

KESTREL BIDCO INC.

and

WESTJET AIRLINES LTD.

ARRANGEMENT AGREEMENT

May 12, 2019

TABLE OF CONTENTS

	PAGE
ARTICLE 1 INTERPRETATION.....	1
Section 1.1 Defined Terms	1
Section 1.2 Certain Rules of Interpretation	25
ARTICLE 2 THE ARRANGEMENT.....	27
Section 2.1 Arrangement.....	27
Section 2.2 Interim Order	27
Section 2.3 The Company Meeting.....	28
Section 2.4 The Company Circular	30
Section 2.5 Final Order	31
Section 2.6 Court Proceedings	31
Section 2.7 Incentive Plan Matters.....	32
Section 2.8 Articles of Arrangement and Effective Date	32
Section 2.9 Payment of Consideration	33
Section 2.10 Withholdings	33
Section 2.11 Voting Agreements.....	34
Section 2.12 List of Company Securityholders.....	34
ARTICLE 3 REPRESENTATIONS AND WARRANTIES.....	34
Section 3.1 Representations and Warranties of the Company	34
Section 3.2 Representations and Warranties of the Purchaser	35
ARTICLE 4 COVENANTS.....	35
Section 4.1 Conduct of Business of the Company	35
Section 4.2 Covenants of the Company Relating to the Arrangement.....	41
Section 4.3 Covenants of the Purchaser Relating to the Arrangement	44
Section 4.4 Regulatory Approvals and Key Regulatory Approvals.....	48
Section 4.5 Access to Information; Confidentiality	50
Section 4.6 Financing Assistance.....	51
Section 4.7 Public Communications	55
Section 4.8 Insurance and Indemnification	56
Section 4.9 Pre-Acquisition Reorganization	58
Section 4.10 Tax Matters.....	59
Section 4.11 Employee Matters.....	60
Section 4.12 Stock Exchange Delisting	61
Section 4.13 Exemptive Relief.....	61
ARTICLE 5 ADDITIONAL COVENANTS REGARDING NON-SOLICITATION	61
Section 5.1 Non-Solicitation	61
Section 5.2 Notification of Acquisition Proposals	63
Section 5.3 Responding to an Acquisition Proposal	64
Section 5.4 Right to Match.....	64

ARTICLE 6 CONDITIONS	67
Section 6.1 Mutual Conditions Precedent	67
Section 6.2 Additional Conditions Precedent to the Obligations of the Purchaser	67
Section 6.3 Additional Conditions Precedent to the Obligations of the Company	69
Section 6.4 Satisfaction of Conditions	69
ARTICLE 7 TERM AND TERMINATION	69
Section 7.1 Term	69
Section 7.2 Termination	70
Section 7.3 Notice and Cure Provisions	72
Section 7.4 Effect of Termination/Survival	73
ARTICLE 8 GENERAL PROVISIONS.....	74
Section 8.1 Amendments.....	74
Section 8.2 Termination Fee and Expenses.....	74
Section 8.3 Notices.....	79
Section 8.4 Time of the Essence	80
Section 8.5 Further Assurances	80
Section 8.6 Remedies	81
Section 8.7 Third Party Beneficiaries.....	82
Section 8.8 Waiver	83
Section 8.9 Entire Agreement	83
Section 8.10 Successors and Assigns	84
Section 8.11 Severability.....	84
Section 8.12 Governing Law	84
Section 8.13 Rules of Construction.....	85
Section 8.14 Language	85
Section 8.15 Counterparts	85
Section 8.16 Non-Recourse.....	86

SCHEDULES

Schedule A	Plan of Arrangement
Schedule B	Arrangement Resolution
Schedule C	Other Merger Control Approvals
Schedule D	Representations and Warranties of the Company
Schedule E	Representations and Warranties of the Purchaser
Schedule F	Form of Voting Agreement

ARRANGEMENT AGREEMENT

THIS AGREEMENT is made as of May 12, 2019.

BETWEEN:

KESTREL BIDCO INC., a corporation existing under the laws of the Province of Alberta

(“**Purchaser**”)

- and -

WESTJET AIRLINES LTD., a corporation existing under the laws of the Province of Alberta

(the “**Company**”)

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

Section 1.1 Defined Terms

As used in this Agreement, the following terms have the following meanings, and grammatical variations thereof shall have corresponding meanings:

“**ABCA**” means the *Business Corporations Act* (Alberta).

“**Acquisition Proposal**” means, other than the transactions contemplated by this Agreement and other than any transaction involving only the Company and/or one or more of its Subsidiaries, any offer, proposal, request or inquiry (written or oral) from any Person or group of Persons “acting jointly or in concert” (within the meaning of National Instrument 62-104 – *Take-Over Bids and Issuer Bids*) other than the Purchaser or one or more of its Affiliates, relating to: (a) any direct or indirect sale, disposition, alliance or joint venture (other than the Delta JV) (or any lease, long-term supply agreement or other arrangement having the same economic effect as a sale) in a single transaction or a series of related transactions, of (i) 20% or more of the voting or equity securities of the Company (including securities convertible into or exercisable or exchangeable for voting or equity securities), or (ii) assets (including shares of Subsidiaries of the Company) representing 20% or more of the consolidated assets, or contributing 20% or more of the consolidated revenue, of the Company and its Subsidiaries (based on the most recent annual consolidated financial statements of the Company filed as part of the Company Filings); (b) any direct or indirect take-over bid, tender offer, exchange offer, treasury issuance or other transaction, in a single transaction or a series of related transactions, that, if consummated, would result in such Person or group of Persons beneficially owning, or exercising control or direction over, 20% or more of the voting or equity securities (including securities convertible into or

exercisable or exchangeable for voting or equity securities) of the Company or of any of its Subsidiaries; (c) any arrangement, merger, amalgamation, consolidation, security exchange, business combination, reorganization, recapitalization, liquidation, dissolution, winding up, exclusive license or similar transaction, in a single transaction or a series of related transactions, involving the Company or any of its Subsidiaries whose assets or revenues constitute 20% or more of the consolidated revenues or constitute 20% or more of the consolidated assets of the Company and its Subsidiaries (based on the most recent annual consolidated financial statements of the Company filed as part of the Company Filings); or (d) any other similar transaction or series of transactions involving the Company or any of its Subsidiaries.

“Advance Ruling Certificate” means an advance ruling certificate issued by the Commissioner pursuant to Section 102 of the *Competition Act* in respect of the transactions contemplated by this Agreement.

“Affiliate” has the meaning given to it in National Instrument 45-106 – *Prospectus Exemptions*, provided that in no case shall “Affiliate” of the Purchaser include (a) the Sponsors or any of their respective affiliates (other than the Purchaser and any Person that would be an Affiliate of the Purchaser if the Sponsors were not Affiliates of the Purchaser) or operating or portfolio companies, investment funds, pooled investment vehicles or investee in which a Sponsor or any of its affiliates may directly or indirectly invest, or (b) any third party acting on a Sponsor’s or any of its affiliates’ behalf in connection with any investment (i) made on its behalf, including third-party investment managers with discretionary authority, or (ii) made by investment funds or other pooled investment vehicles in which they have directly or indirectly invested and that are managed by third parties.

“Agreement” means this arrangement agreement, including all schedules annexed hereto, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“Aircraft” means an airframe and the engines and Aircraft Parts installed thereon and all attachments, accessories, instruments, tools and parts incorporated or contained in or attached or appurtenant to the aircraft which are and shall be deemed to form part of the Aircraft.

“Aircraft Parts” means all appliances, components, parts, instruments, auxiliary power units, navigational and communications equipment, appurtenances, accessories, furnishings and other goods and equipment of whatever nature which may from time to time be incorporated or installed in or attached to an airframe or an engine.

“Arrangement” means the proposed arrangement of the Company under Section 193 of the ABCA on the terms and subject to the conditions set out in the Plan of Arrangement, subject to any amendments or variations to the Plan of Arrangement made in accordance with the terms of this Agreement or made at the direction of the Court in the Final Order with the prior written consent of the Company and the Purchaser, each acting reasonably.

“Arrangement Resolution” means the special resolution approving the Plan of Arrangement to be considered at the Company Meeting by the Shareholders and Company Optionholders entitled to vote thereon, substantially on the terms and in the form set out in Schedule B hereto.

“**Articles of Arrangement**” means the articles of arrangement of the Company in respect of the Arrangement required under subsection 193(10)(b) of the ABCA to be sent to the Registrar after the Final Order is made, which shall include the Plan of Arrangement and otherwise be in form and content satisfactory to the Company and the Purchaser, each acting reasonably.

“**Authorization**” means, with respect to any Person, any order, permit, certificate, accreditation, non-objection (including a lapse, without objection, of a prescribed time period under applicable Laws), approval, consent, waiver, registration, licence or similar authorization of any Governmental Entity having jurisdiction over the Person.

“**Aviation Authorities**” means any Governmental Entity in respect of the regulation of commercial aviation, air navigation or the registration, airworthiness or operation of civil aircraft and having jurisdiction over the Company and its Subsidiaries including, Transport Canada Civil Aviation, the CTA, the Federal Aviation Authority in the United States and the United States Department of Transportation.

“**Board**” means the board of directors of the Company, as constituted from time to time.

“**Board Recommendation**” has the meaning given to it in Section 2.4(2).

“**BofA Merrill Lynch**” means Merrill Lynch, Pierce, Fenner & Smith Incorporated.

“**BofA Merrill Lynch Opinion**” means the opinion of BofA Merrill Lynch to the Board to the effect that, as of the date of such opinion and based on and subject to the assumptions, limitations, qualifications and other matters set forth therein, the Consideration to be received by the holders of Shares (other than, to the extent applicable, the Purchaser, Onex, any Rollover Securityholder or other direct or indirect investor in the Purchaser and their respective affiliates) under the Arrangement is fair, from a financial point of view, to such holders.

“**Breaching Party**” has the meaning given to it in Section 7.3(3).

“**Business Day**” means any day of the year, other than a Saturday, a Sunday or a day on which major banks are closed for business in Calgary, Alberta or Toronto, Ontario or, for purposes of the definition of Marketing Period and the date on which the Effective Date occurs, New York, New York.

“**Business Systems**” means all computer hardware and operating systems, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines, peripheral devices, and all other information technology equipment and elements, Company Software, database engines and processed data, technology infrastructure and other computer systems and all associated documentation.

“**Canadian Status Determination**” means a determination by the CTA that each Subsidiary of the Company that is a CTA Licensee will continue to be a “Canadian” within the meaning of subsection 55(1) of the CT Act upon and following the closing of the transactions contemplated by this Agreement.

“**CASL**” means *An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (Canada).

“**Change in Recommendation**” has the meaning given to it in Section 7.2(1)(iv)(b).

“**CIBC Opinion**” means the opinion of CIBC World Markets Inc. to the effect that, as of the date of the opinion, the Consideration to be received by the Shareholders under the Arrangement is fair, from a financial point of view, to the Shareholders.

“**Collective Agreement**” means any collective bargaining agreement, letter of understanding, binding letter of intent or other written Contract with any trade union, association which may qualify as a trade union, council of trade unions, employee association, employee bargaining agent or affiliated bargaining agent, which covers or would cover any Company Employee.

“**Commissioner**” means the Commissioner of Competition appointed pursuant to Section 7 of the *Competition Act* and includes any person designated by the Commissioner to act on his behalf.

“**Commitment Letters**” means, collectively, the Debt Letters and the Sponsor Commitment Letter.

“**Common Voting Shares**” means the common voting shares in the capital of the Company.

“**Company**” has the meaning given to it in the preamble hereto.

“**Company Aircraft**” has the meaning given to it in Paragraph (42)(a) of Schedule D hereto.

“**Company Aircraft Finance Contract**” means a Contract (including mortgages and deferred or conditional sales agreements) pursuant to which the Company and/or any Subsidiary has financed, or has commitments to finance, any Aircraft or Aircraft engines.

“**Company Aircraft Purchase Contract**” means a Contract pursuant to which the Company or any Subsidiary has a binding obligation or option to purchase or lease one or more (a) Aircraft, (b) Aircraft engines, (c) flight simulators and/or (d) Aircraft Parts with a value in excess of \$10,000,000 in the aggregate.

“**Company Airport**” means any airport into or out of which any Operating Subsidiary conducts its operations.

“**Company Assets**” means all of the assets (tangible and intangible), properties (real or personal), permits, rights, interests, Contracts, registrations, licences, waivers or consents (whether contractual or otherwise) owned, leased or otherwise used or held for use by the Company or any of its Subsidiaries, including Company Leased Properties, Company Aircraft, Aircraft engines, Aircraft Parts, machinery, equipment, fixtures, furniture, furnishings, office equipment, Company Intellectual Property, Business Systems, computer hardware, Company

Data, Contracts, Authorizations, supplies, materials, vehicles, material handling equipment, implements, parts, tools, jigs, dies, moulds, patterns, tooling and spare parts and other assets.

“**Company Circular**” means the notice of the Company Meeting and accompanying management information circular, including all schedules, appendices and exhibits to, and information incorporated by reference in, such management information circular, to be sent to each Shareholder and other Persons as required by the Interim Order and Law in connection with the Company Meeting, as amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

“**Company Constatng Documents**” means the articles and by-laws of the Company, as they may be amended from time to time.

“**Company Data**” means any and all information, including any Personal Information, collected or otherwise controlled by the Company or any of its Subsidiaries about the Company or its Subsidiaries’ passengers, customers, employees, independent contractors, temporary workers or any other person.

“**Company Disclosure Letter**” means the disclosure letter dated the date of this Agreement and delivered by the Company to the Purchaser with this Agreement.

“**Company Employees**” means any current director, officer or employee of the Company or any of its Subsidiaries.

“**Company Expense Fee**” has the meaning given to it in Section 8.2(13).

“**Company Filings**” means all documents publicly filed by or on behalf of the Company on SEDAR since January 1, 2017.

“**Company Intellectual Property**” has the meaning given to it in Paragraph (26)(a) of Schedule D hereto.

“**Company Leased Properties**” means the real or immovable property leased, subleased, licensed or otherwise occupied by the Company or its Subsidiaries.

“**Company Leases**” means, collectively, the leases, subleases, licenses, occupancy agreements, or any other agreements pursuant to which the Company or its Subsidiaries are vested with rights to use or occupy the Company Leased Properties, as amended, modified or renewed prior to the date hereof.

“**Company Meeting**” means the special meeting of Shareholders and Company Optionholders, including any adjournment or postponement of such special meeting in accordance with the terms of this Agreement, to be called and held in accordance with the Interim Order to consider the Arrangement Resolution.

“**Company Optionholder**” means a holder of Company Options.

“**Company Options**” means the outstanding options to purchase Shares issued pursuant to the Stock Option Plan.

“**Company Privacy Policy**” means all external or internal policies (including website and application policies) relating to the processing of Personal Information (including the collection, use, disclosure, sale, lease or transfer (including cross-border transfer) of Personal Information) by the Company and/or any of its Subsidiaries, including any policy relating to the privacy of Personal Information of Service Providers, passengers, other customers and prospective customers and any user of any website or service operated by or on behalf of the Company and/or any of its Subsidiaries.

“**Company Related Parties**” means, collectively, any Affiliate of the Company and any of the Company’s or its Affiliates’ respective former, current or future general or limited partners, financing sources, managers, members, directors, officers, employees, controlling persons, agents or other Representatives.

“**Company Securityholders**” means, collectively, the Shareholders, the Company Optionholders, the holders of RSUs, the holders of PSUs and the holders of DSUs.

“**Company Slots**” has the meaning given to it in Paragraph (43)(a) of Schedule D hereto.

“**Company Software**” means all material software and databases (including source code, object code, and all related documentation) that is owned by the Company and/or any of its Subsidiaries, and which is licensed, used and/or held for use in the operation of the business of the Company or any of its Subsidiaries (including the provision of products and services to passengers and other customers).

“**Competition Act**” means the *Competition Act* (Canada) and includes the regulations promulgated thereunder.

“**Competition Act Clearance**” means that, in connection with the transactions contemplated by this Agreement, either: (a) both (i) the applicable waiting periods under subsection 123(1) of the Competition Act shall have expired or have been waived in accordance with subsection 123(2) of the Competition Act or the obligation to provide a pre-merger notification in accordance with Part IX of the Competition Act shall have been waived in accordance with paragraph 113(c) of the Competition Act, and (ii) the Commissioner shall have issued a No Action Letter; or (b) the Commissioner shall have issued an Advance Ruling Certificate under Section 102 of the Competition Act.

“**Compliance Requirements**” means, with respect to the Financing Information, that: (a) such Financing Information does not contain any untrue statement of a material fact regarding the Company and its Subsidiaries or omit to state any material fact regarding the Company and its Subsidiaries necessary to make such information not materially misleading under the circumstances; (b) the Company’s auditors have not withdrawn, or advised the Company in writing that they intend to withdraw, any audit opinion on any of the audited financial statements contained in such Financing Information; and (c) the Company has not determined to restate any financial statements included in such Financing Information or announced its intention to make any such restatement (it being understood such information will be compliant in respect of this

clause (c) if and when such restatement is completed or the Company has determined no such restatement is required).

“**Confidentiality Agreement**” means the amended and restated confidentiality agreement dated March 21, 2019 between the Company and Onex Partners Advisor LP, as amended.

“**Consideration**” means \$31.00 in cash per Share.

“**Consortia**” means those Canadian and United States fuel consortia and de-icing consortia among the Company and/or its Subsidiaries and certain other airlines, as may be in force and effect from time to time.

“**Contract**” means any written or oral agreement, commitment, engagement, contract, franchise, licence, lease (including the Company Leases), obligation, note, bond, mortgage, indenture, undertaking or joint venture to which the Company, any of its Subsidiaries is a party or by which the Company, or any of its Subsidiaries is bound or affected or to which any of their respective properties (including the Company Leased Properties) or assets is subject.

“**Corrupt Practices Legislation**” has the meaning given to it in Paragraph (38) of Schedule D hereto.

“**Court**” means the Court of Queen’s Bench of Alberta, or other court as applicable.

“**CT Act**” means the *Canada Transportation Act* (Canada), and includes the regulations promulgated thereunder.

“**CT Act Approval**” means that, in connection with the transactions contemplated by this Agreement, either (a) the Minister shall have given notice under subsection 53.1(4) of the CT Act, or (b) the Governor in Council shall have approved such transactions under subsection 53.2(7) of the CT Act.

“**CTA**” means the Canadian Transportation Agency, as continued by the CT Act.

“**CTA Licensee**” means a “licensee” as defined in section 55(1) of the CTA.

“**Data Room**” means the data rooms established by the Company to provide documents to the Purchaser and/or the Purchaser’s Representatives in connection with the Arrangement up until immediately prior to the execution of this Agreement, the indexes of documents of which are referenced in the Company Disclosure Letter.

“**Debt Commitment Letter**” means the commitment letter between the Purchaser and the Debt Financing Sources dated the date hereof, including the summaries of terms attached thereto, as amended, supplemented and/or replaced in accordance with the terms hereof.

“**Debt Fee Letter**” means the fee letter between the Purchaser and the Debt Financing Sources dated the date hereof, as amended, supplemented and/or replaced in accordance with the terms hereof.

“Debt Financing” means the financing contemplated by the Debt Letters pursuant to which the Debt Financing Sources have agreed to lend, subject to the terms and conditions of the Debt Letters, the amounts set forth in the Debt Commitment Letter, which will be used: (a) by the Purchaser for purposes of financing, directly or indirectly, the applicable portion of the aggregate Consideration for the Shares and (b) by the Purchaser and/or at the Purchaser’s option by the Company and/or its Subsidiaries for the purposes of financing, directly or indirectly, any other amounts payable to Company Securityholders in connection with the Arrangement in accordance with the terms of this Agreement; and by the Purchaser and/or the Company and/or its Subsidiaries for (among other things) the refinancing of Indebtedness of the Company and/or its Subsidiaries, and any replacement, amended, modified or alternative debt financing provided by the Debt Financing Sources upon and in accordance with the terms and conditions of this Agreement and the Debt Letters.

“Debt Financing Sources” means (a) the agents, arrangers, lenders and other Persons that have committed to provide or arrange, or otherwise entered into agreements in connection with all or any part of the Debt Financing or any other financings in connection with the transactions contemplated by this Agreement, including the parties to the Debt Commitment Letter (other than the Purchaser, the Sponsors or any of their respective Affiliates) and any related joinder agreements, credit agreements or other definitive agreements relating thereto and their respective successors and permitted assigns, upon and in accordance with the terms and conditions of this Agreement and the Debt Letters, and (b) any Affiliate of the foregoing, and their (and their respective Affiliates’) respective Representatives and their respective successors and permitted assigns, upon and in accordance with the terms and conditions of this Agreement and the Debt Letters.

“Debt Letters” means, collectively, the Debt Commitment Letter and the Debt Fee Letter.

“Delta JV” means the joint venture entered into between the Company and Delta Air Lines, Inc. pursuant to the terms of the joint venture agreement dated July 18, 2018 as it exists on the date hereof.

“Depositary” means such Person as the Company may appoint to act as depositary for the Shares in relation to the Arrangement, with the approval of the Purchaser, acting reasonably.

“Dissent Rights” means the rights of dissent exercisable by registered Shareholders in respect of the Arrangement as described in the Plan of Arrangement.

“DSU Plan” means the deferred share unit plan of the Company dated as of January 1, 2007.

“DSUs” means the outstanding deferred share units of the Company granted pursuant to the DSU Plan.

“EDC Credit Facility” means the guaranteed loan agreement dated as of March 11, 2013 among WestJet Encore Ltd., as borrower, Export Development Canada, as lender and the Company as guarantor.

“Effective Date” means the date upon which the Arrangement becomes effective.

“**Effective Time**” means the time on the Effective Date that the Arrangement becomes effective as set out in the Plan of Arrangement.

“**Employee Plans**” means all health, welfare, supplemental unemployment benefit, fringe benefit, bonus, profit sharing, savings, insurance, incentive (including the Incentive Plans), incentive compensation, deferred compensation, death benefits, termination, retention, change in control, severance, security purchase, security compensation, disability, pension or supplemental retirement plans and other employee, independent contractor, consultant or director compensation or benefit plans, policies, trusts, funds, agreements or arrangements for the benefit of Company Employees, or any other Person, whether written or unwritten, which are maintained by or binding upon the Company or any of its Subsidiaries or in respect of which the Company or any of its Subsidiaries has any actual or potential liability, but does not include (a) individual offer letters or Contracts with Company Employees (including amendments thereto) or Collective Agreements, and (b) any statutory plans administered by a Governmental Entity, including the Canada Pension Plan, Quebec Pension Plan and plans administered pursuant to applicable federal, state or provincial health, worker’s compensation or employment insurance legislation.

“**Environmental Laws**” means all Laws relating to pollution, contaminants, the protection or quality of the natural environment, the release or threatened release of any Hazardous Substances to the environment, the storage, handling, use, transportation of Hazardous Substances and, for greater clarity, includes all requirements under Canada’s Workplace Hazardous Materials Information System (WHMIS).

“**ESP Plan**” means the employee stock purchase plan of the Company dated as of June 21, 1999 as amended November 6, 2012.

“**ESU Plan**” means the executive share unit plan of the Company dated as of February 4, 2008.

“**Ex-Im Facilities**” means (i) the loan agreement, dated as of July 19, 2007, among HFLP Finance V Limited, as borrower, ING Financial Holdings Corporation, as lender, Export-Import Bank of the United States, as guarantor, and the other parties thereto, (ii) the loan agreement, dated as of July 31, 2007, among HFLP Finance V Limited, as borrower, Société Générale (Canada Branch), as lender, Export-Import Bank of the United States, as guarantor, and the other parties thereto, (iii) the loan agreement, dated as of February 14, 2012, among SKSM Finance LLC, as borrower, the Toronto-Dominion Bank, as lender and facility agent, Export-Import Bank of the United States, as guarantor, and the other parties thereto and (iv) the loan agreement, dated as of August 2, 2013, among SKSM Finance LLC, as borrower, the Toronto-Dominion Bank, as lender and facility agent, Export-Import Bank of the United States, as guarantor, and the other parties thereto.

“**Executive Officers**” means the members of executive leadership team of the Company, which is currently comprised of its President and Chief Executive Officer, Executive Vice President and Chief Strategy Officer, Executive Vice President and Chief Operating Officer, Executive Vice President and Chief Information Officer, Executive Vice President, People and Culture, Executive Vice President, Finance & Chief Financial Officer, Executive Vice President and President, Swoop and Executive Vice President and Chief Commercial Officer.

“Existing Credit Facilities” means (a) the Company’s \$400 million syndicated unsecured credit facility maturing in 2022, (b) the Company’s \$300 million syndicated unsecured non-revolving term credit facility, each as more particularly described in the Company Filings, and (c) the Company’s Aircraft financing facilities identified in the Company Disclosure Letter.

“FAA” means the U.S. Federal Aviation Administration.

“Fairly Disclosed” means that a fact, matter or circumstance has been disclosed in the Company Filings with a sufficient degree of specificity such that, when taken together with any related information in the Company Disclosure Letter (if applicable), the Purchaser could reasonably identify, and make a reasonably informed assessment of the nature and scope of, such fact, matter or circumstance.

“Final Order” means the final order of the Court pursuant to section 193 of the ABCA in a form acceptable to the Company and the Purchaser, each acting reasonably, approving the Arrangement, as such order may be amended, modified, supplemented or varied by the Court (with the consent of the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn, abandoned or denied, as affirmed or as amended (provided that any such amendment is acceptable to the Company and the Purchaser, each acting reasonably) on appeal.

“Financing Information” means (a) the audited consolidated statements of financial position (as at December 31, 2018 and 2017) and the related statements of earnings and cash flows for the Company for the fiscal years then ended, (b) unaudited consolidated statements of financial position and related statements of earnings of the Company for each fiscal quarter ended after December 31, 2018 and ended at least 45 days prior to the Effective Date, and (c) such other customary financial information regarding the Company and its Subsidiaries as may reasonably be requested by, and is necessary for, the Purchaser to fulfill the conditions and obligations applicable to it under the Debt Commitment Letter; provided, that the “Financing Information” shall not include (i) any financial information concerning the Company or its Subsidiaries other than the financial information required under the Debt Commitment Letter, (ii) any other information other than such information as the Company or its Subsidiaries maintain in the Ordinary Course or that is existing or reasonably available and in the possession or control of the Company or its Subsidiaries, (iii) any pro forma financial statements or any information regarding any post- Effective Time or pro forma adjustments desired to be incorporated into any information used in connection with the Financings (including any synergies or cost savings), pro forma ownership or an as-adjusted capitalization table, (iv) projections, (v) any description of all or any component of the Financings, (vi) risk factors relating to all or any component of the Financings; or (vii) any information customarily provided by an investment bank in the preparation of a confidential information memorandum.

“Financings” means, collectively, the Debt Financing and the Sponsor Financing and **“Financing”** means either one of them.

“Governmental Entity” means: (a) any international, multinational, national, federal, provincial, territorial, state, regional, municipal, local or other government, governmental or public body, authority or department, central bank, court, tribunal, arbitral or adjudicative body,

commission, board, bureau, commissioner, ministry, governor-in-council, agency or instrumentality, domestic or foreign, (b) any subdivision or authority of any of the above, (c) any quasi-governmental, administrative or private body, including any tribunal, commission, committee, regulatory agency or self-regulatory organization, exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing, or (d) any stock exchange (including the TSX).

“Hazardous Substances” means any material or substance that is regulated under Environmental Laws, including any material or substance that is prohibited, listed, defined, designated or classified as dangerous, hazardous, radioactive, explosive, corrosive, flammable, leachable, oxidizing, or toxic or a pollutant or a contaminant under or pursuant to any applicable Environmental Laws, and including petroleum and all derivatives thereof or synthetic substitutes therefor (including polychlorinated biphenyls).

“ICA” means the *Investment Canada Act* (Canada).

“IFRS” means generally accepted accounting principles as set out in the *CPA Canada Handbook – Accounting* for an entity that prepares its financial statements in accordance with International Financial Reporting Standards.

“Incentive Plans” means, collectively, the Stock Option Plan, the DSU Plan, the KEP Plan, the ESU Plan, the ESP Plan and the TI Plan.

“Incentive Securities” means, collectively, the Company Options, the RSUs, the PSUs and the DSUs.

“Indebtedness” means, with respect to any Person, without duplication: (a) all obligations of such Person for borrowed money, or with respect to deposits or advances of any kind to such Person; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all Aircraft operating leases of such Person; (d) all capitalized lease or purchase money obligations of such Person; (e) all guarantees, indemnities or financial assistance of, or in respect of, any Indebtedness of any other Person; (f) all reimbursement obligations with respect to letters of credit and letters of guarantee; and (g) all obligations in respect of bankers’ acceptances.

“Indemnified Persons” has the meaning given to it in Section 4.8(3).

“Intellectual Property” means all domestic and foreign: (a) patents, applications for patents and reissues, re-examinations, divisionals, continuations, renewals, extensions and continuations-in-part of patents or patent applications, (b) inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, knowhow, methods, processes, designs, technology, technical data, schematics, formulae and customer lists, and documentation relating to any of the foregoing, (c) copyrights, copyright registrations and applications for copyright registration, (d) integrated circuit, topographies, integrated circuit topography registrations and applications, mask works, mask work registrations and applications for mask work registrations, (e) industrial designs, industrial designation registrations and applications, designs, design registrations and design registration applications, (f) trade names, business names, corporate names, domain names, website names, social media accounts, and

world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing, (g) software, (h) moral rights and rights of publicity, and (i) any other intellectual property and industrial property, but excluding, for greater certainty, any nonexclusive license agreements for “off-the-shelf” software, or software licensed pursuant to “click through” or similar stock agreements, in each case, that is generally commercially available for a license fee.

“**Interim Order**” means the interim order of the Court pursuant to section 193 of the ABCA in a form acceptable to the Company and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended, modified, supplemented or varied by the Court with the consent of the Company and the Purchaser, each acting reasonably.

“**KEP Plan**” means the key employee and pilot restricted share unit plan dated as of May, 2010.

“**Key Regulatory Approvals**” means the Competition Act Clearance, the CT Act Approval, Canadian Status Determination and the Other Merger Control Approvals.

“**Law**” means, with respect to any Person, any and all applicable law (statutory, common, civil or otherwise), constitution, treaty, convention, ordinance, by-law, code, rule, regulation, Order, injunction, judgment, award, decree, ruling or other similar requirement, whether domestic or foreign, enacted, adopted, promulgated or applied by a Governmental Entity that is binding upon or applicable to such Person or its business, undertaking, property or securities, and to the extent that they have the force of law, policies, guidelines, notices and protocols of any Governmental Entity, as amended unless expressly specified otherwise.

“**Lien**” means mortgages, charges, pledges, hypothecs, assignments by way of security, conditional sales or other title retention arrangements, security created under the *Bank Act* (Canada), liens, encumbrances, security interests or other interests in property howsoever created or arising, whether fixed or floating, perfected or not, which secure payment or performance of an obligation and, including, in any event, the rights of lessors under capital or financing leases and any other lease financing.

“**Limited Guarantee**” means the limited guarantee dated the date hereof between the Company and the Sponsors pursuant to which each Sponsor has agreed to guarantee, on a several basis and up to its Pro Rata Share of the Purchaser’s obligation to pay the Reverse Termination Fee, on the terms and conditions set forth therein, as amended, replaced or supplemented (including to add additional Sponsors, if applicable) in accordance therewith and in accordance with the terms hereof.

“**Manager**” means Onex Partners Manager LP.

“**Marketing Period**” means the earlier of (a) first period of 18 consecutive Business Days following the date on which all conditions precedent to closing for the benefit of the Purchaser (excluding conditions that, by their terms, cannot be satisfied until the Effective Time) shall have been satisfied or waived, and (b) the period of 18 Business Days ending on or prior to the third Business Day prior to the date that the Outside Date would occur, but only if all conditions precedent to closing for the benefit of the Purchaser shall have been satisfied or waived

(excluding conditions that, by their terms, cannot be satisfied until the Effective Time and the condition in Section 6.1(5), but each of which conditions are reasonably capable of being satisfied at or prior to the Effective Time), and in either case the Purchaser shall have received the Financing Information (and throughout the Marketing Period the Compliance Requirements have been satisfied; provided that if the Compliance Requirements at any time fail to be satisfied, then the Marketing Period will not be deemed to have commenced and the Marketing Period will only commence when the Compliance Requirements are satisfied); and provided further that (i) the following days shall not be considered Business Days for the purposes of this definition: July 4 and 5 and November 29, 2019 and (ii) if the Marketing Period has not ended on or prior to (a) August 16, 2019 it shall not commence prior to September 3, 2019 or (b) December 20, 2019 it shall not commence prior to January 3, 2020.

“**Matching Period**” has the meaning given to it in Section 5.4(1)(e).

“**Material Adverse Effect**” means any change, event, occurrence, effect, state of facts and/or circumstance that, individually or in the aggregate with other such changes, events, occurrences, effects, states of facts or circumstances, is, or would reasonably be expected to be, material and adverse to the business, results of operations, assets, liabilities or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, except for any change, event, occurrence, effect, state of facts or circumstances to the extent resulting from:

- (a) any change, event, occurrence, effect, state of facts or circumstance affecting the airline industry generally, including matters arising from the temporary suspension of service of Boeing 737 MAX Aircraft announced prior to the date hereof;
- (b) changes, events or occurrences in general economic, political, or financial conditions in any jurisdiction in which the Company or its Subsidiaries operate, including changes in currency exchange rates;
- (c) any change in Law, IFRS or regulatory accounting or tax requirements, or in the interpretation, application or non-application of the foregoing by any Governmental Entity;
- (d) increases in the price of fuel (it being understood that the causes underlying such increase may, to the extent not otherwise excluded from the definition of Material Adverse Effect, be taken into account in determining whether a Material Adverse Effect has occurred);
- (e) any action taken (or omitted to be taken) by the Company or any of its Subsidiaries to the extent required by this Agreement (other than pursuant to Section 4.1(1)) or with the prior written consent or at the written direction of the Purchaser;
- (f) any change in the market price or trading volume of the Shares (it being understood that the causes underlying such change in market price or trading volume may, to the extent not otherwise excluded from the

definition of Material Adverse Effect, be taken into account in determining whether a Material Adverse Effect has occurred);

- (g) any failure by the Company to meet any internal forecasts, projections or earnings guidance or expectations, or any external forecasts, projections or earnings guidance or expectations provided or publicly released by the Company or equity analysts, for any period (it being understood that the causes underlying such matters may, to the extent not otherwise excluded from the definition of Material Adverse Effect, be taken into account in determining whether a Material Adverse Effect has occurred);
- (h) any change or announcement of potential change in the credit ratings in respect of the Company or any of its Subsidiaries (it being understood that the causes underlying such change in ratings may, to the extent not otherwise excluded from the definition of Material Adverse Effect, be taken into account in determining whether a Material Adverse Effect has occurred);
- (i) any Proceeding or threatened Proceeding relating to this Agreement or the Arrangement; or
- (j) any loss or threatened loss of, or adverse change or threatened adverse change in, the relationship of the Company or any of its Subsidiaries with any Governmental Entity or any of their current or prospective employees, customers, securityholders, financing sources, vendors, distributors, suppliers or partners, in each case only to the extent resulting from the announcement of this Agreement or the Arrangement or the implementation of the Arrangement;

but, in the case of clauses (a) through to and including (e) above, only to the extent that any such change, event, occurrence, effect, state of facts or circumstances does not have a disproportionate effect on the Company and its Subsidiaries, taken as a whole, relative to other entities operating in the airline industry; and references in certain sections of this Agreement to dollar amounts are not intended to be, and shall not be deemed to be, illustrative or interpretative for purposes of determining whether a Material Adverse Effect has occurred.

“Material Airport” means the Vancouver International Airport, the Calgary International Airport, the Edmonton International Airport, the Toronto Pearson International Airport, LaGuardia Airport and London Gatwick Airport.

“Material Contract” means a Contract to which the Company and/or any of its Subsidiaries is a party:

- (a) that is a Company Aircraft Finance Contract or Company Aircraft Purchase Contract;
- (b) relating to any joint venture, partnership or alliance;

- (c) that is an interline, code-share, charter, wet lease, capacity purchase, regional carrier, co-brand, frequent flyer or similar Contract that is material to the business and operations of the Company and the Subsidiaries on a consolidated basis or that is outside the Ordinary Course;
- (d) with any airport authority in relation to the operation of air services to, use of airport facilities and equipment at, or the lease or license of premises, in each case, at any Material Airport or that is otherwise material to the business and operations of the Company and its Subsidiaries on a consolidated basis or that is outside the Ordinary Course;
- (e) relating to the provision of ground baggage handling services (including terminal services, customer services, baggage handling services, ramp services, de-icing services and lounge services), agreements respecting the participation in Consortia, fuel purchase and supply, in each case that is material to the business and operations of the Company and the Subsidiaries on a consolidated basis or that is outside the Ordinary Course;
- (f) relating to Aircraft and Aircraft engine maintenance repair and overhaul services that cannot be terminated by the Company or a Subsidiary of the Company, as applicable, without penalty on 30 days' notice;
- (g) relating to the delivery of statutory services such as air navigation and transportation security, in each case that is material to the business and operations of the Company and the Subsidiaries on a consolidated basis or that is outside the Ordinary Course;
- (h) relating to the distribution and sale of tickets and other products and services with global distribution systems and third party vendors and suppliers, in each case that is material to the business and operations of the Company and the Subsidiaries on a consolidated basis or that is outside the Ordinary Course;
- (i) providing for material rights in relation to Company Slots;
- (j) relating to Indebtedness (currently outstanding or which may become outstanding) in excess of a principal outstanding amount of \$10,000,000, excluding guarantees or intercompany liabilities or obligations between two or more Persons each of whom is a Subsidiary of the Company or between the Company and one or more Persons each of whom is a Subsidiary of the Company;
- (k) under which the Company or its Subsidiaries has received payment in excess of \$10,000,000 during the fiscal year ended December 31, 2018 or

expects to receive payment in excess of \$10,000,000 during the fiscal year ending December 31, 2019;

- (l) under which the Company or its Subsidiaries has made payments in excess of \$10,000,000 during the fiscal year ended December 31, 2018 or is obligated to make payments in excess of \$10,000,000 during the fiscal year ending December 31, 2019;
- (m) providing for the purchase, sale or exchange of, or option to purchase, sell or exchange, any property or asset where the purchase or sale price or agreed value of such property or asset exceeds \$10,000,000;
- (n) that expressly limits or restricts in any material respect, the ability of the Company or any Subsidiary to engage in any line of business or carry on business in any geographic area, creates an exclusive dealing arrangement, or grants a third party a right of first offer or refusal in respect of material assets of the Company or any of its Subsidiaries; or
- (o) providing for any Swap which is transacted outside of the Ordinary Course.

“**MI 61-101**” has the meaning given to it in Paragraph (47) of Schedule D hereto.

“**Midco**” means Kestrel Midco Inc.

“**Midco Option Plan**” means the stock option plan of Midco to be established by the board of directors of Midco on or prior to the Effective Date.

“**Midco Options**” means options to purchase Midco Shares granted pursuant to the Midco Option Plan.

“**Midco Shares**” means non-voting common shares in the capital of Midco.

“**Minister**” means the Minister referred to in the CT Act.

“**Misrepresentation**” has the meaning given to it under Securities Laws.

“**Money Laundering Laws**” has the meaning given to it in Paragraph (40) of Schedule D hereto.

“**No Action Letter**” means a written confirmation from the Commissioner that he does not, at that time, intend to make an application under section 92 of the *Competition Act* in respect of the transactions contemplated by this Agreement.

“**OHSA**” has the meaning given to it in Paragraph (31)(g) of Schedule D hereto.

“**Onex**” means Onex Corporation.

“**Onex Funds**” means Onex Partners V GP LP, in its capacity as general partner of and on behalf of each of Onex Partners V LP and Onex Partners V-B LP.

“**Operating Subsidiary**” means a Subsidiary of the Company that is engaged in the provision of air services and/or operates any Aircraft.

“**Order**” means any order, writ, judgment, injunction, decree, stipulation, determination, award, decision, sanction or ruling entered by or with any Governmental Entity.

“**Ordinary Course**” means, with respect to an action taken by the Company or any of its Subsidiaries, that such action is consistent in nature and scope with the past practices of the Company and its Subsidiaries and is taken in the ordinary course of the normal day-to-day operations of the business of the Company and its Subsidiaries.

“**Other Assets**” means the Company Assets other than Company Leased Properties, Company Aircraft, Aircraft engines, Material Contracts, Authorizations, Company Intellectual Property, Company Software, Third Party Software and the Company Slots.

“**Other Merger Control Approvals**” means the approvals under the foreign Laws designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization restraint of trade, or lessening of competition through merger or acquisition, and which are listed on Schedule C.

“**Outside Date**” means: (a) if the Minister shall have given notice under subsection 53.1(4) of the CT Act, December 31, 2019; or (b) if the Minister shall not have given notice under subsection 53.1(4) of the CT Act, 366 days from the date hereof, provided that in either case the Outside Date may be extended if the Key Regulatory Approvals have not been denied by a non-appealable decision of a Governmental Entity (i) by the Purchaser in the Purchaser’s sole discretion if the Effective Date has not occurred on or prior to the Outside Date in clause (a) or clause (b), as applicable, for up to 90 days, by giving written notice to the Company to such effect no later than 5:00 p.m. (Calgary time) on the date that is not less than five days prior to the Outside Date specified under clause (a) or clause (b), as applicable, but only if the Purchaser shall have amended the Debt Commitment Letter (and provided a copy of such amendment to the Company) to extend the term thereof to and including the new Outside Date designated by the Purchaser in such notice, or (ii) by written agreement of the Parties.

“**Parties**” means, collectively, the Company and the Purchaser, and “**Party**” means any one of them.

“**Permitted Contest**” means action taken by the Company or a Subsidiary thereof in good faith by appropriate proceedings diligently pursued to contest any Taxes, claims or Liens, provided that:

- (a) the Company has established reasonable reserves therefor in accordance with IFRS;
- (b) proceeding with such contest would not reasonably be expected to have a Material Adverse Effect; and

- (c) proceeding with such contest will not create a material risk of sale, forfeiture or loss of, or interference with the use or operation of, a material part of the property or assets of the Company or such Subsidiary thereof.

“Permitted Dividend” means, in respect of the Shares, a dividend not in excess of \$0.14 per Share per quarter consistent with the current practice of the Company (including with respect to timing of declaration, record and payment dates).

“Permitted Liens” means, in respect of the Company or any of its Subsidiaries or any Company Assets, any one or more of the following:

- (a) Liens or deposits for Taxes which are not due or delinquent or which are the subject of a Permitted Contest;
- (b) to the extent a Lien is created thereby, the right reserved to or vested in any municipality or other Governmental Entity or any other lessor or grantor by the terms of any lease, license, franchise, grant or permit acquired by the Company or a Subsidiary thereof or by any statutory provision to terminate any such lease, license, franchise, grant or permit or to require annual or other periodic payments as a condition of the continuance thereof;
- (c) to the extent a Lien is created thereby, all reservations in the original grant from the Crown of any lands and premises or any interests therein and all statutory exceptions, qualifications and reservations in respect of title;
- (d) public and statutory Liens and similar liens arising by operation of Law not yet due and delinquent;
- (e) Liens or deposits for the fees or charges of NAV Canada or any city or any other public or private board or other body or organization chartered or otherwise established for the purpose of administering, operating or managing airports or related facilities or air navigation authority arising by operation of law in the Ordinary Course for sums either (i) not delinquent for a period of more than thirty (30) days or (ii) being contested in good faith by a Permitted Contest;
- (f) any Lien securing intercompany Indebtedness owing to the Company or a Subsidiary thereof;
- (g) Liens under all existing security documents (i) in connection with the Company’s or its Subsidiaries’ Indebtedness or Swaps, in the case of Indebtedness, reflected as secured Indebtedness on the Company’s consolidated statement of financial position as at December 31, 2018 included in the Company Filings (as in effect on the date hereof), and (ii) disclosed in the Company Disclosure Letter, provided the same has been complied with in all material respects to the extent such Indebtedness is

not paid or such Swaps are not terminated, as the case may be, on the Effective Date;

- (h) Liens granted by the Company or any of its Subsidiaries in relation to the purchasing and/or leasing of Aircraft or Aircraft engines;
- (i) easements, rights of way, restrictions, restrictive covenants, servitudes and similar rights in the Company Leased Properties granted by the Company or any of its Subsidiaries, including rights of way and servitudes for highways and other roads, railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light, power, telephone, telegraph or cable television conduits, poles, wires and cables that, in each case, individually or collectively, do not materially adversely affect the value, marketability or use of the relevant property as it is being used at the date hereof;
- (j) inchoate or statutory Liens of contractors, subcontractors, mechanics, workers, suppliers, materialmen, warehousemen, carriers and others in respect of the construction, maintenance, repair, operation or storage of Company Assets;
- (k) Liens arising out of judgments or awards with respect to which an appeal or other Proceeding for review is being prosecuted;
- (l) statutory, common law or contractual liens of landlords for amounts that are not yet due and payable or are being contested in good faith by a Permitted Contest;
- (m) Liens granted by the Company or any of its Subsidiaries against furniture, leasehold improvements and equipment securing Indebtedness incurred to finance the acquisition of such furniture, leasehold improvements or equipment;
- (n) pledges, deposits and Liens under worker's compensation laws, employment insurance laws or similar legislation;
- (o) good faith deposits in connection with bids, tenders and contracts; and
- (p) the rights of any lessee and, if applicable, any guarantor under any applicable operating or capital lease of personal property, where the Company or any of its Subsidiaries is lessor under such lease;

provided each of the foregoing shall only constitute a Permitted Lien if such Lien (where and as applicable) has been complied with by the Company or its respective Subsidiary in all material respects, unless the failure of the Company or its Subsidiary to be in compliance with such Lien in all material respects would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect or is the subject of a Permitted Contest.

“**Person**” includes any individual, partnership, limited partnership, association, body corporate, organization, joint venture, trust, estate, trustee, executor, administrator, legal representative, Governmental Entity, syndicate or other entity, whether or not having legal status.

“**Personal Information**” means information defined as “personal information”, “personal data”, “personally identifiable information”, “personal health information”, “individually identifiable health information”, “protected health information” or “employee personal information” under any applicable Privacy Law.

“**Plan of Arrangement**” means the plan of arrangement, substantially in the form set out in Schedule A, subject to any amendments or variations to such plan made in accordance with this Agreement and the Plan of Arrangement or made at the direction of the Court in the Final Order with the prior written consent of the Company and the Purchaser, each acting reasonably.

“**Pre-Acquisition Reorganization**” has the meaning given to it in Section 4.9(1).

“**Privacy Laws**” means all Laws relating to privacy or data protection, including, the *Personal Information Protection and Electronic Documents Act* (Canada) and CASL.

“**Pro Rata Share**” means, with respect to each Sponsor, the quotient obtained by dividing (a) the portion of the aggregate Sponsor Financing that such Sponsor has committed to provide in the Sponsor Commitment Letter, by (b) the aggregate Sponsor Financing contemplated by the Sponsor Commitment Letter.

“**Proceeding**” means any suit, claim, action, charge, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, audit, examination or known investigation commenced, brought, conducted or heard by or before, any Governmental Entity.

“**PSUs**” means the outstanding performance share units of the Company granted pursuant to the ESU Plan.

“**Purchaser**” has the meaning given to it in the preamble hereto.

“**Purchaser Expense Fee**” has the meaning given to it in Section 8.2(11).

“**Purchaser Related Parties**” means collectively, the Sponsors, the Debt Financing Sources, each Affiliate of the Purchaser, the Sponsors and the Debt Financing Sources, and each of the Purchaser’s, the Sponsor’s and the Debt Financing Sources’ respective former, current or future general or limited partners, stockholders, financing sources, managers, members, directors, officers, controlling persons, agents, or employees or other Representatives.

“**Registrar**” means the registrar duly appointed pursuant to Section 263 of the ABCA.

“**Regulatory Approvals**” means those sanctions, rulings, consents, Orders, exemptions, permits, licenses and other approvals (including the lapse, without objection, of a prescribed time under a statute or regulation that states that a transaction may be implemented if a prescribed time lapses following the giving of notice without an objection being made) of Governmental Entities

required in relation to the transactions contemplated by this Agreement, including those required in connection with the Interim Order and the Final Order, but excluding the Key Regulatory Approvals.

“**Related Parties**” means, with respect to the Company, the Company Related Parties, and with respect to the Purchaser, the Purchaser Related Parties, as the case may be.

“**Representative**” means, in respect of any Person, and as applicable, any officer, director, trustee, partner, employee, consultant, adviser, or agent and, in the case of the Purchaser, includes financing sources (including the Sponsors and the Debt Financing Sources) and their respective advisers.

“**Required Approval**” has meaning given to it in Section 2.2(c).

“**Reverse Termination Fee**” has the meaning given to it in Section 8.2(7).

“**Reverse Termination Fee Event**” has the meaning given to it in Section 8.2(7).

“**Rollover Agreement**” means an exchange and subscription agreement between a Rollover Securityholder and Midco, pursuant to which each Rollover Securityholder agrees to (a) transfer Shares to Midco in consideration for Midco Shares pursuant to the Plan of Arrangement, (b) exchange Company Options for Midco Options, in a manner that complies with the requirements for an exchange of options under subsection 7(1.4) of the Tax Act, pursuant to the Plan of Arrangement, and (c) subscribe for additional Midco Shares for cash on the Effective Date.

“**Rollover Options**” means Company Options held by a Rollover Securityholder that are to be exchanged for Midco Options pursuant to a Rollover Agreement in accordance with the Plan of Arrangement;

“**Rollover Securityholder**” means a holder of Shares or Company Options that is a party to a Rollover Agreement with Midco as of the Effective Time;

“**Rollover Shares**” means Shares held by a Rollover Securityholder that are to be exchanged for Midco Shares pursuant to a Rollover Agreement in accordance with the Plan of Arrangement;

“**RSUs**” means the outstanding restricted share units of the Company granted pursuant to the KEP Plan, the ESU Plan or the TI Plan.

“**Sanctions**” has the meaning given to it in Paragraph (37) of Schedule D hereto.

“**Securities Authorities**” means the securities commission or securities regulatory authority of each province or territory of Canada and the TSX.

“**Securities Laws**” means the *Securities Act* (Alberta) together with all other applicable securities Laws, rules and regulations and published policies thereunder or under the securities laws of any other province or territory of Canada as now in effect and as they may be promulgated or amended from time to time, and the rules and policies of the TSX.

“**SEDAR**” means the System for Electronic Document Analysis and Retrieval maintained on behalf of the Securities Authorities.

“**Senior Notes**” means, collectively, the Company’s 3.287% senior unsecured notes due 2019 and 3.78% senior unsecured notes due 2021.

“**Service Providers**” means Company Employees and any current consultants, agents and independent contractors of the Company or any of its Subsidiaries.

“**Shareholders**” means the registered holders of the Shares. and, where the context permits, beneficial owners of Shares.

“**Shares**” means, collectively, the Common Voting Shares and the Variable Voting Shares.

“**Special Committee**” means the special committee of the Board of the Company formed in connection with the transactions contemplated by this Agreement.

“**Sponsor Commitment Letter**” means the commitment letter between the Purchaser and the Sponsors dated the date hereof, as amended, supplemented or replaced in accordance with the terms hereof and thereof, including any other commitment letter in substantially similar form entered into between the Purchaser and a Sponsor in connection with the assignment and reallocation of the Sponsor Financing in accordance with the terms of Section 4.3(5).

“**Sponsor Financing**” means the agreement of the Sponsors to (directly or indirectly) invest or cause to be invested in the Purchaser, subject to the terms and conditions of the Sponsor Commitment Letter, the amounts set forth in the Sponsor Commitment Letter, which will be used by the Purchaser for purposes of partially financing the transactions contemplated by this Agreement.

“**Sponsors**” means the Onex Funds and any other Person (other than the Purchaser) who becomes a party to the Sponsor Commitment Letter in accordance with the terms hereof and thereof, and each of their respective successors.

“**Stock Option Plan**” means the 2009 stock option plan of the Company dated as of May 5, 2009.

“**Subsidiary**” has the meaning given to it in National Instrument 45-106 – *Prospectus Exemptions*, and for the purposes of this Agreement, “control” shall include the possession, directly or indirectly, of the power to direct or cause the direction of the policies, management and affairs of any Person, whether through ownership of voting securities, by contract or otherwise, including with respect to any general partner of another Person with the power to direct the policies, management and affairs of such Person.

“**Superior Proposal**” means any unsolicited *bona fide* written Acquisition Proposal from a Person (other than the Purchaser or any of its Affiliates) or group of such Persons acting jointly after the date of this Agreement: (a) to acquire all of the outstanding Shares or all or substantially all of the Company Assets; (b) that did not result from a breach of Section 5.4; (c) that is not subject to a financing condition and in respect of which it has been demonstrated to the

satisfaction of the Board, acting in good faith (after consultation with outside legal counsel and financial advisors), that adequate arrangements have been made in respect of any required financing to complete such Acquisition Proposal at the time and on the basis set out therein; (d) that is not subject to any due diligence and/or access condition; (e) that is reasonably capable of completion in accordance with its terms without undue delay, taking into account all financial, legal, regulatory and other aspects of such proposal and the Person making such Acquisition Proposal and its Affiliates; and (f) in respect of which the Board determines in good faith, after consultation with outside legal counsel and financial advisors, and after taking into account all the terms and conditions of the Acquisition Proposal, including all legal, financial, regulatory and other aspects of such Acquisition Proposal and the Person making such Acquisition Proposal and its Affiliates that such Acquisition Proposal would, if consummated in accordance with its terms, result in a transaction that is more favourable, from a financial point of view, to Shareholders than the Arrangement (including any amendments to the terms and conditions of the Arrangement proposed by the Purchaser pursuant to Section 5.4(2)).

“**Superior Proposal Notice**” has the meaning given to it in Section 5.4(1)(c).

“**Swaps**” means any transaction which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, hedge, commodity option, equity or equity index swap, equity index option, bond option, interest rate option, forward foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, forward sale, exchange traded futures contract or other similar transaction (including any option with respect to any of these transactions or any combination of these transactions).

“**Tax Act**” means the *Income Tax Act* (Canada).

“**Tax Returns**” means any and all returns (including information returns), reports, declarations, claims for refunds, elections, notices, forms, designations, filings, statements and other similar documents (whether in tangible, electronic or other form and including estimated tax returns and reports, withholding tax returns and reports, information returns and reports, and any schedules, attachments, supplements, appendices and exhibits thereto) filed or required to be filed in respect of Taxes including any amendments thereof.

“**Taxes**” means: (a) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Entity, whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth, environment, net worth, Indebtedness, surplus, sales, goods and services, harmonized sales, use, value-added, excise, special assessment, stamp, fuel, gasoline, carbon, petroleum, airport usage, air travellers security, airline related matters, greenhouse gas, withholding, business, franchising, real or personal property, health, employee health, payroll, workers’ compensation, employment or unemployment, employment insurance, severance, social services, social security, education, utility, surtaxes, customs, unclaimed property, import or export, and all employment insurance, health insurance and government pension plan premiums or contributions; (b) all interest, penalties, fines, additions to tax or other additional

amounts imposed by any Governmental Entity on or in respect of amounts of the type described in clause (a) above or this clause (b); (c) any liability for the payment of any amounts of the type described in clauses (a) or (b) above as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (d) any liability for the payment of any amounts of the type described in clauses (a) or (b) above as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any party.

“**Terminating Party**” has the meaning given to it in Section 7.3(3).

“**Termination Fee**” has the meaning given to it in Section 8.2(3).

“**Termination Fee Event**” has the meaning given to it in Section 8.2(3).

“**Termination Fee Recipients**” means any or all of the Sponsors, the Purchaser, the Manager and all such other persons or partnerships designated by the Manager to be Termination Fee Recipients, in such proportions as the Manager may determine.

“**Termination Notice**” has the meaning given to it in Section 7.3(3).

“**Third Party Software**” has the meaning given to it in Section (28)(b) of Schedule D hereto.

“**TI Plan**” means the talent incentive plan dated July 25, 2016.

“**Trade Legislation**” has the meaning given to it in Section (39) of Schedule D hereto.

“**Transaction Documents**” means, collectively, this Agreement, the Plan of Arrangement, the Limited Guarantee, the Commitment Letters, the Rollover Agreements, the Voting Agreements and any agreement or document contemplated to be delivered hereby or thereby.

“**TSX**” means the Toronto Stock Exchange.

“**Variable Voting Shares**” means the variable voting shares in the capital of the Company.

“**Voting Agreements**” means the voting support agreements dated the date hereof between the Purchaser and each of the directors and Executive Officers of the Company, substantially in the form of Schedule F hereto.

“**Willful Breach**” means with respect to any representation, warranty, agreement or covenant in this Agreement, a breach of this Agreement that is a consequence of an act or omission by the Breaching Party with the actual knowledge that the taking of such act or failure to act, as applicable, would, or would be reasonably expected to, cause a breach of this Agreement.

“**Work Order**” means a work Order, deficiency notice, Order to comply, inspector’s Order, notice of violation or non-compliance, open permit, or similar Order, notice or directive, in each case issued in written or electronic form by or on behalf of a Governmental Entity having jurisdiction with respect to any of the Company Leased Properties.

Section 1.2 Certain Rules of Interpretation

In this Agreement, unless otherwise specified:

- (1) **Headings, etc.** The provision of a Table of Contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and do not affect the construction or interpretation of this Agreement. Unless the contrary intention appears, references in this Agreement to an Article, Section, subsection, Paragraph or Schedule by number or letter or both refer to the Article, Section, subsection, Paragraph or Schedule, respectively, bearing that designation in this Agreement.
- (2) **Currency.** All references to dollars or to "\$" are references to Canadian dollars, unless specified otherwise. In the event that any amounts are required to be converted from a foreign currency to Canadian dollars or vice versa, such amounts shall be converted using the most recent closing exchange rate of The Bank of Canada available before the relevant calculation date.
- (3) **Gender and Number.** Any reference to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (4) **Certain Phrases, etc.** The words (i) "including", "includes" and "include" mean "including (or includes or include) without limitation," and (ii) "the aggregate of", "the total of", "the sum of" or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of".
- (5) **Capitalized Terms.** All capitalized terms used in any Schedule or in the Company Disclosure Letter have the meanings given to them in this Agreement.
- (6) **Knowledge.** Where any representation or warranty is expressly qualified by reference to the knowledge:
 - (a) of the Company or any of the Subsidiaries, it is deemed to refer to the actual knowledge of the Executive Officers, in each case after due and diligent inquiry (provided that required inquiries of Company Employees shall be limited to direct reports of the Executive Officers and other Company Employees who had knowledge of the transactions contemplated by this Agreement at least three days prior to the execution hereof); or
 - (b) of the Purchaser, it is deemed to refer to the actual knowledge, of each Senior Managing Director, Managing Director and Senior Principal of Onex Partners Advisor LP who has been actively engaged in the transactions contemplated by this Agreement, after due and diligent inquiry.

- (7) **Accounting Terms.** Unless otherwise stated, all accounting terms are to be interpreted in accordance with IFRS and all determinations of an accounting nature in respect of the Company required to be made shall be made in a manner consistent with IFRS.
- (8) **Statutes.** Any reference to a statute refers to such statute and all rules, resolutions and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise; provided, that for purposes of any representations and warranties contained in this Agreement that are made as of a specific date or dates, references to any statute or other Law shall be deemed to refer to such statute or other Law, as amended, and to any rules or regulations made thereunder, in each case, as of such date.
- (9) **Business Days.** If the date on which any action is required or permitted to be taken under this Agreement by a Person is not a Business Day, such action shall be required or permitted to be taken on the next succeeding day which is a Business Day.
- (10) **Time References.** References to time are to local time in Calgary, Alberta. When computing any time period in this Agreement, the following rules shall apply:
 - (a) the day marking the commencement of the time period shall be excluded but the day of the deadline or expiry of the time period shall be included; and
 - (b) any day that is not a Business Day shall be included in the calculation of the time period; however, if the day of the deadline or expiry of the time period falls on a day which is not a Business Day, the deadline or time period shall be extended to the next following Business Day.
- (11) **Subsidiaries.** To the extent any covenants or agreements relate, directly or indirectly, to a Subsidiary of the Company, each such provision shall be construed as a covenant by the Company to cause (to the fullest extent to which it is legally capable) such Subsidiary to perform the required action.
- (12) **Consent.** If the Purchaser's consent is requested with respect to any matter with respect to this Agreement and such requested consent, together with any other modifications, amendments or express waivers or consents with respect to this Agreement, in the aggregate are materially adverse to the interests of the Debt Financing Sources, and the Debt Financing Sources condition or delay their consent to such matter, it shall not be considered unreasonable for the Purchaser to withhold, delay or condition the Purchaser's consent to such matter.
- (13) **Schedules.** The Schedules attached to this Agreement form an integral part of this Agreement.

ARTICLE 2 THE ARRANGEMENT

Section 2.1 Arrangement

The Company and the Purchaser agree to implement the Arrangement in accordance with and subject to the terms and conditions of this Agreement and the Plan of Arrangement.

Section 2.2 Interim Order

As soon as reasonably practicable after the date of this Agreement so as to permit the Company to hold the Company Meeting within the time set forth in Section 2.3(a), the Company shall apply in a manner acceptable to the Purchaser, acting reasonably, pursuant to Section 193 of the ABCA and, in cooperation with the Purchaser, prepare, file and diligently pursue an application for the Interim Order, which must provide, among other things:

- (a) for the class or classes of Persons (including the Company Securityholders) to whom notice is to be provided in respect of the Arrangement and the Company Meeting and for the manner in which such notice is to be provided;
- (b) that the securities of the Company for which holders as at the record date established for the Company Meeting shall be entitled to vote on the Arrangement Resolution shall be the Shares and the Company Options;
- (c) that the requisite level of approval for the Arrangement Resolution shall be (i) two-thirds of the votes cast on such resolution by Shareholders and Company Optionholders present in person or represented by proxy at the Company Meeting, voting together as a single class, and (ii) a majority of the votes cast on such resolution by Shareholders present in person or represented by proxy at the Company Meeting, excluding for this purpose votes attached to Shares held by Persons described in items (a) through (d) of Section 8.1(2) of MI 61-101 (collectively, the “**Required Approval**”);
- (d) that, in all other respects, other than as ordered by the Court, the terms, restrictions and conditions of the Company Constating Documents, including quorum requirements and all other matters, shall apply in respect of the Company Meeting;
- (e) for the grant of the Dissent Rights to those Shareholders who are registered Shareholders as contemplated in the Plan of Arrangement;
- (f) for the notice requirements with respect to the presentation of the application to the Court for the Final Order;
- (g) that the Company Meeting may be adjourned or postponed from time to time by the Company in accordance with the terms of this Agreement or

as otherwise agreed to by the Parties without the need for additional approval of the Court;

- (h) confirmation of the record date for the purposes of determining the Shareholders entitled to receive notice of and to vote at the Company Meeting in accordance with the Interim Order;
- (i) that the record date for Shareholders and Company Optionholders entitled to notice of and to vote at the Company Meeting will not change in respect of any adjournment or postponement of the Company Meeting, unless required by Law or the Court; and
- (j) for such other matters as the Purchaser or the Company may reasonably require, subject to obtaining the prior consent of the other, such consent not to be unreasonably withheld or delayed, and subject to approval by the Court.

Section 2.3 The Company Meeting

Subject to the receipt of the Interim Order, the terms and conditions thereof and the terms of this Agreement, the Company shall:

- (a) convene and conduct the Company Meeting in accordance with the Interim Order, the Company Constating Documents and applicable Law on or before July 26, 2019 and the Company shall not adjourn, postpone or cancel (or propose the adjournment, postponement or cancellation of) the Company Meeting without the prior written consent of the Purchaser, except:
 - (i) as required or permitted under Section 5.4(5) or Section 7.3(3);
 - (ii) as required for quorum purposes (in which case the Company Meeting shall be adjourned or postponed and not cancelled);
 - (iii) as required by Law or by a Governmental Entity; or
 - (iv) as Ordered by the Court, but only if such Order was not solicited, supported or encouraged by the Company, its Subsidiaries or any of their respective Representatives.
- (b) except as otherwise expressly contemplated or permitted by this Agreement, the Company shall not propose or submit for consideration at the Company Meeting any business other than the Arrangement without the Purchaser's prior written consent;
- (c) notwithstanding the receipt by the Company of a Superior Proposal, unless this Agreement is terminated in accordance with its terms, the Company shall continue to take all steps reasonably necessary to hold the

Company Meeting and to cause the Arrangement Resolution to be voted on at such Company Meeting, and shall not propose to adjourn or postpone such meeting other than as contemplated by Section 2.3(a);

- (d) unless the Board has made a Change in Recommendation in accordance with the Section 5.4(1), use its commercially reasonable efforts to solicit proxies in favour of the approval of the Arrangement Resolution and against any resolution submitted by any Person that is inconsistent with the Arrangement Resolution and the completion of any of the transactions contemplated by this Agreement, including, if so requested by the Purchaser, using proxy solicitation services firms and cooperating with any Persons engaged by the Purchaser to solicit proxies in favour of the approval of the Arrangement Resolution;
- (e) permit the Purchaser to, at the Purchaser's expense, directly or through a proxy solicitation services firm, actively solicit proxies in favour of the Arrangement on behalf of management of the Company in compliance with applicable Law, and disclose in the Company Circular that the Purchaser may make such solicitations;
- (f) provide the Purchaser with copies of or access to information regarding the Company Meeting generated by the Company's transfer agent or any proxy solicitation services firm retained by the Company, as requested from time to time by the Purchaser;
- (g) consult with the Purchaser in fixing the date of the Company Meeting and the record date for the Company Meeting, and give notice to the Purchaser of the Company Meeting and allow the Purchaser's Representatives and legal counsel to attend the Company Meeting;
- (h) promptly advise the Purchaser, at such times as the Purchaser may reasonably request and at least on a daily basis on each of the last 10 Business Days prior to the date of the Company Meeting, as to the aggregate tally of the proxies received by the Company in respect of the Arrangement Resolution;
- (i) promptly advise the Purchaser of any communication (written or oral) received from, or claims brought by (or, to the knowledge of the Company, threatened to be brought by), any Person in opposition to the Arrangement (other than non-substantive communications) and/or any purported exercise or withdrawal of Dissent Rights by Shareholders and, subject to Law, provide the Purchaser with an opportunity to review and comment upon any written communications sent by or on behalf of the Company to any such Person and to participate in any discussions, negotiations or Proceedings with or including any such Persons;

- (j) not settle, compromise or make any payment with respect to, or agree to settle, compromise or make any payment with respect to, any exercise or purported exercise of Dissent Rights without the prior written consent of the Purchaser; and
- (k) not, without the Purchaser's prior written consent, change the record date for the Shareholders and Company Optionholders entitled to receive notice of and to vote at the Company Meeting (including in connection with any adjournment or postponement of the Company Meeting) unless required by Law.

Section 2.4 The Company Circular

- (1) Subject to compliance by the Purchaser with Section 2.4(4), the Company shall as promptly as reasonably practicable prepare and complete, in consultation with the Purchaser, the Company Circular, together with any other documents required by Law in connection with the Company Meeting and the Arrangement, and the Company shall, promptly after obtaining the Interim Order, cause the Company Circular and such other documents to be filed with the applicable Securities Authorities and sent to each Shareholder and other Persons as required by the Interim Order and applicable Law (including all holders of Incentive Securities), in each case using all commercially reasonable efforts so as to permit the Company Meeting to be held by the date specified in Section 2.3(a).
- (2) On the mailing date of the Company Circular, the Company shall ensure that the Company Circular complies, in all material respects with the Interim Order and applicable Law, does not contain any Misrepresentation (other than with respect to any information relating to the Purchaser, the Purchaser Related Parties and the Financings to the extent furnished or approved by or on behalf of the Purchaser or its Representatives for inclusion in the Company Circular) and provides the Shareholders with sufficient information to permit them to form a reasoned judgement concerning the matters to be placed before the Company Meeting. Without limiting the generality of the foregoing, the Company Circular shall include: (a) a statement that the Special Committee unanimously recommended that the Board approve the Arrangement; (b) a statement that the Board, after receiving the unanimous recommendation of the Special Committee and consulting with outside legal counsel and financial advisors in evaluating the Arrangement, has determined that the Arrangement is in the best interests of the Company and unanimously recommends that Shareholders vote in favour of the Arrangement Resolution (the "**Board Recommendation**"); (c) a copy of the Interim Order; (d) copies of the CIBC Opinion and the BofA Merrill Lynch Opinion; and (e) a statement that each director and Executive Officer of the Company has agreed to vote all of such individual's Shares in favour of the Arrangement Resolution in accordance with the Voting Agreements.
- (3) The Company shall allow the Purchaser and its legal counsel a reasonable opportunity to review and comment on drafts of the Company Circular and other related documents, and shall give reasonable consideration to any comments made by the Purchaser and its legal counsel, provided that all information relating solely to the Purchaser, the Sponsors and

the Financings included in the Company Circular shall be in a form and substance satisfactory to the Purchaser.

- (4) The Purchaser shall provide to the Company, in writing, all information concerning the Purchaser, the Purchaser Related Parties and the Financings, that is required by Law to be included in the Company Circular or other related documents, and shall ensure that such information does not contain, any Misrepresentation.
- (5) The Company and the Purchaser shall promptly notify each other if any of them becomes aware that the Company Circular contains a Misrepresentation or otherwise requires an amendment or supplement. The Parties shall cooperate in the preparation of any such amendment or supplement as required or appropriate, and the Company shall promptly mail, file or otherwise publicly disseminate any such amendment or supplement to those Persons to whom the Company Circular was sent pursuant to Section 2.4(1) and, if required by the Court or by applicable Law, file the same with the Securities Authorities or any other Governmental Entity as required.

Section 2.5 Final Order

If the Interim Order is obtained and the Required Approval is obtained at the Company Meeting, the Company shall, as soon as reasonably practicable (but in any event within three Business Days) thereafter, take all steps necessary or desirable to submit the Arrangement to the Court and diligently pursue an application for the Final Order pursuant to Section 193 of the ABCA.

Section 2.6 Court Proceedings

In connection with all Proceedings relating to obtaining the Interim Order and the Final Order, subject to the terms of this Agreement, the Company shall diligently pursue, and cooperate with the Purchaser in diligently pursuing, the Interim Order and the Final Order. The Purchaser will cooperate with and assist the Company in pursuing the Interim Order and the Final Order, including by providing the Company on a timely basis with any information required to be supplied by the Purchaser in connection therewith. The Company will provide the Purchaser and its legal counsel with reasonable opportunity to review and comment upon drafts of all material to be filed with the Court in connection with the Arrangement (including by providing, on a timely basis and prior to the service and filing of such material, a description of any information required to be supplied by the Purchaser for inclusion in such material) and the Company will give reasonable consideration to all such comments, provided that all information relating to the Purchaser, the Sponsors and the Financings included in such materials shall be in a form and substance satisfactory to the Purchaser, acting reasonably. The Company will ensure that all material filed with the Court in connection with the Arrangement is consistent in all material respects with the terms of this Agreement and the Plan of Arrangement. In addition, the Company will not object to legal counsel of the Purchaser making such submissions on the application for the Interim Order and the application for the Final Order as such counsel considers appropriate, acting reasonably, provided that such submissions are consistent in all material respects with this Agreement and the Plan of Arrangement. The Company will also provide the Purchaser's legal counsel, on a timely basis, with copies of any notice and evidence served on the Company or its legal counsel in respect of the application for the Final Order or

any appeal therefrom, and any notice, written or oral, indicating the intention of any Person to appeal, or oppose the granting of, the Interim Order or Final Order. Subject to applicable Law, the Company will not file any material with, or make any submissions to, the Court in connection with the Arrangement or serve any such material, and will not agree to modify or amend materials so filed or served, except as contemplated by this Section 2.6 or with the Purchaser's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed; provided that nothing herein shall require the Purchaser to agree or consent to any increase in the Consideration or other modification or amendment that expands or increases the Purchaser's obligations, or diminishes or limits the Purchaser's rights, set forth in any such filed or served materials or under this Agreement or the Arrangement. The Company will use commercially reasonable efforts to oppose any proposal from any Person that the Final Order contain any provision inconsistent with this Agreement, and, if at any time after the issuance of the Final Order and prior to the Effective Date, the Company is required by the terms of the Final Order or by applicable Law to return to Court with respect to the Final Order, it shall do so only after notice to, and in consultation and cooperation with, the Purchaser.

Section 2.7 Incentive Plan Matters

- (1) The Board shall exercise its discretion under each of the Incentive Plans (to the extent permitted thereunder) to accelerate the vesting of all Incentive Securities issued thereunder effective at or prior to the Effective Time. The Company shall take all reasonable steps as may be necessary or desirable to facilitate the exchange, surrender, settlement, termination and/or cancellation of all outstanding Incentive Securities (whether then vested or unvested) in accordance with the terms of the Plan of Arrangement and the applicable Incentive Plan. The Parties acknowledge the Incentive Securities shall be dealt with in the manner set forth in Section 2.3 of the Plan of Arrangement.
- (2) If and to the extent that a Company Optionholder would be entitled to a deduction under paragraph 110(1)(d) of the Tax Act in respect of his or her surrender of Company Options to the Company in accordance with the Plan of Arrangement if the election described in subsection 110(1.1) of the Tax Act were made and filed (and the other procedures described therein were undertaken) on a timely basis after such surrender, the Purchaser shall cause the Company to make and file such election (and such other procedures to be so undertaken in connection therewith). This Section 2.7(2) shall survive the Effective Date and is intended to be for the benefit of, and will be enforceable by, those Company Optionholders to whom this Section 2.7(2) applies and their respective heirs, executors, administrators and personal representatives and will be binding on the Purchaser, the Company and its successors and assigns.

Section 2.8 Articles of Arrangement and Effective Date

- (1) The Articles of Arrangement shall include and implement the Plan of Arrangement.
- (2) The Company shall file the Articles of Arrangement with the Registrar no later than, and the Arrangement shall become effective on, the date upon which the Company and the Purchaser agree in writing as the Effective Date or, in the absence of such agreement, the

fifth Business Day following the satisfaction or, where not prohibited by applicable Law, the waiver by the applicable Party or Parties for whose benefit a condition exists, of the conditions set out in Article 6 (excluding conditions that, by their terms, cannot be satisfied until the Effective Time, but subject to the satisfaction or, where not prohibited by applicable Law, waiver by the applicable Party or Parties for whose benefit such conditions exist, of those conditions as of the Effective Time); provided that if the Marketing Period has not ended on the date of the satisfaction or waiver of the conditions set out in Article 6 (excluding conditions that, by their terms, cannot be satisfied until the Effective Time, but subject to the satisfaction or, where not prohibited, waiver by the applicable Party or Parties for whose benefit such conditions exist, of those conditions as of the Effective Time), then the Effective Date will take place instead on the earliest of (a) any Business Day during the Marketing Period as may be specified by the Purchaser on not less than three Business Days' prior written notice to the Company, (b) the next Business Day after the final day of the Marketing Period, and (c) such other date as the Purchaser and the Company may agree in writing, but subject in each case to the satisfaction or, where not prohibited, the waiver by the applicable Party or Parties for whose benefit a condition exists, of all of the conditions set out in Article 6.

- (3) The Arrangement shall be effective at the Effective Time on the Effective Date and will have all of the effects provided by applicable Law.
- (4) The closing of the Arrangement will take place at the offices of Blake, Cassels & Graydon LLP in Calgary, Alberta or at such other location as may be agreed upon by the Parties.

Section 2.9 Payment of Consideration

The Purchaser shall, following receipt of the Final Order but prior to the Effective Time, provide, or cause to be provided to the Depository (i) sufficient funds to be held in escrow (the terms and conditions of such escrow to be satisfactory to the Company and the Purchaser, each acting reasonably) to satisfy the aggregate Consideration payable to the Shareholders, and (ii) to the extent requested by the Purchaser or to the extent the Company and its Subsidiaries do not have sufficient cash on hand to pay such amount, sufficient funds (the terms and conditions of such escrow to be satisfactory to the Company and the Purchaser, each acting reasonably) to satisfy the aggregate amount payable in cash to holders of Company Options (other than Rollover Options), DSUs, RSUs and PSUs in consideration for the cancellation of such outstanding Company Options (other than Rollover Options), DSUs, RSUs and PSUs as provided for in the Plan of Arrangement, such amounts to be provided in the form of a loan or equity contribution to the Company and/or its Subsidiaries by the Purchaser and/or an advance to the Company and/or its Subsidiaries by the Debt Financing Sources under the Debt Financing, as the Purchaser may in its discretion determine, and the Company and/or its Subsidiaries shall use such funds to make such payments in accordance with the Plan of Arrangement.

Section 2.10 Withholdings

The Company, the Purchaser, the Depository and any other Person shall be entitled to deduct or withhold from any amount payable to any Person under the Plan of Arrangement or any amount

contemplated herein (including any amounts payable pursuant to Section 3.1 thereof), such amounts as the Company, the Purchaser, the Depositary or such other Person, as applicable, determines, acting reasonably, are required to be deducted or withheld with respect to such payment under the Tax Act or any provision of any other Law. To the extent that amounts are so deducted or withheld, such deducted or withheld amounts shall be treated for all purposes under this Agreement as having been paid to the Person in respect of which such deduction or withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate Governmental Entity.

Section 2.11 Voting Agreements

The Company has, concurrently with the signing of this Agreement, delivered to the Purchaser Voting Agreements which have been executed and delivered by each of the directors and Executive Officers of the Company.

Section 2.12 List of Company Securityholders

At the reasonable request of the Purchaser from time to time, the Company shall, as soon as reasonably practicable, provide the Purchaser with a list (in both written and electronic form) of (a) the registered Shareholders and other Company Securityholders, together with their addresses and respective holdings of Shares or other securities, (b) the names and addresses and holdings of all Persons having rights issued by the Company to acquire Shares (including Company Optionholders), and (c) a list of the non-objecting beneficial owners of Shares, together with their addresses and respective holdings of Shares, all as of a date that is as close as reasonably practicable to the date of delivery of such lists. The Company shall from time to time require that its registrar and transfer agent furnish the Purchaser with such additional information, including updated or additional lists of Shareholders and other Company Securityholders and lists of holdings and other assistance as the Purchaser may reasonably request.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of the Company

- (1) Except as set forth in the Company Disclosure Letter (it being expressly understood and agreed that the disclosure of any fact or item in any section of the Company Disclosure Letter shall be deemed to be an exception to (or, as applicable, disclosure for the purposes of) any other representation or warranty of the Company in this Agreement to which the relevance of such fact or item is reasonably apparent on its face) or Fairly Disclosed in the Company Filings (other than any disclosures contained under the captions “Risk Factors” or “Forward Looking Information” and any other disclosures contained in such documents that are predictive, cautionary or forward-looking in nature), the Company represents and warrants to the Purchaser as set forth in Schedule D, and acknowledges and agrees that the Purchaser is relying upon such representations and warranties in connection with the entering into of this Agreement.
- (2) The Purchaser agrees and acknowledges that, except as expressly set forth in this Agreement, neither the Company nor any other Person has made or makes any other

representation and warranty (written or oral, express or implied, or at Law or in equity) with respect to the Company, its Affiliates, their respective businesses, the past, current or future financial condition or any of their assets, liabilities or operations, their past, current or future profitability or performance, individually or in the aggregate, the accuracy or completeness of any information furnished or made available to the Purchaser (or any officer, director, employee, Representative (including any financial or other advisor) or agent of the Purchaser) or any other Person in connection with the transactions contemplated hereby, and any such other representations or warranties are expressly disclaimed.

- (3) The representations and warranties of the Company contained in this Agreement shall not survive the completion of the Arrangement and shall expire and be terminated at the earlier of the Effective Time and the termination of this Agreement in accordance with its terms.

Section 3.2 Representations and Warranties of the Purchaser

- (1) The Purchaser represents and warrants to the Company as set forth in Schedule E and acknowledge and agree that the Company is relying upon such representations and warranties in connection with the entering into of this Agreement.
- (2) The Company agrees and acknowledges that, except as expressly set forth in this Agreement, neither the Purchaser nor any other Person has made or makes any other representation and warranty (written or oral, express or implied, or at Law or in equity) on behalf of the Purchaser.
- (3) The representations and warranties of the Purchaser contained in this Agreement shall not survive the completion of the Arrangement and shall expire and be terminated at the earlier of the Effective Time and the termination of this Agreement in accordance with its terms.

ARTICLE 4 COVENANTS

Section 4.1 Conduct of Business of the Company

- (1) The Company covenants and agrees that, during the period from the date of this Agreement until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, except (a) with the prior written consent of the Purchaser (such consent not to be unreasonably withheld, conditioned or delayed), (b) as required by this Agreement, (c) as required by applicable Law, (d) in order to take commercially reasonable steps to respond to emergency-type occurrences involving life, health, personal safety or the protection of property, or (e) as provided in the Company Disclosure Letter, the Company shall, and shall cause each of its Subsidiaries to (i) conduct their business in the Ordinary Course and in accordance with all applicable Laws, (ii) use commercially reasonable efforts to maintain and preserve, in the Ordinary Course, its and its Subsidiaries' respective business organization, operations, assets, properties, Authorizations, Intellectual Property, goodwill and relationships with all

Service Providers, Governmental Entities (including Aviation Authorities), landlords, creditors, suppliers, licensors, licensees, unions, employees (as a group), passengers (as a group) and other customers, travel agents (as a group), strategic or alliance partners and other Persons, in each case with whom the Company or any of its Subsidiaries have material business relations, and (iii) use commercially reasonable efforts to manage the Company's quarterly level of net indebtedness in the Ordinary Course. Notwithstanding the foregoing provisions of this Section 4.2(1), (A) the Company shall not, and shall not permit its Subsidiaries to, take any action prohibited by Section 4.1(2) in order to satisfy its obligations under this Section 4.2(1), and (B) the Company shall not be deemed to have failed to satisfy its obligations under this Section 4.1(1) to the extent such failure resulted, directly or indirectly, from such party's failure to take any action prohibited by Section 4.1(2).

- (2) Without limiting the Company's obligations under Section 4.1(1), the Company covenants and agrees that, during the period from the date of this Agreement until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, except (i) with the prior written consent of the Purchaser (such consent not to be unreasonably withheld, conditioned or delayed), (ii) as expressly required by this Agreement, (iii) as required by applicable Law, or (iv) as set forth in Section 4.1(2) of the Company Disclosure Letter, the Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly:
- (a) amend, restate, rescind, alter, enact or adopt all or any portion of any of the Company Constating Documents or the articles, notice of articles, articles of incorporation, articles of amalgamation, articles of continuance, by-laws, partnership agreement or other organizational documents of any Subsidiary of the Company;
 - (b) adjust, split, combine or reclassify any of its securities;
 - (c) adopt a plan of complete or partial liquidation, arrangement, dissolution, merger, consolidation, restructuring, recapitalization, winding-up or other reorganization of the Company or any of its Subsidiaries (other than this Agreement and the transactions contemplated by this Agreement), or file a petition in bankruptcy under any applicable Law on behalf of the Company or any of its Subsidiaries, or consent to the filing of any bankruptcy petition against the Company or any of its Subsidiaries under any applicable Law;
 - (d) enter into any new line of business or discontinue any existing line of business;
 - (e) issue, grant, deliver, sell, exchange, amend, modify, accelerate, pledge or otherwise subject to any Lien (other than Permitted Liens) (i) any securities of the Company or any of its Subsidiaries, (ii) options or other rights to acquire, or exercisable or exchangeable for, or convertible into, any securities of the Company or any of its Subsidiaries (including

Incentive Securities), or (iii) any rights that are linked in any way to the price of any shares of, or to the value of or of any part of, or to any dividends or distributions paid on any shares of, the Company or any of its Subsidiaries (including Incentive Securities), in each case other than (A) the issuance of Shares issuable upon the exercise, vesting or redemption, as applicable, of Incentive Securities outstanding on the date hereof in accordance with the terms of the applicable Incentive Plan, or granted after the date hereof in accordance with the terms of this Agreement, (B) grants of Incentive Securities in accordance with Section 4.1(2)(e) of the Company Disclosure Letter, or (C) the issuance of Common Voting Shares or Variable Voting Shares upon the automatic conversion of either class of shares into the other, in accordance with the Company Constating Documents;

- (f) make, declare, set aside or pay any dividend, other than a Permitted Dividend, or any other distribution (in cash, securities or other property) on, or purchase, redeem, repurchase or otherwise acquire, any class of securities of the Company or any of its Subsidiaries other than interest payments made on the Senior Notes in accordance with their terms (and, in the case of the Company's 3.287% senior unsecured notes due 2019, payments of principal thereof upon maturity);
- (g) invest or acquire an interest in (by amalgamation, merger, consolidation, exchange, purchase of securities, contributions to capital or purchase, lease or license of assets or otherwise) any Person, or any property or asset, or make any capital expenditures, in each case other than (i) acquisitions of Aircraft Parts, inventory, equipment raw materials, goods and other supplies in the Ordinary Course (other than Aircraft, Aircraft engines and flight simulators) and that do not exceed \$10,000,000 in the aggregate, (ii) the purchase or lease of Aircraft, Aircraft engines and Aircraft Parts pursuant to firm commitments (as of the date hereof) under Material Contracts listed on Section D(21) of the Company Disclosure Letter, (iii) capital expenditures disclosed in the capital plans for 2019 and 2020 set forth in Section 4.1(2)(g) of the Company Disclosure Letter (provided that the Company shall be permitted to reallocate all or any portion of any capital expenditures set forth in its 2019 capital plan to its 2020 capital plan), (iv) short-term investments of cash in marketable securities in the Ordinary Course, and (v) expenditures reasonably required to respond to emergency-type occurrences involving life, health, personal safety or the protection of property;
- (h) sell, pledge, licence, lease, swap, transfer or voluntarily lose the right to use, in whole or in part, or otherwise dispose of, or subject to any Lien (other than Permitted Liens), any Company Asset (including the right to use any gates or bridges at any Company Airport) or any interest in any Company Asset, or waive, cancel, release or assign to any Person (other than the Company and its Subsidiaries) any material right or claim

(including Indebtedness owed to the Company and its Subsidiaries), except for (i) Company Assets (other than Aircraft and flight simulators) sold, leased or otherwise transferred in the Ordinary Course and that are not, individually or in the aggregate, material to the Company and its Subsidiaries, (ii) obsolete, damaged or destroyed assets in the Ordinary Course, (iii) returns of leased assets, including Aircraft and Aircraft engines, at the end of the lease term, (iv) transfers of assets between one or more of the Company and its wholly-owned Subsidiaries, (v) non-exclusive grants of licenses in Intellectual Property, (vi) as expressly required pursuant to the terms of any Material Contract in effect on the date of this Agreement, and (vii) sales or other dispositions of Company Assets in the Ordinary Course not in excess of \$200,000,000 in the aggregate;

- (i) make any loan or similar advance to any other Person (other than the Company or a Subsidiary and other than accounts payable to trade creditors and accrued liabilities in the Ordinary Course);
- (j) (i) prepay any Indebtedness before its scheduled maturity, other than (A) repayments under the Existing Credit Facilities not otherwise restricted by this Agreement, (B) as required to satisfy the conditions precedent to the Debt Financing, or (C) as required by Section 4.6(5), or (ii) terminate any Swaps (other than on the expiry thereof);
- (k) incur or guarantee any Indebtedness, except for Indebtedness incurred to fund (i) operating costs incurred in the Ordinary Course and not otherwise restricted pursuant to this Section 4.1, (ii) capital expenditures permitted pursuant to Section 4.1(2)(g), or (iii) as expressly required pursuant to the terms of any Material Contract in effect on the date of this Agreement and listed on Section D(21) of the Company Disclosure Letter;
- (l) except as may be required by applicable Law, or the terms of any Employee Plan or Collective Agreement existing on the date hereof or adopted or entered into after the date hereof in accordance with the terms of this Agreement: (i) increase compensation or other benefits payable or to become payable to any Service Provider other than increases in the Ordinary Course that are not material in the aggregate, (ii) grant or increase any severance, change of control, termination or similar compensation or benefits payable to any Service Provider, or establish, adopt, enter into or amend any bonus, profit sharing, thrift, pension, retirement, deferred compensation, termination or severance plan, agreement, trust, fund, policy or other benefit arrangement as to any Service Provider, in an amount that is material in the aggregate, (iii) hire or engage any Company Employee or promote any existing Company Employee, other than (A) Company Employees (other than at the Executive Officer or vice-presidents level) in the Ordinary Course on terms consistent with similarly situated Company Employees, and (B)

Company Employees at the Executive Officer or vice-presidents level, hired or promoted in the Ordinary Course, after reasonable consultation with the Purchaser, (iv) make any changes to the terms and conditions of employment applicable to any group of Company Employees, as reflected in work rules, employee handbooks, policies and procedures, or otherwise, (v) establish, adopt, enter into, amend or terminate any Employee Plan (or any plan, Contract, program, policy, trust, fund or other arrangement that would be an Employee Plan if it were in existence as of the date hereof), or increase or accelerate the timing of any funding obligation, funding contribution or payment of any compensation or benefits under any Employee Plan, other than commercially reasonable amendments to targets under any Incentive Plan in the Ordinary Course, after reasonable consultation with the Purchaser, or (vi) materially reduce the Company's or any of its Subsidiaries' work force;

- (m) knowingly take any action or fail to take any action that would reasonably be expected to result in a breach or violation of the obligations of the Company or any of its Subsidiaries under any Collective Agreement;
- (n) except as contemplated in Section 4.8, amend, modify or terminate, cancel or let lapse, any material insurance (or re-insurance) policy of the Company or any Subsidiary, unless, simultaneously with any termination, cancellation or lapse, replacement policies underwritten by insurance and re-insurance companies of nationally recognized standing providing coverage equal to or greater than the coverage under the terminated, cancelled or lapsed policies for substantially similar premiums (other than increases reflecting changing market rates) are in full force and effect, and provided that no such termination, cancellation or lapse causes the Company or such Subsidiary to be in material default of any Material Contract or material Authorization to which it is a party or by which it is bound;
- (o) other than in the Ordinary Course amend any existing material Authorization of the Company or any of its Subsidiaries, or abandon or fail to diligently pursue any application for any required material Authorization, or take or omit to take any action that would reasonably be expected to lead to the termination of, or imposition of conditions on, any such material Authorization of the Company or any of its Subsidiaries or such required material Authorization;
- (p) settle or compromise any Proceeding or threatened Proceeding, in each case other than settlements or compromises in the Ordinary Course that involve only: (i) the payment of monetary damages (net of any payments or proceeds received through insurance) not in excess of \$4,000,000 individually or \$15,000,000 in the aggregate, or (ii) the payment of immaterial non-monetary compensation, in each case without any admission of wrongdoing by the Company or any of its Subsidiaries, or

the imposition of any material restrictions (including through the granting of equitable relief) on the business and operations of the Company or any of its Subsidiaries;

- (q) enter into, amend, or modify in any material respect, or terminate or cancel, or waive or fail to exercise any material rights under, any Material Contract, or enter into any Contract that would be a Material Contract if in effect on the date hereof, in each case other than: (i) immaterial amendments in the Ordinary Course, (ii) Contracts with suppliers of services or goods (other than Aircraft or Aircraft engines), corporate and trade incentive sales Contracts, in each case entered into in the Ordinary Course, or (iii) a failure to exercise an option to purchase Aircraft, Aircraft engines or Aircraft Parts that the Company is permitted to acquire pursuant to this Section 4.1(2)(g);
- (r) except as permitted by Section 4.1(4), enter into, amend, or modify in any material respect, or terminate or cancel any Collective Agreement, or enter into any Contract that would be a Collective Agreement if in effect on the date hereof;
- (s) enter into any Contract with any Executive Officer, vice president or director of the Company or any of its Subsidiaries or any of their immediate family members (including spouses), other than (i) expense reimbursements and advances in the Ordinary Course, or (ii) employment contracts with Company Employees hired in accordance with Section 4.1(2)(l).
- (t) make any change in the Company's tax accounting or financial accounting policies, practices, principles, methods or procedures, except as required by applicable Law or as required or permitted by IFRS;
- (u) except as required by applicable Law: (i) make, change or rescind any material Tax election, information schedule, return or designation, (ii) settle or compromise any material Tax claim, assessment, reassessment, liability, Proceeding or controversy, (iii) file any materially amended Tax Return, (iv) enter into any material agreement with a Governmental Entity with respect to Taxes, (v) enter into or change any material Tax sharing, Tax advance pricing agreement, Tax allocation or Tax indemnification agreement that is binding on the Company or its Subsidiaries, (vi) surrender any right to claim a material Tax abatement, reduction, deduction, exemption, credit or refund, (vii) consent to the extension or waiver of the limitation period applicable to any material Tax matter, or (viii) make a request for a material Tax ruling to any Governmental Entity or (ix) materially amend or change any of its methods for reporting income, deductions or accounting for income Tax purposes;

- (v) take any action that would, or would reasonably be expected to, materially delay or impede the consummation of the Arrangement, or the satisfaction of any of the conditions set forth in Article 6; or
 - (w) authorize, agree, offer, resolve or otherwise commit, whether or not in writing, to do any of the foregoing.
- (3) Nothing contained in this Agreement will give the Purchaser, directly or indirectly, the right to direct or control the Company or its Subsidiaries' business and operations prior to the Effective Date. Prior to the Effective Date, the Company will exercise, consistent with the terms of this Agreement, complete control and supervision over its and its Subsidiaries' business and operations. Nothing in this Agreement, including any of the restrictions set forth herein, will be interpreted in such a way as to place any Party in violation of applicable Law.
- (4) Notwithstanding anything to the contrary in this Agreement, the Company and its Subsidiaries shall be permitted to negotiate, enter into, amend, modify, terminate, cancel, finalize and/or implement the terms of any Collective Agreement to the extent required by: (i) collective bargaining commitments already made to any trade union or employee association in connection with any negotiations that are disclosed in Section 4.1(4) of the Company Disclosure Letter; (ii) any requirements or obligations under applicable Law, including, without limitation, the Company's obligations of good faith bargaining under applicable Law; and/or (iii) the Company's obligations under any applicable Order or in respect of any applicable Proceeding; provided that, subject to applicable Law, the Company agrees to reasonably consult with the Purchaser in respect of (a) material actions or decisions to be taken by the Company pursuant to this Section 4.1(4) beyond the mandate approved by the Board prior to the date hereof (all material terms of which are set forth in Section 4.1(4) of the Company Disclosure Letter), or (b) any material amendment to or modification of a Collective Agreement, and will consider in good faith the Purchaser's opinions with respect to all such material actions, decisions, amendments or modifications.
- (5) Without limiting Section 4.1(2), the Company covenants and agrees that, during the period from the date of this Agreement until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, the Company and its Subsidiaries shall, not less than 30 Business Days prior to the expiration of any option to purchase or lease an Aircraft, provide the Purchaser with written notice of such deadline, a copy of any Contract governing such option and copies of all material information that the Company and its Subsidiaries have in their possession or control that is relevant to a decision about whether to exercise such option, and cooperate and consult with the Purchaser regarding the decision about whether to exercise such option.

Section 4.2 Covenants of the Company Relating to the Arrangement

- (1) Subject to the terms and conditions of this Agreement, the Company shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to perform all obligations required to be performed by the Company or any of its Subsidiaries under this

Agreement, cooperate with the Purchaser in connection therewith, and do all such other acts and things as may be necessary or desirable to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, the Company shall and, where appropriate and shall cause its Subsidiaries to (other than in connection with obtaining the Regulatory Approvals and Key Regulatory Approvals, which approvals shall be governed by the provisions of Section 4.4):

- (a) use its commercially reasonable efforts to satisfy all conditions precedent in this Agreement and take all steps set forth in the Interim Order and the Final Order applicable to it and comply promptly with all requirements imposed by Law applicable to it or its Subsidiaries with respect to this Agreement or the Arrangement;
- (b) use its commercially reasonable efforts to provide, obtain and maintain all third party or other notices, consents, waivers, permits, exemptions, orders, approvals, agreements, amendments or confirmations that are reasonably required or reasonably requested by the Purchaser in connection with the transactions contemplated by this Agreement (including those reasonably required under any Contract to which the Company or any of its Subsidiaries is a party), in each case on terms satisfactory to the Purchaser, acting reasonably, and without paying or providing a commitment to pay any consideration in respect thereof without the prior written consent of the Purchaser (it being expressly agreed by the Purchaser that receipt of such notices, consents, waivers, permits, exemptions, orders, approvals, agreements, amendments or confirmations shall not be a condition to the closing of the Arrangement);
- (c) use its commercially reasonable efforts to, (i) effect all necessary or advisable registrations, filings and submissions of information required by Governmental Entities from the Company and its Subsidiaries relating to the Arrangement, and (ii) upon reasonable consultation with the Purchaser, oppose, lift or rescind any injunction, restraining or other Order, decree or ruling seeking to restrain, enjoin or otherwise prohibit or adversely affect the consummation of the Arrangement, and defend, or cause to be defended, any Proceedings to which it is a party or brought against it or its directors or officers challenging the Arrangement or this Agreement or the transactions contemplated thereby, including seeking to have any stay or temporary restraining Order entered by any Governmental Entity vacated or reserved, so as to enable closing to occur as soon as reasonably practicable (provided, that neither the Company nor any of its Subsidiaries shall consent to the entry of any judgment or settlement with respect to any such Proceeding without the prior written approval of the Purchaser, not to be unreasonably withheld, conditioned or delayed) (it being expressly agreed by the Purchaser that the sole conditions to closing with respect to the subject matter of this clause (c) are set out in Article 6);

- (d) not take any action, or refrain from taking any commercially reasonable action, or permit any action to be taken or any commercially reasonable action not to be taken, in each case to the extent inconsistent with this Agreement or which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the Arrangement; and
 - (e) use commercially reasonable efforts to assist the Purchaser in obtaining at the Effective Time, customary mutual releases (in a form satisfactory to the Purchaser, acting reasonably) and, as applicable, resignations effective as of the Effective Time, of those directors of the Company or any its Subsidiaries as may be requested by the Purchaser.
- (2) The Company shall promptly notify the Purchaser in writing, of:
- (a) any Material Adverse Effect that occurs after the date hereof, or any change, event, occurrence, effect, state of facts or circumstance that, individually or in the aggregate with other such changes, events, occurrences, effects, states of facts, circumstances, would reasonably be expected to lead to a Material Adverse Effect;
 - (b) any notice or other communication from any Person alleging that the consent (or waiver, permit, exemption, order, approval, agreement, amendment or confirmation) of such Person (or another Person) is or may be required in connection with the transactions contemplated by this Agreement;
 - (c) unless prohibited by Law, any notice or other communication from any Person (other than a Governmental Entity in connection with the Regulatory Approvals and Key Regulatory Approvals, which shall be addressed as contemplated by Section 4.4) in connection with the transactions contemplated by this Agreement (and the Company shall contemporaneously provide a copy of any such written notice or communication to the Purchaser); or
 - (d) any Proceeding commenced or, to the knowledge of the Company, threatened against, relating to or involving or otherwise affecting this Agreement or the Arrangement.
- (3) The Company shall, and shall cause its Subsidiaries to, provide such cooperation and assistance to the Purchaser as the Purchaser may reasonably request in communications with investors and other stakeholders of the Purchaser relating to the transactions contemplated by this Agreement, including assisting with the preparation of investor materials and by making Representatives of the Company and its Subsidiaries available to participate in investor meetings; provided that: (a) such requests are made on reasonable notice; (b) such cooperation and assistance do not unreasonably interfere with the ongoing operations of the Company or its Subsidiaries; or (c) none of the Company nor any of its Affiliates or Representatives shall be required to take any action or do

anything that would: (i) incur any liability (other than the payment of reasonable and documented out-of-pocket costs related to such cooperation which shall be promptly reimbursed by the Purchaser on demand), (ii) contravene its organizational or constating documents or any applicable Law, (iii) contravene any of the Company's, or any of its Affiliates' agreements that relate to borrowed money or any Contract, (iv) cause any condition set forth in Article 6, not to be satisfied at the Effective Time, (v) cause any breach of this Agreement that would provide the Purchaser with the right to terminate this Agreement or seek indemnity, reimbursement of expenses or the payment of the Termination Fee under the terms hereof, (vi) disclose any information that in the reasonable judgment of the Company would result in the disclosure of any trade secrets or similar information or violate any Contractual obligations of the Company or its Subsidiaries with respect to confidentiality, or (vii) waive or amend any terms of this Agreement.

Section 4.3 Covenants of the Purchaser Relating to the Arrangement

- (1) Subject to the terms and conditions of this Agreement, the Purchaser shall use commercially reasonable efforts to perform all obligations required to be performed by it under this Agreement, cooperate with the Company in connection therewith, and do all such other acts and things as may be necessary or desirable to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, the Purchaser shall (other than in connection with obtaining the Regulatory Approvals and Key Regulatory Approvals, which approvals shall be governed by the provisions of Section 4.4):
 - (a) use its commercially reasonable efforts to satisfy all conditions precedent in this Agreement and take all steps set forth in the Interim Order and the Final Order applicable to it and comply promptly with all requirements imposed by Law on it with respect to this Agreement or the Arrangement;
 - (b) use its commercially reasonable efforts to effect all necessary registrations, filings and submissions of information required by Governmental Entities from it relating to the Arrangement;
 - (c) use its commercially reasonable efforts, upon reasonable consultation with the Company, to oppose, lift or rescind any injunction, restraining or other Order, decree or ruling seeking to restrain, enjoin or otherwise prohibit or adversely affect the consummation of the Arrangement and defend, or cause to be defended, any Proceedings to which it is a party or brought against it or its directors or officers challenging this Agreement or the transactions contemplated hereby, including seeking to have any stay or temporary restraining Order entered by any court or other Governmental Entity vacated or reserved; provided, that the Purchaser shall not consent to the entry of any judgment or settlement with respect to any such Proceeding without the prior written approval of the Company, not to be unreasonably withheld, conditioned or delayed;

- (d) not take any action or refrain from taking any commercially reasonable action, or permit any action to be taken or any commercially reasonable action not to be taken, in each case to the extent inconsistent with this Agreement or which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the Arrangement.
- (2) The Purchaser shall promptly notify the Company orally and, if requested, in writing of:
 - (a) any notice or other communication from any Person (other than a Governmental Entity in connection with the Regulatory Approvals and Key Regulatory Approvals, which shall be addressed as contemplated by Section 4.4) alleging that the consent (or waiver, permit, exemption, order, approval, agreement, amendment or confirmation) of such Person (or another Person) is or may be required in connection with the transactions contemplated by this Agreement;
 - (b) unless prohibited by applicable Law, any notice or other communication from any Governmental Entity in connection with this Agreement (and the Purchaser shall contemporaneously provide a copy of any such written notice or communication to the Company); and
 - (c) any Proceedings commenced or, to the knowledge of the Purchaser, threatened against, relating to or involving or otherwise affecting the Purchaser or the Purchaser Related Parties or their respective assets, in each case to the extent that such Proceeding would reasonably be expected to impair, impede, materially delay or prevent the Purchaser from performing their obligations under this Agreement.
- (3) The Purchaser shall use reasonable best efforts to take or caused to take, all actions, and to do, or cause to be done, all things necessary, proper or advisable to arrange and consummate the Debt Financing on the terms and conditions described in the Debt Letters and to obtain the proceeds of the Debt Financing prior to the Effective Date, including using its reasonable best efforts to: (a) maintain in effect the Debt Letters in accordance with its terms (except for amendments, supplements, modifications, replacements or waivers not prohibited by this Agreement); (b) as promptly as practicable after the date hereof, negotiate and enter into definitive agreements with respect to the Debt Financing on the terms and conditions (including after giving effect to any “market flex” provisions applicable thereto) contained in the Debt Letters as in effect on the date hereof, or on other terms not less favorable to Purchaser in any material respect than the terms and conditions (including any “market flex” provisions applicable thereto) contained in the Debt Letters, provided that such other terms and conditions (including after giving effect to any such “market flex” provisions) shall not impose new or additional conditions or contingencies or otherwise expand, amend, replace, supplement, alter, modify or waive any of the conditions or contingencies to the receipt of any portion of the Financings in a manner that would reasonably be expected to (A) prevent, impair, delay or make less likely the availability of the Financings when required pursuant to Section 2.9, or (B) adversely affect the ability of the Purchaser to timely consummate the

transactions contemplated hereby; (c) satisfy on a timely basis all conditions to funding in the Debt Letters (or definitive agreements entered into with respect to the Debt Financing) applicable to the Purchaser by no later than the Effective Time, except to the extent dependent on compliance by the Company with its obligations under this Agreement; (d) consummate the Debt Financing contemplated by the Debt Letters prior to the Effective Time on the terms and conditions set forth in the Debt Letters; and (e) enforce its rights under the Debt Letters. The Purchaser shall refrain from taking, directly or indirectly, any action that could reasonably be expected to result in a failure of any of the conditions contained in the Debt Letters or in any definitive agreement related to the Debt Financing.

- (4) The Purchaser shall use reasonable best efforts to take, or cause to be taken, all actions, and do, or cause to be done, all things necessary, proper or advisable to arrange and obtain the proceeds of the Sponsor Financing prior to the Effective Date, including using its reasonable best efforts to: (a) maintain in effect the Sponsor Commitment Letter in accordance with its terms (except for amendments, supplements, modifications, replacements or waivers not prohibited by this Agreement), (b) satisfy on a timely basis all conditions to funding in the Sponsor Commitment Letter, (c) consummate the Sponsor Financing contemplated by the Sponsor Commitment Letter prior to the Effective Time, (d) in the event that all conditions to the Sponsor Financing have been satisfied or waived, cause the Sponsors to fund their respective commitments in accordance with the Sponsor Financing required to consummate the transactions contemplated by this Agreement on or prior to the Effective Date, and (e) enforce its rights under the Sponsor Commitment Letter in the event of a breach by any party thereto. The Purchaser shall refrain from taking, directly or indirectly, any action that could reasonably be expected to result in a failure of any of the conditions contained in the Sponsor Commitment Letter or in any definitive agreement related to the Sponsor Financing.
- (5) The Purchaser shall not amend, alter, supplement, modify or replace, or agree to amend, alter, supplement or replace, or permit the amendment, alteration, supplementation, modification or replacement of the Commitment Letters or any definitive agreement or documentation referred to in Section 4.3(3) or Section 4.3(4), or waive any of its rights thereunder, in each case in any manner that would: (a) reduce (or have the effect of reducing) the aggregate amount of the Debt Financing (including by changing the amount of fees to be paid or original issue discount) or Sponsor Financing; (b) impose new or additional conditions or contingencies or otherwise expand, amend, replace, alter or modify any of the conditions or contingencies to the receipt of any portion of the Financings in a manner that would (i) reasonably be expected to prevent or materially impair or delay the availability of the Financings when required pursuant to Section 2.9, (ii) make the funding of the Financings (or satisfaction of the conditions to obtaining the Financings) less likely to occur, (iii) adversely impact the ability of the Purchaser to enforce its rights against other parties to the Debt Letters or Sponsor Commitment Letter, or (iv) otherwise adversely affect the ability of the Purchaser to consummate the transactions contemplated hereby within the time contemplated by Section 2.8(2); or (c) result in the withdrawal or replacement of any Sponsor; provided that the foregoing shall not prohibit (i) any amendment to the Debt Letters to reflect the application of any “market flex” terms or to add additional arrangers, bookrunners, underwriters, agents,

lenders or other Debt Financing Sources as party thereto and to provide for the assignment and reallocation of a portion of the Debt Financing commitments if the addition of such additional parties, individually or in the aggregate, would not prevent, delay or impair the availability of the Financing or the consummation of the transactions contemplated by this Agreement, or (ii) any amendment to, or novation or delegation of, the Sponsor Commitment Letter to add or replace Sponsors, and to provide for the assignment, novation, delegation or reallocation of the Sponsor Financing, in whole or in part, in each case so long as such amendment novation, delegation or reallocation does not result in any of the matters described in clause (a) or (b) of this Section 4.3(5) and complies with the terms of the Sponsor Commitment Letter as at the date hereof or is otherwise on terms that are acceptable to the Company, acting reasonably. The Purchaser shall promptly notify the Company in writing of: (A) the expiration, breach, repudiation or termination (or anticipated, attempted, threatened or purported repudiation or termination, whether or not valid and whether or not in writing) of the Commitment Letters for any reason; (B) receipt of written notice of the refusal of any Debt Financing Source or, as applicable, Sponsor to provide, or of any stated intent by the Debt Financing Sources or Sponsors to refuse to provide, the full Financing contemplated by the Commitment Letters, in each case, notwithstanding the efforts of the Purchaser to satisfy its obligations under Section 4.3(3), Section 4.3(4) or Section 4.3(5); (C) any notice or other communication received by the Purchaser with respect to any actual or threatened breach, default, termination or repudiation by any party to any Commitment Letter; or (D) for any reason, all or any portion of the Financings becoming unavailable, or is expected, or would reasonably be expected to, become unavailable, on the terms and conditions contemplated in any Commitment Letter. In such event, the Purchaser shall, in consultation with the Company, use their reasonable best efforts to promptly arrange for the same or alternative financing (or for additional financing from the original Debt Financing Sources or original Sponsor) on terms (taken as a whole) not less favorable to the Purchaser to replace the portion of the Financings contemplated by such expired, repudiated or terminated commitments or arrangements or for which such Debt Financing Source or Sponsor has refused to provide, which alternative financing would not reasonably be expected to prevent or materially delay the consummation of the Arrangement when required pursuant to Section 2.8(2). The Purchaser shall deliver correct and complete copies of any amendment, replacement, supplement or other modification or waiver of any of the Commitment Letters or any provision thereof to the Company as promptly as practicable following the execution thereof (provided that the existence and/or amount of "market flex" provisions, fees, pricing terms and pricing caps and other economic terms set forth in any such agreement may be redacted). In the event that any Commitment Letter is amended, restated, amended and restated, supplemented, modified, or replaced, the term "Debt Commitment Letter", "Debt Fee Letter" or "Sponsor Commitment Letter" (as applicable) as used herein shall be deemed to include the new or amended commitment letters, fee letters or arrangements described in this Section 4.3(5) to the extent then in effect, the term "Debt Financing", "Sponsor Financing" and "Financings" as used herein shall be deemed to include the applicable financing contemplated by any such new or amended commitment letters or arrangements, and the term "Debt Financing Sources" and "Sponsors" as used herein shall be deemed to include the applicable lenders or sources of equity financing

contemplated by any such new or amended commitment letters, fee letters or arrangements.

- (6) The Purchaser acknowledges and agrees that, prior to the Effective Time, except as provided in Section 4.6, none of the Company or any of its Affiliates or Representatives shall have any obligations in respect of any financing that the Purchaser may raise in connection with the transactions contemplated hereby. The Purchaser also acknowledges and agrees that the Purchaser obtaining financing is not a condition to any of their respective obligations hereunder, regardless of the reasons why financing is not obtained or whether such reasons are within or beyond the control of the Purchaser.
- (7) At the Company's request, the Purchaser shall keep the Company informed in reasonable detail on a current basis of all matters reasonably related to the Financings.
- (8) The Purchaser shall use reasonable best efforts to complete the syndication of a substantial minority of the equity financing commitment under the Sponsor Commitment Letter as soon as reasonably practicable.

Section 4.4 Regulatory Approvals and Key Regulatory Approvals

- (1) The Purchaser and the Company shall, and shall cause their respective Affiliates to, as applicable:
 - (a) as promptly as practicable or advisable, but in any event no later than May 31, 2019, prepare and file with respect to the transactions contemplated by this Agreement:
 - (i) with the Commissioner, a request for an Advance Ruling Certificate under section 102 of the *Competition Act* or, in the alternative, a No Action Letter and a waiver under s. 113(c) of the *Competition Act*, and file those same documents with the Minister and the CTA;
 - (ii) with the Minister, a written submission seeking CT Act Approval on a basis consistent with the principles agreed with the Company; and
 - (iii) with the CTA, an application seeking Canadian Status Determination on a basis consistent with the principles agreed with the Company;
 - (b) within 10 Business Days after the date of delivery of the Purchaser's or the Company's instruction to the other Party, and following the filing, submission and application referred to in Section 4.4(1)(a), prepare and file with the Commissioner, with respect to the transactions contemplated by this Agreement, a notification under Part IX of the *Competition Act*, and file those same documents with the Minister and the CTA;

- (c) as promptly as practicable or advisable, prepare and file any filings or notifications that the Purchaser and the Company agree is required or appropriate to obtain the Other Merger Control Approvals;
 - (d) as promptly as practicable or advisable, prepare and file any other filings or notifications under any other applicable federal, provincial, state or foreign Law required to obtain any other Key Regulatory Approvals; and
 - (e) provide to each Governmental Entity all non-privileged information, documents, data and other things requested by such Governmental Entity or that are necessary or advisable to permit consummation of the transactions contemplated by this Agreement as soon as reasonably practicable following any such request, provided that, in respect of information, documents, data and other things that are subject to confidentiality restrictions, each Party will be permitted to seek, and shall use commercially reasonable efforts to obtain, consent from the relevant third-party to share such information, documents, data and other things, and will only be required to provide such documents, data and other things to a Governmental Entity if consent is received.
- (2) The Purchaser shall pay any filing fee payable to any Governmental Entity in connection with the Key Regulatory Approvals.
- (3) The Purchaser and the Company shall and shall cause their respective Affiliates, as applicable, to cooperate with one another and provide such assistance to one another as the other Party may reasonably request in connection with obtaining the Key Regulatory Approvals and Regulatory Approvals as soon as reasonably practicable. In particular:
- (a) no Party shall extend or consent to any extension of any applicable waiting or review period or enter into any agreement with a Governmental Entity to not consummate the transactions contemplated by this Agreement, except upon the prior written consent of the other Party;
 - (b) the Parties shall exchange drafts of all submissions, material correspondence, filings, presentations, applications, plans and other material documents to be made or submitted to or filed with any Governmental Entity in respect of the transactions contemplated by this Agreement, shall consider in good faith any suggestions made by the other Party and its counsel and shall provide the other Party and its counsel with final copies of all such material submissions, correspondence, filings, presentations, applications, plans, and other material documents submitted to or filed with any Governmental Entity in respect of the transactions contemplated by this Agreement; provided, however, that information indicated by either Party to be commercially confidential or competitively sensitive shall be provided on an external counsel-only basis;

- (c) each Party will keep the other Party and their respective counsel apprised of all substantive written (including email) and oral communications and all meetings with any Governmental Entity and their staff in respect of the Regulatory Approvals and Key Regulatory Approvals, and will not participate in such material communications or meetings without giving the other Party and their respective counsel the reasonable opportunity to participate therein; provided, however, where commercially confidential or competitively sensitive information may be discussed or communicated, the other Party's external legal counsel shall be provided with any such communications or information on an external counsel-only basis and shall have the right to participate in any such meetings on an external counsel-only basis; and
 - (d) the Company shall and shall cause its Affiliates to make available its Representatives, on the reasonable request of Purchaser and its counsel, to assist Purchaser in obtaining the Regulatory Approvals and Key Regulatory Approvals, including by (i) making introductions and arranging meetings with key stakeholders and leaders of Governmental Entities and participating in those meetings, (ii) providing strategic input, including on any materials prepared for obtaining the Regulatory Approvals and Key Regulatory Approvals, and (iii) responding promptly to requests for support, documents, information, comments or input where reasonably requested by Purchaser in connection with the Regulatory Approvals and Key Regulatory Approvals.
- (4) The Purchaser covenants and agrees that it shall not, and shall cause its Affiliates and Onex Funds not to, acquire or agree, by merging with or into or consolidating with, or by purchasing a substantial portion of the assets of or equity in, or by any other manner, any Canadian headquartered airline that competes with the Company and its Subsidiaries. The Purchaser shall cause the Onex Funds to not knowingly syndicate the equity financing commitment under the Sponsor Commitment Letter to any additional Sponsor that would reasonably be expected to negatively affect the ability to obtain any Key Regulatory Approval prior to the Outside Date.
- (5) The Parties shall use (and shall cause their respective Affiliates to use) their respective reasonable best efforts to obtain the Key Regulatory Approvals.
- (6) Subject to the other provisions of this Section 4.4, Purchaser shall, acting reasonably, determine and direct all matters, efforts and strategy related to obtaining the Key Regulatory Approvals and the Regulatory Approvals. The Purchaser shall consider the views and input of the Company in good faith.

Section 4.5 Access to Information; Confidentiality

- (1) From the date hereof until the earlier of the Effective Time and the termination of this Agreement in accordance with its terms, except as prohibited by applicable Law and the terms of any existing Contracts, the Company shall, and shall cause its Subsidiaries and

shall use commercially reasonable efforts to cause its and its Subsidiaries' respective Representatives and Service Providers to afford the Purchaser and its Representatives (including the Sponsors and the Debt Financing Sources) such access as the Purchaser may reasonably request at all reasonable times, including to facilitate post-closing strategic, business and tax planning, the Financings and/or any potential Pre-Acquisition Reorganization, to their senior personnel, offices, properties, assets, books and records, and Contracts, and shall make available to the Purchaser and such Representatives all financial data and other information as the Purchaser may reasonably request (including continuing access to the Data Room); provided that: (a) the Purchaser provides the Company with reasonable notice of any request under this Section 4.5(1), (b) access to any materials contemplated in this Section 4.5(1) (other than the materials in the Data Room) shall be provided during the Company's normal business hours only and in such manner not to interfere unreasonably with the conduct of the business of the Company and its Subsidiaries, and (c) neither the Purchaser or any of its Representatives shall contact Service Providers of the Company or any of its Subsidiaries, other than the Executive Officers, except after prior approval of the Company, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Company shall not be obligated to provide access to, or to disclose, any information to the Purchaser if the Company reasonably determines that such access or disclosure would violate applicable Law, result in the disclosure of any trade secrets or similar information or violate any obligations of the Company or any other Person with respect to confidentiality (if the Company shall have used commercially reasonable efforts to obtain the consent of such third party to such disclosure), jeopardize any privilege claim by the Company or any of its Subsidiaries, interfere unreasonably with the conduct of the business of the Company or its Subsidiaries.

- (2) The Confidentiality Agreement shall continue to apply until the Effective Time, and any information provided under Section 4.5(1) is confidential and shall be subject to the terms of the Confidentiality Agreement.

Section 4.6 Financing Assistance

- (1) Subject to Section 4.6(2), the Company shall use commercially reasonable efforts to provide and cause its Subsidiaries to provide, and shall use its reasonable best efforts to cause its and their respective Representatives, including legal and accounting, to provide, such customary cooperation (including with respect to timeliness) to the Purchaser as the Purchaser may reasonably request in connection with the arrangements by the Purchaser relating to the Debt Financing and Sponsor Financing, including using commercially reasonable efforts to:
 - (a) cooperate with the diligence efforts of the Purchaser, the Sponsors and any Debt Financing Source for all or any portion of the Debt Financing, in each case, upon reasonable notice and at mutually agreeable dates and times;
 - (b) furnish the Purchaser and any Debt Financing Source, as promptly as reasonably practicable, with the Financing Information and updating and

correcting any Financing Information in order to ensure that such Financing Information satisfies the Compliance Requirements;

- (c) obtain and deliver, in escrow subject to receipt of funds from the Purchaser sufficient to make the applicable repayment, at least 3 Business Days prior to the Effective Date an executed payoff letter with respect to any indebtedness for borrowed money (to the extent requested by the Purchaser) being repaid by the Financings and facilitate the removal of Liens where the obligations secured thereby are being fully repaid by the Financings by arranging for Lien terminations and releases and instruments and acknowledgements of discharge, in each case acceptable to the Purchaser, acting reasonably, and subject to receipt of funds from the Purchaser sufficient to make such repayment; provided that no obligation of the Company or any of its Subsidiaries under any agreement shall be operative until the Effective Date;
- (d) assist in the preparation of a bank confidential information memorandum and rating agency presentations, lender presentations and other marketing materials that are customary in connection with financings similar to the Debt Financing, and causing management of the Company and its Subsidiaries (with appropriate seniority and expertise) to participate in marketing efforts (including a reasonable number of meetings and calls and a reasonable number of presentations, road shows, drafting sessions, due diligence sessions (including accounting due diligence sessions), and sessions with prospective lenders and investors and commitment parties, purchasers and rating agencies), in each case at reasonable times and locations mutually agreed;
- (e) obtain from the Company's independent auditors and accountants, consistent with customary practice, comfort letters and consents customary for financings similar to the Debt Financing, and providing customary information and assistance reasonably necessary to assist the Purchaser and their counsel with obtaining the customary legal opinions required to be delivered in connection with the Debt Financing;
- (f) execute and deliver (or assist in the execution and delivery of), as of the Effective Time, any pledge and security documents, other definitive financing documents or other certificates (including, but not limited to a solvency certificate of the chief financial officer and factual back-up certificates for legal opinions) or documents as may be reasonably requested by the Purchaser, including to facilitate the pledging of collateral;
- (g) prevent the offer, placement or arrangement of any debt securities or syndicated credit facilities by or on behalf of the Company or any of its Subsidiaries (except as permitted by this Agreement);

- (h) taking all actions reasonably necessary to permit the Purchaser to appraise and evaluate the Company's assets;
 - (i) assist the Purchaser in obtaining such consents and waiver as the Purchaser may reasonably require with respect to the EDC Credit Facility as soon as reasonably practicable following the date of this Agreement;
 - (j) assist the Purchaser in connection with the preparation of *pro forma* financial information and *pro forma* financial statements of the Company and its Subsidiaries of the type required by the Debt Financing commitments or necessary or reasonably requested by Debt Financing Sources to be included in any customary marketing materials; provided that none of the Company nor any of its Subsidiaries or Representatives shall be required to actually prepare any such *pro forma* financial information; and
 - (k) providing customary authorization letters to the Debt Financing Sources authorizing the distribution of information to prospective lenders or investors and containing customary 10b-5 representations and representations that the public versions of such documents do not include material, non-public information about the Company or its Subsidiaries or their securities and the accuracy of the information contained in the disclosure and the marketing materials.
- (2) The Company or any of its Subsidiaries and their respective Representatives shall only be required to undertake the actions described in Section 4.6(1) provided that:
- (a) such actions are requested on reasonable notice and do not unreasonably interfere with the ongoing business operations of the Company or its Subsidiaries;
 - (b) the Company shall not be required to provide, or cause any of its Subsidiaries to provide, cooperation that involves any binding commitment or agreement (including the entry into any agreement or the execution of any certificate) by the Company or its Subsidiaries (or commitment or agreement which becomes effective prior to the Effective Time) which is not conditional on the completion of the Arrangement and does not terminate without liability to the Company and its Subsidiaries upon the termination of this Agreement;
 - (c) neither the Company nor any of its Subsidiaries shall be required to take any action pursuant to any Contract, certificate or instrument that is not contingent upon the occurrence of the Effective Time or that would be effective prior to the Effective Time;
 - (d) neither the Board nor any of the Company's Subsidiaries' boards of directors (or equivalent bodies) shall be required to approve or adopt any

Financing or Contracts related thereto (or any alternative financing) prior to the Effective Time;

- (e) no employee, officer or director of the Company or any of its Subsidiaries shall be required to take any action which would result in such Person incurring any personal liability (as opposed to liability in his or her capacity as an officer) with respect to any matters related to the Debt Financing;
 - (f) any participants in the Debt Financing or the Sponsor Financing acknowledge the confidentiality of Confidential Information (as defined in the Confidentiality Agreement) received by them (including through customary “click-through” confidentiality undertakings on IntraLinks, R.R. Donnelley Venue, SyndTrak, Debt Domain and similar electronic data sites); and
 - (g) neither the Company nor any of its Subsidiaries shall be required to: (i) pay any commitment, consent or other similar fee, incur any liability (other than the payment of reasonable and documented out-of-pocket costs related to such cooperation which shall be reimbursed by the Purchaser to the extent contemplated by Section 4.6(3)), or provide or agree to provide any indemnity in connection with any such financing prior to the Effective Time; (ii) contravene any applicable Law or its organizational or constating documents; (iii) contravene any agreements that relate to Indebtedness or Swaps or any other Material Contract; (iv) take any action capable of impairing or preventing the satisfaction of any condition set forth in Article 6; (v) cause any breach of this Agreement that is not irrevocably waived by the Purchaser; (vi) disclose any information that in the reasonable judgement of the Company would result in the disclosure of any trade secrets or similar information or violate any Contractual obligations of the Company or its Subsidiaries with respect to confidentiality; (vii) provide access to or disclose information that the Company reasonably determines could jeopardize any solicitor-client privilege of the Company or any of the Company Related Parties; or (viii) waive or amend any terms of this Agreement.
- (3) If this Agreement is terminated (other than by the Purchaser pursuant to Section 7.2(1)(iv)(a)), the Purchaser shall, promptly upon request by the Company, reimburse the Company and its Subsidiaries for all reasonable and documented out-of-pocket costs (including reasonable and documented out-of-pocket legal fees) incurred by the Company or its Subsidiaries in connection with any of the actions contemplated by Section 4.6(1), Section 4.6(5) or Section 4.6(6), and shall indemnify and hold harmless the Company or its Subsidiaries and their respective Representatives from and against any and all losses, damages, claims, costs or expenses suffered or incurred by any of them in connection with the cooperation of the Company and its Subsidiaries contemplated by this Section 4.6(1), Section 4.6(5) or Section 4.6(6) or in connection with the Financings, except to the extent resulting from the willful misconduct or gross

negligence of any such Person (as determined by a final and non-appealable judgment by a court of competent jurisdiction); provided that the aggregate indemnification and reimbursement obligations of the Purchaser in connection with actions taken pursuant to Section 4.6(6) shall not exceed [Redacted – Amount Related to Confidential Information].

- (4) The Company hereby consents to the use of its and its Subsidiaries' trademarks, trade names and logos in connection with the Debt Financing; provided, (a) that such trademarks, trade names and logos are used solely (i) in a manner that is not intended, or reasonably likely, to harm or disparage the Company or its Subsidiaries or the reputation or goodwill of the Company and its Subsidiaries, and (ii) in connection with a description of the Company, its business and products and the transactions contemplated by this Agreement (including the Debt Financing), and (b) the Debt Financing Sources shall only be entitled to use such trademarks, trade names and logos in connection with the Debt Financing and they shall have no property rights therein.
- (5) The Company shall use reasonable best efforts to obtain an amendment or consent under the Ex-Im Facilities to permit such facilities to be prepaid on the Effective Date, provided that the Purchaser has consented to any amendment or consent fee, acting reasonably. The Company shall (subject to either obtaining the amendment or consent referred to in the previous sentence or the Purchaser making the election referred to in Section 4.6(6) below) provide the Purchaser with executed pay-off letters (or other evidence of repayment reasonably acceptable to the Purchaser) on or prior to the Effective Date with respect to each of the Ex-Im Facilities. In addition, the Company shall furnish the Purchaser and any Debt Financing Source, at least five Business Days prior to the Effective Date, with all documentation and other information related to the Company or any of its Subsidiaries as required by any Debt Financing Source under applicable "know your customer" rules and regulations and anti-money laundering rules and regulations (including the USA PATRIOT Act) and 31 C.F.R. §1010.230, in each case with respect to the Debt Financing and to the extent requested by the Purchaser at least ten Business Days prior to the Effective Date.
- (6) If the amendment or consent referred to in the first sentence of Section 4.6(5) cannot be obtained, the Company shall, upon the written request of the Purchaser and on reasonable notice and as elected by the Purchaser on a date specified by the Purchaser, either (A) cause the borrower thereunder to prepay one or more of the Ex-Im Facilities prior to the Effective Date in accordance with Section 2.4(a) thereof or (B) cause the Company to terminate the conditional sale agreements related to one or more of the aircraft under the Ex-Im Facilities thereby causing the borrower under such Ex-Im Facilities to prepay one or more of the Ex-Im Facilities in accordance with Section 2.4(b) thereof.

Section 4.7 Public Communications

The Parties shall agree on the text of joint press releases by which they will announce (a) the execution of this Agreement, and (b) on the Effective Date, the completion of the Arrangement. The Parties shall co-operate in the preparation of presentations, if any, to Shareholders or other Persons regarding the Arrangement. Except as required by applicable Law, neither Party nor any

Related Party shall issue any press release or make any other public statement or disclosure with respect to this Agreement or the transactions contemplated by this Agreement without the prior consent of the Parties (which consent shall not be unreasonably withheld, conditioned or delayed); provided that, subject to Article 5, any Party that, in the opinion of outside counsel, is required to make disclosure by applicable Law (other than disclosures to Governmental Entities in connection with the Regulatory Approvals and Key Regulatory Approvals, which shall be addressed as contemplated by Section 4.4) or to ensure compliance with fiduciary duties of its board of directors, shall, if permitted by applicable Law, use its commercially reasonable efforts to give the other Party prior oral or written notice and a reasonable opportunity to review or comment on such disclosure (other than with respect to confidential information contained in such disclosure) and if such prior notice is not permitted by applicable Law, shall give such notice immediately following the making of such disclosure. The Party making such disclosure shall give reasonable consideration to any comments made by the other Party or its counsel. For the avoidance of doubt, none of the foregoing shall prevent the Company, the Purchaser or a Purchaser Related Party from making (a) internal announcements to employees and having discussions with shareholders, financial analysts and other stakeholders, or (b) public announcements in the Ordinary Course that do not relate specifically to this Agreement or the Arrangement, in each case so long as such announcements and discussions are consistent in all material respects with the most recent press releases, public disclosures or public statements made by such Person. The Purchaser shall also cause Onex to comply with the provisions of this Section 4.7 with regards to restrictions on public disclosure. The Parties acknowledge that the Company will file this Agreement and a material change report relating thereto on SEDAR.

Section 4.8 Insurance and Indemnification

- (1) Prior to the Effective Time, the Company shall, in reasonable consultation with the Purchaser, (and, if the Company is unable to, the Purchaser shall cause the Company as of the Effective Time to) obtain and fully pay a single premium for, customary “tail” policies of directors’ and officers’ liability insurance from an insurance carrier with the same or better credit rating as the Company’s current insurance carriers with respect to directors’ and officers’ liability insurance providing protection for a claims reporting or discovery period beginning at the Effective Time and continuing for not less than six years from and after the Effective Date and with terms, conditions (including retentions and limits of liability) that are no less favourable in the aggregate to the directors and officers of the Company than the protection provided by the policies maintained by the Company which are in effect immediately prior to the Effective Date and providing protection in respect of claims arising from facts or events which occurred on or prior to the Effective Date; provided that the cost of such “tail” policies shall not exceed 300% of the annual premiums for the Company’s directors’ and officers’ liability insurance and errors and omissions insurance in effect as of the date of this Agreement.
- (2) From and after the Effective Time, the Purchaser shall honour all rights to indemnification or exculpation existing as of the date hereof in favour of present and former directors and officers of the Company and its Subsidiaries, and acknowledges that such rights shall survive the completion of the Arrangement and shall continue in full force and effect in accordance with their terms.

- (3) From and after the Effective Time, the Purchaser shall, and shall cause the Company to, indemnify and hold harmless, to the fullest extent permitted under applicable Law (and to also advance expenses as incurred to the fullest extent permitted under applicable Law), each present and former director and officer of the Company and its Subsidiaries (each, an “**Indemnified Person**”) against any costs or expenses (including reasonable attorneys’ fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any Proceeding arising out of or related to such Indemnified Person’s service as a director or officer of the Company or any of its Subsidiaries or services performed by such Persons at the request of the Company or any of its Subsidiaries at or prior to or following the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, including the approval or completion of this Agreement and the Arrangement or any of the other transactions contemplated by this Agreement or arising out of or related to this Agreement and the transactions contemplated hereby. None of the Purchaser, the Company or any of their respective Subsidiaries shall settle, compromise or consent to the entry of any judgment in any Proceeding involving or naming an Indemnified Person or arising out of or related to an Indemnified Person’s service as a director or officer of the Company or any of its Subsidiaries or services performed by such Indemnified Person at the request of the Company or any of its Subsidiaries at or prior to or following the Effective Time without the prior written consent (not to be unreasonably withheld or delayed) of that Indemnified Person, unless such settlement, compromise or consent includes an unconditional release of such Indemnified Person from all liability arising out of such Proceeding.
- (4) If any Indemnified Person makes any claim for indemnification or advancement of expenses under this Section 4.8 that is denied by the Company or the Purchaser, and a court of competent jurisdiction determines that the Indemnified Person is entitled to such indemnification, then the Company and the Purchaser shall pay such Indemnified Person’s reasonable out-of-pocket costs and expenses, including reasonable legal fees and expenses, incurred in connection with pursuing such claim against the Company or the Purchaser.
- (5) The rights of the Indemnified Persons under this Section 4.8 shall be in addition to any rights such Indemnified Persons may have under the Company Constating Documents or the constating documents of any of its Subsidiaries that has been disclosed in the Data Room, or under any applicable Law or customary directors and officers indemnification agreement of any Indemnified Person with the Company or any of its Subsidiaries. All rights to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time and rights to advancement of expenses relating thereto in favour of any Indemnified Person as provided in the constating documents of the Company or any of its Subsidiaries that has been disclosed in the Data Room or any customary directors and officers indemnification agreement between such Indemnified Person and the Company or any of its Subsidiaries shall survive the Effective Time in accordance with their terms and shall not be amended, repealed or otherwise modified in any manner that would adversely affect any right thereunder of any such Indemnified Person without the consent of such Indemnified Person.

- (6) If any of the Company, the Purchaser or any of their successors or assigns shall (a) amalgamate, consolidate with or merge or wind-up into any other person and shall not be the continuing or surviving corporation or entity, or (b) transfer all or substantially all of its properties and assets to any person, then, and in each such case, proper provisions shall be made so that the successors and assigns and transferees of the Company or the Purchaser, as the case may be, shall assume all of the obligations set forth in this Section 4.8.

Section 4.9 Pre-Acquisition Reorganization

- (1) The Company agrees that, upon the reasonable request by the Purchaser, and subject to any approvals of the applicable Governmental Entities, the Company shall use, and shall cause each of its Subsidiaries to use, commercially reasonable efforts to: (a) undertake such transactions and reorganizations involving the Company's and its Subsidiaries' corporate structure, capital structure, business, operations and assets or such other transactions as the Purchaser may reasonably request (each a "**Pre-Acquisition Reorganization**"), and (b) cooperate with the Purchaser and its advisors in order to determine the nature of any Pre-Acquisition Reorganization that might be undertaken and the manner in which any Pre-Acquisition Reorganization might most effectively be undertaken; provided that any Pre-Acquisition Reorganization: (i) is not prejudicial to the Company or the Company Securityholders in any material respect (it being acknowledged that any decrease in or change in the form of or Tax consequences related to the Consideration shall be deemed to materially prejudice the Company Securityholders), (ii) does not require the Company to obtain the approval of any of the Company Securityholders (other than the Required Approval), (iii) does not impair, prevent or materially delay the consummation of the Arrangement or the ability of the Purchaser to obtain or consummate the Financings, (iv) is effected as closely as is reasonably practicable prior to the Effective Time, (v) does not result in any breach by the Company or any of its Subsidiaries of any Contract, Authorization, constating documents (including the Company Constating Documents) or applicable Law, (vi) does not result in Taxes being imposed on, or any adverse Tax or other consequences to, Company Securityholders and (vii) shall not become effective unless the Purchaser has waived or confirmed in writing the satisfaction of all conditions in its favour under this Agreement and shall have confirmed in writing that it is prepared, and able, to promptly and without condition proceed to effect the Arrangement.
- (2) The Purchaser hereby waives any breach of a representation, warranty or covenant by the Company to the extent such breach is a result of an action taken by the Company or a Subsidiary pursuant to a request by the Purchaser pursuant to this Section 4.9.
- (3) The Purchaser shall provide written notice to the Company of any proposed Pre-Acquisition Reorganization at least 15 Business Days prior to the Effective Date. Upon receipt of such notice, the Purchaser and the Company and their respective Representatives shall work cooperatively and use commercially reasonable efforts to prepare prior to the Effective Time all documentation necessary and do all such other acts and things as are reasonably necessary, including making amendments to this Agreement or the Plan of Arrangement (provided that such amendments do not require the Company

to obtain approval of the Company Securityholders (other than as properly put forward and approved at the Company Meeting)), to give effect to such Pre-Acquisition Reorganization.

- (4) If this Agreement is terminated (other than by the Purchaser pursuant to Section 7.2(1)(iv)(a)), the Purchaser (a) shall forthwith reimburse the Company for all costs and expenses, including legal fees and disbursements, incurred by the Company and its Subsidiaries in connection with any proposed Pre-Acquisition Reorganization, and (b) hereby indemnifies and holds harmless the Company, its Subsidiaries and their respective Representatives from and against any and all liabilities, losses, damages, claims, penalties, expenses, interest, awards, judgements, costs and Taxes suffered or incurred by any of them in connection with or as a result of any Pre-Acquisition Reorganization, or to reverse or unwind any Pre-Acquisition Reorganization or other steps taken pursuant to this Section 4.9.
- (5) The Purchaser shall arrange for, and the Company and/or its Subsidiaries shall agree to borrow from the Purchaser or from the Debt Financing Sources under the Debt Financing, concurrent with the Effective Time, such amounts (together with any available cash on hand) as are reasonably necessary in order to fund the repayment of debt owing by the Company and/or its Subsidiaries required as a condition to drawdown of the Debt Commitment Letter, to pay financing and other transaction expenses owing by the Company and/or its Subsidiaries, or for general corporate purposes.

Section 4.10 Tax Matters

The Company covenants and agrees that:

- (1) as promptly as possible after the date hereof, the Company shall provide the Purchaser with a list of all material Tax Returns with respect to which the Company or any of its Subsidiaries has requested an extension of time within which to file such Tax Return which Tax Return has not yet been filed; and
- (2) until the Effective Date the Company and its Subsidiaries will (a) duly and timely file with the appropriate Governmental Entity all Tax Returns required to be filed by any of them, which shall be correct and complete in all material respects, (b) reasonably consult with the Purchaser with respect to the discretionary deductions to be claimed in respect of any such Tax Return where claiming such discretionary deductions would otherwise give rise to a non-capital loss for Canadian tax purposes and (c) pay, withhold, collect and remit to the appropriate Governmental Entity in a timely fashion all amounts required to be so paid, withheld, collected or remitted. The Company shall keep the Purchaser reasonably informed of any events, discussions, notices or changes with respect to any Tax or regulatory audit or investigation or any other investigation by a Governmental Entity or Proceeding involving the Company or any of its Subsidiaries (other than ordinary course communications which could not reasonably be expected to be material to the Company, and the Subsidiaries on a consolidated basis).

Section 4.11 Employee Matters

- (1) For a period of not less than one year following the Effective Time, the Purchaser shall provide, or cause the Company to provide (a) base salary and any applicable annual cash bonus opportunity (excluding equity based arrangements) to each Company Employee (other than any Company Employee subject to a Collective Agreement or who becomes subject to a Collective Agreement during such period) that are substantially comparable in the aggregate to those in effect immediately prior to the Effective Time, (b) severance benefits to each Company Employee (other than any Company Employee subject to a Collective Agreement or who becomes subject to a Collective Agreement during such period) that are no less favourable than those that would have been provided to such Company Employee under the applicable Employee Plan, individual offer letter or Contract as in effect immediately prior to the Effective Time, and if no such arrangements were then in effect, such notice of termination or payment in lieu of notice of termination in accordance with applicable Law and (c) employee benefit plans and arrangements (other than base salary, bonus opportunities, severance, long-term incentive compensation and equity based compensation (including all Incentive Plans) benefits) to Company Employees (other than any Company Employee subject to a Collective Agreement or who becomes subject to a Collective Agreement during such period) that are substantially similar in the aggregate to those provided to the Company Employees immediately prior to the Effective Time.
- (2) The Purchaser hereby acknowledges that the consummation of the transactions contemplated by this Agreement constitutes a “change in control” or “change of control” (or a term of similar import) for purposes of any Employee Plan or Incentive Plan that contains a definition of “change in control” or “change of control” (or a term of similar import), as applicable.
- (3) With respect to all employee benefit plans of the Purchaser and their Affiliates in which Company Employees may be permitted or are required to enroll (including any vacation, paid time-off and severance plans), for purposes of determining eligibility to participate, determining vesting periods (other than vesting of future equity awards) and for purposes of determining severance amounts and future vacation and paid time off accruals, each Company Employee’s service with the Company or any of its Subsidiaries (as well as service with any predecessor employer of the Company or any such Subsidiary, to the extent service with the predecessor employer was recognized by the Company or such Subsidiary for similar purposes under the corresponding Employee Plan) shall be treated as service with the Purchaser or its Affiliates; provided, however, that such service need not be recognized to the extent that such recognition would result in any duplication of benefits for the same period of service.
- (4) Without limiting the generality of Section 4.11(1), the Purchaser shall use commercially reasonable efforts to waive, or cause to be waived, any pre-existing condition limitations, exclusions, actively-at-work requirements and waiting periods under any health and welfare benefit plan maintained by the Purchaser or its Affiliates in which Company Employees (and their eligible dependents) will be eligible to participate from and after the Effective Time, except to the extent that such pre-existing condition limitations,

exclusions, actively-at work requirements and waiting periods would not have been satisfied or waived under the comparable Employee Plan immediately prior to the Effective Time. The Purchaser shall, or shall cause the Company to, use commercially reasonable efforts to recognize the dollar amount of all co-payments, deductibles and similar expenses incurred by each Company Employee (and his or her eligible dependents) during the calendar year in which the Effective Time occurs for purposes of satisfying such year's deductible and co-payment limitations under the relevant welfare benefit plans in which they will be eligible to participate from and after the Effective Time.

- (5) The provisions of this Section 4.11 are solely for the benefit of the Parties to this Agreement, and no provision of this Section 4.11 is intended to or shall (a) constitute the establishment or adoption of or an amendment to any employee benefit plan, (b) require the Purchaser or any of its Affiliates (including, following the Effective Time, the Company and its Subsidiaries) to continue any Employee Plan or prevent the amendment, modification or termination thereof after the Effective Time, (c) guarantee employment for any period of time for, or preclude the ability of the Purchaser or its Affiliates to terminate the employment of any Company Employee at any time and for any or no reason and (d) confer on any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 4.11, including any Person claiming to be a third party beneficiary of this Agreement.

Section 4.12 Stock Exchange Delisting

Each of the Company and the Purchaser agrees to cooperate with the other Parties in taking, or causing to be taken, all actions necessary to delist the Shares from the TSX as promptly as practicable following the Effective Time (including, if requested by the Purchaser, such items as may be necessary to delist the Shares on the Effective Date).

Section 4.13 Exemptive Relief

As promptly as practicable following the date hereof, the Company agrees to use commercially reasonable efforts to obtain an Order of each Canadian securities regulatory authority that, for the purposes of obtaining the approval contemplated by Section 2.2(c)(ii), the Common Voting Shares and the Variable Voting Shares shall vote together as a single class of Shares, and the Interim Order shall contain appropriate provisions to allow the Company to rely on any such Order in obtaining the Required Approval.

ARTICLE 5 ADDITIONAL COVENANTS REGARDING NON-SOLICITATION

Section 5.1 Non-Solicitation

- (1) Except as expressly provided in this Section 5.1, the Company and its Subsidiaries shall not, directly or indirectly, through any Representative or otherwise, and shall not permit any such Person to:

- (a) solicit, assist, initiate, encourage or otherwise facilitate (including by way of furnishing or providing copies of, access to, or disclosure of, any confidential information, properties, facilities, books or records of the Company or any of its Subsidiaries or entering into any form of agreement, arrangement or understanding) any inquiry, proposal or offer (whether public or otherwise) that constitutes, or could reasonably be expected to constitute or lead to, an Acquisition Proposal;
 - (b) continue, enter into or otherwise engage or participate in any discussions or negotiations with, furnish any information relating to the Company or any of its Subsidiaries or offer or provide access to the business, properties, assets, books or records of the Company or any of its Subsidiaries or otherwise cooperate in any way with any Person (other than the Purchaser and the Purchaser Related Parties) regarding any inquiry, proposal, request or offer constituting, or that could reasonably be expected to lead to, an Acquisition Proposal, provided that the Company may (i) advise any Person of the restrictions of this Agreement, and (ii) provide a written response (with a copy to the Purchaser) to any Person who submits an Acquisition Proposal solely for the purposes of seeking clarification of the express terms of such Acquisition Proposal, and (iii) advise any Person making an Acquisition Proposal that the Board has determined that such Acquisition Proposal does not constitute a Superior Proposal, in each case, if, in so doing, no other information that is prohibited from being communicated under this Agreement is communicated to such Person;
 - (c) make a Change in Recommendation;
 - (d) accept, approve, endorse or recommend, or publicly propose to accept, approve, endorse or recommend, any Acquisition Proposal; or
 - (e) accept, approve, endorse, recommend or execute or enter into, or publicly propose to accept, approve, endorse, recommend or execute or enter into any agreement, arrangement or understanding (whether or not legally binding) in respect of an Acquisition Proposal (other than a confidentiality and standstill agreement permitted by and in accordance with Section 5.3(1)(c)).
- (2) The Company shall, and shall cause its Subsidiaries and its and their respective Representatives to, immediately cease and terminate, and cause to be terminated, any solicitation, encouragement, discussion, negotiation or other activities commenced prior to the date of this Agreement with any Person (other than the Purchaser and the Purchaser Related Parties) with respect to any inquiry, proposal, request or offer that constitutes, or could reasonably be expected to lead to, an Acquisition Proposal, and in connection therewith, the Company will:

- (a) immediately discontinue access to, and disclosure of, all confidential information (including through any data room or through granting access to any books and records or its facilities of the Company or any of its Subsidiaries) that such Person may have access to; and
 - (b) within two Business Days of the date hereof, request, and exercise all rights it has to require (i) the return or destruction of all copies of any confidential information regarding the Company or any of its Subsidiaries provided to any such Person, or (ii) the destruction of all material including or incorporating or otherwise reflecting such confidential information regarding the Company or any of its Subsidiaries, in each case using its commercially reasonable efforts to ensure that such requests are fully complied with in accordance with the terms of such rights.
- (3) The Company represents, warrants, covenants and agrees that (a) it shall use commercially reasonable efforts to enforce each confidentiality, standstill or similar agreement, restriction or covenant to which it or any of its Subsidiaries is a party, and (b) neither it nor any of its Subsidiaries or any of their respective Representatives have or will, without the prior written consent of the Purchaser, release any Person from, or waive, amend, suspend or otherwise modify, any Person's obligations respecting the Company or any of its Subsidiaries under, any confidentiality, standstill or similar agreement, restriction or covenant to which the Company or any of its Subsidiaries is a party (it being acknowledged by the Purchaser that the automatic termination or release of any such agreement, restriction or covenant as a result of entering into this Agreement shall not be a violation of this Section 5.1(3)).

Section 5.2 Notification of Acquisition Proposals

If the Company or any of its Subsidiaries or any of their respective Representatives receives or otherwise becomes aware of any inquiry, proposal, request or offer that constitutes or could reasonably be expected to lead to an Acquisition Proposal, or any request for copies of, access to, or disclosure of, confidential information relating to the Company or any of its Subsidiaries outside of the Ordinary Course and not reasonably believed to relate in any way to an Acquisition Proposal, including information, access or disclosure relating to the assets, properties, facilities, books or records of the Company or any of its Subsidiaries, the Company shall promptly (and in any event within 24 hours of the receipt thereof) notify the Purchaser, at first orally, and then in writing, of such inquiry, proposal, request or offer, including a description of its material terms and conditions, and the identity of all Persons making the inquiry, proposal, request or offer, and shall provide the Purchaser with copies of all written agreements, documents in respect of such inquiry, proposal, request or offer Acquisition Proposal, as well as all substantive or material correspondence or other material received from or behalf of, or sent to any such Person and such other details of such Acquisition Proposal, inquiry, proposal, offer or request as the Purchaser may reasonably request. The Company shall keep the Purchaser fully informed on a reasonably current basis of the status of developments and, to the extent permitted by Section 5.3, discussions and negotiations with respect to any such inquiry,

proposal, request or offer, including any material changes, modifications or other amendments to any such inquiry, proposal, request or offer.

Section 5.3 Responding to an Acquisition Proposal

- (1) If at any time prior to obtaining the Required Approval, the Company receives a *bona fide* unsolicited written Acquisition Proposal that the Board determines in good faith, after consultation with outside legal counsel and financial advisors, constitutes or could reasonably be expected to constitute or lead to a Superior Proposal, the Company and its Representatives may engage in discussions and negotiation with such Person regarding such Acquisition Proposal, and may provide such Person with access to, or disclosure of, information, properties, facilities, books or records of the Company and its Subsidiaries, only if:
 - (a) such Acquisition Proposal did not result from a breach by the Company of its obligations under this Section 4.13;
 - (b) such Person was not restricted from making such Acquisition Proposal pursuant to an existing standstill or similar restriction; and
 - (c) prior to providing any such access or disclosure, (i) the Company enters into a confidentiality and standstill agreement with such Person on terms no less favourable to the Company and no more favourable to such Person than the Confidentiality Agreement, and (ii) any such access or disclosure provided to such Person shall have already been, or shall substantially concurrently be, provided to the Purchaser or its Representatives.
- (2) Nothing contained in this Agreement shall prohibit the Board or the Company from making any disclosure to the Company Securityholders (a) if the Board, acting in good faith and upon the advice of outside legal advisors, shall have first determined that the failure to make such disclosure would be inconsistent with the fiduciary duties of the Board, or (b) as required by applicable Law, including in response to an Acquisition Proposal (including by responding to an Acquisition Proposal in a directors' circular); provided that, notwithstanding that the Board or the Company shall be permitted to make such disclosure, neither the Board (nor any committee thereof) shall be permitted to make a Change in Recommendation in response to an Acquisition Proposal other than as permitted by Section 5.4(1). Nothing contained in this Agreement shall prohibit the Company or the Board from calling and/or holding a shareholder meeting requisitioned by Shareholders in accordance with the ABCA or complying with any Order of a Governmental Entity that was not solicited, supported or encouraged by the Company or any of its Representatives.

Section 5.4 Right to Match

- (1) If, prior to obtaining the Required Approval, the Company receives a Superior Proposal, the Board may, subject to compliance with Article 7 and Section 8.1(1), authorize the

Company to enter into a definitive agreement with respect to such Superior Proposal or may make a Change in Recommendation, if and only if:

- (a) the Person making the Superior Proposal was not restricted from making such Superior Proposal pursuant to an existing standstill or similar restriction;
 - (b) the Company has complied with all of its obligations in this Section 5.4;
 - (c) the Company has delivered to the Purchaser a written notice of the determination of the Board that such Acquisition Proposal constitutes a Superior Proposal and of the intention of the Board to enter into such definitive agreement with respect to such Superior Proposal or to make a Change in Recommendation (a “**Superior Proposal Notice**”);
 - (d) the Company has provided the Purchaser with a copy of the proposed definitive agreement for the Superior Proposal (if any) and all ancillary documents and materials (including financing documents, subject to customary confidentiality provisions with respect to fee letters or similar information) provided to the Company in connection therewith, including the cash value that the Board has, after consultation with outside financial advisors, determined should be ascribed to any non-cash consideration offered under the Superior Proposal;
 - (e) at least five Business Days have elapsed from the date that is the later of the date on which the Purchaser received the Superior Proposal Notice and the date on which the Purchaser received all of the materials set forth in Section 5.4(1)(d) (the “**Matching Period**”);
 - (f) after the Matching Period, the Board has determined in good faith, after consultation with outside legal counsel and financial advisors, that such Acquisition Proposal continues to constitute a Superior Proposal (if applicable, compared to the terms of the Agreement and the Arrangement as proposed to be amended by the Purchaser under Section 5.4(2)); and
 - (g) prior to or concurrently with entering into such definitive agreement, the Company terminates this Agreement pursuant to Section 7.2(1)(iii)(b) and pays the Termination Fee pursuant to Section 8.2(3).
- (2) During the Matching Period, or such longer period as the Company may approve in writing for such purpose: (a) the Company shall, and shall cause its Representatives to, negotiate in good faith with the Purchaser to make amendments to the terms of this Agreement and the Arrangement as would result in the Acquisition Proposal previously determined to constitute a Superior Proposal ceasing to be a Superior Proposal; (b) without limiting the generality of clause (a), the Purchaser shall have the opportunity (but not the obligation), to offer to amend this Agreement and the Arrangement; (c) the Board shall, in good faith and in consultation with outside legal counsel and financial advisors, review any offer made by the Purchaser to amend the terms of this Agreement

and the Arrangement to determine whether this Agreement and the Arrangement, as they are proposed to be amended, would, upon acceptance, result in the Acquisition Proposal previously determined to constitute a Superior Proposal ceasing to be a Superior Proposal; and (d) if the Board determines that such Acquisition Proposal would cease to be a Superior Proposal, the Company shall promptly so advise the Purchaser and the Company and the Purchaser shall amend this Agreement to reflect such offer made by the Purchaser, and shall take and cause to be taken all such actions as are necessary to give effect to the foregoing.

- (3) Each successive amendment or modification to any Acquisition Proposal that results in an increase in, or modification of, the consideration (or value of such consideration) to be received by the Company Securityholders or other material terms or conditions thereof shall constitute a new Acquisition Proposal for the purposes of this Section 5.4 and, without limiting the generality of the foregoing, the Purchaser shall be afforded a new Matching Period from the later of the date on which the Purchaser receives a Superior Proposal Notice with respect to such new Superior Proposal and the date on which the Purchaser receives all of the materials set forth in Section 5.4(1)(d) with respect to the new Superior Proposal.
- (4) The Board shall promptly reaffirm the Board Recommendation by press release after any publicly announced Acquisition Proposal is determined not to be a Superior Proposal, or if the Board determines that a proposed amendment to the terms of this Agreement and the Arrangement as contemplated under Section 5.4(2) would result in an Acquisition Proposal previously determined to be a Superior Proposal no longer being a Superior Proposal. The Company shall provide the Purchaser and its legal counsel with a reasonable opportunity to review the form and content of any such press release and shall make all reasonable amendments to such press release requested by the Purchaser and its legal counsel.
- (5) If the Company provides a Superior Proposal Notice to the Purchaser on a date that is less than ten Business Days before the date of the Company Meeting, the Company may, or the Purchaser shall be entitled to require the Company to, adjourn or postpone the Company Meeting to a date that is not more than ten Business Days after the previously scheduled date of the Company Meeting; provided, however, that the Company Meeting shall not be adjourned or postponed to a date later than the 30 Business Days prior to the Outside Date.
- (6) Any violation of the restrictions set forth in this Section 5.4 by the Company's Subsidiaries or the Company's or its Subsidiaries' respective Representatives shall be deemed to be a breach of this Section 5.4 by the Company. Furthermore, the Company shall be responsible for any breach of this Section 5.4 by its Subsidiaries and its and their respective Representatives.

ARTICLE 6 CONDITIONS

Section 6.1 Mutual Conditions Precedent

The Parties are not required to complete the Arrangement unless each of the following conditions is satisfied on or prior to the Effective Time, which conditions may only be waived, in whole or in part, by the mutual consent of each of the Parties:

- (1) **Arrangement Resolution.** The Arrangement Resolution has been approved and adopted at the Company Meeting in accordance with the Interim Order.
- (2) **Interim Order and Final Order.** The Interim Order and the Final Order have each been obtained on terms consistent with this Agreement and have not been set aside or modified in a manner unacceptable to either the Company or the Purchaser, each acting reasonably, on appeal or otherwise.
- (3) **Articles of Arrangement.** The Articles of Arrangement to be sent to the Registrar in accordance with this Agreement shall be in a form and content satisfactory to the Company and the Purchaser, each acting reasonably.
- (4) **Illegality.** No Law is in effect that makes the consummation of the Arrangement illegal or otherwise enjoins or prohibits the Company or the Purchaser from consummating the Arrangement.
- (5) **Key Regulatory Approvals.** Each of the Key Regulatory Approvals have been obtained and shall be in force and effect.

Section 6.2 Additional Conditions Precedent to the Obligations of the Purchaser

The Purchaser is not required to complete the Arrangement unless each of the following conditions is satisfied on or prior to the Effective Time, which conditions are for the exclusive benefit of the Purchaser and may only be waived, in whole or in part, by the Purchaser in its sole discretion:

- (1) **Company Representations and Warranties.** The representations and warranties of the Company set forth (a) in the first sentence in Paragraph (1) [*Organization and Qualification*], Paragraph (2) [*Authorization*] and Paragraph (4) [*Execution and Binding Obligation*], Paragraph (17) [*No Material Adverse Effect*], paragraph (a) of the first sentence of Paragraph (20) [*Authorizations*] of Schedule D hereto shall be true and correct in all material respects as of the Effective Time as if made at and as of the Effective Time (except, in each case, for representations and warranties made as of a specified date, the accuracy of which shall be determined as of such specified date), (b) in Paragraph (3) [*Capitalization*] and Paragraph (42)(b) [*Aircraft*] of Schedule D hereto shall be true and correct in all respects (other than *de minimis* inaccuracies) as of the Effective Time as if made at and as of the Effective Time (except, in each case, for representations and warranties made as of a specified date, the accuracy of which shall be determined as of such specified date), and (c) in this Agreement (including in Schedule D

hereto), other than those to which clause (a) or (b) above applies, shall be true and correct as of the Effective Time as if made at and as of the Effective Time (except, in each case, for representations and warranties made as of a specified date, the accuracy of which shall be determined as of such specified date), except in the case of this clause (c) to the extent that the failure or failures of such representations and warranties to be so true and correct, individually or in the aggregate, would not result in a Material Adverse Effect (and, for the purpose of this clause (c), any reference to “material”, “Material Adverse Effect” or other concepts of materiality in such representations and warranties shall be disregarded), and the Company shall have delivered to the Purchaser a certificate addressed to the Purchaser, dated the Effective Date and executed by two of its senior officers (without personal liability), confirming the same.

- (2) **Performance of Company Covenants.** The Company shall have fulfilled or complied in all material respects with each of its covenants contained in this Agreement to be fulfilled or complied with by it on or prior to the Effective Time and the Company shall have delivered to the Purchaser a certificate addressed to the Purchaser, dated the Effective Date and executed by two of its senior officers (without personal liability), confirming the same.
- (3) **Regulatory Approvals.** Each Regulatory Approval required from an Aviation Authority in order to permit the Company and its Subsidiaries to operate their respective businesses in the Ordinary Course following consummation of the transactions contemplated by this Agreement shall have been obtained, except for those, the failure to obtain of which, in the aggregate, would not materially impair the operation of the Company’s business.
- (4) **No Actions.** No Proceeding shall have been commenced by any Governmental Entity (as described in clause (a) of the definition of Governmental Entity) against the Company, any of its Subsidiaries or the Purchaser that would:
 - (a) prohibit the consummation of the Arrangement;
 - (b) cease trade, enjoin or prohibit the Purchaser’s ability to acquire any Shares upon completion of the Arrangement; or
 - (c) prohibit the ownership or operation by the Purchaser of the business of the Company or any of its Subsidiaries or any material portion of the business or assets of the Company or any of its Subsidiaries’ following completion of the Arrangement.
- (5) **Material Adverse Effect.** Since the date of this Agreement there shall not have occurred a Material Adverse Effect.
- (6) **Dissent.** Dissent Rights shall not have been validly exercised, and not withdrawn or deemed to have been withdrawn, in respect of more than 10% of the outstanding Shares held by the Shareholders.

Section 6.3 Additional Conditions Precedent to the Obligations of the Company

The Company is not required to complete the Arrangement unless each of the following conditions is satisfied on or prior to the Effective Time, which conditions are for the exclusive benefit of the Company and may only be waived, in whole or in part, by the Company in its sole discretion:

- (1) **Purchaser Representations and Warranties.** The representations and warranties of the Purchaser set forth in this Agreement (including in Schedule D) are true and correct as of the Effective Time, as if made at and as of the Effective Time (except, in each case, for representations and warranties made as of a specified date, the accuracy of which shall be determined as of such specified date), except to the extent that the failure or failures of such representations and warranties to be so true and correct, individually or in the aggregate, would not materially impede the completion of the Arrangement, and the Purchaser shall have delivered to the Company a certificate addressed to the Company, dated the Effective Date and executed by two of its senior officers (without personal liability), confirming same.
- (2) **Performance of Purchaser Covenants.** The Purchaser shall have fulfilled or complied in all material respects with each of its covenants contained in this Agreement to be fulfilled or complied with by it on or prior to the Effective Time, and the Purchaser shall have delivered to the Company a certificate addressed to the Company, dated the Effective Date and executed by two of its senior officers (without personal liability), confirming same.
- (3) **Payment of Consideration.** The Purchaser shall have deposited, or caused to be deposited, with the Depositary and the Company, as applicable, sufficient funds to satisfy the Purchaser's obligations under Section 2.9 and the Depositary will have confirmed to the Company receipt from or on behalf of the Purchaser of the funds contemplated by Section 2.9.

Section 6.4 Satisfaction of Conditions

The conditions precedent set out in Section 6.1, Section 6.2 and Section 6.3 will be conclusively deemed to have been satisfied, waived or released at the Effective Time. For greater certainty, and notwithstanding the terms of any escrow arrangement entered into between the Purchaser and the Depositary, all funds held in escrow by the Depositary pursuant to Section 2.9 hereof shall be released from escrow at the Effective Time without any further act or formality required on the part of any Person.

ARTICLE 7 TERM AND TERMINATION

Section 7.1 Term

This Agreement shall be effective from the date hereof until the earlier of the Effective Time and the termination of this Agreement in accordance with its terms.

Section 7.2 Termination

- (1) This Agreement may be terminated and the Arrangement abandoned at any time prior to the Effective Time (notwithstanding receipt of the Required Approval or the Final Order) by:
 - (i) the mutual written agreement of the Parties; or
 - (ii) either the Company or the Purchaser if:
 - (a) the Arrangement Resolution is not approved by the Shareholders at the Company Meeting in accordance with the Interim Order;
 - (b) after the date of this Agreement, any Law is enacted, made, enforced or amended, as applicable, that makes consummation of the Arrangement illegal or otherwise permanently enjoins or prohibits the Company or the Purchaser from consummating the Arrangement, and such Law has become final and non-appealable; provided that the Party seeking to terminate this Agreement pursuant to this Section 7.2(1)(ii)(b) shall have used commercially reasonable efforts to prevent, appeal or overturn such Law (provided such Law is an Order, injunction, judgment, decree or ruling) or otherwise have it lifted or rendered non-applicable in respect of the Arrangement, and provided further that the enactment, making, enforcement or amendment of such Law was not primarily due to a breach by such Party of any of its representations or warranties, or the failure of such Party to perform any of its covenants or agreements, under this Agreement; or
 - (c) the Effective Time does not occur on or prior to the Outside Date, provided that a Party may not terminate this Agreement pursuant to this Section 7.2(1)(ii)(c) if the failure of the Effective Time to so occur has been caused by, or is a result of, a breach by such Party of any of its representations or warranties, or the failure of such Party to perform any of its covenants or agreements, under this Agreement; or
 - (iii) the Company if:
 - (a) subject to Section 7.3, a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Purchaser under this Agreement occurs that would cause any condition in Section 6.3(1) [*Purchaser Representations and Warranties*] or Section 6.3(2) [*Performance of Purchaser Covenants*] not to be satisfied; provided that the Company is not then in breach of this Agreement so as to cause any condition in Section 6.2(1) [*Company Representations and Warranties*] or Section 6.2(2) [*Performance of Company Covenants*] not to be satisfied;
 - (b) prior to obtaining the Required Approval, the Board authorizes the Company, in accordance with and subject to the terms and conditions of

this Agreement to enter into a definitive written agreement (other than a confidentiality agreement permitted by and in accordance with Section 5.3) with respect to a Superior Proposal, provided the Company is then in compliance with Section 5.4 and that prior to or concurrent with such termination the Company pays the Termination Fee in accordance with Section 8.1(1); or

- (c) after the Marketing Period has ended, (A) all conditions in Section 6.1 [*Mutual Conditions Precedent*] and Section 6.2 [*Additional Conditions Precedent to the Obligations of the Purchaser*] have been satisfied or waived (excluding conditions that, by their terms, are to be satisfied at the Effective Time, but that are reasonably capable of being satisfied by the Effective Date), (B) the Company has irrevocably given written notice to the Purchaser that it is ready, willing, and able to complete the Arrangement, (C) at least five Business Days prior to such termination, the Company has given the Purchaser written notice stating its intention to terminate this Agreement pursuant to this Section 7.2(1)(iii)(c), and (D) the Purchaser does not provide, or cause to be provided, the funds required to be provided to the Depositary in accordance with Section 2.9 within five Business Days following receipt such notice; or
- (iv) the Purchaser if:
 - (a) subject to Section 7.3, a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Company under this Agreement occurs that would cause any condition in Section 6.2(1) [*Company Representations and Warranties*] or Section 6.2(2) [*Performance of Company Covenants*] not to be satisfied; provided that the Purchaser are not then in breach of this Agreement so as to cause any condition in Section 6.3(1) [*Purchaser Representations and Warranties*] or Section 6.3(2) [*Performance of Purchaser Covenants*] not to be satisfied; or
 - (b) prior to the Required Approval being obtained (A) the Board (or any committee thereof) fails to unanimously recommend, or publicly withdraws, amends, modifies or qualifies, or publicly proposes or states an intention to withdraw, amend, modify or qualify, in a manner adverse to the Purchaser, the Board Recommendation (it being understood that publicly taking no position or a neutral position with respect to a publicly announced, or otherwise publicly disclosed, Acquisition Proposal for a period of no more than five Business Days after the public announcement thereof (or beyond the Business Day prior to the date of the Company Meeting, if sooner) will not be considered to be a Change in Recommendation, provided the Board has rejected such Acquisition Proposal and affirmed the Board Recommendation before the end of such period), (B) the Board (or any committee thereof) accepts, approves, endorses, or recommends, or publicly proposes to accept, approve,

endorse or recommend, any Acquisition Proposal (it being understood that publicly taking no position or a neutral position with respect to a publicly announced, or otherwise publicly disclosed, Acquisition Proposal for a period of no more than five Business Days after the public announcement thereof (or beyond the Business Day prior to the date of the Company Meeting, if sooner) will not be considered to be a Change in Recommendation, provided the Board and Special Committee has rejected such Acquisition Proposal and affirmed the Board Recommendation before the end of such period), or (C) the Board (or any committee thereof) accepts, approves, endorses, recommends or authorizes the Company or any of its Subsidiaries to execute or enter into, or publicly proposes to accept, approve, endorse, recommend or authorize the Company or any of its Subsidiaries to execute or enter into, any agreement, arrangement or understanding in respect of an Acquisition Proposal (other than a confidentiality and standstill agreement to the extent permitted by and in accordance with Section 5.3), or (D) the Board or the Special Committee fails to publicly reaffirm the Board Recommendation by press release within five Business Days (or in the event that the Company Meeting is scheduled to occur within such five Business Day period, prior to the Business Day prior to the date of the Company Meeting) after having been requested to do so by the Purchaser, acting reasonably (any action set forth in clauses (A), (B), (C) or (D), a **“Change in Recommendation”**).

- (2) The Party desiring to terminate this Agreement pursuant to this Section 7.2 (other than pursuant to Section 7.2(1)(i)) shall give notice of such termination to the other Party, specifying in reasonable detail the basis for such Party’s exercise of its termination right.

Section 7.3 Notice and Cure Provisions

- (1) During the period commencing on the date of this Agreement and continuing until the earlier of the Effective Time and the termination of this Agreement in accordance with its terms, each Party shall promptly notify the other Party of the occurrence, or failure to occur, of any event or state of facts which occurrence or failure would, or would be reasonably likely to:
 - (a) cause any of the representations or warranties of such Party contained in this Agreement to be untrue or inaccurate in any material respect at any time from the date of this Agreement to the Effective Time; or
 - (b) result in the failure to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by such Party under this Agreement.
- (2) Notification provided under this Section 7.3 will not affect the representations, warranties, covenants, agreements or obligations of the Parties (or remedies with respect thereto) or the conditions to the obligations of the Parties under this Agreement.

- (3) The Company may not elect to exercise its right to terminate this Agreement pursuant to Section 7.2(1)(iii)(a) and the Purchaser may not elect to exercise its right to terminate this Agreement pursuant to Section 7.2(1)(iv)(a), unless the Party seeking to terminate this Agreement (the “**Terminating Party**”) has delivered a written notice (a “**Termination Notice**”) to the other Party (the “**Breaching Party**”) specifying in reasonable detail all breaches of representations and warranties and/or failure to perform covenants which the Terminating Party asserts as the basis for termination. After delivering a Termination Notice, provided the Breaching Party is proceeding diligently to cure all breaches and failures to perform set forth in the Termination Notice and such matters are capable of being cured prior to the Outside Date, the Terminating Party may not exercise such applicable termination right until the earlier of (i) the Outside Date, and (ii) the date that is 30 days following receipt of such Termination Notice by the Breaching Party, if such matter has not been cured by such date; provided that, for greater certainty, if such matters are not capable of being cured by the Outside Date or, at any time following receipt of a Termination Notice, the Breaching Party fails to diligently proceed to cure all breaches and failures to perform, the Terminating Party may immediately exercise the applicable termination right; and provided further that a Willful Breach shall be deemed to be incapable of being cured, and the Terminating Party may immediately exercise the applicable termination right in accordance with the terms of Section 7.2(1)(iii)(a) or Section 7.2(1)(iv)(a), as applicable, without first providing a Termination Notice.
- (4) If the Terminating Party delivers a Termination Notice less than twenty Business Days prior to the date of the Company Meeting, unless the Parties agree otherwise, the Company shall adjourn or postpone the Company Meeting to the earlier of (a) seven Business Days prior to the Outside Date, and (b) the date that is twenty Business Days following receipt of such Termination Notice by the Breaching Party.

Section 7.4 Effect of Termination/Survival

If this Agreement is terminated pursuant to Section 7.1 or Section 7.2, this Agreement shall become void and of no further force or effect without liability of any Party (or any Company Related Party or Purchaser Related Party) in connection with this Agreement or any of the transactions contemplated hereby, except that (a) in the event of termination under Section 7.1 as a result of the Effective Time occurring, Section 4.8 shall survive for a period of six years following such termination, (b) in the event of termination under Section 7.2, this Section 7.4 and Section 1.2, Section 4.6(3), Section 4.9(4), and Article 8 (and any related definitions contained in any such Sections or Article) shall survive and continue in full force and effect in accordance with their terms, (c) neither the termination of this Agreement nor anything contained in this Section 7.4, but subject to Section 8.6, shall relieve any Party from any liability for any Willful Breach of this Agreement, and (d) the provisions of the Limited Guarantee shall survive termination of this Agreement until the Sponsors’ obligations thereunder have been fully performed or are otherwise terminated in accordance with its terms.

ARTICLE 8 GENERAL PROVISIONS

Section 8.1 Amendments

- (1) This Agreement may, at any time and from time to time before or after the holding of the Company Meeting but not later than the Effective Time, be amended by mutual written agreement of the Parties, without further notice to or authorization on the part of the Shareholders, and any such amendment may, subject to the Interim Order and Final Order and applicable Laws, without limitation:
 - (a) change the time for performance of any of the obligations or acts of the Parties;
 - (b) waive any inaccuracies or modify any representation or warranty contained in this Agreement or in any document delivered pursuant to this Agreement;
 - (c) modify any of the covenants contained in this Agreement and waive or modify performance of any of the obligations of the Parties; and/or
 - (d) waive compliance with or modify any conditions contained in this Agreement;

provided that no such amendment reduces or materially adversely affects the Consideration to be received by Shareholders without approval by the affected Shareholders given in the same manner as required for the approval of the Arrangement or as may be ordered by the Court.

- (2) The Plan of Arrangement may be amended in accordance with Section 5.1 of the Plan of Arrangement.
- (3) Notwithstanding anything to the contrary contained herein, this Section 8.1, Section 8.6, Section 8.7, Section 8.12, and Section 8.16 may not be amended, supplemented, waived or otherwise modified in a manner that is adverse to the Debt Financing Sources identified in the Debt Commitment Letter without the prior written consent of such Debt Financing Sources.

Section 8.2 Termination Fee and Expenses

- (1) Except as otherwise expressly provided herein, all fees, costs and expenses incurred in connection with this Agreement or the transactions contemplated by this Agreement shall be paid by the Party incurring such fees, costs or expenses, whether or not the Arrangement is consummated; provided that the Parties shall each pay half of any filing fees or similar fee and applicable Taxes payable to a Governmental Entity in connection with a Regulatory Approval.

- (2) If a Termination Fee Event occurs, the Company shall pay or cause to be paid to the Termination Fee Recipients the Termination Fee in accordance with Section 8.2(4), as liquidated damages.
- (3) For the purposes of this Agreement, “**Termination Fee**” means \$100,000,000, and “**Termination Fee Event**” means the termination of this Agreement:
- (i) by the Purchaser, pursuant to Section 7.2(1)(iv)(b) [*Change in Recommendation*];
 - (ii) by the Company, pursuant to Section 7.2(1)(iii)(b) [*Superior Proposal*];
 - (iii) by the Company or the Purchaser pursuant to Section 7.2(1)(ii)(a) [*Arrangement Resolution not Approved*] or Section 7.2(1)(ii)(c) [*Effective Time not Prior to Outside Date*], if:
 - (a) following the date hereof (but prior to the Company Meeting, in the case of a termination pursuant to Section 7.2(1)(ii)(a) [*Arrangement Resolution not Approved*]), a *bona fide* Acquisition Proposal involving the Company is made to the Company or the Shareholders or is publicly announced or otherwise publicly disclosed by any Person; and
 - (b) within 6 months following the date of such termination, any Acquisition Proposal (whether or not such Acquisition Proposal is the same Acquisition Proposal referred to in clause (b) above) is consummated or effected, or the Company and/or any of its Subsidiaries, directly or indirectly, in one or more transactions, enters into a definitive agreement (other than a confidentiality and standstill agreement permitted by Section 5.3(1)(c)) in respect of an Acquisition Proposal (whether or not such Acquisition Proposal is the same Acquisition Proposal referred to in clause (b) above) and such Acquisition Proposal is later consummated or effected (whether or not within 6 months following such termination);
- provided that, for purposes of this Section 8.2(3)(iii), references in the definition of “Acquisition Proposal” to “20%” shall be deemed to be “50%”.
- (4) If a Termination Fee Event occurs due to a termination of this Agreement by the Company pursuant to Section 7.2(1)(iii)(b) [*Superior Proposal*], the Termination Fee shall be paid prior to or concurrently with the occurrence of such Termination Fee Event. If a Termination Fee Event occurs due to a termination of this Agreement by the Purchaser pursuant to Section 7.2(1)(iv)(b) [*Change in Recommendation*], the Termination Fee shall be paid within two Business Days following such Termination Fee Event and after such event but prior to payment of such amount, the Company shall be deemed to hold such funds in trust for the Termination Fee Recipients. If a Termination Fee Event occurs in the circumstances set out in Section 8.2(3)(iii) [*Acquisition Proposal following Termination*], the Termination Fee shall be paid prior to or concurrently with the consummation/closing of the Acquisition Proposal referred to therein and after such event but prior to payment of such amount, the Company shall be deemed to hold such funds in trust for the Termination Fee Recipients. Any Termination Fee shall be paid, or

caused to be paid, by the Company to the Termination Fee Recipients by wire transfer in immediately available funds to an account of the Termination Fee Recipients designated by the Termination Fee Recipients. For greater certainty, in no event shall the Company be obligated to pay the Termination Fee on more than one occasion, whether the Termination Fee may be payable pursuant to one or more than one provision of this Agreement at the same or at different times and upon the occurrence of different events.

- (5) Subject to the Purchaser's right to injunctive and other non-monetary equitable relief or specific performance in accordance with Section 8.6 to prevent breaches or threatened breaches of this Agreement and to enforce compliance with the terms of this Agreement, in the event that the Termination Fee is paid to the Termination Fee Recipients in circumstances for which such fee is payable, payment of the Termination Fee shall be the sole and exclusive remedy of any of the Purchaser or the Purchaser Related Parties against the Company or any Company Related Parties for any loss suffered as a result of the failure of the Arrangement or the transactions contemplated hereby to be consummated or for a breach or failure to perform all obligations required to be performed under this Agreement or otherwise relating to or arising out of this Agreement or the Arrangement, and upon payment of such amount none of the Company or any Company Related Parties shall have any further liability or obligation relating to or arising out of this Agreement or the Arrangement, and none of the Purchaser or the Purchaser Related Parties shall seek to obtain any recovery, judgment, or damages of any kind, including consequential, indirect, or punitive damages, against any of the Company or any Company Related Party in connection with this Agreement or the transactions contemplated by this Agreement; provided that nothing herein shall relieve the Company from any liability for any Willful Breach of this Agreement.
- (6) Any Termination Fee shall be paid free and clear and without withholding or deduction for Taxes, unless such withholding or deduction is required by Law. If the Company is required by Law to withhold or deduct any amount for or on account of Taxes from the payment of the Termination Fee (or portion thereof, as applicable), the Company shall remit or cause to be remitted the full amount so withheld and deducted to the applicable Governmental Entity. The Company will determine the amount required to be deducted or withheld and the appropriate rate of withholding tax applicable to the Termination Fee under the Tax Act or any provision of any other Law. The Company will (i) pay the Termination Fee without withholding or deduction to the extent that the Company is satisfied in its sole discretion acting reasonably that the recipient (or, where the recipient is a partnership, a direct or indirect partner thereof) is the beneficial recipient of the payment and is not a non-resident of Canada for purposes of the Tax Act, and (ii) consider in good faith any position advanced by the Termination Fee Recipients as to why withholding is not required or is exigible at a reduced rate (including any position that an exemption or reduction of any withholding tax under an applicable income tax treaty is available), provided that the Company shall make any determination in respect of such withholding in its sole discretion. If requested by the Company, the Termination Fee Recipients shall provide any applicable withholding tax forms approved by the Canada Revenue Agency.

- (7) If a Reverse Termination Fee Event occurs, the Purchaser shall pay or cause to be paid to the Company the Reverse Termination Fee in accordance with Section 8.2(9) as liquidated damages.
- (8) For the purposes of this Agreement, “Reverse Termination Fee” means \$200,000,000, and “Reverse Termination Fee Event” means:
 - (i) the termination of this Agreement by the Company pursuant to Section 7.2(1)(iii)(c) [*Failure to Fund*]; or
 - (ii) the termination of this Agreement by the Company pursuant to Section 7.2(1)(iii)(a) [*Purchaser Breach*] as a result of a Willful Breach.
- (9) If a Reverse Termination Fee Event occurs, the Purchaser shall pay as promptly as practicable (and in any event within two Business Days following such Reverse Termination Fee Event) the Reverse Termination Fee. Any Reverse Termination Fee shall be paid, or caused to be paid, by the Purchaser to the Company by wire transfer in immediately available funds to an account designated by the Company.
- (10) Each Party acknowledges that the agreements contained in this Section 8.2 are an integral part of the transactions contemplated by this Agreement, and that without these agreements the Parties would not enter into this Agreement, and that the Termination Fee and Reverse Termination Fee set out in this Section 8.2 represents liquidated damages which are a genuine pre-estimate of the damages, including opportunity costs, reputational damage and out-of-pocket expenditures which the Purchaser or the Company, as applicable, and their respective Affiliates will suffer or incur as a result of the event giving rise to such damages and resulting termination of this Agreement, and are not penalties. Each Party irrevocably waives any right it may have to raise as a defence that any such amounts are excessive or punitive. If the Company, or the Purchaser, as the case may be, fails to timely pay any amount due pursuant to this Section 8.2, it shall also pay any costs and expenses incurred by the other Party in connection with a legal action to enforce this Agreement that results in a judgment against the breaching Party for the payment of any amount due pursuant to this Section 8.2, together with interest on such amount at the prime rate of The Bank of Canada from the date such amount was required to be paid to (but excluding) the payment date. In no event shall (a) the Company be obligated to pay the Termination Fee on more than one occasion, or (b) the Purchaser be obligated to pay the Reverse Termination Fee (including as a consequence of payment thereof by the Sponsors pursuant to the Limited Guarantee) on more than one occasion, in each case, whether or not the Termination Fee or Reverse Termination Fee, as applicable, may be payable at different times or upon the occurrence of different events.
- (11) In addition to the rights and remedies of the Purchaser hereunder, if this Agreement is terminated in the circumstances described in Section 8.2(12), then the Company shall, within two Business Days of receiving written notice from the Purchaser of all of the reasonable documented out of pocket fees and expenses (including all reasonable fees and expenses of counsel, accountants, financial advisors and investments bankers and the

Purchaser's share of filing fees for the Regulatory Approvals) incurred by the Purchaser and its Affiliates in connection with or related to the preparation, negotiation, execution and performance and all other matters related to the Arrangement and the other transactions contemplated by this Agreement, pay or cause to be paid to the Purchaser all of such reasonable and documented fees and expenses (up to a maximum of \$10,000,000) (the "**Purchaser Expense Fee**") and prior to payment of such amount, the Company shall be deemed to hold such funds in trust for the Purchaser.

- (12) A Purchaser Expense Fee shall be payable if this Agreement is terminated:
- (a) by either the Purchaser or the Company pursuant to Section 7.2(1)(ii)(a) [*Arrangement Resolution not Approved*]; or
 - (b) by the Purchaser pursuant to Section 7.2(1)(iv)(a) [*Company Breach*].
- (13) In addition to the other rights and remedies of the Company hereunder, but subject to Section 8.6(3) if this Agreement is terminated in the circumstances described in Section 8.2(14), then the Purchaser shall, within two Business Days of receiving written notice from the Company of all of the reasonable documented out of pocket fees and expenses (including all reasonable fees and expenses of counsel, accountants, financial advisors and investment bankers and the Company's share of filing fees for the Regulatory Approvals) incurred by the Company and its Affiliates in connection with or related to the preparation, negotiation, execution and performance and all other matters related to the Arrangement and the other transactions contemplated by this Agreement, pay or cause to be paid to the Company all of such reasonable and documented fees and expenses (up to a maximum of \$10,000,000 (the "**Company Expense Fee**")) and prior to payment of such amount, the Purchaser shall be deemed to hold such funds in trust for the Purchaser.
- (14) A Company Expense Fee shall be payable if this Agreement is terminated:
- (a) by either the Company or Purchaser pursuant to Section 7.2(1)(ii)(b) [*Illegality*] if at the time of termination the Law allowing for termination relates to any of the Key Regulatory Approvals;
 - (b) by either the Company or Purchaser pursuant to Section 7.2(1)(ii)(c) [*Effective Time not Prior to Outside Date*] and at the time of such termination, all of the conditions set forth in Section 6.1 and Section 6.2, except Section 6.1(5) and/or Section 6.2(4) have been satisfied or waived by the Purchaser other than those conditions that by their terms are to be satisfied at the Effective Date and there exists a state of facts or circumstances that would cause the conditions set forth in Section 6.1(5) [*Key Regulatory Approvals*], or Section 6.2(4) [*No Actions*] not to be satisfied. For greater certainty, for the purposes of this provision, if this Agreement is terminated pursuant to Section 7.2(1)(ii)(c) [*Effective Time not Prior to Outside Date*] and at the time of termination the Agreement could also have been terminated by either the Purchaser or the Company

pursuant to Section 7.2(1)(ii)(b) [*Illegality*] in the manner described in this section, such termination shall have been deemed to have been made pursuant to Section 7.2(1)(ii)(b) [*Illegality*] and the Company Expense Fee shall be payable as if such termination had been made pursuant to Section 7.2(1)(ii)(b) [*Illegality*]; or

- (c) by the Company pursuant to Section 7.2(1)(iii)(a) [*Purchaser Breach*] other than as a result of a Willful Breach.

Section 8.3 Notices

Any notice, or other communication given regarding the matters contemplated by this Agreement will be sufficient if in writing and (a) hand delivered, (b) sent by certified or registered mail, (c) sent by express courier, or (d) if notice is also contemporaneously sent by one of the other methods of delivery, sent by facsimile or email, addressed as follows:

- (a) to the Purchaser at:

161 Bay Street, 49th Floor
P.O. Box 700
Toronto, Ontario, Canada
M5J 2S1

Attention: Tawfiq Popatia
Email: [Redacted – Personal Information]

with a copy (which shall not constitute notice) to:

Goodmans LLP
333 Bay Street, Suite 3400
Toronto, Ontario, Canada
M5H 2S7

Attention: Robert Vaux and Chris Sunstrum
Email: rvaux@goodmans.ca and csunstrum@goodmans.ca

(b) to the Company at:

22 Aerial Place N.E.
Calgary, Alberta, Canada
T2E 3J2

Attention: Edward Sims, President and Chief Executive Officer
Email: [Redacted – Personal Information]

with a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
3500, 855 - 2 Street S.W.
Calgary, AB T2P 4J8

Attention: Ross Bentley
Email: ross.bentley@blakes.com

and with a copy (which shall not constitute notice) to:

Norton Rose Fulbright Canada LLP
3700, 400 3rd Avenue SW
Calgary, AB T2P 4H2

Attention: Kevin E. Johnson, Q.C.
Email: kevin.johnson@nortonrosefulbright.com

Any notice or other communication is deemed to be given and received on the day on which it was delivered or, in the case of notices or other communications transmitted by facsimile or email, transmitted (or if such day is not a Business Day or if such notice or communication was delivered or transmitted after 5:00 p.m. (local time in the place of receipt) on the next following Business Day). Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party.

Section 8.4 Time of the Essence

Time is of the essence in this Agreement.

Section 8.5 Further Assurances

Subject to the provisions of this Agreement, the Parties will, from time to time, do all acts and things and execute and deliver all such further documents and instruments, as the other Party may, either before the Effective Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement and, in the event the

Arrangement becomes effective, to document or evidence any of the transactions or events set out in the Plan of Arrangement.

Section 8.6 Remedies

- (1) Each of the Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties may, upon application to a court of competent jurisdiction, obtain injunctive and other equitable relief to prevent breaches of this Agreement, and to enforce compliance with the terms of this Agreement without any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief. None of the Parties shall object to the granting of injunctive or other equitable relief on the basis that there exists an adequate remedy at law.
- (2) Notwithstanding anything to the contrary in this Agreement (including Section 4.3 and Section 8.6(1)), it is acknowledged and agreed that the Purchaser's obligation to enforce the Sponsor Commitment Letter and to consummate the Arrangement and the other transactions contemplated by this Agreement, and the Company's right to specifically enforce such obligations as set out in Section 8.6(1), shall be subject to the requirements that: (a) all conditions in Section 6.1 [*Mutual Conditions Precedent*] and Section 6.2 [*Additional Conditions Precedent to the Obligations of the Purchaser*] have been satisfied or waived by the applicable Party or Parties for whose benefit such conditions exist (excluding conditions that, by their terms, are to be satisfied at the Effective Time, but that are reasonably capable of being satisfied by the Effective Date); (b) the Purchaser fails to consummate the Arrangement on the date on which the Effective Date should have occurred pursuant to Section 2.8(2); (c) the Debt Financing provided for by the Debt Letters (or any alternative financing to the Debt Financing contemplated by Section 4.6) has been funded or will be funded in accordance with the terms thereof on the Effective Date if the Sponsor Financing is funded on the Effective Date, and (d) the Company has irrevocably confirmed that, if specific performance is granted and the Sponsor Financing and Debt Financing (or any alternative financings thereto contemplated by Section 4.6) are funded, it is ready, willing and able to consummate the Arrangement. Under no circumstances will the Company be entitled to enforce or seek to enforce specifically the Purchaser's obligation to enforce the Sponsor Commitment Letter and to consummate the Arrangement and the other transactions contemplated by this Agreement if the Debt Financing would not be funded in full at the Effective Time substantially concurrently with the funding of the Sponsor Financing (and, for certainty, for the purpose of determining whether the Debt Financing would be funded in full, assuming that the Sponsor Financing would be funded in full at the Effective Time).
- (3) Notwithstanding anything to the contrary in this Agreement or any other Transaction Document, without limiting the Company's right to obtain specific performance if and to the extent available in accordance with Section 8.6(1) and Section 8.6(2), the maximum aggregate liability, whether in equity or at Law, in Contract, in tort or otherwise, of the Purchaser Related Parties collectively (including the Reverse Termination Fee and

monetary damages for fraud or breach, whether willful, material, intentional, unintentional or otherwise, or monetary damages in lieu of specific performance): (a) under this Agreement or any other Transaction Document; (b) in connection with the failure of the transactions contemplated hereby (including the Financing) or under any other Transaction Document to be consummated; or (c) resulting from the termination of this Agreement; (d) any liabilities or obligations arising under this Agreement (including any amounts owing to the Company pursuant to Section 4.6(3) and Section 4.9(4)); or (e) in respect of any representation or warranty made or alleged to have been made in connection with this Agreement or any other Transaction Document, will not under any circumstances exceed, in the aggregate, an amount equal to (i) \$200,000,000, plus (ii) only if applicable, all costs, expenses or interest owing pursuant to Section 8.2(9), and in no event will the Company or any Company Related Party seek, directly or indirectly, to recover against the Purchaser Related Parties, or compel payment by the Purchaser Related Parties of, any damages or other payments whatsoever, whether at Law or in equity, in contract, tort or otherwise, in excess of such aggregate amount. For the avoidance of doubt, under no circumstances shall the Company be entitled to seek or obtain any recovery or judgment against the Debt Financing Sources, including for any type of damage relating to this Agreement or the transactions contemplated hereby, whether at law or in equity, in contract, in tort or otherwise. No Debt Financing Source shall be subject to any special, consequential, punitive or indirect damages or damages of a tortious nature.

- (4) Under no circumstances shall the Company, directly or indirectly, be permitted or entitled to receive (a) both (i) a grant of specific performance to enforce the Purchaser's obligation to enforce the Sponsor Commitment Letter and to consummate the Arrangement, in each case, if, and to the extent, permitted by Section 8.6(2), or other equitable relief, on the one hand, and (ii) payment of monetary damages or the Reverse Termination Fee pursuant to Section 8.2(7), on the other hand, or (b) both (i) payment of any monetary damages whatsoever, on the one hand, or (ii) payment of the Reverse Termination Fee, on the other hand.

Section 8.7 Third Party Beneficiaries

- (1) Except as provided in Section 2.7(1), Section 4.6(3) and Section 4.8 which, without limiting their respective terms, are intended as stipulations for the irrevocable benefit of the Company Optionholders, the Representatives of the Company and its Subsidiaries and Indemnified Persons, respectively, the Company and the Purchaser intend that this Agreement will not benefit or create any right or cause of action in favour of any Person other than the Parties, and that no Person, other than the Parties, shall be entitled to rely on the provisions of this Agreement in any Proceeding or other forum.
- (2) Despite the foregoing, the Parties acknowledge to each of the Company Optionholders their direct rights against the applicable Party under Section 2.7(1), which is intended for the benefit of, and shall be enforceable by, each Company Optionholder, his or her heirs and his, her or its legal representatives, and for such purpose, the Company and the Purchaser, as applicable, confirms that it is acting as trustee on their behalf, and agrees to enforce such provisions on their behalf.

- (3) Despite the foregoing, the Parties acknowledge to each of the Indemnified Persons their direct rights against the applicable Party under Section 4.8, which is intended for the benefit of, and shall be enforceable by, each Indemnified Person, his or her heirs and his, her or its legal representatives, and for such purpose, the Company and the Purchaser, as applicable, confirms that it is acting as trustee on their behalf, and agrees to enforce such provisions on their behalf.
- (4) Despite the foregoing, the Parties acknowledge to each of the Representatives of the Company and its Subsidiaries their direct rights against the applicable Party under Section 4.6(3), which is intended for the benefit of, and shall be enforceable by, each such Representative, its, his or her heirs and its, his, her or its legal representatives, and for such purpose, the Company and the Purchaser, as applicable, confirms that it is acting as trustee on their behalf, and agrees to enforce such provisions on their behalf.
- (5) Despite the foregoing, the Parties acknowledge that each of the Debt Financing Sources shall be express third party beneficiaries of Section 8.1(3), Section 8.6, this Section 8.7(5), Section 8.12(3), Section 8.12(4), Section 8.12(5) and Section 8.16, each of such Sections shall expressly inure to the benefit of the Debt Financing Sources and the Debt Financing Sources shall be entitled to rely on and enforce the provisions of such Sections.
- (6) Other than as contemplated in Section 8.7(5), prior to the Effective Time, the Parties reserve the right to vary or rescind their rights at any time and in any way whatsoever, if any, granted by or under this Agreement to any Person who is not a Party, without notice to or consent of that Person, including any Indemnified Person.

Section 8.8 Waiver

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial waiver of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right.

Section 8.9 Entire Agreement

This Agreement, together with the Confidentiality Agreement and the Limited Guarantee, constitute the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The Parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

Section 8.10 Successors and Assigns

- (1) This Agreement becomes effective only when executed by the Company and the Purchaser. After that time, it will be binding upon and inure to the benefit of the Company and the Purchaser and their respective successors and permitted assigns.
- (2) Neither this Agreement nor any of the rights or obligations under this Agreement are assignable or transferable by any Party without the prior written consent of the other Party, provided that the Purchaser may assign all or part of their respective rights under this Agreement to, and its obligations under this Agreement may be assumed by, any of its Affiliates if the Purchaser continues to be liable jointly and severally with such Affiliate for all of its obligations hereunder.

Section 8.11 Severability

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by any court of competent jurisdiction, that provision will be severed from this Agreement and the remaining provisions shall remain in full force and effect, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

Section 8.12 Governing Law

- (1) This Agreement will be governed by and interpreted and enforced in accordance with the Laws of the Province of Alberta and the federal Laws of Canada applicable therein.
- (2) Each Party irrevocably attorns and submits to the non-exclusive jurisdiction of the courts of Alberta in the City of Calgary and waives objection to the venue of any Proceeding in such court or that such court provides an inconvenient forum, provided that any such Proceedings will be conducted in the English language only.
- (3) Notwithstanding anything herein to the contrary, each of the Company and the Purchaser agree that any claim, controversy or dispute of any kind or nature (whether based upon contract, tort or otherwise) against a Debt Financing Source that is in any way related to this Agreement or any of the transactions contemplated hereby, including any dispute arising out of or relating in any way to the Debt Financing, shall be governed by, and construed in accordance with, the Laws of the State of New York without regard to conflict of law principles.
- (4) Notwithstanding anything herein to the contrary, each of the Company and the Purchaser and each Company Related Party agrees (a) that it will not bring or support any action, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against the Debt Financing Sources in any way relating to this Agreement or any of the transactions contemplated hereby, including but not limited to any dispute arising out of or relating in

any way to the Debt Financing or the performance thereof or the transactions contemplated thereby, in any forum other than exclusively in the Supreme Court of the State of New York, County of New York, or, if under applicable law exclusive jurisdiction is vested in the federal courts, the United States District Court for the Southern District of New York (and appellate courts thereof), (b) submits for itself and its property with respect to any such action to the exclusive jurisdiction of such courts, (c) agrees that service of process, summons, notice or document by registered mail addressed to it at its address provided in Section 8.2(14) shall be effective service of process against it for any such action brought in any such court, (d) waives and hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such action in any such court, and (e) agrees that a final judgment in any such action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

- (5) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EACH COMPANY RELATED PARTY AND EACH OTHER PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS OF TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ACQUISITION, THE DEBT FINANCING OR ANY OF THE OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING IN ANY ACTION, PROCEEDING OR COUNTERCLAIM AGAINST ANY FINANCING SOURCE.

Section 8.13 Rules of Construction

The Parties to this Agreement waive the application of any Law or rule of construction providing that ambiguities in any agreement or other document shall be construed against the Party drafting such agreement or other document.

Section 8.14 Language

The Parties expressly acknowledge that they have requested that this Agreement and all ancillary and related documents thereto be drafted in the English language only. *Les parties aux présentes reconnaissent avoir exigé que la présente entente et tous les documents qui y sont accessoires soient rédigés en anglais seulement.*

Section 8.15 Counterparts

This Agreement may be executed in any number of counterparts (including counterparts by facsimile or any other form of electronic communication) and all such counterparts taken together shall be deemed to constitute one and the same instrument. The Parties shall be entitled to rely upon delivery of an executed facsimile or similar executed electronic copy of this Agreement, and such facsimile or similar executed electronic copy shall be legally effective to create a valid and binding agreement between the Parties.

Section 8.16 Non-Recourse

Subject to claims against the Debt Financing Sources and the Sponsors by the Purchaser pursuant to, and subject to the terms and conditions of, any Commitment Letters (and any definitive documents related thereto), notwithstanding anything else herein to the contrary, each party agrees, on behalf of itself and its Related Parties, each Party agrees, on behalf of itself and its Related Parties, that all Proceedings (whether in Contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil or any other theory or doctrine, including alter ego or otherwise) that may be based upon, in respect of, arise under, out of or by reason of, be connected with, or relate in any manner to (a) this Agreement, any other Transaction Document, the Arrangement or the transactions contemplated hereunder or thereby, (b) the negotiation, execution or performance of any Transaction Document (including any representation or warranty made in connection with, or as an inducement to any Transaction Document), (c) any breach or violation of this Agreement or any other Transaction Document, and (d) any failure of the Arrangement (including the Financing) or any other transactions contemplated hereunder or thereunder to be consummated, in each case, may be made only against (and are those solely of), in this case of this Agreement, the Persons that are expressly identified as parties to this Agreement, and in the case of the other Transaction Documents, the applicable parties thereto, and in accordance with, and subject to the terms and conditions of such Transaction Documents. Notwithstanding anything in this Agreement or any of the other Transaction Documents to the contrary, except for claims against the Debt Financing Sources and the Sponsors by Purchaser pursuant to, and subject to the terms and conditions of, any Commitment Letters (and any definitive documents related thereto), each party agrees, on behalf of itself and its Related Parties, that no recourse under this Agreement or any of the other Transaction Documents or in connection with the Arrangement (including the Financing) or any other transactions contemplated hereunder or under any other Transaction Document will be sought or had against any Debt Financing Source or any other Person, including in each case any Related Party, and no Debt Financing Source or no other Person, including in each case any Related Party, will have any personal liabilities or obligations (whether in Contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil or any other theory or doctrine, including alter ego or otherwise), for any claims, causes of action, obligations or liabilities arising under, out of, in connection with or related in any manner to the items in the immediately preceding clauses (a) through (d), it being expressly agreed and acknowledged that no personal liability or losses whatsoever will attach to, be imposed on or otherwise be incurred by any of the aforementioned, as such, arising under, out of, in connection with or related in any manner to the items in the immediately preceding clauses (a) through (d) except for claims by the Company against the Sponsors under, if, as and when required pursuant to the terms and conditions of the Limited Guarantee.

* * * * *

IN WITNESS WHEREOF the Parties have executed this Agreement on the date first written above.

KESTREL BIDCO INC.

By: “Dave Copeland”
Name: Dave Copeland
Title: Director and Chief Financial
Officer

WESTJET AIRLINES LTD.

By: “Edward Sims”
Name: Edward Sims
Title: President and Chief Executive
Officer

By: “Christopher Burley”
Name: Christopher Burley
Title: Vice Chair

SCHEDULE A

PLAN OF ARRANGEMENT

PLAN OF ARRANGEMENT UNDER SECTION 193 OF THE *BUSINESS CORPORATIONS ACT (ALBERTA)*

ARTICLE 1 INTERPRETATION

Section 1.1 Definitions

Unless indicated otherwise, any capitalized term used herein but not defined shall have the meaning given to it in the Arrangement Agreement and the following terms shall have the respective meanings set out below (and grammatical variations of such terms shall have corresponding meanings):

“**ABCA**” means the *Business Corporations Act* (Alberta).

“**Arrangement**” means an arrangement of the Company under Section 193 of the ABCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations hereto made in accordance with the terms of the Arrangement Agreement or Section 5.1 or made at the direction of the Court in the Final Order with the prior written consent of the Company and the Purchaser, each acting reasonably.

“**Arrangement Agreement**” means the arrangement agreement made as of May 12, 2019 between the Purchaser and the Company (including the Schedules thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms.

“**Arrangement Resolution**” means the special resolution approving this Plan of Arrangement to be considered at the Company Meeting by the Shareholders and Company Optionholders entitled to vote thereon pursuant to the Interim Order.

“**Business Day**” means any day of the year, other than a Saturday, a Sunday or a day on which major banks are closed for business in Calgary, Alberta or Toronto, Ontario or, for purposes of the definition of Marketing Period and the date on which the Effective Date occurs, New York, New York.

“**Certificate of Arrangement**” means the proof of filing to be issued by the Registrar pursuant to subsection 193(12) of the ABCA in respect of the Articles of Arrangement.

“**Company**” means WestJet Airlines Ltd.

“**Company Meeting**” means the special meeting of Shareholders and Company Optionholders, including any adjournment or postponement of such special meeting in accordance with the terms of this Agreement, to be called and held in accordance with the Interim Order to consider the Arrangement Resolution.

“Company Optionholder” means a holder of Company Options.

“Company Options” means the outstanding options to purchase Shares issued pursuant to the Stock Option Plan.

“Company Securityholders” means, collectively, the Shareholders and the Company Optionholders.

“Consideration” means \$31.00 in cash per Share.

“Court” means the Court of Queen’s Bench of Alberta, or other court as applicable.

“Depositary” means AST Trust Company of Canada or such other Person as the Company and the Purchaser mutually agree on.

“Dissent Rights” has the meaning given to it in Section 3.1.

“Dissenting Holder” means a registered Shareholder as of the record date of the Company Meeting who (a) has validly exercised its Dissent Rights in strict compliance with the Dissent Right provisions of this Plan of Arrangement, (b) has not withdrawn or been deemed to have withdrawn such exercise of Dissent Rights, and (c) is ultimately entitled to be paid the fair value for his, her or its Shares, but only in respect of Shares in respect of which Dissent Rights are validly exercised by such registered Shareholder.

“Effective Date” means the date shown on the Certificate of Arrangement giving effect to the Arrangement.

“Effective Time” means 1:01 a.m., Calgary time, on the Effective Date, or such other time as the Parties agree to in writing before the Effective Date.

“Final Order” means the final order of the Court pursuant to section 193 of the ABCA in a form acceptable to the Company and the Purchaser, each acting reasonably, approving the Arrangement, as such order may be amended, modified, supplemented or varied by the Court (with the consent of the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn, abandoned or denied, as affirmed or as amended (provided that any such amendment is acceptable to the Company and the Purchaser, each acting reasonably) on appeal.

“Interim Order” means the interim order of the Court pursuant to section 193 of the ABCA in a form acceptable to the Company and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended, modified, supplemented or varied by the Court with the consent of the Company and the Purchaser, each acting reasonably.

“Letter of Transmittal” means the letter of transmittal sent to holders of Shares for use in connection with the Arrangement.

“**Lien**” means mortgages, charges, pledges, hypothecs, assignments by way of security, conditional sales or other title retention arrangements, security created under the *Bank Act* (Canada), liens, encumbrances, security interests or other interests in property howsoever created or arising, whether fixed or floating, perfected or not, which secure payment or performance of an obligation and, including, in any event, the rights of lessors under capital or financing leases and any other lease financing.

“**Midco**” means Kestrel Midco Inc.

“**Midco Option Plan**” means the stock option plan of Midco to be established by the board of directors of Midco on or prior to the Effective Date.

“**Midco Options**” means options to purchase Midco Shares granted pursuant to the Midco Option Plan.

“**Midco Shares**” means non-voting common shares in the capital of Midco.

“**Midco Transfer Agreement**” means the agreement to be entered into between Midco and the Purchaser pursuant to which Midco will transfer to the Purchaser the Rollover Shares acquired by Midco.

“**Parties**” means, collectively, the Company and the Purchaser, and “**Party**” means any one of them.

“**Person**” includes any individual, partnership, limited partnership, association, body corporate, organization, joint venture, trust, estate, trustee, executor, administrator, legal representative, Governmental Entity, syndicate or other entity, whether or not having legal status.

“**Plan of Arrangement**” means this plan of arrangement, subject to any amendments or variations made in accordance with the Arrangement Agreement or Section 5.1 or made at the direction of the Court in the Final Order with the prior written consent of the Company and the Purchaser, each acting reasonably.

“**Purchaser**” means Kestrel Bidco Inc., a corporation incorporated under the laws of the Province of Alberta.

“**Rollover Agreement**” means each exchange and subscription agreement between a Rollover Securityholder and Midco, pursuant to which each Rollover Securityholder agrees to (a) transfer Shares to Midco in consideration for Midco Shares pursuant to the Plan of Arrangement, (b) exchange Company Options for Midco Options, in a manner that complies with the requirements for an exchange of options under subsection 7(1.4) of the Tax Act, pursuant to the Plan of Arrangement, and (c) subscribe for additional Midco Shares for cash on the Effective Date.

“**Rollover Options**” means Company Options held by a Rollover Securityholder that are to be exchanged for Midco Options pursuant to a Rollover Agreement in accordance with the Plan of Arrangement.

“**Rollover Securityholder**” means a holder of Shares or Company Options that is a party to a Rollover Agreement with Midco as of the Effective Time.

“**Rollover Shares**” means Shares held by a Rollover Securityholder that are to be exchanged for Midco Shares pursuant to a Rollover Agreement in accordance with the Plan of Arrangement.

“**Shareholders**” means the registered holders of the Shares.

“**Shares**” means, collectively, the Common Voting Shares and the Variable Voting Shares.

“**Stock Option Plan**” means the 2009 stock option plan of the Company dated as of May 5, 2009.

“**Tax Act**” means the *Income Tax Act* (Canada).

Section 1.2 Certain Rules of Interpretation

In this Plan of Arrangement, unless otherwise specified:

- (1) **Headings, etc.** The division of this Plan of Arrangement into Articles and Sections and the insertion of headings are for convenient reference only and do not affect the construction or interpretation of this Plan of Arrangement.
- (2) **Currency.** All references to “dollars” or to “\$” are references to Canadian dollars, unless specified otherwise. In the event that any amounts are required to be converted from a foreign currency to Canadian dollars or vice versa, such amounts shall be converted using the most recent closing exchange rate of The Bank of Canada available before the relevant calculation date.
- (3) **Gender and Number.** Any reference to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (4) **Certain Phrases, etc.** The words (a) “including”, “includes” and “include” mean “including (or includes or include) without limitation”, (b) “or” is not exclusive, (c) “day” means “calendar day”, (d) “hereof”, “herein”, “hereunder” and words of similar import, shall refer to this Plan of Arrangement as a whole and not to any particular provision of this Plan of Arrangement, (e) “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”, (f) “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends and such phrase shall not mean simply “if”, and (g) unless stated otherwise, “Article” or “Section” followed by a number or letter mean and refer to the specified Article or Section of this Plan of Arrangement.
- (5) **Statutes and Rules.** Any reference to a statute or to a rule of a self-regulatory organization, including any stock exchange, refers to such statute or rule and all rules, resolutions and regulations, administrative policy statements, instruments, blanket orders, notices, directions and rulings issued or adopted under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise.

- (6) **Date for Any Action.** If the date on which any action is required to be taken hereunder is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day. Any reference to a number of days shall refer to calendar days unless Business Days are specified.
- (7) **Time.** Time shall be of the essence in every matter or action contemplated hereunder. All times expressed herein are local time in Calgary, Alberta unless otherwise stipulated herein.

ARTICLE 2 THE ARRANGEMENT

Section 2.1 Arrangement Agreement

This Plan of Arrangement is made pursuant to the Arrangement Agreement.

Section 2.2 Binding Effect

This Plan of Arrangement and the Arrangement shall become effective at the Effective Time, and shall be binding on the Purchaser, the Company, all Shareholders (including Dissenting Holders), all holders of Incentive Securities, the registrar and transfer agent of the Company, the Depository and all other Persons at and after the Effective Time, without any further act or formality required on the part of any Person.

Section 2.3 Arrangement

Commencing at the Effective Time, each of the following events shall occur sequentially in the order set out below without any further authorization, act or formality, in each case, unless stated otherwise, effective as at five minute intervals starting at the Effective Time (provided that none of the following shall occur unless all of the following occur):

- (1) notwithstanding the terms of the DSU Plan, the KEP Plan, the ESU Plan or the TI Plan or any applicable award agreements in relation thereto, simultaneously:
 - (a) the DSU Plan shall be terminated and each DSU outstanding immediately prior to the Effective Time shall, without any further action or formality on behalf of the holder thereof and the Company, be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to the Consideration, payable in cash to the holder in accordance with Section 4.1(5), in full satisfaction of the Company's obligations under such surrendered DSU;
 - (b) the KEP and TI Plan shall be terminated and each RSU granted under the KEP Plan or the TI Plan and outstanding immediately prior to the Effective Time (whether then vested or unvested) shall, without any further action or formality on behalf of the holder thereof and the Company, be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to the Consideration, payable in cash to the holder in accordance with Section 4.1(5), in full satisfaction of the Company's obligations under such surrendered RSU;

- (c) the ESU Plan shall be terminated and each RSU or PSU granted under the ESU Plan and outstanding immediately prior to the Effective Time (whether then vested or unvested) shall, without any further action or formality on behalf of the holder thereof and the Company, be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to, (i) in the case of each RSU, the Consideration multiplied by the number of Shares covered by such RSU, and (ii) in the case of each PSU, the Consideration multiplied by the number of Shares covered by such PSU assuming 100% performance vesting, multiplied by a factor, being the ratio of (x) the period of time from the grant date of the PSU to the Effective Date, to (y) the term of the PSU, in each case payable in cash to the holder in accordance with Section 4.1(5), in full satisfaction of the Company's obligations under such surrendered RSU or PSU (as applicable);

whereupon all DSUs, RSUs and PSUs shall be, and shall be deemed to be, cancelled by the Company, all obligations in respect of the DSUs, RSUs and PSUs shall be deemed to be fully satisfied and the holders thereof shall cease to have any rights in respect thereof other than the right to receive the consideration contemplated under this Plan of Arrangement;

- (2) notwithstanding the terms of the Stock Option Plan or any applicable award agreements in relation thereto, the Stock Option Plan shall be cancelled and each Company Option (other than Rollover Options) whether vested or unvested, that has not, prior to the Effective Time, been exercised or surrendered in accordance with its terms shall, without any further action or formality on behalf of the holder thereof and the Company and without any payment by such Company Optionholder, be deemed to be transferred to the Company as follows:
 - (a) in respect of each Company Option outstanding at the Effective Time (other than Rollover Options) whether vested or unvested, that has an exercise price that is less than the Consideration, the applicable Company Option shall be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to the amount by which the Consideration exceeds the exercise price thereof, payable in cash to the Company Optionholder in accordance with Section 4.1(5) in full satisfaction of the Company's obligations under such surrendered Company Option; and
 - (b) in respect of each Company Option outstanding at the Effective Time whether vested or unvested, that has an exercise price that is equal to or greater than the Consideration, the applicable Company Option shall be deemed to be surrendered to the Company in exchange for, subject to Section 4.4, an amount equal to \$0.05, payable in cash to the Company Optionholder in accordance with Section 4.1(5) in full satisfaction of the Company's obligations under such surrendered Company Option;

whereupon all Company Options (other than Rollover Options) shall be, and shall be deemed to be, cancelled by the Company, all obligations in respect of the Company Options (other than Rollover Options) shall be deemed to be fully satisfied, and the

holders thereof shall cease to have any rights in respect thereof other than the right to receive the consideration contemplated under this Plan of Arrangement.

- (3) each Share held by a Dissenting Holder described in Section 3.1 shall be transferred by the holder thereof to the Company in exchange for a debt claim against the Company for the amount determined in accordance with Section 3.1(a);
- (4) each Rollover Share shall be transferred by the holder thereof to Midco in exchange for such number of Midco Shares as set out in the applicable Rollover Agreement on the terms and conditions set out in the applicable Rollover Agreement.
- (5) simultaneous with the transactions set out in Section 2.3(4), each outstanding Share (other than a Share held by a Dissenting Holder described in Section 2.3(1) or a Rollover Share) shall be transferred to the Purchaser in exchange for, subject to Section 4.4, a cash payment to the holder equal to the Consideration;
- (6) each Rollover Option (whether then vested or unvested) shall be exchanged for such number of Midco Options as set out in the applicable Rollover Agreement on the terms and conditions set out in the applicable Rollover Agreement; and
- (7) each Rollover Share shall be transferred by Midco to the Purchaser in exchange for common shares of the Purchaser on the terms and conditions set out in the Midco Transfer Agreement.

ARTICLE 3 RIGHTS OF DISSENT

Section 3.1 Rights of Dissent

Subject to Section 3.1(a), each registered Shareholder as of the record date for the Company Meeting may exercise dissent rights with respect to the Shares held by such holder as of such date (the “**Dissent Rights**”) in connection with the Arrangement pursuant to and in the manner set forth in Section 191 of the ABCA, as modified by the Interim Order and this Article 3; provided that, notwithstanding Section 191 of the ABCA, the written objection to the Arrangement Resolution must be received by the Company not later than 5:00 p.m. (Calgary time) two Business Days immediately preceding the date of the Company Meeting (as it may be adjourned or postponed from time to time). Dissenting Holders who validly exercise their Dissent Rights shall be deemed to have transferred the Shares held by them and in respect of which Dissent Rights have been validly exercised to the Company, without any further act or formality, as provided in Section 2.3(3), and if they:

- (a) ultimately are entitled to be paid fair value for such Shares, they shall: (i) in respect of such Shares be treated as not having participated in the transactions in Article 2 (other than Section 2.3(3)), (ii) be entitled to be paid, subject to Section 4.4, the fair value of such Shares by the Company, which fair value shall be determined as of the close of business on the day before the Arrangement Resolution was adopted at the Company Meeting, and (iii) not be entitled to any other payment or consideration, including any payment that would be payable

under the Arrangement had such holders not exercised their Dissent Rights in respect of such Shares; or

- (b) ultimately are not entitled, for any reason, to be paid fair value for such Shares, they shall in respect of such Shares be treated as having participated in the Arrangement on the same basis as a non-Dissenting Holder of Shares (and shall be entitled to receive the Consideration from the Purchaser in the same manner as such non-Dissenting Holders).

Section 3.2 Recognition of Dissenting Holders

- (1) In no circumstances shall the Purchaser, the Company, the Depositary or any other Person be required to recognize a Person exercising Dissent Rights: (a) unless, as of the deadline for exercising Dissent Rights (as set forth in Section 3.1), such Person is the registered holder of those Shares in respect of which such Dissent Rights are sought to be exercised, (b) if such Person has voted or instructed a proxy holder to vote such Shares in favour of the Arrangement Resolution, or (c) unless such Person has strictly complied with the procedures for exercising Dissent Rights and does not withdraw such dissent prior to the Effective Time.
- (2) For greater certainty, in no case shall the Purchaser, the Company or any other Person be required to recognize Dissenting Holders as holders of the Shares in respect of which Dissent Rights have been validly exercised after the completion of the transfers under Section 2.3(3).
- (3) In addition to any other restrictions under Section 191 of the ABCA, none of the following shall be entitled to exercise Dissent Rights: (a) holders of Incentive Securities, (b) Shareholders who vote or have instructed a proxyholder to vote Shares in favour of the Arrangement Resolution, (c) any Person (including any beneficial owner of Shares) who is not a registered Shareholder, and (d) the Purchaser or its Affiliates.

ARTICLE 4 EXCHANGE OF CERTIFICATES AND PAYMENTS

Section 4.1 Payment of Consideration

- (1) Following receipt of the Final Order and prior to the Effective Date, in accordance with Section 2.9 of the Arrangement Agreement, the Purchaser shall deposit, or shall cause to be deposited, for the benefit of the Shareholders, cash with the Depositary in the aggregate amount equal to the payments in respect of the Shares required by this Plan of Arrangement, with the amount per Share in respect of which Dissent Rights have been exercised being deemed to be the Consideration for this purpose.
- (2) The consideration contemplated by Section 4.1(1) shall be held by the Depositary as agent and nominee for such Shareholders in accordance with the provisions of Article 4 hereof. Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Shares that were transferred pursuant to Section 2.3(3) and Section 2.3(5) together with a duly completed

and executed Letter of Transmittal and such additional documents and instruments as the Depository may reasonably require, the holder of such surrendered certificate shall be entitled to receive, and the Depository shall deliver (and the Purchaser shall cause the Depository to deliver), to such holder, a cheque (or other form of immediately available funds) representing the cash which such holder has the right to receive pursuant to this Plan of Arrangement in respect of such Shares, without interest and less any amounts withheld pursuant to Section 4.4, and any certificate so surrendered shall forthwith be cancelled.

- (3) After the Effective Time and until surrendered for cancellation as contemplated by this Section 4.1, each certificate, agreement or other instrument (as applicable) which immediately prior to the Effective Time represented Shares shall be deemed at all times to represent only the right to receive upon such surrender a cash payment in lieu of such certificate as contemplated in this Section 4.1.
- (4) Any certificate, agreement or other instrument that immediately prior to the Effective Time represented outstanding Shares not duly surrendered with all other documents required by this Section 4.1 on or before the sixth anniversary of the Effective Date shall cease to represent a claim by or interest of any former holder thereof of any kind or nature against or in the Company or the Purchaser. On such date, all consideration to which such former holder was entitled under this Plan of Arrangement shall be deemed to have been surrendered to the Purchaser or the Company, as applicable, together with all entitlements to dividends, distributions and interest thereon held for such former holder.
- (5) As soon as reasonably practicable following the Effective Time, the Company shall deliver, or shall cause to be delivered, to each holder of Incentive Securities (other than Rollover Options), through the Company's payroll systems (or such other means as the Company may elect or as otherwise directed by the Purchaser including with respect to the timing and manner of such delivery), the cash payment, if any, which such holder of Incentive Securities has the right to receive under this Plan of Arrangement for such Incentive Security, less any amounts withheld pursuant to Section 4.4 hereof.
- (6) Any payment made by way of cheque by the Depository or the Company, as applicable, pursuant to this Plan of Arrangement that has not been deposited or has been returned to the Depository or the Company, as applicable, or that otherwise remains unclaimed, in each case, on or before the sixth anniversary of the Effective Time, and any right or claim to payment hereunder that remains outstanding on the sixth anniversary of the Effective Time shall cease to represent a right or claim of any kind or nature and the right of the holder to receive the applicable consideration for the Shares and Incentive Securities pursuant to this Plan of Arrangement shall terminate and be deemed to be surrendered and forfeited to the Purchaser or the Company, as applicable, for no consideration.

Section 4.2 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Shares that were transferred pursuant to Section 2.3 shall have been lost, stolen or destroyed, the Depository shall issue and deliver (and the Purchaser shall cause the Depository

to issue and deliver) to the Person claiming such certificate to be lost, stolen or destroyed, in exchange for such lost, stolen or destroyed certificate, a cheque (or other form of immediately available funds) representing the aggregate consideration in respect thereof which such holder is entitled to receive pursuant to the Arrangement, deliverable in accordance with such holder's Letter of Transmittal. When authorizing such delivery in exchange for any lost, stolen or destroyed certificate, the Person to whom such consideration is to be delivered shall, as a condition precedent to the delivery of such consideration, give an affidavit (in form and substance acceptable to the Purchaser, acting reasonably) of the claimed loss, theft or destruction of such certificate and a bond or surety satisfactory to the Purchaser and the Depositary (each acting reasonably) in such reasonable and customary sum as the Purchaser may direct, or otherwise indemnify the Purchaser, the Company and the Depositary in a manner satisfactory to the Purchaser and the Depositary, each acting reasonably, against any claim that may be made against the Purchaser, the Company and/or the Depositary with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4.3 Rounding of Cash

If the aggregate cash amount which a Party is entitled to receive pursuant to this Plan of Arrangement would otherwise include a fraction of \$0.01, then the aggregate cash amount to which such Party shall be entitled to receive shall be rounded up to the nearest whole \$0.01.

Section 4.4 Withholding Rights

The Company, the Purchaser, the Depositary and any other Person shall be entitled to deduct or withhold from any amount payable to any Person under this Plan of Arrangement (including, without limitation, any amounts payable pursuant to Section 3.1), such amounts as the Company, the Purchaser, the Depositary or such other Person, as applicable, determines, acting reasonably, are required to be deducted or withheld with respect to such payment under the Tax Act or any provision of any other Law. To the extent that amounts are so deducted or withheld, such deducted or withheld amounts shall be treated for all purposes hereof as having been paid to the Person in respect of which such deduction or withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate Governmental Entity.

Section 4.5 No Liens

Any exchange or transfer of securities pursuant to this Plan of Arrangement shall be free and clear of any Liens or other claims of third parties of any kind.

Section 4.6 Paramourty

From and after the Effective Time: (a) this Plan of Arrangement shall take precedence and priority over any and all Shares and Incentive Securities issued or outstanding prior to the Effective Time, and (b) the rights and obligations of the Shareholders, the holders of Incentive Securities, the Company and its Subsidiaries, the Purchaser and its Affiliates, the Depositary and any transfer agent or other depositary therefor in relation to this Plan of Arrangement shall be solely as provided for in this Plan of Arrangement.

ARTICLE 5 AMENDMENTS

Section 5.1 Amendments to Plan of Arrangement

- (1) The Parties may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must be (a) set out in writing, (b) approved by the Parties, each acting reasonably, (c) filed with the Court and, if made following the Company Meeting, approved by the Court, and (d) communicated to the Company Securityholders if and as required by the Court.
- (2) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by either of the Parties at any time prior to the Company Meeting (provided that the other Party has consented thereto) with or without any other prior notice or communication, and if so proposed and accepted by the Persons voting at the Company Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
- (3) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Company Meeting shall be effective only if (a) it is consented to in writing by each of the Parties (in each case, acting reasonably), and (b) if required by the Court, it is consented to by some or all of the Shareholders voting in the manner directed by the Court. Any amendment, modification or supplement to this Plan of Arrangement may be made following the granting of the Final Order without filing such amendment, modification or supplement with the Court or seeking Court approval, provided that (i) it concerns a matter which, in the reasonable opinion of the Parties, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the interest of any Company Securityholder or (ii) is an amendment contemplated in Section 5.1(4).
- (4) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, without communication to the Company Securityholders, provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the economic interest of any former Company Securityholder.
- (5) This Plan of Arrangement may be withdrawn prior to the Effective Time in accordance with the terms of the Arrangement Agreement.

ARTICLE 6 FURTHER ASSURANCES

Section 6.1 Further Assurances

Notwithstanding that the transactions and events set out in this Plan of Arrangement shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further

act or formality, following the Effective Time, each of the Parties shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required or advisable by either of them in order to further document or evidence any of the transactions or events set out in this Plan of Arrangement.

SCHEDULE B
ARRANGEMENT RESOLUTION

BE IT RESOLVED THAT:

- (1) The arrangement (as may be amended, supplemented or varied, the “**Arrangement**”) under Section 193 of the *Business Corporations Act* (Alberta) involving WestJet Airlines Ltd. (the “**Company**”), pursuant to the arrangement agreement among the Company and Kestrel Bidco Inc. dated May 12, 2019, as it may be modified, supplemented or amended from time to time in accordance with its terms (the “**Arrangement Agreement**”), the full text of which is set out as Appendix ● to the management information circular of the Company dated ●, 2019 (the “**Circular**”), and all transactions contemplated thereby, are hereby authorized, approved and adopted.
- (2) The plan of arrangement, the full text of which is set out as Appendix ● to the Circular, as it has been or may be modified, supplemented or amended in accordance with the Arrangement Agreement and its terms, involving the Company (the “**Plan of Arrangement**”), is hereby authorized, approved and adopted.
- (3) The Arrangement Agreement and all the transactions contemplated therein, the actions of the directors of the Company in approving the Arrangement and the Arrangement Agreement and the actions of the directors and officers of the Company in executing and delivering the Arrangement Agreement and any modifications, supplements or amendments thereto are hereby ratified and approved.
- (4) Notwithstanding that this resolution has been passed (and the Arrangement adopted) by the Shareholders and Company Optionholders (as defined in the Arrangement Agreement) or that the Arrangement has been approved by the Court of Queen’s Bench of Alberta (the “**Court**”), the directors of the Company are hereby authorized and empowered, at their discretion, without further notice to or approval of the Shareholders: (a) to amend or modify the Arrangement Agreement or the Plan of Arrangement to the extent permitted by their terms, and (b) subject to the terms of the Arrangement Agreement, not to proceed with the Arrangement and any related transactions.
- (5) The Company is hereby authorized to apply for a final order from the Court to approve the Arrangement in accordance with and subject to the terms and conditions set forth in the Arrangement Agreement and the Plan of Arrangement.
- (6) Any officer or director of the Company is hereby authorized and directed, for and on behalf of the Company, to execute or cause to be executed and to deliver or cause to be delivered, all such other documents and instruments and to perform or cause to be performed all such other acts and things as, in such person’s opinion, may be necessary or desirable to give full force and effect to the foregoing resolutions and the matters authorized thereby, such determination to be conclusively evidenced by the execution and delivery of such other document or instrument or the doing of any other such act or thing.

SCHEDULE C
OTHER MERGER CONTROL APPROVALS

Schedule C may be modified at any time upon written agreement of the Parties and/or their external counsel.

The United States Hart Scott Rodino Antitrust Improvement Act.

SCHEDULE D
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

- (1) **Organization and Qualification.** The Company and each of its Subsidiaries is a corporation or other entity incorporated or organized, as applicable, validly existing, and in good standing under the Laws of the jurisdiction of its governing jurisdiction. The Company, and each of its Subsidiaries, has all requisite power and authority, is duly qualified, licensed or registered and holds all material Authorizations required to carry on its business as now conducted and to own, lease and operate its assets and business.
- (2) **Authorization.** The Company has the requisite corporate power and authority to enter into this Agreement and the other Transaction Documents to which it is a party, and to perform its obligations hereunder and thereunder. The execution and delivery by the Company of this Agreement and the other Transaction Documents to which it is a party, and the performance by the Company of its obligations hereunder and thereunder, and the consummation of the Arrangement and the other transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action on the part the Company and no other corporate proceedings on the part the Company are necessary to authorize this Agreement and the other Transaction Documents to which it is a party, or the consummation of the Arrangement and the other transactions contemplated hereby, other than the Required Approval and the Interim Order and the Final Order.
- (3) **Capitalization.**
 - (a) The authorized capital of the Company consists of (i) an unlimited number of Common Voting Shares and an unlimited number of Variable Voting Shares, of which 113,952,590 Shares were issued and outstanding as of the date of this Agreement, (ii) an unlimited amount of non-voting shares, issuable in series, of which none are issued and outstanding, and (iii) an unlimited number of preferred shares, issuable in series, of which none were issued and outstanding as of the date of this Agreement. All issued and outstanding Shares have been duly authorized and validly issued, and are fully paid and non-assessable.
 - (b) As of the date hereof (i) up to 11,183,839 Shares are issuable upon the exercise of outstanding Company Options, (ii) up to 337,969 Shares would be issuable upon the settlement of outstanding PSUs (assuming application of the maximum possible performance vesting), if all such PSUs were settled through the issuance of newly-issued Shares and (iii) up to 588,720 Shares would be issuable upon the settlement of outstanding RSUs, if all such RSUs were settled through the issuance of newly-issued Shares. Except as disclosed in the preceding sentence and for RSUs and PSUs granted after the date hereof in accordance with this Agreement, there are no options, convertible securities or other rights, Contracts, plans (including any shareholder rights plan or poison pill) or commitments of any character whatsoever (pre-emptive, contingent or otherwise) requiring, or which may require, whether or not subject to conditions, the issuance, sale or transfer by the Company or any of its Subsidiaries of any securities of the Company or any of its Subsidiaries (including Shares) or any securities

convertible into, or exchangeable or exercisable for, or otherwise evidencing a right to subscribe for or acquire, any securities of the Company or any of its Subsidiaries.

- (c) There are no outstanding contractual or other obligations of the Company or any Subsidiary to repurchase, redeem or otherwise acquire any of the Company's or any Subsidiary's securities (other than Senior Notes), or qualify securities for public distribution in Canada or elsewhere. Other than the Shares, there are no securities or other instruments or obligations of the Company or of any of its Subsidiaries that carry (or which is convertible into, or exchangeable for, securities having) the right to vote generally with the Shareholders on any matter.
 - (d) All outstanding Shares, Company Options, DSUs, RSUs and PSUs have been duly authorized by the Board (or a duly authorized committee thereof) and have been issued in compliance with all applicable Laws (including Securities Laws).
- (4) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Company, and constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, except as enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other Laws related to or affecting the rights of creditors generally, and except as limited by the application of equitable principles (regardless of whether such enforcement is considered in a Proceeding in equity or at Law) and by the fact that the right to indemnity, contribution and waiver, and the ability to sever unenforceable terms, may be limited by applicable Law.
- (5) **Governmental Authorization.** The execution and delivery of this Agreement by the Company, and the performance of its and its Subsidiaries' obligations hereunder and the consummation of the Arrangement and the other transactions contemplated hereby, do not require any Authorization or other action by or in respect of, or filing with or notification to, any Governmental Entity by the Company or any of its Subsidiaries other than (a) the Regulatory Approvals and the Key Regulatory Approvals, (b) the Interim Order and the Final Order, (c) the filing of the Articles of Arrangement, and (d) customary filings with the Securities Authorities.
- (6) **Non-Contravention.** The execution and delivery of this Agreement by the Company, and performance of its and its Subsidiaries' obligations hereunder and the consummation by the Company and its Subsidiaries of the Arrangement and the other transactions contemplated hereby do not and will not (or would not, with the giving of notice, the lapse of time, or the happening of any other event or condition (or combination thereof)):
- (a) contravene, conflict with, or result in any violation or breach of the Company Constating Documents or the organizational documents of any of the Company's Subsidiaries;

- (b) assuming compliance with the matters referred to in Paragraph D(5) above, contravene, conflict with or result in a material violation or breach of any applicable Law;
 - (c) except as set out in Section D(6)(c) of the Company Disclosure Letter, allow any Person to exercise any rights, require any consent or other action by any Person, constitute a breach of or default under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Company or any of its Subsidiaries is entitled (including by triggering any rights of first refusal or first offer, change in control provision or other restriction or limitation) under, any Material Contract or any material Authorization of the Company or any Subsidiary; or
 - (d) result in the creation or imposition of any Lien upon any of the properties or assets of the Company or any of its Subsidiaries (excluding, for greater certainty, any Lien created or imposed by the Debt Financing).
- (7) **Shareholders' and Similar Agreement.** None of the Company or any of its Subsidiaries is a party to any shareholder, pooling, voting or other similar Contract, arrangement or understanding relating to the ownership or voting of any securities of the Company or any of its Subsidiaries and, to the knowledge of the Company, as of the date hereof, other than the Voting Agreements, there are no irrevocable proxies or voting Contracts with respect to any securities issued by the Company or any of its Subsidiaries.
- (8) **Subsidiaries.**
- (a) A true and complete list of all Subsidiaries of the Company is set out in Section D(8) of the Company Disclosure Letter, including: (i) its name, (ii) the percentage of each class of outstanding shares or other interests (including partnership interests, however divided) in such Subsidiary owned, directly or indirectly, by the Company, and (iii) its governing jurisdiction.
 - (b) Other than the Subsidiaries set out in Section D(8) of the Company Disclosure Letter, the Company has no direct or indirect Subsidiaries nor does it own any direct or indirect equity or voting interest of any kind in any Person.
 - (c) The Company directly or indirectly owns all of the issued and outstanding shares and other interests (including partnership interests, however divided) of each of its Subsidiaries, free and clear of any Liens (other than Permitted Liens), and all of the issued and outstanding shares or interests directly or indirectly owned by the Company have been duly authorized and validly issued and are fully paid and non-assessable shares or interests, and no such shares or interests have been issued in violation of any pre-emptive or similar rights.
 - (d) There are no Contracts, arrangements or restrictions that require the Company's Subsidiaries to issue, sell or deliver any shares or other interests, or any securities convertible into or exchangeable for, any shares or other interests.

(9) **Securities Law Matters.**

(a) The Company is a reporting issuer (or the equivalent) under Securities Laws in each of the provinces and territories of Canada. The Shares are listed and posted for trading on the TSX. None of the Company's Subsidiaries are subject to any continuous or periodic or other disclosure requirements under the securities Laws of any jurisdiction. The Company is not in default of any material requirement of applicable Securities Laws. The Company has not taken any action to cease to be a reporting issuer in any province or territory of Canada, nor has the Company received notification from any Securities Authority seeking to revoke the reporting issuer status of the Company. To the knowledge of the Company, no Proceeding or Order for the delisting, suspension of trading or cease trade or other Order or restriction with respect to any securities of the Company is in effect, has been initiated or is threatened or expected (other than as contemplated by Section 4.12). The Company has timely filed with the Securities Authorities all forms, reports, schedules, statements and other documents required to be filed by the Company with the Securities Authorities since January 1, 2017. The documents comprising the Company Filings, as of their respective dates, complied as filed in all material respects with applicable Law and did not contain any Misrepresentation. The Company has not filed any confidential material change report or other confidential filing with any Security Authority which at the date of this Agreement remains confidential. As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters from any Securities Authority with respect to any of the Company Filings. Neither the Company nor any of its Subsidiaries is subject to any ongoing Proceeding by any Securities Authority or the TSX and, to the knowledge of the Company, no such Proceeding is threatened.

(b) The Company does not have, nor is it required to have, any class of securities registered under the *Securities Exchange Act of 1934* of the United States of America, nor is the Company subject to any reporting obligation (whether active or suspended) pursuant to Section 13(a) or Section 15(d) of the *Securities Exchange Act of 1934* of the United States of America. The Company is not, and has never been, subject to any requirement to register any class of its equity securities pursuant to section 12(g) of the *Securities Exchange Act of 1934* of the United States of America, is not an investment company registered or required to be registered under the *Investment Company Act of 1940* of the United States of America, and is a "foreign private issuer" (as such term is defined in Rule 3b-4 under the *Securities Exchange Act of 1934* of the United States of America). No securities of the Company have been traded on any national securities exchange in the United States of America during the past 12 calendar months.

(10) **Financial Statements.** The audited consolidated financial statements and the unaudited consolidated interim financial statements of the Company for the years ended December 31, 2018 and 2017 (including, in each case, any notes or schedules to, and the auditor's report (if any) on, such financial statements) included in the Company Filings: (a) were prepared in accordance with IFRS, consistently applied throughout the periods referred to

therein (except as expressly set forth in the notes thereto) and (b) fairly present, in all material respects, the assets, liabilities, consolidated financial position, results of operations and cash flows of the Company and its Subsidiaries as of their respective dates and for the respective periods covered thereby, and there have been no changes in accounting methods, policies or practices of the Company or its Subsidiaries during such periods (except, in each case, as expressly set forth in the notes to such financial statements).

(11) **Disclosure Controls and Internal Control over Financial Reporting.**

- (a) The Company has established and maintains a system of disclosure controls and procedures (as such term is defined in National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings*) to provide reasonable assurance that information required to be disclosed by the Company in its annual filings, interim filings or other reports required to be filed or submitted by it under Securities Laws is recorded, processed, summarized and reported within the time periods required by applicable Securities Laws. Such disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed by the Company in its annual filings, interim filings or other reports required to be filed or submitted under applicable Securities Laws is accumulated and communicated to the Company's management, including its chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.
- (b) The Company has established and maintains a system of internal control over financial reporting (as such term is defined in National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings*) that is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with IFRS.
- (c) To the knowledge of the Company, there is no material weakness (as such term is defined in National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings*) relating to the design, implementation or maintenance of the Company's internal control over financial reporting or fraud, whether or not material, that involves Service Providers who have a significant role in the internal control over financial reporting of the Company. To the knowledge of the Company, neither of the Company, any of its Subsidiaries, nor any of its or their respective Representatives has received or otherwise obtained knowledge of any Proceeding regarding accounting, internal accounting controls or auditing matters, including any Proceeding alleging that the Company or any of its Subsidiaries has engaged in questionable accounting or auditing practices, or any expression of concern from its Representatives regarding questionable accounting or auditing matters.

- (12) **Books and Records.** The financial books, records and accounts of the Company and each of its Subsidiaries; (a) have been maintained in accordance with applicable Laws; (b) accurately and fairly reflect all material transactions involving the Company and its

Subsidiaries, and (c) accurately and fairly reflect the basis of the Company's financial statements in all material respects.

- (13) **Minute Books.** The corporate minute books of the Company and its Subsidiaries contain the minutes of all meetings and resolutions of their respective boards of directors and each committee thereof, (other than minutes of meetings held from May 6, 2019 which are still in the process of being prepared and the subject matter of which addresses Ordinary Course matters or that relate to this Agreement and the transactions contemplated hereby) and have been maintained in accordance with applicable Laws, and are complete and accurate, in all material respects. True and correct copies of the minutes books of the Company and each of its Subsidiaries (other than those portions of minutes of meetings of the Board and any committee thereof relating to this Agreement and the transactions contemplated hereby) have been provided in the Data Room.
- (14) **No Undisclosed Material Liabilities.** There are no material liabilities, Indebtedness or other obligations of any nature, whether accrued, contingent, absolute, determined, determinable, or otherwise, whether matured or unmatured, of the Company or of any of its Subsidiaries of a type required to be reflected or reserved for on a balance sheet prepared in accordance with IFRS, other than liabilities or obligations: (a) reflected on the consolidated balance sheet of the Company as at December 31, 2018, (b) incurred in the Ordinary Course since December 31, 2018, or (c) reasonably incurred after December 31, 2018 in connection with this Agreement or the transactions contemplated hereby. Except as disclosed in Section D(14) of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off balance sheet Contract, arrangement or understanding (including any Contract, arrangement or understanding between the Company or any of its Subsidiaries, on the one hand, and any unconsolidated entity, on the other hand, including any structured finance, special purpose, or limited purpose entity or person, on the other hand), or any other "off balance sheet arrangements" (as defined in the instructions thereto of Form 51-102F1 – *Management's Discussions and Analysis of National Instrument 51-102 – Continuous Disclosure Obligations*).
- (15) **Auditors.** The auditors of the Company are independent public accountants as required by applicable Laws and, to the knowledge of the Company, there has not been any reportable event (as defined in National Instrument 51-102 – *Continuous Disclosure Obligations*) with the present or any former auditor of the Company.
- (16) **Absence of Certain Changes or Events.** Since December 31, 2018, other than the transactions contemplated in this Agreement or events, circumstances or occurrences disclosed in Company Filings filed prior to the date hereof, the business of the Company and of each of its Subsidiaries has been conducted in the Ordinary Course and none of the Company or any of its Subsidiaries has taken any action that, if taken after the date of this Agreement without the consent of the Purchaser, would constitute a breach or violation of Section 4.1(1).
- (17) **No Material Adverse Effect.** Since December 31, 2018, no Material Adverse Effect has occurred.

- (18) **Related Party Transactions.** Neither the Company nor any of its Subsidiaries is indebted to any Company Employee or any of their respective associates or affiliates (except for amounts accrued in the Ordinary Course that are not yet due and payable). There are no Contracts (other than in the Ordinary Course) with, or advances, loans, guarantees, liabilities or other obligations to, on behalf or for the benefit of, any shareholder, Executive Officer or director of the Company or any of its Subsidiaries, or any of their respective Affiliates or associates (except for amounts accrued in the Ordinary Course that are not yet due and payable).
- (19) **Compliance with Law.** Except as disclosed in Section D(19) of the Company Disclosure Letter, the Company and each of its Subsidiaries is, and since January 1, 2017 has been, in compliance with Law in all material respects. Neither the Company nor any of its Subsidiaries is, to the knowledge of the Company, under any investigation with respect to, has been convicted, charged or threatened to be charged with, or has received notice of, any violation or potential violation of any Law from any Governmental Entity.
- (20) **Authorizations.** The Company and each of its Subsidiaries lawfully own, possess and have obtained, and have complied with, all material Authorizations that are required by Law (a) in connection with the operation of its business in the Ordinary Course, and (b) in connection with the ownership, operation or use of its properties and assets, except, in each case, for those, the non-compliance with which, in the aggregate, would not materially impair the operation of the Company's business. Each such Authorization is valid, in full force and effect, and is renewable in the Ordinary Course. As of the date hereof, no Proceeding is in progress or, to the knowledge of the Company, pending or threatened, in respect of any such Authorization that could reasonably be expected to result in the suspension, loss, adverse amendment or revocation of any such Authorizations.
- (21) **Material Contracts.**
- (a) Section D(21) of the Company Disclosure Letter sets out a complete and accurate list of all Material Contracts as of the date hereof and, except as disclosed in Section D(21) of the Company Disclosure Letter, true, correct and complete copies of all Material Contracts as of the date hereof, including all material amendments and supplements thereto, have been provided in the Data Room; provided that for the purpose of this Section D(21) references in the definition of "Material Contract" to \$10,000,000 shall be \$30,000,000.
- (b) Each Material Contract is in full force and effect, and is a legal, valid and binding obligation of, and enforceable against, the Company and/or the one or more Subsidiaries of the Company that are party thereto and, to the knowledge of the Company, each other party thereto, in accordance with its terms (subject to bankruptcy, insolvency, reorganization, moratorium or other Laws related to or affecting the rights of creditors generally, and to general principles of equity).
- (c) Neither the Company nor any of its Subsidiaries knows of, or has received any written notice of, any breach or default under any Material Contract, nor, to the

knowledge of the Company, does there exist any condition that, with the giving of notice or the lapse of time or both would, constitute any material breach or default under any Material Contract.

- (d) Except as disclosed in Section D(21)(d) of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries has received any written notice that any party to a Material Contract intends to cancel, terminate or not renew its relationship with the Company or any of its Subsidiaries, and, to the knowledge of the Company, no such action is pending or threatened.
- (22) **Restrictions on Conduct of Business.** Except for Material Contracts disclosed in Section D(21) of the Company Disclosure Letter, none of the Company or any of its Subsidiaries is a party to, or bound by, any non-competition agreement or any other Contract or any Order or Authorization of any Governmental Entity that purports to materially: (a) limit the manner or location in which the Company or any of its Subsidiaries may conduct any line of business (other than limitations on the disposition of assets or requirements to continue conducting business in the Ordinary Course), (b) limit any business practice of the Company or its Subsidiaries (other than limitations on the disposition of assets or requirements to continue conducting business in the Ordinary Course), or (c) restrict any acquisition of assets or property by the Company or any of its Subsidiaries.
- (23) **No Guarantees.** Other than in connection with the Existing Credit Facilities, or as disclosed in Section D(23) of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries is a party to or bound by any Contract of guarantee, indemnification (other than standard indemnity agreements in favour of the directors and officers of the Company and its Subsidiaries and indemnification provisions contained in Material Contracts or other Contracts entered into in the Ordinary Course) or any similar commitment in respect of any material obligations, liabilities (contingent or otherwise) or Indebtedness of any other Person (other than Subsidiaries of the Company).
- (24) **Real Property.**
- (a) *Owned Property*
 - (i) Neither the Company nor any of its Subsidiaries currently own, or immediately upon the consummation of the Arrangement, will own, any fee simple interests in any real or immovable property either in whole or in part, legally or beneficially.
 - (ii) Neither the Company nor any of its Subsidiaries is a party to, or bound by, any Contract or option to sell, transfer or acquire any interest in any fee simple interests in real property.
 - (b) *Leased Property*
 - (i) Section D(24)(b)(i) of the Company Disclosure Letter sets forth a complete and accurate list of all material Company Leased Properties.

- (ii) The Data Room contains complete and accurate copies of all material Company Leases, including all amendments, modifications, supplements, guarantees, registrations and non-disturbance agreements in connection therewith.
 - (iii) With respect to all material Company Leased Properties: (A) each Company Lease in respect thereof is in full force and effect and, to the knowledge of the Company, is legal, valid, binding obligation of, and is enforceable against, each other party thereto in accordance with its terms, and (B) there is no event of breach of or default under, or any event which, with the giving of notice, the lapse of time or both, would become an event of default, under any such Company Lease, and, to the knowledge of the Company, neither the Company nor any of its Subsidiaries has received or delivered any notice of any material breach of, or default under, any such Company Lease. To the knowledge of the Company, there is no breach of, or default under, any such Company Lease by any other party thereto.
- (c) *General*
- (i) All material accounts for materials, work and services performed or materials placed or furnished upon or in respect of construction at each of the Company Leased Properties has been fully paid, or the Company has made arrangements with such contractor for payment in the Ordinary Course.
 - (ii) Except as set forth in any Company Lease, no Person has any (A) option to purchase or lease, (B) right of first opportunity, refusal or offer, (C) other purchase or repurchase right, or (D) any right or option to occupy, any material Company Leased Property or the Company's and its Subsidiaries' interests therein, and neither the Company nor its Subsidiaries has granted any right or privilege (whether by law or contract) capable of becoming a Contract, arrangement or understanding with any Person for the purchase, lease, sublease, license, assignment or other disposition of any of the material Company Leased Properties or any right or interest therein.
 - (iii) To the knowledge of the Company, the Company Leased Properties constitute all of the real property necessary to operate the business of the Company and its Subsidiaries in the manner presently operated.
 - (iv) Neither the Company nor any of its Subsidiaries has received any Work Order or notification which remains open or in effect that any material work repairs, construction or capital expenditures are required to be made in respect of any Company Leased Properties, including matters within the jurisdiction of local Governmental Entities, or as a condition of compliance with Law in any material respect.

(25) **Other Assets.**

- (a) The Company or one or more of its Subsidiaries has good and valid title to all material Other Assets owned by the Company and its Subsidiaries, or a valid and enforceable leasehold interest in all material Other Assets leased by the Company and its Subsidiaries, or a valid and enforceable contractual right with respect to all other material Other Assets used in the operation of their respective businesses, in each case free and clear of all Liens (other than Permitted Liens). No Person has any right of first refusal, undertaking or commitment, or any right or privilege capable of becoming a right of first refusal, undertaking or commitment, to purchase or otherwise acquire any interest in any material Other Asset.
- (b) To the knowledge of the Company, all material tangible Other Assets are, in all material respects, in good operating condition and repair having regard their uses and ages, and are adequate and suitable for their respective uses, and conform in all material respects to all applicable Laws. The Company and its Subsidiaries have conducted all required repair and maintenance on their respective material tangible Other Assets as is customary in their business, and, except for ordinary, routine maintenance and repairs that are not material in nature or cost, no maintenance or repairs are required that would materially interrupt the operation of the business of the Company and its Subsidiaries as currently conducted in the Ordinary Course.

(26) **Intellectual Property.**

- (a) Section D(26)(a) of the Company Disclosure Letter sets out a true, complete and accurate list of the Intellectual Property owned by the Company or any of its Subsidiaries or licensed by the Company or its Subsidiaries from third parties that are material to the business and operations of the Company or the Subsidiaries (collectively, the “**Company Intellectual Property**”). The Company Intellectual Property is the only Intellectual Property necessary for and material to the operation of the business of the Company and each of its Subsidiaries in the Ordinary Course.
- (b) The Company or one or more of its Subsidiaries own exclusively, free and clear of all Liens (other than Permitted Liens) all rights, title and interest in and to the Company Intellectual Property owned by the Company or one or more of its Subsidiaries, or have licensed (and are not in breach of any such license in any material respect) to use or otherwise exploit, the Company Intellectual Property, all of which rights shall in all material respects survive following the execution and delivery of this Agreement and the consummation of the transactions contemplated herein.
- (c) All Company Intellectual Property is subsisting, in full force and effect and enforceable by the Company or one or more of its Subsidiaries, and, to the knowledge of the Company, is valid and no third party is breaching, infringing, violating or misappropriating or interfering with any Company Intellectual

Property in any material respect. There is no Proceeding in progress or pending or, to the knowledge of the Company, threatened, by any Person challenging the Company's or its Subsidiaries' rights in or to any Company Intellectual Property.

- (d) None of the Company Intellectual Property, other than normal and routine off-the-shelf software licensed by the Company or its Subsidiaries is subject to any Contract or Order (or Proceeding seeking an Order) or decree restricting the use, distribution, transfer, or licensing thereof by the Company or any of its Subsidiaries, other than under the terms of any license for any Company Intellectual Property that the Company or its Subsidiaries, as applicable, is in compliance with in all material respects.
- (e) The Company and its Subsidiaries have taken commercially reasonable steps to protect their rights in and to all material owned Company Intellectual Property, and to maintain the confidentiality of all information that constitutes a material trade secret of the Company or any of its Subsidiaries.
- (f) Neither the Company nor any of its Subsidiaries has disclosed any confidential Company Intellectual Property owned by the Company or any of its Subsidiaries (including the source code to any Company Software) to any third party other than pursuant to a customary Contract that requires such third party to keep all information comprising, or related to, such Company Intellectual Property confidential.
- (g) The Company and its Subsidiaries are in compliance in all material respects with its obligations under any Contract pursuant to which the Company or its Subsidiaries, as applicable, has obtained the legal right to use any Intellectual Property owned by, or licensed from, a third party.
- (h) As of the date of this Agreement, there are no Proceedings in progress or pending, or, to the knowledge of the Company, threatened, alleging any breach, infringement, violation or misappropriation, or interference, by the Company or any of its Subsidiaries of or with the Intellectual Property of any Person, and there is no Proceeding in progress or pending or, to the knowledge of the Company, threatened, by any Person challenging the Company's or its Subsidiaries' rights, title or interest in or to the Company Intellectual Property.

(27) **Business Systems.**

The Business Systems, whether owned, leased or otherwise used or held for use by the Company or its Subsidiaries that are material to the performance of or provision of any material services to the customers of Company and its Subsidiaries (including passengers), to the knowledge of the Company (A) are sufficient to conduct the business of the Company and its Subsidiaries in the Ordinary Course, (B) operate and perform in all material respects in accordance with their documentation and functional specifications and otherwise as required by the Company and its Subsidiaries to conduct their business in the Ordinary Course, and (C) have not malfunctioned or failed in any material respect within the three-year period immediately preceding the date of this

Agreement. To the knowledge of the Company, in the past three years, no Person has gained unauthorized access to any material Business Systems. The Company and its Subsidiaries have implemented and maintain reasonable and sufficient backup and disaster recovery technology consistent with industry practices.

(28) **Company Software.**

- (a) Section (28)(a) of the Company Disclosure Letter sets forth a complete and accurate list of the Company Software and all material components thereof, including all components owned by the Company or any of its Subsidiaries and all components licensed from third parties.
- (b) Section (28)(b) of the Company Disclosure Letter sets forth all material software licensed or used by the Company and/or one or more of its Subsidiaries from a Person (other than the Company or one of its Subsidiaries), excluding any software subject to a nonexclusive license agreement for “off-the-shelf” software, or software licensed pursuant to “click through” or similar stock agreements, in each case, that is generally commercially available for a license fee (the “**Third Party Software**”). None of the Company Software is subject to an open source code license or to any license, in each case that would require the present or future public disclosure of its source code. The Company Software and the Third Party Software constitutes all materials necessary for the continued maintenance of the Company Software. Copies of all license and maintenance agreements for the material Third Party Software have been made available by the Company to the Purchaser or its Representatives.
- (c) All copies of the source code and related documentation for all Company Software owned by the Company or one of its Subsidiaries are securely located at the Company’s premises at the address specified in Section 8.3(b). No source code or related documentation forming part of the Company Software is subject to escrow. The source code or related documentation has not been disclosed to any third party.
- (d) The Company has obtained all material approvals required by Law from any Governmental Entity in all jurisdictions where material Company Software is used or licensed.
- (e) Section D(28)(e) of the Company Disclosure Letter lists all material licenses, installation, implementation, maintenance or support agreements, development Contracts and all other agreements between the Company or any of its Subsidiaries and users of the Company Software, copies of each of which have been made available to the Purchaser or its Representatives. All such users have non-transferable, non-exclusive, licenses to use only object code versions of the Company Software. To the knowledge of the Company, no third parties are in material breach of any such agreement.

- (f) To the knowledge of the Company, there are no material problems or defects in the Company Software or the operation thereof, including bugs, logic errors or failures of the Company Software to operate as described in the related documentation, and the Company Software operates in accordance with its documentation and specifications.
 - (g) The Company and each of its Subsidiaries have taken reasonable measures, consistent with industry practice, to prevent the introduction into any Company Software owned by the Company or one of its Subsidiaries of any “back door”, “drop dead device”, “time bomb”, “Trojan horse”, “virus”, “worm”, “spyware” “malware” or “adware” (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing or facilitating, any of the following functions: (i) disrupting, disabling, harming, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed, or (ii) compromising the privacy or data security of a user or damaging or destroying any data or file without a user’s consent.
- (29) **Litigation.** Except as disclosed in Section D(29) of the Company Disclosure Letter, there are no material Proceedings in progress or pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its Subsidiaries, the business of the Company or any of its Subsidiaries, or affecting in any material respect any of their respective current properties, assets or operations by or before any Governmental Entity. To the knowledge of the Company, there are no facts or circumstances that could give rise to any such Proceedings. None of the Company, any of its Subsidiaries or any of their respective properties or assets is subject to any outstanding Order. No bankruptcy, liquidation, winding-up or other similar Proceeding is in progress or pending or, to the knowledge of the Company, threatened against or relating to the Company or any of its Subsidiaries before any Governmental Entity.
- (30) **Environmental Matters.**
- (a) Except as would not, individually or in the aggregate, have a Material Adverse Effect:
 - (i) the Company and each of its Subsidiaries and, to the knowledge of the Company, each Consortia have complied in all material respects with all Environmental Laws since January 1, 2014;
 - (ii) none of the Company or any of its Subsidiaries or, to the knowledge of the Company, any Consortia (A) is subject to any Proceeding or Order under any Environmental Laws, or (B) has received any written notice of any alleged non-compliance in respect of, or any potential liability under, any Environmental Laws that remains outstanding; and
 - (iii) except as disclosed in Section D(30)(a) of the Company Disclosure Letter none of the Company or any of its Subsidiaries has caused or permitted

the release, spill, emission, discharge, presence or migration of any Hazardous Substances, except (A) in material compliance with Environmental Laws, and (B) in material compliance with any applicable Contractual obligations of the Company or any of its Subsidiaries, including under the Company Leases; and

- (iv) there are no Hazardous Substances in, on, under or migrating from lands owned or formerly owned or leased or formerly leased by the Company, its predecessors or any of its Subsidiaries except in concentrations that comply with Environmental Laws.
- (b) The Data Room contains complete and accurate copies and results of any material reports, studies, analyses, tests, documents or correspondence in the possession of the Company or any of its Subsidiaries relating to Environmental Laws or Hazardous Substances.
- (c) Except pursuant to any customary indemnities in any Company Lease, pursuant to any Material Contract set forth in Section D(21) of the Company Disclosure Letter, or as set forth in Section D(30)(c) of the Company Disclosure Letter, the Company has not agreed by Contract or otherwise (including any order or consent agreement) to indemnify or hold harmless any Person for any material liability pursuant to Environmental Laws.

(31) **Employees.**

- (a) Section D(31)(a) of the Company Disclosure Letter contains an anonymized list of all current Company Employees who are not subject to a Collective Agreement as of the date hereof and whose annual base compensation exceeds \$75,000 and sets forth for each Person the following information (as applicable): (i) title or position (including whether full or part time); (ii) hire date; (iii) current annual base compensation rate; and (iv) commission, bonus or other incentive-based compensation. All Contracts in relation to the top 8 compensated Company Employees have been disclosed in the Data Room (calculated on annual base salary plus target cash bonus). To the knowledge of the Company, no such Company Employee has notified the Company or its Subsidiaries that he or she intends to resign, retire or terminate his or her engagement with the Company or Subsidiary following the Arrangement or as a result of the transactions contemplated by this Agreement or otherwise. Section D(31)(a) of the Company Disclosure Letter contains an anonymized list of all current Company Employees who are currently on any form of leave of absence, including the reason for such leave (subject to applicable privacy Law) and the anticipated return to work date.
- (b) All amounts due or accrued for all salary, wages, bonuses, incentive compensation, deferred compensation, commissions, vacation with pay, sick days and benefits under Employee Plans and other similar accruals have either been paid or are accrued and accurately reflected in the books and records of the Company and its Subsidiaries. All liabilities of the Company or any of its

Subsidiaries due or accruing due to Company Employees have or shall have been paid or accrued and accurately reflected in the books and records of the Company to the Effective Date, including premium contributions, remittances and assessments for employment insurance, employer health tax, Canada Pension Plan, income tax and any other employer-related legislation.

- (c) Section D(31)(c) of the Company Disclosure Letter contains a list of all Executive Officers and vice presidents of the Company who have a Contract with the Company or its Subsidiaries' providing for a length of notice or severance payment required to terminate his or her employment (other than such as results by Law from the employment of an employee without an agreement as to notice or severance). Except as disclosed in Section D(31)(c) of the Company Disclosure Letter, there are no change of control payments, retention payments or severance payments or Contracts with any Company Employees providing for cash or other compensation or benefits (including any increase in amount of compensation or benefit or the acceleration of time of payment or vesting of any compensation or benefit) upon the consummation of, or relating to, the Arrangement or any other transaction contemplated by this Agreement, including a change of control of the Company or of any of its Subsidiaries.
- (d) Within the past three years, the Company has taken reasonable action in respect to each known and credible sexual harassment allegation and, except as disclosed in Section D(31)(d) of the Company Disclosure Letter, the Company does not reasonably expect any material liability with respect to any such allegations.
- (e) Except as disclosed in Section D(31)(e) of the Company Disclosure Letter, the Company and its Subsidiaries are in compliance in all material respects with all applicable terms and conditions of employment and with all applicable Laws respecting labour and employment, including pay equity, employment equity, work classification, work permits/authorizations, wages, hours of work, unemployment insurance, discrimination, harassment, leave of absence, equal opportunity, overtime, employment and labour standards, labour relations, privacy, workers compensation, human rights and occupational health and safety. Except as disclosed in Section D(31)(e) of the Company Disclosure Letter, no material Proceedings with respect to any such Law relating to the Company or any of its Subsidiaries is in progress or pending or, to the knowledge of the Company, threatened.
- (f) There are no material outstanding assessments, penalties, fines, Liens, charges, surcharges, or other amounts due or owing pursuant to any workers' compensation Laws owing by the Company or any of its Subsidiaries, and neither of the Company nor any of its Subsidiaries has been assessed or reassessed in any material respect under such legislation during the past three years. No material Proceeding involving the Company or any of its Subsidiaries is currently in progress or pending or, to the knowledge of the Company, threatened, pursuant to any applicable workers' compensation Laws. There are no Proceedings currently in progress or pending or, to the knowledge of the Company, threatened, which

could materially adversely affect the accident cost experience in respect of the Company or any of its Subsidiaries.

- (g) There are no material charges pending under occupational health and safety Laws (“**OHSA**”) in respect of the Company or any of its Subsidiaries, and there are no appeals of any Orders under OHSA applicable to the Company or any of its Subsidiaries currently outstanding. The Company and each of its Subsidiaries have complied in all material respects with all Orders issued under OHSA for the past two years, and have developed and implemented policies and training for Company Employees, including with respect to harassment, OHSA and accessibility for people with disabilities requirements.
- (h) To the knowledge of the Company, all Service Providers have been accurately classified by the Company and its Subsidiaries with respect to services as an employee or a non-employee for all purposes, including wages, payroll Taxes and participation and benefit accrual under each Employee Plan, and neither the Company nor any of its Subsidiaries has received any notice from any Person disputing such classification.

(32) **Collective Agreements.**

- (a) Except as disclosed in Section D(32)(a) of the Company Disclosure Letter, there are no Collective Agreements in force or currently being negotiated with respect to any Company Employee, and no Person holds bargaining rights with respect to any of the Company Employees. Except as disclosed in Section D(32)(a) of the Company Disclosure Letter (i) to the knowledge of the Company, no Person has applied to be certified as the bargaining agent of any Company Employees, (ii) to the knowledge of the Company, there are no threatened or apparent union-organizing campaigns for Company Employees, (iii) to the knowledge of the Company, there are no employee associations authorized to represent any Company Employees, (iv) no union has an application outstanding to have the Company or any Subsidiary declared a common or related employer under applicable labour Laws, and (v) no material arbitration Proceeding or material grievance arising out of, or pursuant to, any Collective Agreement is in progress, pending or, to the knowledge of the Company, threatened.
- (b) Except as Fairly Disclosed in the Company Filings or in Section D(32)(b) of the Company Disclosure Letter, there is no labour strike, dispute, lock-out, concerted refusal to work overtime, work slowdown, stoppage or similar labour activity or organizing campaign in progress or pending or, to the knowledge of the Company, threatened, involving the Company or any of its Subsidiaries, and no such event has occurred in the past two years. Except as disclosed in Section D(32)(b) of the Company Disclosure Letter, none of the Company or any of its Subsidiaries has engaged in, or received notice of any pending or threatened, unfair labour practice complaint.

- (c) Section D(32)(c) of the Company Disclosure Letter sets forth all material collective bargaining commitments already made to any trade union or employee association in connection with any negotiations that are disclosed in Section 4.1(4) of the Company Disclosure Letter as of the date hereof.

(33) Employee Plans.

- (a) The Data Room contains complete and accurate copies of: (i) the Incentive Plans and each other written Employee Plan (and a summary of each material unwritten Employee Plan) as listed in Section (33)(a) of the Company Disclosure Letter, (ii) each trust Contract, insurance, group annuity Contract or other funding Contract relating to any Employee Plan, and (iii) all material correspondence to or from any Governmental Entity in the last three years relating to any Employee Plan.
- (b) Except as required by operation of Section 2.3 of the Plan of Arrangement, neither the execution of this Agreement nor the consummation of any of the transactions contemplated by this Agreement will increase the amount payable under, result in a default under, or result in any other material obligation pursuant to, any Employee Plan or any Contract with any Service Provider.
- (c) Each Employee Plan has, in all material respects, been established, registered and administered in accordance with applicable Laws and in accordance with its terms. To the knowledge of the Company, no fact or circumstance exists that could adversely affect the registered status of any Employee Plan.
- (d) No event has occurred and no condition or circumstances exist that has resulted in, or could reasonably be expected to result in, any Employee Plan being ordered, or required to be, terminated or wound up in whole or in part, having its registration under applicable Laws refused or revoked, being placed under the administration of any trustee, receiver or Governmental Entity, or the Company or any of its Subsidiaries being required to pay any Taxes, penalties, payments or levies under applicable Laws that are material in the aggregate.
- (e) All contributions or premiums required to be made or paid by the Company or any of its Subsidiaries under the terms of each Employee Plan or by applicable Laws have been duly made in accordance the terms of such Employee Plan and such applicable Laws.
- (f) Other than as required by applicable Law or as otherwise disclosed in Section D(33)(f) of the Company Disclosure Letter, none of the Employee Plans provide for post-termination welfare benefits to any individual under any circumstances, and neither the Company nor any of its Subsidiaries has any liability or obligation to provide post-termination or retiree welfare benefits to any individual, or has ever represented, promised or contracted in favour of any individual that such Service Provider would be provided with post-termination or retiree welfare benefits.

- (g) Other than routine claims for benefits in the Ordinary Course or as otherwise disclosed in Section D(33)(g) of the Company Disclosure Letter, to the knowledge of the Company, there is no Proceeding in progress or pending or, to the knowledge of the Company, threatened, relating to any Employee Plan, nor has any such Proceeding been initiated within the past five years.
 - (h) Except as disclosed in Section D(33)(h) of the Company Disclosure Letter, no Employee Plan is a “registered pension plan” or a “multi-employer pension plan”, or contains a “defined benefit provision”, in each case, within the meaning of the Tax Act, nor is any Employee Plan a multi-employer pension plan as such term is defined under the *Pension Benefits Standards Act* (Canada) or any similar plan for purposes of pension standards Laws of any jurisdiction. Neither the Company nor any of its Subsidiaries sponsors, maintains or contributes to, or is obligated to contribute to, or has, within the preceding five years, sponsored, maintained or contributed to, an Employee Plan of the kind described in the preceding sentence.
 - (i) No Employee Plan is registered in, or subject to, the Laws of any jurisdiction outside of Canada.
 - (j) As of the date of this Agreement, neither the Company nor any of its Subsidiaries has any material liability or obligation for any assessment, excise or penalty Taxes with respect to any Employee Plan and, to the knowledge of the Company, no condition or circumstances exist that would give rise to any such liability or obligation.
 - (k) Only Company Employees and directors of the Company and its Subsidiaries participate in the Employee Plans, and no Person other than the Company or its Subsidiaries is a participating employer under any Employee Plan.
 - (l) All outstanding Company Options, DSUs, RSUs and PSUs have been granted in compliance with the terms of the applicable Incentive Plan, and have been recorded in the Company’s financial statements in accordance with IFRS, and no such grants involved any “back dating,” “forward dating,” “spring loading” or similar concept.
 - (m) No trust funds have been established pursuant to section 6(g) of the ESU Plan or section 6.4 of the KEP Plan.
- (34) **Insurance.**
- (a) The Company and each of its Subsidiaries is insured by reputable third party insurers with reasonable and prudent policies appropriate for the size and nature of the business of the Company and its Subsidiaries and their respective assets, consistent with industry practice.
 - (b) Each material insurance policy held by the Company or any of its Subsidiaries is in full force and effect in accordance with its terms, and neither the Company nor any of its Subsidiaries is in default under the terms of any such policy. To the

knowledge of the Company, neither the Company nor any of its Subsidiaries have received notice that any material claim pending under any insurance policy of the Company or its Subsidiaries has been denied, rejected, questioned or disputed by any insurer, or as to which any insurer has refused to cover all or any material portion of such claims. To the knowledge of the Company, all material Proceedings covered by any insurance policy of the Company or any of its Subsidiaries have been properly reported to and accepted by the applicable insurer.

(35) **Taxes.**

- (a) The Company and each of its Subsidiaries have duly and timely filed with the appropriate Governmental Entity all material Tax Returns required by Law to be filed by them prior to the date hereof and all such Tax Returns are complete and correct in all material respects.
- (b) The Company and each of its Subsidiaries have paid as required by Law on a timely basis all material Taxes which are due and payable, all assessments and reassessments, and all other material Taxes due and payable by them, including instalments on account of Taxes for the current year, whether or not shown as being due on any Tax Returns or assessed by the appropriate Governmental Entity, on or before the date hereof, other than those which are being or have been contested in good faith by appropriate Proceedings and in respect of which adequate reserves have been provided in the most recently published consolidated financial statements of the Company (where required in accordance with applicable accounting standards). The Company and its Subsidiaries have provided adequate accruals in accordance with their books and records and in the most recently published consolidated financial statements of the Company for any Taxes of the Company and each of its Subsidiaries for the period covered by such financial statements that have not been paid whether or not shown as being due on any Tax Returns. Since such publication date, no liability in respect of material Taxes not reflected in such statements or otherwise provided for has been assessed, proposed to be assessed, incurred or accrued.
- (c) Except as disclosed in Section D(35)(c) of the Company Disclosure Letter, no claims, suits, audits, assessments, reassessments, deficiencies, litigation, proposed adjustments or matters in controversy exist or have been asserted or threatened with respect to material Taxes of the Company or any of its Subsidiaries and none of the Company or any of its Subsidiaries is a party to any material Proceeding for assessment or collection of Taxes and no such event has been asserted or threatened against the Company or any of its Subsidiaries or any of their respective assets.
- (d) No claim has been made by any Governmental Entity in a jurisdiction where the Company or any of its Subsidiaries do not file Tax Returns that the Company or any of its Subsidiaries is or may be subject to Tax by that jurisdiction.

- (e) There are no Liens (other than Permitted Liens) with respect to Taxes upon any of the assets of the Company or any of its Subsidiaries.
- (f) Except as set out in Section D(35)(f) of the Company Disclosure Letter, the Company and each of its Subsidiaries has withheld or collected all material amounts required by Law to be withheld or collected by them on account of Taxes (including Taxes and other amounts required to be withheld by them in respect of any amount paid or credited or deemed to be paid or credited by them to or for the benefit of any Person and all amounts on account of any sales, use or transfer Taxes, including goods and services, harmonized sales, provincial and territorial Taxes and state and local Taxes, required by Law to be collected by them) and have remitted all such amounts to the appropriate Governmental Entity when required by Law to do so.
- (g) None of the Company or any of its Subsidiaries is bound by, is party to, or has any obligation under any Tax sharing, allocation, indemnification or similar agreement with respect to Taxes that could give rise to a payment or indemnification obligation (other than agreements among the Company and its Subsidiaries).
- (h) None of the Company or any of its Subsidiaries has, at any time, directly or indirectly transferred any property or supplied any services to, or acquired any property or services from, a Person who is not resident in Canada for purposes of the Tax Act and with whom the Company or Subsidiary, as the case may be, was not dealing at arm's length (within the meaning of the Tax Act) for consideration other than consideration equal to the fair market value of such property or services at the time of transfer, supply or acquisition, as the case may be, nor has the Company or any of its Subsidiaries been deemed to have done so for purposes of the Tax Act; and the Company and each such Subsidiary have made or obtained records or documents that meet the requirements of paragraphs 247(4)(a) to (c) of the Tax Act, and there are no transactions to which subsection 247(2) or subsection 247(3) of the Tax Act may reasonably be expected to apply.
- (i) There are no circumstances existing which could result in the application of Section 78 or Sections 80 to 80.04 of the Tax Act, or any equivalent provision under provincial Law, to the Company or any of its Subsidiaries. The Company and its Subsidiaries have not claimed nor will they claim any reserve under any provision of the Tax Act or any equivalent provincial provision, if any amount could be included in the income of the Company or its Subsidiaries for any period ending after the Effective Date.
- (j) For the purposes of the Tax Act, any applicable Tax treaty and any other relevant Tax purposes:
 - (i) the Company is resident in, and is not a non-resident of, Canada, and is a "taxable Canadian corporation"; and

- (ii) each of its Subsidiaries is resident in the jurisdiction in which it was formed, and is not resident in any other country.
 - (k) The Tax attributes of the depreciable assets of the Company and each of its Subsidiaries are accurately reflected in the Tax Returns of the Company and each of its Subsidiaries, as applicable, and have not materially and adversely changed since the date of such Tax Returns.
 - (l) There are no outstanding agreements, arrangements, waivers or objections extending the statutory period or providing for an extension of time with respect to the assessment or reassessment of material Taxes of or the payment or remittance of material Taxes by, the Company or any of its Subsidiaries.
 - (m) None of the Company or any of its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Effective Date as a result of any:
 - (i) change in method of accounting for a taxable period ending on or prior to the Effective Date;
 - (ii) use of an improper method of accounting for a taxable period ending on or prior to the Effective Date; or
 - (iii) prepaid amount received on or prior to the Effective Date.
- (36) **Brokers.** Except for CIBC World Markets Inc. and BofA Merrill Lynch, no investment banker, broker, finder, financial advisor or other intermediary has been retained by, or is authorized to act on behalf of, the Company or any of its Subsidiaries, or is entitled to any fee, commission, or other payment from the Company or any of its Subsidiaries in connection with this Agreement or any other transactions contemplated by this Agreement. The aggregate fees payable by the Company to each of CIBC World Markets Inc. and BofA Merrill Lynch in relation to the transactions contemplated by this Agreement have been disclosed in Section D(36) of the Company Disclosure Letter.
- (37) **Anti-Terrorism Laws.** None of the Company, any of its Subsidiaries or, to the knowledge of the Company, any of its Representatives acting on behalf of the Company or any of its Subsidiaries, has been or is currently subject to any economic or financial sanctions or trade embargoes imposed, authorized, administered or enforced by any Governmental Entity (including the Government of Canada, the Office of Foreign Assets Control of the U.S. Treasury Department (including, but not limited to, the designation as a “specially designated national or blocked person” thereunder), or any other applicable sanctions authority) or other similar Laws (collectively, “**Sanctions**”). Neither the Company nor any of its Subsidiaries has received any notice alleging that the Company, any of its Subsidiaries or any of their respective Representatives has violated any Sanctions, and, to the knowledge of the Company, no condition or circumstances exist (including any ongoing Proceedings) that would form the basis of any such allegations.

- (38) **Corrupt Practices Legislation.** None of the Company, any of its Subsidiaries or, to the knowledge of the Company, any of its or their Representatives acting on behalf of the Company or any of its Subsidiaries, has taken, committed to take or been alleged to have taken any action which would cause the Company or any of its Subsidiaries to be in violation of the *Corruption of Foreign Public Officials Act* (Canada), the United States *Foreign Corrupt Practices Act of 1977*, the U.K. *Bribery Act* of 2010 or any similar Law (collectively, “**Corrupt Practices Legislation**”). Neither the Company nor any of its Subsidiaries has received any notice alleging that the Company, any of its Subsidiaries or any of their respective Representatives has violated any Corrupt Practices Legislation, and, to the knowledge of the Company, no condition or circumstances exist (including any ongoing Proceedings) that would form the basis of any such allegations.
- (39) **Trade Compliance.** The operations of the Company and each of its Subsidiaries have been conducted in compliance in all material respects with the *Canadian Export and Import Permits Act* and regulations and the United States *Export Administration Regulations, the Arms Export Control Act* and *International Traffic in Arms Regulations* or any similar Law (collectively, “**Trade Legislation**”). Neither the Company nor any of its Subsidiaries has received any notice alleging that the Company or any of its Subsidiaries has violated any Trade Legislation in any material respect.
- (40) **Money Laundering.** The operations of the Company and each of its Subsidiaries have been, since January 1, 2016, conducted in compliance in all material respects with applicable financial recordkeeping and reporting requirements and money laundering or similar Laws (“**Money Laundering Laws**”). Neither the Company nor any of its Subsidiaries has received any notice alleging that the Company, any of its Subsidiaries or any of their respective Representatives has violated any Money Laundering Laws, and, to the knowledge of the Company, no condition or circumstances exist (including any ongoing Proceedings) that would form the basis of any such allegations.
- (41) **Privacy and Anti-Spam.**
- (a) The Company and each of its Subsidiaries have complied with all applicable Privacy Laws, each Company Privacy Policy, all Contracts with third parties relating to privacy and data protection to which the Company and any of its Subsidiaries is a party or by which any of them are otherwise bound. There are no material Proceedings in progress or pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries with respect to any of the foregoing.
 - (b) Section D(41)(b) of the Company Disclosure Letter identifies each Company Privacy Policy in effect at any time during the past three years. Each Company Privacy Policy provides (or provided while it was in effect) accurate and sufficient notice of the then current practices of the Company and its Subsidiaries relating to the subject matter of such Company Privacy Policy.
 - (c) To the knowledge of the Company, the Company has not collected or received any Personal Information online from children under the age of thirteen without

verifiable consent of a parent or legal guardian, or directed any of its websites or applications to children under the age of thirteen through which such Personal Information could be obtained.

- (d) In relation to the collection, accepting, processing, storage or transmission of any credit cards, passwords, CVV data, or other related data by the Company or any of its Subsidiaries, the Company or the applicable Subsidiary have implemented data protection procedures, processes and systems that together meet or exceed all applicable Privacy Laws as well as standards and guidelines established by the Payment Card Industry Standards Council (including the Payment Card Industry Data Security Standard).
 - (e) To the knowledge of the Company, the Company and each of its Subsidiaries has all necessary consents and authorizations to collect, use, disclose, retain, process and transmit any Personal Information in its possession or under its control to the extent required in connection with the operation of their respective businesses as currently conducted. Neither the Company nor any of its Subsidiaries sells, rents or otherwise makes available any Personal Information to any Person, except in a manner that complies in all material respects with the applicable Privacy Laws. The Company has obtained written agreements from all third parties to whom it has provided, disclosed or made available any Personal Information that satisfy the requirements of applicable Privacy Laws.
 - (f) The Company and each of its Subsidiaries have taken commercially reasonable measures (including implementing and monitoring technical and physical security) to ensure that confidential information of the Company and its Subsidiaries and Company Data are protected against unauthorized access, use, modification, disclosure or other misuse, and, since January 1, 2017, except as set forth in Section D(41)(f) of the Company Disclosure Letter, to the knowledge of the Company no material unauthorized access to or unauthorized use, modification, disclosure or other material misuse of such confidential information or Company Data has occurred.
 - (g) The Company and each of its Subsidiaries have, in all material respects, conducted its business in compliance with CASL, including provisions relating to the sending of commercial electronic messages only with express or implied consent, within the meaning of such legislation, and with the prescribed contact information and unsubscribe mechanism, and retains records sufficient to demonstrate such compliance.
- (42) **Aircraft.**
- (a) Section D(42) of the Company Disclosure Letter sets forth a complete and accurate list of (i) all air operating certificates issued by Transport Canada that is held by each Operating Subsidiary, (ii) all Aircraft owned or leased by the Operating Subsidiaries, in each case as of the date of this Agreement (collectively, the “**Company Aircraft**”), including a description of the manufacturer,

model/type, manufacturer serial number, Transport Canada registration number and manufacture date of each such Aircraft, (iii) all Aircraft engines owned or leased by the Operating Subsidiaries, in each case as of the date of this Agreement, including a description of the manufacturer, model/type and manufacturer serial number, and (iv) all domestic, scheduled international and non-scheduled international licenses to operate air services issued to the Operating Subsidiaries by the CTA and applicable Governmental Entities in Mexico and the United States.

- (b) The Company or one or more of its Subsidiaries has good and valid title to all Company Aircraft and Aircraft engines described as owned in Appendix V of the Company Disclosure Letter as at the date hereof, or a valid and enforceable leasehold interest in all Company Aircraft and Aircraft engines leased by the Company and its Subsidiaries as at the date hereof, in each case free and clear of all Liens (other than Permitted Liens), except for any failure to have good and valid title, or a valid and enforceable leasehold interest, as applicable, that would not, individually or in the aggregate, result in a reduction in the book value of the Company's consolidated assets as reflected on its balance sheet as at March 31, 2019 by more than \$200,000,000.
- (c) The Company or one or more of its Subsidiaries has good and valid title to all the Company Aircraft and Aircraft engines described as owned in Appendix V of the Company Disclosure Letter, or a valid and enforceable leasehold interest in all Company Aircraft and Aircraft engines leased by the Company and its Subsidiaries, in each case free and clear of all Liens (other than Permitted Liens).
- (d) Each Operating Subsidiary has been issued aviation documents, certifications and licenses by the applicable Governmental Entities of each jurisdiction in which such Operating Subsidiary operates a Company Aircraft, and each such aviation document, certification and license is in good order and has not been cancelled, suspended or rescinded.
- (e) Except as disclosed in Section D(42)(e) of the Company Disclosure Letter, all Company Aircraft are properly registered on the Canadian Civil Aircraft Registry, are in airworthy condition and have validly issued Transport Canada certificates of registration and airworthiness that are in full force and effect (except for any temporary suspension relating to a period of time during which any Company Aircraft is out of service), and all requirements for the effectiveness of each certificate of airworthiness have been satisfied.
- (f) All Company Aircraft are operated by, and under the control of, trained, qualified and duly licenced pilots with proper ratings.
- (g) All technical records relating to any Aircraft or Aircraft engines have been maintained in accordance with applicable Law, mandatory manufacturers' requirements and mandatory directives, bulletins, guidelines and notices of applicable Aviation Authorities.

- (h) All Company Aircraft are being maintained, inspected, serviced, repaired and overhauled:
 - (i) by properly qualified personnel approved by applicable Aviation Authorities in compliance with each applicable certificate of airworthiness and certificate of registration relating to the Company Aircraft issued by any Aviation Authority, in accordance with all applicable Laws and all mandatory directives, bulletins, guidelines and notices issued by any Aviation Authority and in accordance with the requirements of the Aircraft and Aircraft engine manufacturers so as to keep such Company Aircraft and Aircraft engines in good and airworthy operating condition and maintain the certificates of airworthiness of the Company Aircraft, except (A) during temporary periods of storage or maintenance and modifications as permitted by applicable Laws; and (B) when an Aviation Authority has revoked or suspended the certificates of airworthiness for any Aircraft or type of Aircraft, for reasons other than a failure by the Company or any Subsidiary to maintain, service, repair and overhaul such Company Aircraft in the manner described above;
 - (ii) in accordance with the relevant airframe manufacturers' and/or engine manufacturers' mandatory procedures;
 - (iii) so as to comply with the applicable manufacturers' maintenance, components maintenance or structural repair manuals and, to the extent that the same are made mandatory by either the manufacturer or any Aviation Authority, and to comply with all modifications, airworthiness directives, corrosion prevention programs, alert service bulletins and any service bulletins that must be performed in order to maintain the warranties on the Company Aircraft, the Aircraft engines or the Aircraft Parts and similar requirements applicable to the Company Aircraft; and
 - (iv) so as to comply with all applicable Laws of Canada and any other jurisdiction to, from, in or over which the Company Aircraft may be flown (and regardless of upon whom the relevant requirements are imposed).
- (i) The Company and its Subsidiaries have made all such alterations and modifications in and additions to any Company Aircraft as have been required to be made from time to time by the applicable manufacturer and/or to meet the applicable standards of the Aviation Authorities.
- (j) The Company and its Subsidiaries have implemented maintenance schedules with respect to Company Aircraft and Company Aircraft engines that, if complied with, are designed to result in the satisfaction of all requirements under all applicable airworthiness directives and applicable Laws required to be complied with in accordance with such maintenance schedules in all materials respects. Each Company Aircraft's structure, systems and components are functioning in all material respects in accordance with their intended use, except for Company

Aircraft that are undergoing maintenance and temporarily deferred maintenance items that are permitted by the Company's maintenance programs.

- (k) Neither the Company nor any Operating Subsidiary is currently leasing any Company Aircraft to any third party. Except as set forth in Section D(42)(k) of the Company Disclosure Letter, the Company is not a party to any interchange or pooling agreements with respect to the Company Aircraft other than in the Ordinary Course.
 - (l) The Company Aircraft are not used for any purpose or manner, or in any airspace for which they were not designed or reasonably suited or in a manner which is outside the tolerances and limitations for which the Company Aircraft was designed, or in a manner that is inconsistent with applicable Laws or insurance policies.
- (43) **Slots.**
- (a) Section D(43) of the Company Disclosure Letter sets forth a complete and accurate list of all takeoff and landing slots, gate rights and bridge rights granted to each Operating Subsidiary by an airport authority or other air carriers, and any applicable operating Authorizations from Transport Canada, the FAA or any other applicable Governmental Entity and other similar airport access rights held by such Operating Subsidiary in respect of any Material Airport or that are otherwise material to the business and operations of the Company and its Subsidiaries on a consolidated basis (the "**Company Slots**") (except for seasonal swaps and temporary returns, in each case, with a duration of six months or less) and such list indicates any Company Slots that have been leased from another air carrier and in which an Operating Subsidiary holds only temporary use rights (except for seasonal swaps and temporary returns, in each case, with a duration of six months or less).
 - (b) Each Operating Subsidiary has complied, in all material respects, with all applicable Laws and terms of any Contracts governing Company Slots.
 - (c) None of the Operating Subsidiaries have (i) received any written notice of any proposed withdrawal of a Company Slot by an airport authority or other air carrier, Transport Canada, the FAA or any other applicable Governmental Entity, or (ii) agreed to any future reduction, trade, purchase, sale, exchange, lease, or transfer of any Company Slot that has not been completed (in each case, except for seasonal swaps and temporary returns with a duration of approximately six months or less).
- (44) **Investigations.** There are no material accident or incident investigations or reviews, safety related incidents or other material Proceedings related to aviation safety or regulation currently pending with respect to or involving any Operating Subsidiary or any Company Aircraft outside of the Ordinary Course.

- (45) **Company Airports.** As of the date of this Agreement, no airport authority at any Company Airport has issued any Order, initiated any Proceeding or taken any other action, nor, to the knowledge of the Company, is any such Order, Proceeding or other action threatened, that would reasonably be expected to materially and adversely interfere with the ability of the Company to conduct its operations at any Company Airport in substantially the manner currently conducted.
- (46) **Major Suppliers.** Except as disclosed in Section D(46) of the Company Disclosure Letter, to the knowledge of the Company, no material supplier has any intention to materially adversely change its relationship with the Company.
- (47) **No “Collateral Benefit”.** To the knowledge of the Company, subject to the accuracy of the representation of the Purchaser contained in Section (11) of Schedule E, other than any Rollover Agreement (a) no related party of the Company (within the meaning of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* (“**MI 61-101**”)) is entitled to receive a “collateral benefit” (within the meaning of such instrument) as a consequence of the transactions contemplated by this Agreement, and (b) no Shares, except Shares beneficially owned or over which control or direction is exercised by a Rollover Securityholder, are required by MI 61-101 to be excluded from voting on the Arrangement.
- (48) **Certain Board and Special Committee Matters.**
- (a) The Board has received the CIBC Opinion and the BofA Merrill Lynch Opinion.
 - (b) The Special Committee has unanimously recommended that the Board approve the Arrangement.
 - (c) The Board, after receiving the unanimous recommendation of the Special Committee and after consultation with outside legal counsel and financial advisors in evaluating the Arrangement, has unanimously: (i) determined that the Consideration to be received by Shareholders pursuant to the Arrangement is fair to the Shareholders, and that the Arrangement is in the best interests of the Company, (ii) resolved to recommend that Shareholders vote in favour of the Arrangement Resolution, and (iii) authorized the entering into of this Agreement and the performance by the Company of its obligations under this Agreement, and, except as expressly permitted by this Agreement, no action has been taken to amend, or supersede, such determinations, resolutions or authorizations.
 - (d) Each of the directors and Executive Officers of the Company has advised the Company that they intend to vote or cause to be voted all Shares beneficially held or beneficially owned by them in favour of the Arrangement Resolution and against any resolution submitted by any Person that is inconsistent with the Arrangement, and the Company shall make a statement to that effect in the Company Circular.

- (49) **Disclosure.** Except as set forth in Section D(49) of the Company Disclosure Letter, true and complete copies of all documents listed in the Company Disclosure Letter have been made available in the Data Room.

SCHEDULE E
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

- (1) **Organization and Qualification.** The Purchaser is a corporation duly incorporated and validly existing under the Laws of its jurisdiction of incorporation.
- (2) **Authorization.** The Purchaser has the requisite corporate power and authority to enter into this Agreement and the other Transaction Documents, and to perform its obligations hereunder and thereunder. The execution and delivery by the Purchaser of this Agreement and the Transaction Documents and the performance by each of the Purchaser of its obligations hereunder and thereunder, and the consummation of the Arrangement and the other transactions contemplated hereby, have been duly authorized by all necessary corporate action on the part of the Purchaser and no other corporate proceedings on the part of the Purchaser are necessary to authorize this Agreement and the Transaction Documents or the consummation of the Arrangement and the other transactions contemplated hereby.
- (3) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Purchaser, and constitutes a legal, valid and binding agreement of the Purchaser, enforceable against each of the Purchaser in accordance with its terms, subject only to any limitation under bankruptcy, insolvency, reorganization, moratorium or other Laws related to or affecting the rights of creditors generally and the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (4) **Governmental Authorization.** The execution and delivery of this Agreement by the Purchaser, and performance of its obligations hereunder and the consummation by the Purchaser of the Arrangement and the other transactions contemplated hereby, do not require any Authorization or other action by or in respect of, or filing with or notification to, any Governmental Entity by the Purchaser other than (a) the Regulatory Approvals and Key Regulatory Approvals, (b) the Interim Order and the Final Order, and (c) the filing of the Articles of Arrangement.
- (5) **Non-Contravention.** The execution and delivery of this Agreement by the Purchaser, and performance of its obligations hereunder and the consummation by the Purchaser of the Arrangement and the other transactions contemplated hereby do not and will not:
 - (a) contravene, conflict with, or result in any violation or breach of the organizational documents of the Purchaser; or
 - (b) assuming compliance with the matters referred to in Paragraph E(4) above, contravene, conflict with or result in a material violation or breach of any applicable Law.
- (6) **Litigation.** There are no material Proceedings in progress or pending or, to the knowledge of the Purchaser, threatened, against the Purchaser, nor is the Purchaser subject to any outstanding Order that is reasonably likely to prevent or materially delay

consummation of the Arrangement or the other transactions contemplated by this Agreement.

- (7) **Funds Available.** The Purchaser has delivered to the Company (a) a true and complete copy of: (i) the Debt Commitment Letter evidencing the availability of committed credit facilities in favour of Purchaser, pursuant to which the Debt Financing Sources have agreed, subject to the terms and conditions set forth therein, to provide Purchaser, with the Debt Financing in the aggregate amount set forth therein; and (ii) the Debt Fee Letter (as redacted to remove only the fee amounts, economic terms, “market flex” provisions and other customary threshold amounts; provided that none of such redactions affect or relate to the conditionality, enforceability, termination, timing, availability or aggregate principal amount of the Debt Financing or reduce the Debt Financing below the amount set forth in the Debt Commitment Letter), and (b) a true and complete copy of the Sponsor Commitment Letter, pursuant to which the Sponsors have agreed, subject to the terms and conditions set forth therein, to provide the Purchaser with funds in the aggregate amount set forth therein, in each case, including all exhibits, schedules, annexes and amendments to such letters in effect as of the date of this Agreement. Except for customary fee credit letters or engagement letters, in each case, with respect to the Debt Financing (none of which adversely affect the conditionality, enforceability, termination, timing, availability or aggregate principal amount of the Debt Financing or reduce the Debt Financing below the amount set forth in the Debt Commitment Letter), as of the date hereof, there are no other agreements, side letters or arrangements that would permit the Debt Financing Sources to reduce the amount of the Debt Financing or that could otherwise affect the availability of the Debt Financing. The Debt Letters and the Sponsor Commitment Letter contain all of the conditions precedent to the obligations of the parties thereunder to make the Financings available to the Purchaser on the terms therein. Each Sponsor has the financial capacity to pay and perform its obligations under the Sponsor Commitment Letter. As of the date hereof, each of the Debt Letters and the Sponsor Commitment Letter is in full force and effect, has not been amended, restated, modified, withdrawn or terminated, and no event has occurred or circumstance exists, including the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby, which, with or without notice, lapse of time or both, would or would reasonably be expected to constitute a default or breach on the part of the Purchaser under either the Debt Letters or the Sponsor Commitment Letter. As of the date hereof, each of the Debt Letters and the Sponsor Commitment Letter are legal, valid and binding obligations of the Purchaser and the other parties thereto, in each case, except as may be limited by (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar Laws relating to creditors’ rights generally, and (b) general principles of equity, whether such enforceability is considered in a Proceeding in equity or at law. As of the date hereof, assuming the accuracy of all representations and warranties of the Company in this Agreement and compliance by the Company with its covenants and agreements hereunder, the Purchaser has no reason to believe that any of the conditions to the Financings contemplated by the Debt Letters and the Sponsor Commitment Letter will not be satisfied or that the Financings will not be made available to the Purchaser on the Effective Date. All commitment and other fees or expenses required to be paid under or in connection with the Debt Letters and/or the Sponsor Commitment Letter on or prior to

the date hereof have been paid. Assuming the accuracy, to the extent required by the Debt Commitment Letter, of all representations and warranties of the Company in this Agreement and compliance by the Company with its covenants and agreements hereunder in all material respects, the proceeds from the Financings (together with the available cash of the Company and its Subsidiaries) will be sufficient for all amounts required to be paid by the Purchaser pursuant to this Agreement on the Effective Date.

- (8) **Security Ownership.** As of the date hereof, neither the Purchaser nor the Sponsors beneficially owns, or exercises control or direction over, any securities of the Company.
- (9) **Canadian Status.** The Purchaser is not a “non-Canadian” as defined pursuant to Section 3 of the ICA. The Purchaser is a “Canadian” as defined pursuant to Section 55(1) of the CT Act.
- (10) **Purchaser Affiliates.** Each of the Affiliates of the Purchaser that is directly or indirectly owned or controlled by Onex and through which it indirectly controls the Purchaser is or shall be upon formation duly formed and existing under the laws of Canada or a province thereof, and Onex directly or indirectly owns or upon formation shall own a majority of the voting interests in such Person and has or upon formation shall have control in fact over such Person.
- (11) **Certain Arrangements.** Except as disclosed to the Company, other than any Rollover Agreement, there are no contracts, undertakings, commitments, arrangements or understandings, whether written or oral, between the Purchaser, the Sponsors or any of their respective Affiliates (without regard to subsections (a) or (b) of the definition thereof), on the one hand, and any beneficial owner of outstanding Shares or any member of the Company’s management or the Board, on the other hand, relating in any way to the Company, the Company’s securities, the transactions contemplated by this Agreement, the Arrangement, the Arrangement Resolution, or to the operations of the Company after the Effective Time.
- (12) **Limited Guarantee.** Concurrently with the execution of this Agreement, the Purchaser has caused the Sponsors (as of the date hereof) to deliver to the Company the duly executed Limited Guarantee. The Limited Guarantee is in full force and effect, is a valid, binding and enforceable obligation of the Sponsors party thereto, and, to the knowledge of the Purchaser, as of the date hereof, no event has occurred which constitutes (or would constitute, with the giving of notice, the lapse of time, or the happening of any other event or condition (or combination thereof)), a material default on the part of any of the Sponsors under the Limited Guarantee.
- (13) **Residency.** For the purposes of the Tax Act, any applicable Tax treaty and any other relevant Tax purposes, each of the Purchaser and Midco is resident in, and is not a non-resident of, Canada, and is a “taxable Canadian corporation”.

SCHEDULE F
FORM OF VOTING AGREEMENT

, 2019

Kestrel Bidco Inc.
161 Bay Street, 49th Floor
P.O. Box 700
Toronto, Ontario, Canada
M5J 2S1

Dear Sirs/Madams:

Re: Voting and Support Agreement

The undersigned understands that Kestrel Bidco Inc. (the “**Purchaser**”) and WestJet Airlines Ltd. (the “**Company**”) wish to enter into an arrangement agreement dated as of the date hereof (the “**Arrangement Agreement**”) contemplating an arrangement (the “**Arrangement**”) of the Company under Section 193 of the *Business Corporations Act* (Alberta), the result of which shall be the acquisition by the Purchaser of all the outstanding shares (the “**Shares**”) of the Company.

All capitalized terms used but not otherwise defined herein shall have the respective meaning ascribed to them in the Arrangement Agreement.

The undersigned hereby agrees, in his or her capacity as securityholder and not in his or her capacity as an officer or director of the Company, from the date hereof until the earlier of (i) the Effective Date, (ii) the date the Arrangement Agreement is terminated in accordance with its terms, (iii) the Outside Date, and (iv) the date of the Company Meeting if the Required Approval is not obtained at the Company Meeting:

- (a) to vote or to cause to be voted its Shares owned (beneficially or otherwise) by the undersigned as of the record date for the Company Meeting (the “**Holder Securities**”), in favour of the Arrangement and any other matter necessary for the completion of the Arrangement (including in favour of all matters recommended by management of the Company);
- (b) no later than 10 days prior to the Company Meeting, to deliver or to cause to be delivered to the Company duly executed proxies or voting instruction forms voting in favour of the Arrangement, such proxy or voting instruction forms not to be revoked or withdrawn without the prior written consent of the Purchaser;
- (c) except as contemplated by the Arrangement Agreement or upon the settlement of awards or the exercise of other rights to purchase Shares, including purchases of Shares under the Company’s employee share purchase plan, not to, directly or indirectly, acquire or seek to acquire Shares or other voting securities of the Company, or sell, assign, transfer, dispose of, hypothecate, alienate, grant a security interest in, encumber or tender to offer, transfer any economic interest (directly or indirectly) or otherwise convey any of the Holder Securities, in each

case without the Purchaser's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed);

- (d) not to exercise any rights of dissent in connection with the Arrangement; and
- (e) except as required pursuant to this letter agreement (including to give effect to clause (a) above), not to grant or agree to grant any proxy or other right to vote the Holder Securities or enter into any voting trust or pooling agreement or arrangement in respect of the Holder Securities or enter into or subject any of the Holder Securities to any other agreement, arrangement, understanding or commitment, formal or informal, with respect to or relating to the voting or tendering thereof or revoke any proxy granted pursuant to this letter agreement.

Notwithstanding any provision of this letter agreement to the contrary, the Purchaser hereby agrees and acknowledges that the undersigned is executing this letter agreement and is bound hereunder solely in his or her capacity as a securityholder of the Company. Without limiting the provisions of the Arrangement Agreement, nothing contained in this letter agreement shall limit or affect any actions the undersigned may take in his or her capacity as a director or officer of the Company or limit or restrict in any way the exercise of his or her fiduciary duties as director or officer of the Company.

The undersigned hereby represents and warrants that (a) this letter agreement has been duly executed and delivered and is a valid and binding agreement, enforceable against the undersigned in accordance with its terms, and the performance by the undersigned of its obligations hereunder will not constitute a violation or breach of or default under, or conflict with, any contract, commitment, agreement, understanding or arrangement of any kind to which the undersigned will be a party and by which the undersigned will be bound at the time of such performance, and (b) he or she has been afforded the opportunity to obtain independent legal advice and confirms by the execution of this letter agreement that he or she has either done so or waived his or her right to do so in connection with the entering into of this letter agreement, and that any failure on the undersigned's part to seek independent legal advice shall not affect (and the undersigned shall not assert that it affects) the validity, enforceability or effect of this letter agreement or the Arrangement Agreement.

This letter agreement shall terminate and be of no further force and effect upon the termination of the Arrangement Agreement in accordance with its terms.

This letter agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, and the parties hereto irrevocably attorn to the jurisdiction of the Alberta courts situated in the City of Calgary and waive objection to the venue of any proceeding in such court or that such court provides an inconvenient forum. This letter agreement may be executed in any number of counterparts (including counterparts by facsimile or electronic copy) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

If the foregoing is in accordance with the Purchaser's understanding and is agreed to by the Purchaser, please signify the Purchaser's acceptance by the execution of the enclosed copies of

this letter agreement where indicated below by an authorized signatory of the Purchaser and return the same to the undersigned, upon which this letter agreement as so accepted shall constitute an agreement among the Purchaser and the undersigned.

The parties expressly acknowledge that they have requested that this letter agreement and all ancillary and related documents thereto be drafted in the English language only. *Les parties aux présentes reconnaissent avoir exigé que la présente lettre entente et tous les documents qui y sont accessoires soient rédigés en anglais seulement.*

[Remainder of page left intentionally blank. Signature page follows.]

Yours truly,

By: _____
(Signature)

(Print Name)

(Place of Residency)

(Name and Title)

Address:

Accepted and agreed on this ____ day of _____, 2019.

KESTREL BIDCO INC.

By: _____
Name:
Title: