

**No: 500-11-042345-120**

## **EXHIBIT R-3**

**(In support of the Motion for authorization to cancel  
a letter of credit and to make certain distributions)**

## PBA TERMINATION AGREEMENT

Between:           **AVEOS FLEET PERFORMANCE INC.**

(the "Company")

And:               **AIR CANADA**

("Air Canada" and, with the Company, the  
"Parties")

**WHEREAS** Air Canada and the Company (as successor in interest to ACTS LP) are parties to a certain *Pension and Benefits Agreement* made as of June 22, 2007 (as amended, restated and supplemented from time to time, the "PBA"), in connection with the transfer of certain unionized and non-unionized employees of Air Canada to the Company;

**WHEREAS** on March 12, 2010, the Company and Air Canada entered into a *Fifth Supplement to the Pension and Benefits Agreement* (the "Fifth Supplement") pursuant to which Air Canada agreed to arrange for a financial institution to issue an irrevocable stand-by letter of credit;

**WHEREAS** at the request of Air Canada, on March 10, 2010, the Canadian Imperial Bank of Commerce ("CIBC") issued Letter of Credit No. SBGM746187 in favour of the beneficiary as described therein in the amount of \$20 million (as renewed and extended from time to time, the "L/C") to secure the Air Canada Payment Obligations (as defined in the Fifth Supplement);

**WHEREAS** to this day, the L/C has not been drawn upon, nor has it expired;

**WHEREAS** Air Canada, as the previous administrator, has determined the identity of the beneficiaries entitled to receive payments of benefits and, in the case of unionized employees, the amounts payable, the whole, in accordance with the provisions of the PBA;

**WHEREAS** on March 19, 2012, Justice Mark Schragger of the Superior Court of Quebec, Commercial Division (the "CCAA Court") issued an Initial Order (as amended from time to time, the "Initial Order") in respect of the Company under the *Companies' Creditors Arrangement Act* in court file 500-11-04235-120 and pursuant to which FTI Consulting Canada Inc. was appointed as Monitor (the "Monitor");

**WHEREAS** on March 20, 2012, the CCAA Court issued an order appointing Mr. Jonathan Solursh as chief restructuring officer of the Company;

**WHEREAS** the Parties wish to set out herein the terms of their agreement pursuant to which the PBA will be terminated and the L/C will be cancelled;

**WHEREAS** Aveos cannot locate the original document evidencing the L/C in order to physically return it for the purpose of cancelling it, such that the Parties have agreed to seek a judicial pronouncement of the cancellation of the L/C and the removal of any restrictions placed on the cash collateral put up by Air Canada in guarantee thereof.

**WHEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. The preamble hereto shall form an integral part hereof.

2. The Company undertakes and agrees, as soon as practicable following the execution of this Agreement, to bring a motion before the CCAA Court substantially in the form of the draft appended hereto as **Appendix A** (the "L/C Motion"), pursuant to which the Company will seek the issuance of an order (the "L/C Order") in which the CCAA Court will, *inter alia*:
  - (a) authorize and direct Aveos to take any steps which are necessary to cancel the L/C, including delivering to CIBC a notice of cancellation in the form attached as an exhibit to the L/C Motion, in which Aveos will confirm that it has no interest in the L/C and that CIBC is authorized to cancel the L/C with immediate effect (the "L/C Notice");
  - (b) declare that the L/C shall be deemed to be effectively cancelled upon receipt, by CIBC, of the L/C Notice;
  - (c) direct CIBC not to accept and authorize any draw on the L/C should the original ever be presented for payment and, forthwith upon receipt of the L/C Notice, to return any cash collateral held in connection with the L/C to Air Canada or to release, in favour of Air Canada, any restrictions imposed on said cash, such that Air Canada may freely transact with same;
  - (d) direct Air Canada, forthwith upon the issuance of the L/C Notice, to make the PBA Payment (as defined below) to Aveos, in trust;
  - (e) authorize and direct Aveos to distribute the PBA Payment to the beneficiaries thereof in accordance with the distribution terms outlined in the L/C Order; and
  - (f) take act of the Parties' termination of the PBA and the Monitor's consent thereto.
3. For greater certainty and notwithstanding anything to the contrary, the Parties acknowledge that the relief sought in the L/C Motion is in the discretion of the CCAA Court and the Company's sole obligation with respect to the L/C Motion will be to use its reasonable, good faith and diligent efforts to have the L/C Motion heard by the CCAA Court in a timely manner with a view to obtaining the L/C Order. It is understood that these efforts include reasonable efforts to have any objection thereto resolved in advance of the hearing.
4. The Parties agree to terminate the PBA subject to and conditional upon the CCAA Court approving the cancellation of the L/C and Air Canada making the PBA Payment (as defined below).
5. In consideration for the termination of the PBA, Air Canada shall remit to Aveos, in trust, without any admission of liability or obligation whatsoever, an aggregate sum of \$4,933,000.00 (the "PBA Payment"), payable forthwith upon the delivery of the L/C Notice.
6. Aveos shall receive the PBA Payment in trust and shall distribute the PBA Payment, subject to applicable statutory deductions, in accordance with the directions set out in the L/C Order.
7. Subject to and conditional upon the granting of the L/C Order, Aveos and Air Canada grant each other and their respective affiliates, successors, assigns, as well as persons acting in their capacity as representatives, officers, directors, agents and employees of the foregoing, a full and final release and discharge of and from any and all claims, demands, causes of action, suits, debts, dues, duties, sums of money, accounts, reckonings, covenants, contracts, agreements, promises, damages, liabilities and obligations, both

contingent and fixed, known and unknown of every kind and nature whatsoever, that either Party may have had, now has or may have, for, upon or by reason of, any matter or cause whatsoever in respect of the Parties' dealings or relationship with, or in any way relating to, the PBA.

8. Nothing in this agreement or the L/C Order should constitute or be construed as an admission by AC that it is in any way liable towards Aveos or any employee or former employee of Aveos or Air Canada.
9. **General Terms:**
  - (a) **Non-Waiver.** No delay or failure by any party to exercise any of its powers, rights or remedies under this Agreement shall operate as a waiver of them, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them.
  - (b) **Time of Essence.** Time shall be of the essence in this Agreement.
  - (c) **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of Quebec and the applicable federal laws of Canada, without regard to its conflicts principles.
  - (d) **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relative to the L/C Motion and supersedes all prior agreements, undertakings, negotiations and discussions, whether oral or written, of the parties hereto relative to this Agreement.
  - (e) **Amendments.** No modification, amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Parties and then any such waiver or consent shall be effective only in the specific instance and for the purpose for which given.
  - (f) **Severability.** If any one or more of the provisions contained in this Agreement, or any part thereof, should be determined by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, the validity, legality and enforceability of such provision or part thereof shall not in any way be affected or impaired thereby under the laws of any other jurisdiction and the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby and shall continue in full force and effect.
  - (g) **Confidentiality.** The terms of this Agreement are confidential. The Parties, the Monitor and the CRO agree not to disclose same except to their officers, directors, personnel, agents and professional advisors who have a need to know and are generally bound by similar confidentiality obligations. Notwithstanding the foregoing, the Parties, the Monitor and the CRO may disclose the terms of this Agreement for the purposes of the L/C Motion, including in the context of discussions with the stakeholders or beneficiaries of the distributions contemplated therein and, otherwise, if required, (i) in the context of the Petitioners' proceedings before the CCAA Court generally (ii) pursuant to any mandatory provisions of law applicable to such party (including in the event of any tax audit or related proceedings), (iii) to defend or prosecute any court proceedings, or (iv) in any proceedings to enforce the terms of this Agreement (and, in such case, the party disclosing the terms

hereof shall use its good faith, diligent and reasonable efforts to seek confidential treatment of the terms of this Agreement).

- (h) Further Assurances. The parties agree to execute all documents and to do all things as may be reasonably necessary to give full effect to this Agreement.
- (i) Third Party Rights. This Agreement shall not create any rights in third parties or create any obligations of a Party to any third parties, whether direct or indirect.
- (j) Transaction. This Agreement constitutes a transaction pursuant to article 2631 and following of the *Civil Code*.
- (k) Counterparts. This Agreement may be executed in any number of counterparts (including counterparts by facsimile) and all such counterparts taken together shall be deemed to constitute one and the same instrument.
- (l) Language. The parties have required that this Agreement be drawn up in the English language. *Les parties aux présentes ont requis que cette entente soit rédigée en langue anglaise.*

**AND THE PARTIES HAVE SIGNED**

**SIGNATURE PAGES FOLLOW**

**PBA TERMINATION AGREEMENT**  
**BETWEEN AVEOS FLEET PERFORMANCE INC AND AIR CANADA**  
**SIGNATURE PAGE OF AVEOS FLEET PERFORMANCE INC.**

**IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED AT:**

Montréal, September 10, 2013

**AVEOS FLEET PERFORMANCE INC./**  
**AVEOS PERFORMANCE**  
**AÉRONAUTIQUE INC.**

Per: \_\_\_\_\_


JONATHAN SOLURSH, duly authorized  
representative, as he so declares

**PBA TERMINATION AGREEMENT  
BETWEEN AVEOS FLEET PERFORMANCE INC AND AIR CANADA  
SIGNATURE PAGE OF AIR CANADA**

**IN WITNESS HEREOF, THE PARTIES HAVE SIGNED AT:**

Montréal, September 10, 2013

**AIR CANADA**

Per:   
CALIN ROVINESCU, PRESIDENT & CEO  
duly authorized representative, as he so  
declares


**PBA TERMINATION AGREEMENT**  
**BETWEEN AVEOS FLEET PERFORMANCE INC AND AIR CANADA**  
**INTERVENTION OF FTI CONSULTING CANADA INC.**

FTI CONSULTING CANADA INC. hereby intervenes to consent to this PBA Termination Agreement in its capacity as Court-appointed Monitor to pursuant to the Initial Order.

*Toronto*  
Montreal, September 10, 2013

FTI CONSULTING CANADA INC.

Per: \_\_\_\_\_

  
TONI VANDERLAAN, duly authorized  
representative, as she so declares



**APPENDIX A**

**L/C Motion**

**(begins next page)**

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL  
NO. : 500-11-042345-120**

**SUPERIOR COURT**

**Commercial Division**  
(Sitting as a Court designated pursuant to  
the *Companies' Creditors Arrangement*  
*Act*, R.S.C. 1985, c. C-36)

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IN THE MATTER OF THE PROPOSED  
PLAN OF COMPROMISE AND  
ARRANGEMENT:

**AVEOS FLEET PERFORMANCE INC. /  
AVEOS PERFORMANCE  
AÉRONAUTIQUE INC.**

and

**AERO TECHNICAL US, INC.**

**Insolvent Debtors/Petitioners**

and

**FTI CONSULTING CANADA INC.**

**Monitor**

and

**AIR CANADA**

and

**CANADIAN IMPERIAL BANK OF  
COMMERCE**

and

**WELLS FARGO BANK NATIONAL  
ASSOCIATION, as Fondé de Pouvoir**

and

**CRÉDIT SUISSE AG, CAYMAN ISLANDS  
BRANCH, as Fondé de Pouvoir**

and

**AVEOS HOLDING COMPANY as Fondé  
de Pouvoir**

and

**THE ATTORNEY GENERAL OF CANADA**

and

**AON HEWITT, as administrator of the**

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**Aveos Fleet Performance Inc. pension plans**

and

**QUEBEC REVENUE AGENCY**

and

**CANADA REVENUE AGENCY**

and

**THE INDIVIDUALS WHO ARE AFFECTED  
AND HAVE RECEIVED SERVICE OF  
THIS MOTION BY MAIL**

**Mises-en-cause**

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**MOTION FOR AUTHORIZATION TO CANCEL A LETTER OF CREDIT AND TO  
MAKE CERTAIN DISTRIBUTIONS  
(Section 11 of the *Companies' Creditors Arrangement Act*)**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, AVEOS  
FLEET PERFORMANCE INC. / AVEOS PERFORMANCE AÉRONAUTIQUE INC.  
RESPECTFULLY SUBMITS AS FOLLOWS:**

**I. PREAMBLE**

1. On March 19, 2012, the Honourable Mark Schrager, J.S.C. issued an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 in respect of Aveos Fleet Performance Inc./Aveos Performance Aéronautique Inc. ("**Aveos**" or the "**Petitioner**") and Aero Technical US, Inc., as appears from the Court record.
2. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as Monitor of the Debtors (the "**Monitor**") and a stay of proceedings was ordered until April 5, 2012 and subsequently extended by further orders until November 22, 2013.
3. On March 20, 2012, Mr. Jonathan Solursh was appointed as Chief Restructuring Officer of the Debtors, with the requisite authority to carry on, manage, operate and supervise the management and operations of the business and affairs of the Insolvent Debtors, as appears from the Court record.

**II. ORDERS SOUGHT**

4. Aveos requests orders from this Court:

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- (a) authorizing Aveos to deliver to Canadian Imperial Bank of Commerce ("CIBC"), with a copy to Air Canada, a notice requesting the cancellation of the Letter of Credit Reference No. SBGM746187 issued for the benefit of Aveos on March 12, 2010 by CIBC, at the request of Air Canada, in the amount of \$20 million (said letter of credit as renewed and extended from time to time, the "L/C");
- (b) directing CIBC not to make any payments on any draw on the L/C, should the original L/C ever be presented for payment, and to return to Air Canada any cash collateral held in connection therewith or to release any restrictions imposed on said cash, such that Air Canada may freely transact with same, forthwith upon receipt of: i) the notice from Aveos requesting the cancellation of the L/C, and ii) a copy of the Order sought herein;
- (c) ordering Air Canada, forthwith upon receipt of a copy of the notice to CIBC above and a copy of the Order sought herein, to make a payment of \$4,933,000.00 to Aveos, in trust (the "PBA Payment");
- (d) ordering Aveos, acting in trust and as fiduciary, to allocate and distribute, subject to any applicable statutory withholding and remittance obligations, the PBA Payment to the intended beneficiaries of such funds;
- (e) taking act of the termination of the Pension Benefit Agreement described below in accordance with the terms of the PBA Termination Agreement described below;

the whole, as further detailed in the conclusions of this Motion.

### III. BACKGROUND

#### a) The Pension and Benefits Agreement

- 5. On June 22, 2007, Air Canada, ACTS LP, as vendor, and KSAGE MRO Holdings Inc., as purchaser, entered into a Pension and Benefits Agreement (as amended, restated and supplemented from time to time, the "PBA"). A copy of the PBA is communicated herewith, along with the five (5) Supplements thereto, *en liasse*, as Exhibit R-1.
- 6. The PBA was entered into at the time when the assets of ACTS LP were being purchased by KSAGE MRO Holdings Inc. The latter subsequently changed its name to ACTS Aero Technical Support & Services Inc., and then to Aveos.
- 7. The purpose of the PBA was to set out an agreement between Air Canada and Aveos regarding certain closing adjustments and future payments to Aveos by Air Canada with respect to employees and retirees' pension and health benefits matters for former Air Canada unionized and non-unionized employees that were transferred to Aveos.
- 8. Aveos created, *inter alia*, defined benefit and defined contribution registered pension plans, post-retirement group benefit plans and long term disability

coverage plans which provided for pension and other benefits to (i) non-unionized employees of Air Canada who had been previously assigned to ACTS LP and who became employees of Aveos as of October 17, 2007, and (ii) certain unionized employees of Air Canada who were assigned to Aveos pursuant to general services agreements between Air Canada and ACTS LP and became employees of Aveos on July 14, 2011 (the "**Certification Date**").

9. Under the PBA, Air Canada agreed to make certain payments to Aveos based on actuarial calculations for each of the various programs outlined in paragraphs 13, 24, 33, 37, 40, and 41 of the PBA (the "**Air Canada Payment Obligations**"), on a quarterly basis and over a five (5) year period, beginning on the closing date of the sale to Aveos on October 16, 2007 (the "**Closing Date**") for non-unionized employees and as of the Certification Date for unionized employees. The Air Canada Payment Obligations were secured by the L/C. As discussed in greater detail below, the documents contemplated that, in the event of Aveos' insolvency, payments would be subject to a trust for the benefit of the intended beneficiaries.
10. According to the terms of the PBA Aveos undertook to assume the liabilities for such pension and other benefit obligations in respect of the transferred employees and to save and hold harmless Air Canada from any claims regarding any of the plans contemplated in the PBA. In the case of the non-unionized employees, this took effect from and after the Closing Date, whereas for the unionized employees, this was effective as of the Certification Date.
11. The PBA covered benefits for two groups - the Aveos non-unionized employees and the Aveos unionized employees, in three different categories: post-retirement group health, pension and long term disability benefits.
12. To date, the remaining Air Canada Payment Obligations that would have been payable to Aveos in connection with the programs for former **non-unionized** employees are the following:
  - (a) payments totaling \$390,160.00 under paragraph 40 of the PBA remain unpaid with respect to post-retirement group health benefits for former non-unionized employees who transferred to Aveos as of October 17, 2007 and were then eligible for such future benefits. There are fifty-seven (57) individuals in this group ( the "**Non-Union Post-Retirement Benefit Group**"); and
  - (b) payments totaling \$600,288.00 under paragraph 13 of the PBA remain unpaid with respect to the pension deficit of the "Retirement Plan for Employees of Aveos", OSFI registration #57573, established by Aveos (the "**Non-Unionized Pension Plan**").
13. All amounts owing to Aveos by Air Canada for former non-unionized employees entitled to long term disability payments under paragraph 33 of the PBA had been paid prior to the Initial Order.
14. To date, the remaining Air Canada Payment Obligations that would have been otherwise payable to Aveos in connection with the programs for former **unionized** employees are the following:

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- (a) with respect to post-retirement group health benefits under paragraph 41 of the PBA for former unionized employees who transferred to Aveos on the Certification Date and were then eligible for such future benefits, an actuarial evaluation estimates this amount to be \$1,416,464.00. There are sixty-eight (68) individuals in this group (the "**Union Post-Retirement Benefit Group**"); and
  - (b) with respect to long term disability payments under paragraph 37 of the PBA to former unionized employees who qualified for such future benefits as of the Certification Date and who were receiving benefits as of the date of the Initial Order, there are eighteen (18) individuals in this group. Air Canada agreed, without being required to under the PBA, to include in this group, for the sole purposes of the arrangements for which approval is sought in this Motion, another two (2) individuals who had a pre-existing condition on the Certification Date, had received such benefits previously, were not receiving benefits on the Certification Date but later resumed receiving benefits from Aveos. There are therefore twenty (20) participants in this group, a list of which has been provided to Aveos and to the Monitor by Air Canada. An actuarial evaluation estimates this amount to be \$2,526,088.00. (the "**Union LTD Group**").
15. The IAMAW has filed a grievance against Air Canada with respect to 23 individuals (including the 20 mentioned above) that IAMAW considers to be part of the Union LTD Group. However, Air Canada advises that three (3) individuals have no outstanding claims with respect to long term disability as one is now receiving full pension benefits from Air Canada and two are now on leave of absence after expiry of their disability eligibility.
16. Paragraph 24 of the PBA contemplates compensation payments to be made by Air Canada to Aveos in connection with the assumption by Aveos of the pension plan maintained for former unionized employees. However such plan was never transferred to Aveos. Following the issuance of the Initial Order, the Office of the Superintendent of Financial Institutions ordered the termination of Aveos' defined benefit pension plans and Air Canada was ordered not to transfer to Aveos the pension assets and liabilities with regards to the transferred unionized employees and to assume all pension liabilities in connection therewith. The assets that would have been transferred to Aveos under the PBA would have been significantly lower than the liabilities, such that approximately \$22 million would have been payable to Aveos. However the liabilities now accrue to Air Canada as a result of this decision and far exceed any payments that would have been made under the PBA.
17. Because Aveos did not fulfill its obligation to assume the pension liabilities to the unionized employees, Aveos has no potential claim for amounts which would have otherwise been payable under paragraph 24 of the PBA.
18. The amounts owing on account of Aveos' liabilities to the Non-Union Post-Retirement Benefit Group, the Union Post-Retirement Benefit Group and the Union LTD Group were provided to Aveos by Air Canada as previous plan administrator as provided in the PBA. The amounts due in the case of the Union Post-Retirement Benefit Group and the Union LTD Group were calculated with

the assistance of actuaries based on updated information that took into account the termination of employment that took place prior to or concurrent with the issuance of the Initial Order and independently reviewed by an independent actuary engaged by Aveos as further discussed below.

19. In the case of the Non-Union Post-Retirement Benefit Group, the amount payable was calculated as being the outstanding quarterly payments that would have been otherwise payable by Air Canada to Aveos as these amounts were calculated and known from and after the Closing Date.

**b) Cancellation of the L/C**

20. In accordance with certain Supplements to the PBA, Air Canada delivered to Aveos from time to time several letters of credit to secure the Air Canada Payment Obligations owed to Aveos, as appears from the Supplements communicated as Exhibit R-1.
21. On March 12, 2010, the PBA was modified for the last time pursuant to the Fifth Supplement to the PBA (the "Fifth Supplement").
22. On or around March 12, 2010, in accordance with the Fifth Supplement, all letters of credit previously issued and outstanding under the PBA were cancelled and the L/C was issued for the benefit of Aveos by CIBC, at the request and for the account of Air Canada, and delivered to Aveos to secure the payment of the Air Canada Payment Obligations. A copy of the L/C is communicated herewith as Exhibit R-2.
23. As appears from Exhibit R-2, the sole beneficiary of the \$20 million L/C is Aveos. However, Aveos' right to draw on the L/C is subject to the drawing restrictions and payment conditions detailed below.
24. The original L/C has been misplaced and cannot physically be returned to CIBC for purposes of cancellation. As a result, the parties have agreed to implead CIBC and to seek the issuance of orders from this Court aimed, *inter alia*, at confirming the cancellation of the L/C, facilitating the PBA Payment to Aveos in trust and authorizing and directing the allocation and distribution of the PBA Payment funds directly to the ultimate beneficiaries of each category referenced in paragraphs 12, 13 and 14 above.

**c) Termination of the Pension and Benefits Agreement**

25. Prior to the service of this Motion, Air Canada and Aveos, with the approval of the Monitor, entered into an agreement (the "PBA Termination Agreement") pursuant to which Aveos undertook to bring this Motion. A copy of the PBA Termination Agreement is communicated herewith as Exhibit R-3. The purpose and intent of the PBA Termination Agreement is to:
  - (a) at the request of Aveos and upon Air Canada's consent, make the PBA Payment funds available immediately to cover potential claims for the benefit of certain former employees to the extent that their claims would have benefited from the security offered by the L/C;

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- (b) settle any potential dispute and avoid potential litigation on the existence of conditions precedent to a draw on the L/C; and
  - (c) enable Air Canada to obtain the return of any security provided to CIBC for the purpose of issuing the L/C .
- 26. The termination of the PBA is conditional upon this Court granting the orders sought herein, pursuant to which the L/C will effectively be cancelled, the cash collateral held by CIBC will be returned to Air Canada (or any restrictions imposed on said cash will be removed) and Aveos will receive the PBA Payment from Air Canada, in trust, for purposes of distribution to the intended beneficiaries.
- 27. The cancellation of the L/C will be effective upon receipt, by CIBC, of a copy of the Order to be rendered herein together with a notice from Aveos (the "L/C Notice") in the form attached to the conclusions of this Motion as **Schedule "A"**, in which Aveos will confirm that it has no further interest in the L/C and in which CIBC will be requested to cancel the L/C with immediate effect, the whole in accordance with the Order sought by this Motion.
- 28. Aveos and/or Air Canada intend to communicate with CIBC, before the eventual hearing of this Motion by the Court, to confirm that CIBC is satisfied with these conditions and with the Order sought by this Motion, as it concerns the proposed cancellation of the L/C and the release of the cash collateral to Air Canada (or the removal of any restrictions imposed on said cash).
- 29. In consideration for the termination of the PBA and conditional upon the cancellation of the L/C, Air Canada has agreed to remit to Aveos, in trust, the PBA Payment. The PBA Payment is due forthwith upon the delivery of the L/C Notice by Aveos to CIBC.
- 30. Aveos seeks authorization and direction to proceed to allocate and distribute the PBA Payment to the following individuals or entities subject to any applicable statutory and withholding and remittance obligations (the "**Proposed Distributions**"):
  - (a) \$390,160.00 for the claims of the Non-Union Post-Retirement Benefit Group for post-retirement group health benefits for former non-unionized employees who transferred to Aveos as of October 17, 2007 and were then eligible for such benefits, to be paid in equal amounts for each individual;
  - (b) \$600,288.00 to Aon Hewitt, as the Administrator of the Non-Unionized Pension Plan in respect of the liabilities of Aveos to the Non-Unionized Pension Plan;
  - (c) \$1,416,464.00 for the claims of the Union Post-Retirement Benefit Group of former unionized employees of Aveos who qualified, as of the Certification Date for post-retirement group health benefits, to be distributed based on actuarial estimates of individual claims; and



- (d) \$2,526,088.00 for the claims of the Union LTD Group of former unionized employees of Aveos who qualified, as of the Certification Date for long term disability benefits, and who still qualified therefor as of May 1st, 2013, and the two individuals as described in paragraph 14(b) of this Motion, to be distributed based on actuarial estimates of individual claims.
31. The identity of each of the beneficiaries of the Proposed Distributions was determined in the first instance by Air Canada, as previous plan administrator, and reviewed by Aveos according to its records. The amounts or estimated amounts owing to the various intended beneficiaries were calculated by an actuary retained by Air Canada and subsequently verified with the assistance of an independent actuary retained by Aveos to review and confirm the actuarial reports obtained by Air Canada. Aveos was assisted throughout by the Monitor in performing this review.
32. These beneficiaries will be given prior notice of the Motion by mail along with a letter from the CRO of Aveos informing such beneficiaries of the category and amount of their claims for the purposes of the Proposed Distributions. To preserve personal information and confidentiality for the affected beneficiaries who are retired or former Aveos employees, an affidavit of service by mail will be filed under seal at the hearing. The list of beneficiaries and amounts has been provided to the Monitor.
33. The amounts of the Proposed Distributions are based on the amounts which Air Canada would have otherwise owed to Aveos under the PBA. The intended beneficiaries are limited to those who would have been entitled to claims in accordance with the terms of the PBA.
34. Aveos, the CRO, the Monitor and Air Canada request that they be adequately protected by the Order of this Court in their actions of facilitating and enabling these payments to be made to the intended beneficiaries of the Proposed Distributions.

#### **IV. GROUNDS FOR THIS MOTION**

35. Aveos and Air Canada entered into discussions to settle all outstanding matters between them since the granting of the Initial Order and the first retrieval agreement concluded in April 2012. The matter of the PBA termination and the outstanding L/C was raised in the context of these discussions.
36. The L/C was procured by Air Canada in favour of Aveos for the exclusive purpose of securing the Air Canada Payment Obligations which would be payable to Aveos pursuant to specific sections of the PBA.
37. Aveos was advised that Air Canada took the position that no Air Canada Payment Obligations under the PBA were owed and that Aveos was not entitled to draw on the L/C. Under the terms of the proposed PBA Termination Agreement, Aveos has requested, and Air Canada has agreed to voluntarily make the PBA Payment provided that this Honourable Court grants the relief requested in this Motion.

38. Moreover, as appears from the L/C, the parties to the PBA had agreed to a payment mechanism, whereby in the circumstances where the conditions for a draw on the L/C were met while Aveos was insolvent, the payment would be made directly by CIBC to an investment grade trustee which would then proceed to administer the funds and pay eligible claims from the funds to eligible beneficiaries until such funds are depleted.
39. In fact, Aveos created a trust for that purpose, as appears from an *Amended and Restated Trust Agreement* dated as of March 12, 2010 communicated herewith as **Exhibit R-4**.
40. As such, in light of this mechanism, even if the conditions for a draw on the L/C were met, Aveos would not be entitled to the L/C funds for its own account; in other words, the L/C funds could not be paid to Aveos in accordance with the terms of the agreements and the L/C funds would therefore never be available for the general body of creditors.
41. The Monitor has confirmed to Aveos that it has sought an independent legal opinion to determine that the L/C and the proceeds thereof are not part of Aveos' property available for distribution to its creditors generally in these CCAA Proceedings, nor in an eventual bankruptcy. It is anticipated that this issue will be discussed in the Monitor's report to be filed in connection with this Motion.
42. In addition, the Third Party Secured Lenders, who hold valid and enforceable security over all the property and assets of Aveos, have been advised of the PBA Termination Agreement and the Agent for the Third Party Secured Lenders has confirmed that it will not object to the orders sought in this Motion.
43. The Proposed Distributions have been reviewed and discussed with IAMAW, the union representing the former unionized employees.
44. If a draw was possible under the L/C and the funds were paid to the trustee as contemplated under the current agreements, the trustee fees, legal fees, claim administration costs, management and other expenses would significantly deplete the amounts that would otherwise be available to beneficiaries.
45. Given that these beneficiaries have received no post-retirement benefits or long term disability payments since the date of the Initial Order, it is fair, reasonable and equitable that they receive as soon as possible a lump sum payment.
46. In light of the proposed satisfaction of the Air Canada Payment Obligations and the proposed termination of the PBA, there exists no valid purpose for the continued existence of the L/C. Since the L/C has yet to expire according to its terms, Aveos respectfully submits that it should be authorized to deliver to CIBC a notice requesting the cancellation the L/C in accordance with the orders sought in this Motion.
47. It is submitted that the Proposed Distributions contemplated herein are in the best interests of Aveos' stakeholders and should be made without any further delay.

48. Aveos therefore respectfully requests this Court to order the provisional execution of the order to be rendered on this Motion.
49. The present Motion is well founded in fact and in law.

**WHEREFORE, MAY THIS COURT:**

- [1] **GRANT** the *Motion for Authorization to Cancel a Letter of Credit and to Make Certain Distributions* (the "**Motion**");
- [2] **DECLARE** that all capitalized terms not otherwise defined in the Motion shall have the meaning ascribed to them in the Initial Order dated March 19, 2012, as amended and restated, granted by the Honourable Mark Schragger, J.S.C., in the present matter;
- [3] **DECLARE** that the time for service of the Motion is abridged to the time actually given and service of the Motion and supporting material is good, valid and sufficient, and any further service thereof is hereby dispensed with;
- [4] **AUTHORIZE AND DIRECT** Aveos to take any and all steps which are necessary to deliver a notice (the "**L/C Notice**") to Canadian Imperial Bank of Commerce ("**CIBC**"), with a copy to Air Canada, requesting the cancellation of the Letter of Credit Reference No. SBGM746187 issued for the benefit of Aveos on March 12, 2010 by CIBC at the request of Air Canada, in the amount of \$20 million (said letter of credit as renewed and extended from time to time, the "**L/C**"), in which Aveos confirms that it has no further interest in the L/C and that CIBC is authorized to cancel the L/C with immediate effect, the whole in the form of the notice attached to this Order as **Schedule "A"**;
- [5] **DIRECT** CIBC not to make any payments on any draw on the L/C should the original L/C ever be presented for payment, and **DECLARE** that the L/C shall be effectively cancelled upon CIBC receiving the L/C Notice and a copy of this Order;
- [6] **DIRECT** CIBC, upon receipt of the L/C Notice and a copy of this Order, to forthwith return any cash collateral held in connection with the L/C to Air Canada or to release any restrictions imposed on said cash, such that Air Canada may freely transact with same;
- [7] **ORDER** Air Canada, forthwith upon the delivery of the L/C Notice and a copy of this Order, to make a payment of \$4,933,000.00 to Aveos, in trust (the "**PBA Payment**");
- [8] **ORDER** Aveos, acting in trust and as fiduciary, to allocate and distribute, subject to any applicable statutory withholding and remittance obligations, the PBA Payment to the following individuals and entities:
- (a) \$390,160.00 for the claims by former non-unionized employees of Aveos who transferred to Aveos as of October 17, 2007 and were then eligible for post-retirement group health benefits, to be paid in equal amounts for each individual;

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- (b) \$600,288.00 to Aon Hewitt, as the Administrator of the Non-Unionized Pension Plan in respect of the liabilities of Aveos to the Non-Unionized Pension Plan;
  - (c) \$1,416,464.00 for the claims by former unionized employees of Aveos who qualified, as of July 14, 2011, for post-retirement group health benefits, to be distributed based on actuarial estimates of individual claims; and
  - (d) \$2,526,088.00 for the claims by former unionized employees of Aveos who qualified, as of July 14, 2011, for long term disability benefits, and who still qualified therefor as of May 1st, 2013, as well as for the two individuals with a pre-existing condition described in paragraph 14(b) of the Motion who are included in the list of the Union LTD Group members and respective amounts provided to Aveos and to the Monitor, based on actuarial estimates of the individual claims.
- [9] **TAKE ACT** of the Parties' termination of the Pension and Benefit Agreement under the PBA Termination Agreement, Exhibit R-3 to the Motion, as well as the Monitor's consent thereto;
- [10] **DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioners and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioners, (iii) any receivership of the Petitioners, and (iv) the provisions of any federal or provincial statute, the PBA Payment funds are to be deemed held in trust and create a trust, enforceable against third parties, the Third Party Secured Lenders and other secured parties, the CCAA Charges, any receiver, trustee in bankruptcy and the payments or disposition of Property made by the Petitioners pursuant to this Order, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law;
- [11] **DECLARE** that the trust mentioned above and the payments to be made pursuant to this Order shall be valid and enforceable and have full effect as to the priorities applicable as against all Property of the Petitioners and opposable to all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners, for all purposes;
- [12] **DECLARE** that Aveos, the Chief Restructuring Officer, the Monitor and Air Canada along with their respective partners, principals, directors, officers, employees and agents shall have no liability with respect to the payments made in accordance with this Order.
- [13] **ORDER** the provisional execution of this Order notwithstanding appeal and without the need to furnish any security.

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**THE WHOLE** without costs, save in case of contestation.

Montréal, September ●, 2013

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**DENTONS CANADA LLP**  
Attorneys for Insolvent Debtors/Petitioners

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**SCHEDULE "A"**

To the Order issued on ●, 2013 by Hon. Mark Schragger J.s.C.  
In file : 500-11-042345-120

**[On letterhead of Beneficiary Aveos Fleet Performance inc.]**

**[Date]**

**TO:** Canadian Imperial Bank of Commerce ("CIBC")  
Trade Finance Operations  
1155 boul. René-Lévesque Ouest, 12<sup>e</sup> étage,  
Montréal, QC H3B 3Z4

<b>RE:</b> CIBC Letter of Credit No.	SBGM746187
Applicant:	Air Canada
Beneficiary:	Aveos Fleet Performance Inc.
Amount:	\$20,000,000.00
Current Expiry date:	Mar 11, 2014

With respect to the above-noted letter of credit, we confirm we have no further interest in the letter of credit and authorize CIBC to cancel the letter of credit with immediate effect. We are unable to locate the original letter of credit and undertake to return it to CIBC promptly if it is located.

**Aveos Fleet Performance Inc.**

Per: \_\_\_\_\_  
Name: Jonathan Solursh  
Title: Chief Restructuring Officer  
Authorized signing officer pursuant to his  
Appointment in a Court Order

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**AFFIDAVIT**

I, the undersigned, **JONATHAN SOLURSH**, Chief Restructuring Officer of the Petitioners in the present matter, domiciled for the purposes hereof at 730 Côte-Vertu Boulevard, in the City of Montreal, Province of Quebec, do solemnly declare:

1. I am the Chief Restructuring Officer of the Petitioners in the present matter;
2. All of the facts alleged in the *Motion for Authorization to Return for Cancellation a Letter of Credit and to Make Certain Distributions* are true.

AND I HAVE SIGNED:

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**JONATHAN SOLURSH**

**SOLEMNLY DECLARED** before me  
at Montreal, this \_\_\_th day of September 2013

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**COMMISSIONER OF OATHS FOR THE  
PROVINCE OF QUÉBEC**

**NOTICE OF PRESENTATION**

**TO: SERVICE LIST**

**TO: The individuals affected by the Motion and listed in the affidavit of service**

**TAKE NOTICE** that the *Motion for Authorization to Cancel a Letter of Credit and to Make Certain Distributions* will be presented before the Honourable Mark Schragger of the Superior Court, sitting in and for the Commercial Division, in **Room 16.12 of the Montreal Courthouse**, situated at 1 Notre-Dame Street East, Montreal, on **●, 2013** at **9h30 a.m.**, or so soon thereafter as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, September ●, 2013

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**DENTONS CANADA LLP**  
Attorneys for Insolvent Debtors/Petitioners



CANADA  
 PROVINCE OF QUÉBEC  
 DISTRICT OF MONTREAL  
 NO. : 500-11-042345-120

**SUPERIOR COURT**

**Commercial Division**  
 (Sitting as a Court designated pursuant to  
 the *Companies' Creditors Arrangement Act*,  
 R.S.C. 1985, c. C-36)

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IN THE MATTER OF THE PROPOSED  
 PLAN OF COMPROMISE AND  
 ARRANGEMENT:

**AVEOS FLEET PERFORMANCE INC. /  
 AVEOS PERFORMANCE  
 AÉRONAUTIQUE INC.**

and

**AERO TECHNICAL US, INC.**

**Insolvent Debtors/Petitioners**

and

**FTI CONSULTING CANADA INC.**

**Monitor**

and

**AIR CANADA**

and

**CANADIAN IMPERIAL BANK OF  
 COMMERCE**

and

**WELLS FARGO BANK NATIONAL  
 ASSOCIATION, as Fondé de Pouvoir**

and

**CRÉDIT SUISSE AG, CAYMAN ISLANDS  
 BRANCH, as Fondé de Pouvoir**

and

**AVEOS HOLDING COMPANY as Fondé  
 de Pouvoir**

and

**THE ATTORNEY GENERAL OF CANADA**

and

**AON HEWITT, as administrator of the  
 Aveos Fleet Performance Inc. pension  
 plans**

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and

**QUEBEC REVENUE AGENCY**

and

**CANADA REVENUE AGENCY**

and

**THE INDIVIDUALS WHO ARE AFFECTED  
AND HAVE RECEIVED SERVICE OF THIS  
MOTION BY MAIL****Mises-en-cause****LIST OF EXHIBITS**

- Exhibit R-1: Pension and Benefits Agreement dated as of June 22, 2007 (as amended, restated and supplemented from time to time) and five supplements thereto, en liasse;
- Exhibit R-1a): First Supplement to the Pension and Benefits Agreement dated as of October 16, 2007;
- Exhibit R-1b): Second Supplement to the Pension and Benefits Agreement dated as of October 28, 2008;
- Exhibit R-1c): Third Supplement to the Pension and Benefits Agreement and Amendment to Payment Suspension Agreement dated as of January 7, 2009;
- Exhibit R-1d): Fourth Supplement to the Pension and Benefits Agreement dated as of January 8, 2009;
- Exhibit R-1e): Fifth Supplement to the Pension and Benefits Agreement dated as of March 12, 2010;
- Exhibit R-2: Copy of Letter of credit SBGM746187 issued by CIBC on March 12, 2010;
- Exhibit R-3: PBA Termination Agreement;
- Exhibit R-4: Amended and Restated Trust Agreement dated as of March 12, 2010.

Montréal, September 9, 2013

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**DENTONS CANADA LLP**  
Attorneys for Insolvent Debtors/Petitioners

No 500-11-042345-120

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SUPERIOR COURT (Commercial Division)  
DISTRICT OF MONTRÉAL

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IN THE MATTER OF THE PROPOSED PLAN OF  
COMPROMISE AND ARRANGEMENT OF :

AVEOS FLEET PERFORMANCE INC. / AVEOS  
PERFORMANCE AÉRONAUTIQUE INC.

And  
AERO TECHNICAL US, INC.

Insolvent Debtors/Petitioners

And  
FTI CONSULTING CANADA INC.

Monitor

And  
AIR CANADA and  
CANADIAN IMPERIAL BANK OF CANADA  
And AL.

Mises-en-cause

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Me Roger P. Simard/ Our file: 548732-001

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## EXHIBIT R-3

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**DENTONS**

Dentons Canada LLP  
1 Place Ville Marie, Suite 3900  
Montréal QC H3B 4M7  
Tel. : 514 878 8800  
Fax : 514 866 2241

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