reinsurance, as applicable, shall be placed with reinsurers and through brokers, in each case satisfying the requirements of Clause 15 of the Agreement and such reinsurance will:
 - (i) be on the same terms as the original insurances and will include the provisions of this Schedule;
 - (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 and the Reinsured hereby agree 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 parties identified as Contract Parties under the original insurance 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 in connection therewith.

To provide for payment to be made notwithstanding (a) any bankruptcy, insolvency, liquidation or dissolution of the Reinsured, and/or (b) that the Reinsured has made no payment under the original insurances.

The Reinsurers reserve the right to set off against any claim payable under the Reinsurance policy in accordance with this Cut-Through Clause any outstanding premiums (applicable to the Aircraft involved in the Loss) covered by the original insurance. Such set off shall first be applied to any financial interest of the Insured in the Aircraft involved.

If Reinsurers exercise their right to set off any outstanding premium, upon subsequent receipt by Reinsurers of such outstanding premium, Reinsurers hereby agree to refund the set off premium to the Contract Parties.

Any payment due under this Cut-Through Clause shall not contravene any law, statute or decree of the Government of Lessee's jurisdiction."

- (i) **Initiating Claims:** contain a provision entitling Lessor 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
- (j) **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

The Insurances will be endorsed to provide for payment of proceeds as follows:

- 5. (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;
- 6. (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 (a) and (b) above, 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 a 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.

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.

**SCHEDULE 6
DESCRIPTION OF AIRCRAFT**

GENERAL DESCRIPTION (MINIMUM REQUIREMENTS)

Aircraft Type	Boeing 737-852
Manufacturer's Serial Number	35115
U.S. Registration No.	N950AM
Maximum Taxi Weight	174,663 lbs
Maximum Take-Off Weight	174,200 lbs
Maximum Landing Weight	144,000 lbs
Maximum Zero Fuel Weight	136,000 lbs
Engines (2)	CFM International, Inc. CFM56-7B27
Manufacturer's Serial Numbers	894236 and 894238*
Configuration	16J/144Y
Winglets	Yes
Boeing Sky Interior	No
ETOPS	180 min.
Alternate C.G.	No
Landing Category	CAT II

***Each Engine has 550 or more rated takeoff horsepower or the equivalent thereof**

SCHEDULE 7
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)
 - (k) Current air operator certificate and/or operations specification (as applicable)

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

2.
 - (a) Aircraft Flight Manual, inclusive of any relevant supplements;
 - (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

- (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:

3.

- (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 [REDACTED];
 - (c) [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 accomplishment of the A.D;
 - (d) Exemptions or deviations granted by the Aviation Authority (or other applicable civil aviation authority with jurisdiction over the Aircraft) on AD compliance, including copy of exemption request; 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]:
 - (i) engineering orders;
 - (ii) drawings;
 - (iii) parts lists;
 - (iv) installation documentation;
 - (v) engineering analysis as submitted to obtain the STC approval;
 - (vi) all manual supplements (MM, IPC, WD, AFM);
 - (vii) maintenance program supplements; and
 - (viii) any and all reference documents referenced by documents contained in this section 4(e);

- (f) Engineering deviations records, if any, applicable to the airframe, Engines and APU, components and piece parts; and
- (g) Digital Flight Data Recorder System technical description.

Aircraft Maintenance Status Summaries, signed and stamped by Lessee's quality assurance as follows:

- (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 Major Checks and applicable time remaining to Major Checks;
- 5.
- (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 FAA or EASA approval;
 - (h) List of out of Phase Checks, Service Bulletins requiring continuous surveillance and Special Requirements (if any); and
 - (i) Aircraft non-incident/accident statement (including specific statements for Landing Gear, Engines, and APU), including a Declaration of Aircraft Accident/Incident Report, if applicable.
 - (j) Certified listing of on-condition/condition-monitored components
 - (k) Status list of deferred maintenance items
 - (l) "Last Done Next Due" Status list of all maintenance tasks applicable per the then-current revision of the AMP and MPD, so as the maintenance status of the Aircraft can be ascertained. Such list shall clearly indicate the date, flight hours and/or flight cycles (as applicable) of the most recent compliance of each task (last done), and also the relevant date, flight hours and/or flight cycles (as applicable) at which each task will next fall due (next due)

- (m) Latest flight data and cockpit voice recorder reports
- (n) Statement that no non-OEM parts and repairs have been installed on or accomplished for the Aircraft during the Lease Term except as otherwise permitted under this agreement.
- (o) A listing of all free-of-charge service bulletin kits that have been received by Lessee but not installed on the Aircraft.
- (p) A statement that the Aircraft has not exceeded and design limitations during operation during the lease term.
- (q) A statement of the fuels, fluids, and gasses used to service the aircraft during operation.

Aircraft Maintenance Records

- (a) Aircraft & Pilot maintenance log from the past [REDACTED];
- (b) Cabin maintenance log (if maintained separately from the Aircraft maintenance log) from the past [REDACTED];
- 6. (c) C Checks- Complete work card packages, tally sheets, material data sheets and maintenance releases for the last complete cycle of C 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];
- (k) Weighing reports; and

Configuration Status

- (a) FAA or EASA approved and certified LOPA;
- (b) [REDACTED];
- 7. (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 Major Module Performance Restoration reports, for all Engine Major Module Performance Restorations;
- (d) [REDACTED];
- (e) On Wing Repair records;
- (f) 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 a [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];
 - (ii) [REDACTED];

(iii) [REDACTED] and

(r) [REDACTED]:

(i) [REDACTED];

(ii) [REDACTED];

(iii) [REDACTED].

APU

- 9.
- (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]:
 - (i) [REDACTED];
 - (ii) [REDACTED];
 - (iii) [REDACTED];
 - (m) [REDACTED]:
 - (i) [REDACTED];
 - (ii) [REDACTED];
 - (iii) [REDACTED]; and
 - (n) [REDACTED].

Components

- (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;
- 10. (c) Certified Quick Engine Change (QEC) rotatable parts list and FAA Form 8130-3 or EASA Form One for each QEC rotatable part;

Landing Gear

- (a) [REDACTED];
- (b) [REDACTED];
- (c) Last shop visit report; and
- 11. (d) LLP status report.

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. All repairs shall have documents showing the method of compliance, relevant manual supplements, and materials used for each repair.
- 12. (c) [REDACTED];
 - (i) [REDACTED]; and
 - (ii) [REDACTED];
- (d) Copies of applicable Engineering Orders (EOs);
- (e) Copies of applicable Supplemental Type Certificates (STCs); and
- (f) Copies of applicable Alternative Means of Compliance (AMOC).

Software

- (a) A certified listing of onboard loadable software and databases to include the following:
 - (i) ATA chapter;
 - (ii) nomenclature;
 - 13. (iii) part number;
 - (iv) revision date;

- (v) expiration date; and
- (b) Procedures for obtaining downloadable software from the internet, if applicable.

SCHEDULE 8 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 has complied with such conditions Lessor shall execute and deliver to Lessee the Redelivery Acceptance Certificate confirming delivery of the Aircraft to Lessor. For the avoidance of doubt, there shall be no requirements for the redelivery condition of the Aircraft other than those specified in this Schedule.

During the period commencing [REDACTED] months and ending no less than [REDACTED] months prior to the Expiry Date, Lessee and Lessor will agree to conduct a pre-redelivery meeting for the purpose of reviewing and agreeing upon the workscope for the Redelivery Check and, if applicable, any Engine, APU, or Landing Gear shop visit. Lessor and Lessee shall each commit sufficient resources to the 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 Clause I – Maintenance Carry-Overs of this Schedule, that Lessee will have the option of either correcting such discrepancy at its own expense or providing compensation in lieu of such correction in an amount to be mutually agreed upon by Lessee and Lessor.

A. Registration & Certification, Maintenance Program & Airworthiness Directives

The Aircraft shall be registered with the Federal Aviation Administration of the United States of America (the “Aviation Authority”) in the name of Lessor unless such registration cannot be maintained because of the failure of Lessor to comply with the citizenship or other eligibility requirements for registration of the Aircraft. Following Lessee’s receipt of the Redelivery Acceptance Certificate executed by Lessor, Lessee shall [REDACTED]. 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.

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 be (a) in good operating condition, normal wear and tear excepted, (b) clean by international commercial airline standards, (c) in a passenger configuration, (d) with equipment, components and systems fully functional and operating within limits under the Maintenance Program and the Aircraft Maintenance Manual, and (e) equipped with two Engines (which may be Replacement Engines) duly installed thereon. The Aircraft shall be in compliance with Lessee’s corrosion prevention and control program.

There shall be no external doubler repairs on the Aircraft unless Manufacturer specifically recommends such repair as preferred over other options. All repairs to the Aircraft will have been

accomplished in accordance with Manufacturer's Structural Repair Manual (or as otherwise approved by the Manufacturer, using FAA-approved data supported by an FAA Form 8110-3 or FAA Form 8100-9). There shall no damage to the Aircraft that is out of Manufacturer's limits. For the avoidance of doubt, a repair approved by the Manufacturer using an FAA 8110-3 or an FAA 8100-9 will be acceptable regardless of the damage it repairs exceeding Manufacturer's limits.

Wings shall be free of fuel leaks. If required by the Maintenance Program, the fuel tanks will have undergone an antifungus biological growth contamination laboratory evaluation with appropriate correction taken in accordance with the AMM in the event contamination is identified.

Soft furnishings including galley floor coverings, carpets, curtains, seat covers and seat cushions shall meet FAA fire resistance regulations.

Cargo nets shall be in [REDACTED] condition.

C. 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.

D. Landing Gear Minimum

Each of the nose and main Landing Gear shall have no fewer than [REDACTED] remaining (the "**Hard Time Landing Gear Minimum**") until the next scheduled Landing Gear Overhaul as measured by Flight Hours, Cycles or calendar days, whichever is applicable and most limiting. Each tire shall have at least [REDACTED]. The Landing Gear brakes will each have an average of at least [REDACTED].

E. Engine LLP Minimum

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

F. Engine Hard Time Performance Restoration Minimum

Each Engine shall have no fewer than [REDACTED] Performance Restoration, as measured by Lessee's expected time on wing until such next Engine Performance Restoration for engines in Lessee's fleet of the same make and model as the Engines. [REDACTED].

G. Components

Each time controlled component [REDACTED] will have no less than [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. All time controlled and on-condition/condition-monitored components installed on the Aircraft during the original and extended lease

terms will have FAA Form 8130-3 or EASA Form 1 serviceable tags issued at time of such component's installation on the Aircraft, and, for time controlled components, such FAA Form 8130-3 or EASA Form 1 serviceable tags shall include the flight hours, cycles, and calendar time, as applicable, since (i) last refurbishment, or, if no such refurbishment has occurred; (ii) since new.

H. Auxiliary Power Unit Minimum

The APU shall be in [REDACTED], as evidenced by an APU condition test performed in accordance with the Manufacturer's AMM.

I. 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]

J. Paint and Special Markings

The Aircraft paint will be in the condition as removed from airline service, with Lessee's identification marks removed or painted over. Lessee shall at 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] invoices or quotations for the same.

K. Records

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

L. 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 [REDACTED]. Lessee will record the Engine power assurance test conditions and results on the Redelivery Acceptance Certificate. Lessee will correct any discrepancies in accordance with the guidelines set out by the 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]

M. Demonstration Flight

At Lessor's request, Lessee will perform, at its expense, and in accordance with a mutually agreed acceptance flight procedure, a demonstration flight lasting no more than two hours for the purpose of demonstrating the satisfactory operation of the Aircraft with no more than [REDACTED] of Lessor, or of the next operator, on board during such flight, subject to consent of the Aviation Authority. If the

demonstration flight reveals any discrepancies from the Redelivery Conditions, Lessee will correct them or pay compensation to Lessor in accordance with the third paragraph of this Schedule 8.

N. Liens

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

O. Fuel

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

P. Inspection

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

SCHEDULE 9
FORM OF LEASE COMMENCEMENT DATE CONFIRMATION

LEASE COMMENCEMENT DATE CONFIRMATION

Wings 35115 LLC (“**Lessor**”) and Aerovías de México, S.A. de C.V. (“**Lessee**”) hereby agree as follows:

1. 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 Boeing 737-852 aircraft bearing manufacturer’s serial number 35115, U.S. registration mark N950AM equipped with two (2) CFM International, Inc. CFM56-7B27 engines bearing ESNs 894236 and 894238 (the “**Aircraft**”).
2. Terms used in this Confirmation shall have the meanings given them in the Lease.
3. 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 commenced and the Commencement Date is this [_____] day of [_____] 2021.

Wings 35115 LLC
as Lessor

By: _____
Name:
Title:

Aerovías de México, S.A. de C.V.
as Lessee

By: _____
Name:
Title:

SCHEDULE 10
FORM OF RENEWAL NOTICE

[Lessee Letterhead]

To: Wings 35115 LLC as lessor (“**Lessor**”)
c/o Wings Capital Partners LLC
4659 MacArthur Court, Suite 1400
Newport Beach, California 92660

Cc: Wells Fargo Bank, N.A. in its capacity as security trustee (“**Security Trustee**”)
299 South Main Street, 5th Floor
MAC: U1228-051
Salt Lake City, Utah 84111

WAVE 2017-1 LLC (“**Lessor Guarantor**”)
c/o Wings Capital Partners LLC
4659 MacArthur Court, Suite 1400
Newport Beach, California 92660

_____, 20__

Re: Renewal Notice in respect of One Boeing 737-852 Aircraft bearing Manufacturer’s Serial Number
35115 (the “**Aircraft**”)

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Aircraft Lease Agreement dated [●], 2021 (as amended, modified or supplemented from time to time, the “**Lease**”) between Lessor and Aerovías de México, 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 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.

Aerovías de México, S.A. de C.V.

By: _____

Name: _____

Title: _____

Acknowledged and Agreed:

Wings 35115 LLC
Lessor

By: _____

Name: _____

Title: _____

SCHEDULE 11

[RESERVED]

SCHEDULE 12

[*RESERVED*]

SCHEDULE 13

[REDACTED]

SCHEDULE 14

[REDACTED]

SCHEDULE 15

FORM OF REDELIVERY ACCEPTANCE CERTIFICATE

This Return Certificate (“**Return Certificate**”) is delivered on the date set forth in paragraph 1 below by Wings 35115 LLC (“**Lessor**”) to Aerovías de México, S.A. de C.V. (“**Lessee** pursuant to the Amended and Restated Aircraft Lease Agreement dated _____ between Lessor and Lessee (the “**Agreement**”). Capitalized terms used but not defined in this Return Certificate shall have the meanings given to such terms in the Agreement.

Lessor hereby confirms to Lessee that Lessor has at ___:___ G.M.T. on this [] day of [] 20[], at [], accepted the following:

1. (a) one [AirframeMfgr] Model [Model] airframe bearing manufacturer’s serial number [msn] and [] registration mark [regmark];
- (b) two [EngMfgr] Model [EngModel] engines bearing manufacturer’s serial numbers [esn1] and [esn2];
- (c) all Parts installed on, attached to or appurtenant to the Airframe and Engines; and
- (d) the Aircraft Documents specified in Schedule 2, Part 2 to the Agreement and all other Aircraft Documents acquired or prepared by Lessee during the Term;

and thereupon Lessor and Lessee agree that the leasing of the Aircraft under the Agreement is terminated.

Lessor and Lessee hereby confirm that on the date and time hereof (i) the Aircraft was duly accepted by Lessor, and (ii) the information set forth in Annex 1 is correct. Lessee confirms its obligations under the Agreement accruing prior to the date hereof, and those required to be performed after the date hereof, shall remain in full force and effect until all such obligations have been satisfactorily completed.

2. This Return Certificate and any non-contractual obligations arising from or in connection with it shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Return Certificate for the Aircraft to be executed in their respective corporate names by their duly authorized representatives as of the day and year first above written.

3.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Return Certificate to be executed in their respective corporate names by their duly authorized representatives as of the day and year first above written.

WINGS 35115 LLC, as lessor¹

By: _____
Name: _____
Title: _____

AEROVÍAS DE MÉXICO, S.A. DE C.V.

By: _____
Name: _____
Title: _____

¹ Signature to be notarized by a Mexican notary public and/or notarized and apostilled

ANNEX I

PAYMENT AND ADJUSTMENT AMOUNTS DUE AT REDELIVERY²

Upon redelivery, the following is due from Lessee to Lessor:

- | | | |
|----|---|---------|
| 1. | Equivalency Charges under Part B of the Financial Terms Annex | \$_____ |
| 2. | [REDACTED] | \$_____ |
| 3. | [REDACTED] | \$_____ |

Net Payments from [Lessee to Lessor]	\$_____
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Payments [to Lessor] should be made to the account set forth in Clause 7.1 of the Lease.

² Revise Annex for applicable payments.

SCHEDULE 16

FORM OF MAINTENANCE STATUS REPORT

AIRCRAFT SUMMARY REPORT

Report Period from _____ to _____

Aircraft Specification	
Manufacturer	
Type	
Model	
Serial number	
Date of Manufacture	
Current Registration	
Current Operator	
Aircraft Operating Limitation	

Airframe Status	
Total Airframe Hours	
Total Airframe Cycles	
Period Airframe Hours	
Period Airframe Cycles	

Titled Engines (Currently Installed)		
Manufacturer		
Position		
Part number		
Serial number		
Time Since New		
Cycles Since New		
Time Since OH		
Cycles Since OH		
Last OH Date		

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		
Period Hours		
Period Cycles		

Auxiliary Power Unit (Currently Installed)	
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	
Period Flight Hours	
Period Flight Cycles	
Period Counter for APU Cycles	
Period Counter for APU Hours	

Landing Gears			
Manufacturer			
Position			
Part number			
Serial number			
Time Since New			
Cycles Since New			
Time Since OH			
Cycles Since OH			
Last OH Date			
Period Hours			
Period Cycles			

SCHEDULE 17

PETITION DATE CONDITION

(July 1, 2020)

Airframe

MSN	[REDACTED]
Build Date	[REDACTED]
Last C-Check (HM1-P, C-P) Date	[REDACTED]
Last 9-Year Check (HM2-P, 2C-P) Date	[REDACTED]
Last 12-Year Check (HM3-P, 3C-P) Date	[REDACTED]
Total FH since New	[REDACTED]
Total FC since New	[REDACTED]

Landing Gear

NLG - Last Overhaul Date (or, if none, Build Date)	[REDACTED]
NLG - FC since Overhaul or since New	
Right MLG - Last Overhaul Date (or, if none, Build Date)	[REDACTED]
Right MLG - FC since Overhaul or since New	
Left MLG - Last Overhaul Date (or, if none, Build Date)	[REDACTED]
Left MLG - FC since Overhaul or since New	

APU

Last Repair Date (or, if none, Build Date)	[REDACTED]
APUH Since Repair (or, if none, since new)	[REDACTED]

Engine ESN 894236

Build Date	[REDACTED]
Total TSN	[REDACTED]
Total CSN	[REDACTED]
Time since last Overhaul	[REDACTED]
Cycles since last Overhaul	[REDACTED]

Engine ESN 894238

Build Date	[REDACTED]
Total TSN	[REDACTED]
Total CSN	[REDACTED]
Time since last Overhaul	[REDACTED]
Cycles since last Overhaul	[REDACTED]

DESCRIPTION OF PRIOR LEASE

Aircraft Lease Agreement dated as of June 25, 2010, between Aerovías de México, S.A. de C.V., as lessee, and ALC Blarney Aircraft Limited, as lessor, which was recorded by the Federal Aviation Administration on April 24, 2012 and assigned Conveyance No. MC012232, as supplemented, assigned, amended and restated, and amended by the following described instruments:

<u>Instrument</u>	<u>Date of Instrument</u>	<u>FAA Recording Date</u>	<u>FAA Conveyance No.</u>
Estoppel and Acceptance Certificate	06/29/10	04/24/12	MC012232
Side Letter Number One to Aircraft Lease Agreement	06/29/10	Which was not filed for recordation with the FAA	
Assignment, Assumption and Amendment Agreement among ALC Blarney Aircraft Limited, as prior lessor and assignor, ALC Warehouse Ireland Limited, as new lessor and assignee, and Aerovías de México, S.A. de C.V., as lessee	as of 10/25/11	04/24/12	MC012232
Amended and Restated Effective Time Notice	04/17/12	04/24/12	MC012232
Second Assignment, Assumption and Amendment Agreement among ALC Warehouse Ireland Limited, as prior lessor and assignor, ALC Blarney Aircraft Limited, as new lessor and assignee, and Aerovías de México, S.A. de C.V., as lessee	as of 10/06/14	07/16/15	WH009822
Third Assignment, Assumption and Amendment Agreement among ALC Blarney Aircraft Limited, as prior lessor and assignor, Wings 35115 LLC, as new lessor and assignee, and Aerovías de México, S.A. de C.V., as lessee	as of 06/23/15	07/16/15	WH009824
Effective Time Notice	06/23/15	07/16/15	WH009824
Amendment No. 1 to Lease Agreement 35115	01/25/17	02/14/17	JC005718

<u>Instrument</u>	<u>Date of Instrument</u>	<u>FAA Recording Date</u>	<u>FAA Conveyance No.</u>
Amendment No. 2 to Lease Agreement 35115	05/01/18	06/05/18	TK010168
Amendment No. 3 to Lease Agreement 35115	09/28/18	11/28/18	CF007993
Amendment No. 4 to Lease Agreement 35115	02/07/20	03/17/20	EA008300
Amendment No. 5 to Lease Agreement 35115	04/06/20	05/11/20	CF011409

Exhibit B

Summary of Terms of Amended Aircraft Lease

Material Terms: Form of Amended and Restated Aircraft Lease Agreement	
Leased Aircraft	One Boeing B737-852 aircraft
MSNs	MSN 35115
Term	The Base Lease Term shall commence on the Lease Commencement Date and end on [REDACTED].
Power-by-the-Hour Period	PBH Rent shall be paid from the Lease Commencement Date until [REDACTED].
Power-by-the-Hour Pricing	<p>During the PBH Period [REDACTED], the PBH Rent for a calendar month will be calculated in accordance with the following formula:</p> <p>$W = [REDACTED]$</p> <p>where: W: PBH Rent [REDACTED]</p>
Monthly Rent per Aircraft	For each Fixed Rent Period during the Base Lease Term, the amount of US\$[REDACTED] shall be payable on each Fixed Rent Date during the Base Lease Term.