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## **Aircraft operating leasing: a legal and practical analysis in the context of public and private international air law**

Hanley, D.P.

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Aircraft Operating Leasing: A Legal and Practical Analysis  
in the Context of Public and Private International Air Law

**SUPPLEMENT:**

**SAMPLE AIRCRAFT LEASE AGREEMENT**

**SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

LEASE AGREEMENT [msn]

[date of Lease]

between

[NAME OF LESSOR],

(Lessor)

- and -

[NAME OF LESSEE],

(Lessee)

- relating to –

[mfgr] Model [model] Aircraft  
Airframe Manufacturer's Serial No: [msn]

THIS LEASE AGREEMENT HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. TO THE EXTENT THAT THIS LEASE AGREEMENT CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART MARKED "CHATTEL PAPER COUNTERPART" ON THE SIGNATURE PAGE OF THIS LEASE AGREEMENT.

## SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT

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### LEASE AGREEMENT [msn]

This **LEASE AGREEMENT [msn]**, [date of Lease], (this “Agreement”) is between:

- (1) [NAME OF LESSOR], \_\_\_\_\_, having its principal place of business at [Address of Lessor] (“Lessor”), and
- (2) [NAME OF LESSEE], a company organized and existing under the laws of the State of Organization having its principal place of business at *[to be supplied by Lessee]* (“Lessee”).

#### RECITALS:

- (A) Lessor is the owner of the [mfg] Model [model] aircraft bearing Manufacturer’s serial number [msn] and related Leased Property.
- (B) Lessor wishes to lease the Leased Property to Lessee, and Lessee agrees to lease the Leased Property from Lessor, upon and subject to the covenants, terms and conditions set out in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration whose receipt and sufficiency are acknowledged, Lessor and Lessee agree as follows:

#### 1. DEFINITIONS AND INTERPRETATION<sup>1</sup>

##### 1.1 Definitions

In this Agreement the following expressions shall, unless the context otherwise requires, have the following respective meanings:

Actual Cost	as it applies to any maintenance work or rectification of discrepancies on the Aircraft, means the actual cost of replacement parts and/or the cost of labor associated with such work, rectification or replacement at Lessee’s in-house labor rates (if the work is performed by Lessee) or at third party costs charged to Lessee (if the work is performed by third parties) and shall in no event include late charges, mark-ups, freight charges, interest, exchange fees or other similar amounts.
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AD	any airworthiness directive, consigne de navigabilité or other
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<sup>1</sup> *Vide* 3.3 of the text *supra*.



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	requirement of the FAA, EASA or the Aviation Authority applicable to the Airframe, any Engine, any Part or the Aircraft Documents.
Additional Rent	collectively, Airframe Additional Rent, APU Additional Rent, Engine Additional Rent, Engine LLP Additional Rent and Landing Gear Additional Rent.
Affiliate	in relation to any Person, any other Person controlled directly or indirectly by that Person, any other Person that controls directly or indirectly that Person or any other Person under common control with that Person. For this purpose “control” of any Person means ownership of a majority of the voting power of such Person.
Agreed Maintenance Performer	Lessee or any other reputable Manufacturer, airline or maintenance organization that (i) is experienced in maintaining aircraft and/or engines of the same type as the Aircraft and the Engines, (ii) possess a repair station certificate issued by the FAA under FAR Part 145 and/or by EASA under EASA Regulations Part 145, and by the Aviation Authority, (iii) is duly certified by the Aviation Authority and (iv) is not excluded by Lessor pursuant to Section 7.5.
Agreed Value	as set forth in Schedule 5.
Aircraft	the aircraft described in Part 1 of Schedule 1 (which term includes, where the context admits, a separate reference to all Engines, Parts and Aircraft Documents).
Aircraft Documents	the documents, data and records identified in or pursuant to Part 2 of Schedule 1 and all additions, renewals, revisions and replacements from time to time made in accordance with this Agreement.
Airframe	the Aircraft, excluding the Engines and the Aircraft Documents.
Airframe Additional Rent	as defined in Section 5.4(a).
Airframe Additional Rent Rate	as set forth in Schedule 5.
Airframe Manufacturer	<i>[to be supplied]</i>

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Airframe Reimbursable Expenses	as defined in Section 7.2(a)(i).
AMM	the Airframe Manufacturer's maintenance manual, as updated and modified from time to time.
Applicable Law	all applicable (i) laws, treaties and international agreements of any national government, (ii) laws of any state, province, territory, locality or other political subdivision of a national government, and (iii) rules, regulations, judgments, decrees, orders, injunctions, writs, directives, licenses and permits of any Government Entity or arbitration authority.
Approved Maintenance Program	the Maintenance Program of Lessee approved by Lessor in writing on or before the Delivery Date, which shall at all times be based upon and in compliance with the Airframe Manufacturer's MPD and the Engine Manufacturer's MPD, as the same may be updated, amended and otherwise modified from time to time in accordance with this Agreement.
APU	(i) the auxiliary power unit listed in Part 1 of Schedule 1, (ii) any and all Parts, so long as such Parts are incorporated in, installed on or attached to such auxiliary power unit or so long as title to such Parts is vested in Lessor in accordance with the terms of Section 8.17 after removal from such auxiliary power unit, and (iii) insofar as the same belong to Lessor, all substitutions, replacements or renewals from time to time made in or to such auxiliary power unit or to any of the Parts referred to in clause (ii) above, as required or permitted under this Agreement.
APU Additional Rent	as defined in Section 5.4(a).
APU Additional Rent Rate	as set forth in Schedule 5.
APU Basic Shop Visit	any shop visit involving the disassembly, cleaning, inspection and repair of an APU which corrects the condition associated with the removal reason, accomplishes a minimum of a medium repair to the power section in accordance with the Manufacturer's workscope planning guide, and provides for a minimum interval of continued operation greater than or equal to the Manufacturer's mean time between shop visits.
APU Hour	each hour or part thereof (rounded up to one decimal place) that the APU is operated, whether for aircraft operations or testing.

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APU Reimbursable Expenses	as defined in Section 7.2(e)(i).
ATC/Airport Authority	any air traffic control authority, including NavCanada and Eurocontrol, and any airport authority with jurisdiction over any aircraft operated by Lessee or any sublessee.
Aviation Authority	any and all Government Entities that, under the laws of the State of Registration, from time to time (i) have control or supervision of civil aviation; or (ii) have jurisdiction over the registration, airworthiness or operation of, or matters relating to, the Aircraft.
Basic Rent	all amounts payable pursuant to Section 5.3.
Basic Rent Amount	as set forth in Schedule 5.
Beneficiary	such party as may be identified in the Notice and Acknowledgment.
Business Day	a day (other than a Saturday or Sunday) on which business of the nature required by this Agreement is carried out in New York, New York and the city in which Lessee's office listed in Section 16.10(b) is located.
C-Check	a maintenance check on the Airframe under the Approved Maintenance Program designated as a "C" check (or the equivalent check if not so designated) and consisting of full and complete zonal, systems and structural check including the corresponding lower checks ("A" and "B" or equivalent) and any other maintenance and inspections tasks that are a part of such checks, all in accordance with the Approved Maintenance Program, or if the Approved Maintenance Program changes and no longer refers to a full and complete zonal, systems and structural block "C" check, then a check consisting of those items of maintenance characterized by the MPD and best industry practice as a "C" check (or its equivalent), but in any event not including repairs arising as the result of operational or maintenance mishandling or accidental damage.
Certificate of Acceptance	a certificate in the form attached as Exhibit A to be completed and executed by Lessor and Lessee at the time of Delivery.
Certificate of Delivery Condition	a certificate in the form attached as Exhibit B to be completed and executed by Lessor and Lessee at the time of Delivery.

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Commitment Fee	as set forth in Schedule 5.
CPCP	Lessee's Corrosion Prevention and Control Program that is a part of the Approved Maintenance Program.
Cycle	one take-off and landing of the Airframe or, in the case of an Engine, of the airframe on which such Engine is installed.
Damage Notification Threshold	as set forth in Schedule 5.
Default	any Event of Default and any event which with the giving of notice, lapse of time, determination of materiality or fulfillment of other condition or any combination of the foregoing would constitute an Event of Default.
Delivery	the delivery of the Aircraft to Lessee in accordance with the terms of this Agreement.
Delivery Date	the date on which Delivery takes place, which shall be the Scheduled Delivery Date or such other date notified by Lessor to Lessee in accordance with the provisions of this Agreement.
Delivery Location	a location in [the continental United States] [Western Europe] mutually agreeable to Lessor and Lessee.
Deregistration Power of Attorney	an irrevocable power of attorney by Lessee in substantially the form attached as Exhibit C.
Dollars and \$	the lawful currency of the United States of America.
EASA	the European Aviation Safety Agency of the European Union established by Regulation (EC) No 1592/2002 of 15 July 2002, or any successor Government Entity succeeding to the functions thereof.
EASA Regulations	the requirements of Regulation (EC) No 1702/2003 and Regulation (EC) No 2042/2003, any successor thereto and all applicable certification specifications, acceptable means of compliance and guidance material issued by EASA pursuant thereto.
Engine	whether or not installed on the Aircraft:  (a) each engine of the manufacture, model and serial number

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	specified in Part 1 of Schedule 1, title to which shall belong to Lessor; or
	(b) any engine which replaces that engine, title to which passes to Lessor in accordance with Section 8.17(a);
	and in each case includes all modules and Parts from time to time belonging to, installed in or appurtenant to that engine.
Engine Additional Rent	as defined in Section 5.4(a).
Engine Additional Rent Rate	as set forth in Schedule 5.
Engine LLP Additional Rent	as defined in Section 5.4(a).
Engine LLP Additional Rent Rate	as set forth in Schedule 5.
Engine LLP Reimbursable Expenses	as defined in Section 7.2(c)(i).
Engine Loss	the occurrence, with respect to an Engine, of one of the events set forth in clauses (a) through (d) of the definition of "Total Loss" as if references to the "Airframe" were to such "Engine".
Engine Loss Date	the relevant date determined in accordance with the definition of "Total Loss Date" as if that definition applied to an Engine Loss.
Engine Manufacturer	[EngMfgr].
Engine Reimbursable Expenses	as defined in Section 7.2(b)(i).
Engine Shop Visit	[to be reviewed by technical for each lease].
Equipment Change	any modification, alteration, addition to or removal from the Aircraft during the Term.
Eurocontrol	the European Organization for the Safety of Air Navigation.
Event of Default	an event specified in Section 13.1.
Excusable Delay	with respect to delivery of the Aircraft, delay or non-performance due to or arising out of (i) acts of God or public enemy, civil war, insurrection or riot, fire, flood, explosion, earthquake, serious accident, epidemic, quarantine restriction or

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

import restriction, (ii) any act of government, governmental priority, allocation, regulation or order affecting directly or indirectly, the Aircraft, any Manufacturer, Lessor or any materials or facilities, (iii) strike or labor dispute causing cessation, slowdown or interruption of work, (iv) inability after due and timely diligence to procure equipment, data or materials from manufacturers, suppliers, any existing owner, seller or lessee in a timely manner, (v) damage, destruction or loss, or adverse weather conditions preventing any services, inspections or flights of the Aircraft or (vi) any other cause to the extent that such cause is beyond the control of Lessor, whether above mentioned or not and whether or not similar to the foregoing.

Expiry Date

the Scheduled Expiry Date or, if earlier, the date on which:

- (a) the Aircraft has been redelivered in accordance with this Agreement and all obligations of Lessee have been satisfied; or
- (b) Lessor receives the Agreed Value following a Total Loss and any other amounts then due and owing in accordance with this Agreement.

FAA

the Federal Aviation Administration of the U.S. Department of Transportation, or any successor Government Entity succeeding to the functions thereof.

FAR

Federal Aviation Regulations issued by the FAA.

Final Inspection

the inspection of the Aircraft by Lessor and any other inspecting parties during any part of the inspections, checks and test flights required pursuant to Section 12 and Schedule 3 or otherwise performed in connection with the Return.

Final Maintenance  
Performer

an Agreed Maintenance Performer with the necessary experience and regulatory authority approvals for the Aircraft type in order to perform the required redelivery maintenance on the Aircraft needed to meet the requirements of Section 12 and Schedule 3.

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Financial Indebtedness	<p>any indebtedness in respect of:</p> <ul style="list-style-type: none"><li>(a) moneys borrowed;</li><li>(b) any liability under any debenture, bond, note, loan stock, acceptance credit, documentary credit or other security;</li><li>(c) the acquisition cost of any asset to the extent payable before or after the time of acquisition or possession; or</li><li>(d) the capitalized value (determined in accordance with accounting practices generally accepted in the United States of America) of obligations under finance leases; or</li><li>(e) any guarantee, indemnity or similar assurance against financial loss of any Person in respect of the above.</li></ul>
Financing Documents	<p>any loan agreement, credit agreement or similar agreement between Lessor and any Financing Party under which funds are advanced to Lessor or any Affiliate of Lessor and the obligations of Lessor or any Affiliate of Lessor to such Financing Parties relate to the Leased Property or the Operative Documents.</p>
Financing Parties	<p>collectively (i) Beneficiary, (ii) Security Trustee, (iii) any Person that has advanced funds to Lessor or an Affiliate of Lessor pursuant to a Financing Document, (iv) any Person that holds a Security Interest in the Leased Property or the Lessor's right, title and interest in any Operative Document to secure the Lessor's and/or any Affiliate's obligations under Financing Documents, (v) any agent, loan agent, trustee, security trustee, collateral trustee or similar Person acting pursuant to any Financing Document, and (vi) the successors and permitted assigns of such Persons.</p>
Financing Security Document	<p>any Financing Document whereby Lessor grants to a Financing Party a Security Interest in the Leased Property and/or in its right, title and interest in any Operative Document.</p>
Flight Charges	<p>all flight charges, route navigation charges, navigation service charges and all other fees, charges or Taxes payable for the use of or for services provided at any airport or otherwise payable to any airport, airport authority, navigation or flight authority or other similar entity or for any services provided in connection with the operation, landing or navigation of aircraft.</p>
Flight Hour	<p>each hour or part thereof (rounded up to one decimal place) elapsing from the moment the wheels of the Airframe leave the</p>

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ground on take off until the moment the wheels of the Airframe next touch the ground or, in the case of an Engine, of the airframe on which such Engine is installed.

GAAP	generally accepted accounting principles as in effect from time to time in the State of Organization and, subject to changes in such principles from time to time, consistently applied in accordance with the past practices of a Person.
Government Entity	<p>(a) any national, state or local government, political subdivision thereof or local jurisdiction therein;</p> <p>(b) any board, commission, department, division, instrumentality, court, agency or political subdivision thereof; and</p> <p>(c) any association, organization or institution of which any of the above is a member or to whose jurisdiction any thereof is subject or in whose activities any of the above is a participant.</p>
Habitual Base	the State of Organization or, subject to the prior written consent of Lessor, any other state, province or country in which the Aircraft is for the time being habitually based.
Hull Insurance Deductible	as set forth in Schedule 5.
IATA	the International Air Transport Association.
Indemnitees	Lessor, Servicer, any Financing Party, the respective successors and assigns of such Persons and the shareholders, members, partners, Affiliates, directors, officers, employees, agents and servants of such Persons.
Insurances	as defined in Section 9.1.
Landing Gear	the landing gear assemblies (nose, left main and right main) of the Aircraft identified by the respective serial numbers in the Certificate of Acceptance, and any landing gear assembly substituted therefor in accordance with this Agreement and title to which has passed to Lessor in accordance with this Agreement.
Landing Gear Additional Rent	as defined in Section 5.4(a).



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Landing Gear Additional Rent Rate	as set forth in Schedule 5.
Landing Gear Overhaul	an overhaul of the Landing Gear to full Manufacturer specification and operating condition (excluding any rotatable components such as wheels, tires, brakes and consumable items).
Landing Gear Reimbursable Expenses	as defined in Section 7.2(d)(i).
Leased Property	the Aircraft and the Aircraft Documents.
Lessee Installed Part	any part installed on the Aircraft at Delivery title to which is held by Lessee, and any part installed on the Aircraft after Delivery not in replacement for a Part and not required under Applicable Law on the Aircraft title to which is either held by Lessee (which title may be subject to a Security Interest in favor of an unrelated third party) or held by an unrelated third party and such part is leased or conditionally sold to Lessee.
Lessor's Counsel	<i>[to be advised]</i> , counsel to Lessor in each of the State of Organization and the State of Registration.
Lessor Lien	<ul style="list-style-type: none"><li>(a) any Security Interest from time to time created by or arising through Lessor or any Financing Party in connection with the financing or refinancing of the Aircraft;</li><li>(b) any other Security Interest in respect of the Aircraft that results from acts or omissions of, or claims against, Lessor or any Financing Party not related to the operation of the Aircraft or the transactions contemplated by or permitted under the Operative Documents; and</li><li>(c) Security Interests in respect of the Aircraft for Non-Indemnified Taxes.</li></ul>
Letter of Credit	as defined in Section 5.15.
Letter of Credit Bank Minimum Rating	a senior, unsecured and unguaranteed long-term debt rating of "A+" from Standard & Poor's Ratings Group (a division of The McGraw-Hill Companies, Inc.) or "A1" from Moody's Investors Service, Inc.
Letter of Credit Validity Date	at any date of determination, the date which is three months after the Scheduled Expiry Date.

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LLPs	life limited Parts.
Maintenance Program	an Aviation Authority approved maintenance program for the Aircraft encompassing scheduled maintenance, condition monitored maintenance and/or on-condition maintenance of Airframe, Engines and Parts, including servicing, testing, preventative maintenance, repairs, structural inspections, system checks, overhauls, approved modifications, service bulletins, engineering orders, ADs, corrosion control, inspections and treatments.
Major Checks	any C-Check, Engine Shop Visit, APU Basic Shop Visit and Landing Gear Overhaul.
Mandatory Equipment Change	an Equipment Change that is required by or performed to comply with an AD or a Manufacturer's service bulletin
Manufacturer	with respect to the Airframe, Engine or any Part of the Aircraft, the Airframe Manufacturer, Engine Manufacturer or manufacturer of such Part, respectively.
Minimum Liability Coverage	as set forth in Schedule 5.
MPD	for any Manufacturer, such Manufacturer's maintenance planning document or EMP-Engine MFG maintenance program/planning guide, as updated and modified from time to time.
Non-Incident/Non-Accident Statement	a statement produced on Lessee's letterhead confirming that the Airframe and Engines have not been involved in any abnormal operational or maintenance events that could have resulted in significant damage (incidents) or that did result in significant damage (accidents), executed by Lessee's appropriately qualified quality assurance manager.
Non-Indemnified Taxes	<p>(a) Taxes imposed as a direct result of activities of any Tax Indemnitee in the jurisdictions imposing the liability unrelated to such Tax Indemnitee's dealings with Lessee pursuant to the Operative Documents or to the transactions contemplated by the Operative Documents or the operation of the Aircraft by Lessee;</p> <p>(b) Taxes imposed on the income, profits or gains of any Tax Indemnitee by (i) any Federal Government Entity in the United States of America, (ii) any Government Entity in</p>

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

the jurisdictions where such Tax Indemnatee is incorporated, formed or organized or has its principal place of business, or (iii) any Government Entity in any other jurisdiction where such Tax Indemnatee is liable for such Taxes and such liability has or would have arisen in the absence of the transactions contemplated by the Operative Documents;

- (c) Taxes imposed with respect to any period commencing or event occurring before the date of this Agreement or after Return and unrelated to any Tax Indemnatee's dealings with Lessee pursuant to the Operative Documents or to the transactions contemplated by the Operative Documents;
- (d) Taxes imposed as a direct result of the sale or other disposition of the Aircraft, unless such sale or disposition occurs as a consequence of an Event of Default;
- (e) Taxes imposed by a taxing jurisdiction for a particular tax period unless imposed as a result of any of the following for that tax period: (i) the operation, maintenance, registration, location, presence or use of the Aircraft, the Airframe, any Engine or any Part thereof in such jurisdiction, (ii) the place of incorporation, commercial domicile or other presence in such jurisdiction of Lessee, any sublessee or any user of or Person in possession of the Aircraft, the Airframe, any Engine or any Part thereof in such jurisdiction, or (iii) any payments made under the Operative Documents and related documents being made from such jurisdiction;
- (f) Taxes to the extent caused by the gross negligence or willful misconduct of any Tax Indemnatee; and
- (g) Taxes to the extent caused by a failure by any Tax Indemnatee to furnish in a timely manner notice or information that it is required to furnish to Lessee by the terms of this Agreement.

Notice and  
Acknowledgment

a notice and acknowledgment between Lessor and Lessee in substantially the form attached as Exhibit D.

OEM

the original equipment manufacturer of a Part.

Operative Documents

this Agreement, the Certificate of Acceptance, the Certificate of

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

Delivery Condition, the Deregistration Power of Attorney and the Notice and Acknowledgment.

Overdue Rate                      at any time and from time to time, 7.0% plus the base commercial lending rate as announced by Citibank, N.A.

Part                                      whether or not installed on the Aircraft:

(a)     any appliance, part, component, module, navigation, avionic and communication equipment, computer, instrument, appurtenance, accessory, furnishing and equipment of whatever nature (including the APU and Landing Gear but excluding a complete Engine) furnished with, installed on or appurtenant to the Airframe and Engines on Delivery, which may from time to time be removed, incorporated or installed in or attached to the Airframe or any Engine; and

(b)     any other appliance, part, component, module, navigation, avionic and communication equipment, computer, instrument, appurtenance, accessory, furnishing or equipment of whatever nature (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 Section 8.17 and any Lessee Installed Part.

Permitted Lien                      (a)     any Security Interest for Taxes not assessed or, if assessed, not yet due and payable, or being contested in good faith by appropriate proceedings;

   (b)     any Security Interest of a repairer, mechanic, carrier, hangar keeper, unpaid seller or other similar lien arising in the ordinary course of business or by operation of law in respect of obligations which are not overdue in accordance with Applicable Law (or, if applicable, generally accepted accounting principles and practices in the relevant jurisdiction) or are being contested in good faith by appropriate proceedings; and

   (c)     any Lessor Lien;

   but only if, in the case of (a) and (b), (i) adequate reserves have

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

been provided by Lessee for the payment of the Taxes or obligations in accordance with GAAP; and (ii) such proceedings, or the continued existence of the Security Interest, do not give rise to any reasonable likelihood of the sale, forfeiture or other loss of the Aircraft or any interest therein or of criminal liability on the part of Lessor or any Financing Party.

Person	any individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, association, joint stock company, trust, unincorporated organization or Government Entity.
PMA Part	a non type-certificated Part whose design and/or manufacture has been accomplished by any entity other than the OEM and which has received parts manufacture approval from an Aviation Authority.
Redelivery Location	the facility of the Final Maintenance Performer, or such other location mutually acceptable to Lessor and Lessee.
Reimbursable Expenses	collectively, Airframe Reimbursable Expenses, APU Reimbursable Expenses, Engine Reimbursable Expenses, Engine LLP Reimbursable Expenses and Landing Gear Reimbursable Expenses.
Rent	collectively, Basic Rent, Additional Rent and Supplemental Rent.
Rent Date	the Delivery Date and the corresponding day of each calendar month during the Term or, for any calendar month that does not have a corresponding day, the last day of such calendar month.
Rental Period	each period ascertained in accordance with Section 5.2.
Return	the return of the Aircraft by Lessee to Lessor at the Redelivery Location in the condition and manner required by Section 12 and Schedule 3 and the other provisions of this Agreement, as evidenced by the execution by Lessor, and the delivery to Lessee, of a Return Certificate.
Return Certificate	the return certificate to be delivered by Lessor to Lessee pursuant to Section 12.3, substantially in the form attached as Exhibit E.

## SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT

Scheduled Delivery Date	_____, 200__ or such other date mutually agreed by Lessor and Lessee.
Scheduled Expiry Date	the day corresponding to the Delivery Date in the ____ calendar month after the month in which the Delivery Date occurs or, if such calendar month does not have a corresponding day, the last day of such calendar month.
Security Interest	any security interest, mortgage, charge, pledge, lien, encumbrance, claim, assignment, hypothecation, right of set-off or other agreement or arrangement having the effect of creating a security interest.
Security Trustee	such party as may be identified in the Notice and Acknowledgment.
Servicer	[ ] or any other Person appointed by Lessor or Beneficiary to act as manager, administrative agent or remarketing agent for the Aircraft or any of the Operative Documents, as may be identified by Lessor to Lessee from time to time.
SRM	the Airframe Manufacturer's structural repair manual
State of Organization	<i>[to be supplied]</i> .
State of Registration	<i>[to be supplied]</i> .
Subsidiary	<p>(a) in relation to any reference to accounts, any company wholly or partially owned by Lessee whose accounts are consolidated with the accounts of the Lessee in accordance with accounting principles generally accepted under accounting standards of the State of Organization; and</p> <p>(b) for any other purpose, an entity from time to time:</p> <p>(i) of which another has direct or indirect control or owns directly or indirectly more than 50% of the voting share capital; or</p> <p>(ii) which is a direct or indirect subsidiary of another under the laws of the jurisdiction of its incorporation.</p>

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

Supplemental Rent	all amounts, liabilities and obligations (other than Basic Rent and Additional Rent) that Lessee assumes or agrees to pay under this Agreement to Lessor or any other Person, including payment of deposits, indemnities and the Agreed Value.
Tax Indemnities	Lessor, Servicer, any Financing Party and the respective successors and assigns of Lessor, Servicer and each Financing Party (no such Person shall cease to be a Tax Indemnitee by reason of being a member of a group that files a consolidated tax return under the name of an affiliated Person).
Taxes	all present and future taxes, levies, imposts, duties or charges in the nature of taxes, whatever and wherever imposed, including customs duties, value added taxes or similar taxes and any franchise, transfer, sales, use, business, occupation, excise, personal property, stamp or other tax or duty imposed by any national or local taxing or fiscal authority or agency, together with any withholding, penalties, additions to tax, fines or interest thereon or with respect thereto.
Term	the period commencing on the Delivery Date and ending on the Expiry Date or any later date pursuant to Section 12.2.
Third Party Engine	any engine, title to which is either held by Lessee (which title may be subject to a Security Interest in favor of an unrelated third party) or held by an unrelated third party and such engine is leased or conditionally sold to Lessee.
Total Loss	<p>with respect to the Airframe:</p> <ul style="list-style-type: none"><li>(a) the actual, arranged or constructive total loss of the Airframe (including any damage to the Airframe which results in an insurance settlement on the basis of a total loss, or requisition for use or hire which results in an insurance settlement on the basis of a total loss);</li><li>(b) the Airframe being destroyed, damaged beyond repair or permanently rendered unfit for normal use for any reason whatsoever;</li><li>(c) the requisition of title, or other compulsory acquisition, capture, seizure, deprivation, confiscation or detention for any reason of the Airframe by the government of the State of Registration (whether <i>de jure</i> or <i>de facto</i>), but excluding requisition for use or hire not involving</li></ul>

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

requisition of title; or

- (d) the hi-jacking, theft, condemnation, confiscation, seizure or requisition for use or hire of the Airframe which deprives any Person permitted by this Agreement to have possession and/or use of the Airframe for more than 60 consecutive days.

Total Loss Date

- (a) in the case of an actual total loss, the actual date on which the loss occurs or, if such date is unknown, the day on which the Aircraft was last heard of;
- (b) in the case of any of the events described in sub-paragraph (a) of the definition of “Total Loss” (other than an actual total loss), the earlier of (i) 30 days after the date on which notice claiming such total loss is given to the relevant insurers, and (ii) the date on which such loss is admitted or compromised by the insurers;
- (c) in the case of any of the events described in sub-paragraph (b) of the definition of “Total Loss”, the date on which such destruction, damage or rendering unfit occurs;
- (d) in the case of any of the events described in sub-paragraph (c) of the definition of “Total Loss”, the date on which the relevant requisition of title or other compulsory acquisition, capture, seizure, deprivation, confiscation or detention occurs; and
- (e) in the case of any of the events described in sub-paragraph (d) of the definition of “Total Loss”, the expiry of the period of 60 days referred to in such sub-paragraph (d);

and, in each case, the Total Loss shall be deemed to have occurred at noon Greenwich Mean Time on such date.

Voluntary Equipment Change

an Equipment Change other than a Mandatory Equipment Change.

### **1.2 Interpretation**

- (a) In this Agreement, unless the contrary intention is stated, a reference to:



## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (i) each of “Lessor”, “Lessee”, “Servicer”, “Beneficiary”, “Financing Party” or any other Person includes without prejudice to the provisions of this Agreement any successor in title to it and any permitted assignee;
- (ii) words importing the plural shall include the singular and vice versa;
- (iii) the term “including”, when used in this Agreement, means “including without limitation” and “including but not limited to”;
- (iv) any document shall include that document as amended, novated or supplemented from time to time unless expressly stated to the contrary; and
- (v) a law (1) includes any statute, decree, constitution, regulation, order, judgment or directive of any Government Entity; (2) includes any treaty, pact, compact or other agreement to which any Government Entity is a signatory or party; (3) includes any judicial or administrative interpretation or application thereof; and (4) is a reference to that provision as amended, substituted or re-enacted.
- (vi) A “Section”, “Schedule” or “Exhibit” is a reference to a section of, a schedule to or an exhibit to this Agreement.
- (vii) The headings in this Agreement are to be ignored in construing this Agreement.

## **2. REPRESENTATIONS AND WARRANTIES**

### **2.1 Lessee’s Representations and Warranties**

Lessee represents and warrants to Lessor as follows:

- (a) Status: Lessee is a \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of the State of Organization, has the corporate power to own its assets and carry on its business as it is being conducted and is (or will at the relevant time be) the holder of all necessary air transportation licenses required in connection therewith and with the use and operation of the Aircraft.
- (b) Power and Authority: Lessee has the power to enter into and perform, and has taken all necessary corporate action to authorize the entry into, performance and delivery of, each of the Operative Documents and the transactions contemplated by the Operative Documents.

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<sup>2</sup> *Vide* 3.4 and Annex 7 of the text *supra*.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (c) Execution and Delivery: Lessee has duly executed and delivered this Agreement, and on or before Delivery shall have duly executed and delivered each of the Operative Documents to which Lessee is a party.
- (d) Legal validity: Each of the Operative Documents to which Lessee is a party constitutes Lessee's legal, valid and binding agreement, enforceable against Lessee in accordance with its terms.
- (e) Non-conflict: The entry into and performance by Lessee of, and the transactions contemplated by, the Operative Documents to which Lessee is a party do not and will not:
  - (i) conflict with any Applicable Laws binding on Lessee;
  - (ii) conflict with the constitutional documents of Lessee; or
  - (iii) conflict with or result in default under any document which is binding upon Lessee or any of its assets, or result in the creation of any Security Interest over any of its assets, other than Permitted Liens.
- (f) Authorization: All authorizations, consents and registrations required by, and all notifications to be given by, Lessee in connection with the entry into, performance, validity and enforceability of, the Operative Documents and the transactions contemplated by the Operative Documents have been (or will on or before Delivery have been) obtained, effected or given (as appropriate) and are (or will on their being obtained or effected be) in full force and effect.
- (g) No Immunity:
  - (i) Lessee is subject to civil and commercial law with respect to its obligations under the Operative Documents.
  - (ii) Neither Lessee nor any of its assets is entitled to any right of immunity and the entry into and performance of the Operative Documents by Lessee constitute private and commercial acts.
- (h) Financial Statements: The audited consolidated financial statements of Lessee and its Subsidiaries most recently delivered to Lessor:
  - (i) have been prepared in accordance with GAAP; and
  - (ii) fairly present the consolidated financial condition of the Lessee and its Subsidiaries as at the date to which they were drawn up and the consolidated results of operations of the Lessee and its Subsidiaries for the periods covered by such statements.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (i) Restricted Countries: Lessee does not hold a contract or other obligation to, and does not, operate the Aircraft to or from any of the countries that are the subject of sanctions under U.N. Security Council directives.
- (j) Pari Passu: The obligations of Lessee under the Operative Documents 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.
- (k) Choice of Law: The choice by Lessee of the law of England and Wales to govern this Agreement as set out in Section 15.1 and the submission by the Lessee to the non-exclusive jurisdiction of the courts as set out in Section 15.2 are valid and binding.
- (l) Allowances: Lessee has not claimed and will not claim any capital or depreciation allowances in respect of the Aircraft.

### **2.2 Lessee's Further Representations and Warranties**

Lessee further represents and warrants to Lessor that:

- (a) No Default:
  - (i) No Event of Default has occurred and is continuing or might reasonably be expected to result from the entry into or performance of any of the Operative Documents.
  - (ii) No event has occurred and is continuing that constitutes, or with the giving of notice, lapse of time, determination of materiality or fulfillment of any other applicable condition, or any combination of the foregoing, might constitute, a material default under any document that is binding on Lessee or any assets of Lessee.
- (b) Registration:
  - (i) It is not necessary or advisable under the laws of the State of Organization, the State of Registration or the Habitual Base in order to ensure the validity, effectiveness and enforceability of the Operative Documents or to establish, perfect or protect the property rights of Lessor or any Financing Party in the Leased Property that any instrument relating to the Operative Documents, other than *[to be supplied by Lessee]*, be filed, registered or recorded or that any other action be taken or, if any such filings, registrations, recordings or other actions are necessary, the same have been effected or will have been effected on or before Delivery.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (ii) Under all Applicable Laws, including the laws of the State of Organization, the State of Registration and the Habitual Base, the property rights of Lessor and any Financing Parties notified to Lessee in the Leased Property have been fully established, perfected and protected and this Agreement will have priority in all respects over the claims of all creditors of Lessee, with the exception of such claims as are mandatorily preferred by law and not by virtue of any contract.
- (c) Litigation: No litigation, arbitration or administrative proceedings are pending or, to Lessee's knowledge, threatened against Lessee that, if adversely determined, would have a material adverse effect upon its financial condition or business or its ability to perform its obligations under the Operative Documents.
- (d) Taxes: Lessee has delivered all necessary returns and payments due to all tax authorities having jurisdiction over Lessee, including those in the State of Organization, the State of Registration and the Habitual Base, and Lessee is not required by law to deduct or withhold any Taxes from any payments under this Agreement. The execution, delivery or performance by Lessee or Lessor of the Operative Documents will not result in the Lessor (i) having any liability in respect of Taxes in the State of Organization, State of Registration or Habitual Base or (ii) having or being deemed to have a place of business in the State of Organization, State of Registration or Habitual Base.
- (e) Material Adverse Change: No material adverse change in the financial condition of Lessee has occurred since the date of the financial statements most recently provided to Lessor on or before the Delivery Date.
- (f) Information: The financial and other information furnished by Lessee in connection with the Operative Documents does not contain any untrue statement of material fact or omit to state any fact the omission of which makes the statements therein, in light of the circumstances under which they were made, materially misleading, and does not omit to disclose any material matter. All forecasts and opinions contained in the financial and other information furnished by Lessee in connection with the Operative Documents were honestly made on reasonable grounds after due and careful inquiry by Lessee.
- (g) Air Traffic Control: Lessee is not in default in the payment of any sums due by Lessee to any ATC/Airport Authority in respect of any aircraft operated by Lessee.
- (h) Insurances: On the Delivery Date, the Insurances will not be subject to any Security Interest except as may be created pursuant to the Operative Documents.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

### **2.3    Repetition**

The representations and warranties in Section 2.1 and Section 2.2 will survive the execution of this Agreement. The representations and warranties contained in Section 2.1 and Section 2.2 will be deemed to be repeated by Lessee on Delivery with reference to the facts and circumstances then existing. The representations and warranties contained in Section 2.1 will be deemed to be repeated by Lessee on each Rent Date as if made with reference to the facts and circumstances then existing.

### **2.4    Lessor's Representations and Warranties**

Lessor represents and warrants to Lessee that:

- (a)    Status: Lessor is duly formed and validly existing under the laws of the place of its organization. Lessor has the power to own the Leased Property and carry on the business contemplated of Lessor under the Operative Documents.
- (b)    Power and Authority: Lessor has the power and authority to enter into and perform, and has taken all necessary action to authorize the entry into, performance and delivery of, the Operative Documents and the transactions contemplated by the Operative Documents.
- (c)    Enforceability: Each of the Operative Documents constitutes Lessor's legal, valid and binding agreement, enforceable against Lessor in accordance with its terms.
- (d)    Non-conflict: The entry into and performance by Lessor of, and the transactions contemplated by, the Operative Documents do not and will not:
  - (i)    conflict with any Applicable Laws binding on Lessor;
  - (ii)   conflict with the organizational documents of Lessor; or
  - (iii)   conflict with or result in a default under any document that is binding upon Lessor or any of its assets.
- (e)    Authorization: So far as concerns the obligations of Lessor, all authorizations, consents, registrations and notifications required in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Operative Documents by Lessor have been (or will on or before Delivery have been) obtained or effected (as appropriate) and are (or will on their being obtained or effected be) in full force and effect.
- (f)    No Immunity:
  - (i)    Lessor is subject to civil and commercial law with respect to its obligations under the Operative Documents.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (ii) Neither Lessor nor any of its assets is entitled to any right of immunity and the entry into and performance of the Operative Documents by Lessor constitute private and commercial acts.
- (g) Right to Lease: On the Delivery Date, Lessor shall have the right to lease the Aircraft to Lessee under this Agreement.

### **2.5 Repetition**

The representations and warranties in Section 2.4 will survive the execution of this Agreement. The representations and warranties contained in Section 2.4 will be deemed to be repeated by Lessor on Delivery as if made with reference to the facts and circumstances then existing.

## **3. CONDITIONS PRECEDENT**

### **3.1 Lessor's Documentary Conditions Precedent**

Lessor's obligation to lease the Leased Property to Lessee under this Agreement is subject to the receipt of the following by Lessor from Lessee no less than three Business Days before Delivery in form and substance satisfactory to Lessor, provided, that it shall not be a condition precedent to the obligations of Lessor that any document be produced, or action taken, which is to be produced or taken by Lessor or any Person within its control:

- (a) Constitutional Documents: a copy of the constitutional documents of Lessee[, together with an English translation thereof];
- (b) Resolutions: a true copy of a resolution of the board of directors (or the equivalent) of Lessee approving the terms of, and the transactions contemplated by, the Operative Documents to which it is a party, resolving that it enter into the Operative Documents to which it is a party, and authorizing a specified individual or individuals to execute the Operative Documents to which it is a party and accept delivery of the Leased Property on its behalf;
- (c) Operative Documents: a copy of each of the Operative Documents, duly executed and, if necessary, notarized by Lessee, including the chattel paper original counterpart of this Agreement;
- (d) Opinions: (i) an opinion, in form and substance satisfactory to Lessor, in respect of Lessee's obligations under the Operative Documents issued by independent legal counsel to Lessee acceptable to Lessor, and (ii) an opinion from Lessor's Counsel as to such matters as Lessor may reasonably request;

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<sup>3</sup> *Vide* 3.5 and Annex 8 of the text *supra*.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (e) Approvals: evidence of the issuance of each approval, license and consent which may be required in relation to, or in connection with, the performance by Lessee of its obligations under the Operative Documents;
- (f) 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 Leased Property;
- (g) Licenses: copies of Lessee's air transport license, 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;
- (h) Certificate: a certificate of a duly authorized officer of Lessee:
  - (i) setting out a specimen of each signature of an officer of Lessee referred to in Section 3.1(b); and
  - (ii) certifying that each copy of a document specified in Section 3.1(a) and (b) is correct, complete and in full force and effect;
- (i) Insurances: certificates of insurance, certificates of reinsurance, insurance brokers' undertakings, reinsurance broker's undertakings 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 Delivery;
- (j) ATC/Airport Authority: letters from Lessee addressed to any ATC/Airport Authority designated by Lessor pursuant to which Lessee authorizes such authority to issue to Lessor, upon Lessor's request from time to time, a statement of account of all sums due by Lessee to such authority in respect of all aircraft (including the Aircraft) operated by Lessee;
- (k) Acceptance by Process Agent: a letter from the process agent appointed by Lessee pursuant to Section 15.4(a) accepting its appointment;
- (l) Aviation Authority Letter: to the extent available, a letter from the appropriate Aviation Authority confirming that, upon the occurrence of an Event of Default under this Agreement and a request for deregistration by Lessor, the Aviation Authority will deregister the Aircraft and authorize the export of the Aircraft from the State of Registration; and
- (m) General: such other documents as Lessor may reasonably request.

### **3.2 Lessor's Other Conditions Precedent**

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The obligation of Lessor to deliver and lease the Leased Property under this Agreement is also subject to the following additional conditions precedent:

- (a) Representations and Warranties: the representations and warranties of Lessee under Sections 2.1 and 2.2 are correct and would be correct if repeated on Delivery; and
- (b) Payments: all payments due to Lessor under this Agreement on or before Delivery, including the Basic Rent due on the Delivery Date and the Commitment Fee, shall have been received by Lessor.

### **3.3 Lessor's Waiver**

The conditions specified in Sections 3.1 and 3.2 are for the sole benefit of Lessor and may be waived or deferred in whole or in part and with or without conditions by Lessor. If any of those conditions are not satisfied and Lessor (in its absolute discretion) nonetheless agrees to deliver the Leased Property to Lessee, then Lessee will ensure that those conditions are fulfilled within one month after the Delivery Date and Lessor may treat as an Event of Default the failure of Lessee to do so.

### **3.4 Lessee's Conditions Precedent**

Lessee's obligation to accept the Leased Property on lease from Lessor under this Agreement is subject to the satisfaction by Lessor of the following conditions precedent:

- (a) Representations and Warranties: the representations and warranties of Lessor under Section 2.4 are correct and would be correct if repeated on Delivery; and
- (b) Delivery Condition: the Aircraft shall be in the condition set forth in Schedule 2.

### **3.5 Lessee's Waiver**

The conditions specified in Section 3.4 are for the sole benefit of Lessee and may be waived or deferred in whole or in part and with or without conditions by Lessee. If any of those conditions are not satisfied on or before Delivery and Lessee (in its absolute discretion) nonetheless agrees to lease the Leased Property from Lessor, then Lessor will ensure that those conditions are fulfilled within one month after the Delivery Date.

### **3.6 Indemnity for Non-Occurrence of or Delay in Delivery**

Lessee shall hold harmless and indemnify Lessor, without prejudice to any of Lessor's other rights under the Operative Documents, from and against all costs, expenses, liabilities, break funding costs and losses incurred by Lessor as a result of or arising out of or directly connected with a delay in or the non-occurrence of Delivery by reason of the failure of Lessee to satisfy all or any of the conditions set out in Sections 3.1 and/or 3.2 within the time set out therein for satisfaction of such conditions.



## SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT

### 4. COMMENCEMENT<sup>4</sup>

#### 4.1 Agreement to Lease

- (a) Lessor will lease the Leased Property to Lessee and Lessee will take the Leased Property on lease at the Delivery Location on the Delivery Date in accordance with the Operative Documents for the duration of the Term.
- (b) Lessor and Lessee intend that this Agreement constitute a “true lease” and a lease for all United States federal income tax purposes.

#### 4.2 Delivery

- (a) Delivery Condition: Lessor shall deliver the Aircraft and the Aircraft Documents to Lessee at the Delivery Location in a condition complying with Schedule 2 except for any items mutually agreed between Lessor and Lessee which are set forth on Annex 2 to the Certificate of Delivery Condition.
- (b) Correction of Discrepancies: The obligation of Lessee to lease the Leased Property from Lessor is subject to Lessor delivering the Leased Property to Lessee in compliance with the conditions set forth on Schedule 2. If Lessor corrects all material discrepancies from the conditions set forth on Schedule 2 before Delivery, or if Lessor and Lessee agree that Lessor will correct or pay for their correction as set forth on Annex 2 to the Certificate of Delivery Condition, then Lessee shall accept the Leased Property. If, on the Scheduled Delivery Date, the Aircraft is not, in all material respects, in the condition set forth in Schedule 2 and either Lessor does not correct all material discrepancies or Lessor and Lessee do not agree upon the correction of such material discrepancies within 360 days after the Scheduled Delivery Date, then Lessee may by notice to Lessor terminate this Agreement, in which event neither Lessor nor Lessee shall have any further obligations under this Agreement except as set forth in Section 7.4. If Lessee fails to give any such termination notice within 360 days following the Scheduled Delivery Date, Lessee shall be deemed to have accepted the Leased Property for all purposes of this Agreement.

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<sup>4</sup> *Vide* 3.6 of the text *supra*.

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### **4.3 Delayed Delivery**

If, as a result of the occurrence of damage to the Aircraft not constituting a Total Loss or any Excusable Delay, Lessor delays in the delivery of, or fails to deliver, the Aircraft under this Agreement on the Scheduled Delivery Date, and so long as such failure does not result from the gross negligence or willful misconduct of Lessor, then in any such case:

- (a) Lessor will not be responsible for any losses, including loss of profit, costs or expenses arising from or in connection with the delay or failure suffered or incurred by Lessee; and
- (b) if the Aircraft is not in the condition provided in Section 4.2(b) within 360 days after the Scheduled Delivery Date, either Lessor or Lessee may terminate this Agreement upon giving five Business Days prior written notice to the other, in which event neither Lessor nor Lessee shall have any further obligations under this Agreement except as set forth in Section 7.4.

### **4.4 Acceptance and Risk**

- (a) The Leased Property will be delivered to, and will be accepted by, Lessee at the Delivery Location on the Delivery Date immediately following satisfaction of the conditions precedent specified in Sections 3.1, 3.2 and 3.4 (or their waiver or deferral by the party entitled to grant such waiver or deferral).
- (b) Immediately following satisfaction of the conditions precedent specified in Sections 3.1, 3.2 and 3.4 (or their waiver or deferral by the party entitled to grant such waiver or deferral), Lessee and Lessor shall forthwith complete the annexes to the Certificate of Delivery Condition specifying, among other things, the maintenance status of the Airframe, Engines, APU and Landing Gear, and Lessor and Lessee shall sign and deliver to each other the Certificate of Acceptance and the Certificate of Delivery Condition. Delivery of the signed Certificate of Acceptance to Lessor shall constitute deemed delivery of the Aircraft to Lessee.
- (c) On and from Delivery, the Leased Property will be in every respect at the sole risk of Lessee, which will bear all risk of loss, theft, damage or destruction to the Leased Property from any cause whatsoever.
- (d) On or concurrent with Delivery, Lessee shall take all actions necessary to cause the Aircraft to be registered with the Aviation Authority and permit the operation of the Aircraft by Lessee in its normal passenger operations, including if required, causing this Agreement and the Certificate of Acceptance to be registered with the Aviation Authority.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

### **5. PAYMENTS**

#### **5.1 Commitment Fee**

On the date that is three (3) Business Days prior to the Scheduled Delivery Date, Lessee shall pay the Commitment Fee to Lessor in immediately available funds. Lessee acknowledges that the Commitment Fee constitutes consideration to Lessor for leasing the Aircraft to Lessee and upon payment irrevocably and unconditionally becomes the unencumbered property of Lessor, free of any claims or rights thereto by Lessee.

#### **5.2 Rental Periods**

The first Rental Period will commence on the Delivery Date and end on the day preceding the numerically corresponding day one (1) month after the Delivery Date. Each subsequent Rental Period will commence on the day of each month during the Term which numerically corresponds with the Delivery Date, and will end on the day immediately preceding the first day of the next Rental Period, except that if a Rental Period would otherwise overrun the Expiry Date, it will end on the Expiry Date.

#### **5.3 Basic Rent**

- (a) Time of Payment: For each Rental Period during the Term, Lessee shall pay to Lessor or its order Basic Rent in advance on each Rent Date. Lessee shall initiate payment adequately in advance of the Rent Date to ensure that Lessor receives the payment of Basic Rent on the Rent Date.
- (b) Amount: The Basic Rent payable in respect of each Rental Period will be the Basic Rent Amount, except that if the final Rental Period contains less than thirty (30) days, the amount of Basic Rent payable in respect of such final Rental Period will be a pro rata amount of the Basic Rent Amount obtained by dividing the Basic Rent Amount by thirty (30) and multiplying the result by the number of days elapsed from, and including, the last Rent Date to, and including, the Expiry Date.

#### **5.4 Additional Rent**

- (a) Amount: Lessee will pay to Lessor Additional Rent in relation to each calendar month (or portion thereof) during the Term on the 10th day following the end of that calendar month (but not later than the Expiry Date for the last full calendar month and the portion of the calendar month in which the Expiry Date occurs) as follows:
  - (i) in respect of the Airframe, Lessee shall pay the Airframe Additional Rent Rate for that calendar month ("Airframe Additional Rent");

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<sup>5</sup> Vide 3.7 and 3.8 of the text *supra*.

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- (ii) in respect of each Engine, Lessee shall pay the Engine Additional Rent Rate for that calendar month ("Engine Additional Rent");
  - (iii) in respect of each Engine, Lessee shall pay the Engine LLP Additional Rent Rate for that calendar month ("Engine LLP Additional Rent");
  - (iv) in respect of the Landing Gear, Lessee shall pay the Landing Gear Additional Rent Rate for that calendar month ("Landing Gear Additional Rent"); and
  - (v) in respect of the APU, Lessee shall pay the APU Additional Rent Rate for that calendar month ("APU Additional Rent").
- (b) Adjustment: The Additional Rent rates set forth in Section 5.4(a) shall be adjusted as follows:
- (i) the Airframe Additional Rent Rate, the Engine Additional Rent Rate, the Landing Gear Additional Rent Rate and the APU Additional Rent Rate are based on [month] [year] Dollars and each such rate, as otherwise adjusted by this Section 5.4(b), shall be increased on the Delivery Date and on the first day of each calendar month in which an anniversary of the Delivery Date occurs at an annual rate of [ ]%, and the adjusted amounts of such rates as of the Delivery Date shall be set forth on the Certificate of Acceptance;
  - (ii) the Engine LLP Additional Rent Rate shall be adjusted on the Delivery Date and on the first day of each calendar month in which an anniversary of the Delivery Date occurs based on changes in the respective Manufacturer's then current catalog list price, and the adjusted Engine LLP Additional Rent Rate as of the Delivery Date shall be set forth on the Certificate of Acceptance; and
  - (iii) the Engine Additional Rent Rate is based upon an assumed Flight Hour-to-Cycle ratio of [\_\_]:1.0 or greater, and if any Engine's Flight Hour-to-Cycle ratio is less than [\_\_]:1.0 in any 12-month period (or portion thereof) commencing on the first day of the month in which the Delivery Date or any anniversary of the Delivery Date occurs, Lessee shall pay to Lessor an amount equal to (i) the number of Cycles in such year in excess of a [\_\_]:1.0 Flight Hours-to-Cycles ratio, multiplied by (ii) the Engine Additional Rent Rate in effect on the last day of such period.

### **5.5 Charged Moneys:**

- (a) Lessee acknowledges that the Additional Rent constitutes additional Rent payable for the use of the Aircraft and shall irrevocably and unconditionally become the

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

unencumbered property of Lessor upon payment thereof by Lessee, free of any claims or rights thereto by Lessee.

- (b) Notwithstanding the intent of Lessor and Lessee stated in Sections 5.1 and 5.5(a), if and to the extent that the Commitment Fee and/or the Additional Rent, or any part thereof, under any Applicable Law or otherwise, is determined to be security deposits or otherwise the property of Lessee or a debt owed to Lessee, or that Lessee shall have any interest in the Commitment Fee and/or the Additional Rent, then Lessee and Lessor agree that Sections 5.5(b)(i) and (ii) below shall apply to the Commitment Fee and/or the Additional Rent (as the case may be) (collectively, the “Charged Moneys”):
  - (i) To the fullest extent permitted by law and by way of continuing security, Lessee grants a Security Interest in the Charged Moneys and all rights of Lessee to payment thereof, the debt represented thereby and all interest thereon and/or any and all interest of Lessee therein to Lessor by way of first priority Security Interest as security for Lessee’s obligations and liability under the Operative Documents (the “Secured Liabilities”). Except as expressly permitted under this Agreement, Lessee will not be entitled to payment of the Charged Moneys. Lessee will not assign, transfer or otherwise dispose of all or part of its rights or interest in the Charged Moneys and Lessee agrees that it will enter into any additional documents and instruments necessary or reasonably requested by Lessor to evidence, create or perfect Lessor’s rights to the Charged Moneys.
  - (ii) If any Event of Default has occurred and is continuing, Lessor may immediately or at any time thereafter, without prior notice to Lessee, (1) offset all or any part of Secured Liabilities against the liabilities of Lessor in respect of the Charged Moneys, or (2) apply or appropriate the Charged Moneys in or towards the payment or discharge of Secured Liabilities in such order as Lessor sees fit. Upon any offset or application of any portion of the Charged Moneys to the Secured Liabilities, Lessee shall immediately pay to Lessor an amount equal to the amount of the Charged Moneys so offset or applied.

### **5.6 Payments**

- (a) All payments of Rent by Lessee to Lessor under this Agreement will be made for value on the due date, for the full amount due, in Dollars and in same day funds, settled through the New York Clearing House System or such other funds as may for the time being be customary for the settlement in New York City of payments in Dollars by telegraphic transfer to the following account for Lessor:

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*[to be supplied]*

or to such other account in North America or the European Union as Lessor may direct by at least five Business Days prior written notice.

- (b) If any Rent or other payment would otherwise become due on a day which is not a Business Day, it shall be due on the immediately preceding Business Day.
- (c) At the time of each Basic Rent, Additional Rent or other payment, Lessee will complete and fax or email to Lessor a wire transfer disbursement report stating (i) the amount of the payment being made by Lessee, (ii) the allocation of such payment to the Commitment Fee, Basic Rent, Additional Rent, interest at the Overdue Rate, indemnity payments and other charges, and (iii) if any payment includes Additional Rent, the allocation of such payment of Additional Rent to the applicable Additional Rent categories. Notwithstanding the allocation set forth in Lessee's report, during the continuance of an Event of Default, Lessor will have complete discretion to allocate all payments by Lessee as Lessor determines.

### **5.7 Gross-up**

- (a) All payments by Lessee under or in connection with the Operative Documents will be made without offset or counterclaim, free and clear of and without deduction or withholding for or on account of any Taxes (other than Taxes that Lessee is compelled by law to deduct or withhold).
- (b) All Taxes (other than Non-Indemnified Taxes) in respect of payments under the Operative Documents shall be for the account of Lessee.
- (c) If Lessee is compelled by law to make payment to an Indemnatee under or in connection with the Operative Documents subject to any Tax and such Indemnatee does not actually receive for its own benefit on the due date a net amount equal to the full amount provided for under the Operative Documents (other than Non-Indemnified Taxes that Lessee is compelled by law to deduct or withhold), Lessee will pay all necessary additional amounts to ensure receipt by such Indemnatee of the full amount (other than Non-Indemnified Taxes that Lessee is compelled by law to deduct or withhold) provided for under the Operative Documents.

### **5.8 Taxation**

- (a) Lessee will on demand pay and indemnify each Tax Indemnatee against all Taxes (other than Non-Indemnified Taxes) levied or imposed against or upon such Tax Indemnatee and relating to or attributable to Lessee, the Operative Documents or the Leased Property directly or indirectly in connection with the importation, exportation, registration, ownership, leasing, subleasing, purchase, delivery,

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possession, use, operation, repair, maintenance, overhaul, transportation, landing, storage, presence or redelivery of the Aircraft or any part thereof or any rent, receipts, insurance proceeds, income or other amounts arising therefrom.

- (b) If any Tax Indemnatee shall, based upon its own reasonable interpretation of any relevant laws or regulations, realize any Tax savings (by way of refund, deduction, credit or otherwise) in respect of any amount with respect to which Lessee shall have made a payment (or increased payment) pursuant to Section 5.7, 5.9 or 5.11 or shall have indemnified such Tax Indemnatee pursuant to Section 5.8(a), or in respect of the occurrence or transaction which gave rise to such payment or indemnification, and such Tax savings shall not have been taken into account previously in calculating any indemnity payment made by Lessee, then such Tax Indemnatee shall, to the extent that it can do so without prejudice to the retention of the relevant savings and subject to Lessee's obligations to repay such amount to such Tax Indemnatee if the relevant savings are subsequently disallowed or canceled, pay to Lessee such amount as such Tax Indemnatee shall in its opinion have concluded to be the amount of such Tax savings (together with, in the case of a refund, any interest received thereon); provided, that such Tax Indemnatee shall not be obliged to make any payment to Lessee pursuant to this Section 5.8(b) to the extent that the amount of any Tax savings in respect of which such payment is to be made would exceed the aggregate amount of all prior payments made by Lessee to, on behalf of or as indemnification of such Tax Indemnatee under this Agreement for Taxes less the amount of all prior payments made pursuant to this Section 5.8(b) in respect of such Tax savings. Lessee acknowledges that nothing contained in this Section 5.8(b) shall interfere with the right of any Tax Indemnatee to arrange its tax affairs in whatsoever proper manner it thinks fit (or give Lessee any right to investigate, or impose any obligation on any Tax Indemnatee to disclose, the same) and, in particular, no Tax Indemnatee shall be under any obligation to claim any Tax savings in priority to any other savings available to it; provided, that subject to the foregoing Lessor shall use reasonable good faith diligence to realize Tax savings as described above.

### **5.9 Value Added Tax**

- (a) For purposes of this Section 5.9, "VAT" means value added tax and any goods and services, sales or turnover tax, imposition or levy of a similar nature, and "supply" includes anything on or in respect of which VAT is chargeable.
- (b) Lessee shall pay each Tax Indemnatee 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 the Operative Documents.
- (c) Each amount stated as payable by Lessee under the Operative Documents is exclusive of VAT (if any), and if VAT is payable in respect of any amount payable by Lessee under the Operative Documents, Lessee shall pay all such VAT and shall indemnify each Tax Indemnatee against any claims for the same,

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and where appropriate Lessee shall increase the payments that would otherwise be required to be made under the Operative Documents so that such Tax Indemnatee is left in the same position as it would have been had no VAT been payable. Lessee shall provide evidence to Lessor, if available, in respect of payment of any VAT paid by Lessee with respect to the Operative Documents.

### **5.10 Information**

If Lessee is required by any Applicable Law, or by any third party, to deliver any report or return in connection with any Taxes, then Lessee will duly complete the same and, in particular, will not state therein that any Person other than Lessee is responsible for the use and operation of the Aircraft and for the Taxes (other than Non-Indemnified Taxes) arising therefrom, and Lessee will, on request, supply a copy of the report or return to any Tax Indemnatee. If Lessee requires any information or cooperation from any Tax Indemnatee in order to satisfy its obligations as set forth above, such Tax Indemnatee shall promptly furnish such information or cooperation as Lessee may reasonably request in writing. If actual notice is given by any taxing authority to Lessor that a report or return is required to be filed with respect to any Taxes (other than Non-Indemnified Taxes), Lessor shall promptly notify Lessee of such required report or return.

### **5.11 Taxation of Indemnity Payments**

- (a) If and to the extent that any sums payable to any Tax Indemnatee by Lessee under the Operative Documents by way of indemnity are insufficient, by reason of any Taxes payable in respect of those sums, for such Tax Indemnatee to discharge the corresponding liability to the relevant third party (including any taxation authority), or to reimburse such Tax Indemnatee for the cost incurred by it to a third party (including any taxation authority), Lessee will pay to such Tax Indemnatee such sum as will, after the tax liability has been fully satisfied, leave such Tax Indemnatee with the same amount as it would have been entitled to receive in the absence of that liability, together with interest on the amount of the deficit at the Overdue Rate in respect of the period commencing on the date on which the payment of taxation is finally due until payment by Lessee (both before and after judgment).
- (b) If and to the extent that any sums constituting (directly or indirectly) an indemnity to any Tax Indemnatee but paid by Lessee to any Person other than such Tax Indemnatee are treated as taxable in the hands of such Tax Indemnatee, then Lessee will pay to such Tax Indemnatee such sum as will, after the tax liability has been fully satisfied, indemnify such Tax Indemnatee to the same extent as it would have been indemnified in the absence of such liability, together with interest on the amount payable by Lessee under this Section 5.11(b) at the Overdue Rate in respect of the period commencing on the date on which the payment of taxation is finally due until payment by Lessee (both before and after judgment).

### **5.12 Default Interest**



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- [(a)] If Lessee fails to pay any amount payable under the Operative Documents on the due date, Lessee will pay on demand from time to time to any Indemnitee interest (both before and after judgment) at the Overdue Rate on such amount from the due date to the day of payment in full by Lessee to such Indemnitee. All such interest shall be compounded monthly and calculated on the basis of the actual number of days elapsed assuming a year of 360 days.
- [(b)] If, at any time during the Term, either (x) Lessee fails to make any two (2) consecutive payments of Basic Rent, Additional Rent or Commitment Fee installments (or any combination thereof) as and when required by this Agreement or (y) any single Basic Rent, Additional Rent or Commitment Fee installment payment remains due and unpaid for more than sixty (60) days, then the Basic Rent Amount payable by Lessee in accordance with Section 5.3 will automatically increase by five percent (5%) for the remainder of the Term, commencing with the Basic Rent payable immediately after the first to occur of (x) or (y) above. Nothing in this Section 5.12(b) will limit Lessor's right to receive interest at the Overdue Rate on such late payments or Lessor's rights and remedies pursuant to Sections 13.2 and 13.3 on account of such Events of Default.]

### **5.13 Contest**

If a written claim is made against any Tax Indemnitee for or with respect to any Taxes (other than Non-Indemnified Taxes), such Tax Indemnitee shall promptly notify Lessee. If reasonably requested by Lessee in writing within 30 days after such notification, such Tax Indemnitee shall, upon receipt of indemnity satisfactory to such Tax Indemnitee and at the expense of Lessee (including all costs, expenses, losses, legal and accountants' fees and disbursements, penalties and interest), in good faith contest or to the extent permissible by law allow Lessee to contest in Lessee's or such Tax Indemnitee's name, other than the Financing Parties, the validity, applicability or amount of such Taxes by either (i) resisting payment thereof if practicable and permitted by Applicable Law, or (ii) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings, and in the contest of any such claim by any Tax Indemnitee, such Tax Indemnitee shall apprise Lessee of all material developments with respect to such contest, shall forward copies of all material submissions made in such contest and shall materially comply in good faith with any reasonable request concerning the conduct of any such contest; provided, that no Tax Indemnitee will be obliged to take any such action:

- (a) that such Tax Indemnitee considers, in its reasonable discretion, may prejudice it; or
- (b) that such Tax Indemnitee reasonably considers does not have a reasonable prospect of success; or

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- (c) for which Lessee has not made adequate provision to the reasonable satisfaction of such Tax Indemnatee in respect of the expense concerned; or
- (d) that gives rise to any reasonable likelihood of the Aircraft or any interest of any Tax Indemnatee in the Aircraft being sold, forfeited or otherwise lost, or of criminal liability on the part of any Tax Indemnatee.

If any Tax Indemnatee, in accordance with the foregoing, determines to pay such Taxes and seek a refund, Lessee will either pay such Taxes on such Tax Indemnatee's behalf and pay such Tax Indemnatee any amount due with respect to such payment or will promptly reimburse such Tax Indemnatee for such Taxes. If any Tax Indemnatee shall obtain a refund of all or any part of such Taxes paid by Lessee, such Tax Indemnatee shall pay Lessee the amount of such refund; provided, that such amount shall not be payable before such time as Lessee shall have made all payments or indemnities to any Tax Indemnatee then due with respect to Taxes and so long as no Default has occurred and is continuing. If in addition to such refund any Tax Indemnatee shall receive an amount representing interest, attorneys fees or any other amount with respect to such refund, Lessee shall be paid that proportion of such interest, attorneys fees or any other amount which is fairly attributable to the Taxes paid by Lessee prior to the receipt of such refund. No Tax Indemnatee shall enter into a settlement or other compromise with respect to, or otherwise concede, any claim by a taxing authority on account of Taxes being contested by Lessee pursuant to this Section 5.13 without the written consent of Lessee, which consent shall not be unreasonably withheld, unless such Tax Indemnatee waives its right to be indemnified by Lessee with respect to such claim (but not with respect to any future claims).

### **5.14 Absolute**

Lessee's obligations under this Agreement are absolute and unconditional irrespective of any contingency whatever including (but not limited to):

- (a) any right of offset, counterclaim, recoupment, reduction, defense or other right which either party to this Agreement may have against the other;
- (b) any unavailability of the Aircraft for any reason, including a requisition of the Aircraft or any prohibition or interruption of, interference with or other restriction against Lessee's use, operation or possession of the Aircraft;
- (c) any lack or invalidity of title or any other defect in title, airworthiness, merchantability, fitness for any purpose, condition, design or operation of any kind or nature of the Aircraft for any particular use or trade, or for registration or documentation under the laws of any relevant jurisdiction, or any Total Loss in respect of or any damage to the Aircraft;
- (d) any insolvency, bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against Lessor or Lessee;

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- (e) any invalidity, unenforceability or lack of due authorization of, or other defect in, this Agreement; or
- (f) any other cause which, but for this provision, would or might otherwise have the effect of terminating or in any way affecting any obligation of Lessee under this Agreement;

provided always, however, that this Section 5.14 shall be without prejudice to Lessee's right to claim damages and other relief from the courts in the event of any breach by Lessor of its obligations under this Agreement, or in the event that, as a result of any lack or invalidity of title to the Aircraft on the part of Lessor, Lessee is deprived of its possession of the Aircraft.

### **5.15 Substitution of Letter of Credit**

- (a) At any time on or before three (3) Business Days prior to the Delivery Date, so long as no Default is then continuing, Lessee shall have the option to substitute (which once exercised shall be irrevocable) for the Commitment Fee a letter of credit (the "Letter of Credit"), as security for all of the Secured Liabilities, with a stated amount equal to the Commitment Fee. The Letter of Credit:
  - (i) shall be in the form set out in Exhibit F or such other form as Lessor may agree or require, acting reasonably;
  - (ii) shall be issued or confirmed by a first class international bank (or branch thereof) in New York or Los Angeles having at least the Letter of Credit Bank Minimum Rating; and
  - (iii) shall remain in full force and effect until the Letter of Credit Validity Date (or, if the Letter of Credit is at any time due to expire prior to the Letter of Credit Validity Date, then Lessee shall cause a valid renewal to be issued in a form satisfactory to Lessor not later than 30 days prior to such expiry date, each such renewal being for a period of not less than one year or, if less, until the Letter of Credit Validity Date).

Upon valid substitution by Lessee of a Letter of Credit for the Commitment Fee in accordance with the provisions of this Section 5.15, Lessor shall apply that portion of the Commitment Fee which has not previously been applied or retained as provided for in any Operative Document, without interest, against the next payments of Basic Rent that may come due.

- (b) In the event that at any time prior to the Letter of Credit Validity Date the bank issuing or confirming the Letter of Credit no longer has at least the Letter of Credit Bank Minimum Rating, Lessee shall within fourteen days of demand therefor by Lessor provide Lessor with a replacement "Letter of Credit" issued or confirmed by a first class international bank in New York or Los Angeles having

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at least the Letter of Credit Bank Minimum Rating and otherwise meeting the terms of this Agreement.

- (c) If for any reason Lessor is paid under the Letter of Credit, then (a) Lessor may at any time as an agreed remedy, apply or retain all or any portion of the amounts so paid in full or partial payment for amounts constituting or corresponding to the Secured Liabilities and/or may retain all or any portion of the amounts so paid as security for the performance of the Secured Liabilities and any interest earned on the amounts so drawn shall be for Lessor's sole account, and (b) Lessee shall cause an additional "Letter of Credit" to be issued, or shall pay Lessor such amount in cash, so that the Lessor shall at all times have the benefit of cash and/or a Letter of Credit for the full Commitment Fee which would otherwise be required under Section 5.1.
- (d) Unless the Letter of Credit is fully drawn, Lessor shall return the Letter of Credit to Lessee not later than 30 days after the date upon which the Aircraft is returned to Lessor in accordance with this Agreement and all of the Secured Liabilities which are then due and payable have been satisfied in full.

### **6. MANUFACTURER'S AND OTHER WARRANTIES**<sup>6</sup>

#### **6.1 Assignment**

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. Unless an Event of Default shall have occurred and be continuing, Lessor hereby authorizes Lessee during the Term to pursue any claim thereunder in relation to defects affecting the Aircraft, any Engine or Part, and Lessee agrees diligently to pursue any such claim that arises at its own cost. Lessee will notify Lessor promptly upon becoming aware of any such claim. Lessor will provide such assistance to Lessee in making a claim under any such warranties or customer and/or product support as Lessee may reasonably request, and, if requested by Lessee and at Lessee's expense, will pursue a claim in its own name where the relevant manufacturer, vendor, maintenance performer, subcontractor or supplier has refused to acknowledge Lessee's right to pursue that claim, but subject to Lessee first ensuring that Lessor is indemnified and secured to Lessor's reasonable satisfaction against all losses, damages, costs, expenses and liabilities (including fees and disbursements) that Lessor may incur in the taking of any such actions.

#### **6.2 Proceeds**

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<sup>6</sup> *Vide* 3.9 of the text *supra*.

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All proceeds of any such claim as is referred to in Section 6.1 and which exceed \$100,000 will be paid directly to Lessor at the account set forth in Section 5.6(a), but if and to the extent that such claim relates:

- (a) to defects affecting the Aircraft which Lessee has rectified; or
- (b) to compensation for loss of use of the Aircraft, an Engine or any Part during the Term; or
- (c) to costs incurred by Lessee in pursuing such claim (whether or not proceeds of such claim are payable to Lessee);

and provided no Default shall have occurred and be continuing, the proceeds will be promptly paid to Lessee by Lessor but, in the case of (a), only on receipt of evidence reasonably satisfactory to Lessor that Lessee has rectified the relevant defect.

### **6.3 Parts**

Except to the extent Lessor otherwise agrees in a particular case, Lessee will procure that all engines, components, furnishings or equipment provided by the manufacturer, vendor, maintenance performer, subcontractor or supplier as a replacement for a defective Engine or Part pursuant to the terms of any warranty or customer and/or product support arrangement comply with Section 8.13(a), are installed on the Aircraft promptly and that title thereto vests in Lessor in accordance with Section 8.17(b). On installation those items will be deemed to be an Engine or Part, as applicable.

### **6.4 Agreement**

To the extent any warranties or customer and/or product support relating to the Aircraft are made available under an agreement between any Manufacturer, vendor, maintenance performer, subcontractor or supplier and Lessee, this Section 6 is subject to that agreement. However, Lessee will:

- (a) pay the proceeds of any claim thereunder to Lessor at the account set forth in Section 5.6(a) to be applied pursuant to Section 6.2 and, pending such payment, will hold the claim and the proceeds in trust for Lessor; and
- (b) take all such steps as are necessary and requested by Lessor at the end of the Term to ensure the benefit of any of those warranties or customer and/or product support which have not expired are vested in Lessor.

### **6.5 Lessee Warranties**

Lessee acknowledges that during the Term it might contract with Manufacturers, maintenance and overhaul agencies, subcontractors, suppliers and vendors (each an "MRO") to maintain, provide and service the Airframe, Engines and Parts. At Return, Lessee will irrevocably assign to Lessor all of Lessee's rights regarding the Aircraft

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under any warranty (express or implied), service policy, maintenance or product agreement provided by any MRO to the extent that such rights are assignable. Lessee will provide such assistance to Lessor in making a claim under any such warranties or customer and/or product support as Lessor may reasonably request. After Return, Lessee will promptly enforce on Lessor's behalf all such rights that are not assignable.

### **6.6 Final Maintenance Performer Warranties**

To the extent that Lessee uses a Final Maintenance Performer for the Return, Lessee will cause its maintenance contracts with each Final Maintenance Performer 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.

## **7. LESSOR'S COVENANTS AND DISCLAIMERS<sup>7</sup>**

### **7.1 Quiet Enjoyment**

Provided no Event of Default shall have occurred and be continuing, none of Lessor, its successors and assigns, any Financing Party or any Person claiming by, through or on account of any of such parties will interfere with the quiet use, possession and enjoyment of the Aircraft by Lessee.

### **7.2 Lessor's Maintenance Contribution**

#### **(a) Airframe Reimbursable Expenses:**

- (i) Upon the performance by Lessee of a C-Check during the Term of this Agreement, the Lessee's Actual Costs incurred in completing all routine and non-routine C-Check tasks (or the equivalent thereof), but not including the cost of repairs caused by accident, premature or catastrophic failure, faulty maintenance or installation, incident, improper operations, abuse, neglect or misuse or the cost of modifications, interior reconfiguration, the accomplishment of ADs and any overhaul of time controlled components accomplished during the C-Check except such as are part of the tasks included at such C-Check interval, shall constitute "Airframe Reimbursable Expenses".
- (ii) Upon the completion of a C-Check, Lessee shall present written evidence satisfactory to Lessor as to the completion of such C-Check, the workscope of such C-Check and the amount of the Airframe Reimbursable Expenses for approval by Lessor. Such evidence shall include a full hardcopy or digital copy of the entire maintenance event and a list of all

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<sup>7</sup> Vide 3.10 of the text *supra*.

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routine and non-routine work cards with corresponding references to the MPD and an itemized labor and materials report. Upon receipt of such written evidence, and provided there then exists no Default or Event of Default, Lessor shall pay to Lessee (in the case where Lessee performed the work or upon proof that Lessee had paid the independent repair facility that performed such work) or to the independent repair facility performing such work if directed in writing by Lessee and upon receipt of written confirmation from such repair facility that it will apply such payments solely against the costs due for such C-Check, an amount equal to the lesser of (i) the Airframe Reimbursable Expenses or (ii) an amount equal to (1) all Airframe Additional Rent previously paid by Lessee under this Agreement as of the date of completion of the C-Check, minus (2) all previous payments by Lessor under this Section 7.2(a).

(b) Engine Reimbursable Expenses:

- (i) Upon the accomplishment of an Engine Shop Visit of an Engine during the Term, excluding any cost of such Engine Shop Visit to the extent incurred in respect of foreign object damage, ingestion, accident, premature or catastrophic failure, faulty maintenance or installation, incident, abuse, neglect or misuse, Lessee's Actual Costs incurred in completing such Engine Shop Visit, other than costs resulting from elective parts replacement (except to the extent ordinarily accomplished during such maintenance or overhaul) or covered by Engine Manufacturer's service bulletins or which is reimbursable by a claim under the Engine Manufacturer's warranties or by insurance (but including deductibles for purposes of this provision), shall constitute "Engine Reimbursable Expenses".
- (ii) Upon accomplishment of any Engine Shop Visit for an Engine, Lessee, within six months of such accomplishment, shall present written evidence satisfactory to Lessor as to the completion of such Engine Shop Visit and the amount of Engine Reimbursable Expenses for approval by Lessor. Such evidence shall include a full hardcopy or digital copy of the entire maintenance event and a description of the reason for removal, a shop tear down report, a shop findings report, a full description of the workscope of the Engine Shop Visit and complete disk records for such Engine both prior to and after the Engine Shop Visit. Both the invoice supplied by the Engine repair facility and that submitted by Lessee to Lessor with respect to such Engine will state whether or not credits were provided due to life remaining on any Parts removed from such Engine and the amount of any such credits will be itemized. Upon receipt of such written evidence, and provided there then exists no Default or Event of Default, Lessor shall pay to Lessee (in the case where Lessee performed the work or upon proof that Lessee had paid the independent repair facility that performed such work) or to the independent repair facility performing such work if directed in

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writing by Lessee and upon receipt of written confirmation from such repair facility that it will apply such payments solely against the costs due for such Engine Shop Visit, an amount equal to the lesser of (i) the Engine Reimbursable Expenses with respect to such Engine or (ii) an amount equal to (1) all Engine Additional Rent previously paid by Lessee with respect to such Engine pursuant to this Agreement as of the date of completion of the Engine Shop Visit, minus (2) all previous payments by Lessor under this Section 7.2(b) with respect to such Engine (the “Net Available Engine Additional Rent”), subject to the further limitations that such amount payable by Lessor and attributable to:

- (A) the high-pressure turbine of such Engine shall not exceed 43% of the Net Available Engine Additional Rent;
- (B) the low-pressure turbine of such Engine shall not exceed 19% of the Net Available Engine Additional Rent;
- (C) the high-pressure compressor of such Engine shall not exceed 17% of the Net Available Engine Additional Rent;
- (D) the low-pressure compressor of such Engine shall not exceed 13% of the Net Available Engine Additional Rent; and
- (E) the fan and gear box of such Engine shall not exceed 8% of the Net Available Engine Additional Rent.

provided, however, that if the Engine Shop Visit includes a performance restoration in all modules of the Engine then the preceding module percentages shall not apply to the Net Available Engine Additional Rent.

(c) Engine LLP Reimbursable Expenses:

- (i) During the performance of an Engine Shop Visit for an Engine during the Term, in the event Lessee is obligated to replace an Engine LLP (the “Replaced LLP”) in accordance with the Approved Maintenance Program, excluding any replacements caused by foreign object damage, ingestion, accident, premature or catastrophic failure, faulty maintenance or installation, incident, abuse, neglect, misuse, elective parts replacement (except to the extent ordinarily accomplished during such maintenance) or covered by Manufacturer’s service bulletins or which is reimbursable by a claim under the Manufacturer’s warranties or by insurance (but including deductibles for purposes of this provision), the Lessee’s actual cost to purchase a replacement Engine LLP (the “Replacement LLP”) shall constitute “Engine LLP Reimbursable Expenses”. For the avoidance of doubt, Engine LLP Reimbursable Expenses shall not include any late charges, mark-ups, interest, handling fees or similar charges associated



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with the purchase, import or shipping of such Replacement LLP, or any labor associated with the removal or replacement of such Replaced LLP or Replacement LLP.

- (ii) Within six months following the accomplishment of any Engine Shop Visit for an Engine, Lessee shall deliver written evidence satisfactory to Lessor as to the amount of Engine LLP Reimbursable Expenses for each Replacement LLP in accordance with the preceding Section 7.2(c)(i). Upon receipt of such written evidence, and provided there then exists no Default or Event of Default, Lessor shall pay to Lessee (in the case where Lessee performed the work or upon proof that Lessee had paid the independent repair facility that performed such work) or to the independent repair facility performing such work if directed in writing by Lessee and upon receipt of written confirmation from such repair facility that it will apply such payments solely against the costs due for such Engine Shop Visit, an amount equal to the product of the following formula with respect to such Replacement LLP:

$$(A - B) \times (C \div D) \times E$$

where

- “A” - is the number of remaining Cycles on the Replacement LLP at installation;
- “B” - is the number of remaining Cycles on the Replaced LLP at removal;
- “C” - is the relevant Manufacturer’s catalog price for the Replacement LLP at the time of installation;
- “D” - is the relevant Manufacturer’s catalog price for the entire Engine LLP stack at the time of installation of the Replacement LLP; and
- “E” - is the weighted mean of the Engine LLP Additional Rent Rates (weighted by the number of months in which each successive adjusted figure for the Engine LLP Additional Rent Rate applies during the period in question) in effect since the previous Engine Shop Visit for such Engine (or since the Delivery Date, if later).

Notwithstanding the foregoing formula, however, Lessor shall not be required to pay to Lessee pursuant to this Section 7.2(c) more than either (A) the Engine LLP Reimbursable Expenses with respect to such Replacement Engine LLP, or (B) all Engine LLP Additional Rent previously paid by Lessee with respect to such Engine as of the date of

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completion of the Engine Shop Visit minus all previous payments by Lessor under this Section 7.2(c) with respect to such Engine.

(d) Landing Gear Reimbursable Expenses:

- (i) Upon the performance by Lessee of a Landing Gear Overhaul during the Term in accordance with the Approved Maintenance Program, excluding a Landing Gear Overhaul caused by accident, faulty maintenance or installation, incident, abuse, neglect or misuse or covered by Manufacturer's service bulletins or which is reimbursable by a claim under the Manufacturer's warranties or by insurance (but including deductibles for purposes of this provision), Lessee's Actual Cost incurred in completing such Landing Gear Overhaul shall constitute "Landing Gear Reimbursable Expenses".
- (ii) Upon accomplishment of a Landing Gear Overhaul, Lessee shall, within six months of such accomplishment, present written evidence satisfactory to Lessor as to the completion of such Landing Gear Overhaul, including a full hardcopy or digital copy of the entire maintenance event, and the amount of Landing Gear Reimbursable Expenses for approval by Lessor. Upon receipt of such written evidence, and provided there then exists no Default or Event of Default, Lessor shall pay to Lessee (in the case where Lessee performed the work or upon proof that Lessee had paid the independent repair facility that performed such work) or to the independent repair facility performing such work if directed in writing by Lessee and upon receipt of written confirmation from such repair facility that it will apply such payments solely against the costs due for such Landing Gear Overhaul, an amount equal to the lesser of (i) the Landing Gear Reimbursable Expenses or (ii) an amount equal to (1) all Landing Gear Additional Rent previously paid by Lessee pursuant to this Agreement as of the date of completion of the Landing Gear Overhaul, minus (2) all previous payments by Lessor under this Section 7.2(d).

(e) APU Reimbursable Expenses:

- (i) Upon the accomplishment of any APU Basic Shop Visit of the APU during the Term in accordance with the Approved Maintenance Program, but excluding any APU Basic Shop Visit caused by foreign object damage, ingestion, accident, faulty maintenance or installation, incident, abuse, neglect, misuse, elective parts replacement (except to the extent ordinarily accomplished during such APU Basic Shop Visit), the cost of modifications, the accomplishment of Manufacturer's service bulletins or ADs, or costs which are reimbursable by claim under the Manufacturer's warranties or by insurance, Lessee's Actual Cost incurred in completing such APU Basic Shop Visit shall constitute "APU Reimbursable Expenses".

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- (ii) Upon accomplishment of any APU Basic Shop Visit of the APU, Lessee shall, within six months of such accomplishment, present written evidence satisfactory to Lessor as to the completion of such APU Basic Shop Visit, including a full hardcopy or digital copy of the entire maintenance event, and the amount of APU Reimbursable Expenses for approval by Lessor. Upon receipt of such written evidence, and provided there then exists no Default or Event of Default, Lessor shall pay to Lessee (in the case where Lessee performed the work or upon proof that Lessee had paid the independent repair facility that performed such work) or to the independent repair facility performing such work if directed in writing by Lessee and upon receipt of written confirmation from such repair facility that it will apply such payments solely against the costs due for such APU Basic Shop Visit, an amount equal to the lesser of (i) the APU Reimbursable Expenses or (ii) an amount equal to (1) all APU Additional Rent previously paid by Lessee for the APU pursuant to this Agreement as of the date of completion of the APU Basic Shop Visit, minus (2) all previous payments by Lessor under this Section 7.2(e).
- (f) Additional Provisions:
  - (i) Notwithstanding anything to the contrary contained in this Section 7.2, any such maintenance and the extent and nature of such maintenance to be performed shall be conducted at an Agreed Maintenance Performer. Lessor shall be entitled to have representatives present during the performance of such maintenance to oversee and approve all aspects of such performance, including the workscope thereof. Lessor shall be notified by Lessee prior to the commencement of any maintenance work described in this Section 7.2, including as to the Agreed Maintenance Performer and for Lessor's reasonable approval of the workscope. If required by the Agreed Maintenance Performer, Lessee shall give written authorization to the Agreed Maintenance Performer granting Lessor and its representatives full access to the maintenance event and all documents and correspondence generated during and as a result of such maintenance event.
  - (ii) Lessee acknowledges that Lessee is required to pay the full cost of and to perform (or cause to be performed) any check, shop visit, overhaul or other maintenance required by the Approved Maintenance Program, whether or not Lessor is required to make any payments pursuant to this Section 7.2, and any costs incurred by Lessee in performing any such check, shop visit, overhaul or other maintenance required by the Approved Maintenance Program shall be for Lessee's account solely.
  - (iii) As soon as practicable but, in any case, within 30 days after receipt of a claim for reimbursement of Reimbursable Expenses, Lessor shall (i) notify Lessee in writing of any portion of such claim to which it reasonably

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objects or for which it reasonably requires additional supporting documentation, and (ii) pay all portions of such claim to which it does not reasonably object or need additional documentation.

### **7.3 Registration and Filings**

Lessor shall, at Lessee's cost:

- (a) take all actions reasonably requested by Lessee to enable Lessee to perform its obligations under Section 8.10 regarding the registration of the Aircraft with the Aviation Authority, and not do or suffer to be done anything which might reasonably be expected to adversely affect that registration; and
- (b) do all acts and things (including making any filing or registration with the Aviation Authority or any other Government Entity) as may be required following any change in the ownership or financing of the Aircraft.

### **7.4 Lessor's Obligations Following Termination**

So long as no Default has occurred and is continuing, within five Business Days of:

- (a) termination of this Agreement before Delivery pursuant to Section 4.2(b), 4.3(b) or 11.1; or
- (b) redelivery of the Aircraft to Lessor in accordance with and in the condition required by this Agreement; or
- (c) receipt by Lessor of the Agreed Value following a Total Loss and all other amounts due under Section 11.2;

or in any such case at such later time as Lessee has irrevocably paid to Lessor all amounts that are then outstanding under this Agreement, Lessor shall, unless Lessee shall have substituted for the Commitment Fee a Letter of Credit under Section 5.15, pay to Lessee an amount equal to that portion of the Commitment Fee that has not been applied or retained as provided for in any Operative Document without interest.

### **7.5 Agreed Maintenance Performers**

Lessor may object to and may exclude any maintenance organization (other than Lessee) being included as an "Agreed Maintenance Performer" or "Final Maintenance Performer" for a valid business reason. If Lessor wishes to exclude a maintenance organization from being an Agreed Maintenance Performer or Final Maintenance Performer, Lessor shall deliver written notice to such effect to Lessee, which exclusion may be amended by Lessor from time to time. At the request of Lessee, Lessor shall consult in good faith with Lessee regarding any organizations excluded by Lessor pursuant to this Section.

### **7.6 Exclusion**

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UPON EXECUTION OF THE CERTIFICATE OF ACCEPTANCE, THE AIRCRAFT IS ACCEPTED BY LESSEE "AS IS, WHERE IS WITH ALL FAULTS" AND LESSEE AGREES AND ACKNOWLEDGES THAT, SAVE AS IS EXPRESSLY STATED IN THIS AGREEMENT, LESSOR WILL HAVE NO LIABILITY IN RELATION TO, AND LESSOR HAS NOT AND WILL NOT BE DEEMED TO HAVE MADE OR GIVEN, ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THE AIRCRAFT, INCLUDING:

- (a) THE DESCRIPTION, AIRWORTHINESS, MERCHANTABILITY, FITNESS FOR ANY USE OR PURPOSE, VALUE, CONDITION, OR DESIGN, OF THE AIRCRAFT OR ANY PART; OR
- (b) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM LESSOR'S NEGLIGENCE, ACTUAL OR IMPUTED (BUT EXCLUDING ANY SUCH OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT WHICH ARISES FROM LESSOR'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT); OR
- (c) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGE TO THE AIRCRAFT, FOR ANY LIABILITY OF LESSEE TO ANY THIRD PARTY, OR FOR ANY OTHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

### **7.7 Lessee's Waiver**

LESSEE HEREBY WAIVES, AS BETWEEN ITSELF AND LESSOR, ALL ITS RIGHTS IN RESPECT OF ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, ON THE PART OF LESSOR AND ALL CLAIMS AGAINST LESSOR HOWSOEVER AND WHENEVER ARISING AT ANY TIME IN RESPECT OF OR OUT OF THE CONDITION, OPERATION OR PERFORMANCE OF THE AIRCRAFT OR THIS AGREEMENT EXCEPT AS IS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT.

### **7.8 Lessee's Confirmation**

LESSEE CONFIRMS THAT IT IS FULLY AWARE OF THE PROVISIONS OF SECTIONS 7.6 AND 7.7 AND ACKNOWLEDGES THAT BASIC RENT, ADDITIONAL RENT AND ALL OTHER AMOUNTS PAYABLE BY LESSEE UNDER THIS AGREEMENT HAVE BEEN CALCULATED NOTWITHSTANDING ITS PROVISIONS.

### **7.9 Conclusive Proof**

DELIVERY BY LESSEE TO LESSOR OF THE CERTIFICATE OF ACCEPTANCE WILL BE CONCLUSIVE PROOF AS BETWEEN LESSOR AND LESSEE THAT LESSEE HAS EXAMINED AND INVESTIGATED THE AIRCRAFT, THAT THE

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AIRCRAFT AND THE AIRCRAFT DOCUMENTS ARE SATISFACTORY TO LESSEE AND THAT LESSEE HAS IRREVOCABLY AND UNCONDITIONALLY ACCEPTED THE AIRCRAFT FOR LEASE HEREUNDER WITHOUT ANY RESERVATIONS WHATSOEVER (EXCEPT FOR ANY DISCREPANCIES WHICH MAY BE NOTED IN THE CERTIFICATE OF DELIVERY CONDITION).

### **8. LESSEE'S COVENANTS**

#### **8.1 Duration**

The undertakings in Sections 8, 12 and Schedule 3 will:

- (a) except as otherwise stated, be performed at the expense of Lessee; and
- (b) remain in force until redelivery of the Aircraft to Lessor in accordance with this Agreement and thereafter to the extent of any accrued rights of Lessor in relation to those undertakings.

#### **8.2 Information**

Lessee shall:

- (a) furnish to Lessor:
  - (i) within 60 days after the last day of the first three fiscal quarters of each fiscal year of Lessee, unaudited consolidated quarterly financial statements of Lessee prepared for such quarter, including a consolidated balance sheet of Lessee and its Subsidiaries as of the last day of such quarter and consolidated statements of income and retained earnings for such fiscal quarter and for the year to date and, on a comparative basis, figures for the corresponding periods of the immediately preceding fiscal year, all in reasonable detail, each such statement to be certified in a certificate of Lessee's chief financial officer or chief accounting officer as fairly presenting the financial position and the results of operations of the Lessee as at its date and for such quarter (subject to year-end audit adjustments) and as having been prepared in accordance with GAAP;
  - (ii) as soon as available but not in any event later than 90 days after the last day of each fiscal year of Lessee, audited consolidated financial statements of Lessee prepared for such year, including a consolidated balance sheet of Lessee and its Subsidiaries as of the last day of such year, consolidated statements of income and retained earnings of Lessee and its Subsidiaries for such fiscal year, a consolidating balance sheet of Lessee and its Subsidiaries as of the last day of such year and consolidating statements of income and retained earnings of Lessee and its Subsidiaries

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<sup>8</sup> *Vide* 3.10 and Annex 9 of the text *supra*.

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for such fiscal year and in all cases on a comparative basis figures for the immediately preceding fiscal year, all in reasonable detail, each prepared in accordance with GAAP and certified without qualification by one of the largest international firms of independent certified public accountants as fairly presenting the financial position and the results of operations of Lessee and its Subsidiaries at the end of and for such fiscal year and as having been prepared in accordance with GAAP;

- (iii) in lieu of delivering to Lessor the financial statements referred to in Sections 8.2(a)(i) and (ii) above, Lessee may cause such financial statements to be publicly available on the internet within the time periods set forth in Sections 8.2(a)(i) and (ii) above at a location identified to Lessor in writing;
  - (iv) concurrently with the financial statements furnished pursuant to Sections 8.2(a)(i) and (ii) above, an officer's certificate signed by the chief financial officer or chief accounting officer of Lessee certifying to the best knowledge after due inquiry of such officer that no Default occurred during the period covered by such financial statements and no Default exists on the date of such officer's certificate or, if a Default occurred or exists, stating that fact and specifying the nature and period of existence of such Default and the actions Lessee took or proposes to take with respect to such Default;
  - (v) at the same time as it is issued to the creditors of Lessee, a copy of each notice or circular issued to Lessee's creditors as a group; and
  - (vi) on request from time to time such other information regarding Lessee and its business and affairs as Lessor may reasonably request, including copies of all statements of account of any Government Entity or other Person in respect of any Flight Charges;
- (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 furnish to Lessor all information that Lessor from time to time reasonably requests regarding the Aircraft, any Engine or any Part and its use, location and condition, including the hours available on the Aircraft and any Engine until the next scheduled check, inspection, overhaul or shop visit, as the case may be;
  - (d) on request, furnish to Lessor evidence reasonably satisfactory to Lessor that all Taxes and charges incurred by Lessee with respect to the Aircraft have been paid and discharged in full;

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- (e) provide to Lessor, within five days following the end of each calendar month during the Term, a monthly report on the Aircraft in the form set out in Exhibit E or such other form as Lessee may select providing substantially the same information;
- (f) promptly notify Lessor of:
  - (i) any Total Loss, any Engine Loss, any theft of the Airframe or any Engine, any damage to the Aircraft if the potential cost of repair may reasonably be expected to exceed the Damage Notification Threshold or any modification to the Aircraft if the potential cost may reasonably be expected to exceed the Damage Notification Threshold;
  - (ii) any claim or other occurrence likely to give rise to a claim under the Insurances (but, in the case of hull claims only, in excess of the Damage Notification Threshold) and details of any negotiations with the insurance brokers over any such claim; and
  - (iii) any litigation, arbitration or administrative proceedings that are pending or, to Lessee's knowledge, threatened against Lessee which, if adversely determined, would have a material adverse effect upon its financial condition or business or its ability to perform its obligations under the Operative Documents; and
  - (iv) as soon as any officer of Lessee obtains knowledge thereof, any Default or Event of Default.

### **8.3 Operation of the Aircraft**

Lessee shall:

- (a) comply with all Applicable Law for the time being in force in any country or jurisdiction in which the Aircraft is being operated which is applicable to the Aircraft or the use and operation of the Aircraft;
- (b) not use the Aircraft in any manner contrary to any recommendation of the Aviation Authority or any applicable Manufacturer, contrary to any rule or regulation of the Aviation Authority or for any purpose for which the Aircraft is not designed or reasonably suitable;
- (c) ensure that the crew and engineers employed by it in connection with the operation and maintenance of the Aircraft have the qualifications and hold the licenses required by the Aviation Authority and Applicable Law;
- (d) use the Aircraft solely in commercial or other operations for which Lessee is duly authorized by the Aviation Authority and Applicable Law;



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- (e) not knowingly use the Aircraft (or use it when Lessee ought reasonably to have known that it was being so used) for the carriage of:
  - (i) whole animals, living or dead, except in the cargo compartments according to IATA regulations, and except domestic pet animals carried in a suitable container to prevent the escape of any liquid and to ensure the welfare of the animal;
  - (ii) acids, toxic chemicals, mercury, other corrosive materials, explosives, nuclear fuels, nuclear wastes or any nuclear assemblies or components, except as permitted for cargo aircraft under the “Restriction of Goods” schedule issued by IATA from time to time and provided that all the requirements for packaging or otherwise contained therein are fulfilled;
  - (iii) any other goods, materials or items of cargo which could reasonably be expected to cause damage to the Aircraft and which would not be adequately covered by the Insurances; or
  - (iv) any illegal item or substance;
- (f) not utilize 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 type operated by Lessee;
- (g) not (other than for bona fide safety reasons) cause or permit the Aircraft to proceed to, or remain at, any location which is for the time being the subject of a prohibition order (or any similar order or directive) by:
  - (i) any Government Entity of the State of Registration or the Habitual Base; or
  - (ii) any Government Entity of the country in which such location is situated; or
  - (iii) any Government Entity having jurisdiction over Lessor, any Financing Party or the Aircraft;
- (h) obtain and maintain in full force all certificates, licenses, permits and authorizations required for the use and operation of the Aircraft for the time being, and for the making of payments required by, and the compliance by Lessee with its other obligations under, this Agreement;
- (i) not change the location of the Habitual Base of the Aircraft; and
- (j) not operate the Aircraft to, from or in any country that is the subject of sanctions under United Nations Security Council directives that prohibit use of the Aircraft.

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### **8.4 Taxes and Other Charges**

As between Lessor and Lessee, Lessee shall be responsible for all fees, expenses, charges and other costs related to the use, operation and maintenance of the Leased Property, and shall promptly pay:

- (a) all license and registration fees, Taxes, Flight Charges and other amounts of any nature imposed by any Government Entity that are imposed on Lessee or for which Lessee is responsible under the Operative Documents with respect to the Aircraft, including the purchase, ownership, delivery, leasing, possession, use, operation, return, sale or other disposition of the Aircraft;
- (b) all rent, fees, charges, Taxes imposed on Lessee and other amounts in respect of any premises where the Aircraft or any Part thereof is located from time to time during the Term; and
- (c) all sums due by Lessee to any relevant ATC/Airport Authority in respect of all aircraft (including the Aircraft) operated by Lessee before such sums become overdue and in default,

except to the extent that such payment is being contested in good faith by appropriate proceedings in accordance with Section 5.13.

### **8.5 Subleasing**

Lessee will not sublease or otherwise part with possession of the Aircraft, the Engines or any Part except that Lessee may part with possession:

- (a) with respect to the Aircraft, the Engines or any Part, to the relevant manufacturers for testing or similar purposes, or to an Agreed Maintenance Performer or Final Maintenance Performer for service, repair, maintenance or overhaul work or for alterations, modifications or additions to the extent required or permitted by this Agreement;
- (b) with respect to an Engine or Part, as expressly permitted by this Agreement;
- (c) provided that no Default shall have occurred and be continuing, with respect to the Aircraft or an Engine, pursuant to an ACMI (aircraft, crew, maintenance and insurance) or “wet” lease or charter of the Aircraft in which operational control of the Aircraft remains with Lessee at all times (each a “Wet Lease”), provided (i) the Aircraft remains registered with the Aviation Authority, (ii) the Aircraft shall be maintained, insured and otherwise operated in accordance with the provisions of this Agreement, (iii) Lessee has given written notice to Lessor of such Wet Lease at least two (2) days prior to the date on which it is proposed that such Wet Lease begin, (iv) prior to the start of the Wet Lease, Lessee delivers to Lessor an original executed counterpart of the agreement documenting the Wet Lease and (v) prior to the start of such Wet Lease, the party contracting with Lessee for such

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service shall deliver to Lessor a written confirmation, in form and substance satisfactory to Lessor, that it will recognize the respective rights, title and interest of Lessor and any Financing Party in the Aircraft, that it will not seek to exercise any rights whatsoever in relation thereto and that it agrees that any right between it and Lessee is subject and subordinate to this Agreement; and

- (d) with respect to the Aircraft, pursuant to a code-sharing arrangement so long as operational control of the Aircraft remains with Lessee at all times.

### **8.6 Inspection**

- (a) Lessor, any Financing Party and any Person designated by Lessor or any Financing Party may at any time visit, inspect and survey the Aircraft, any Engine or any Part and for such purpose may, subject to any applicable Aviation Authority regulation, travel on the flight deck as observer. Lessor, any Financing Party or any designee shall not be restricted during such inspection from opening any panels, bays or doors on the Aircraft or from inspecting any part of the Aircraft.
- (b) Lessee shall have no responsibility for the costs and expenses of Lessor and any Financing Party in connection with any such visit, inspection or survey unless an Event of Default has occurred and is continuing or the visit, inspection or survey discloses that Lessee is in breach of its material obligations under this Agreement, in which case such costs and expenses shall be paid by Lessee on demand.
- (c) Lessor shall:
  - (i) have no duty to make, or liability arising out of, any such visit, inspection or survey; and
  - (ii) so long as no Default has occurred and is continuing, not exercise such right other than on reasonable notice and so as not to disrupt unreasonably the maintenance or operation of the Aircraft.

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### **8.7 Protection of Title**

Lessee acknowledges that title to the Aircraft shall at all times be and remain solely and exclusively vested in Lessor and that the Operative Documents constitute for all purposes, including tax purposes, an agreement by Lessor to lease the Aircraft to Lessee and, accordingly, Lessee shall:

- (a) not do or knowingly permit to be done or omit or knowingly permit to be omitted to be done any act or thing which might reasonably be expected to jeopardize the respective rights, title and interest of any Financing Party as mortgagee of the Aircraft and assignee of this Agreement or Lessor as owner of the Aircraft and lessor under this Agreement, or the validity, enforceability or priority of any Financing Security Document or which would be likely to expose Lessor or any Financing Party to any criminal or civil liability;
- (b) 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 and is subject to any Financing Security Document;
- (c) not at any time:
  - (i) represent or hold out Lessor or any Financing Party as carrying goods or passengers on the Aircraft or as being in any way connected or associated with any operation or carriage (whether for hire or reward or gratuitously) which may be undertaken by Lessee; or
  - (ii) pledge the credit of Lessor or any Financing Party;
- (d) ensure that there is always affixed, and not removed or in any way obscured, a fireproof plate (having dimensions of not less than 6 in. x 4 in.) in a reasonably prominent position on the Aircraft stating:
  - (i) “This Aircraft (msn [msn]) is owned by [Insert Name and Address of Lessor]”
- (e) ensure that there is always affixed on each Engine, and not removed or in any way obscured, a fireproof plate in a prominent position near such Engine’s data plate stating:
  - “ This Engine (esn [Insert esn]) is owned by [Insert Name of Lessor]”
- (f) not create or permit to exist any Security Interest upon the Aircraft, any Engine or any Part, except Permitted Liens and will promptly take, or cause to be taken, such actions as may be necessary to discharge any such Security Interest (other than Permitted Liens) that may at any time arise, exist or be levied upon the Aircraft, any Engine or Part;

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- (g) not do or permit to be done anything which may reasonably be expected to expose the Aircraft, any Engine or any Part to penalty, forfeiture, impounding, detention, appropriation, damage or destruction and, without prejudice to the foregoing, if any such penalty, forfeiture, impounding, detention, appropriation, damage or destruction occurs, give Lessor notice and use its best efforts to procure the immediate release of the Aircraft, such Engine or such Part, as the case may be;
- (h) not abandon the Aircraft, any Engine or any Part;
- (i) pay and discharge or cause to be paid and discharged when due and payable or make adequate provision by way of security or otherwise for all debts, damages, claims and liabilities which have given or might reasonably be expected to give rise to a Security Interest over or affecting the Aircraft, any Engine or any Part; and
- (j) not attempt, or hold itself out as having any power, to sell, lease or otherwise dispose of the Aircraft, any Engine or any Part other than as expressly permitted by this Agreement.

### **8.8 General**

Lessee will:

- (a) not make any substantial change in the nature of the business in which it is engaged if such change, in the reasonable opinion of Lessor, might reasonably be expected to have a material adverse effect on Lessee's performance of its obligations under the Operative Documents;
- (b) preserve its corporate existence, and will not merge or consolidate with any Person, or sell all or substantially all of its assets to any Person, unless the successor Person resulting from such merger or consolidation or purchasing all or substantially all of Lessee's assets (in each event, the "Successor"):
  - (i) is a Person incorporated, formed or organized under the laws of the State of Organization, any state or province of the United States of America or the Dominion of Canada, a member of the European Union or another jurisdiction consented to in writing by Lessor;
  - (ii) has a net worth immediately after such merger, consolidation or purchase of Lessee's assets that is not less than Lessee's net worth immediately prior to such transaction;
  - (iii) is authorized under Applicable Law to perform Lessee's obligations under the Operative Documents to the same extent as Lessee;
  - (iv) delivers to Lessor an agreement in form and substance reasonably satisfactory to Lessor containing an assumption by the Successor of

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Lessee's representations and warranties under this Agreement, together with the due and punctual performance of all of Lessee's obligations under the Operative Documents; and

- (v) delivers to Lessor an opinion of counsel reasonably satisfactory in form and substance to Lessor covering the Operative Documents and the agreement referred to in Section 8.8(b)(iv) above and substantially in the form of the legal opinion delivered pursuant to Section 3.1(d)(i).

### **8.9 Records**

Lessee shall procure that accurate, complete and current records of all flights made by, and all maintenance, repairs, replacements, removals, modifications, alterations and additions carried out on or made to, the Aircraft (including, in relation to each Engine or Part subsequently installed, before its installation) are kept in English, and shall keep the records in such manner as the Aviation Authority, EASA and the FAA may from time to time require. In addition, all Airframe and Engine LLPs installed or replaced during the Term shall have documentation substantiating traceability "back-to-birth" to confirm current accumulated Flight Hours and Cycles. The records will form part of the Aircraft Documents.

### **8.10 Registration and Filings**

Lessee shall at its cost:

- (a) maintain the registration of the Aircraft with the Aviation Authority reflecting (so far as permitted by Applicable Law) the interests of the Lessor and not do or suffer to be done anything which might reasonably be expected to adversely affect that registration;
- (b) do all acts and things (including making any filing or registration with the Aviation Authority or any other Government Entity) and execute and deliver all documents (including any amendment of this Agreement) as may be required by the Lessor:
  - (i) following any change or proposed change in the ownership or financing of the Aircraft or in the manner of securing the Lessor's obligations to the Financing Parties;
  - (ii) following any modification of the Aircraft, any Engine or any Part or the permanent replacement of any Engine or Part in accordance with this Agreement, so as to ensure that the respective rights of the Lessor and any Financing Party under this Agreement apply with the same effect as before; or
  - (iii) to establish, maintain, preserve, perfect and protect the rights of Lessor under this Agreement and in and to the Aircraft; and

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- (c) without limitation to the generality of Section 8.10(b) above, if at any time in the State of Registration there shall be, or be brought into force, any legislative or other provisions giving effect to the Geneva Convention of 1948 or the Cape Town Convention on International Interests in Mobile Equipment and the Aircraft Equipment Protocol thereto (the "Cape Town Convention") or otherwise relating to the recognition of rights in aircraft, do and join with Lessor in doing all such acts as may be necessary to perfect recognition of Lessor's title and interest in, and the interests of any Financing Party in, the Aircraft in accordance with such legislative or other provisions. Lessee hereby irrevocably consents to Lessor's registering this Agreement under the Cape Town Convention.

### **8.11 Maintenance and Repair**

Lessee shall:

- (a) keep the Aircraft airworthy in all respects and in good repair and condition, and all maintenance will be carried out to the standards of major international air carriers;
- (b) incorporate in the Approved Maintenance Program (i) a CPCP as recommended by the Airframe Manufacturer, (ii) any aging aircraft program as recommended by the Airframe Manufacturer, (iii) any SID program approved by the Airframe Manufacturer, and (iv) an anti-fungus and anti-biological growth and contamination prevention, control and treatment program for all fuel tanks in accordance with the Airframe Manufacturer's approved procedures;
- (c) maintain the Aircraft in accordance with FAR Part 121 and all rules and regulations of the Aviation Authority as are applicable to passenger aircraft of the same type as the Aircraft, and maintain the Aircraft to as to comply at all times with the type certificate specification and data sheets for the Aircraft;
- (d) maintain the Aircraft in accordance with the Approved Maintenance Program through Agreed Maintenance Performers and perform (at the respective intervals provided in the Approved Maintenance Program) all Major Checks, and (i) Lessor shall be notified by Lessee prior to the commencement of any Major Checks, including as to the Agreed Maintenance Performer and for Lessor's reasonable approval of the workscope, (ii) Lessor shall be entitled to have representatives present during the performance of all Major Checks to oversee and approve all aspects of such performance, including the workscope thereof and (iii) if required by the Agreed Maintenance Performer, Lessee shall give written authorization to the Agreed Maintenance Performer granting Lessor and its representatives full access to the Major Check and all documents and correspondence generated during and as a result of such maintenance event.
- (e) advise Lessor in writing of all material changes to the Approved Maintenance Program, and shall not (i) change the intervals between Major Checks under the

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Approved Maintenance Program without the written consent of Lessor, or (ii) change the Approved Maintenance Program in any other material respect without the written consent of Lessor unless recommended by the applicable Manufacturer or mandated by the Aviation Authority;

- (f) comply with all mandatory inspection and modification requirements, ADs and similar requirements applicable to the Aircraft, any Engine or Part having a compliance date on or before the Expiry Date and that are required by the Aviation Authority, EASA or the FAA;
- (g) comply with all alert service bulletins issued by any manufacturer of the Aircraft, Engines or Parts, and comply (including scheduling compliance work and then performing such work on schedule) with all other service bulletins issued by any such manufacturer if and to the extent that Lessee brings or schedules to bring in compliance at least one-half of the applicable aircraft it operates (excluding for purposes of such calculation aircraft acquired from unrelated third parties that already comply with such other service bulletins);
- (h) comply with all Applicable Laws and the regulations of the Aviation Authority and any other aviation authorities with jurisdiction over Lessee or the Aircraft, any Engine or Part that relate to the maintenance, condition, use or operation of the Aircraft or require any modification or alteration to the Aircraft, any Engine or Part;
- (i) maintain in good standing a certificate of airworthiness for the Aircraft in the appropriate category for the nature of the operations of the Aircraft issued by the Aviation Authority except when the Aircraft is undergoing maintenance, modification or repair required or permitted by this Agreement, and from time to time Lessee shall provide to Lessor a copy on request;
- (j) if required by the Aviation Authority, maintain a current certification as to maintenance issued by or on behalf of the Aviation Authority in respect of the Aircraft and shall from time to time provide to Lessor a copy on request;
- (k) maintain the Engines with respect to overhaul build standards and disc replacements at a level which is consistent with the level applied by Lessee in relation to other engines of the same type as the Engines in its fleet;
- (l) maintain the Engines and the APU in an “on condition” program as set forth in the respective Manufacturer’s maintenance manual;
- (m) not enter into any engine maintenance cost per flight hour, power-by-the-hour or similar agreement with the Engine manufacturer or any other engine maintenance facility or organization that includes any Engine without Lessor’s prior written consent;



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- (n) subject to Section 11.3, procure promptly the replacement of any Engine or Part which has become time, cycle or calendar expired, lost, stolen, seized, confiscated, destroyed, damaged beyond repair, unserviceable or permanently rendered unfit for use, with an engine or part complying with the conditions set out in Section 8.13(a);
- (o) accomplish all repairs, modifications and alterations in accordance with the SRM or, if the repair, modification or alteration is outside the scope of the SRM, as recommended in writing by the applicable manufacturer and approved by the Aviation Authority;
- (p) provide Lessor with a written summary of all sampling programs involving or affecting the Aircraft;
- (q) ensure that overhauls are accomplished following the respective Manufacturer's recommendations and using maintenance and quality control procedures approved by the Aviation Authority, and that each Agreed Maintenance Performer provides a complete record of all work performed during the course of such overhaul was accomplished in accordance with Aviation Authority, EASA and FAA requirements; and
- (r) comply with the provisions of Section 11.4 in connection with any accident or incident involving the Aircraft.

### **8.12 Removal of Engines and Parts**

Lessee will ensure that no Engine or Part installed on the Aircraft is at any time removed from the Aircraft other than:

- (a) if replaced as expressly permitted by this Agreement; or
- (b) if the removal is of an obsolete item and is in accordance with the Approved Maintenance Program; or
- (c) pursuant to, and in accordance with, Section 8.15; or
  - (i) during the course of maintaining, servicing, repairing, overhauling or testing that Engine or the Aircraft, as the case may be; or
  - (ii) as part of a normal engine or part rotation program; or
  - (iii) for the purpose of making such modifications to the Engine or the Aircraft, as the case may be, as are permitted under this Agreement,

and then in each case only if it is reinstalled or replaced by an engine or part complying with Section 8.13(a) as soon as practicable and in any event no later than the Expiry Date.

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### **8.13 Installation of Engines and Parts**

- (a) Lessee will ensure that, except as permitted by this Agreement, and (in the case of an engine) subject to Section 8.13(d), no engine or part is installed on the Aircraft unless:
  - (i) in the case of an engine, it (1) is an engine of the same model as, or an improved or advanced version of the Engine it replaces (provided, in the case of an improved or advanced version, it can be installed and operated on the Airframe without modification of the Airframe or the engine, whether or not the other installed Engine is also such an improved or advanced version), (2) is in the same or better operating condition, has substantially similar hours available until the next scheduled checks, inspections, overhauls and shop visits and has the same or greater value and utility as the replaced Engine, (3) has attached to it a current “serviceable tag” issued by the Engine Manufacturer or an approved vendor indicating that the engine is new, serviceable or overhauled (and Lessee shall retain all such tags), and (4) shall be accompanied by documentation establishing traceability “back-to-birth” for all installed LLPs;
  - (ii) in the case of a part, it (1) is in as good operating condition, (2) has substantially similar hours available until the next scheduled checks, inspections, overhauls and shop visits, is of the same or a more advanced make and model, and is of the same interchangeable modification status as the replaced Part, (3) has attached to it a current “serviceable tag” issued by the manufacturer or approved vendor indicating that the part is new, serviceable or overhauled (and Lessee shall retain all such tags), and (4) is accompanied by documentation establishing traceability “back-to-birth”;
  - (iii) in the case of a part that is replacing a Part in an Engine, Landing Gear or APU, the part is an OEM Part unless Lessee has obtained Lessor’s prior written approval to use a non OEM Part, which approval, if given, will generally be given only for the installation of PMA Parts manufactured in accordance with FAR Part 21.303 (or its EASA equivalent) that are consumable parts such as brackets, gaskets and seals; the use of stationary or high energy rotating PMA Parts in the Engine or APU gas path will generally not be approved by Lessor; any proposed repair to an OEM Part or PMA Part in an Engine, Landing Gear or APU that has been approved by an FAA Designated Engineering Representative (DER) (or its EASA equivalent) must also be approved by Lessor prior to performance of the repair;
  - (iv) in the case of a part, it has become and remains the property of Lessor free from Security Interests and on installation on the Aircraft will, without further act, be subject to this Agreement, in which case title to the

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removed part shall automatically become vested in Lessee without further action or warranty on the part of Lessor except that such Part shall be free of Lessor Liens; and

- (v) in each case, Lessee has full details as to its source and maintenance records.
- (b) If no Default has occurred and is continuing, Lessee will be entitled to install any engine or part on the Aircraft by way of replacement notwithstanding Section 8.13(a), but (in the case of an engine) subject to Section 8.13(d), if:
  - (i) there is not available to Lessee at the time and in the place that engine or part is required to be installed on the Aircraft a replacement engine or part complying with the requirements of Section 8.13(a);
  - (ii) it would result in an unreasonable disruption of the operation of the Aircraft or the business of Lessee to ground the Aircraft until an engine or part complying with Section 8.13(a) becomes available for installation on the Aircraft; and
  - (iii) as soon as practicable after installation of the same on the Aircraft but, in any event, no later than the earlier of (1) 60 days after such installation and (2) the Expiry Date, Lessee removes any such engine or part and replaces it with the Engine or Part replaced by it or by an engine or part complying with Section 8.13(a).
- (c) If no Default has occurred which is continuing, Lessee will be entitled to install Third Party Engines and Lessee Installed Parts on the Airframe by way of replacement notwithstanding Section 8.13(a)(i) and (ii), respectively, so long as:
  - (i) the terms of any lease, conditional sale agreement or security agreement, as the case may be, covering such Third Party Engine or Lessee Installed Part will not have the effect of prejudicing the title and interest of Lessor in and to the Aircraft (including its Engines and Parts);
  - (ii) the secured party, lessor or conditional vendor, as the case may be, of such Third Party Engine or Lessee Installed Part has confirmed and acknowledged in writing (which confirmation and acknowledgment may be contained in the lease, conditional sale agreement or security agreement covering such Third Party Engine or Lessee Installed Part, as applicable) 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

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- (iii) before the Expiry Date (1) Lessee removes any such Third Party Engine and replaces it with the Engine replaced by it, and (2) Lessee removes any such Lessee Installed Part and replaces it with the Part replaced by it or by another part, in either case complying with Section 8.13(a).
- (d) Lessor agrees, for the benefit of any mortgagee, conditional vendor or holder of any other Security Interest in any Third Party Engine installed on the Airframe that Lessor shall not claim any title to or interest in any such Third Party Engine as the result of such Third Party Engine being installed on the Airframe; provided, that the agreement by Lessor set forth in this Section 8.13(d) is subject to Lessor's rights to take possession of the Aircraft under Section 13.2(c)(i) and/or to require Lessee to redeliver the Aircraft under Section 13.2(c)(ii) with such Third Party Engine installed. Lessee shall have full authority at all relevant times to comply with the provisions of this Section 8.13(d) in respect of any engine installed by it on the Aircraft pursuant to Section 8.13(a) or 8.13(c).

### **8.14 Non-Installed Engines and Parts**

- (a) Lessee shall ensure that any Engine or Part that is not installed on the Airframe (or any other airframe as permitted by this Agreement) is, except as expressly permitted by this Agreement, properly and safely stored and kept free from Security Interests (other than Permitted Liens), with insurance thereon complying with the requirements of this Agreement.
- (b) Lessee shall notify Lessor whenever an Engine is removed from the Aircraft and, from time to time, upon request procure that any Person to whom possession of an Engine is given acknowledges in writing to Lessor, in form and substance satisfactory to Lessor, that such Person will respect the interests of Lessor in such Engine and will not seek to exercise any rights whatsoever in relation to such Engine.
- (c) Notwithstanding Section 8.14(a), Lessee shall be permitted, if no Default has occurred and is continuing, to install any Engine on an airframe and any Part on an airframe or engine:
  - (i) owned and operated by Lessee free from Security Interests, other than Permitted Liens;
  - (ii) leased or hired to Lessee pursuant to a lease or conditional sale agreement on a long-term basis and on terms whereby Lessee has full operational control of that aircraft or engine; or
  - (iii) acquired or financed by Lessee and operated by Lessee on terms that ownership of that aircraft or engine, as the case may be, pursuant to a lease, conditional sale agreement or Security Interest is vested in or held by any other Person;

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provided, that in the case of (ii) and (iii):

- (1) the terms of any such lease, conditional sale agreement or Security Interest will not have the effect of prejudicing the title and interest of Lessor in and to that Engine or Part or the interest of any Financing Party in respect thereof under any Financing Security Document;
- (2) the lessor under such lease, the seller under such conditional sale agreement or the secured party of such Security Interest, as the case may be, has confirmed and acknowledged in writing (which confirmation and acknowledgment may be contained in the lease, conditional sale agreement or document creating the Security Interest covering that Engine or Part) to Lessor, in form and substance satisfactory to Lessor, that it will recognize the respective rights, title and interest of Lessor to and in that Engine or Part and that it will not seek to exercise any rights whatever in relation thereto; and
- (3) Lessee shall have delivered to Lessor evidence reasonably satisfactory to Lessor of the matters set forth in clauses (1) and (2) above, which may be by written confirmation, in form and substance reasonably satisfactory to Lessor, from the applicable lessor, seller or secured party, or by Lessee providing a copy (certified as being true, correct and complete by Lessee) of the applicable provisions of the applicable lease, conditional sale agreement or security agreement.

### **8.15 Pooling of Engines and Parts**

Lessee will not enter into nor permit any pooling agreement or arrangement in respect of an Engine or Part without the prior written consent of Lessor except, so long as no Default has occurred which is continuing, for pooling agreements or arrangements satisfying the following conditions:

- (a) Lessee has entered into the pooling agreement or arrangement in the ordinary course of its airline business;
- (b) the other parties to the pooling agreement or arrangement are reputable, solvent commercial air carriers or the manufacturers or suppliers of the Engine or Part (or other reputable, solvent organizations whose business includes the administration of and participation in such pooling agreements or arrangements);
- (c) the Engine or Part is leased, let on hire or otherwise made available by Lessee on terms conferring no more than a contractual right *in personam* against Lessee and not a right *in rem* against such Engine or Part;
- (d) in the case of an Engine, the pooling agreement or arrangement does not contemplate the transfer of title to such Engine; and

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- (e) the pooling agreement or arrangement either provides that Lessor (or any Financing Party designated by Lessor) will be sole loss payee in respect of any loss or damage to the Engine or Part, or provides for Lessor to acquire title to a substitute engine or part satisfying the conditions set out in Section 11.3(a) if the Engine or Part is destroyed.

### **8.16 Equipment Changes**

- (a) Lessee will not make any Voluntary Equipment Change expected to cost over \$250,000 or that deviates from the Aircraft's original type design or configuration without the prior written consent of Lessor, which consent shall not be unreasonably withheld.
- (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 such documents in final form and any other documents required by Applicable Law as a result of an 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) Lessee shall not make any Voluntary Equipment Change that has the effect of diminishing or impairing the value, utility, condition or airworthiness of the Aircraft.
- (d) All permanent or structural Equipment Changes, all Mandatory Equipment Changes and all Voluntary Equipment Changes will, upon installation, become a part of the Aircraft and the property of Lessor. At Lessor's request, all Voluntary Equipment Changes will be removed from the Aircraft before return of the Aircraft to Lessor and the Aircraft will be restored to its condition prior to that Equipment Change, and upon such removal and restoration will revert to become the property of Lessee; provided, that Lessee may not remove a Voluntary Equipment Change without Lessor's consent during the continuation of a Default.

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### **8.17 Title to Engines and Parts**

- (a) Any Engine at any time removed from the Aircraft will remain the property of Lessor until a replacement has been made in accordance with this Agreement and title to that replacement has passed, according to Applicable Laws, to Lessor subject to this Agreement free of all Security Interests, whereupon title to the removed Engine will, provided no Default has occurred and is continuing, pass to Lessee free of Lessor Liens. At any time when requested by Lessor, Lessee will provide evidence to Lessor's reasonable satisfaction (including the provision, if required, to Lessor of one of more legal opinions) that title has so passed to Lessor.
- (b) Title to all Parts installed on the Aircraft, whether by way of replacement, as the result of an Equipment Change or otherwise (except Lessee Installed Parts or those installed pursuant to Section 8.15) will on installation, without further act, vest in Lessor subject to this Agreement free and clear of all Security Interests. Lessee will at its own expense take all such steps and execute, and procure the execution of, all such instruments that are necessary to ensure that title so passes to Lessor according to all Applicable Laws. At any time when requested by Lessor, Lessee will provide evidence to Lessor's reasonable satisfaction (including the provision, if required, to Lessor of one of more legal opinions) that title has so passed to Lessor.
- (c) Except as referred to in Section 8.17(b), any Part at any time removed from the Aircraft will remain the property of Lessor until a replacement has been made in accordance with this Agreement and until title to that replacement has passed, according to Section 8.17(b) and Applicable Laws, to Lessor subject to this Agreement free of all Security Interests, whereupon title to the removed Part will, provided no Default has occurred and is continuing, pass to Lessee free of Lessor Liens.
- (d) If any Lessee Installed Part title to which is held by Lessee is not removed prior to the return of the Aircraft to Lessor, then upon return of the Aircraft to Lessor, title to all such Lessee Installed Parts will, without further act, vest in Lessor free and clear of all Security Interests. Lessee will at its own expense take all such steps and execute, and procure the execution of, all such instruments that are necessary to ensure that title so passes to Lessor.

### **8.18 Third Parties**

Lessee shall procure that no Person having possession of the Aircraft during the Term will act in any manner inconsistent with Lessee's obligations under this Agreement, and that all such Persons shall comply with those obligations as if references to "Lessee" included a separate reference to those Persons. Lessee shall authorize the release by such Persons to Lessor of all details pertaining to the maintenance and Lessee shall, upon

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Lessor's request, provide Lessor with letters to all such Persons allowing the disclosure to Lessor of all matters relating to the Aircraft.

### **8.19 Non-Discrimination**

- (a) Lessee shall not discriminate against the Aircraft in its use, maintenance or operation of the Aircraft compared to similar aircraft owned or operated by Lessee, and Lessee shall service, repair, maintain and overhaul the Aircraft so as to keep the Aircraft maintained in the same manner and with the same care as used by Lessee with similar aircraft owned or operated by Lessee.
- (b) Subject to a sublease permitted pursuant to Section 8.5, Lessee shall continue to use the Aircraft in its regular commercial passenger operations until delivery to the Redelivery Location immediately prior to the Final Inspection.
- (c) Lessee further agrees that normal progressive maintenance will continue to be performed on the Aircraft throughout the Term, and no unusual maintenance procedures or cessation of maintenance shall occur during the one year period prior to the Expiry Date.

## **9. INSURANCE**

### **9.1 Insurances**

Lessee will maintain in full force and effect during the Term insurances in respect of the Aircraft in form and substance reasonably satisfactory to Lessor (the "Insurances") through such brokers and with such insurers and having such deductibles and being subject to such exclusions as are usual and customary in the worldwide aviation insurance marketplace for major international air carriers operating similar equipment who are similarly situated with Lessee. The Insurances will be effected either:

- (a) on a direct basis with insurers of recognized standing who normally participate in aviation insurances in the leading international insurance markets and led by reputable underwriters approved by Lessor, or
- (b) with a single insurer or group of insurers approved by Lessor who does not retain the risk, but effects substantial reinsurance in the leading international insurance markets and through reinsurance brokers of recognized standing and acceptable to Lessor for a percentage acceptable to Lessor of all risks insured.

### **9.2 Requirements**

Lessor's current requirements as to Insurances are as specified in this Section 9 and in Schedule 4. Except for the amount of the Agreed Value, the Minimum Liability Coverage and the deductible under Lessee's hull and war risk insurance policies, Lessor

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<sup>9</sup> Vide 3.12 of the text *supra*.



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may from time to time stipulate such other requirements for the Insurances as Lessor reasonably considers necessary to ensure that the scope and level of cover is maintained in accordance with the then prevailing industry practice in relation to aircraft of the same type as the Aircraft and in relation to operators of similar standing to Lessee. In the event that it proposes any such stipulation, Lessor shall notify Lessee accordingly and Lessor and/or its brokers will then consult in good faith with Lessee and Lessee's brokers (as for the time being approved by Lessor) with regard to such proposed stipulation. Following the consultation, if Lessor is satisfied that the stipulation should be made, Lessee shall then comply with the stipulated requirements.

### **9.3 Insurance Covenants**

Lessee shall:

- (a) ensure that all legal requirements as to insurance of the Aircraft, any Engine or any Part that may from time to time be imposed by the laws of the State of Registration or any jurisdiction to, from or over which the Aircraft may be flown, in so far as they affect or concern the operation of the Aircraft, are complied with and, in particular, those requirements compliance with which is necessary to ensure that:
  - (i) the Aircraft does not become subject to detention or forfeiture;
  - (ii) the Insurances remain valid and in full force and effect; and
  - (iii) the interests of the Indemnitees in the Insurances and the Aircraft or any Part are not thereby prejudiced;
- (b) not use, cause or permit the Aircraft, any Engine or any Part to be used for any purpose or in any manner not covered by the Insurances or outside any geographical limit imposed by the Insurances;
- (c) comply with the terms and conditions of each policy of the Insurances and not do, consent or agree to any act or omission that:
  - (i) invalidates or may reasonably be expected to invalidate the Insurances;
  - (ii) renders or may reasonably be expected to render void or voidable the whole or any part of any of the Insurances; or
  - (iii) brings any particular liability within the scope of an exclusion or exception to the Insurances;
- (d) not take out without the prior written approval of Lessor any insurance in respect of the Aircraft other than those of the type required under this Agreement unless relating solely to hull total loss, business interruption, engine break-down, profit commission and deductible risk;

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- (e) provide to Lessor copies of those documents evidencing the Insurances which Lessor may reasonably request;
- (f) on request, provide to Lessor evidence that the Insurance premiums have been paid;
- (g) not make any modification or alteration to the Insurances material and adverse to the interests of any of the Indemnitees;
- (h) be responsible for any deductible under the Insurances; and
- (i) provide any other insurance related information, or assistance, in respect of the Insurances as Lessor may reasonably request.

### **9.4 Renewal of Insurances**

Lessee shall commence renewal procedures at least 30 days prior to the expiration of any of the Insurances and provide to Lessor:

- (a) if requested by Lessor, a written status report of renewal negotiations 14 days prior to each expiration date;
- (b) telefaxed confirmation of completion of renewal prior to each expiration date; and
- (c) a certificate of insurance and broker's letter of undertaking substantially in the form delivered to Lessor on the Delivery Date, detailing the coverage and confirming the insurers' agreement to the specified insurance requirements of this Agreement within seven days after each renewal date.

### **9.5 Failure to Insure**

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

- (a) Lessee shall immediately ground the Aircraft and shall keep it grounded until such time as the Insurances shall again be in full force and effect.
- (b) Lessee shall immediately notify Lessor of the non-compliance of the Insurances with the requirements of this Agreement, and Lessee shall provide Lessor with full details of all steps that Lessee is taking or proposes to take in order to remedy such non-compliance.
- (c) Each of the Indemnitees will be entitled but not obligated (without prejudice to any other rights of Lessor under this Agreement):
  - (i) to pay the premiums due or to effect and maintain insurances satisfactory to it or otherwise remedy Lessee's failure in such manner (including to effect and maintain an "owner's interest" policy) as it considers

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appropriate, and any sums so expended by it will become immediately due and payable by Lessee to Lessor on demand (such demand being made as soon as reasonably practicable following the incurring of such expenditure), together with interest thereon at the Overdue Rate from the date of expenditure by it up to the date of reimbursement by Lessee (before and after any judgment); and

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

### **9.6 Continuing Insurance for Indemnity**

- (a) Lessee shall effect and maintain insurance after the Expiry Date with respect to its liability under the indemnities in Section 10 for two years, providing for each Indemnatee to be named as an additional insured pursuant to the provisions of the airline finance/lease contract Endorsement AVN 99.
- (b) Lessee's obligation under this Section 9.6 shall not be affected by Lessee ceasing to be lessee of the Aircraft or any of the Indemnitees ceasing to have any interest in respect of the Aircraft, and upon a Transfer pursuant to Section 14.2, Lessee shall continue to name the Indemnitees as additional insureds under the Insurance policies covered by Section 1(d) of Schedule 4 for two years after the Transfer date.

### **9.7 Application of Insurance Proceeds**

As between Lessor and Lessee, and except to the extent otherwise required pursuant to the provisions of the airline finance/lease contract Endorsements AVN 67C and AVN 67C (Hull War) adopted by the Lloyd's Aviation Underwriter's Association (or any successor endorsements), if applicable:

- (a) All insurance payments, up to the Agreed Value, received as the result of a Total Loss occurring during the Term will be paid to Lessor (unless or until Lessor notifies Lessee that said payments should be made to a specified Financing Party).
- (b) All insurance proceeds in respect of any damage or loss to the Aircraft, any Engine or any Part occurring during the Term not constituting a Total Loss and involving insurance proceeds in excess of the Damage Notification Threshold will be paid to Lessor (unless or until Lessor notifies Lessee that said payments should be made to a specified Financing Party) and applied in payment (or to reimburse Lessee) for repairs or replacement property upon Lessor being reasonably satisfied that the repairs or replacement have been effected in accordance with this Agreement. Insurance proceeds in amounts less than the Damage Notification Threshold may be paid by the insurer directly to Lessee. Any balance remaining shall be paid to or may be retained by Lessee.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (c) All insurance proceeds in respect of third party liability will be paid to the relevant third party.
- (d) Notwithstanding Sections 9.7(a) and (b), if at the time of the payment of any such insurance proceeds a Default has occurred and is continuing, all such proceeds will be paid to or retained by Lessor (unless or until Lessor notifies Lessee that said payments should be made to a Financing Party) to be applied toward payment of any amounts that may be or become payable by Lessee in such order as Lessor sees fit or as Lessor may elect. In the event that Lessee remedies any such Default to the reasonable satisfaction of Lessor, then Lessor shall procure that all such insurance proceeds then held by Lessor or any Financing Party, as the case may be, in excess of the amounts (if any) applied by Lessor or any Financing Party, as the case may be, in accordance with this Section 9.7(d) shall be paid promptly to Lessee.

### **9.8 Aggregate Limits**

If any of the Insurances is subject to an annual aggregate yearly or other periodic limit, and, by reason of any claims made thereunder during the course of a year or other period in respect of any property subject to such policy, the aggregate amount of coverage available thereunder in respect of the balance of such year or other period shall have been reduced:

- (a) Lessee shall forthwith notify Lessor of the amount of any such claim; and
- (b) Lessee shall not operate the Aircraft during the balance of such year or other period either (i) without the prior written consent of Lessor or (ii) until Lessee has increased forthwith upon request of Lessor the aggregate limit under the relevant policy for such year or other period to such amount as Lessor may reasonably require.

### **9.9 Form LSW555D Exclusions**

In this Section 9.9, the term “**Uninsured Risks**” shall mean the matters set out in the exclusions to form LSW555D (or any successor provision approved by Lessor) for chemical or biological weapons, so called “dirty bombs” and electromagnetic pulse weapons. Lessee undertakes that if cover in respect of the Uninsured Risks is, or becomes, available in the London insurance markets or elsewhere at commercially reasonable rates (having reference to the extent to which such cover is commonly taken by first class international airlines) it shall, if requested by Lessor, obtain and maintain, or cause to be obtained and maintained, insurance cover for the Uninsured Risks to the fullest extent available in the leading international insurance markets.

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### **10. INDEMNITY<sup>10</sup>**

#### **10.1 General**

- (a) Lessee shall defend, indemnify and hold harmless each of the Indemnitees for, from and against any and all claims, proceedings, losses, liabilities, suits, judgments, costs, expenses, penalties or fines (each a “Claim”) regardless of when the same is made or incurred, whether during or after the Term (but not before):
  - (i) that may at any time be suffered or incurred directly or indirectly as a result of or connected with possession, repossession, delivery, performance, management, registration, deregistration, control, maintenance, condition, service, repair, overhaul, leasing, subleasing, use, operation or return of the Aircraft, any Engine or Part (either in the air or on the ground) whether or not the Claim may be attributable to any defect in the Aircraft, any Engine or any Part or to its design, testing, use or otherwise, and regardless of when the same arises or whether it arises out of or is attributable to any act or omission, negligent or otherwise, of any Indemnatee;
  - (ii) that arise out of any act or omission that invalidates or that renders voidable any of the Insurances; or
  - (iii) that may at any time be suffered or incurred as a consequence of any design, article or material in the Aircraft, any Engine or any Part or its operation or use constituting an infringement of patent, copyright, trademark, design or other proprietary right or a breach of any obligation of confidentiality owed to any Person.
- (b) Notwithstanding the provisions of Section 10.1(a), Lessee shall not have to indemnify an Indemnatee for any Claim to the extent that:
  - (i) it arises directly as a result of the willful misconduct or gross negligence of that Indemnatee;
  - (ii) it arises directly as a result of a breach by Lessor of its express obligations under this Agreement or as a result of a representation or warranty given by Lessor in this Agreement not being true and correct at the date when, or when deemed to have been, given or made;
  - (iii) it constitutes a Non-Indemnified Tax or Lessor Lien;
  - (iv) it represents a Tax or loss of tax benefits (Lessee’s liabilities for which, including exclusions, are set out in Sections 5.7, 5.8, 5.9 and 5.11);

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<sup>10</sup> *Vide* 3.11 of the text *infra*.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (v) it constitutes a cost or expense that is required to be borne by Lessor in accordance with another provision of this Agreement;
- (vi) it results from any disposition not caused by Lessee of all or any part of Lessor's rights, title or interest in or to the Aircraft or under this Agreement, unless such disposition occurs as a consequence of an Event of Default;
- (vii) it is attributable to an event occurring after the Term unless the Claim results from or arises out of an act or omission by Lessee, or any circumstance existing, during the Term; or
- (viii) it is brought after the Term and relates to a claimed patent infringement by the applicable Manufacturer.

### **10.2 Mitigation**

- (a) Lessor agrees that it shall notify Lessee in writing as soon as reasonably practicable after it becomes aware of any circumstances that would, or would reasonably be expected to, become the subject of a claim for indemnification pursuant to Section 10.1. Lessor (and any other Indemnitee seeking indemnification, as the case may be) and Lessee shall then consult with one another in good faith in order to determine what action (if any) may reasonably be taken to avoid or mitigate such Claim. Lessee shall have the right to take all reasonable action (on behalf and, if necessary, in the name of Lessor 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 Lessee shall not be entitled to take any such action unless adequate provision, reasonably satisfactory to Lessor and such other Indemnitee, shall have been made in respect of the third party claim and the costs thereof. Lessee or, if the Claim is covered by Lessee's Insurances, Lessee's insurers shall be entitled to select any counsel to represent it or them, Lessor and such other Indemnitee in connection with any such action, subject in the case of Lessee to the approval of Lessor and such other Indemnitee (such approval not to be unreasonably withheld) and any action taken by Lessee shall be on a full indemnity basis in respect of Lessor and such other Indemnitee.
- (b) Any sums paid by Lessee to Lessor or any Indemnitee in respect of any Claim pursuant to Section 10.1 shall be paid subject to the condition that, in the event that Lessor or such Indemnitee is subsequently reimbursed in respect of that Claim by any other Person, Lessor or such Indemnitee shall, provided no Default shall have occurred and be continuing, promptly pay to Lessee an amount equal to the sum paid to it by Lessee, including any interest on such amount to the extent attributable thereto and received by Lessor or such Indemnitee, less any Tax payable by Lessor or such Indemnitee in respect of such reimbursement.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

### **10.3 Duration**

The indemnities contained in this Agreement will survive and continue in full force after the Expiry Date.

## **11. EVENTS OF LOSS**

### **11.1 Total Loss Before Delivery**

If a Total Loss occurs before Delivery, this Agreement will immediately terminate and neither party will have any further obligation or liability under this Agreement except as expressly stated herein.

### **11.2 Total Loss After Delivery**

(a) If a Total Loss occurs after Delivery, Lessee will pay the Agreed Value to Lessor (or any Financing Party designated by Lessor) on the earlier of:

- (i) the date of receipt of the insurance proceeds payable as a result of the Total Loss, or
- (ii) the 30th day after the Total Loss Date (the “Settlement Date”),

in either case unless the Aircraft is restored to Lessor or Lessee within that period (or, in the case of a Total Loss coming within paragraph (c) of the definition of Total Loss and involving the loss of Lessor’s title to the Aircraft, if both the Aircraft and Lessor’s title thereto are restored to Lessor or, in the case of the Aircraft, to Lessee).

(b) The receipt by Lessor or any Financing Party (on behalf of Lessor) of the insurance proceeds in respect of the Total Loss on or prior to the Settlement Date shall discharge Lessee from its obligation to pay the Agreed Value to Lessor pursuant to this Section 11.2, provided such proceeds are not less than the Agreed Value. In the event that the insurance proceeds are paid initially to Lessee and not to Lessor or any Financing Party designated by Lessor, they may be retained by Lessee if Lessee shall have paid the Agreed Value to Lessor or any Financing Party (on behalf of Lessor); otherwise Lessee shall pay the Agreed Value to Lessor or any Financing Party (on behalf of Lessor) not later than the next Business Day following receipt by Lessee of such proceeds. In the event that Lessee pays the Agreed Value to Lessor or any Financing Party (on behalf of Lessor) in accordance with this Section 11.2, Lessor shall promptly assign to Lessee its rights under the Insurances to receive the insurance proceeds in respect of the Total Loss to the extent that such proceeds shall not have been paid to Lessee.

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11 *Vide* 3.11 and 3.12 of the text *infra*.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (c) Subject to the rights of any insurers or other third parties, upon irrevocable payment in full to Lessor or any Financing Party (on behalf of Lessor) of the Agreed Value and all other amounts that are payable to Lessor under the Operative Documents, Lessor shall without recourse or warranty (except as to the absence of Lessor Liens), and without further act, be deemed to have transferred to Lessee all of Lessor's rights to any Engines or Parts not installed when the Total Loss occurred, all on an "as-is where is" basis, and shall, at Lessee's expense, execute and deliver such bills of sale and other documents and instruments as Lessee may reasonably request to evidence (on the public record or otherwise) the transfer and the vesting of Lessor's rights in such Engines and Parts in Lessee, free and clear of all rights of Lessor and any Lessor Liens.

### **11.3 Engine Loss**

- (a) Upon the occurrence of an Engine Loss in circumstances in which there has not also occurred a Total Loss (including, for the avoidance of doubt, at a time when the Engine is not installed on the Airframe), Lessee shall give Lessor written notice promptly upon becoming aware of the same and shall, within 60 days after the Engine Loss Date, convey or cause to be conveyed to Lessor, as replacement for such Engine, title to a replacement engine that is in the same or better operating condition, and has the same or greater value and utility, as the lost Engine (assuming the lost Engine was, immediately before the Engine Loss, in the condition required by this Agreement) and that complies with the conditions set out in Section 8.13(a).
- (b) Lessee will at its own expense take all such steps and execute, and procure the execution of, a full warranty bill of sale covering such replacement engine, a supplement to this Agreement adding such replacement engine to the Leased Property and all such other agreements and instruments that are necessary to ensure that title to such Engine passes to Lessor and is subject to the Security Interest created by any Financing Security Document and such replacement engine becomes an "Engine", all according to Applicable Laws. At any time when requested by Lessor, Lessee will provide evidence to Lessor's reasonable satisfaction (including the provision, if required, to Lessor of one of more legal opinions) that title has so passed to Lessor and is subject to the Security Interest created by any Financing Security Document.
- (c) Upon compliance with the foregoing title transfer provisions, the leasing of the replaced Engine that suffered the Engine Loss shall cease and title to such replaced Engine shall (subject to any salvage rights of insurers) vest in Lessee free of Lessor Liens. If Lessor or any Financing Party subsequently receives any insurance proceeds relating to such Engine Loss, Lessor shall promptly remit such proceeds, or cause such proceeds to be remitted, to Lessee.



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- (d) No Engine Loss with respect to any Engine that is replaced in accordance with the provisions of this Section 11.3 shall result in any increase or decrease in Basic Rent, Additional Rent or the Agreed Value.

### **11.4 Damage or Incident Not Constituting a Total Loss**

Following the occurrence of any damage to the Aircraft, any Engine or any Part that does not constitute a Total Loss or an Engine Loss and where either (i) the potential cost of repair may reasonably be expected to exceed the Damage Notification Threshold or (ii) Lessor notifies Lessee in writing that Lessor reasonably believes the damage will permanently affect the value of the Aircraft, Lessee shall take the following actions:

- (a) Lessee shall consult with, and comply with, all reasonable instructions of Lessor with respect to the accomplishment of repairs;
- (b) Lessee shall obtain Lessor's consent prior to agreeing any repair workscope or seeking Manufacturer approval in connection with any such repairs; and
- (c) Lessee shall obtain a written certification satisfactory to Lessor from all relevant Manufacturers as to the accomplishment of repairs.

### **11.5 Requisition**

During any requisition for use or hire of the Aircraft, any Engine or Part that does not constitute a Total Loss:

- (a) the Basic Rent, Additional Rent and Supplemental Rent 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 this Agreement (other than operational obligations with which Lessee is unable to comply solely by virtue of the requisition);
- (b) so long as no Default has occurred and is continuing, Lessee will be entitled to any compensation payable by the requisitioning authority in respect of the Term;
- (c) Lessee will, as soon as practicable after the end of any such requisition (with the Term being extended if and to the extent that the period of requisition continues beyond the Scheduled Expiry Date), cause the Aircraft to be put into the condition required by this Agreement; and
- (d) Lessor will 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 will 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 Default has

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occurred and is continuing, Lessor may apply the compensation in or towards settlement of any amounts owing by Lessee under this Agreement.

### **12. RETURN OF AIRCRAFT**<sup>12</sup>

#### **12.1 Redelivery**

On the Expiry Date or termination of the leasing of the Aircraft under this Agreement, Lessee shall, unless a Total Loss has occurred, at its expense, return and redeliver the Aircraft and Aircraft Documents to Lessor at the Redelivery Location in a condition complying with Schedule 3, free and clear of all Security Interests and Permitted Liens (other than Lessor Liens).

#### **12.2 Non-Compliance**

To the extent that, at the time of Final Inspection, the condition of the Aircraft or the Aircraft Documents does not comply with this Agreement, Lessee shall, at the option of Lessor:

- (a) immediately rectify the non-compliance and, to the extent the non-compliance extends beyond the Expiry Date, the Term will be automatically extended until the earlier to occur of the date on which the non-compliance has been rectified and the date (if any) on which Lessor notifies Lessee to redeliver the Leased Property in accordance with Section 12.2(b); or
- (b) redeliver the Aircraft and the Aircraft Documents to Lessor and indemnify Lessor, and provide security reasonably acceptable to Lessor for that indemnity, against the cost of putting the Aircraft and the Aircraft Documents into the condition required by this Agreement.

During any extension of the Term pursuant to Section 12.2(a), this Agreement will remain in full force and effect, including the obligation to pay lease rental (which Lessee shall pay on a *per diem* basis weekly in advance in an amount equal to half of the Basic Rent Amount per week); provided, however, that Lessee shall not operate, or permit others to operate, the Aircraft after the Expiry Date except for acceptance flights pursuant to Schedule 3 and a ferry flight to the Redelivery Location or, in accordance with Section 12.5, from the Redelivery Location.

#### **12.3 Acknowledgment**

Following redelivery of the Aircraft by Lessee to Lessor at the Redelivery Location in compliance with the requirements of this Agreement and Lessee's satisfaction of its other obligations under the Operative Documents, Lessor will deliver to Lessee the Return Certificate.

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<sup>12</sup> Vide 3.13 of the text *infra*.

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### **12.4 Storage**

- (a) If Lessor so requests, and subject to the availability of the requisite space, Lessee shall park and store the Aircraft at a secure storage area, which may be at the Redelivery Location or at any other suitable facility of Lessee selected by Lessee, wherever located (the “Storage Location”), on behalf of Lessor for a period not exceeding 30 days from the Expiry Date. During that period the Aircraft shall be at Lessee’s risk (save as to any loss or damage caused by Lessor’s willful misconduct or gross negligence), and Lessee shall maintain the Aircraft under the Lessee’s EASA Continuing Airworthiness Maintenance Organization (CAMO) including but not limited to, oversight of continuing maintenance requirements in compliance with the Approved Maintenance Program, monitoring of the Aircraft maintenance and records keeping under the Lessee’s quality control procedures, organize appropriate continuing maintenance and AD compliance actions and maintain appropriate technical records keeping practices, all such actions to be in compliance with EASA Part M subpart G requirements. The Lessee will invoice the Lessee’s incremental Actual Costs associated with EASA Part M subpart G requirements. Lessee shall insure the Aircraft in accordance with a “ground risk only” policy usual and customary in the worldwide aviation insurance marketplace. All storage, maintenance and insurance costs shall be borne by Lessee.
- (b) If Lessor so requests, and subject to the availability of the requisite space, Lessee shall continue to park and store the Aircraft at the Storage Location on behalf of Lessor for a further period not exceeding 60 days. During that further period the Aircraft shall be at Lessor’s risk (save as to any loss or damage caused by Lessee’s willful misconduct or gross negligence), but Lessee shall continue to maintain, store and insure the Aircraft in accordance with this Section 12.4. All reasonable storage, maintenance and insurance costs incurred by Lessee (excluding any profit element accruing to Lessee) during such further period shall be reimbursed by Lessor promptly upon presentation of supporting invoices and receipts.

### **12.5 Ferry Flight**

After acknowledgment of redelivery of the Aircraft pursuant to Section 12.3 or storage of the Aircraft pursuant to Section 12.4, Lessee will ferry the Leased Property to a location designated by Lessor in the continental United States of America or the European Union.

## **13. DEFAULT<sup>13</sup>**

### **13.1 Events**

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<sup>13</sup> *Vide* 3.14, 3.15 and Annex 10 of the text *supra*.

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Each of the following events will constitute an Event of Default and a repudiation of this Agreement by Lessee:

- (a) Non-payment: Lessee (i) fails to pay the Agreed Value and all other amounts required under Section 11.2 on the Settlement Date, (ii) fails to make any payment of Basic Rent or Additional Rent within two Business Days after the date on which such payment is due, or (iii) fails to pay any other amount payable by it under this Agreement within five Business Days after written notice from Lessor that such amounts are due; or
- (b) Material Covenants: Lessee (i) fails to rectify the non-compliance of the Leased Property with the conditions of Section 12 and Schedule 3 or redeliver the Leased Property to Lessor in accordance with Section 12.2, (ii) fails to maintain in full force and effect any insurance required to be maintained under Section 9, or (iii) transfers possession of the Airframe or any Engine to another Person other than as permitted by this Agreement; or
- (c) Breach: Lessee fails to comply with any other provision of this Agreement and, if such failure is, in the reasonable opinion of Lessor, capable of remedy, the failure continues for 14 days after notice from Lessor to Lessee, provided, that if such failure cannot reasonably be remedied within such 14 day period and Lessee is diligently undertaking all necessary remedial action, the 14 day period shall be extended for a further 14 days; or
- (d) Representation: any representation or warranty made (or deemed to be repeated) by Lessee in the Operative Documents or in any document or certificate furnished to Lessor pursuant to or in connection with the Operative Documents is or proves to have been incorrect in any material respect when made or deemed to be repeated and Lessee's ability to comply with its obligations under the Operative Documents, and/or Lessor's rights, title and interest to and in the Aircraft and/or under the Operative Documents, are thereby materially and adversely affected; or
- (e) Cross Default:
  - (i) any Financial Indebtedness of Lessee or any of its Affiliates that exceeds \$[ ] is not paid when due and any applicable grace period shall have expired;
  - (ii) the security for any Financial Indebtedness of Lessee or any of its Affiliates is enforced;
  - (iii) any lease, conditional sale, installment sale or forward purchase agreement of Lessee or any of its Affiliates in respect of an aircraft is terminated as a consequence of an event of default or termination event (however described); or

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- (iv) 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;

provided always, in any such case, it shall not constitute an Event of Default under this Agreement:

- (1) if the relevant Financial Indebtedness constitutes non-recourse borrowing or financing; or
  - (2) if the non-payment, acceleration, termination or event in question is being contested by Lessee in good faith and on reasonable grounds and any declaration of default, termination of agreement or enforcement of security has been stayed by a court of competent jurisdiction; or
- (f) Approvals: any consent, authorization, license, certificate or approval of or registration with or declaration to any Government Entity in connection with this Agreement, including:
- (i) any authorization required by Lessee of, or in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of the Operative Documents or the performance by Lessee of its obligations under the Operative Documents; or
  - (ii) any airline license, air transport license, franchise, concession, permit, certificate, right or privilege required by Lessee for the conduct of its business,

is modified, withheld, revoked, suspended, canceled, withdrawn, terminated or not renewed, or otherwise ceases to be in full force and is not reissued, reinstated or renewed within 30 days, provided however that any such modification, withholding, revocation, suspension, cancellation, withdrawal, termination or non-renewal shall only constitute an Event of Default if it has a material adverse effect on Lessee's ability to perform its obligations under the Operative Documents or on Lessor's rights, title and interest to and in the Aircraft or under the Operative Documents; or

- (g) Insolvency:
- (i) Lessee or any of its Affiliates 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
  - (ii) Lessee or any of its Affiliates suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness; or

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### **(h) Bankruptcy and Similar Proceedings**

- (i) Lessee shall consent to the appointment of a receiver, trustee or liquidator for itself or for a substantial part of its property; or
- (ii) Lessee shall admit in writing its inability to pay its debts generally as they become due, or Lessee shall make a general assignment for the benefit of creditors; or
- (iii) Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or answer seeking reorganization in a proceeding under any laws dealing with bankruptcy, insolvency, moratorium or creditors' rights generally (any or all of which are hereinafter referred to as "Bankruptcy Laws"), or an answer admitting the material allegations of a petition filed against Lessee in any such proceeding, or Lessee shall by voluntary petition or answer consent to or fail to oppose the seeking of relief under the provisions of any Bankruptcy Laws; or
- (iv) any order, judgment or decree is entered by a court of competent jurisdiction appointing a receiver, trustee or liquidator of Lessee or a substantial part of its property, or ordering a substantial part of Lessee's property to be sequestered, is instituted or done with the consent of Lessee or, if instituted by another Person, the order, judgment or decree is not dismissed, remedied or relinquished within 30 days; or
- (v) a petition against Lessee in a proceeding under any Bankruptcy Laws shall be filed and shall not be withdrawn or dismissed within 30 days thereafter, or if, under the provisions of any Bankruptcy Laws that may apply to Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of Lessee or of any substantial part of its property; or
- (vi) any step (including petition, proposal or convening a meeting) is taken with a view to a composition, assignment or arrangement with any creditors of, or the reorganization, rehabilitation, administration, liquidation, or dissolution of, Lessee or any of its Affiliates or any other insolvency proceedings involving Lessee or any of its Affiliates; or
- (i) Other Jurisdiction: there occurs in relation to Lessee or any of its Affiliates any event anywhere which, in the reasonable opinion of Lessor, corresponds with any of those mentioned in Section 13.1(h); or
- (j) Unlawful: it becomes unlawful for Lessee to perform any of its material obligations under the Operative Documents, or any of the Operative Documents becomes wholly or partly invalid or unenforceable, provided that any such partial invalidity or unenforceability shall only constitute an Event of Default if it has a material adverse effect on Lessee's ability to perform its obligations under the

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Operative Documents or Lessor's rights, title and interest in and to the Aircraft or under the Operative Documents; or

- (k) Suspension of Business: Lessee or any of its Affiliates suspends or ceases to carry on all or a substantial part of its business; or
- (l) Disposal: Lessee or any of its Affiliates disposes or threatens to dispose of all or a material part of its assets, whether by one or a series of transactions, related or not, other than pursuant to a merger or consolidation as referred to in, and subject to, Section 8.8(b) or for the purpose of any other reorganization or amalgamation the terms of which have received the previous consent in writing of Lessor; or
- (m) Rights: the existence, validity, enforceability or priority of the rights of Lessor as owner and lessor in respect of the Aircraft or the rights of any Financing Party as mortgagee of the Aircraft or assignee of this Agreement are challenged by Lessee or any other Person claiming by or through Lessee; or
- (n) Change of Ownership: any single Person or group of Persons acquire control, directly or indirectly, of Lessee without the previous consent in writing of Lessor (which consent shall not be withheld unless Lessor is of the reasonable opinion that such acquisition of control will have a materially adverse effect on Lessee's ability to perform its obligations under the Operative Documents or Lessor's rights, title and interest in and to the Aircraft or under the Operative Documents), not including (i) individuals or other Persons that are currently in control of Lessee, (ii) spouses of any such individuals, (iii) any lineal ancestor or descendant of any such individual, (iv) any spouse of any individual covered by clause (iii), or (v) a partnership or trust set up for the benefit of individuals identified in clauses (i) through (iv); or
- (o) Delivery: Lessee fails to accept delivery of the Aircraft when validly tendered pursuant to this Agreement by Lessor (provided that Lessor shall have satisfied the conditions precedent set out in Section 3.4); or
- (p) Adverse Change: any event or series of events occurs which, in the reasonable opinion of Lessor, could be expected to have a material adverse effect on the financial condition or operations of Lessee and its Affiliates or on the ability of Lessee to comply with its obligations under the Operative Documents or to have a prejudicial effect on Lessor's or any Financing Party's rights, title and/or interest in, to or under the Aircraft and/or the Operative Documents; or
- (q) Nationalization: all or a material part of the undertakings, rights, assets or revenues of, or shares or other ownership interests in, Lessee are seized, nationalized, expropriated or compulsorily acquired by or under the authority of any Government Entity.

### **13.2 Rights**

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If an Event of Default occurs, and for as long as it shall continue, Lessor may at its option (and without prejudice to any of its other rights under this Agreement or that may arise by operation of Applicable Law), at any time thereafter:

- (a) accept such repudiation by Lessee of its obligations under this Agreement and by notice to Lessee with immediate effect terminate the leasing of the Aircraft (but without prejudice to the continuing obligations of Lessee under this Agreement), whereupon all rights of Lessee under this Agreement shall cease; and/or
- (b) proceed by appropriate court action or actions to enforce performance of this Agreement or to recover damages for the breach of this Agreement; and/or
- (c) either:
  - (i) take possession of the Aircraft, for which purpose Lessor may enter any premises belonging to, occupied by or under the control of Lessee (for which purpose Lessee hereby grants to Lessor an irrevocable license to the extent permitted by Applicable Law) 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 authorized and empowered, to the extent permitted by Applicable Law, to direct pilots of Lessee or other pilots to fly the Aircraft to that airport and will have all the powers and authorizations necessary for taking such action; or
  - (ii) by serving notice, require Lessee to redeliver the Aircraft to Lessor at the Redelivery Location (or such other location as Lessor may require) in the condition required by Section 12 and Schedule 3.
- (d) If an Event of Default occurs, Lessor may sell, lease or otherwise deal with the Leased Property in such manner as Lessor in its absolute discretion considers appropriate.
- (e) If an Event of Default occurs, Lessee shall at the request of Lessor take all steps necessary to deregister the Aircraft from the aircraft registry of the State of Registration and export the Aircraft from the country where the Aircraft is for the time being registered or situated and any other steps necessary to enable the Aircraft to be redelivered to Lessor in accordance with this Agreement. Lessee hereby irrevocably and by way of security for its obligations under the Operative Documents authorizes and empowers Lessor as its attorney-in-fact and agent (such agency being coupled with an interest), in Lessor's own name or in the name of Lessee, to execute and deliver any documentation and to do any act or thing required in connection with the foregoing.

### **13.3 Default Payments**



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If an Event of Default occurs, Lessee will indemnify and pay to Lessor on demand against any loss (including loss of profit), damage, expense, cost or liability that Lessor may sustain or incur directly or indirectly as a result, including:

- (a) all unpaid Basic Rent, Additional Rent and Supplemental Rent then due and unpaid;
- (b) any loss of profit (calculated on an after-tax basis) suffered by Lessor because of Lessor's inability to place the Aircraft on lease with another lessee on terms as favorable to Lessor as this Agreement or because whatever use, if any, to which Lessor is able to put the Aircraft upon its return to Lessor, or the funds arising upon a sale or other disposal of the Aircraft, is not as profitable (calculated on an after-tax basis) to Lessor as this Agreement would have been but for such Event of Default;
- (c) in the event that the Aircraft is sold prior to Lessor entering into a replacement lease, the amount (if any) by which (i) the aggregate of (1) the net sale proceeds (calculated by deducting the costs of sale together with the cost of preparing the Aircraft for sale and the repayment of any outstanding indebtedness in relation to the financing of the Aircraft) plus (2) the present value of the anticipated after-tax net income to be derived from such net sale proceeds up to the Scheduled Expiry Date, discounted on a monthly basis using 3.0% *per annum* as the discount rate, are less than (ii) the aggregate of (1) the anticipated net sale proceeds (computed on the same basis as the net sale proceeds referred to in (i)(1) above), assuming that the Aircraft would have been sold as soon as reasonably practicable following the Scheduled Expiry Date plus (2) the present value of the income that would have been derived from the future Basic Rent payable until the Scheduled Expiry Date, discounted on a monthly basis using 3.0% *per annum* as the discount rate;
- (d) any amount of principal, interest, fees or other sums whatsoever paid or payable on account of funds borrowed in order to carry any amount unpaid by Lessee;
- (e) any loss, premium, penalty or expense that may be incurred in repaying funds raised to finance the Aircraft or in unwinding any swap, forward interest rate agreement or other financial instrument relating in whole or in part to Lessor's financing of the Aircraft; and
- (f) any loss, cost, expense or liability sustained or incurred by Lessor owing to Lessee's failure to redeliver the Aircraft on the date, at the place and in the condition required by this Agreement.

### **13.4 Waiver of Certain Article 2A Rights**

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

## SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT

Code shall be conferred upon either Lessor or Lessee unless otherwise expressly granted in this Agreement.

### 14. ASSIGNMENT, TRANSFER and FINANCING<sup>14</sup>

#### 14.1 No Assignment by Lessee

Lessee shall not assign any of its right, title, interests, duties, obligations or liabilities in, to or under the Operative Documents, or create or permit to exist any Security Interest (other than Permitted Liens) over any of its rights under the Operative Documents, and any such purported assignment or grant of a Security Interest shall be void *ab initio* and of no force or effect. Without limiting the foregoing, if any assignment prohibited under the foregoing sentence shall be valid by operation of any non-waivable provision of Applicable Law, Lessee shall nevertheless remain fully liable for the payment and performance of all of Lessee's obligations to be paid and performed hereunder as fully and to the same extent as if such assignment had not been effected, without prejudice to the obligations of such assignee.

#### 14.2 Lessor Assignment

Lessor may sell, assign or transfer all or any of its rights under the Operative Documents and in the Leased Property (a "Transfer") and Lessor will, other than in the case of an assignment for security purposes, have no further obligation under the Operative Documents following a Transfer but, notwithstanding any Transfer, will remain entitled to the benefit of each indemnity under this Agreement.

(a) In connection with any Transfer, the following conditions shall apply:

- (i) Lessor shall give Lessee written notice of such Transfer at least 10 Business Days before the date of such Transfer, specifying the name and address of the proposed purchaser, assignee or transferee (the "Transferee");
- (ii) the Transferee will either (1) be an Affiliate of Lessor or (2) be a Person reasonably experienced in aircraft leasing (or the Transferee's rights and powers under this Agreement shall be exercised or serviced on its behalf pursuant to an appropriate management or servicing agreement by a Person having such experience);
- (iii) the Transferee will have full corporate power and authority to enter into and perform the transactions contemplated by this Agreement on the part of "Lessor";
- (iv) such Transfer shall not result in a change of State of Registration (unless otherwise agreed with Lessee);

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<sup>14</sup> *Vide* 3.16 of the text *supra*.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (v) on the Transfer date Lessor and the Transferee shall enter into an agreement or agreements in which the Transferee confirms that it shall be deemed a party to this Agreement and agrees to be bound by all the terms of, and to undertake all of the obligations of, Lessor contained in this Agreement arising on or after the time of the Transfer; and
  - (vi) such Transfer shall not violate any Applicable Law.
- (b) Upon any Transfer, the Transferee shall be deemed Lessor for all purposes of this Agreement, each reference in this Agreement to “Lessor” shall thereafter be deemed for all purposes to refer to the Transferee, and the transferor shall be relieved of all obligations of “Lessor” under this Agreement arising after the time of such Transfer except to the extent attributable to acts or events occurring prior to the time of such Transfer.
- (c) Upon compliance by Lessor and a Transferee with the terms and conditions of Section 14.2(a), Lessee shall at the time of Transfer, at the specific written request of Lessor and with Lessor paying all of Lessee’s reasonable out-of-pocket costs and expenses:
  - (i) execute and deliver to Lessor and to such Transferee an agreement, in form and substance satisfactory to Lessor, Lessee and such Transferee, dated the date of such Transfer, consenting to such Transfer, agreeing to pay all or such portion of the Basic Rent, Additional Rent and other payments under this Agreement to such Transferee or its designee as such Transferee shall direct, and agreeing that such Transferee shall be entitled to rely on all representations and warranties made by Lessee in the Operative Documents or in any certificate or document furnished by Lessee in connection with the Operative Documents as though such Transferee was the original “Lessor”;
  - (ii) execute and deliver to Lessor or such Transferee, as appropriate, precautionary Uniform Commercial Code financing statements or amendments reflecting the interests of such Transferee in the Aircraft and the Operative Documents;
  - (iii) deliver to Lessor and to such Transferee a certificate, signed by a duly authorized officer of Lessee, dated the date of such Transfer, to the effect that (1) no Event of Default has occurred and is continuing or, if one is then continuing, describing such Event of Default, and (2) the representations and warranties set forth in Section 2.1 are true and correct as of such date;
  - (iv) cause to be delivered to Lessor and such Transferee certificates of insurance and broker’s letters of undertaking substantially in the form delivered to Lessor on the Delivery Date, detailing the coverage and

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

confirming the insurers' agreement to the specified insurance requirements of this Agreement and listing Lessor and Transferee as additional insureds and the Transferee as sole loss payee (subject to other direction by any Financing Party);

- (v) deliver to Lessor and to such Transferee an opinion of Lessee's counsel (which may be Lessee's General Counsel), addressed to Lessor and such Transferee to the effect that the agreement referred to in Section 14.2(c)(i) has been duly authorized and executed by Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms (subject to customary exceptions), and to the effect that such Transferee may rely on the opinion delivered by such counsel or its predecessor counsel in connection with the Operative Documents on the Delivery Date with the same force and effect as if such Transferee was an original addressee of such opinion when given;
- (vi) deliver to Lessor and such Transferee information on the location of the Airframe and Engines at all times requested by Lessor in order to permit the Transfer to take place at a time and on a date so as to eliminate or minimize any Taxes applicable to the Transfer; and
- (vii) such other documents as Lessor or such Transferee may reasonably request.

### **14.3 Financing Parties; Grants of Security Interests**

- (a) On or before the Delivery Date, and from time to time thereafter, Lessor shall advise Lessee in writing of any Financing Parties, and of any Financing Documents relevant to such Financing Parties status as Additional Insureds and of any Financing Security Documents providing to any Financing Parties a Security Interest in the Leased Property or Lessor's right, title and interest in any Operative Documents. On the Delivery Date, pursuant to Section 3.1(c), Lessee shall execute and deliver to Lessor the Notice and Acknowledgment.
- (b) Lessor shall be entitled at any time after Delivery to grant a Security Interest in the Leased Property or its right, title and interest in any Operative Document in replacement of or with a priority senior, equal or subordinate to any previous grant of a Security Interest. In the case of any such grant after Delivery, Lessee shall promptly, at the specific written request of Lessor and with Lessor paying all of Lessee's reasonable out-of-pocket costs and expenses:
  - (i) execute and deliver to Lessor a notice and acknowledgment referring to the new Financing Security Document and otherwise substantially in the form of the Notice and Acknowledgment;

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (ii) deliver to Lessor and any new Financing Parties identified by Lessor a certificate, signed by a duly authorized officer of Lessee, dated the date of the grant of the additional Security Interest by Lessor, to the effect that (1) no Event of Default has occurred and is continuing or, if one is then continuing, describing such Event of Default, and (2) the representations and warranties set forth in Section 2.1 are true and correct as of such date;
- (iii) cause to be delivered to Lessor certificates of insurance and broker's letters of undertaking substantially in the form delivered to Lessor on the Delivery Date, detailing the coverage and confirming the insurers' agreement to the specified insurance requirements of this Agreement, adding the additional Financing Parties identified by Lessor as additional insureds and, if requested by Lessor, as loss payees; and
- (iv) such other documents as Lessor may reasonably request.

### **14.4 Sale and Leaseback by Lessor**

In addition to the Transfers and grants of Security Interests permitted by Sections 14.2 and 14.3, Lessor shall be entitled to transfer its right, title and interests in and to the Leased Property to any Person and lease the Aircraft from such Person (a "Head Lessor"), and in such event Lessor shall retain its rights and obligations as "Lessor" under this Agreement. In the event of such a sale and lease-back by Lessor, (a) the Head Lessor shall meet the requirements for a "Transferee" as defined in Section 14.2(a)(ii) above, (b) Lessor shall be entitled to assign its rights in this Agreement to such Head Lessor as security for its obligations under the head lease, (c) the Head Lessor shall be entitled to grant to one or more purchase money lenders, or to an indenture trustee on behalf of such lenders, a Security Interest covering the Leased Property and the Operative Documents, (d) Lessee shall execute and deliver to Lessor, such Head Lessor and such secured parties, as appropriate, the documents specified in Sections 14.2(c) and 14.3(b) above, and Lessee shall cooperate with Lessor to make such other changes to the Operative Documents, such as including such Head Lessor and such secured parties as additional insureds and "Indemnitees", as Lessor may reasonably request.

### **14.5 Further Acknowledgments**

Lessee further acknowledges that any Transferee shall in turn have the rights of, and be subject to the conditions to, transfer and grants of Security Interests set forth above in this Section 14.

### **14.6 Certain Protections for Lessee's Benefit**

The rights of Lessee under this Agreement shall be superior to the rights of any Financing Party or Head Lessor, and Lessor shall require each Financing Party holding a Security Interest in this Agreement and each Head Lessor to agree in writing with Lessee that such Financing Party's and Head Lessor's rights in and to the Leased Property and/or this

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

Agreement shall be subject to the terms of this Agreement, including to Lessee's rights to the quiet use, possession and enjoyment provisions contained in this Agreement. Lessor's obligations to perform the terms and conditions of this Agreement shall remain in full force and effect notwithstanding the creation of any Financing Security Document or head lease. No Transfer shall cause or result in any increase in or additional payment obligations (including with respect to Taxes) of Lessee under this Agreement based on the laws in effect at the time of such Transfer. Lessor shall not enter into any Financing Security Document or head lease that violates the terms of this Section 14.6.

### **15. GOVERNING LAW AND JURISDICTION<sup>15</sup>**

#### **15.1 Governing Law**

THIS AGREEMENT SHALL, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF ENGLAND AND WALES. THE LAWS OF ENGLAND AND WALES SHALL ALSO GOVERN ANY NON-CONTRACTUAL OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND EACH OTHER OPERATIVE DOCUMENT, UNLESS OTHERWISE EXPRESSLY PROVIDED THEREIN.

#### **15.2 Consent to Jurisdiction**

Each of Lessor and Lessee hereby agrees that the English courts are to have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement or any other Operative Document, and by execution and delivery of this Agreement each of Lessor and Lessee hereby irrevocably submits to and accepts with regard to any such action or proceeding, for itself and in respect of its assets, generally and unconditionally, the jurisdiction of the aforesaid courts. Each of Lessor and Lessee waives objection to the English courts on grounds of inconvenient forum or otherwise as regards proceedings arising out of or in connection with this Agreement and any other Operative Document and agrees that a judgment or order of an English court in any such proceedings is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction. Nothing herein shall limit the right of either Lessor or Lessee from bringing any legal action or proceeding or obtaining execution of judgment against the other in any other appropriate jurisdiction or concurrently in more than one jurisdiction. Each of Lessor and Lessee further agrees that, subject to applicable law, a final judgment in any action or proceeding arising out of or relating to this Agreement or any other Operative Document shall be conclusive and may be enforced in any other jurisdiction outside England by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and the amount of the indebtedness or liability therein described, or in any other manner provided by law.

#### **15.3 Waiver of Jury Trial**

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<sup>15</sup> Vide 3.17 and 3.18 of the text *supra*.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

LESSEE AND LESSOR HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING TO WHICH THEY ARE PARTIES INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT.

### **15.4 Service of Process**

- (a) Lessor hereby irrevocably designates, appoints and empowers [ ] of [ ] as its authorized agent to receive on its behalf and on behalf of its property service of copies of the summons and complaint and any other process which may be served in any action or proceeding arising out of or in connection with to this Agreement and/or any Operative Document. Such service may be made by mailing or delivering a copy of such process in care of the appropriate process agent described in this Section 15.4 and Lessor hereby irrevocably authorizes and directs its designated process agent to accept such service on its behalf. Lessor further agrees that failure by a process agent appointed in accordance with the foregoing terms to notify Lessor of the process shall not invalidate the proceeding concerned. Notwithstanding the foregoing, nothing herein shall affect the rights of either party to serve process in any other manner permitted by law.
- (b) Lessee hereby irrevocably designates, appoints and empowers [ ] of [ ] as its authorized agent to receive on its behalf and on behalf of its property service of copies of the summons and complaint and any other process which may be served in any action or proceeding arising out of or in connection with to this Agreement and/or any Operative Document. Such service may be made by mailing or delivering a copy of such process in care of the appropriate process agent described in this Section 15.4 and Lessee hereby irrevocably authorizes and directs its designated process agent to accept such service on its behalf. Lessee further agrees that failure by a process agent appointed in accordance with the foregoing terms to notify Lessee of the process shall not invalidate the proceeding concerned. Notwithstanding the foregoing, nothing herein shall affect the rights of either party to serve process in any other manner permitted by law.

## **16. MISCELLANEOUS<sup>16</sup>**

### **16.1 Waivers, Remedies Cumulative**

The rights of Lessor or Lessee under this Agreement may be exercised as often as necessary, are cumulative and not exclusive of that party's rights under any law and may be waived only in writing and specifically. Delay in exercising or non-exercise of any such right is not a waiver of that right.

### **16.2 Delegation**

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<sup>16</sup> Vide 3.19 of the text *supra*.

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Lessor may delegate to any Person or Persons all or any of the trusts, powers or discretions vested in it by this Agreement and any such delegation may be made upon such terms and conditions and subject to such regulations (including power to sub-delegate) as Lessor in its absolute discretion thinks fit.

### **16.3 Appropriation**

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

### **16.4 Currency Indemnity**

- (a) If Lessor receives an amount in respect of the Lessee's liability under this Agreement or if such liability is converted into a claim, proof, judgment or order in a currency other than the currency (the "contractual currency") in which the amount is expressed to be payable under this Agreement:
  - (i) Lessee will indemnify Lessor, as an independent obligation, against any loss arising out of or as a result of such conversion;
  - (ii) if the amount received by Lessor, when converted into the contractual currency (at the market rate at which Lessor is able on the relevant date to purchase the contractual currency in New York City with that other currency) is less than the amount owed in the contractual currency, Lessee will, forthwith on demand, pay to Lessor an amount in the contractual currency equal to the deficit; and
  - (iii) Lessee will pay to Lessor on demand any exchange costs and Taxes payable in connection with the conversion.
- (b) Lessee waives, to the extent permitted by Applicable Law, any right it may have in any jurisdiction to pay any amount under this Agreement in a currency other than that in which it is expressed to be payable.

### **16.5 Payment by Lessor**

Lessor will not be obliged to pay any amounts to Lessee 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 will fall due only if and when Lessee has paid all such sums.



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### **16.6 Severability**

If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (b) the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

### **16.7 Remedy**

If Lessee fails to comply with any provision of this Agreement, 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 the non-compliance as a 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 reasonable legal costs) necessarily incurred in connection therewith.

### **16.8 Expenses**

- (a) Lessor and Lessee shall each bear their respective expenses (including legal, professional and out-of-pocket expenses) incurred or payable in connection with the negotiation, preparation and execution of the Operative Documents, except that Lessee shall be responsible for (i) all registration and filing fees in connection with the registration of the Aircraft in the State of Registration, (ii) all fees in connection with the filing and translation of any Operative Document or related document, and (iii) the legal fees and out-of-pocket expenses of Lessor's Counsel.
- (b) Lessee shall pay to Lessor on demand all expenses (including legal, professional and out-of-pocket expenses) incurred or payable by Lessor in connection with the granting of any waiver or consent under this Agreement.
- (c) Lessee will pay to Lessor on demand all expenses (including legal, survey and other costs) payable or incurred by Lessor in contemplation of, or otherwise in connection with, the enforcement of or preservation of any of Lessor's rights under the Operative Documents, or in respect of the repossession of the Aircraft.
- (d) Lessor will pay to Lessee on demand all expenses (including legal costs) payable or incurred by Lessee in contemplation of, or otherwise in connection with, the enforcement of or preservation of any of Lessee's rights under this Agreement.

### **16.9 Time of Essence**

The time stipulated in this Agreement for all payments payable by Lessee to Lessor and for the performance of Lessee's other obligations under this Agreement that are due on a

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

specified or determinable date will be of the essence of this Agreement (subject always to any applicable grace period).

### **16.10 Notices**

- (a) All notices and other communications given under or in connection with this Agreement shall be in writing (including telefax and e-mail) and in English, and shall be deemed to be received as follows:
  - (i) If the notice or other communication is sent by telefax, it shall be deemed to be received at the time of receipt by the sender of a transmission report indicating that all pages of the telefax transmission were properly transmitted (unless the recipient notifies the sender promptly, or if received after 17:00 local time, by no later than 10:00 local time the following Business Day, that the transmission was incomplete or illegible, in which case the telefax shall be deemed to have been received at the time of receipt by the sender of a further clear transmission report on retransmitting the telefax), provided the relevant telefax transmission (or retransmission, as the case may be) was transmitted to the receiver between 09:00 and 17:00 local time. If it was transmitted later, then it shall be deemed to have been received at 09:00 local time on the succeeding Business Day.
  - (ii) In any other case, the notice or other communication shall be deemed to be received when delivered to the address or e-mail address (if any) specified in Section 16.10(b).
- (b) All such notices, requests, demands and other communications shall be sent:
  - (i) to Lessor at: [Name of Lessor]  
[Lessor's Address]  
U.S.A.  
Attention:  
Telephone:  
Telefax:  
E-mail:
  - (ii) to Lessee at: [Name of Lessee]  
[Lessee's Address]  
Attention:  
Telephone:  
Telefax:  
E-mail:

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

or to such other address, e-mail address or telefax number as shall have been notified by one party to the other in the manner set out in this Section 16.10.

### **16.11 Sole and Entire Agreement**

This Agreement is the sole and entire agreement between Lessor and Lessee in relation to the leasing of the Aircraft, and supersedes all previous agreements in relation to that leasing. The terms and conditions of this Agreement can only be varied by an instrument in writing executed by both parties or by their duly authorized representatives.

### **16.12 Indemnities**

All rights expressed to be granted to each Indemnatee under this Agreement (other than any Financing Party) are given to Lessor as agent for and on behalf of that Indemnatee.

### **16.13 Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall constitute an original and, when taken together, all of which shall constitute one and the same Agreement.

### **16.14 English Language**

All documents delivered to the Lessor pursuant to this Agreement will be in English or, if not in English, will be accompanied by a certified English translation. If there is any inconsistency between the English version of this Agreement and any version in any other language, the English version will prevail.

### **16.15 Further Assurances**

Lessee shall promptly and duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time reasonably request in order to carry out more effectively the intent and purpose of the Operative Documents and to establish and protect Lessor's title to the Leased Property, the interests of any subsequent transferee and Lessor's rights and remedies created or intended to be created under the Operative Documents.

### **16.16 Confidentiality**

Neither Lessor nor Lessee shall, without the other's prior written consent, communicate or disclose the terms of the Operative Documents or any information or documents furnished pursuant to the Operative Documents (except to the extent that the same are within the public domain) to any third party (other than any Financing Party, any prospective Transferee, any material investor in Lessee or creditor in Lessee, Head Lessors, the respective external legal advisers, auditors, insurance brokers or underwriters

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

of Lessor, Lessee and such parties, and the Airframe Manufacturer and Engine Manufacturer); provided, that disclosure will be permitted, to the extent required:

- (a) pursuant to an order of any court of competent jurisdiction; or
- (b) pursuant to any procedure for discovery of documents in any proceedings before any such court; or
- (c) pursuant to any law or regulation having the force of law; or
- (d) pursuant to a lawful requirement of any authority with whose requirements the disclosing party is legally obliged to comply; or
- (e) in order to perfect any assignment of any assignable warranties.

**[signature page follows]**

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

IN WITNESS WHEREOF Lessor and Lessee have executed this Lease Agreement [msn] on the date shown at the beginning of this Agreement.

[NAME OF LESSOR]

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

[NAME OF LESSEE]

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

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

### **SCHEDULE 1 – DESCRIPTION OF LEASED PROPERTY**

#### **Part 1 Aircraft Specification**

##### **IDENTIFICATION:**

Aircraft Model: [mfgr] Model [model]  
Registration Mark: \_\_\_\_\_  
Serial Number: [msn]  
Date of Manufacture: \_\_\_\_\_

##### **WEIGHT DATA:**

Maximum Gross Taxi Weight: \_\_\_\_\_ lbs.  
Maximum Gross Takeoff Weight: \_\_\_\_\_ lbs.  
Maximum Landing Weight: \_\_\_\_\_ lbs.  
Maximum Zero Fuel Weight: \_\_\_\_\_ lbs.  
Operating Empty Weight: \_\_\_\_\_ lbs.  
Fuel Capacity: \_\_\_\_\_ U.S. gallons

##### **AIRFRAME AND INTERIOR EQUIPMENT:**

Galleys	Locations:	_____ forward; _____ aft
Lavatories	Locations:	_____ forward; _____ aft
Air Stairs	Locations:	_____ forward
Passenger Seats	Types:	

##### **ENGINES:**

Manufacturer:	[EngMfgr]	
Position	No.1	No.2
Model:	[EngModel]	[EngModel]
Serial Numbers:	[esn1]	[esn2]

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### APU:

Manufacturer: [.....]  
Model: [.....]  
Serial Number: [.....]

### LANDING GEAR:

Position:	<u>Nose</u>	Left Main	Right Main
Manufacturer:	[.....]	[.....]	[.....]
Part Number:	[.....]	[.....]	[.....]
Serial Number:	[.....]	[.....]	[.....]

### MAJOR AVIONICS EQUIPMENT:

<u>Description</u>	<u>Manufacturer</u>	<u>Part No.</u>	<u>Qty.</u>
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## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

### **SCHEDULE 1 – DESCRIPTION OF LEASED PROPERTY**

#### **Part 2 Aircraft Documents**

1. Manuals: The following manuals shall be delivered with the Aircraft. Each manual shall be current and include all temporary revisions. Each manual shall be in the English language.
  - (a) FAA-Approved Airplane Flight Manual.
  - (b) Weight and Balance Control and Cargo Loading Manual and Supplements (load and trim sheet) to include last weight and balance paperwork and delivery equipment list.
  - (c) Operations Manual and Quick Reference Handbook.
  - (d) Structural Repair Manual
  - (e) Aircraft Maintenance Manuals
  - (f) Aircraft/Engine/APU Illustrated Parts Catalog (IPC) (Lessee Customized)
  - (g) Wiring Diagram Manual
2. Airworthiness Directives Documentation: The following data will be provided as well as all records associated with A.D. compliance:
  - (a) a single, complete and current status list of each AD to the Airframe, each Engine and each Part (at redelivery, the list shall be typed, certified and signed by authorized quality assurance representative of Lessee);
  - (b) legible copies of the completion documentation that accomplish each AD, and if the AD involves repetitive inspection, documentation from the last accomplishment is sufficient (if the original completion documents are not available, at a minimum a copy of the job card of engineering order that accomplished the AD shall be provided, plus a certification letter (at redelivery, signed by Lessee's airworthiness department) stating that the AD in question was accomplished at a certain Flight Hour, Cycle and date and referencing all pertinent support documentation (i.e., engineering order, alternate means of compliance, etc.); however, any AD that was complied with by an alternate means of compliance must have all original documentation and necessary air authority approvals); and
  - (c) exemptions or deviations, if any, granted by any aviation authority on AD compliance, including copy of exemption request.



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3. Engineering Documentation:
  - (a) A single, current list in English language of the following shall be provided:
    - (i) Service Bulletin status.
    - (ii) Major repairs list, if applicable.
    - (iii) Supplement Type Certificate list, if any.
  - (b) Data package covering all non-manufacturer or non-aviation authority approved repairs or alterations, including any submittals to aviation authorities for an approval, if applicable.
4. Additional Documentation:
  - (a) Quarterly Published Reliability Reports for last 3 months (one year, if available)
  - (b) Location map of emergency equipment with description
  - (c) Interior configuration drawings
  - (d) Passenger/Cargo Equipment List (seats, galleys, lavatories)
  - (e) Complete paperwork for last “D” Check overhaul.
  - (f) Compass card calibration documentation
  - (g) All life records for the assemblies and rotatable parts installed during the last overhaul for each nose, left hand and right hand main landing gears
5. Individual Aircraft and Engine Records:
  - (a) Letter of Declaration for each major aircraft/engine accident or major incident which shall include supporting documentation, if any
  - (b) Engine trend monitoring data for each Engine.
  - (c) Aircraft Technical Log for the last six (6) months of operation (at redelivery)
  - (d) Serviceable/overhaul tags for all life limited parts and hard time components listed in the rotatable components list (for Term only).
  - (e) Listing of Aircraft, Engine and APU components status by P/N-S/N-Description Position TBO-TSO-TSN, total time, next due time, including interpretation keys, (Rotable Component List)
  - (f) Engine and APU logbooks

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- (g) Aircraft and Engine time status at redelivery with serial number, total time, total cycles and times of the last letter check inspection
- (h) All (i) Engine and APU records for the last heavy maintenance shop visit, (ii) back to birth history for each Engine life limited part, and (iii) last power plant test cell run documents for Engines and APU
- (i) Aircraft Readiness Log (from aircraft manufacturer)
- (j) Copies of all applicable Master Changes (M.C.) performed on the Aircraft, if any
- (k) aviation authority approvals and operator certification reports for major modifications alterations and repairs that are not covered by manufacturer's service bulletins.
- (l) Fire blocking status for all seats, interior fabrics/material, including burn test documentation and certification.
- (m) Current CPCP Status Report
- (n) Current list outlining all waiver items/components not approved by FAR Part 121.

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### **SCHEDULE 2 – OPERATING CONDITION AT DELIVERY**

On the Delivery Date the Aircraft will be in the condition set out below:

#### **1. General Condition**

The Aircraft will:

- (a) be clean by major international airline standards;
- (b) be airworthy, conform to type design and be in a condition for safe operation with all equipment, components and systems operating in accordance with their intended use and within limits established by the manufacturer and approved by the FAA, and all pilot discrepancies and deferred maintenance items cleared on a terminating action basis;
- (c) have a valid export certificate of airworthiness with respect to the Aircraft issued by the \_\_\_\_\_ Aviation Authority;
- (d) have zero Flight Hours (except for test and acceptance flights) since undergoing a block “C” Check in accordance with the MPD before the Scheduled Delivery Date;
- (e) have had accomplished all outstanding ADs and mandatory orders affecting that model of Aircraft issued by the FAA or EASA that are due before the Delivery Date on a terminating action basis;
- (f) have no special or unique manufacturer inspection or check requirements specific to the Aircraft that exist unless there is no terminating action available from any source;
- (g) be free of any system-related leaks;
- (h) have all fluid reservoirs (including fuel, oil, oxygen, hydraulic and water) full, and the waste tank serviced in accordance with the Manufacturer’s instructions;
- (i) have all signs and decals clean, secure and legible; and
- (j) be painted white in accordance with standard industry practices and the paint manufacturer’s instructions and avoiding any overspray on other surfaces.

#### **2. Parts**

- (a) Each life limited or hard time controlled Part, excluding Engine Parts, shall have not less than 3,600 Flight Hours, 3,600 Cycles or 18 months (whichever is the

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most limiting factor) remaining to the next scheduled removal in accordance with the MPD intervals or OEM recommendations in the event that the MPD does not provide intervals.

- (b) Each calendar limited Part (including hard time controlled Parts with calendar limits but excluding Engine Parts) will have at least 18 months remaining to its next scheduled removal or overhaul in accordance with the Airframe Manufacturer's MPD recommendations or OEM recommendations in the event that the Airframe Manufacturer's MPD does not provide intervals.
- (c) Each "on-condition" and "condition monitored" Part will be serviceable in accordance with the MPD.

### **3. Engines**

- (a) Each Engine shall have at least 2,500 Cycles remaining until the next scheduled CER or LLP replacement under the existing maintenance program.
- (b) No Engine shall be "on engineering watch", on a reduced interval inspection or otherwise have any defect that reduces the Flight Hours or Cycles (whichever is more limiting) of remaining life pursuant to Engine Manufacturer's or airworthiness requirements until overhaul to less than 2,500.
- (c) Each Engine shall be in a condition that can operate at maximum rated take-off power at sea level with an E.G.T. margin of 15 degrees Celsius.
- (d) Lessor shall perform a maximum power assurance run and condition, acceleration and bleed valve scheduling checks on each Engine in accordance with the AMM. Lessor will record and evaluate each Engine's performance, with Lessee's representatives entitled to be present. Each Engine shall pass such tests without operational limitations throughout the operating envelope in accordance with the AMM.
- (e) Lessor shall perform a video borescope inspection of all accessible gas path sections of each Engine (accessible whether by borescope port or other means), including the low pressure and high pressure compressors and the turbine area of such Engine, and Lessee's representatives will be entitled to observe such borescope inspection. All items beyond the Engine Manufacturer's maintenance manual serviceable limits will be rectified at Lessor's sole cost and expense.

### **4. Fuselage, Windows and Doors**

- (a) The fuselage will not contain any dents, corrosion or abrasions that exceed the SRM limitations and shall be free of scab patches and loose, pulled or missing rivets.

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(b) The windows will not contain any delamination, blemishes or crazing that exceed the prescribed parameters under the AMM and will be properly sealed.

(c) The doors will be free moving, correctly rigged and fitted with serviceable seals.

### **5. Wings and Empennage**

(a) The leading edges will not contain any damage that exceeds the SRM limitations.

(b) All unpainted cowlings and fairings will be polished.

(c) All wings will be free of fuel leaks.

### **6. Interior**

(a) The interior will be fully serviceable.

(b) All emergency equipment having a calendar life will have a minimum of one year or 100% of its total approved life remaining, whichever is less.

(c) All curtains, carpets, seat covers and seat cushions will be clean and free from stains and worn out (threadbare) areas and will conform to EASA/FAR fire resistance regulations as applicable to an EASA/FAR Part 121 operator.

### **7. Cockpit**

(a) All fairing panels shall be free of stains and cracks, clean, secure and repainted as necessary.

(b) All floor coverings will be clean and effectively sealed.

(c) All seat covers will be in good condition, clean and free of stains and will conform to EASA/FAR fire resistance regulations as applicable to an EASA/FAR Part 121 operator.

(d) All seats will be serviceable, in good condition and repainted as necessary.

### **8. Cargo Compartments**

(a) All panels will be in good condition and effectively sealed.

(b) All nets will be in good condition.

(c) The cargo compartments will comply with EASA/FAR fire resistance and containment regulations as applicable to an EASA/FAR Part 121 operator.

### **9. Landing Gear**

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- (a) The installed main and nose landing gear components and their associated actuators and parts will be cleared of all inspections for not less than 12 months, 3,000 Flight Hours or 3,000 Cycles of operation (whichever is more limiting).
- (b) The tires and brakes will have 50% of the wear, as specified by the manufacturer as serviceable limits, remaining until next removal.
- (c) The landing gear and wheel wells will be clean, free of leaks and repaired as necessary.

### 10. APU

- (a) The APU shall be serviceable in accordance with the MPD.
- (b) The APU shall have not more than 1,500 Flight Hours of operation since its last hot section inspection.
- (c) Lessor shall perform a video borescope inspection and an electrical and pneumatic load analysis of the APU, and Lessee's representatives will be entitled to observe such borescope inspection. All items beyond the Manufacturer's recommended serviceable limits will be rectified at Lessor's sole cost and expense.

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### **11. Aircraft Documents**

The Aircraft will be accompanied by the Aircraft Documents listed on Part 2 of Schedule 1. Lessor will also provide to Lessee all historical and current maintenance manuals, aircraft and engine technical records and data, and other aircraft documentation in the possession of Lessor. Upon the request of Lessee, Lessor shall use reasonable efforts to obtain any required maintenance and technical records or documents not in its custody. All Aircraft Documents provided to Lessee at Delivery shall be listed and included as an attachment to the Certificate of Delivery Condition.

### **12. Acceptance Flight**

Before the Delivery Date, Lessor shall cause an acceptance flight of the Aircraft to be performed of up to three hours at Lessor's cost (with up to two representatives of Lessee on-board as observers), and such further acceptance flights as may be necessary in the event that the first or subsequent flights do not confirm that the Aircraft complies with the delivery conditions set forth in this Schedule 2.

### **13. Delivery Inspection**

Before the Delivery Date, Lessor shall make the Leased Property available for Lessee to conduct a ground inspection of the Aircraft and an inspection of the Aircraft Documents to its satisfaction

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### **SCHEDULE 3 – OPERATING CONDITION AT REDELIVERY**

On the Expiry Date the Aircraft, subject to fair wear and tear generally, will be in the condition set out below:

1. General Condition

The Aircraft will:

- (a) be clean by major international airline standards;
- (b) have installed the full complement of engines and other equipment, parts and accessories and loose equipment installed at Delivery and required under the Approved Maintenance Program and usually installed in the other aircraft of the same model operated by Lessee (together with any additions and improvements thereto, or replacements thereof, effected pursuant to and in accordance with this Agreement) and be in a condition suitable for immediate operation in commercial service;
- (c) be airworthy, conform to type design and be in a condition for safe operation with all equipment, components and systems operating in accordance with their intended use and within limits established by the manufacturer and approved by the Aviation Authority, and all pilot discrepancies and deferred maintenance items cleared on a terminating action basis;
- (d) have a standard transport category Certificate of Airworthiness issued by the Aviation Authority in accordance with the Aviation Law and the FAR's or, if requested by Lessor, a valid export certificate of airworthiness with respect to the Aircraft issued by the Aviation Authority for a country designated by Lessor, and unconditionally meet all Aviation Authority requirements for immediate operations and be in a condition which makes it eligible for the issuance of an FAA Certificate of Airworthiness;
- (e) comply with the manufacturer's original specification to the extent that it so complied on the Delivery Date and subject to any alterations made pursuant to and in accordance with this Agreement after such date;
- (f) have undergone, at Return immediately prior to redelivery of the Aircraft, the next sequential block "C" check or equivalent block-type maintenance on the Airframe performed by the Final Maintenance Performer in accordance with the then current Airframe Manufacturer's MPD, including all corresponding and lower level checks, and Lessee shall perform all other inspections and maintenance tasks (including corrosion prevention and control and aging aircraft inspections, if any and as applicable), all structural/systems/zonal inspections and out-of-sequence inspections due at that time, and all routine and non-routine tasks, all with full



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fault rectification, sufficient to clear the Aircraft for operation until its next scheduled C-Check per the then current Airframe Manufacturer's MPD and in any event not less than 6,000 Flight Hours, 4,000 Cycles and 24 months. If the Approved Maintenance Program permits such "C" check, inspections, checks and other tasks to be performed in phases, Lessee shall ensure that the Final Maintenance Performer performs all phases of such maintenance check, inspections and other tasks immediately prior to the Return in order to align fully such maintenance of the Aircraft with the then latest revision of the Airframe Manufacturer's "block type" MPD schedule to the same extent as if the Approved Maintenance Program did not permit such maintenance check, inspections and other tasks to be performed in phases;

- (g) have had accomplished all outstanding ADs and mandatory orders affecting that model of Aircraft issued by the Aviation Authority, EASA or the FAA that are due during the Term or by the next block C-Check or within the next 6,000 Flight Hours, 4,500 Cycles or 18 months thereafter on a terminating action basis; ADs and mandatory orders that do not have a terminating action will be accomplished at the highest level of inspection or modification permitted;
- (h) no special or unique manufacturer inspection or check requirements specific to the Aircraft will exist unless there is no terminating action available from any source;
- (i) have installed all applicable vendor's and manufacturer's service bulletin kits received free of charge by Lessee that are appropriate for the Aircraft and, to the extent not installed, those kits retained by Lessee will be furnished free of charge to Lessor;
- (j) be free of any system-related leaks;
- (k) all fluid reservoirs (including fuel, oil, oxygen, hydraulic and water) will be full, and the waste tank serviced in accordance with the manufacturer's instructions;
- (l) all fuel tanks and hydraulic systems will have recently undergone an anti-fungus/biological growth contamination laboratory evaluation, and any excessive levels of contamination corrected;
- (m) have had the Aircraft interior fumigated prior to Return;
- (n) have all Lessee specific corporate branding and Lessee unique external and interior markings, decals and signs removed and blended, and Lessee shall have restored such areas to the original condition that existed prior to the application of such markings;
- (o) have all signs and decals clean, secure and legible; and

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- (p) in conjunction with the redelivery check, be stripped of Lessee's livery, with all exterior markings removed and replaced, and either painted white or painted in the livery of the next operator, as identified by Lessor, in either case in accordance with standard industry practices and the paint Manufacturer's instructions and avoiding any overspray on other surfaces; the Aircraft will be painted at an appropriate time in the Return process so that the paint will have a uniform and continuous finish, without damage caused by the removal of panels, and after painting the Aircraft will be weighed and any flight surfaces will be removed and balanced as required by the Manufacturer's MPD.

### **2. Parts**

- (a) Each life limited or hard time controlled Part, excluding Engine Parts, shall have not less than 6,000 Flight Hours, 4,500 Cycles or 18 months (whichever is the most limiting factor) remaining to the next scheduled removal in accordance with the MPD intervals or OEM recommendations in the event that the MPD does not provide intervals.
- (b) Each calendar limited Part (including hard time controlled Parts with calendar limits but excluding Engine Parts) will have at least 18 months remaining to its next scheduled removal or overhaul in accordance with the Airframe Manufacturer's current MPD recommendations or OEM recommendations in the event that the Airframe Manufacturer's MPD does not provide intervals.
- (c) Each "on-condition" and "condition monitored" Part will be serviceable and have been maintained in accordance with the Manufacturer's recommendations and the MPD.

### **3. Engines**

- (a) Each Engine shall, at Return, to the extent not previously provided to Lessor, be accompanied by all documentation Lessor may require to evidence that title thereto is properly vested in Lessor in accordance with Section 8.17.
- (b) Each Engine shall have no more than 4,000 Flight Hours since its last Engine Shop Visit and no less than 4,000 Flight Cycles remaining until the next anticipated Engine Shop Visit (based on the Engine Manufacturer's MTBR for this type engine operating at the agreed upon hour to cycle ratio). No Engine shall be "on engineering watch," on a reduced interval inspection or otherwise have any defect that reduces the Flight Hours or Cycles (whichever is more limiting) of remaining life pursuant to Engine Manufacturer's or airworthiness requirements until overhaul to less than 4,000.
- (c) Each Engine shall be in a condition that can operate at maximum rated take-off power at sea level with an E.G.T. margin of 30°C at an I.A.T. of 32°C.

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- (d) Each Engine LLP shall have not less than [ ] Cycles of life remaining.
- (e) Within the first week of induction into the final maintenance check (or within one week of installation of an Engine if it is installed during the redelivery check), in accordance with the AMM, Lessee shall perform a maximum power assurance run test and condition, acceleration and vibration study on each Engine. Lessee will record and evaluate each Engine's performance, with Lessor and its representatives entitled to be present. Each Engine shall pass such tests without operational limitations throughout the operating envelope in accordance with the published AMM.
- (f) Following the last flight prior to the Return and ground performance tests, Lessee shall perform a video borescope inspection of all accessible gas path sections of each Engine (accessible whether by borescope port or other means), including the low pressure and high pressure compressors and the turbine area of such Engine. All items beyond the Airframe Manufacturer's published maintenance manual serviceable limits will be rectified at Lessee's sole cost and expense.

### **4. Fuselage, Windows and Doors**

- (a) The fuselage will not contain any dents, corrosion or abrasions.
- (b) The windshields and windows will not contain any delamination, blemishes or crazing.
- (c) The doors will be free moving, correctly rigged and fitted with serviceable seals.

### **5. Wings and Empennage**

- (a) The leading edges will not contain any damage that exceeds the SRM limitations.
- (b) All unpainted cowlings and fairings will be polished.
- (c) All wings will be free of fuel leaks.

### **6. Interior**

- (a) The interior will be fully serviceable.
- (b) All emergency equipment having a calendar life will have a minimum of 18 months or 100% of its total approved life remaining, whichever is less.
- (c) All curtains, carpets, seat covers and seat cushions will be clean and free from stains and worn out (threadbare) areas and will conform to EASA/FAR fire resistance regulations as applicable to an EASA/FAR Part 121 operator.

### **7. Cockpit**

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- (a) All fairing panels shall be free of stains and cracks, clean, secure and repainted as requested by Lessor.
- (b) All floor coverings will be clean and effectively sealed.
- (c) All seat covers will be in good condition, clean and free of stains and will conform to EASA/FAR fire resistance regulations as applicable to an EASA/FAR Part 121 operator.
- (d) All seats will be fully inspected per the seat CMM, be in good condition and repainted as requested by Lessor.

### **8. Cargo Compartments**

- (a) All panels will be in good condition without repairs and effectively sealed.
- (b) All nets will be in good condition without any repairs.
- (c) The cargo compartments will comply with EASA/FAR fire resistance and containment regulations as applicable to an EASA/FAR Part 121 operator.

### **9. Landing Gear**

- (a) The installed main and nose landing gear components and their associated actuators and parts will be in serviceable condition with no less than 3,000 Cycles or 12 months (whichever is the most limiting factor) remaining until the next scheduled Landing Gear Overhaul under the Approved Maintenance Program.
- (b) The tires and brakes will have 50% of the wear, as specified by the manufacturer as serviceable limits, remaining until next removal.
- (c) The landing gear and wheel wells will be clean, free of leaks and repaired as necessary.

### **10. APU**

- (a) The APU shall be serviceable in accordance with the Approved Maintenance Program parameters.
- (b) The APU shall have not more than 500 Flight Hours of operation since its last APU Basic Shop Visit.
- (c) Within the first week of induction into the final maintenance check (or within one week of installation of an APU if it is installed during the redelivery check), Lessee shall perform a video borescope inspection and an electrical and pneumatic load analysis of the APU, and all items beyond the Manufacturer's recommended limits will be rectified at Lessee's sole cost and expense.

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### **11. Corrosion**

- (a) The Aircraft will be in compliance with the CPCP.
- (b) Fuel tanks will be free from contamination and corrosion and the fuel tank treatment program that is part of the Approved Maintenance Program will be current.
- (c) Lessee shall perform (or have performed by an Agreed Maintenance Performer), at Return immediately prior to redelivery of the Aircraft, an internal and external corrosion inspection in accordance with the CPCP, and correct any discrepancies in accordance with the recommendations of the Airframe Manufacturer and the SRM. In addition, all inspected areas will be properly treated with corrosion inhibitor as recommended by Airframe Manufacturer.

### **12. Structural Inspections**

If Lessee performed any structural inspections or tasks on a sampling basis but did not perform such inspections on the Aircraft, such work shall also be performed on the Aircraft.

### **13. Trend Monitoring**

If any historical and technical records, condition trend monitoring data, power assurance runs or borescope inspection indicate an abnormal acceleration or shift in the rate of performance deterioration or oil consumption in any Engine or the APU, Lessee shall correct such conditions causing the accelerated rate of deterioration or oil consumption.

### **14. Additional Work**

- (a) Lessee shall also perform or cause to be performed, to the extent it is able, any other work reasonably required by Lessor (and not otherwise required under this Agreement) so long as such work does not prevent Lessee from returning the Aircraft on the Expiry Date, and Lessor shall reimburse Lessee for the Actual Cost of such work.
- (b) At the request of Lessor, Lessee shall perform “bridging” maintenance procedures for the purpose of standardizing the Aircraft to the maintenance program of any subsequent operator of the Aircraft; provided, that Lessor shall pay to Lessee the Actual Cost of all “bridging” procedures that are in excess of or not in lieu of the final checks and maintenance work to be performed pursuant to this Schedule 3 and that are in excess of “bridging” maintenance work required to align the Leased Property to the Airframe Manufacturer’s MPD.

### **15. Final Inspection**

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During the 30 days prior to Return, Lessee will make the Aircraft and Aircraft Documents available at one single location to representatives of Lessor for inspection (“Final Inspection”) in order to verify that the condition of the Leased Property complies with this Agreement. The Final Inspection will be long enough to permit the representatives of Lessor to inspect, at their own cost, the Aircraft Documents, the Aircraft and any uninstalled Parts and Engines. The representatives of Lessor shall attend and conduct the Final Inspection diligently and, without limiting their right to conduct the full Final Inspection permitted by this Agreement, will cooperate with Lessee in order to complete the Final Inspection as soon as reasonably practical. In addition, Lessor’s representatives shall be entitled to review the workscope for, and be present at, all redelivery checks, maintenance work and meetings in connection with the Return, including, for the avoidance of doubt, all production meetings between Lessee and the Final Maintenance Performer. During the redelivery checks, Lessor’s representatives shall not be restricted from opening any accessible panel or bay door.

### **16. Acceptance Flight**

Prior to Return, Lessor shall also be entitled, as part of the Final Inspection, to require Lessee to perform an acceptance flight of up to three hours at Lessee’s cost (with up to four representatives of Lessor on-board as observers) and such further acceptance flights as may be necessary in the event that the first or subsequent flights do not confirm to Lessor that the Aircraft complies with the redelivery requirements of this Agreement.

### **17. Aircraft Documents**

Lessee shall redeliver to Lessor on the Expiry Date all Aircraft Documents delivered with the Aircraft on the Delivery Date in the form and condition in which such Aircraft Documents were delivered by Lessor to Lessee, and all other Aircraft Documents acquired or prepared by Lessee during the Term, including time logs showing Flight Hours and Cycles for the Airframe, Engines, Landing Gear and APU on any given date, documents, manuals (revised up to and including the most current revisions issued by the applicable Manufacturer), data, overhaul records, time controlled part and hard time part traceability to last overhaul and/or repair/test (as applicable) and total Flight Hours/Cycles/calendar time since new or since last overhaul or repair (as applicable), LLP traceability to original source of origin (back to birth) and last overhaul and “zero time since new” for time controlled and hard time parts that have been replaced by Lessee, log books, and serviceable parts tags (such as FAA Form 8130-3 or EASA Form One) for all Parts that have been replaced by Lessee, component teardown/inspection and shop findings reports or alternative compliance as described in Section 8.13 for time controlled parts that have been replaced by Lessee, Aviation Authority forms (as applicable), modification records, inspection reports (including non-destructive test documentation such as x-ray and eddy current documentation), Non-Incident/Non-Accident Statements for the Airframe and Engines and all other documentation such as reliability reports and the like pertaining to the Aircraft, Engines and Parts. If Lessee’s maintenance program did not track tasks using the MPD numbering system, Lessee will produce a cross reference that will enable Lessor to track each Lessee maintenance

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program task to the MPD. Lessee will provide a list of all maintenance program tasks last accomplished and “next due” status. All discrepancies found in the Aircraft Documents shall be corrected, and any missing Aircraft Documents shall be reconstructed by Lessee at Lessee’s sole cost and expense prior to the return of the Aircraft. All Aircraft Documents shall be in the English language.

18. Assignment of Warranties

At Return, Lessee shall assign or novate to Lessor any remaining Airframe, Engine, Part or other warranties with respect to the Aircraft pursuant to a written agreement in form and substance satisfactory to Lessor, including warranties pursuant to Section 6.5 and the warranties from the Final Maintenance Performer pursuant to Section 6.6, and Lessee shall arrange for all necessary consents to such assignment or novation.

19. Non-Incident/Non-Accident Statement

At Return, Lessee shall provide Lessor with Non-Incident/Non-Accident Statements for the Airframe and Engines in a form satisfactory to Lessor.

20. Maintenance Program

- (a) During the 60-day period preceding the Scheduled Expiry Date and upon Lessor’s request, Lessee will provide Lessor or its agent access to the Approved Maintenance Program and the Aircraft Documents in order to facilitate the Aircraft’s integration into any subsequent operator’s fleet. Lessor agrees that it will not disclose the contents of the Approved Maintenance Program to any Person except to the extent necessary to monitor Lessee’s compliance with this Agreement and to bridge the maintenance program for the Aircraft from the Approved Maintenance Program to another program after the Expiry Date.
- (b) Concurrent with providing the Aircraft Documents for Lessor’s review, Lessee shall provide to Lessor a written summary of all sampling programs involving or affecting the Aircraft.

21. Other

[        ].

22. Export and Deregistration

Upon Return and upon request by Lessor, Lessee shall (i) provide to Lessor all documents necessary to export the Aircraft from the State of Registration (including a valid and subsisting export license for the Aircraft), and (ii) provide any documents requested by Lessor in connection with, and otherwise cooperate with, the deregistration of the Aircraft by the Aviation Authority, including causing the Aviation Authority to issue an Export Certificate of Airworthiness to a country specified by Lessor.

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### **SCHEDULE 4 – INSURANCE REQUIREMENTS**

1. The Insurances required to be maintained are as follows:

- (a) HULL “ALL RISKS” of loss or damage while flying and on the ground with respect to the Aircraft for the Agreed Value and with a deductible not exceeding the Hull Insurance Deductible.
- (b) HULL WAR AND ALLIED PERILS, covering those war risks excluded from the Hull “All Risks” Policy to the extent such coverage is available from the leading international insurance markets, including confiscation and requisition by the State of Registration, for the Agreed Value (with form LSW555D exclusions being acceptable except to the extent applying while the Aircraft is under power and except to the extent that coverage in respect of such exclusions is commercially available in the insurance market);
- (c) “ALL RISKS” PROPERTY INSURANCE (INCLUDING WAR AND ALLIED RISK except when on the ground or in transit other than by air or sea) on all Engines and Parts when not installed on the Aircraft (to the extent not covered under the Aircraft hull insurances described in paragraphs (a) and (b) above), including Engine test and running risks, in an amount equal to replacement value in the case of the Engines; and
- (d) AIRCRAFT THIRD PARTY, BODILY INJURY/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 in respect of any one occurrence (but, in respect of products liability, this limit may be an aggregate limit for any and all losses occurring during the currency of the policy, and in respect of liability arising out of certain offences, the limit (within the said combined single limit) may be \$25,000,000 in respect of any one offence and in the aggregate, and cargo and mail legal liability may be subject to a limit of \$1,000,000 any one occurrence); War and Allied Risks are also to be covered under the Policy to the extent available in the leading international insurance markets. The Minimum Liability Coverage may be adjusted upwards from time to time to such an amount as Lessor may be advised by its insurance brokers constitutes the standard Minimum Liability Coverage applicable to aircraft of the make, model and series as the Aircraft operating internationally by an airline similarly situated as Lessee. If Lessee disputes any such adjustment, the matter shall be referred to a reputable independent insurance broker appointed by Lessor, whose decision, acting as expert, shall be conclusive and binding on Lessee.

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2. All required hull and spares insurance specified in Sections 1(a), 1(b) and 1(c) above, so far as it relates to the Aircraft, will:
  - (a) provide that any loss will be settled with Lessee (who undertakes to consult with Lessor in regard thereto), and any claim that becomes payable on the basis of a Total Loss shall be paid in Dollars to Lessor (unless or until the Lessor notifies Lessee that said payments should be made to a Financing Party) as sole loss payee up to the Agreed Value, and loss proceeds in excess of the Agreed Value shall be payable to Lessee, with any other claim being payable as may be necessary for the repair of the damage to which it relates;
  - (b) if separate Hull “All Risks” and “War Risks” insurances are arranged, include a 50/50 provision in the terms of Lloyd’s endorsement AVS103 or its equivalent; and
  - (c) confirm that the Insurers are not entitled to replace the Aircraft in the event of a Total Loss.
3. All required liability insurances specified in Section 1(d) above will:
  - (a) include the Indemnitees as additional insureds for their respective rights and interests; but the coverage provided will not include claims arising out of their legal liability as manufacturer, repairer or servicing agent of the Aircraft or any Engine or Part;
  - (b) include a severability of interest clause;
  - (c) contain a provision confirming that the policy is primary without right of contribution and that the liability of the insurers will not be affected by any other insurance of which any Indemnitee or Lessee have the benefit; and
  - (d) accept and insure the indemnity provisions of this Agreement to the extent of the risks covered by the relevant policy or policies.
4. All Insurances specified in Sections 1(a) through (d) above will:
  - (a) be in accordance with normal industry practice of Persons operating similar aircraft in similar circumstances;
  - (b) provide coverage on a worldwide basis subject to those territorial exclusions which are usual and customary for carriers similarly situated with Lessee in the case of War Risks and Allied Perils coverage which are advised to and approved by Lessor, such approval not to be unreasonably withheld;
  - (c) acknowledge that the insurers are aware that the Aircraft is owned by Lessor and is subject to this Agreement;

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- (d) provide that, in relation to the interests of each of the additional insureds, the Insurances will not be invalidated by any act or omission of the Insured which results in a breach of any terms, conditions or warranty of the policies;
  - (e) provide that the Insurers will waive any rights of recourse and/or subrogation against each additional insured to the same extent that Lessee has waived or has no rights of recovery against such additional insured in the Lease;
  - (f) provide that the additional insureds will have no obligation or responsibility for the payment of any premiums (but reserve the right to pay the same should any of them elect to do so) and that the Insurers will waive any right of offset or counterclaim against the respective additional insureds other than for outstanding premiums in respect of the Aircraft, any Engine or Part;
  - (g) provide that, except in the case of any provision for cancellation or automatic termination specified in the policies or endorsements thereof, the Insurance can only be canceled or materially altered in a manner adverse to the additional insureds by giving at least 30 days' written notice to Lessor and each Financing Party, except in the case of war risks (or radioactive contamination), for which seven days' written notice (or such lesser period as is or may be customarily available in respect thereof) will be given; and
  - (h) include a services of suit clause.
5. Where any provision of this Schedule 4 conflicts with the provisions of the airline finance/lease contract Endorsements AVN 67C, AVN 67C (Hull War), and AVN 99 (Tail Cover Continuing Liability) adopted by the Lloyd's Aviation Underwriter's Association (or any successor endorsements), Lessor agrees that the provisions of AVN 67C, AVN 67C (Hull War) and AVN 99 (Tail Cover Continuing Liability), respectively, or any successor endorsements will apply to the exclusion of the provisions of this Schedule 4. For purposes of each of AVN 67C, AVN 67C (Hull War), and AVN 99 (Tail Cover Continuing Liability), the "Designated Contract Party" will be Lessor.
6. All Reinsurances will:
- (a) be on the same terms as the Insurances and will include the provisions of this Schedule;
  - (b) provide that, notwithstanding any bankruptcy, insolvency, liquidation, dissolution or similar proceedings of or affecting the reinsured, the reinsurers' liability will be to make such payment 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

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (c) contain a “cut-through” clause in the following form (or such other form as is 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 party(ies) identified as Contract Part(ies) 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 Clause any outstanding premiums (applicable to the Equipment 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 Equipment 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 Part(ies).

Any payment due under this Clause shall not contravene any law, statute or decree of the Government of Lessee’s jurisdiction.”

7. For insurance coverage that includes the AVN67C endorsement (or the substantive equivalent), the Contract Parties (their addressees) and the Contracts that should be identified in the insurance/reinsurance certificates are set forth in the Notice and Acknowledgment.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

### **SCHEDULE 5 – SCHEDULE OF PRINCIPAL ECONOMIC TERMS**

Agreed Value	\$____,000,000.
Airframe Additional Rent Rate	\$____.00 per Flight Hour or Cycle flown by the Airframe, whichever is greater, as adjusted from time to time pursuant to Section 5.4(b).
APU Additional Rent Rate	\$____.00 per APU Hour, as adjusted from time to time pursuant to Section 5.4(b).
Basic Rent Amount	\$_____ per Rental Period.
Commitment Fee	\$_____.
Damage Notification Threshold	\$_____.
Engine Additional Rent Rate	\$____.00 per Flight Hour or Cycle operated by such Engine, whichever is greater, as adjusted from time to time pursuant to Section 5.4(b).
Engine LLP Additional Rent Rate	\$____.00 per Cycle operated by such Engine, as adjusted from time to time pursuant to Section 5.4(b).
Hull Insurance Deductible	\$____,000.
Landing Gear Additional Rent Rate	\$____.00 per Flight Hour flown by the Airframe, as adjusted from time to time pursuant to Section 5.4(b).
Minimum Liability Coverage	\$_____ each occurrence.

## SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT

### EXHIBIT A – CERTIFICATE OF ACCEPTANCE

#### Certificate of Acceptance

This Certificate of Acceptance is delivered on the date set forth in paragraph 1 below by [NAME OF LESSEE] (“Lessee”) to [NAME OF LESSOR] (“Lessor”) pursuant to Lease Agreement [msn], dated [date of Lease], between Lessor and Lessee (the “Agreement”). Capitalized terms used but not defined in this Certificate of Acceptance shall have the meaning given to such terms in the Agreement.

1. Details of Acceptance.

Lessee hereby confirms to Lessor that Lessee has at \_\_:\_\_.m. G.M.T. on this \_\_\_\_ day of \_\_\_\_\_ 200\_, at \_\_\_\_\_, accepted the following, in accordance with the provisions of the Agreement.

- (a) one [mfgr] Model [model] airframe, bearing manufacturer’s serial number [msn] and \_\_\_\_\_ registration mark \_\_\_\_\_;
- (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 Part 2 of Schedule 1 to the Agreement.

2. Lessee’s Confirmation. Lessee confirms to Lessor that as at the time indicated above, being the time of Delivery:

- (a) Lessee’s representations and warranties contained in Sections 2.1 and 2.2 of the Agreement are hereby repeated;
- (b) the Aircraft is insured as required by the Agreement; and
- (c) Lessee confirms that there have been affixed to the Aircraft and the Engines the fireproof notices required by the Agreement.

3. Lessor’s Confirmation. Lessor confirms to Lessee that, as at the time indicated above, being the time of Delivery, Lessor’s representations and warranties contained in Section 2.4 of the Agreement are hereby repeated.

4. Lease Information. Lessor and Lessee agree and confirm the following as of the date of this Certificate of Acceptance:

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

- (a) the date of this Certificate of Acceptance is the “Delivery Date” for purposes of the Lease Agreement; and
- (b) the Additional Rent rates as of the Delivery Date are as follows:
  - (i) Airframe Additional Rent Rate: \$\_\_\_\_\_ per calendar month;
  - (ii) Engine Additional Rent Rate: \$\_\_\_\_\_ per Flight Hour or Cycle;
  - (iii) Engine LLP Additional Rent Rate: \$\_\_\_\_\_ per Cycle;
  - (iv) Landing Gear Additional Rent Rate: \$\_\_\_\_\_ per Flight Hour or Cycle;  
and
  - (v) APU Additional Rent Rate: \$\_\_\_\_\_ per APU Hour.

\* \* \*

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

IN WITNESS WHEREOF Lessor and Lessee have executed this Certificate of Acceptance on the date set forth in Section 1 of this Certificate.

SIGNED on behalf of  
[NAME OF LESSEE]

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

SIGNED on behalf of  
[NAME OF LESSOR]

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



## SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT

### EXHIBIT B – CERTIFICATE OF DELIVERY CONDITION

#### **Certificate of Delivery Condition**

This Certificate of Delivery Condition is delivered on \_\_\_\_\_, 200\_ by [NAME OF LESSEE] (the “Lessee”) to [NAME OF LESSOR] (“Lessor”) pursuant to Lease Agreement [msn], dated [date of Lease], between Lessor and Lessee (the “Agreement”). Capitalized terms used but not defined in this Certificate of Delivery Condition shall have the meaning given to such terms in the Agreement.

1. **Aircraft Acceptance.** Lessee hereby confirms to Lessor that, pursuant to the Agreement, Lessee has accepted the [mfg] Model [model] airframe bearing manufacturer’s serial number [msn] and \_\_\_\_\_ registration mark \_\_\_\_\_, together with the two [EngMfg] Model [EngModel] aircraft engines bearing manufacturer’s serial numbers [esn1] and [esn2], all Parts installed on, attached to or appurtenant to the Airframe and Engines, as set forth on Annexes 4 and 6, and the Aircraft Documents, as set forth on Annex 5, and Lessor and Lessee agree that such Airframe, Engines and Parts are in the condition set forth as listed on the attached Annexes 1 and 3.
2. **Confirmation of Delivery Condition.** Lessee confirms to Lessor that at the time of acceptance of the Leased Property, the Leased Property complied in all respects with the condition required at Delivery under Schedule 2 of the Agreement, except for the items (if any) listed on the attached Annex 2 (the “Discrepancies”). Lessor and Lessee agree that the Discrepancies (if any) shall be corrected as set forth on the attached Annex 2.

**IN WITNESS WHEREOF** Lessor and Lessee have executed this Certificate of Delivery Condition on the date set forth at the beginning of this Certificate.

**SIGNED** on behalf of  
[NAME OF LESSEE]

**SIGNED** on behalf of  
[NAME OF LESSOR]

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

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

## SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT

### ANNEX 1

#### STATUS OF AIRCRAFT

##### AIRFRAME:

	Date	Hours	Cycles
Current:	_____	_____	_____
Last "C" Check:	_____	_____	_____
Last "D" Check:	_____	_____	_____

##### ENGINES:

Position/ Serial Number	Current:		Last Shop Visit:		
	Hours	Cycles	Date	Hours	Cycles
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____

##### APU:

Serial Number	Current:		Last Overhaul:		
	Hours	Cycles	Date	Hours	Cycles
_____	_____	_____	_____	_____	_____

##### LANDING GEAR:

Position	Serial Number	Current:		Last Overhaul:		
		Hours	Cycles	Date	Hours	Cycles
Nose:	_____	_____	_____	_____	_____	_____
Right Main:	_____	_____	_____	_____	_____	_____
Left Main:	_____	_____	_____	_____	_____	_____

Fuel on board at Delivery: \_\_\_\_\_ (circle one) pounds / kilograms (\_\_\_\_\_ gallons)

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

ANNEX 2

### **DISCREPANCIES**

<b>Description of Discrepancy</b>		<b>Agreed Corrective Action</b>	
<b>1.</b>		<b>1.</b>	
<b>2.</b>		<b>2.</b>	

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

ANNEX 3

### **ENGINE LLPs**

<b>Part Description</b>	<b>Cycles for Engine [esn1]</b>	<b>Cycles for Engine [esn2]</b>
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**SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

ANNEX 4

**LOOSE EQUIPMENT AND ACCESSORIES**

[TO BE INSERTED BY TECHNICAL REPRESENTATIVE]

**SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

ANNEX 5

**AIRCRAFT DOCUMENTS AND TECHNICAL RECORDS**

[TO BE INSERTED BY TECHNICAL REPRESENTATIVE]

**SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

ANNEX 6

**AIRCRAFT STATUS – AVIONICS INVENTORY**

[TO BE INSERTED BY TECHNICAL REPRESENTATIVE]

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

### **EXHIBIT C – FORM OF DEREGISTRATION POWER OF ATTORNEY**

#### **Irrevocable Power of Attorney**

By this Irrevocable Power of Attorney, [NAME OF LESSEE], a company incorporated under the laws of \_\_\_\_\_ and having its registered office at *[to be supplied by Lessee]* (together with its successors and assigns, the “Lessee”), hereby irrevocably nominates and appoints [Name of Lessor] having its principal place of business at [Address of Lessor], acting alone and without the authorization of any other person, to be the Lessee’s true and lawful attorney-in-fact (the “Lessor”) so that the Lessor may take any of the following actions in the name of and for Lessee with respect to the [mfr] Model [model] airframe bearing manufacturer’s serial no. [msn] and \_\_\_\_\_ registration mark \_\_\_\_\_, including the engines and any and all parts installed on or appurtenant to such airframe (collectively, the “Aircraft”), leased by the Lessor to the Lessee pursuant to Lease Agreement [msn], dated [date of Lease], between the Lessor and the Lessee (the “Lease”):

1. In the exercise of the rights of the Lessor under the Lease to recover the Aircraft from Lessee after termination of the Lease due to an Event of Default under the Lease or for termination of the Lease for any other reason, the Lessor may take all action, and may execute in the Lessee’s name and for and on behalf of the Lessee any and all documents, applications and instruments, that may at any time be required in order to (a) cause the Aircraft to be repossessed by the Lessor, (b) cause the Aircraft to be deregistered from the register of aircraft maintained by the \_\_\_\_\_ civil aviation authority (the “Aviation Authority”), (c) obtain any document (whether in the nature of an export license, certificate of airworthiness for export or otherwise) that is required for the purpose of canceling the registration of the Aircraft with the Aviation Authority and/or securing the export of the Aircraft from \_\_\_\_\_, and (d) export the Aircraft after the expiration of the Lease.

2. Pursuant to the Lease, Lessee is maintaining all risk hull and war risk insurance and reinsurance covering the Aircraft, and the Lessor has been named loss payee on such insurance and reinsurance policies in the event of a total loss or constructive total loss of the Aircraft, in the event of damage to the Aircraft in excess of \$100,000 or in the event of damage to the Aircraft while an “Event of Default” under the Lease has occurred and is continuing. The Lessor may take all action, and may execute in the Lessee’s name and for and on behalf of the Lessee any and all documents, applications and instruments, including executing on behalf of the Lessee an appropriate form of discharge and release, that may at any time be required in order for the Lessor to collect such insurance proceeds or to adjust or settle any claim under such insurance policies.

3. In the exercise of the rights listed in paragraphs 1 and 2, the Lessor may take all such other actions and sign all such other documents as the Lessor considers necessary or appropriate in its absolute discretion. In connection with such documents, or in connection with any registrations or filings to which such documents are subject, the Lessor may represent the



## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

Lessee before and submit any such document, application or instrument to any applicable authorities, government department and agencies (including without limitation, the Aviation Authority) of \_\_\_\_\_ as shall be necessary to achieve the aforementioned purposes.

4. The Lessee hereby undertakes from time to time and at all times to indemnify the Lessor against all costs, claims, expenses and liabilities lawfully and reasonably incurred by such Lessor in connection with this Irrevocable Power of Lessor and, upon request, to ratify and confirm whatever the Lessor shall lawfully and reasonably do or cause to be done by virtue of this Irrevocable Power of Attorney.

5. The Lessee hereby grants to the Lessor the full power and authority to substitute and appoint in its place one or more attorney or attorneys to exercise for it as attorney or attorneys of the Lessee any or all the powers and authorities conferred on the Lessor by this Irrevocable Power of Attorney, and to revoke any such appointment from time to time and to substitute or appoint any other or others in the place of such attorney or attorneys, all as the Lessor shall from time to time deem appropriate.

Any person, agency or company relying upon this Irrevocable Power of Attorney need not and will not make any determination or require any court judgment as to whether an "Event of Default" has occurred under the Lease or whether the Lease has been terminated. Lessee hereby waives any claims against (i) any person acting on the instructions given by Lessor or its designee pursuant to this Irrevocable Power of Attorney and (ii) any person designated by Lessor or an officer of Lessor to give instructions pursuant to this Irrevocable Power of Attorney. Lessee also agrees to indemnify and hold harmless any person, agency or company that may act in reliance upon this Irrevocable Power of Attorney and pursuant to instructions given by Lessor or its designee.

This Power of Attorney is given as security by the Lessee for the performance of its obligations under the Lease. This Power of Attorney is irrevocable and coupled with an interest. Lessee hereby represents, warrants and covenants that this Irrevocable Power of Attorney is irrevocably granted to the Lessor, and constitutes the legal, valid and irrevocably binding obligation of the Lessee, enforceable against the Lessee in accordance with its terms.

This Power of Attorney shall be governed by the laws of \_\_\_\_\_.

IN WITNESS WHEREOF, [NAME OF LESSEE] has executed and delivered this Irrevocable Power of Attorney this \_\_\_\_ day of \_\_\_\_\_ 200\_.

[NAME OF LESSEE]

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

Name:

Title:

**SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

**EXHIBIT D – NOTICE AND ACKNOWLEDGMENT**

*[to be supplied]*

## SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT

### EXHIBIT E – MONTHLY UTILIZATION AND STATUS REPORT

MONTH ENDING \_\_\_\_\_, 20\_\_

[NAME OF LESSOR]

[Address]

ATTN:

FAX:

E-mail:

A/C TYPE		A/C SERIAL #		REGIS. #		
				CALENDAR	HOURS (1)	CYCLES
A/C TOTAL HOURS & CYCLES SINCE NEW AS OF LAST REPORT				-----		
A/C TOTAL HOURS & CYCLES SINCE NEW (CURRENT REPORT)				-----		
AIRCRAFT HOURS & CYCLES FLOWN DURING MONTH				-----		
DATE/HOURS/CYCLES @ ACCOMP OF LAST C CHECK OR EQUIV.						
INTERVALS FOR C CHECK OR EQUIVALENT						
DATE/HOURS/CYCLES @ ACCOMP OF LAST D CHECK OR EQUIV.						
INTERVALS FOR D CHECK OR EQUIVALENT						

ENGINE TYPE		ENG SERIAL #		THRUST RATING (Lbs)		
ORIGINAL POSITION						
CURRENT LOCATION (A/C & Position, In Shop, Spare, etc) See Note (2)						
					HOURS (1)	CYCLES
ENG TOTAL HOURS & CYCLES SINCE NEW AS OF LAST REPORT						
ENG TOTAL HOURS & CYCLES SINCE NEW (CURRENT REPORT)						
TOTAL HOURS & CYCLES FLOWN DURING MONTH						
ENGINE LIMITER(S) (DESCRIPTION - ie C1 Disk, T1 Disk, etc.)						
ENGINE LIMITER HOURS/CYCLES REMAINING						
ENGINE HOURS & CYCLES SINCE LAST SHOP VISIT						

ENGINE TYPE		ENG SERIAL #		THRUST RATING (Lbs)		
ORIGINAL POSITION						
CURRENT LOCATION (A/C & Position, In Shop, Spare, etc) See Note (2)						
					HOURS (1)	CYCLES
ENG TOTAL HOURS & CYCLES SINCE NEW AS OF LAST REPORT						
ENG TOTAL HOURS & CYCLES SINCE NEW (CURRENT REPORT)						
TOTAL HOURS & CYCLES FLOWN DURING MONTH						
ENGINE LIMITER(S) (DESCRIPTION - ie C1 Disk, T1 Disk, etc.)						
ENGINE LIMITER HOURS/CYCLES REMAINING						
ENGINE HOURS & CYCLES SINCE LAST SHOP VISIT						

LANDING GEAR		CALENDAR	HOURS	CYCLES
NOSE GEAR SERIAL #	TOTAL HOURS & CYCLES	-----		
	TSO (Hrs/Cyc/Months as App)			
	TIME SINCE INSTLLN (Hrs/Cyc/Months as App)			
-----	OVERHAUL INTERVAL (Hrs/Cyc/Months as App)			

## SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT

LH MAIN GEAR SERIAL #	TOTAL HOURS & CYCLES	-----		
	TSO (Hrs/Cyc/Months as App)			
	TIME SINCE INSTLLN (Hrs/Cyc/Months as App)			
-----	OVERHAUL INTERVAL (Hrs/Cyc/Months as App)			
RH MAIN GEAR SERIAL #	TOTAL HOURS & CYCLES	-----		
	TSO (Hrs/Cyc/Months as App)			
	TIME SINCE INSTLLN (Hrs/Cyc/Months as App)			
-----	OVERHAUL INTERVAL (Hrs/Cyc/Months as App)			

APU MFR		APU MODEL		APU S/N	
CURRENT LOCATION (On A/C #, In Shop, etc)					
TOTAL HOURS & CYCLES SINCE NEW (If available)					
HOURS & CYCLES FLOWN DURING MONTH					
HOURS & CYCLES SINCE LAST SHOP VISIT					

**Notes:**

- (1) List Hours in Hours + Minutes format for this portion of the report where applicable.
- (2) Record Engine data for only the engines owned by the Lessor whether or not installed on this aircraft. If collateral engine goes into the shop, provide TT, TC and date of removal.  
Also provide engine disk sheets & last workscope whenever an engine comes out of a shop visit.
- (3) Please advise any routine checks , Airworthiness Directives and Service Bulletins performed during the month, as well as details of any repairs accomplished which were beyond SRM limits.
- (4) Also advise any Airframe Maintenance Checks, Engine scheduled shop visits or landing gear or APU overhauls or replacements scheduled to be performed within the next 12 months.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

### **EXHIBIT F – FORM OF LETTER OF CREDIT**

[LETTERHEAD OF CONFIRMING BANK]

#### **IRREVOCABLE LETTER OF CREDIT**

Current Date: \_\_\_\_\_, 20\_\_

Irrevocable Letter of Credit No. \_\_\_\_\_

Re: Lease Agreement [msn], dated [date of Lease],  
between [Name of Lessor] and [Name of Lessee]  
relating to [model] bearing msn [msn]

Expiration Date: \_\_\_\_\_, 20\_\_

[Name of Lessor]  
[Address of Lessor]

Ladies and Gentlemen:

We hereby issue in your favor, at the request of and for the account of [Name of Lessee] (“Lessee”), this Irrevocable Letter of Credit No. \_\_\_\_\_ in the amount of *[insert amount]* United States Dollars (US\$ \_\_\_\_\_) (the “Stated Amount”) available upon presentation in accordance with this Letter of Credit of (i) a Sight Draft drawn on us dated on or before the date of such presentation and in the form attached as Annex 1 and (ii) a Drawing Certificate dated the date of such draft in the form attached as Annex 2 and signed by an individual being or purporting to be your authorized representative.

Such presentation must be made on a Banking Day to our offices at *[insert address of Drawing Location]*, Facsimile Number: \_\_\_\_\_, confirming Telephone Number: \_\_\_\_\_ on or before the Expiration Date set forth above or, if such date is not a Banking Day, then on or before the following Banking Day. “Banking Day” means a day other than a Saturday, a Sunday or a day on which banks are required or authorized to be closed in *[City/State of Drawing Location]*. Any such presentation may be made by means of electronic facsimile transmission and we shall be entitled to rely thereon as if such draft and certificate were presented in person, provided such draft and certificate are in conformity with the requirements for the same as set

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

forth herein, but for the requirement of an original signature. In addition, any draft and certificate hereunder may be presented by U.S. Mail, express courier (e.g., Federal Express or DHL) or in person at the address set forth above.

A Sight Draft presented hereunder may be in an amount of up to the Stated Amount. More than one Sight Draft may be presented hereunder, provided the aggregate amount of such drafts shall not exceed the Stated Amount.

We hereby agree that, to the extent that within five (5) calendar days of any drawing by you hereunder, such drawing is reimbursed in full to us by, or on behalf of, Lessee, including any banking charges, such drawing shall not be considered as a drawing hereunder for the purposes of, and only for such purposes of, calculating the aggregate maximum amount of all drawings made hereunder.

We hereby agree that each draft presented hereunder in compliance with the terms hereof will be duly honored by the amount of such draft in immediately available funds in United States dollars to the account specified on the sight draft:

- (a) not later than 3:00 p.m., *[City of Drawing Location]* time, on the day such draft is presented to us as aforesaid, if such presentation is made to us at or before 12:00 noon, *[City of Drawing Location]* time, or
- (b) not later than 3:00 p.m., *[City of Drawing Location]* time, on the Business Day following the day such draft is presented to us as aforesaid, if such presentation is made to us after 12:00 noon, *[City of Drawing Location]* time.

Upon the earlier of (a) the Expiration Date set forth above or (b) irrevocable payment of the entire Stated Amount (in one or more drawings), this Letter of Credit shall automatically terminate.

This Letter of Credit shall be deemed automatically extended without amendment for a period of one year from the Expiration Date and from each anniversary of the Expiration Date unless, 30 days prior to such date, we shall notify you in writing by certified mail, courier or hand delivery that we elect not to consider this Letter of Credit renewed for any such additional period. In the event that we notify you that we elect not to renew this Letter of Credit, a drawing can be made by you by presenting a sight draft and a certificate in the forms attached hereto.

Except as otherwise provided herein, this Letter of Credit shall be governed by and construed in accordance with the Uniform Customs and Practice for Documentary Credits (2007 Revision), ICC Publication No. 600 (the "UCP"). Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as described in said Article 36, we agree to effect payment if a drawing is made against this Letter of Credit within 30 days after the resumption of business.

## **SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

Upon request, but no more than once in any 30 day period, we will confirm to you in writing that this Letter of Credit is in full force and effect and is enforceable against us in accordance with its terms.

This Letter of Credit sets forth in full the terms of our undertaking and shall not in any way be modified, amended or amplified by reference to any documents, instruments or agreements referred to herein, or in which this Letter of Credit is referred to or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any such documents, instruments and agreements.

This Letter of Credit may be transferred by you to any person.

Communications with respect to this Letter of Credit shall be in writing, addressed to *[Name of Issuing Bank]* at *[address of Issuing Bank]*. Attention: *[\_\_\_\_\_]*, specifically referring to the number of this Letter of Credit, and if directed to you, shall be addressed to you at *[insert address of beneficiary]*, Attention: *\_\_\_\_\_*.

All banking charges in connection with this Letter of Credit and any drawings made hereunder shall be for the account of Lessee. All payments made to you pursuant to this Letter of Credit shall be made free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without set off of counterclaim for any reasons whatsoever.

We hereby confirm and engage with drawers, endorsers and bonafide holders of Sight Drafts drawn and in compliance with the terms of this Letter of Credit that the same shall be duly honored upon presentation and delivery of documents as specified at this office, if negotiated on/or before the expiration date of this letter of Credit.

*[NAME OF ISSUING BANK]*

---

*[Name]*

*[Title]*

**SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

Annex 1 to Irrevocable Letter of Credit No. \_\_\_\_\_

**SIGHT DRAFT**

Irrevocable Letter of Credit No. \_\_\_\_\_

Date of Draft: \_\_\_\_\_

To the Order of [Name of Lessor]

Pay \_\_\_\_\_ (\$ \_\_\_\_\_) US DOLLARS

At SIGHT by wire transfer of such amount to the account of *[Name of Lessor]* at:

*[Lessor's Bank]*

ABA Number: [ \_\_\_\_\_ ]

Account Number: [ \_\_\_\_\_ ]

DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_.

TO: *[Name of Issuing Bank]*  
*[Address of Issuing Bank]*

[NAME OF LESSOR]

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

Name:

Title:

[Endorse on back]



## SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT

Annex 2 to Irrevocable Letter of Credit No. \_\_\_\_\_

### DRAWING CERTIFICATE

Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, a duly authorized representative of [Name of Lessor] ("Beneficiary"), hereby certifies to *[NAME OF ISSUING BANK]* (the "Bank") with reference to Irrevocable Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit"), issued by the Bank in favor of Beneficiary, as follows:

1. Beneficiary is presenting a sight draft herewith to draw funds under the Letter of Credit in the amount of US \$[\_\_\_\_\_].
2. Demand for payment under the Letter of Credit is being made prior to the expiration thereof.
3. Either (a) an Event of Default has occurred and is continuing under and as defined in Lease Agreement [msn], dated [date of Lease], between Beneficiary and [Name of Lessee] ("Lessee");  
(b) the Letter of Credit expires within 30 days of the date hereof and Lessee has not as of the date hereof provided Beneficiary with evidence of a renewal or extension of the Letter of Credit or with a substitute Letter of Credit, in each case, in form and substance satisfactory to Beneficiary; or  
(c) the bank issuing or confirming the Letter of Credit no longer has at least the Letter of Credit Bank Minimum Rating as defined in the Lease, and Lessee did not, within fourteen days of demand therefor by Lessor, provide Lessor with a replacement letter of credit meeting the requirements of the Lease.

IN WITNESS WHEREOF, Beneficiary has caused this Drawing Certificate and the accompanying Sight Draft to be executed as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[NAME OF LESSOR]

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

## SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT

### EXHIBIT G – FORM OF RETURN CERTIFICATE

#### Return Certificate

This Return Certificate ("Return Certificate") is delivered on the date set forth in paragraph 1 below by [Name of Lessor] ("Lessor") to [Name of Lessee] ("Lessee") pursuant to Lease Agreement [msn], dated [date of Lease], between Lessor and Lessee (the "Lease Agreement"). Capitalized terms used but not defined in this Return Certificate shall have the meanings given to such terms in the Lease Agreement.

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

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

and thereupon the leasing of such property under the Lease Agreement was terminated.

Lessor and Lessee hereby confirm that on the date and time hereof (i) the Aircraft was duly accepted by Lessor subject to correction of the discrepancies noted in Attachment 2 hereto and (ii) Lessee confirms its obligations under the Lease 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.

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

[NAME OF LESSEE]  
(Lessee)

[NAME OF LESSOR]  
(Lessor)

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

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

## SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT

### ATTACHMENT 1

#### STATUS OF AIRCRAFT

##### AIRFRAME:

	Date	Hours	Cycles
Current:	_____	_____	_____
Last "C" Check:	_____	_____	_____
Last "D" Check:	_____	_____	_____

##### ENGINES:

Position/ Serial Number	Current:		Last Shop Visit:		
	Hours	Cycles	Date	Hours	Cycles
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____

##### APU:

Serial Number	Current:		Last Overhaul:		
	Hours	Cycles	Date	Hours	Cycles
_____	_____	_____	_____	_____	_____

##### LANDING GEAR:

Position	Serial Number	Current:		Last Overhaul:		
		Hours	Cycles	Date	Hours	Cycles
Nose:	_____	_____	_____	_____	_____	_____
Right Main:	_____	_____	_____	_____	_____	_____
Left Main:	_____	_____	_____	_____	_____	_____

Fuel on board at Delivery: \_\_\_\_\_ (circle one) pounds / kilograms (\_\_\_\_\_ gallons)

**SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

**ATTACHMENT 2**

**DISCREPANCIES**

<b>Description of Discrepancy</b>		<b>Agreed Corrective Action</b>	
<b>1.</b>		<b>1.</b>	
<b>2.</b>		<b>2.</b>	

**SUPPLEMENT: SAMPLE AIRCRAFT LEASE AGREEMENT**

**ATTACHMENT 3**

**LESSOR REQUESTED MAINTENANCE**