

COURT OF APPEAL OF ALBERTA**COURT OF APPEAL FILE
NUMBER****TRIAL COURT FILE NUMBER****COURT****REGISTRY OFFICE:**

2401-02664

COURT OF KING'S BENCH OF
ALBERTA

CALGARY

Clerk's Stamp

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c C-36, as amendedAND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF LYNX AIR HOLDINGS
CORPORATION AND 1263343 ALBERTA INC. dba
LYNX AIR**APPLICANTS**EDMONTON REGIONAL AIRPORTS AUTHORITY,
HALIFAX INTERNATIONAL AIRPORT AUTHORITY, THE
CALGARY AIRPORT AUTHORITY, VANCOUVER
AIRPORT AUTHORITY, and WINNIPEG AIRPORTS
AUTHORITY INC.**RESPONDENTS**LYNX AIR HOLDINGS CORPORATION and 1263343
ALBERTA INC. dba LYNX AIRNOT PARTIES TO THE APPEAL
(MONITOR)

FTI CONSULTING CANADA

DOCUMENT**ADDRESS FOR SERVICE AND****CONTACT INFORMATION OF****PARTY FILING THIS DOCUMENT****AFFIDAVIT****STIKEMAN ELLIOTT LLP**Barristers & Solicitors
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Calgary Airport Authority, Vancouver Airport Authority, and
Winnipeg Airports Authority Inc.

File No.: 156416.1001

AFFIDAVIT OF JESSICA WATTS**Sworn on September 16, 2024**I, JESSICA WATTS, Legal Assistant of Stikeman Elliott LLP ("**Stikeman Elliott**"), SWEAR AND SAY
THAT:

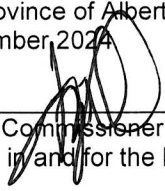
1. I am a legal assistant to Karen Fellowes, K.C. and Archer Bell, counsel to the Applicants, the Calgary Airport Authority ("**CAA**"), Edmonton Regional Airports Authority ("**ERAA**"), Vancouver

Airport Authority (“VAA”), Winnipeg Airports Authority Inc. (“WAA”) and Halifax International Airport Authority (“HIAA” and collectively, the “Airport Authorities”), and have knowledge of the Airport Authorities’ matter with respect to the Court of King’s Bench of Alberta Action No. 2401-02664 (the “Action”). As such, I have personal knowledge of the matters deposed to herein, except where I have stated matters to be based on information and belief. Where I have stated matters to be based on information and belief, I believe those matters to be true.

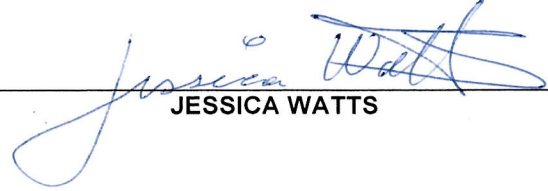
2. On February 28, 2024, FTI Consulting, Inc. (“FTI”) filed its First Report of the Monitor with respect to Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (collectively, “Lynx”) in the Action, a copy of which is attached hereto and marked as **Exhibit “A”**.
3. On March 27, 2024, FTI filed its Second Report of the Monitor with respect to Lynx in the Action, a copy of which is attached hereto and marked as **Exhibit “B”**.
4. On April 11, 2024, FTI filed its Third Report of the Monitor with respect to Lynx in the Action, a copy of which is attached hereto and marked as **Exhibit “C”**.
5. On May 15, 2024, FTI filed its Fourth Report of the Monitor with respect to Lynx in the Action, a copy of which is attached hereto and marked as **Exhibit “D”**.
6. On May 24, 2024, the Airport Authorities filed an application (the “Airport Authorities’ Application”) regarding the treatment of Airport Improvement Fees (“AIF”) in the Action, a copy of which is attached hereto and marked as **Exhibit “E”**.
7. On May 24, 2024, an affidavit affirmed by Jennifer Pon was filed in the Action, a copy of which is attached hereto and marked as **Exhibit “F”**.
8. On May 24, 2024, an affidavit affirmed by Diana Vuong was filed in the Action, a copy of which is attached hereto and marked as **Exhibit “G”**.
9. On May 24, 2024, an affidavit affirmed by Leslie Kwasny was filed in the Action, a copy of which is attached hereto and marked as **Exhibit “H”**.
10. On May 24, 2024, an affidavit sworn by Paul Brigley was filed in the Action, a copy of which is attached hereto and marked as **Exhibit “I”**.
11. On May 24, 2024, an affidavit affirmed by Nicole Stefaniuk was filed in the Action, a copy of which is attached hereto and marked as **Exhibit “J”**.

- 12. On May 28, 2024, the Greater Toronto Airports Authority (the “GTAA”) filed an application (the “GTAA Application”) regarding the treatment of AIF in the Action, a copy of which is attached hereto and marked as **Exhibit “K”**.
- 13. On May 28, 2024, an affidavit sworn by Jason Boyd was filed in the Action, a copy of which is attached hereto and marked as **Exhibit “L”**.
- 14. On June 3, 2024, an affidavit sworn by Michael Woodward was filed in the Action, a copy of which is attached hereto and marked as **Exhibit “M”**.
- 15. On June 11, 2024, the Airport Authorities filed a brief in support of the Airport Authorities’ Application in the Action, a copy of which is attached hereto and marked as **Exhibit “N”**.
- 16. On June 10, 2024, the GTAA served an unfiled brief in support of the GTAA Application in the Action, a copy of which is attached hereto and marked as **Exhibit “O”**.
- 17. On June 18, 2024, Lynx served an unfiled brief in respect of the Airport Authorities’ Application and the GTAA Application in the Action, a copy of which is attached hereto and marked as **Exhibit “P”**.
- 18. On June 21, 2024, FTI filed its Fifth Report of the Monitor with respect to Lynx in the Action, a copy of which is attached hereto and marked as **Exhibit “Q”**.
- 19. On August 26, 2024, the Honourable Justice B.E. Romaine issued Reasons for Decision in the Action, reported as *Greater Toronto Airports Authority v Lynx Air Holdings Corporation, 2024 ABKB 514* (the “Decision”), a copy of which is attached hereto and marked as **Exhibit “R”**.
- 20. On September 9, 2024, FTI filed its Sixth Report of the Monitor with respect to Lynx in the Action, a copy of which is attached hereto and marked as **Exhibit “S”**.
- 21. I understand that on September 13, 2024, FTI was granted an order extending Lynx’s CCAA proceedings until January 31, 2025.
- 22. I make this affidavit in support of the Airport Authorities’ application for permission to appeal the Decision, and for no improper purpose.

SWORN before me in the City of Calgary, in)
 the Province of Alberta this 16th day of)
 September, 2024.)



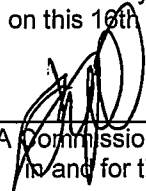
 A Commissioner for Oaths and Notary)
 in and for the Province of Alberta)



JESSICA WATTS

KIRA BRYNN LYSENG
A Commissioner for Oaths
In and for Alberta
My Commission Expires September 11, 2026

This is **Exhibit "A"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 10th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
in and for Alberta
My Commission Expires September 11, 2026

ENTERED

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IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION
and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT

**FIRST REPORT OF FTI CONSULTING CANADA INC., IN
ITS CAPACITY AS MONITOR OF LYNX AIR HOLDINGS
CORPORATION and 1263343 ALBERTA INC. dba LYNX
AIR**

February 28, 2024

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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FIRST REPORT OF THE MONITOR

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Appendix “A” – Letter from Calgary Airport Authority dated February 26, 2024

Appendix “B” – Cash Flow Statement for the period ending April 15, 2024 and management representation letter

INTRODUCTION

1. On February 22, 2024 (“**Initial Filing Date**”), Lynx Air Holdings Corporation (“**Lynx Holdco**”) and 1263343 Alberta Inc. dba Lynx Air (“**Lynx Opco**”, together with Lynx Holdco, “**Lynx Air**” the “**Applicants**” or the “**Company**”), sought and obtained an initial order (“**Initial Order**”) by the Court of King’s Bench of Alberta (“**Court**”) to commence proceedings (“**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”).
2. The Initial Order granted, among other things, the following relief:
 - (a) declaring that the Applicants are companies to which the CCAA applies;
 - (b) authorizing the Applicants to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”) and continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) or their Property;
 - (c) staying, until and including March 4, 2024, (the “**Stay Period**”), all proceedings, and remedies against the Applicants or its business or Property, except as otherwise set forth in the Initial Order or otherwise permitted by law (“**Stay of Proceedings**”);
 - (d) appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”) of the Applicants in these CCAA Proceedings;
 - (e) granting a charge in favour of the Monitor, its legal counsel, and the Applicant’s legal counsel in respect of their fees and disbursements in the amount of \$500,000 under section 11.52 of the CCAA (the “**Administrative Charge**”);

- (f) granting a \$500,000 charge in favour of the Applicants directors and officers (“**Directors’ Charge**”) as protection against obligations and liabilities that they may incur as directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of these CCAA Proceedings;
- (g) authorizing the Applicants to borrow under an interim loan facility term sheet (“**Term Sheet**”) with Indigo Northern Ventures LOP (the “**Interim Lender**” and “**Indigo**”) an amount of up to \$1,000,000 (the “**Interim Facility**”) to be used by the Applicants to wind-down operations and the granting of a court-ordered priority charge on the Property of the Applicants to secure the Interim Facility (the “**Interim Lender’s Charge**”);
- (h) sealing the Confidential Supplemental Affidavit of Michael Woodward in accordance with the terms of a restricted Court access order; and
- (i) scheduling a comeback application for hearing at 10:00 a.m. on February 28, 2024. The comeback hearing was subsequently deferred to 10:00 a.m. on March 1, 2024 (the “**Comeback Hearing**”).
3. On February 28, 2024, the Applicants filed a notice of application returnable on March 1, 2024, in respect of the Comeback Hearing, seeking:
- (a) an amended and restated Initial Order (the “**ARIO**”) which will provide for:
- an increase in the size of the Interim Facility from approximately \$1.0 million (US\$750,000) to approximately \$5.0 million (as same is denominated in USD) and a corresponding increase in the Interim Lender’s Charge;
 - an extension of the Stay of Proceedings until and including April 15, 2024 (the “**Stay Extension**”); and

- granting a fourth-ranking charge against the Applicants' Property for a key employee retention plan (the "**KERP**"), and

(b) Approval of a SISP (as defined below).

4. Electronic copies of all materials filed by the Applicants in connection with their February 22, 2024 application ("**Initial CCAA Application**"), the March 1, 2024 application ("**Comeback Application**") and other statutory materials are available on the Monitor's website at: <http://cfcanada.fticonsulting.com/lynxair/>.

PURPOSE

5. FTI has reviewed the Court materials filed by the Applicants in support of the Initial CCAA Application and the Comeback Application. The purpose of this report (this "**Report**") is to provide this Honourable Court and the Applicants' stakeholders with information and the Monitor's comments with respect to the following:
- (a) background information with respect to the Applicants;
- (b) a summary of correspondence the Applicants and the Monitor have had with specific creditors and or contractual counterparties, that could have a meaningful impact on the Company's cash flow or its aircraft fleet (and related preservation efforts); including discussions and/or correspondence with:
- certain Aircraft Lessors (as defined below);
 - the Calgary Airport Authority; and
 - Elavon Canada Company ("**Elavon**").

- (c) the Applicants cash flow statement (the “**Cash Flow Statement**”) for the period of February 22, 2024, to April 15, 2024 (the “**Forecast Period**”) as well as the Monitor’s view on the reasonableness of the Cash Flow Statement and assumptions therein;
- (d) a summary of the relief being sought at the Comeback Hearing as outlined in the amended and restated Initial Order (“**ARIO**”) and the Monitor’s analysis and recommendations in respect of same, including, among other things:
- extending the Stay Period up to and including April 15, 2024;
 - the proposed increase to the Interim Facility from \$1 million to \$5 million and a corresponding increase to the Interim Lender’s Charge;
 - the Applicants request for a KERP and a charge securing the obligation under the KERP (“**KERP Charge**”); and
 - The Monitor’s comments with respect to the Applicants’ efforts to develop a sales investment and solicitation process (“**SISP**”) and related procedures thereto (“**SISP Procedures**”).

6. This Report should be read in conjunction with the affidavit of Mike Woodward, sworn on February 20, 2024 (the “**First Woodward Affidavit**”) in support of the Initial CCAA Application and the affidavit of Mike Woodward, sworn on February 28, 2024 (the “**Second Woodward Affidavit**”) in support of the additional relief being sought at the Comeback Hearing.

TERMS OF REFERENCE

7. Capitalized terms used but not defined herein are given the meaning ascribed to them in the First Woodward Affidavit, Second Woodward Affidavit and the Initial Order.

8. In preparing this Report, the Monitor has relied upon unaudited financial information, other information available to the Monitor and, where appropriate, the Applicants' books and records and discussions with various parties (collectively, the "**Information**").
9. Except as described in this Report:
 - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*;
 - (b) the Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*; and
 - (c) future oriented financial information reported or relied on in preparing this Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
10. The Monitor has prepared this Report in connection with the Applicants' Comeback Hearing. This Report should not be relied on for other purposes.
11. Information and advice described in this Report that has been provided to the Monitor by its legal counsel, McCarthy Tétrault LLP (the "**Monitor's Counsel**"), was provided to assist the Monitor in considering its course of action, is subject to solicitor client privilege, not intended as legal or other advice to, and may not be relied upon by, any other person.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

BACKGROUND INFORMATION

13. Lynx Holdco (formerly, “**Enerjet Holdco Inc.**”) was incorporated under the *Alberta Business Corporations Act* on December 17, 2018 and is the 100% parent of Lynx Opco, a corporation incorporated under the laws of Alberta.
14. The Applicants operate a Canadian ultra-low-cost carrier (“**ULCC**”) airline under the trade name “Lynx Air” through a fleet of nine leased Boeing Model 737 MAX 8 aircraft (the “**Fleet**”).
15. As more fully described in the First Woodward Affidavit, a significant increase in jet fuel over the past number of years combined with a delay of almost 3 three years in operating its inaugural flight due to COVID-19 related travel restrictions and the grounding of the Boeing 737 MAX 8 aircraft in March 2019 has resulted in significant operational and financial challenges for the business.
16. The Company operates its business out of Calgary, Alberta. As at December 31, 2023, the Applicants employed approximately 500 employees in Alberta and Ontario. As at February 1, 2024, the Applicants had 19 independent contractors, retained through a number of holding corporations or agencies. Some of the Applicants’ employees, pilots and cabin crew employees, recently unionized.
17. As at December 31, 2023, the Applicants had current assets of \$53.3 million, non-current assets of \$375.7 million and total liabilities of \$599.9 million. A detailed break-down of the assets and liabilities is provided in the First Woodward Affidavit.
18. The main assets as at December 31, 2023, include:
 - (a) the Fleet which includes nine leased Boeing Model 737 MAX 8 aircraft. The Applicants also have three leased CFM LEAP-1B25 spare engines (“**Spare Engines**”). The Fleet and the Spare Engines are capitalized leases recorded as property plant and equipment on the Applicants’ balance sheet; and

- (b) as set out at paragraph 40 of the First Woodward Affidavit, an agreement with the Boeing Company (“**Boeing**”) to purchase 40 737 MAX aircraft over the next 6 years (the “**Boeing Agreement**”). The Boeing Agreement is not reflected in the Applicants’ financial statements however is considered by the Company and the Monitor to have significant value.

19. A summary of the Applicants’ secured liabilities is provided below:

(a) the main secured obligations include:

- approximately \$93.5 million in aggregate principal owed to Indigo pursuant to six secured promissory note agreements, as more fully described in the First Woodward Affidavit;
- approximately \$344.8 million with certain aircraft lessors (“**Aircraft Lessors**”) pursuant to:
 - nine 12-year aircraft lease agreements for the Fleet; and
 - three engine lease agreements for three CFM LEAP-1B25 spare engines.

(collectively, the “**Aircraft Leases**”).

- secured obligations of \$5.9 million pursuant to a series of Assignment of Deposit Certificates (the “**Assignment Certificates**”) between ATB Financial (“**ATB**”) and Lynx Opco dated between May 2020 and November 2023 to stand as security for Letters of Credit and credit cards issued by ATB.

(b) unsecured obligations total approximately \$72.4 million, including:

- approximately \$26.6 million owing to the Canada Border Services Agency (“CBSA”) in respect of GST incurred on importation of six aircraft and 3 engines into Canada. Approximately \$25.5 million of the above is subject to a payment arrangement with Canada Revenue Agency dated November 7, 2023 as further described at paragraph 75 of the Second Woodward Affidavit; and
- unsecured obligations owing to various trade creditors, various airports in Canada, the United States and Mexico and employee termination/severance pay obligations.

ACTIVITIES SINCE INITIAL FILING DATE

20. Upon the granting of the Initial Order, the Applicants commenced an expedited wind-down of its flight operations which contemplated operating scheduled flights for a period of four days, from the Initial Filing Date to the end of day on February 25, 2024 (the “**Operating Period**”). The short-term continuation of operations during the Operating Period attempted to minimize disruption to customer’s immediate travel plans and provide a short period for passengers travelling after February 25, 2024, to make alternative travel arrangements.
21. The Monitor worked in consultation with the Applicants’ management and critical operations staff in an attempt to ensure essential services could be procured and flight crews were available to operate the scheduled flights during the Operating Period with as little disruption as possible.
22. Subsequent to the Initial Order, the Applicants’ cancelled all flights scheduled from February 25, 2024, onward. Upon granting of the Initial Order, the Applicants immediately arranged for prepayment for post-filing services relating to the ongoing operations scheduled during the Operating Period, as was contemplated in the cash flow projection attached as Exhibit “41” to the First Woodward Affidavit.

23. While having sufficient funding in place to provide post-filing services during the Operating Period, certain suppliers refused or delayed providing services post-filing. Due to the quick turn around of flights, it was not possible to return to Court to have suppliers compelled to provide service and given the unique nature of airline operations, it was not possible, at times, to find alternative vendors on a timely basis. Accordingly, certain flights scheduled during the Operating Period were cancelled as a result of supplier/contractual counterparties refusing to provide service.
24. At the completion of Operating Period, approximately 64 of 115 scheduled flights were safely flown carrying approximately 10,000 passengers and 51 flights had to be cancelled. A large portion of the cancelled flights related to US destinations which experienced significant supplier issues. All US flights were cancelled early in the Operating Period to ensure passengers did not experience disruptions at the airport, to ensure crew safety and to ensure the Fleet was secured.
25. The Monitor observed the Applicants' management, operations staff and flight crews working 24 hours a day during the Operating Period to safely fly scheduled flights and transport as many passengers as possible. The Monitor recognizes the significant difficulties faced by many of the Applicants' customers caused by the CCAA filing; however, the Monitor commends the efforts of the Applicants' employees during this highly volatile and time sensitive situation to successfully complete as many flights as possible under the circumstances.
26. At the end of the Operating Period, the entire Fleet was returned to the Calgary International Airport ("YYC"). The Applicants arranged for temporary secured storage at YYC for the Fleet and ensured that the Fleet was maintained in accordance with the Aircraft Leases.
27. Due to the CCAA Proceedings and the expedited wind-down of flight operations, a large portion of the employees employed on Initial Filing Date were no longer necessary for ongoing operations. Accordingly, the Applicants commenced staff terminations shortly after the granting of the Initial Order. Since the filing date approximately 435 employees have been terminated. The Monitor has notified terminated employees of the existence of the Wage Earner Protection

Program (“**WEPP**”) and is working with the Applicants and terminated employees to coordinate filing claims under the WEPP.

28. A small skeleton team of 15 employees is being retained to ensure the Fleet is maintained in airworthy condition, maintain the Airline Operating Certificate, to assist in the administration of these CCAA proceedings, including processing passenger refunds, and assist in the continued restructuring efforts, which includes launching the proposed SISP, as discussed in further detail below.
29. Since the Initial Filing Date, the Monitor prepared and issued the required notices under the CCAA and Initial Order including:
- (a) issuing the notices to creditors referenced in paragraph 44 of the Initial Order and posting the notice on the Monitor’s website;
 - (b) coordinated the publishing of a creditor notice in the *Calgary Herald* on February 27 and March 5, 2024 and *The Globe & Mail* on February 28 and March 6, 2024; and
 - (c) issuing Form 1 and 2 notices to the Office of the Superintendent of Bankruptcy in the prescribed form as required under section 23(1)(f) of the CCAA.
30. The Monitor has participated in ongoing discussions with Management, the Applicants’ legal counsel, counsel to the Interim Lender regarding the Applicants’ business and financial affairs and plan for the CCAA Proceedings.

CAPE TOWN CONVENTION

31. The Monitor is aware of the Cape Town Convention (the “**CTC**”) and its Aircraft Protocol (the “**Protocol**”). The CTC is an international treaty intended to standardize transactions involving movable property including high-value aviation assets, namely airframes, aircraft engines and

helicopters which, by their nature, have no fixed location. The Fleet and the Aircraft Leases would fall within the CTC and Protocol.

32. Canada ratified the CTC in December 2012, and the treaty came into effect on April 1, 2013, including the province of Alberta. Canada has declared applicable Alternative A under Article XI of the Protocol (remedies on insolvency) (“Alternative A”). Canada has implemented the treaty, including Alternative A, on a federal level through an Act to implement the CTC on International Interests in Mobile Equipment and the Protocol to the CTC on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment of 14 December 2012 (the “**CTC Implementation Act**”).
33. The commencement of the Lynx Air CCAA Proceedings constitutes an insolvency-related event under the Protocol and triggers application of Alternative A (“Alternative A”) in relation to aircraft equipment to which the CTC applies.
34. Alternative A sets out a 60-day waiting period (“**60 Day Waiting Period**”) with respect to the Fleet and the Aircraft Leases whereby the Applicants would have 60 days to either:
 - (a) cure all defaults and agree to perform future obligations under the Aircraft Leases; or
 - (b) come to a consensual agreement with the Aircraft Lessors.
35. If after the 60 Day Waiting Period, the above conditions are not met the Aircraft Lessor would have the right to repossess the aircraft. The Applicants’ 60 Day Waiting Period expires on April 22, 2024.
36. The CTC and the Protocol are important as it influences the treatment of the Fleet and Aircraft Lessors throughout the CCAA Proceedings including the timelines and procedures of the proposed SISP and storage/security of the Fleet during, both described in more fully below.

37. During the 60 Day Waiting Period the Applicants intend to preserve the Fleet by:
- (a) ensuring that the Fleet is stored in accordance with the Aircraft Leases;
 - (b) monitoring the stored Fleet with retained employees of Lynx Air;
 - (c) completing required ongoing maintenance in accordance with the maintenance manuals for each aircraft of the Fleet; and
 - (d) maintaining adequate insurance over the Fleet in accordance with pre-existing policies.
- (collectively the “**Preservation Work**”).

CREDITOR & CONTRACT COUNTERPARTY CORRESPONDENCE

38. Since the Initial Filing Date, the Applicants and the Monitor have had discussions with many creditors and contract counterparties. The below summarizes discussions with certain significant stakeholder groups.

Elavon Canada Company

39. Elavon Canada Company (“**Elavon**”) is the Company’s credit card processing company. When customers booked airline tickets with Lynx Air, Elavon held the cash until the booked flight was flown. After the flight was flown, Elavon would release 50% of the ticket price on the date of the flight and 50% six days after the flight. If a flight was cancelled and a ticket refunded, the funds being held by Elavon would be refunded to the customer. Since the CCAA Proceedings commenced, Elavon has not released any of the held funds to the Applicants despite 64 flights be flown post-filing. Elavon has advised that they need to complete a reconciliation and understand the magnitude of refund and chargebacks requests prior to releasing any funds to the Applicants.

40. The Monitor, Elavon and the Applicants have had initial discussions and have agreed to work collectively to complete the reconciliation as soon as possible. Due to this process, the Cash Flow Statement has been adjusted to assume a delay in the receipt of funds from Elavon with no receipts assumed within Forecast Period for the Operating Period.

Certain Aircraft Lessors

41. Certain Aircraft Lessors have contacted the Applicants requesting confirmation and clarification of the Applicant's intentions with respect to the Fleet and the Aircraft Leases during the 60 Day Waiting Period and whether the Applicant would agree to the return of the leased aircraft.
42. The following summarizes the Applicants responses to date:
- (a) the Fleet will be securely stored and maintained during the 60 Day Waiting Period. The Fleet is currently located at YYC;
 - (b) the Cash Flow Statement approved by the Interim Lender has sufficient funding to pay for insurance, storage and the Preservation Work;
 - (c) the Fleet would not be returned by the Applicants during the 60 Day Waiting Period, as discussed in further detail below, the Applicants are considering steps to launch a SISP which may include seeking to assign the Aircraft Leases;
 - (d) based on the results of the SISP, the Applicants intend to make a decision prior to the expiration of the end of the 60 Day Waiting Period under the CTC as to whether to bring the leases current or return the Leased Aircraft, if consensual alternative arrangements are not reached;
 - (e) the Applicant confirmed that the Court ordered Charges do not and will not prime the Aircraft Lessors' interests in the Fleet and that the requirement in the Interim Financing Facility, which was approved by the Court on February 22, 2024, that the Interim Lender

Charge have priority over the Aircraft Lessors' interests has been waived by the Interim Lender; and

- (f) the Company does not intend to pay post-filing lease payments during the 60 Day Waiting Period and the Fleet will not be operational.

Airport Authority

43. Upon completion of the Operating Period, the Fleet was stored in Calgary at YYC. Subsequent to the commencement of the CCAA Proceedings, a dispute between the Applicants and the Calgary Airport Authority (the "CAA") arose with respect to storage costs of the Fleet.
44. The Applicants' view was that costs associated with storage of the Fleet would fall under the existing Long Term Charges Agreement ("Agreement") between the CAA and Lynx Air, dated April 7, 2022, which set out 'Apron Usage Fees' at \$117.70 per plane per day. The CAA's position was that the go-forward storage costs were not covered under the Agreement and provided a new proposed agreement that stated a storage fee of \$2,000 per plane per day for storage.
45. The Company's Counsel sent a letter to the CAA on February 25, 2024, advising of the CCAA Proceedings and that the Initial Order restrains counterparties from discontinuing, altering interfering with, suspending or terminating the supply of goods and services that may be required by the Applicants and that the request for \$2,000 per plane per day is a breach of the Initial Order.
46. The CAA's position is that it is not in breach of the CCAA Order and that the \$2,000 per plane per day rate is market and the newly requested storage is not included in the Agreement. The Company's counsel received a letter on February 26, 2024, from counsel to the CAA, attached as Appendix "A", advising the Applicants that they disagreed with the Applicants' position in respect of storage rates and to either immediately consent to all terms, including rates proposed by the CAA or collect all aircraft from the YYC by the end of day on Tuesday, February 27, 2024.

47. Discussions continued between the Applicants and the CAA in attempt to resolve the disagreement and the CAA subsequently offered a revised long-term storage fee of \$1,250 per plane per day and verbally agreed to allow the Fleet to remain at the YYC until March 1, 2024. The Applicants and the CAA are currently documenting the verbal understanding for the short-term rental period until March 1, 2024.

FLEET RELOCATION

48. The Applicants were in the process of evaluating various locations to move the Fleet due to the CAA's requirement for Lynx Air to vacate the "collect all aircraft from the Airport Authority by the end of the day on Tuesday, February 27, 2024", which was verbally extended to March 1, 2024. Various options were researched by the Applicants including the Red Deer airport, Lethbridge airport and the Edmonton International airport; however, these airports were not able to accommodate the Fleet (9 aircraft).
49. While the Applicants continued to evaluate alternative storage options on February 27, 2024, certain of the Aircraft Lessors' counsel contacted the Monitor and the Applicants and offered concessions and inducements to the Applicants (as set out below) in return for the Applicants agreeing to relocate the Fleet to the Tucson Arizona area. The Monitor understands Arizona has large areas specializing in aircraft storage and that the hot dry, desert climate is ideal for aircraft storage as it that prevents corrosion and the need for additional freeze prevention maintenance that is required in colder climates.
50. Based on its evaluation and after discussion with the Aircraft Lessors, the decision was made to relocate the Fleet to the Tucson Arizona area. On February 28th, the Applicants commenced internal logistical arrangements as well as coordinating with the Aircraft Lessors in order to make arrangements to move the Fleet on February 29, 2024, and has notified the CAA of the intention to vacate YYC by March 1, 2024.

51. The Aircraft Lessors and the Applicants have had discussions and are completing documentation with respect to the terms on which it would relocate of the Fleet, including:
- (a) the Aircraft Lessors would fund costs related to the transportation, Preservation Work and storage in exchange for agreeing to move the Fleet;
 - (b) the Aircraft Lessors agree to abide by the stay of the Initial Order and not amend or terminate the terms of their respective leases; and
 - (c) the Aircraft Lessors agree for the Aircraft Leases to be included in the SISP, and that any eventual assignment of the Aircraft Leases would be subject to the consent of the Aircraft Lessors, and that the Lessors will engage in good faith negotiation for the assignment of the Leases to a third party that may be identified through the SISP.
52. At the date of this report, neither the Monitor, nor the Applicant, are aware of any steps being taken to lift the stay and commence any enforcement action by any Canadian Airport Authority or Nav Can.
53. The Monitor supports the Applicants' decision to commence relocation of the Fleet given the following:
- (a) the Applicants urgently evaluated other locations to store the Fleet, however, no appropriate storage areas were identified;
 - (b) having the Aircraft Leases included in the SISP will be beneficial to the overall likelihood of a successful SISP for reasons including the Aircraft Leases and the CTC provide that any assignment of an aircraft lease cannot be completed without consent of the Aircraft Lessors;
 - (c) Arizona is an optimal venue for the storage of the Fleet;

- (d) funding by the Equipment Lessors of ongoing storage and maintenance cost will significantly reduce the amounts required to be funded by the Interim Lender; and
- (e) the CAA demanded the Applicants move the Fleet from the YYC by February 27, 2023 (subsequently verbally agreed to extend to March 1, 2024).

CASH FLOW STATEMENT

54. The Applicants, with the assistance of the Monitor, have prepared the Cash Flow Statement to set out the liquidity requirements of the Applicants during the Forecast Period. The Cash Flow Statement and management's report on the cash-flow statement as required by section 10(2)(b) of the CCAA are attached hereto as Appendix "B". The Cash Flow Statement is summarized in the following table:

(C\$ 000s)		
For the period of February 22 to April 15, 2024		
	Notes	Total
Receipts		
Revenue	1	\$ 2,041
Total - Receipts		2,041
Disbursements		
Payroll and employee related obligations	2	(2,835)
SG&A expense	3	(1,883)
Operating costs	4	(2,045)
Professional fees	5	(1,410)
PDP Commitment fees	6	(1,200)
KERP	7	(734)
Airport Improvement Fees	8	(296)
Maintenance reserves	9	(110)
Interim Facility - Interest and fees	10	(39)
Lease payments / deferrals	11	-
Total - Disbursements		(10,552)
Net change in cash		(8,511)
Opening cash		3,920
Interim Facility - Draw (repayment)	12	5,013
Ending Cash		\$ 422
Interim Facility		
Opening		\$ -
Draw (repayment)		5,013
Ending Interim Facility		\$ 5,013

55. The Cash Flow Statement indicates that during Forecast Period (period ending on April 15, 2024), the Applicants will have net cash requirements of approximately \$8.5 million comprising cash receipts of approximately \$2.0 million less total disbursements of \$10.6 million.
56. The Cash Flow Statement has opening cash of \$3.9 million and total draws on the Interim Facility of approximately \$5.0 million, with ending cash of \$0.4 million.
57. The Cash Flow Statement is based on the following key assumptions:
- (a) Revenue includes amounts received from Elavon for flights flown prior to the Initial Filing Date. Additional amounts are expected to be collected for flights flown up to and including February 25, 2024 (during the Operating Period), but not are not included in the Forecast Period;
 - (b) Payroll and employee related obligations includes amounts owing to employees for salaries and wages up to the date of termination and includes estimated amounts for the employees required to assist in the CCAA Proceedings during the Forecast Period;
 - (c) SG&A expense includes continued insurance premiums, ongoing maintenance and storage of the Fleet, IT and ongoing software costs to maintain access to the Applicants systems, and other costs associated with the Applicants office required during the CCAA Proceedings;
 - (d) Operating costs include fuel, navigation fees, terminal fees, deicing and ground handling services provided for flights operating during the Operating Period;
 - (e) Professional fees including the Monitor, the Monitor's Counsel, the Applicants' counsel and counsel to the Interim Lender;

- (f) Pre delivery payments (“**PDP**”) commitment fees related to the financing of 2024 aircraft deliveries;
- (g) KERP includes amounts proposed to be paid to assist during the CCAA Proceedings, subject to approval of this Honourable Court;
- (h) Airport Improvement Fees paid for flights during the Operating Period;
- (i) Maintenance reserves relate to estimated prorated amounts owing under the Aircraft Leases for the period after the Initial Filing Date;
- (j) Interim Facility includes amounts borrowed from the Interim Lender under Term Sheet to fund the cost of the CCAA Proceedings. The Applicants are seeking to increase the maximum amount under the Interim Facility to approximately \$5.0 million (to be denominated in USD). As at the date of this Report approximately \$1.0 million has been drawn under the Interim Facility; and
- (k) the Monitor notes that no amounts are contemplated to be paid to the Aircraft Lessors under the Aircraft Leases (other than pro-rated maintenance reserves after the date of the Initial Order) in the Cash Flow Statement during the 60 Day Waiting Period.

Monitor's Comments on the Cash Flow Statement

- 58. Section 23(1)(b) of the CCAA states that the Monitor shall, “review the company’s cash-flow statement as to its reasonableness and file a report with the court on the Monitor’s findings”.
- 59. Pursuant to section 23(1)(b) of the CCAA, and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports as follows:

- (a) the Cash Flow Statement has been prepared by management of the Applicants for the purpose described in the notes to the Cash Flow Statement, using the probable assumptions and the hypothetical assumptions set out therein; and
 - (b) the Monitor's review consisted of inquiries, analytical procedures and discussion related to information supplied by certain of the management and employees of the Applicants. Since hypothetical assumptions need not be supported, the Monitor's procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the Cash Flow Statement. The Monitor has also reviewed the information provided by Management in support of the probable assumptions and the preparation and presentation of the Cash Flow Statement;
60. Based on its review, and as at the date of this Report, nothing has come to the attention of the Monitor that causes it to believe that, in all material respects:
- (a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow Statement;
 - (b) the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow Statement, given the hypothetical assumptions; or
 - (c) the Cash Flow Statement does not reflect the probable and hypothetical assumptions;

- (d) since the Cash Flow Statement is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Cash Flow Statement will be achieved. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information present in this Report, or relied upon by the Monitor in preparing this Report; and
- (e) the Cash Flow Statement has been prepared solely for the purpose of estimating liquidity requirements of the Applicants during the Forecast Period. The Cash Flow Statement should not be relied upon for any other purpose.

RELIEF SOUGHT IN THE AMENDED AND RESTATED INITIAL ORDER

Increase of the Interim Facility

61. As demonstrated by the Cash Flow Statement, the Applicants are in need of additional liquidity and is therefore seeking approval for an increase of the Interim Facility and corresponding Interim Lender's Charge.
62. The Monitor has reviewed the terms of the Interim Facility which include, among others, the following:
- (a) **Interim Lender's Charge:** it is a condition of the Interim Lender's Charge that it must have been granted in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, subject only to the Administration Charge and to the security the Aircraft Leases hold over the Fleet. Initially the Interim Facility contemplated priming Aircraft Leases for amounts after the initial advance; however, after further discussions between the Monitor, the Applicants and the Interim Lender the Interim Lender has waived this condition;

- (b) **Term:** the Interim Facility will be available until the earlier of (i) the occurrence of any Event of Default under the Interim Facility which is continuing and has not been cured; (ii) the implementation of a plan of compromise or arrangement within the CCAA Proceedings which has been approved by the requisite majorities of the Credit Parties' creditors and by an order entered by the Court; (iii) the closing of a Court-approved Sale within the CCAA Proceedings which has been approved by orders entered by the Court; (iv) conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act (Canada)* ("**BIA**"); and (v) April 15, 2024 (the earliest of such dates being the "**Maturity Date**").
- (c) **Interest:** Interest will accrue on the principal amounts outstanding under the Interim Facility at a rate equal to 20% per annum; and
- (d) **Additional Fees:** an upfront fee of 3% of the total amount of the Interim Facility and the Applicants shall pay all of the Interim Lender's out of pocket disbursements and any costs of realization or enforcement related to the Interim Facility.
- (a) the Applicants require access to the Interim Facility to, among other things, provide liquidity to fund its wind-down, preserve the Fleet and progress its restructuring efforts including launching of the SISP.

63. In the Monitor's view:

- (a) the financing contemplated by the Interim Facility is necessary to fund the wind-down of the Applicants' operations, preservation of the Fleet and its restructuring efforts. The Interim Facility will assist in preserving asset value and enhance the Applicants' prospect of achieving a viable restructuring or sale. Absent the funding available under the Interim Facility, Lynx Air would be forced to cease its restructuring efforts due to lack of liquidity; and

- (b) the Monitor reviewed a database of approximately 140 interim financings approved in insolvency proceedings and can advise that proposed terms (interest rate, fees, etc.) contemplated in the Interim Facility are customary and reasonable compared to those approved in prior CCAA restructurings.
64. The Monitor notes that the cost of the Interim Facility is considered on the higher end of the acceptable ranges, however, the Monitor believes it to be appropriate in the circumstance given:
- (a) the interest rate of the Interim Facility is consistent with the interest rate charged on recent bridge loans advanced to the Applicants by the Interim Lender in the period leading up to the Initial Order (as described in the First Woodward Affidavit);
 - (b) the Interim Lender is also the most significant secured creditor and the most logical party to advance funding; and
 - (c) in the Monitor's view, it is unlikely that the Applicants could secure alternative financing to fund these proceedings.
65. Overall, the Monitor supports the Applicants request to increase the Interim Facility for the following reasons:
- (a) it does not materially prejudice any existing stakeholders and that the increase to the Interim Facility and the Interim Financing Charge to \$5 million is necessary for the funding of the Applicants' wind-down, asset preservation and restructuring efforts.
 - (b) absent the funding available under the Interim Facility, the Applicants would be forced to cease its efforts which would have a substantial and prejudicial negative impact on recoverable value to creditors. Therefore the Interim Facility will enhance the prospects of a restructuring or value maximizing sale.

- (c) the Applicants appear to have the support of the major stakeholders as evidenced by Indigo's support of the CCAA Proceedings and willingness to provide the Interim Facility.

Sales Investment and Solicitation Process

- 66. With the completion of the flights during the Operating Period, the Applicants are now focusing on its restructuring efforts. While the Applicants have no ongoing operations, there are several assets that may have significant value, including:
 - (a) the assignment of the Aircraft Leases related to the Fleet;
 - (b) the sale/assignment of the Boeing Agreement; and
 - (c) other assets and intangibles.
- 67. Prior to the commencement of CCAA Proceedings, the Applicants had been approached and/or held discussions with various parties that expressed interest in Lynx Air and its assets. Accordingly, the Applicants worked with the Monitor to develop a SISP to solicit interest in purchasing or investing into the Applicants' businesses and assets.
- 68. The development of a SISP and SISP Procedures for the Applicants' Property has certain complexities, specifically given the confidential nature of the information that prospective bidders would require to actively participate in the process.
- 69. The Applicants and the Monitor have had, and are continuing, discussions with the Aircraft Lessors and Boeing (and respective counsel) with respect to establishing appropriate protections and protocols to maintain the confidentiality of information that would be provided to bidders in the SISP in exchange for the Aircraft Lessors and Boeing agreeing to disclose their respective agreements to prospective bidders.

70. The Applicants are seeking approval of the SISP, which sets out the manner in which prospective bidders can participate in the SISP for the purchase of the assets of Lynx Air, including the Aircraft Leases, the Boeing Agreement, or other assets.
71. The Monitor advises that the key components of the proposed SISP includes the following:
- (a) the SISP shall be conducted by the Company, in consultation with the Monitor, to solicit interest in, and opportunities for, a sale of, or investment in, all or part of the Applicants' business or Property (the "**Opportunity**");
 - (b) the main assets being marketed will be the Boeing Agreement and the Aircraft Leases;
 - (c) as soon as practicable Lynx Air, with input from the Monitor, will prepare a list of potential bidders (the "**Pre-Qualified Known Potential Bidders**") who may have interest in the Opportunity;
 - (d) the Applicants and the Monitor discuss with Boeing and the Aircraft Lessors to pre-qualify the Know Potential Bidders ("**Pre-Qualified Known Potential Bidders**");
 - (e) the Monitor will send a package to the Pre-Qualified Known Potential Bidders which includes (i) a process summary ("**Teaser**"); and (ii) a non-disclosure agreement ("**NDA**");
 - (f) the Monitor will make a virtual data room ("**VDR**") available containing due diligence materials including the Aircraft Leases, the Boeing Agreement and other assets;

- (g) the timelines proposed in the SISP will need to take into account the requirements of the CTC and the Protocol and in particular the 60 Day Waiting Period. The preliminary targeted key dates of the proposed SISP are as follows:

Event	Target Date
Approval of the SISP and Bidding Procedures by the Court	March 1, 2024
Monitor and Lynx Air to create list of Pre-Qualified Known Potential Bidders	March 1, 2024
Monitor to prepare and have available for Potential Bidders the Data Room	By no later than March 4, 2024
Monitor to distribute Teaser and NDAs to Pre-Qualified Known Potential Bidders	By no later than March 8, 2024
Binding Bid Deadline	By no later than April 1, 2024, at 5:00 p.m.
Auction (if required)	By no later than April 5, 2024, at 5:00 p.m.
Definitive documentation	By no later than April 7, 2024
Approval Application – Successful Bid(s), if required	By no later than April 10, 2024
Outside Date - Closing	April 12, 2024

72. The Applicants and Monitor will discuss the SISP with the Aircraft Lessors and Boeing, and their respective legal counsel, and will continue to refine the specific details of the SISP including the confidentiality provisions. The Monitor shall post on the Monitor’s website, as soon as practicable, any such modification, amendment, variation or supplement to the Bidding Procedures and Lynx Air or the Monitor shall inform the bidders impacted by such modifications.
73. The Applicants, in consultation with the Monitor and the Interim Lender, may at any time and from time to time, modify, amend, vary or supplement the SISP or the Bidding Procedures, without the need for obtaining an order of the Court.

74. Given the limited liquidity and the 60 Day Waiting Period, the Monitor's view is that SISP and SISP Procedures should be approved and the SISP launched as quickly as practical.

Extending the Stay Period

75. The Applicants are seeking an extension to the Stay Period up to and including April 15, 2024. The Monitor has considered the Applicants' application for the extension of the Stay of Period, and has the following comments:
- (a) with an increase to the Interim Facility (as outlined above) the Applicants are projected to have sufficient available liquidity to fund its ongoing obligations and the costs of the CCAA Proceedings during the term of the proposed extension of the Stay of Proceedings;
 - (b) there will be no material prejudice to the Applicants' creditors and other stakeholders as a result of the extension of the Stay of Proceedings;
 - (c) the Applicants are acting in good faith and with due diligence;
 - (d) the overall prospects of the Applicants effecting a viable restructuring and/or sale will be enhanced by the extension of the Stay of Proceedings; and
 - (e) will provide sufficient time for the Applicants to commence the SISP and continue discussions the Aircraft Lessors regarding the Fleet prior to the expiration of the 60 Day Waiting Period.

Administration Charge

76. The Initial Order provides an Administration Charge of up to \$500,000 covering the period until the Comeback Hearing charging the assets of the Applicants, in favour of the Monitor, the Monitor's counsel, and the Applicants' counsel as security for their professional fees and disbursements incurred both before and after the commencement of the CCAA Proceedings.

77. The Monitor has reviewed (i) the underlying assumptions upon which the Applicants have based the quantum of the proposed Administration Charge, (ii) the anticipated complexity of the CCAA Proceedings and the services to be provided by the beneficiaries of the Administration Charge, and (iii) is of the view that the proposed quantum of the Administration Charge is reasonable and appropriate in the circumstances.
78. The Proposed Monitor believes it is appropriate for the beneficiaries to be afforded the Administration Charge as they will be undertaking a necessary and integral role in the CCAA Proceedings.

Directors and Officers Charge

79. The Initial Order provides for the charge over the Applicants' property in favour of the directors and officers of the Applicants as security for the indemnity contained in the Initial Order in respect of specified obligations and liabilities that the directors and officers may incur after the commencement of the CCAA Proceeding. The Directors' Charge will not exceed an aggregate amount of \$500,000.
80. As described in the First Woodward Affidavit, the Applicants maintain certain insurance coverage for the directors and officers, but the deductibles and exclusions from the policies mean that the insurance may not fully cover the potential statutory liabilities of the beneficiaries of the Directors' Charge. Additionally a \$2,000,000 irrevocable trust ("**Lynx Air D&O Trust**") was established on September 20, 2023, to protect the Applicants directors and officers from potential claims. The Monitor notes that the directors and officers will only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any existing insurance policy, not covered by the Lynx Air D&O Trust, or to the extent that such coverage is insufficient to pay amounts for which the directors and officers are entitled to be indemnified pursuant to the provisions of the Initial Order.

81. The Applicants' directors and officers have the necessary background and knowledge that will be beneficial to the Applicants' efforts to preserve value and maximize recoveries for stakeholders through completion of the CCAA Proceedings.
82. Given the nature of the industry and the large number of employees the Monitor is of the view that the amount of the Directors' Charge is reasonable in relation to the quantum of the estimated potential liability of the Applicants' directors and officers.

Key Employee Retention Plan and Key Employee Incentive Plan

83. The Applicants are seeking the Court's approval of a key employee retention plan ("**KERP**"). The KERP proposes a payment of up to a maximum aggregate amount of \$1.2 million (the "**KERP Payment**") to twelve employees and three executives (the "**KERP Employees**").
84. The KERP is structured as follows:
- (a) each of the 12 employees will receive their respective KERP Payment payable on the earlier of the termination of their employment (except in the case of termination for cause) or the end of these CCAA Proceedings;
 - (b) two of the three executives will receive their respective KERP Payment payables in two installments: (i) 50% payable upon the successful completion of a transaction, and (ii) 50% payable on the earlier of the termination of their employment or the end of the CCAA Proceedings;
 - (c) one of the three executives will receive their respective KERP Payment payable on the earlier of the termination of their employment (except in the case of termination for cause) or the end of these CCAA Proceedings
85. The Monitor has reviewed the KERP and is of the view that its terms are reasonable based on the following:

- (a) the wind-down of airline operations is a complicated scenario and requires highly specialized expertise. The Fleet also requires ongoing care and specialized maintenance to preserve its value while the Applicants undertake their restructuring efforts. The KERP Employees are integral in winding-down operations in an efficient manner and preserving value. There are no payments contemplated to employees for termination or severance pay nor are employees receiving any payments under their typical annual bonus plan. The KERP has been designed to incentive employees in lieu of receiving these amounts;
- (b) the KERP Employees are also integral in the launching and completion of the SISP;
- (c) the Monitor has reviewed the KERP Employee list and is satisfied that the list is appropriate and not unduly broad. The Monitor notes that the Applicants employed approximately 500 employees at the commencement of the CCAA Proceedings, staffing levels have been substantially reduced and a total of 15 have been included as KERP Employees;
- (d) the Monitor has consulted with Indigo, as a senior secured lender and the Interim Lender, regarding the nature and quantum of the KERP and understands that Indigo is supportive; and
- (e) the Monitor considers the quantum and extent of the KERP are reasonable in the circumstances.

Summary of the Proposed Rankings of the Court-Ordered Charges

86. If the ARIIO is granted, the Charges would have the following ranking:

- (a) First – the Administration Charge in the amount of \$500,000;

- (b) Second – the Interim Financing Charge in the amount of approximately \$5,013,000 (as same is denominated in USD); and
- (c) Third – the D&O Charge in the amount of \$500,000; and
- (d) Fourth – the KERP Charge.

87. The Monitor notes that the Initial Order and ARIO contemplate the Charges ranking junior to the Aircraft Lessors interest in the Fleet. Accordingly, the Monitor believes that the Charges, including their proposed quantum and ranking, are required and reasonable in the circumstances of these CCAA Proceedings in order to preserve the going concern operations of the Applicants maintain its enterprise value and, as a result, supports the granting of the granting of Charges as proposed by the Applicants.

CONCLUSIONS AND RECOMMENDATIONS

88. The Monitor is of the view that the relief requested by the Applicant pursuant to the Initial Order and the proposed ARIO is necessary, reasonable and justified in the circumstances. The ARIO and Stay of Proceedings will provide the Applicants with stability and the best opportunity to preserve value and maximize recoveries for its stakeholders.

89. The Monitor supports the relief being sought by the Applicants, including the proposed SISP. Accordingly, the Monitor respectfully recommends that the Applicants' request for the proposed ARIO be granted.

All of which is respectfully submitted this 28th day of February 2024.

FTI Consulting Canada Inc.,
Licensed Insolvency Trustee in its capacity as
Monitor of Lynx Air and not in its personal or
corporate capacity.



Name: Deryck Helkaa, CPA, CA, CIRP, LIT
Title: Senior Managing Director
FTI Consulting Canada Inc.



Name: Dustin Olver, CPA, CA, CIRP, LIT
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Appendix “A” – Letter from Calgary Airport Authority dated February 26, 2024

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February 26, 2024

DELIVERED VIA EMAIL [RVANDEMOSSELAER@OSLER.COM]

Osler, Hoskin & Harcourt LLP
 Brookfield Place, Suite 2700
 225 6 Ave SW, Calgary, AB T2P 1N2

Attention: Randal Van de Mosselaer

Dear Mr. Van de Mosselaer:

Re: In the matter of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (collectively, “Lynx” or the “Applicants”); Court File No. 2401-02664

Draft Temporary Storage Agreement (“Proposed Storage Agreement”) between Lynx and the Calgary Airport Authority (the “Airport Authority”)

We are counsel to the Airport Authority in respect of the above matter. We have been provided your letter to the Airport Authority of today’s date in respect of the Proposed Storage Agreement.

We understand that Lynx initiated discussions with the Airport Authority on or about February 22, 2024, in respect of mid or long term and non-operated storage of the Lynx aircraft in anticipation of your client’s scheduled cessation of its operating business. In this context, the Airport Authority prepared a comprehensive agreement setting forth important terms, including insurance requirements and risk allocations, as well as a proposed base fee of \$2,000 per day for storing each of Lynx’s aircraft.

Based on your letter, we understand that Lynx now believes it is instead entitled to pay only \$117 per day for aircraft storage under the Long Term Charges Agreement dated effective April 7, 2022 (the “LTA”). You further allege in your letter that the Airport Authority has committed a “clear, flagrant and willful breach of the terms of the [CCAA] Initial Order”.

We strongly disagree with these allegations. The LTA does not apply to the services now requested by Lynx and the rates proposed by the Airport Authority are commercially fair and appropriate in the circumstances. Our more detailed comments are as follows.

BACKGROUND

The Airport Authority and Lynx are parties to the LTA, which contemplates that Lynx will be granted certain landing and take-off and related rights at the Calgary International Airport (the “**Airport**”), in exchange for the payment of fees or charges to the Airport Authority.

The LTA does not contemplate that Lynx will be contractually entitled to store aircraft outside of normal operations.

First, this is clear from the definition of “Aeronautical Charges”, which you reference in your letter. For example:

- “Aeronautical Charges” is defined as “means the aggregate of the following charges applicable to Lynx Movements: Apron Usage Fees, CUTE Fees, General Terminal Fees, Landing Fees, Loading Bridge Fees, and Preclearance Fees; with all such charges being charged and payable at the applicable rates described in the version of the Tariff in effect at the date such charges are incurred” (Section 1.1(1)).
- “Lynx Movements” is defined as “means movements of aircraft landing at the Airport, which aircraft are operated by a Lynx Party, provided Lynx Movements shall not include any Charter Flights.” (Section 1.1(33)).

While the definition of “Aeronautical Charges” includes “Apron Usage Fees” (as you mention in your letter), that inclusion does not entitle Lynx to store aircraft on the Airport apron while Lynx is not operating. Aeronautical Charges, including Apron Usage Fees, all apply to Lynx’s *movement* and *landing* of aircrafts during *operations*.

Second, the Airport Authority’s Tariff of Aviation Fees as at January 1, 2024 (the “**Tariff**”), which you also refer to in your letter, makes clear the rates therein apply to normal operations. In particular, under the Tariff an Apron Usage Fee of \$117.70 is prescribed for Boeing 737-800 MAX aircraft. The fee of \$117.70 is payable on a per aircraft basis for each 24 hour period or portion thereof. The Tariff states that the aforementioned fee is assessed for “aircraft stopping or parking on aprons”. It does not apply to aircraft *storage* when operations have ceased.

Accordingly, despite assertions in your letter otherwise, the LTA, and the rates in the Tariff, including the Apron Usage Fee, apply only to Lynx’s use of the Airport in normal operations. The LTA and Tariff do not apply and cannot apply to Lynx storing its aircraft during restructuring proceedings under the *Companies’ Creditors Arrangement Act* (“**CCAA**”).

LYNX CCAA AND REQUEST TO STORE AIRCRAFT

Based on your client’s application materials for the Initial Order, we understand that Lynx intends to use the CCAA as a liquidation process. Your Bench Brief states, for instance, that Lynx will use the CCAA to “conclude the transaction that will allow an orderly wind down of operations...” (para 32).

In this context, Lynx requested from the Airport Authority the ability to store its aircraft at the Airport following its cessation of operations and pending the completion of a wind-down/ liquidation. In consideration for the requested storage, the Airport Authority requires a clear allocation of risks associated with such long term non-operated storage, and is further entitled to receive industry standard and commercially reasonable and fair compensation for the requested services. The rate proposed by the Airport Authority, of \$2,000 per aircraft per day, reflects competitive market rates.

Further, when Lynx operates in the normal course—that is by landing and taking off—Lynx would normally incur a host of fees in addition to apron usage fees under the LTA and Tariff. These fees include landing, terminal, bridge, preclearance and other usage fees. These fees, in aggregate, typically cost over \$5,000 each time one of Lynx’s Max 8 aircraft takes off and lands at the airport. The Apron Usage Fee of \$117.70 per day is an incidental in these circumstances, and is only commercially defensible in the context of normal operations. It is completely unreasonable as a stand alone storage fee. By analogy, daily parking for a passenger’s motor vehicle at the airport is \$39/day. It seems to go without saying that \$117.70 for a multimillion dollar aircraft is not a reasonable storage fee.

Finally, given the nature of the new storage services requested, and contrary to the flawed claims in your letter, Section 18 of the CCAA Initial Order has no application. Section 18 applies to existing services Lynx was contractually entitled to receive upon the commencement of the CCAA proceedings. It is *not*, nor is the CCAA more generally, a means by which Lynx can write new contracts for itself without the Airport Authority's consent.

Put differently, Section 18 cannot be a sword by a debtor company that seeks the protection of the CCAA, to extract new services at below market rates. A touchstone of the CCAA is fairness to all stakeholders. It would be highly unfair and prejudicial for Lynx to tie up large sections of the Airport Authority's runway and facilities, for potentially weeks or months, for fees that are closer to passenger parking rates than competitive aircraft storage facilities.

It follows that there can be no question of the Airport Authority being in "willful breach" of the CCAA Initial Order, and such baseless assertions are contrary to Lynx's statutory duty of good faith.

CONCLUSION

In light of the foregoing, the Airport Authority **immediately** requires as follows:


- a) Lynx's confirmation of its consent to all terms, including rates, in the Proposed Storage Agreement, and execution of the Proposed Storage Agreement, by end of day on Tuesday, February 27, 2024.
- b) Alternatively, for Lynx to collect all aircraft from the Airport Authority by end of day on Tuesday, February 27, 2024.

Please also (i) confirm that the undersigned and Mr. Madsen (copied) are added to your Service List for the within matter, and (ii) advise of the date of the next Court attendance and provide us copies of all application materials filed to date.

Should you have any questions, please contact the undersigned.

Yours truly,

BORDEN LADNER GERVAIS LLP



Jack R. Maslen

cc: Client
Deryck Helkaa, FTI Canada Consulting Inc. in its capacity as court-appointed monitor (via email)
David T. Madsen, K.C., Borden Ladner Gervais LLP (via email)

First Report of FTI Consulting Canada Inc.,
In its capacity as Monitor of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air

Appendix “B” – Cash Flow Statement for the period ending April 15, 2024

Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air
Consolidated Cash Flow Statement
For the period of February 22, 2024 to April 15, 2024

(C\$ 000s)											
For the period of February 22 to April 15, 2024											
Week Ending	Notes	Week 1 24-Feb	Week 2 2-Mar	Week 3 9-Mar	Week 4 16-Mar	Week 5 23-Mar	Week 6 30-Mar	Week 7 6-Apr	Week 8 13-Apr	Stub Week 9 15-Apr	Total
Receipts											
Revenue	1	\$ 2,041	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,041
Total - Receipts		2,041	-	-	-	-	-	-	-	-	2,041
Disbursements											
Payroll and employee related obligations	2	-	(2,406)	-	(174)	-	(139)	-	-	(116)	(2,835)
SG&A expense	3	-	(324)	(227)	(687)	(127)	(127)	(226)	(127)	(36)	(1,883)
Operating costs	4	(1,860)	(185)	-	-	-	-	-	-	-	(2,045)
Professional fees	5	-	-	(460)	-	-	-	(950)	-	-	(1,410)
PDP Commitment fees	6	-	(600)	-	-	-	(600)	-	-	-	(1,200)
KERP	7	-	-	-	-	-	-	-	-	(734)	(734)
Airport Improvement Fees	8	(296)	-	-	-	-	-	-	-	-	(296)
Maintenance reserves	9	-	-	-	(110)	-	-	-	-	-	(110)
Interim Facility - Interest and fees	10	-	-	-	-	-	(39)	-	-	-	(39)
Lease payments / deferrals	11	-	-	-	-	-	-	-	-	-	-
Total - Disbursements		(2,156)	(3,515)	(687)	(971)	(127)	(905)	(1,176)	(127)	(887)	(10,552)
Net change in cash		(116)	(3,515)	(687)	(971)	(127)	(905)	(1,176)	(127)	(887)	(8,511)
Opening cash		3,920	4,817	1,302	615	1,144	1,017	1,112	936	1,309	3,920
Interim Facility - Draw (repayment)	12	1,013	-	-	1,500	-	1,000	1,000	500	-	5,013
Ending Cash		\$ 4,817	\$ 1,302	\$ 615	\$ 1,144	\$ 1,017	\$ 1,112	\$ 936	\$ 1,309	\$ 422	\$ 422
Interim Facility											
Opening		\$ -	\$ 1,013	\$ 1,013	\$ 1,013	\$ 2,513	\$ 2,513	\$ 3,513	\$ 4,513	\$ 5,013	\$ -
Draw (repayment)		1,013	-	-	1,500	-	1,000	1,000	500	-	5,013
Ending Interim Facility		\$ 1,013	\$ 1,013	\$ 1,013	\$ 2,513	\$ 2,513	\$ 3,513	\$ 4,513	\$ 5,013	\$ 5,013	\$ 5,013



Per: Mike Woodward, CFO
Lynx Air

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

Notes and Assumptions to the Cash Flow Statement

For the period of February 22, 2024 to April 15, 2024 (the “**Forecast Period**”)

Disclaimer:

This cash flow statement (the “**Cash Flow Statement**”) has been prepared using unaudited financial information and the Monitor has not attempted to further verify the accuracy or completeness of such information.

The Cash Flow Statement is based on the probable and hypothetical assumption identified below.

Since the Cash Flow Statement is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Forecast Period will vary from the Cash Flow Statement, and such variation may be material. There is no representation, warranty or other assurance that any of the assumptions or estimates used in the Cash Flow Statement will be realized.

Overview:

The Cash Flow Statement includes estimated receipts and disbursements of Lynx Air during the Forecast Period. Lynx Air, with the assistance of FTI Consulting Canada Inc., in its capacity as Monitor, have prepared the Cash Flow Statement based primarily on estimated receipts and disbursements related to the CCAA proceedings. Receipts and disbursements are denominated in Canadian dollars (the foreign exchange conversion rate used to convert USD to CAD is 1.35).

1. **Revenue:** Lynx Air anticipates limited revenue receipts in the Forecast Period. When passengers booked airline tickets with Lynx Air, the Applicants’ credit card processing company retains the payment until the booked flight is flown. During normal operations, after the flight is flown, Lynx would receive 50% of the ticket price on the date of the flight and 50% approximately 6 days after the flight. The amounts in shown in the Week 1 relate to flights flown prior to the Initial Filing Date. Lynx Air and the credit card processing company are working diligently to reconcile the amounts owed during the Operating Period including refunds to customers for cancelled flights;
2. **Payroll and employee related obligations:** includes amounts owing to employees for salaries and wages up to the date of termination of their employment and estimated amounts for the employees required to assist in the CCAA Proceedings during the Forecast Period;

3. **SG&A expense:** includes, among other things, aircraft insurance premiums, information technology and software licenses to maintain access to the Applicants systems, bank fees and other miscellaneous costs;
4. **Operating costs:** includes fuel, navigation fees, terminal fees, deicing and ground handling services provided for flights during the Operating Period;
5. **Professional fees:** represents the fees and costs of the Monitor, the Monitor’s Counsel, the Applicants’ counsel and counsel to the Interim Lender;
6. **Pre delivery payments (“PDP”) Commitment Fees:** commitment fees relate to amounts owing for 2024 aircraft deliveries in accordance with the Aircraft Purchase Agreement;
7. **KERP:** relates to a retention plan proposed to be paid to key employees and executives for their assistance during the CCAA Proceedings, subject to approval of the Court;
8. **Airport Improvement Fees:** amounts paid for flights flown during the Operating Period;
9. **Maintenance reserves:** represents prorated amounts owing under the Aircraft Leases for the period after the Initial Filing Date and during the Operating Period;
10. **Interim Facility – interest and fees:** represents interest payable under the Interim Facility;
11. **Lease payments / deferrals:** no amounts are contemplated to be paid to the Aircraft Lessors under the Aircraft Leases during the 60 Day Waiting Period (other than pro-rated maintenance reserves after the date of the Initial Order); and
12. **Interim Facility:** represents draws under the Interim Facility to fund the cost of the CCAA Proceedings. The Applicants are seeking to increase the amount under the Interim Facility to approximately \$5.0 million. As at the date of this Report approximately \$1.0 million has been drawn under the Interim Facility.

February 28, 2024

FTI Consulting Canada Inc.
Suite 1610, 520 Fifth Avenue S.W.
Calgary, AB
T2P 3R7

Attention: Deryck Helkaa, CPA, CA, CIRP, LIT

Dear Sir:

**Re: Proceedings under the Companies' Creditors Arrangement Act ("CCAA")
Responsibilities/Obligations and Disclosure with Respect to Cash Flow Projections**

In connection with the application by Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba as Lynx Air (collectively, "**Lynx Air**" or the "**Applicants**"), for the commencement of proceedings under the CCAA in respect of Applicants, the management of Lynx Air ("**Management**") has prepared the attached Cash Flow Statement and the assumptions on which the Cash Flow Statement are based.

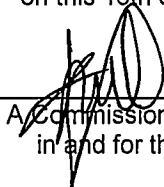
Management confirms that:

1. The Cash Flow Statement and the underlying assumptions are the responsibility of the Lynx Air;
2. All material information relevant to the Cash Flow Statement and to the underlying assumptions has been made available to FTI Consulting Canada Inc. in its capacity as Monitor; and
3. Management has taken all actions that it considers necessary to ensure:
 - a. That the individual assumptions underlying the Cash Flow Statement are appropriate in the circumstances; and
 - b. That the individual assumptions underlying the Cash Flow Statement, taken as a whole, are appropriate in the circumstances.



Mike Woodward
Interim Chief Financial Officer

This is **Exhibit "B"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024

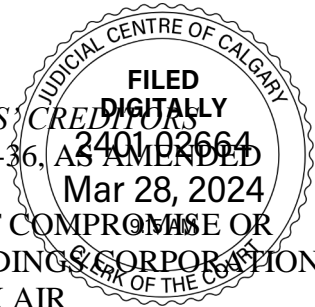


A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
in and for Alberta
My Commission Expires September 11, 2026

COURT FILE NUMBER 2401-02664
 COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS
 ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
 AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION
 and 1263343 ALBERTA INC. dba LYNX AIR



DOCUMENT **SECOND REPORT OF FTI CONSULTING CANADA INC.,
 IN ITS CAPACITY AS MONITOR OF LYNX AIR
 HOLDINGS CORPORATION and 1263343 ALBERTA INC.
 dba LYNX AIR**

March 27, 2024

ADDRESS FOR SERVICE AND
 CONTACT INFORMATION OF
 PARTY FILING THIS
 DOCUMENT

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COURT FILE NUMBER 2401-02664
 COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS
 ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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 IN ITS CAPACITY AS MONITOR OF LYNX AIR
 HOLDINGS CORPORATION and 1263343 ALBERTA INC.
 dba LYNX AIR**

March 27, 2024

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SECOND REPORT OF THE MONITOR

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Appendix “A” – Cash Flow Statement for the period ending April 15, 2024

INTRODUCTION

1. On February 22, 2024 (“**Initial Filing Date**”), Lynx Air Holdings Corporation (“**Lynx Holdco**”) and 1263343 Alberta Inc. dba Lynx Air (“**Lynx Opco**”, together with Lynx Holdco, “**Lynx Air**” the “**Applicants**” or the “**Company**”), sought and obtained an initial order (“**Initial Order**”) by the Court of King’s Bench of Alberta (“**Court**”) to commence proceedings (“**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”).
2. The Initial Order, among other things, established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants until March 4, 2024, and appointed FTI Consulting Canada Inc. as monitor (the “**Monitor**”) of the Applicants in these CCAA Proceedings;
3. On March 1, 2024, this Honourable Court granted an Amended and Restated Initial Order (the “**ARIO**”) which, among other things, provided the following relief:
 - (a) declared that the Applicants are companies to which the CCAA applies;
 - (b) authorized the Applicants to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”) and continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) or their Property;
 - (c) extended the Stay of Proceedings, until and including April 15, 2024, (the “**Stay Period**”), all proceedings, and remedies against the Applicants or its business or Property, except as otherwise set forth in the Initial Order or otherwise permitted by law;

- (d) granted a charge in favour of the Monitor, its legal counsel, and the Applicants' legal counsel in respect of their fees and disbursements in the amount of \$500,000 under section 11.52 of the CCAA (the "**Administrative Charge**");
- (e) granted a \$500,000 charge in favour of the Applicants' directors and officers ("**Directors' Charge**") as protection against obligations and liabilities that they may incur as directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of these CCAA Proceedings;
- (f) increased the amount available to the Applicants under an interim loan facility term sheet ("**Term Sheet**") with Indigo Northern Ventures LOP (the "**Interim Lender**" and "**Indigo**") from approximately \$1.0 million (US\$750,000) to approximately \$5.0 million (as same is denominated in USD, the "**Interim Facility**") and a corresponding increase to the court-ordered priority charge on the Property of the Applicants to secure the Interim Facility (the "**Interim Lender's Charge**");
- (g) granted a charge against the Applicants' Property for a key employee retention plan ("**KERP**") in the maximum amount of \$1.2 million (the "**KERP Charge**"); and
- (h) sealed the Confidential Affidavit of Michael Woodward in accordance with the terms of a restricted court access order granted by the Court; and
- (i) declared pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), S.C. 2005, c. 47, s.1 ("**WEPPA**"), that the Applicants and their former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations SOR/2008-222 (the "**WEPP Regulations**") and are individuals to whom the WEPPA applies as of the date of the Initial Order.

4. Also on March 1, 2024, this Honourable Court approved a sale and investment solicitation process (“**SISP**”) and granted an Order (the “**SISP Order**”) authorizing and directing the Applicants and the Monitor to implement the SISP in accordance with the terms thereof (the “**SISP Procedures**”).
5. On March 25, 2024, the Applicants filed and served a notice of application returnable on April 2, 2024, seeking:
 - (a) approval of a termination agreement and mutual release (the “**Termination Agreement**”) between The Boeing Company (“**Boeing**”) and Lynx Opco in respect of Purchase Agreement No. PA-04427 (the “**Boeing Purchase Agreement**”); and
 - (b) a restricted Court access Order (the “**Restricted Court Access Order**”) which would seal the confidential affidavit of Michael Woodward, sworn March 25, 2024 (the “**Confidential Woodward Affidavit**”), which contains an unredacted copy of the Termination Agreement.

(the “**April 2 Application**”)
6. Electronic copies of all materials filed by the Applicants in connection with the April 2 Application and other statutory materials are available on the Monitor’s website at: <http://cfcanada.fticonsulting.com/lynxair/>.

PURPOSE

7. The Monitor has reviewed the Court materials filed by the Applicants in support of the April 2 Application. The purpose of this report (this “**Report**”) is to provide this Honourable Court and the Applicants’ stakeholders with information and the Monitor’s comments with respect to the following:

- (a) the activities of the Monitor since its first report dated February 28, 2024 (the “**First Report**”);
 - (b) the status of the Applicants’ business and operations;
 - (c) the status of the SISP including discussions with specific contractual counterparties;
 - (d) the Applicants’ actual cash receipts and disbursements for the 5-week period ending on March 23, 2024, as compared to the cash flow statement presented to this Honourable Court attached to the First Report;
 - (e) the Applicants updated cash flow statement (the “**Second CFS**”) for the period of March 24, 2024, to April 15, 2024 (the “**Forecast Period**”) as well as the Monitor’s view on the reasonableness of the Cash Flow Statement and assumptions therein; and
 - (f) status of the Monitor’s administration of WEPPA claims for terminated employees; and
 - (g) the Monitor’s conclusions and recommendations with respect to the above.
8. This Report should be read in conjunction with the affidavit of Mike Woodward, sworn on March 25, 2024 (the “**Third Woodward Affidavit**”).

TERMS OF REFERENCE

9. Capitalized terms used but not defined herein are given the meaning ascribed to them in the Third Woodward Affidavit and ARIO.

10. In preparing this Report, the Monitor has relied upon unaudited financial information, other information available to the Monitor and, where appropriate, the Applicants' books and records and discussions with various parties (collectively, the "**Information**").
11. Except as described in this Report:
 - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*;
 - (b) the Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*; and
 - (c) future oriented financial information reported or relied on in preparing this Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
12. The Monitor has prepared this Report in connection with the April 2 Application. This Report should not be relied on for other purposes.
13. Information and advice described in this Report that has been provided to the Monitor by its legal counsel, McCarthy Tétrault LLP (the "**Monitor's Counsel**"), was provided to assist the Monitor in considering its course of action, is subject to solicitor client privilege, not intended as legal or other advice to, and may not be relied upon by, any other person.
14. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

BACKGROUND INFORMATION

15. Detailed information with respect to the Applicants' business, operations and causes of financial difficulty are described in Affidavit of Mike Woodward sworn in these proceedings on February 22, 2024.
16. Additional background information on the Applicants and the CCAA Proceedings is available on the Monitor's Website, including the Third Woodward Affidavit.
17. The Applicants' primary assets, include:
 - (a) nine leased Boeing 737 MAX 8 aircraft (the "**Fleet**") and three leased CFM LEAP-1B25 spare engines (the "**Engine Leases**" and together with the Fleet, the "**Aircraft Leases**");
 - (b) the Boeing Purchase Agreement which includes 29 aircraft remaining to be delivered;
 - (c) a sale and leaseback agreement between Lynx Opco and BOC Aviation Limited with respect to eight aircraft scheduled to be delivered in 2024 (the "**BOCA Aircraft**");
 - (d) an agreement between Lynx Opco and CFM International, Inc. to purchase four LEAP-1B25 engines (the "**Engine Purchase Agreement**"); and
 - (e) other miscellaneous aircraft equipment and parts.

(collectively, the "**Assets**").
18. Pursuant to the Aircraft Leases the Applicants are party to lease agreements with six counterparties (the "**Lessors**").

CAPE TOWN CONVENTION

19. The Monitor is aware of the Cape Town Convention (the “**CTC**”) and its Aircraft Protocol (the “**Protocol**”). The CTC is an international treaty intended to standardize transactions involving movable property including high-value aviation assets, namely airframes, aircraft engines and helicopters which, by their nature, have no fixed location. The Aircraft Leases fall within the CTC and Protocol.
20. Canada ratified the CTC in December 2012, and the treaty came into effect on April 1, 2013, including the province of Alberta. Canada has declared applicable Alternative A under Article XI of the Protocol (remedies on insolvency) (“**Alternative A**”). Canada has implemented the treaty, including Alternative A, on a federal level through an Act to implement the CTC on International Interests in Mobile Equipment and the Protocol to the CTC on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment of 14 December 2012 (the “**CTC Implementation Act**”).
21. Alternative A sets out a 60-day waiting period (“**Waiting Period**”) with respect to the Fleet and the Aircraft Leases whereby the Applicants would have 60 days to either:
 - (a) cure all defaults and agree to perform future obligations under the Aircraft Leases; or
 - (b) come to a consensual agreement with the Aircraft Lessors.
22. The Applicants’ Waiting Period expires on April 22, 2024.

ACTIVITIES OF THE MONITOR

23. The Monitor’s activities since the First Report include the following:
 - (a) monitoring the Applicants’ finances (including cash flows) and operations;

- (b) prepared and issued the required notices under the CCAA and Initial Order including (i) issuing the notices to creditors referenced in paragraph 44 of the Initial Order and posting the notice on the Monitor’s website; (ii) coordinated the publishing of a creditor notice in the *Calgary Herald* on February 27 and March 5, 2024 and *The Globe & Mail* on February 28 and March 6, 2024; and (iii) issuing Form 1 and 2 notices to the Office of the Superintendent of Bankruptcy in the prescribed form as required under section 23(1)(f) of the CCAA;
- (c) participating in numerous discussions with the Applicants, Boeing and the Lessors to conduct and carry out the SISP;
- (d) participating in numerous discussions with the Applicants and Boeing with respect to the Termination Agreement;
- (e) assisting the Applicants in preparing the Second CFS;
- (f) administering the WEPPA process in consultation with the Applicants human resource and payroll departments, including, having discussions and numerous communications with counsel for the Canadian Union of Public Employees Lynx Air flight crew local (“**CUPE Counsel**”), employees and former employees in respect of the process and timelines for calculating and submitting WEPPA claims and assisting former employees with filing their WEPPA claims with Service Canada – Employment and Social Development Canada (“**Service Canada**”); and
- (g) responding to inquiries from suppliers and creditors who contacted the Monitor in connection with these CCAA Proceedings.

STATUS OF OPERATIONS AND BUSINESS

Operations

24. As described in the First Report, upon granting of the Initial Order the Applicants commenced an expedited wind-down of flight operations which included operating scheduled flights for a period of four days, from the Initial Filing Date to the end of day on February 25, 2024 (the “**Operating Period**”). Through the Operating Period the Applicants attempted to minimize disruption to passengers’ immediate travel plans and provide a short period for passengers travelling after February 25, 2024, to make alternative travel arrangements.
25. Upon the completion of the Operating Period, the Fleet returned to the Calgary International Airport (“**YYC**”). Ultimately, the Applicants and the Calgary Airport Authority were unable to agree upon the commercial terms for the temporary storage of the Fleet at YYC and the Applicants came to an agreement with the Aircraft Lessors (the “**Aircraft Asset Protection Agreement**”) which was described in the Monitor’s First Report. In accordance with the Aircraft Asset Protection Agreement, the Fleet was moved to Marana, Arizona and Tucson, Arizona.

Employees

26. On the date of the Initial Order, the Applicants employed approximately 500 employees. After the completion of the Operating Period certain employees including pilots, cabin crew members and flight operations were no longer required given flight operations ceased. As a result, the Applicants’ staffing levels have been significantly reduced.
27. As of the date of this Report approximately 15 employees remain to assist with the administration of the SISP, the continued wind-down of the business and the administration of the CCAA Proceedings.
28. Upon their termination employees were provided with directions on how to receive a copy of their record of employment from Service Canada and made aware of the WEPPA.

29. Section 5(1) of the WEPPA provides that an individual is eligible to receive payment under that Act if, among other things, (i) the individual is owed eligible wages by a former employer; (ii) the former employer is subject to proceedings under the CCAA; and (iii) a court determines under subsection 5(5) that criteria prescribed by regulation are met.
30. Section 5(5) of WEPPA provides that, on application by any person, a court under the CCAA may determine that a former employee meets criteria prescribed by regulation. Section 3.2 of the WEPP Regulations provides that “for purposes of subsection 5(5) of the *WEPPA*, a court may determine whether the former employer is the former employer of all of whose employees in Canada have been terminated other than any retained to wind down its business operations.”
31. Paragraph 12 of the ARIO contained a declaration pursuant to Section 5(5) of WEPPA that the Applicants and their collective former employees meet the criteria prescribed by the WEPP Regulations and are individuals to whom the WEPPA applies. Accordingly, the Monitor was authorized to administer WEPPA claims for terminated employees that meet the eligibility criteria outlined in WEPPA.
32. The Monitor worked extensively with the Applicants’ human resource and payroll departments to determine which terminated employees met the criteria to be eligible to make claims under WEPPA for unpaid wages, vacation, termination and severance pay.
33. On March 5, 2024, the Monitor, the Applicants and their respective counsel received communication from CUPE Counsel advising that they would like to have a call with the Monitor and the Applicants to discuss the WEPPA process and timing. In particular, CUPE’s counsel advised they wanted to discuss the methodology and calculation of the employees’ WEPPA claims to confirm accuracy of the same.
34. Following the above-noted discussions, the Monitor sent CUPE Counsel a summary of the methodology the Monitor used to calculate the WEPPA payment. After further discussions between the parties it was determined that there was a disagreement in the methodology for

calculating termination pay between CUPE, on the one hand, and the Monitor and the Applicants, on the other.

35. CUPE's Counsel advised that CUPE is of the view that eligible employees are entitled to 16 weeks pay in lieu of notice under group termination provisions contained in section 212 of the *Canada Labour Code*. The Monitor and the Applicants determined that the group termination provisions do not apply in Lynx's circumstances for reasons including there is no express entitlement to pay in lieu of notice of group termination (in contrast to individual termination notice). Counsel to CUPE provided certain authority, but outside of the CCAA context, that the failure to give notification of a group termination gave rise to an obligation of the employer to provide payment in lieu of the 16 week group termination notice.
36. After due enquiry, the Monitor advised CUPE's counsel, that the Monitor is aware of no authority that would support CUPE's claim that group termination applies to an employer that faced a liquidity crisis which resulted in an immediate and unplanned cessation of operations combined with an urgent application by the employer to obtain relief under the CCAA. The Monitor's view was confirmed with a Labour Affairs Officer of Employment and Social Development Canada.
37. Therefore, the Applicants calculated termination pay in accordance with federal employment standards for individual termination notices. After this determination the Monitor proceeded to administer the WEPPA claims to avoid delays and ensure timely processing for eligible employees.
38. On March 13, 2024, within the timeline prescribed by the WEPP Regulations, the Monitor provided eligible employees with an instruction letter ("**WEPPA Instruction Letter**") setting out the Applicants' calculation of eligible wages owed under WEPPA and instructions on how to submit claims with Service Canada.

39. The following summarizes the Monitor's status of WEPPA claims administered to date:
- (a) The Monitor sent 476 WEPPA Instruction Letters to eligible employees (472 on March 14, 2024, and 4 on March 20, 2024);
 - (b) 311 eligible employees have submitted a proof of claim ("**WEPPA Proofs of Claim**") to the Monitor in accordance with the WEPPA Instruction Letter and in accordance with the requirements under WEPPA; and
 - (c) The Monitor reviewed all 311 WEPPA Proofs of Claim received to date and has submitted all 311 WEPPA Proofs of Claim to Service Canada for processing. The Monitor continues to review and process claims as received from eligible employees.

Customer Refunds

40. Elavon Canada Company ("**Elavon**") is the Company's credit card processing company. When customers booked airline tickets with Lynx Air, in accordance with the processing agreement between the Company and Elavon, Elavon would release 50% of the ticket price to Lynx Air on the date of the flight and the other 50% of the ticket price to Lynx Air six days after the flight had concluded. If a flight was cancelled, Elavon would refund the customer the cost of the ticket.
41. Elavon previously advised that it, in consultation with the Applicants, needed to complete a reconciliation and understand the magnitude of customer refunds and chargebacks prior to releasing any funds to the Applicants. The Applicants estimate that approximately \$3.0 million in revenue was generated in the Operating Period.
42. The Applicants, with the assistance of the Monitor, and Elavon continue to engage in discussions to complete the reconciliation and customer refunds soon as possible. The intention is for the Applicants to complete customer refunds directly without the need for customers to contact their credit card providers to submit chargebacks.

STATUS OF THE SISP

43. Prior to the commencement of CCAA Proceedings, the Applicants had been approached by and/or had discussions with various third parties who expressed interest in purchasing the Applicants' business or the Assets. Accordingly, following the commencement of the CCAA Proceedings, the Applicants worked with the Monitor to develop the SISP to solicit interest in purchasing the Applicants' Property. The major aspects of Property with material value that the Applicants intended to market through the SISP are the Boeing Purchase Agreement and the Aircraft Leases.
44. This Honourable Court granted the SISP Order on March 1, 2024. The SISP Procedures provided, among other things:
- (a) the SISP shall be conducted by the Company, in consultation with the Monitor, to solicit interest in, and opportunities for one or more sales of the Assets (the "**Opportunity**");
 - (b) as soon as practicable the Applicants, with input from the Monitor, will prepare a list of potential bidders (the "**Pre-Qualified Known Potential Bidders**") who may have interest in the Opportunity;
 - (c) as soon as practicable, and only after reaching agreement with Boeing and the Counterparties to Aircraft Leases on appropriate confidentiality protections and terms of access, the Monitor will make a virtual data room ("**VDR**") available to each Pre-Qualified Known Potential bidder who has executed an NDA with Lynx and, as necessary, Boeing and of the Counterparties to the Aircraft Leases; and

- (d) by March 8, 2024, the Monitor will send a package to the Pre-Qualified Known Potential Bidders which includes (i) a process summary (“**Teaser**”); and (ii) a non-disclosure agreement (“**NDA**”).

45. For ease of reference, a summary of the key dates pursuant to the SISP are as follows:

Event	Target Date
Approval of the SISP and Bidding Procedures by the Court	March 1, 2024
Monitor and Lynx Air to create list of Pre-Qualified Known Potential Bidders	March 1, 2024
Monitor to prepare and have available for Potential Bidders the Data Room	By no later than March 4, 2024
Monitor to distribute Teaser and NDAs to Pre-Qualified Known Potential Bidders	By no later than March 8, 2024
Binding Bid Deadline	By no later than April 1, 2024, at 5:00 p.m.
Auction (if required)	By no later than April 5, 2024, at 5:00 p.m.
Definitive documentation	By no later than April 7, 2024
Approval Application – Successful Bid(s), if required	By no later than April 10, 2024
Outside Date - Closing	April 12, 2024

The Boeing Purchase Agreement

46. The potential value from the Boeing Purchase Agreement is derived from various aspects including the following:

- (a) near-term delivery slots for the delivery of aircraft;
- (b) certain economic benefits available to the Applicants; and
- (c) inflation protection impacting the ‘fly-away’ price of future aircraft deliveries as compared to current market rates.

47. As noted above, and in recognition of Boeing's and the Aircraft Lessors' legitimate confidentiality concerns, the SISP Order includes provisions that the Boeing Purchase Agreement and the Aircraft Leases would only be made available in the VDR after reaching agreement on the appropriate and acceptable confidentiality protections and terms of access.
48. Upon granting of the SISP Order, the Applicants, in consultation with the Monitor, engaged in discussions with Boeing to determine the conditions upon which it would be willing to disclose the Boeing Purchase Agreement in the VDR.
49. The Boeing Purchase Agreement contains confidentiality provisions which prevent the Applicants from disclosing the existence of the Boeing Purchase Agreement or any of its terms without Boeing's consent.
50. Since the date of the SISP Order, the Monitor and Boeing engaged in discussions to agree upon a list of the Pre-Qualified Known Potential Bidders that would be granted access to the VDR and the Boeing Purchase Agreement. For reference a timeline of events is as follows:
- (a) on March 1, 2024, the Applicants, in consultation with the Monitor, provided an initial list of 20 airlines and 16 lessors/aviation investors to be considered by Boeing;
 - (b) on March 1, 2024, Boeing provided a baseline redacted version of the Boeing Agreement that could be shared with Pre-Qualified Known Potential Bidders who executed NDAs. Boeing, the Applicants and the Monitor continued discussions to determine a methodology upon which Pre-Qualified Known Potential Bidders who qualified for the benefits of the redacted provisions would be entitled to view the applicable redacted provisions. The Monitor notes that the redacted provisions included certain sections outlining various economic benefits, as more fully described in the Confidential Supplemental Report;
 - (c) on March 3, 2024, the Applicants and Boeing agreed on a form of NDA that would allow Pre-Qualified Known Potential Bidders access to the VDR including an appropriately

redacted copy of the Boeing Purchase Agreement in accordance with the above paragraph (b);

(d) on March 6, 2024, Boeing provided a draft form of a side letter (the “**Side Letter**”) setting out the requirements to permit Pre-Qualified Known Potential Bidders access to the VDR and the Boeing Purchase Agreement, which included requirements that:

- the Pre-Qualified Known Potential Bidder holds a sufficient credit rating from S&P Global Ratings or Fitch Ratings as of December 31, 2023; and
- the Pre-Qualified Known Potential Bidder has delivered an executed non-disclosure agreement to Boeing in the form attached as Schedule “A” to the Side Letter, and Boeing has countersigned and delivered such NDA.

(e) on March 7, 2024, after further discussions with Boeing’s counsel, the Applicants, in consultation with the Monitor, provided a draft teaser and a revised list of bidders that were believed to meet Boeing’s credit worthiness criterion for Boeing’s approval as set out in the Side Letter.

51. While discussions continued with Boeing regarding the Pre-Qualified Known Potential Bidders’ list and what information could be provided to which bidders based on the terms of the Boeing Purchase Agreement, Boeing presented a proposal to the Applicants to terminate the Boeing Purchase Agreement (the “**Termination Agreement**”) which would provide financial compensation to the Applicants in exchange for the termination of the Boeing Purchase Agreement.

52. On March 21, 2024, the Applicants and Boeing executed the Termination Agreement. A redacted copy of the Termination Agreement is included at Exhibit “A” of the Third Woodward Affidavit and an unredacted copy is included at Exhibit “A” of the Confidential Affidavit of Mike Woodward sworn on March 25, 2024.

53. The key non-commercial terms of the Termination Agreement are outlined below:
- (a) the Termination Agreement is conditional on receiving approval from this Honourable Court;
 - (b) within two days of receiving approval from this Honourable Court Boeing will pay to Lynx Opco the amounts agreed to under the Termination Agreement; and
 - (c) the parties release each other from any and all claims relating to the Boeing Purchase Agreement.

Monitor's View on the Termination Agreement

54. The Monitor is supportive of and recommends the Applicants' request that this Honourable Court authorize and approve the Termination Agreement based on the following:
- (a) the confidentiality provisions contained in the Boeing Purchase Agreement represent a significant impediment to the Applicants' ability to provide potential bidders with financial details of the Boeing Purchase Agreement. These details are, in the Monitor's view, essential to allow a prospective bidder to value the Boeing Purchase Agreement. While a methodology was being discussed to address these issues, as discussed in paragraph 51(b) above, the final resolution and timing of such is uncertain and may have required direction of the Court;
 - (b) the Boeing Purchase Agreement is, on its terms, not assignable without Boeing's consent. While the Monitor takes cognizance of the fact that s.11.3 of the CCAA provides the Court with jurisdiction to assign the agreements notwithstanding the requirement for counterparty consent, the Monitor's assessment is that an attempt to force an assignment of the Boeing Purchase Agreement would not be a simple exercise for reasons including the complex and bespoke nature of the Boeing Purchase Agreement, including that certain key economic terms are unique to Lynx Air and thus would not benefit many, if any, Pre-Qualified

- Known Potential Bidders. However, the material value that potential purchasers would ascribe to the Boeing Purchase Agreement is inextricably tied to such terms for which they would likely be ineligible, and this creates significant risk that the consideration provided by an alternative transaction may be significantly lower, or non-existent, compared to the consideration provided for under the Termination Agreement;
- (c) the Boeing Purchase Agreement provides for the delivery of aircraft in accordance with Lynx Air's specifications and configurations as specified in the terms; consequently, any Pre-Qualified Known Potential Bidders would necessarily require modifications to the terms of the Boeing Purchase Agreement in order to obtain aircraft in a configuration consistent with their own unique requirements, including their own branding and livery;
 - (d) although the Applicants' and Boeing's negotiations involving the various matters detailed above were conducted in good faith and on an expedited basis, any potential inability to ultimately reach a consensus would potentially require direction from the Court and likely cause significant delays in closing, which, in turn, will likely negatively impact a contested sale, and, ultimately, if a forced assignment were not approved by the Court, the Applicants would receive no or little value for the Boeing Purchase Agreement in the face of the current proposal which represents material value. The Monitor's view is that the consensual solution presented by the Termination Agreement resolves the risks discussed above, and preserves value for Boeing, the Applicants and its stakeholders;
 - (e) a significant portion of the economic benefits attributed to the Boeing Purchase Agreement includes economic benefits that may or may not be available to some or all bidders and creates additional uncertainty;
 - (f) the Applicants are not current on pre-delivery deposits required under the Boeing Purchase Agreement and the potential impact on delivery slots is uncertain and could also impact the value of the Boeing Purchase Agreement to interested parties;

- (g) there is a significant risk that the consideration provided by an alternative transaction may be significantly lower than provided for under the Termination Agreement, even assuming all Pre-Qualified Known Potential Bidders qualified under the terms of the Boeing Purchase Agreement for all available beneficial economic terms and could thus fully review the terms of the Boeing Purchase Agreement on an unredacted basis; and
 - (h) Indigo, the Applicants' senior secured creditor and Interim Lender is supportive of the Termination Agreement.
55. The Monitor's view is that the Applicants and Boeing's negotiations surrounding the bases upon which the Boeing Purchase Agreement would be made available to potential purchasers was being undertaken in good faith and on an expedited basis prior to Boeing proposing the Termination Agreement.
56. The Monitor has reviewed the Boeing Purchase Agreement (unredacted version) and estimated a range of potential values. The Monitor concluded that the range of potential values of the Boeing Purchase Agreement is highly contingent on a purchaser successfully receiving all of the economic benefits, and if not assignable or available, would materially negatively affect value. After such consideration, the Monitor believes that the consideration provided in the Termination Agreement is fair and reasonable in the circumstances. Details of the Monitor's analysis of the potential range of values of the Boeing Purchase Agreement is summarized in the Confidential Supplemental Report.
57. The Monitor is seeking a restricted access Order ("**Monitor's Restricted Access Order**") to seal the Confidential Supplemental Report as it contains commercially sensitive information in which there is an expectation and requirement on the part of Boeing that such commercially sensitive information be kept confidential. Moreover, if the information is disclosed such disclosure could negatively impact value to the Applicants for the Boeing Purchase Agreement in the event the Termination Agreement is not approved by this Honourable Court and the Applicants re-commence marketing efforts for the Boeing Purchase Agreement.

Aircraft Leases

58. Prior to commencing the SISP the Applicants and the Monitor discussed the terms of the SISP with counsel to each of the Lessors.
59. The Applicants, in consultation with the Monitor, and the Lessors engaged in discussions to agree upon the list of Pre-Qualified Known Potential Bidders that would gain access to the VDR. For reference a timeline of events is as follows:
- (a) on March 2, 2024, the Applicants, in consultation with the Monitor, provided an initial list of 20 airlines and 16 lessors or aviation investors to be considered by the Lessors;
 - (b) on March 3, 2024, counsel to certain of the Lessors expressed concerns about soliciting bids from other lessors as doing so would provide those lessors with access to commercially sensitive/competitive information contained in the respective leases;
 - (c) on March 6, 2024, and March 8, 2024, the Applicants and Monitor received redacted versions of lease agreements from certain Lessors.
60. The Lessors expressed concern about disclosing the commercial terms of their respective Aircraft Leases to other aircraft lessors. Therefore, it was determined that only airline carriers would be permitted to participate in the SISP with respect to the Aircraft Leases.
61. Since the date of the SISP Order, the Applicants, in consultation with the Monitor, have had ongoing discussions with respective Lessors to determine the Lessors' requirements to allow them to consent to disclosing their respective agreements.
62. Those discussions are ongoing, and it is at present unclear if they will conclude successfully. Without agreement between the Applicants and the Lessors to provide unredacted copies of the respective Aircraft Leases it is unlikely that any Pre-Qualified Known Potential Bidders would be able to fully evaluate the Opportunity.

63. On March 14, 2024, the Applicants, in consultation with the Monitor, proposed the following to certain of the Lessors:
- (a) the Applicants would deliver to the Lessors:
- a proposed list of airline bidders and seek consent to send a previously agreed upon form of NDA to those parties, and
 - a summary table, for review and consent by each respective Lessor, of key information including monthly rent, reserves, aircraft hours and cycles; and
- (b) provided all Lessors have agreed to share similar information in the summary table, the information will be made available in the VDR subject to the requirement that the potential purchaser enter into an NDA.

Full copies of the Aircraft Leases would be provided to the winning bidder for the sole purpose of undertaking final confirmatory due diligence.

64. Certain of the Lessors have agreed to include the information above to a list of Pre-Qualified Known Potential Bidders, however, others have advised that the commercial terms, including, rent, reserves will need to remain confidential. This has led to a patchwork of positions being taken by the Lessors with respect to their participation in the SISP.
65. The evaluation of the Aircraft Leases is ongoing, and the Monitor will report to the Court further when the results of the SISP process with respect to the Aircraft Leases is complete.

BUDGET TO ACTUAL RESULTS

66. The Applicants, in consultation with the Monitor, prepared a cash flow statement (the “**Initial Cash Flow Statement**”) which was appended to the First Report.

67. Actual cash flow as compared to those contained in the Initial Cash Flow Statement for the five-week period of February 22, 2024, to March 23, 2024, are summarized below.

(C\$ 000s)			
For the period of February 22, 2024 to March 23, 2024			
	Actual	Forecast	Variance
Receipts			
Revenue	\$ 2,082	\$ 2,041	\$ 41
Trust Receipt	-	-	-
Other / Recovery of Deposits	335	-	335
Total - Receipts	2,417	2,041	376
Disbursements			
Payroll and employee related obligations	(2,094)	(2,580)	486
SG&A expense	(557)	(1,366)	810
Operating costs	(1,812)	(2,045)	233
Fleet relocation recovery	13	-	13
Professional fees	(444)	(460)	16
PDP Commitment fees	-	(600)	600
KERP	-	-	-
Airport Improvement Fees	(300)	(296)	(4)
Maintenance reserves	(14)	(110)	96
Interim Facility - Interest and fees	-	-	-
Air Travellers Security Charge	(81)	-	(81)
Lease payments / deferrals	-	-	-
Total - Disbursements	(5,289)	(7,457)	2,168
Net change in cash	(2,872)	(5,416)	2,544
Opening cash	3,920	3,920	-
Interim Facility - Draw (repayment)	1,013	2,513	(1,500)
Ending Cash	\$ 2,060	\$ 1,017	\$ 1,044
Interim Facility			
Opening	\$ -	\$ -	-
Draw (repayment)	1,013	2,513	(1,500)
Ending Interim Facility	\$ 1,013	\$ 2,513	\$ (1,500)

68. The variances in actual receipts and disbursements are primarily due to the following:
- (a) Receipts were substantially in line with forecast with approximately \$0.3 million in other receipts relating to the collection of training credits, return of prepayment amounts for the Operating Period and other miscellaneous refunds that were not contemplated in the Initial Cash Flow Statement;

- (b) lower than anticipated disbursements of approximately \$2.2 million primarily related to the following:
- lower than anticipated payroll and employee related obligations due to the reconciliation of employee benefits account and an over estimation of pilot hours;
 - lower than anticipated SG&A expense partially relating to the timing and payment of expenses, reduction in insurance premiums for the Fleet and cancellation of certain services resulting in lower than forecast disbursements;
 - fleet relocation expenses were not forecast in Initial Cash Flow Statement relating to certain expenses to move the aircraft to Arizona with such costs being reimbursed by the Lessors;
 - professional fees were lower than anticipated as a result of timing of invoicing and payments. Overall, professional fees are generally in line with forecast;
 - PDP commitment fees have been deferred during the Waiting Period; and
 - Maintenance reserves were lower than anticipated due the timing of the payment and are expected to be paid in future periods.
- (c) the cash balance at the end of the period is approximately \$2.1 million which is higher than anticipated by approximately \$1.0 million primarily driven by lower expenses incurred in the period and offset by a lower draw on the Interim Facility.

CASH FLOW STATEMENT

69. The Applicants, with the assistance of the Monitor, have prepared the Second CFS to set out the liquidity requirements of the Applicants during the Forecast Period. The Second CFS and management's report on the cash-flow statement as required by section 10(2)(b) of the CCAA are attached hereto as Appendix "A". The Second CFS is summarized in the following table:

(C\$ 000s)	
For the period of March 25, 2024 to April 15, 2024	
	Total
Receipts	
Revenue	\$ -
Other / Recovery of Deposits	4,068
Total - Receipts	4,068
Disbursements	
Payroll and employee related obligations	(255)
SG&A expense	(475)
Operating costs	(28)
Fleet relocation recovery (expense)	-
Professional fees	(1,492)
PDP Commitment fees	-
KERP	(734)
Airport Improvement Fees	-
Maintenance reserves	(68)
Interim Facility - Interest and fees	(25)
Lease payments / deferrals	-
Total - Disbursements	(3,076)
Net change in cash	991
Opening cash	2,060
Interim Facility - Draw (repayment)	-
Ending Cash	\$ 3,052
Interim Facility	
Opening	\$ 1,013
Draw (repayment)	-
Ending Interim Facility	\$ 1,013

70. The Second CFS indicates that during the Forecast Period (period ending on April 15, 2024), the Applicants will have net cash flow of approximately \$1.0 million comprising cash receipts of approximately \$4.1 million less total disbursements of \$3.1 million.
71. The Second CFS has opening cash of \$2.1 million and with ending cash of \$3.1 million and no forecasted draws on the Interim Facility.
72. The Second CFS is based on the following key assumptions:

- (a) No revenue receipts in the Forecast Period. Reconciliation efforts with Elavon with respect to the post-filing period are ongoing, but the timing of collection of the remaining receipts is uncertain;
- (b) Other receipts include collection of carbon tax rebates for periods prior to the Initial Filing Date and the recovery of certain prepayments that were made during the Operating Period after completion of the reconciliation of accounts and recovery of certain deposits on account;
- (c) Payroll and employee related obligations includes estimated amounts for remaining employees required to assist in the CCAA Proceedings;
- (d) SG&A expense includes continued insurance premiums, IT and ongoing software costs to maintain access to the Applicants systems, and other costs associated with the Applicants office required during the CCAA Proceedings;
- (e) Operating costs relating to remaining amounts to be paid for the Operating Period;
- (f) Professional fees including the Monitor, the Monitor's Counsel, the Applicants' counsel and counsel to the Interim Lender;
- (g) KERP includes amounts proposed to be paid to assist during the CCAA Proceedings, subject to approval of this Honourable Court;
- (h) Maintenance reserves relate to estimated prorated amounts owing under the Aircraft Leases for the period after the Initial Filing Date;
- (i) Interim Facility includes amounts borrowed from the Interim Lender under Term Sheet to fund the cost of the CCAA Proceedings. As at the date of this Report approximately \$1.0 million has been drawn under the Interim Facility; and

- (j) the Monitor notes that no amounts are contemplated to be paid to the Aircraft Lessors under the Aircraft Leases (other than pro-rated maintenance reserves after the date of the Initial Order) in the Second CFS during the Waiting Period.

Monitor's Comments on the Cash Flow Statement

73. Section 23(1)(b) of the CCAA states that the Monitor shall, “review the company’s cash-flow statement as to its reasonableness and file a report with the court on the Monitor’s findings”.
74. Pursuant to section 23(1)(b) of the CCAA, and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports as follows:
- (a) the Second CFS has been prepared by management of the Applicants for the purpose described in the notes to the Second CFS, using the probable assumptions and the hypothetical assumptions set out therein; and
- (b) the Monitor’s review consisted of inquiries, analytical procedures and discussion related to information supplied by certain of the management and employees of the Applicants. Since hypothetical assumptions need not be supported, the Monitor’s procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the Second CFS. The Monitor has also reviewed the information provided by Management in support of the probable assumptions and the preparation and presentation of the Second CFS;
- (c) Based on its review, and as at the date of this Report, nothing has come to the attention of the Monitor that causes it to believe that, in all material respects:
- the hypothetical assumptions are not consistent with the purpose of the Second CFS;

- the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Second CFS, given the hypothetical assumptions; or
 - the Second CFS does not reflect the probable and hypothetical assumptions.
75. Since the Second CFS is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Second CFS will be achieved. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information present in this Report, or relied upon by the Monitor in preparing this Report.
76. The Second CFS has been prepared solely for the purpose of estimating liquidity requirements of the Applicants during the Forecast Period. The Second CFS should not be relied upon for any other purpose.

CONCLUSIONS AND RECOMMENDATIONS

77. The Monitor supports the relief being sought by the Applicants, and recommends this Honourable Court approve:
- (a) the Applicants' request for approval of the Termination Agreement and the Restricted Access Order sealing the unredacted Termination Agreement; and

(b) the Monitor's request for the Monitor's Restricted Access Order.

All of which is respectfully submitted this 27th day of March 2024.

FTI Consulting Canada Inc.,
Licensed Insolvency Trustee in its capacity as
Monitor of Lynx Air and not in its personal or
corporate capacity.



Name: Deryck Helkaa, CPA, CA, CIRP, LIT
Title: Senior Managing Director
FTI Consulting Canada Inc.

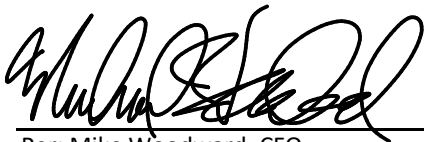


Name: Dustin Olver, CPA, CA, CIRP, LIT
Title: Senior Managing Director
FTI Consulting Canada Inc.

Appendix “A” – Cash Flow Statement for the period ending April 15, 2024

Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air
 Consolidated Cash Flow Statement
 For the period of March 24, 2024 to April 15, 2024

(C\$ 000s)						
For the period of March 24, 2024 to April 15, 2024						
		Week 1	Week 2	Week 3	Stub Week 4	
		30-Mar	6-Apr	13-Apr	15-Apr	Total
Receipts						
Revenue	1	\$ -	\$ -	\$ -	\$ -	\$ -
Other / Recovery of Deposits	2	1,343	2,725	-	-	4,068
Total - Receipts		1,343	2,725	-	-	4,068
Disbursements						
Payroll and employee related obligations	3	(139)	-	-	(116)	(255)
SG&A expense	4	(180)	(140)	(120)	(34)	(475)
Operating costs	5	(28)	-	-	-	(28)
Professional fees	6	(542)	-	-	(950)	(1,492)
PDP Commitment fees	7	-	-	-	-	-
KERP	8	-	-	-	(734)	(734)
Maintenance reserves	9	-	(68)	-	-	(68)
Interim Facility - Interest and fees	10	-	(25)	-	-	(25)
Lease payments / deferrals	11	-	-	-	-	-
Total - Disbursements		(889)	(232)	(120)	(1,835)	(3,076)
Net change in cash		454	2,493	(120)	(1,835)	991
Opening cash		2,060	2,514	5,007	4,886	2,060
Interim Facility - Draw (repayment)	12	-	-	-	-	-
Ending Cash		\$ 2,514	\$ 5,007	\$ 4,886	\$ 3,052	\$ 3,052
Interim Facility						
Opening		\$ 1,013	\$ 1,013	\$ 1,013	\$ 1,013	\$ 1,013
Draw (repayment)		-	-	-	-	-
Ending Interim Facility		\$ 1,013	\$ 1,013	\$ 1,013	\$ 1,013	\$ 1,013



Per: Mike Woodward, CFO
 Lynx Air

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

Notes and Assumptions to the Cash Flow Statement

For the period of March 24, 2024, to April 15, 2024 (the “**Forecast Period**”)

Disclaimer:

This cash flow statement (the “**Cash Flow Statement**”) has been prepared using unaudited financial information and the Monitor has not attempted to further verify the accuracy or completeness of such information.

The Cash Flow Statement is based on the probable and hypothetical assumption identified below.

Since the Cash Flow Statement is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Forecast Period will vary from the Cash Flow Statement, and such variation may be material. There is no representation, warranty or other assurance that any of the assumptions or estimates used in the Cash Flow Statement will be realized.

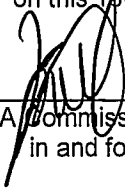
Overview:

The Cash Flow Statement includes estimated receipts and disbursements of Lynx Air during the Forecast Period. Lynx Air, with the assistance of FTI Consulting Canada Inc., in its capacity as Monitor, have prepared the Cash Flow Statement based primarily on estimated receipts and disbursements related to the CCAA proceedings. Receipts and disbursements are denominated in Canadian dollars (the foreign exchange conversion rate used to convert USD to CAD is 1.35).

1. **Revenue:** Lynx Air and Elavon are working diligently to reconcile the amounts owed during the Operating Period including initiating refunds or chargebacks to customers for cancelled flights. No amounts are anticipated to be collected during the Forecast Period;
2. **Other / Recovery of Deposits:** includes BC Carbon Tax Rebates for periods prior to date of Initial Filing Date, return of deposits and other receivables, and return of post-filing overpayments upon completion of reconciliation;
3. **Payroll and employee related obligations:** includes estimated amounts for the employees required to assist in the administration of the CCAA Proceedings;

4. **SG&A expense:** includes, among other things, information technology and software licenses to maintain access to the Applicants systems, bank fees and other miscellaneous costs;
5. **Operating costs:** no ongoing operating costs as operation ceased as of February 26, 2024. Operating costs incurred during the Operating Period were paid by end of February and any residual amounts relate to anticipated reconciliation with vendors for post-filing amounts;
6. **Professional fees:** represents the fees and costs of the Monitor, the Monitor's Counsel, the Applicants' counsel and counsel to the Interim Lender;
7. **Pre delivery payments ("PDP") Commitment Fees:** PDP commitment fees have been deferred during the Waiting Period;
8. **KERP:** relates to a retention plan proposed to be paid to key employees and executives for their assistance during the CCAA Proceedings, as approved by this Honourable Court;
9. **Maintenance reserves:** represents prorated amounts owing under the Aircraft Leases for the period after the Initial Filing Date and during the Operating Period;
10. **Interim Facility – interest and fees:** represents interest payable under the Interim Facility;
11. **Lease payments / deferrals:** no amounts are contemplated to be paid to the Aircraft Lessors under the Aircraft Leases during the Waiting Period (other than pro-rated maintenance reserves after the date of the Initial Order); and
12. **Interim Facility:** As at the date of this Report approximately \$1.0 million has been drawn under the Interim Facility and no additional amounts are anticipated to be drawn in the Forecast Period.

This is **Exhibit "C"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
in and for Alberta
My Commission Expires September 11, 2026

COURT FILE NUMBER 2401-02664
 COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS
 ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
 AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION
 and 1263343 ALBERTA INC. dba LYNX AIR



DOCUMENT **THIRD REPORT OF FTI CONSULTING CANADA INC., IN
 ITS CAPACITY AS MONITOR OF LYNX AIR HOLDINGS
 CORPORATION and 1263343 ALBERTA INC. dba LYNX
 AIR**

April 11, 2024

ADDRESS FOR SERVICE AND
 CONTACT INFORMATION OF
 PARTY FILING THIS
 DOCUMENT

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THIRD REPORT OF THE MONITOR

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Appendix “A” – Cash Flow Statement for the period ending June 29, 2024

Appendix “B” – CRA Notice dated March 26, 2024

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Appendix “E” – Letter from Counsel to various Airport Authorities dated March 28, 2024

INTRODUCTION

1. On February 22, 2024 (“**Initial Filing Date**”), Lynx Air Holdings Corporation (“**Lynx Holdco**”) and 1263343 Alberta Inc. dba Lynx Air (“**Lynx Opco**”, together with Lynx Holdco, “**Lynx Air**” the “**Applicants**” or the “**Company**”), sought and obtained an initial order (“**Initial Order**”) by the Court of King’s Bench of Alberta (“**Court**”) to commence proceedings (“**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”).
2. The Initial Order, among other things, established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants until March 4, 2024, and appointed FTI Consulting Canada Inc. as monitor (the “**Monitor**”) of the Applicants in these CCAA Proceedings;
3. On March 1, 2024, this Honourable Court granted an Amended and Restated Initial Order (the “**ARIO**”) which, among other things, provided the following relief:
 - (a) declared that the Applicants are companies to which the CCAA applies;
 - (b) authorized the Applicants to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the “**Property**”) and continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) or their Property;
 - (c) extended the Stay of Proceedings, until and including April 15, 2024, (the “**Stay Period**”), all proceedings, and remedies against the Applicants or its business or Property, except as otherwise set forth in the Initial Order or otherwise permitted by law;

- (d) granted a charge in favour of the Monitor, its legal counsel, and the Applicants' legal counsel in respect of their fees and disbursements in the amount of \$500,000 under section 11.52 of the CCAA (the "**Administrative Charge**");
- (e) granted a \$500,000 charge in favour of the Applicants' directors and officers ("**Directors' Charge**") as protection against obligations and liabilities that they may incur as directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of these CCAA Proceedings;
- (f) increased the amount available to the Applicants under an interim financing term sheet ("**Term Sheet**") made as of February 21, 2024, with Indigo Northern Ventures LP (the "**Interim Lender**" or "**Indigo**") from approximately \$1.0 million (US\$750,000) to approximately \$5.0 million (as same is denominated in USD, the "**Interim Facility**") and a corresponding increase to the court-ordered priority charge on the Property of the Applicants to secure the Interim Facility (the "**Interim Lender's Charge**");
- (g) granted a charge against the Applicants' Property for a key employee retention plan ("**KERP**") in the maximum amount of \$1.2 million (the "**KERP Charge**"); and
- (h) sealed the Confidential Affidavit of Michael Woodward in accordance with the terms of a restricted court access order granted by the Court; and
- (i) declared pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), S.C. 2005, c. 47, s.1 ("**WEPPA**"), that the Applicants and their former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations SOR/2008-222 (the "**WEPP Regulations**") and are individuals to whom the WEPPA applies as of the date of the Initial Order.

4. Also on March 1, 2024, this Honourable Court approved a sale and investment solicitation process (“**SISP**”) and granted an Order (the “**SISP Order**”) authorizing and directing the Applicants and the Monitor to implement the SISP in accordance with the terms thereof (the “**SISP Procedures**”).
5. On April 2, 2024, this Honourable Court granted the following Orders:
 - (a) an Order (the “**Termination Approval Order**”) approving a termination agreement and mutual release (the “**Termination Agreement**”) between The Boeing Company (“**Boeing**”) and Lynx Opco in respect of Purchase Agreement No. PA-04427 (the “**Boeing Purchase Agreement**”);
 - (b) a restricted Court access Order sealing the confidential affidavit of Michael Woodward, sworn March 25, 2024, which contains an unredacted copy of the Termination Agreement; and
 - (c) a restricted Court access Order sealing the confidential supplement to the second Report of the Monitor dated March 27, 2024.
6. On April 9, 2024, the Applicants filed and served a notice of application returnable on April 15, 2024, seeking orders:
 - (a) authorizing the Applicants, with the approval of the Monitor, to repay the borrowings to the Interim Lender in an amount equal to the amounts owing to the Interim Lender under the Term Sheet;
 - (b) authorizing the Applicants to make further distributions to Indigo up to an amount equal to the secured obligations and amounts owing by the Applicants under the terms of the note purchase agreement dated December 20, 2018 (the “**Initial Notes**”), and the five bridge

note purchase agreements, as amended (the “**Bridge Notes**” and collectively with the Initial Notes, the “**Secured Obligations**”)

- (c) an extension of the Stay of Proceedings until and including June 28, 2024 (the “**Stay Extension**”);

(the “**April 15 Application**”).

- 7. Electronic copies of all materials filed by the Applicants in connection with the April 15 Application and other statutory materials are available on the Monitor’s website at: <http://cfcanda.fticonsulting.com/lynxair/>.

PURPOSE

- 8. The Monitor has reviewed the Court materials filed by the Applicants in support of the April 15 Application. The purpose of this report (this “**Report**”) is to provide this Honourable Court and the Applicants’ stakeholders with information and the Monitor’s comments with respect to the following:
 - (a) the activities of the Monitor since its second report dated March 27, 2024 (the “**Second Report**”);
 - (b) the status of the wind-down of the Applicants’ business and operations;
 - (c) the status of the SISP including discussions with specific contractual counterparties;
 - (d) the Applicants’ actual cash receipts and disbursements for the 2-week period ending on April 6, 2024, as compared to the cash flow statement presented to this Honourable Court attached to the Second Report;

- (e) the Applicants updated cash flow statement (the “**Third CFS**”) for the period of April 7, 2024, to June 28, 2024 (the “**Forecast Period**”) as well as the Monitor’s view on the reasonableness of the Cash Flow Statement and assumptions therein;
 - (f) the details of the secured and potential priority claims against the Applicants’ Property;
 - (g) the proposed distributions (the “**Proposed Distributions**”) to Indigo in respect of the Interim Facility and Secured Obligations; and
 - (h) the Monitor’s conclusions and recommendations with respect to the above.
9. This Report should be read in conjunction with the affidavits of Mike Woodward including the affidavit sworn on February 22, 2024 (the “**First Woodward Affidavit**”) and the affidavit sworn on April 8, 2024 (the “**Fourth Woodward Affidavit**”).

TERMS OF REFERENCE

10. Capitalized terms used but not defined herein have the same meaning ascribed to them in the First Woodward Affidavit, the Fourth Woodward Affidavit and the ARIIO, as the context may require.
11. In preparing this Report, the Monitor has relied upon unaudited financial information, other information available to the Monitor and, where appropriate, the Applicants’ books and records and discussions with various parties (collectively, the “**Information**”).
12. Except as described in this Report:
- (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*;

- (b) the Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*; and
 - (c) future oriented financial information reported or relied on in preparing this Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
13. The Monitor has prepared this Report in connection with the April 15, 2024, Application. This Report should not be relied on for other purposes.
14. Information and advice described in this Report that has been provided to the Monitor by its legal counsel, McCarthy Tétrault LLP (the “**Monitor’s Counsel**”), was provided to assist the Monitor in considering its course of action, is subject to solicitor client privilege, not intended as legal or other advice to, and may not be relied upon by, any other person.
15. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

BACKGROUND INFORMATION

16. Detailed information with respect to the Applicants’ business, operations and causes of financial difficulty are described in First Woodward Affidavit.
17. Additional background information on the Applicants and the CCAA Proceedings is available on the Monitor’s Website, including the Fourth Woodward Affidavit.
18. The Applicants’ primary assets, included:
- (a) nine leased Boeing 737 MAX 8 aircraft (the “**Fleet**”) and three leased CFM LEAP-1B25 spare engines (the “**Engine Leases**” and together with the Fleet, the “**Aircraft Leases**”);

- (b) the Boeing Purchase Agreement which included 29 aircraft remaining to be delivered;
 - (c) a sale and leaseback agreement between Lynx Opco and BOC Aviation Limited with respect to eight aircraft scheduled to be delivered in 2024 (the “**BOCA Aircraft**”);
 - (d) an agreement between Lynx Opco and CFM International, Inc. to purchase four LEAP-1B25 engines (the “**Engine Purchase Agreement**”); and
 - (e) other miscellaneous aircraft equipment and parts (the “**Miscellaneous Equipment**”).
- (collectively, the “**Assets**”).

19. Pursuant to the Aircraft Leases the Applicants are party to lease agreements with six counterparties (the “**Lessors**”).

CAPE TOWN CONVENTION

20. The Monitor is aware of the Cape Town Convention (the “**CTC**”) and its Aircraft Protocol (the “**Protocol**”). The CTC is an international treaty intended to standardize transactions involving movable property including high-value aviation assets, namely airframes, aircraft engines and helicopters which, by their nature, have no fixed location. The Aircraft Leases fall within the CTC and Protocol.
21. Canada ratified the CTC in December 2012, and the treaty came into effect on April 1, 2013, including the province of Alberta. Canada has declared applicable Alternative A under Article XI of the Protocol (remedies on insolvency) (“**Alternative A**”). Canada has implemented the treaty, including Alternative A, on a federal level through an Act to implement the CTC on International Interests in Mobile Equipment and the Protocol to the CTC on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment of 14 December 2012 (the “**CTC Implementation Act**”).

22. Alternative A sets out a 60-day waiting period (“**Waiting Period**”) with respect to the Fleet and the Aircraft Leases whereby the Applicants would have 60 days to either:
- (a) cure all defaults and agree to perform future obligations under the Aircraft Leases; or
 - (b) come to a consensual agreement with the Aircraft Lessors.
23. The Applicants’ Waiting Period expires on April 22, 2024.

ACTIVITIES OF THE MONITOR

24. The Monitor’s activities since the Second Report include the following:
- (a) monitoring the Applicants’ finances (including cash flows) and operations;
 - (b) participating in numerous discussions with the Applicants and the Lessors to conduct and carry out the SISP;
 - (c) continuing to administer the WEPPA claims process in consultation with the Applicants human resource and payroll departments;
 - (d) assisting the Applicants in preparing the Third CFS; and
 - (e) responding to inquiries from suppliers and creditors who contacted the Monitor in connection with these CCAA Proceedings.

STATUS OF OPERATIONS AND BUSINESS

Operations

25. As described in the First Report, upon granting of the Initial Order the Applicants commenced an expedited wind-down of flight operations which included operating scheduled flights for a period

of four days, from the Initial Filing Date to the end of day on February 25, 2024 (the “**Operating Period**”).

26. As of the date of this Report the Applicants continue the wind-down of operations including reconciling final accounts with vendors which provided services during the Operating Period and correspondence with counterparties that held security in the form of deposits and letters of credit to either effectuate the return of the collateral or release the security to vendors.

Employees

27. As of the date of this Report approximately 15 employees remain to assist with the administration of the SISP, the continued wind-down of the business and the administration of the CCAA Proceedings.
28. As described in the Second Report, upon their termination employees were provided with directions on how to receive a copy of their record of employment from Service Canada and made aware of the WEPPA.
29. On March 13, 2024, within the timeline prescribed by the WEPP Regulations, the Monitor provided eligible employees with an instruction letter (“**WEPPA Instruction Letter**”) setting out the Applicants’ calculation of eligible wages owed under WEPPA and instructions on how to submit claims with Service Canada.
30. The following summarizes the Monitor’s status of WEPPA claims administered to date:
- (a) sent 477 WEPPA Instruction Letters to eligible employees;
 - (b) 432 eligible employees have submitted a proof of claim (“**WEPPA Proofs of Claim**”) to the Monitor in accordance with the WEPPA Instruction Letter and in accordance with the requirements under WEPPA; and

- (c) the Monitor has reviewed the WEPPA Proofs of Claim received to date and has submitted 432 WEPPA Proofs of Claim to Service Canada for processing. The Monitor continues to review and process claims as received from eligible employees.

Customer Refunds

31. Elavon Canada Company (“**Elavon**”) is the Company’s credit card processing company. Elavon previously advised that it, in consultation with the Applicants, needed to complete a reconciliation and understand the magnitude of customer refunds and chargebacks prior to releasing any funds to the Applicants. The Applicants estimate that approximately \$3.0 million in revenue was generated in the Operating Period.
32. The Applicants and Elavon attempted to engage with Sabre Corporation (which was the Applicants’ provider of air bookings services) to assist with processing customer refunds, however, to date, Sabre has indicated that it is not willing to engage in these efforts. As a result, it is expected that customers will have to contact their credit card providers to submit chargebacks. This will result in an extended process and increased fees charged to the Applicants.
33. The Applicants, with the assistance of the Monitor, and Elavon continue to engage in discussions to determine if an alternative method can be achieved to refund customers.

STATUS OF THE SISP

34. This Honourable Court granted the SISP Order on March 1, 2024. For ease of reference, a summary of the key dates pursuant to the SISP are as follows:

Event	Target Date
Approval of the SISP and Bidding Procedures by the Court	March 1, 2024
Monitor and Lynx Air to create list of Pre-Qualified Known Potential Bidders	March 1, 2024

Monitor to prepare and have available for Potential Bidders the Data Room	By no later than March 4, 2024
Monitor to distribute Teaser and NDAs to Pre-Qualified Known Potential Bidders	By no later than March 8, 2024
Binding Bid Deadline	By no later than April 1, 2024, at 5:00 p.m.
Auction (if required)	By no later than April 5, 2024, at 5:00 p.m.
Definitive documentation	By no later than April 7, 2024
Approval Application – Successful Bid(s), if required	By no later than April 10, 2024
Outside Date - Closing	April 12, 2024

The Boeing Termination Agreement

35. On March 21, 2024, the Applicants and Boeing executed the Termination Agreement in respect of the Boeing Purchase Agreement.
36. On April 2, 2024, this Honourable Court granted the Termination Approval Order approving the Termination Agreement and on April 3, 2024, the Applicants received the amount payable under the Termination Agreement from Boeing.

Aircraft Leases

37. As described in the Second Report, certain Lessors expressed concern about disclosing the commercial terms of their respective Aircraft Leases to other aircraft lessors. Therefore, it was determined that only airline carriers would be permitted to participate in the SISP with respect to the Aircraft Leases.
38. Since the date of the SISP Order, the Applicants, in consultation with the Monitor, have had ongoing discussions with respective Lessors to determine the Lessors' requirements to allow them to consent to disclosing their respective agreements.

39. Ultimately, the Lessors advised the Applicants and the Monitor that they intend to recover their respective aircraft pursuant to the CTC and the Protocol. The Applicants and the respective Lessors are currently discussing the details of termination agreements with respect to the Aircraft Leases and returning the aircraft to the Lessors.

Engine Purchase Agreement and Miscellaneous Equipment

40. The Engine Purchase Agreement relates to the future purchase of four LEAP-1B25 engines. The Applicants, with assistance of the Monitor, and with the agreement of CFM, have provided access to the Engine Purchase Agreement in the VDR.
41. As of the date of this Report Pre-Qualified Known Potential Bidders are continuing to evaluate the opportunity.
42. The Applicants, in consultation with the Monitor, are also in the process of attempting to monetize the Miscellaneous Equipment.
43. Any transaction or transactions with respect to the Engine Purchase Agreement or Miscellaneous Equipment would be subject to approval of this Honourable Court pursuant to paragraph 11(a) of the ARIO.

BUDGET TO ACTUAL RESULTS

44. The Applicants, in consultation with the Monitor, prepared a cash flow statement (the “**Second CFS**”) which was appended to the Second Report.
45. Actual cash flow as compared to those contained in the Second CFS for the two-week period of March 24, 2024, to April 6, 2024, are summarized below.

(C\$ 000s) For the period of March 24, 2024 to April 6, 2024	Budget to Actual 2-Week Period		
	Actual	Forecast	Variance
Receipts			
Revenue	\$ (0)	\$ -	\$ (0)
Other / Recovery of Deposits	96,016	4,068	91,948
Total - Receipts	96,016	4,068	91,948
Disbursements			
Payroll and employee related obligations	(127)	(139)	12
SG&A expense	(76)	(320)	244
Operating costs	(43)	(28)	(15)
Fleet relocation recovery	(17)	-	(17)
Professional fees	(650)	(542)	(108)
PDP Commitment fees	-	-	-
KERP	-	-	-
Airport Improvement Fees	(0)	-	(0)
Maintenance reserves	(85)	(68)	(18)
Interim Facility - Interest and fees	-	(25)	25
Air Travellers Security Charge	-	-	-
Lease payments / deferrals	-	-	-
Total - Disbursements	(998)	(1,121)	123
Net change in cash	95,018	2,946	92,071
Opening cash	2,060	2,060	-
Interim Facility - Draw (repayment)	-	-	-
Ending Cash	\$ 97,078	\$ 5,007	\$ 92,071
Interim Facility			
Opening	\$ 1,013	1,013	\$ -
Draw (repayment)	-	-	-
Ending Interim Facility	\$ 1,013	\$ 1,013	\$ -

46. The variances in actual receipts and disbursements are primarily due to the following:
- Other receipts were higher than anticipated due to the proceeds resulting from the Boeing Termination Agreement, timing of the return of prepayment amounts for the Operating Period and letters of credit or deposits that exceeded the amount owed to such parties and other refunds expected to be collected including fuel tax refunds from the Government of British Columbia;
 - lower than anticipated disbursements of approximately \$0.1 million primarily related to the following:

- lower than anticipated SG&A expense which is partially relating to the timing and payment of expenses;
- professional fees were slightly higher than anticipated in the period, however, overall, professional fees have been generally in line with forecast; and
- Interest and fees on the Interim Facility were not paid in the period and are expected to be paid upon the repayment of the Interim Facility.

CASH FLOW STATEMENT

47. The Applicants, with the assistance of the Monitor, have prepared the Third CFS to set out the liquidity requirements of the Applicants during the Forecast Period. The Third CFS and management's report on the cash-flow statement as required by section 10(2)(b) of the CCAA are attached hereto as Appendix "A". The Third CFS is summarized in the following table:

(C\$ 000s) For the period of April 7, 2024 to June 29, 2024	Forecast 12 Week
	Total
Receipts	
Revenue	\$ -
Other / Recovery of Deposits	3,641
Total - Receipts	3,641
Disbursements	
Payroll and employee related obligations	(483)
WEPP Priority Claim	(1,000)
SG&A expense	(1,808)
Operating costs	(59)
Professional fees	(1,765)
KERP	(1,179)
Maintenance reserves	(14)
Interim Facility - Interest and fees	(180)
Air Travellers Security Charge	(261)
Other and contingency	(2,908)
Lease payments / deferrals	-
Total - Disbursements	(9,658)
Net change in cash	(6,016)

48. The Third CFS indicates that during the Forecast Period (period ending on June 29, 2024), the Applicants will have negative net cash flow of approximately \$6.0 million comprising cash receipts of approximately \$3.6 million less total disbursements of \$9.7 million.
49. The Third CFS is based on the following key assumptions:
- (a) No revenue receipts in the Forecast Period. Reconciliation efforts with Elavon with respect to the post-filing period are ongoing, but the quantum and the timing of collection of the remaining receipts is uncertain;
 - (b) Other receipts include collection of fuel tax rebates for periods prior to the Initial Filing Date, recovery of certain prepayments that were made during the Operating Period after completion of the reconciliation of accounts and recovery of certain deposits on account;
 - (c) Payroll and employee related obligations includes estimated amounts for remaining employees required to assist in the CCAA Proceedings;
 - (d) WEPP Priority Claim (as defined below) based on the calculation of Service Canada's subrogated super-priority claim;
 - (e) SG&A expense includes directors and officers run-off insurance premiums, IT and ongoing software costs to maintain access to the Applicants systems, and other costs associated with the Applicants office required during the CCAA Proceedings;
 - (f) Operating costs relating to remaining amounts expected to be paid for the Operating Period;
 - (g) Professional fees including the Monitor, the Monitor's Counsel, the Applicants' counsel and counsel to the Interim Lender;
 - (h) KERP includes payments to employees as previously approved by this Honourable Court;

- (i) Maintenance reserves owing to the last Lessor for the Operating Period;
- (j) Interest and fees owing on the Interim Facility pursuant to the Term Sheet;
- (k) Air Traveller's Security Charge based on the final reconciliation of amounts owed;
- (l) Other and contingency includes amounts for potential CRA claims, reserve for lower amounts realized from the return of deposits and letters of credit, fuel tax refunds and contingencies;
- (m) the Monitor notes that no amounts are contemplated to be paid to the Aircraft Lessors under the Aircraft Leases during the Waiting Period. The Applicants expect to return the Fleet and Engines Leases to the respective Lessors; and
- (n) the Applicants intend to repay the amounts outstanding under the Interim Facility from cash on hand in accordance with Term Sheet.

Monitor's Comments on the Cash Flow Statement

50. Section 23(1)(b) of the CCAA states that the Monitor shall, "review the company's cash-flow statement as to its reasonableness and file a report with the court on the Monitor's findings".
51. Pursuant to section 23(1)(b) of the CCAA, and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports as follows:
- (a) the Third CFS has been prepared by management of the Applicants for the purpose described in the notes to the Third CFS, using the probable assumptions and the hypothetical assumptions set out therein; and

(b) the Monitor's review consisted of inquiries, analytical procedures and discussion related to information supplied by certain of the management and employees of the Applicants. Since hypothetical assumptions need not be supported, the Monitor's procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the Third CFS. The Monitor has also reviewed the information provided by Management in support of the probable assumptions and the preparation and presentation of the Third CFS;

(c) Based on its review, and as at the date of this Report, nothing has come to the attention of the Monitor that causes it to believe that, in all material respects:

- the hypothetical assumptions are not consistent with the purpose of the Third CFS;
- the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Third CFS, given the hypothetical assumptions; or
- the Third CFS does not reflect the probable and hypothetical assumptions.

52. Since the Third CFS is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Third CFS will be achieved. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information present in this Report, or relied upon by the Monitor in preparing this Report.

53. The Third CFS has been prepared solely for the purpose of estimating liquidity requirements of the Applicants during the Forecast Period. The Third CFS should not be relied upon for any other purpose.

DETAILS OF SECURED AND POTENTIAL PRIORITY CLAIMS

54. The Monitor is aware of the following secured claims, charges or other claims that are owed by the Applicants, either pursuant to statute, or which have been asserted against the Property.

Indigo Secured Claims

55. Indigo has the following secured claims against the Applicants' Property:

- (a) the amount owing under the Interim Facility in the amount of approximately \$1.0 million which is anticipated to be repaid by the Applicants from cash on hand in accordance with the Term Sheet;
- (b) the Secured Obligations of approximately \$71.2 million plus accrued interest and fees of \$21.9 million owing under the terms of the Initial Notes and approximately \$42.4 million plus accrued interest and fees owing of approximately \$4.7 million under the terms of the Bridge Notes.

Secured Obligations (C\$ 000s)	
Initial Notes	\$ 71,242
Initial Notes accrued interest	21,877
Bridge Notes	42,426
Bridge Notes accrued interest	4,744
Total - Secured and Priority Claims	\$ 140,289

Canada Revenue Agency

56. On March 26, 2024, the CRA delivered a notice to the Applicants that it was completing an audit of GST/GST returns for the period from October 1, 2021, to February 22, 2024. A copy of the notice from the CRA is attached hereto as Appendix "B".

57. As of the date of the Report the Applicants and the Monitor are not aware of the CRA asserting a deemed trust claim against the Property.

Wage Earner Protection Program

58. As described above, former employees that were terminated during the CCAA Proceedings were not paid severance and/or termination pay. Additionally, employees that were terminated were not paid vacation pay that accrued prior to the Initial Filing Date.
59. The Applicants, in consultation with the Monitor, determined that a total of approximately \$1.4 million was owed to former employees for unpaid vacation and a total of \$1.4 million for severance and termination pay, which are considered eligible wages under the WEPP (the “**WEPP Claims**”).
60. Pursuant to section 81.4(4) of the *Bankruptcy and Insolvency Act*, the WEPP Claims are secured against the Applicants’ current assets to the extent of \$2,000 per employee for wages and compensation (including vacation pay, but excluding severance and termination pay).
61. The Applicants have not yet received a statement from Service Canada asserting a subrogated priority claim (“**WEPP Priority Claim**”) related to the unpaid vacation pay portion of the WEPP Claims. However, the Monitor estimates the WEPP Priority Claim to be approximately \$1.0 million.
62. On April 2, 2024, the Monitor received a letter from Koskie Minsky LLP in its capacity as counsel to CUPE as the bargaining agent for and on behalf of former cabin crew employees that it disagreed with the calculation of the termination and severance pay and that it intended to bring a motion before the Court for an order lifting the Stay of Proceedings. A copy of the letter is attached as Appendix “C”. The Monitor is considering the matters raised by CUPE and anticipates it will reply to CUPE, through its counsel, in the near future.
63. The Monitor notes that the positions articulated by CUPE in the above-noted letter do not impact the quantum of the WEPP Priority Claim inasmuch as severance and termination pay are not included in the definition of ‘compensation’ under 81.4(4) of the *Bankruptcy and Insolvency Act*.

Trust Claims for Airport Improvement Fees

64. On March 5, 2024, the Applicants received notice from counsel to the Greater Toronto Airport Authority (the “GTAA”) asserting a trust claim for unpaid AIF (the “GTAA AIF Claim”) pursuant to an agreement between the Lynx Opco and the GTAA for periods prior to the Initial Filing Date. A copy of the notice is attached as Appendix “D”.
65. On March 28, 2024, the Applicants received notice from counsel to Vancouver Airport Authority, Calgary Airport Authority, Edmonton Regional Airport Authority, Winnipeg Airport Authority Inc. and Halifax International Airport Authority asserting trust claims (the “Airport Authorities AIF Claims” and together with the GTAA AIF Claim, the “AIF Claims”) for unpaid AIF pursuant various agreements for periods prior to the Initial Filing Date. A copy of the notice is attached as Appendix “E”.
66. The Applicants are currently reviewing and determining next steps with respect to the AIF Claims asserted in the notices above and will report to this Honourable Court further when appropriate. The Monitor notes that in the interim the Applicants have maintained sufficient funds for the full amount of outstanding AIF Claims based on its records.

Security Opinion

67. The Monitor’s Counsel reviewed the Note Purchase Agreement, Note Guarantee, Note General Security Agreement, the First through Fifth Bridge Note Guarantee, and the First through Fifth Bridge Note General Security Agreement, and opined that, subject to standard qualifications and assumptions, all reviewed documents constitute legal, valid and enforceable obligations of the applicable obligors thereunder and the security interests governed by the *Personal Property Security Act* (Alberta) have been duly perfected in the Province of Alberta by registration of financing statements with the Alberta Personal Property Registry.

68. Other than the parties referenced above and the Aircraft Lessors, no other party has contacted the Applicants or the Monitor asserting a claim in priority to Indigo and the Monitor is not aware of any other party asserting priority to the Indigo, or any party that would be entitled to do so.

RELIEF SOUGHT BY THE APPLICANTS

Proposed Distributions

69. Given the realization of the Property is substantially complete, the Applicants do not anticipate the recoveries from any remaining transactions will be sufficient to repay the Secured Obligations in full.
70. As detailed above the Applicants currently have approximately \$97.1 million of cash on hand.
71. The Applicants are proposing to reserve certain amounts for:
- (a) the estimated net remaining funds to administer the estate as set out in the Third CFS;
 - (b) the AIF Claims, and
 - (c) pending resolution or determination such other potential priority claims (the “**Reserve**”).
72. The Proposed Distributions, subject to approval of this Honourable Court, would authorize the Applicants to make distributions, upon receiving the consent of the Monitor, to Indigo up to the amount of the Secured Obligations, without further Order of this Honourable Court.

73. The table below sets out the Proposed Distributions to Indigo, subject to the Reserve. Any residual amounts from the Reserve, up to the amount of the Secured Obligations, are proposed to be distributed to Indigo. The table illustrates that Indigo is anticipated to experience a shortfall on the Secured Obligations of approximately \$57.1 million.

Proposed Distributions (C\$ 000s)	
Opening cash as at April 7, 2024	\$ 97,078
Net change in cash during the Forecast Period	(6,016)
Repayment of Interim Facility	(1,013)
Reserve for AIF Claims	(6,879)
Total - Proposed Distributions	83,170
Secured Obligations	(140,289)
Shortfall	\$ (57,119)

74. The Monitor supports the Applicants' application to make the Proposed Distributions to Indigo because the Proposed Distributions are being made to Indigo in its capacity as senior secured creditor and its corresponding entitlement to receive the Proposed Distributions.
75. It is projected that Indigo will incur a shortfall of at least \$57.1 million. There are no other secured creditors or claimants with claims against the Applicants that rank in priority to, or potentially in priority, to the secured claim of Indigo (other than, potentially, the WEPP Priority Claim and AIF Trust Claims, both of which have been reserved).
76. The First Woodward Affidavit attaches a copy of a Noteholders' and Shareholders' Agreement as Exhibit 37 which has been amended from time to time, up to and including Amendment No. 7 to the Noteholders' and Shareholders' Agreement dated as of February 7, 2024 (collectively, the "NSA").
77. Article 13 of the NSA provides, in certain circumstances, that repayment of Notes requires a *pro rata* repurchase, redemption or purchase for cancellation of all Common Shares. In this regard, the Monitor notes that Lynx, owing to its insolvency, is unable to repurchase, redeem or purchase

for cancellation any of the Common Shares pursuant to the NSA even if the Proposed Distributions are approved by the Court and made by the Applicants.

Extending the Stay Period

78. The Applicants are seeking an extension to the Stay Period up to and including June 28, 2024. The Monitor has considered the Applicants' application for the extension of the Stay of Period, and has the following comments:

- (a) based on the Third CFS the Applicants are projected to have sufficient available liquidity to fund its ongoing obligations and the costs of the CCAA Proceedings during the term of the proposed extension of the Stay of Proceedings after considering the Reserve;
- (b) there will be no material prejudice to the Applicants' creditors and other stakeholders resulting from the extension of the Stay of Period;
- (c) the Applicants are continuing to act in good faith and with due diligence; and
- (d) the proposed extension of the Stay of Period will provide sufficient time for the Applicants to potentially realize more value for the Applicants stakeholders through the continued efforts to monetize the Engine Purchase Agreement and Miscellaneous Equipment.

CONCLUSIONS AND RECOMMENDATIONS

79. The Monitor supports the relief being sought by the Applicants, and recommends this Honourable Court approve:

- (a) the Applicants' request for authorization to make a distribution to the Interim Lender in an amount equal to the amounts owing to the Interim Lender under the Term Sheet;
- (b) the Applicants' request for authorization to make the Proposed Distributions to Indigo; and

- (c) the Applicants' request for an extension to the Stay of Period up to and including June 28, 2024.

All of which is respectfully submitted this 11th day of April 2024.

FTI Consulting Canada Inc.,
Licensed Insolvency Trustee in its capacity as
Monitor of Lynx Air and not in its personal or
corporate capacity.



Name: Deryck Helkaa, CPA, CA, CIRP, LIT
Title: Senior Managing Director
FTI Consulting Canada Inc.



Name: Dustin Olver, CPA, CA, CIRP, LIT
Title: Senior Managing Director
FTI Consulting Canada Inc.

Appendix “A” – Cash Flow Statement for the period ending June 29, 2024

Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air
Consolidated Cash Flow Statement
For the period of April 7, 2024 to June 29, 2024

(C\$ 000s)													Forecast
For the period of April 7, 2024 to June 29, 2024	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Forecast
	13-Apr	20-Apr	27-Apr	4-May	11-May	18-May	25-May	1-Jun	8-Jun	15-Jun	22-Jun	29-Jun	12 Week
													Total
Receipts													
Revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other / Recovery of Deposits	220	1,087	1,080	-	-	-	-	-	-	-	-	1,255	3,641
Total - Receipts	220	1,087	1,080	-	-	-	-	-	-	-	-	1,255	3,641
Disbursements													
Payroll and employee related obligations	(30)	(104)	-	(116)	-	(58)	-	(58)	-	(58)	-	(58)	(483)
WEPP Priority Claim	-	-	-	-	-	-	-	-	-	-	-	(1,000)	(1,000)
SG&A expense	(126)	(120)	(120)	(1,347)	(12)	(12)	(12)	(12)	(12)	(12)	(12)	(12)	(1,808)
Operating costs	(59)	-	-	-	-	-	-	-	-	-	-	-	(59)
Professional fees	-	(695)	-	-	-	(620)	-	-	-	(450)	-	-	(1,765)
KERP	-	-	-	(1,179)	-	-	-	-	-	-	-	-	(1,179)
Maintenance reserves	(14)	-	-	-	-	-	-	-	-	-	-	-	(14)
Interim Facility - Interest and fees	-	-	(180)	-	-	-	-	-	-	-	-	-	(180)
Air Travellers Security Charge	-	-	-	(261)	-	-	-	-	-	-	-	-	(261)
Other and contingency	-	-	-	-	-	-	-	-	-	-	-	(2,908)	(2,908)
Lease payments / deferrals	-	-	-	-	-	-	-	-	-	-	-	-	-
Total - Disbursements	(229)	(919)	(301)	(2,904)	(12)	(690)	(12)	(70)	(12)	(520)	(12)	(3,978)	(9,658)
Net change in cash	(10)	168	779	(2,904)	(12)	(690)	(12)	(70)	(12)	(520)	(12)	(2,723)	(6,016)
Opening cash	97,078	97,068	97,236	97,003	94,099	94,087	93,397	93,385	93,316	93,304	92,784	92,772	97,078
Interim Facility - Draw (repayment)	-	-	(1,013)	-	-	-	-	-	-	-	-	-	(1,013)
Ending Cash	\$ 97,068	\$ 97,236	\$ 97,003	\$ 94,099	\$ 94,087	\$ 93,397	\$ 93,385	\$ 93,316	\$ 93,304	\$ 92,784	\$ 92,772	\$ 90,049	\$ 90,049
Interim Facility													
Opening	\$ 1,013	\$ 1,013	\$ 1,013	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,013
Draw (repayment)	-	-	(1,013)	-	-	-	-	-	-	-	-	-	(1,013)
Ending Interim Facility	\$ 1,013	\$ 1,013	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -



Per: Mike Woodward, CFO
Lynx Air

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

Notes and Assumptions to the Cash Flow Statement

For the period of April 7, 2024, to June 29, 2024 (the “**Forecast Period**”)

Disclaimer:

This cash flow statement (the “**Cash Flow Statement**”) has been prepared using unaudited financial information and the Monitor has not attempted to further verify the accuracy or completeness of such information.

The Cash Flow Statement is based on the probable and hypothetical assumption identified below.

Since the Cash Flow Statement is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Forecast Period will vary from the Cash Flow Statement, and such variation may be material. There is no representation, warranty or other assurance that any of the assumptions or estimates used in the Cash Flow Statement will be realized.

Overview:

The Cash Flow Statement includes estimated receipts and disbursements of Lynx Air during the Forecast Period. Lynx Air, with the assistance of FTI Consulting Canada Inc., in its capacity as Monitor, have prepared the Cash Flow Statement based primarily on estimated receipts and disbursements related to the CCAA proceedings. Receipts and disbursements are denominated in Canadian dollars (the foreign exchange conversion rate used to convert USD to CAD is 1.35).

1. **Revenue:** Lynx Air and Elavon are working diligently to reconcile the amounts owed during the Operating Period including initiating refunds or chargebacks to customers for cancelled flights. No amounts are anticipated to be collected during the Forecast Period;
2. **Other / Recovery of Deposits:** Other receipts include collection of fuel tax rebates for periods prior to the Initial Filing Date, recovery of certain prepayments that were made during the Operating Period after completion of the reconciliation of accounts and recovery of certain deposits on account;
3. **Payroll and employee related obligations:** includes estimated amounts for remaining employees required to assist in the administration of the CCAA Proceedings
4. **WEPP Priority Claim:** based on the calculation of Service Canada’s subrogated super-priority claim;

5. **SG&A expense:** includes, among other things, directors and officers run-off insurance premiums, information technology and software licenses to maintain access to the Applicants systems, bank fees and other miscellaneous costs;
6. **Operating costs:** remaining operating costs incurred during the Operating Period and reconciliation with vendors for post-filing amounts;
7. **Professional fees:** represents the fees and costs of the Monitor, the Monitor's Counsel, the Applicants' counsel and counsel to the Interim Lender;
8. **KERP:** relates to a retention plan proposed to be paid to key employees and executives for their assistance during the CCAA Proceedings, previously approved by this Honourable Court;
9. **Maintenance reserves:** represents remaining prorated amounts owing under the Aircraft Leases for the period after the Initial Filing Date and during the Operating Period;
10. **Interim Facility – interest and fees:** represents interest payable under the Interim Facility;
11. **Air Travellers Security Charge:** based on the final reconciliation of amounts owed;
12. **Other and contingency:** includes amounts for potential CRA claims, reserve for lower amounts realized from the return of deposits and letters of credit, fuel tax refunds and contingencies;
13. **Lease payments / deferrals:** no amounts are contemplated to be paid to the Aircraft Lessors under the Aircraft Leases during the Waiting Period (other than pro-rated maintenance reserves after the date of the Initial Order); and
14. **Interim Facility:** as at the date of this Report approximately \$1.0 million has been drawn under the Interim Facility and is expected to be repaid, subject to approval from the Court.

Appendix “B” – CRA Notice dated March 26, 2024



Canada Revenue
Agency

Agence du revenu
du Canada

March 26, 2024

1263343 Alberta Inc.
3215 12th Street NE
Calgary AB T2E 7S9

Dear Michael Woodward:

Subject: Computer Audit Assistance – GST Audit
Audit Period – October 1, 2021 to February 22, 2024
Business Number: 84054 1767 RT0001
Case Number: 48644061

Further to our conversation on March 26, 2024, we are confirming the information required to proceed with the retrieval of your electronic books and records in relation to a GST/HST audit being conducted by Kim McLean (initial letter dated March 21, 2024).

The Excise Tax Act and the Income Tax Act requires every person who keeps records electronically to retain them in an electronically readable format for the retention period as set out for paper books and records. The legislative sections that state as such are as follows:

- Subsection 230(4.1) of the Income Tax Act
- Subsection 286(3.1) of the Excise Tax Act

Information Circular 78-10R5 Books and Records Retention/Destruction provides information and guidance in relation to maintaining records. A copy of this Circular is available from our website at www.cra-arc.gc.ca.

In the context of 1263343 Alberta Inc. recent filing for protection under the Companies' Creditors Arrangement Act (CCAA). This development necessitates a thorough verification of the amounts claimed on your GST/HST returns, specifically focusing on Input Tax Credits (ITCs), which may be subject to eligibility criteria based on the payment status (Paid vs. Unpaid) of the related expenses.

As such, it is your responsibility to provide us with the documents requested below:

- Aged Accounts Payable Listing (AAPL) as of CCAA Filing Date:
 - a. The outstanding AAPL, ideally showing a tax-embedded balance. Our understanding is that most systems can generate this data accordingly.
 - b. This listing should detail transactions on a per-transaction basis rather than summarized by vendor, to enable precise review.
 - c. Each transaction listed must share a common field with the General Ledger

- d. A sample AAPL is attached “**Appendix 1 - Sample Aged Accounts Payable Listing (AAPL)**”
- Trial Balances for Sept. 30/2021, Sept. 30/2022, Sept. 30/2023, and Feb. 22/2024,
 - General Ledger Detailed Transaction File for the entire fiscal-years ending Dec Sept. 30/2022, Sept. 30/2023, and stub Oct. 01/2023 – Feb. 22/2024,
 - Vendor Master,
 - Customer Master,
 - Chart of Accounts – including all segments and description,
 - Accounts Payable (A/P) Journal Detail Transaction File.

The electronic records you provide to us must contain sufficient detail to form an audit trail from the financial statements/corporate tax return/GST return to the source documents and enable us to determine the correct amount of taxes payable. To assist you in providing electronic books and records that meet these minimum requirements, we have enclosed a document entitled **Appendix 2 - GENERIC REQUEST FOR ELECTRONIC DATA**. Please note that this is for reference only and some of the information will not be applicable to your software and/or company.

To facilitate reconciliation of the electronic data to the GST returns, financial statements and the corporate tax return/s filed, we also request, if available, the following documentation:

- GST/HST Excel Monthly Working Papers supporting how the GST return amounts were derived,
- Adjusting Journal Entries (if not contained in the electronic records), and
- Grouping Schedule/s and/or financial working papers (used for reconciling the trial balance/s to the corporate tax return/s)
- If you utilize a reporting tool to produce year-end financials (i.e. Hyperion, BOARD, Cognos, Adaptive Insights, etc), please provide the following:
 - Comment on how 365 data flows/maps to the reporting tool
 - Soft copy of mapping 365 accounts to reporting tool accounts
 - Soft copy of year-end adjustments made in the reporting tool

A copy of your electronic data may be transferred to CRA using the following:

- “Submit Documents”, which may be accessed through “My Business Account” (MyBA) or “Represent a Client” (RAC). Information on “Submit Documents” may be found on CRA’s website at <https://www.canada.ca/en/revenue-agency/services/e-services/submit-documents-online.html>. “Submit Documents” may be used to securely transmit your electronic data through the Internet to CRA. Please note that you will need to enter the following case number **48644061** before you can successfully send the documents.

If the above option is not possible or convenient, you may consider sending the data via registered mail. It is the CRA’s policy not to solicit taxpayers to send electronic accounting data via external mail. If you choose to send the data by mail or courier, you are solely responsible until the data is received by CRA. You are also responsible to ensure that the

data provided to CRA is a copy of your data, and not the original data files. If you choose to send the data by mail or courier, we strongly recommend that you encrypt and password-protect your data using encryption software with AES256 encryption level (i.e: Winzip). Please contact the undersigned at the number below to provide the encryption password.

Regardless of the method chosen, the data must be received no later than **April 10, 2024**.

We thank you for your co-operation and assistance during this part of the audit. If you have any questions, please call me at 403-836-3974. My team leader, Avinash Chandra, may also be reached at 587-338-9991.

Yours truly,

2024-03-26

 X Scott Winkel

Scott Winkel

Signed by: WINKEL SCOTT

Scott Winkel
Digital Compliance & Audit Support Division
Canada Revenue Agency

Enclosures

Telephone: (403) 836-3974
Fax: (604) 951-5664
Mailing: Canada Revenue Agency
Attention: Scott Winkel
DCASD, HCATSO
9755 King George Boulevard
Surrey, BC V3T 5E1

Appendix “C” – Letter from Koskie Minsky LLP dated April 2, 2024



April 2, 2024

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Via E-mail

McCarthy Tétrault LLP
Suite 4000, 421-7th Avenue S. W.
Calgary, Alberta T2P 4K9

Attention: Justin Turc

Dear Mr. Turc:

Re: *In the Matter of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air*, Court File No. 2401-02664

**CUPE Cabin Crew Members Bargaining Unit
Undercalculation of Cabin Crew Severance Amounts for WEPPA Process
Our File No. 16407-240298**

We have reviewed your letter dated March 25, 2024 with our clients.

We do not agree with your proposition that the financial liquidity crisis of Lynx Air prior to it seeking protection from its creditors under the CCAA and the sudden mass termination of its 246 cabin crew employees without prior notice nor pay in lieu of notice, disentitle the employees to a claim in respect of mass termination severance under section 212 of the Canada Labour Code, R.S.C. 1985, c. L-2 (the "*Code*"), and thus a claim in respect of that amount under the WEPPA program.

We maintain the Monitor's calculations of each employees' severance claim is too low, and for some employees, the amount of their claims appear to be even below their entitlement under common law notice, which would still apply even if the mass termination provision under the *Code* are ultimately held not to.

The Monitor's exclusion of the mass termination provisions as well as an amount based on common law notice has the effect of depriving the terminated employees of their full entitlements under WEPPA, which the employees urgently need in the circumstances of their job losses.

We also disagree with your statement that the employment data of the Union members is not required to be provided to CUPE to discharge its duty of representation of its members. As we explained in our previous correspondence dated March 12, 2024, cases have held that privacy

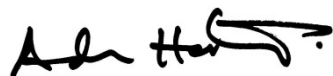
rights of the Union members are partially superseded by the rights of their Union, who those employees chose as their representative. CUPE is entitled to the employment and compensation data of its members, which CUPE requires so it can verify each of their members' severance calculations and ensure that they receive their full entitlement under WEPPA and for any future claims process. The refusal to provide the Union member data is obstructing the Union in its representation of its members.

Given the impasse with the Monitor on the above issues, our client wishes to bring the matter of: (i) the request of the members' employment and compensation data; and (ii) the applicable law to apply to the employees' mass termination entitlements, before the Canada Industrial Relations Board (the regulatory body that administers the *Code*; the "CIRB") for a determination.

We expect that this will require bringing a motion before the Court for an order lifting the CCAA stay of proceedings to facilitate the CIRB hearing. We have contacted the Court office who have advised that the Court has availability over the next few weeks for the lift stay motion.

Please advise that you will not oppose the lift stay motion and if so, the motion can proceed unopposed and efficiently. We will coordinate with you to schedule the hearing before the CIRB.

Yours truly,
KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl

cc. Clients
Abir Shamim, *Koskie Minsky LLP*

Appendix “D” – Letter from Counsel to the Greater Toronto Airport Authority dated March 5, 2024

Osler, Hoskin & Harcourt LLP
 Box 50, 1 First Canadian Place
 Toronto, Ontario, Canada M5X 1B8
 416.362.2111 MAIN
 416.862.6666 FACSIMILE

OSLER

Toronto

March 5, 2024

Shawn Irving
 Direct Dial: 416.862.4733
 sirving@osler.com

Montréal

Sent by Electronic Mail (rvandemosselaer@osler.com)

Calgary

Osler, Hoskin & Harcourt LLP
 Suite 2700, Brookfield Place
 225 – 6th Avenue S.W.
 Calgary, Alberta T2P 1N2

Ottawa

Vancouver

New York

Dear Mr. Van de Mosselaer:

In the Matter of a Plan of Compromise or Arrangement of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air – Airport Improvement Fee Trust

We act for the Greater Toronto Airports Authority (the “GTAA”). We are aware that on February 22, 2024, Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (collectively “Lynx Air”) sought and obtained an initial order (as subsequently amended and restated, the “ARIO”) under the *Companies’ Creditors Arrangement Act* (“CCA”).

As you may know, 1263343 Alberta Inc. (dba Lynx Air) and the GTAA are parties to the Greater Toronto Airports Authority Airport Improvement Fee Agreement (the “AIF Agreement”), dated January 1, 2023. The AIF Agreement sets out, among other things, the requirement that the Airport Improvement Fee (“AIF”) charged by the GTAA to Enplaned Passengers (as defined in the AIF Agreement) be collected and held by Lynx Air on behalf of GTAA and remitted back to the GTAA.

Paragraph 2.1.1(c) expressly provides that the AIF collected on behalf of the GTAA by Lynx Air are funds or revenues belonging to the GTAA and not Lynx Air. Moreover, Lynx Air is expressly required to hold the AIF in trust for the benefit of the GTAA. As such, the AIF collected by Lynx Air from Enplaned Passengers represent trust funds that do not form part of the debtor’s Property (as that term is defined in the ARIO) and cannot be distributed to Lynx’s creditors or otherwise used as part of the CCA proceeding. An excerpt of the applicable provisions in the AIF Agreement is attached as Schedule “A”. A full copy of the AIF Agreement, which is confidential, is available upon request.

As of February 21, 2024, Lynx Air is holding CAD \$1,710,148.23 million in AIF (the “AIF Monies”) in trust on behalf of the GTAA. GTAA demands that Lynx Air immediately remit the AIF Monies that remain owing to the GTAA, failing which the GTAA intends to bring a payment motion in the CCA proceeding. In the meantime, we expect that Lynx Air will refrain from taking any steps to deplete or use the AIF Monies in any way.

OSLER

Page 2

We look forward to hearing from you.

Sincerely,



Shawn Irving
Partner

cc. FTI Consulting Canada Inc. *in its capacity as Monitor of Lynx Air*
McCarthy Tétrault LLP, *Counsel for the Monitor*
Julie Treleaven, *Osler, Hoskin & Harcourt LLP (Calgary)*
Andrea Campbell, *Greater Toronto Airports Authorities*
Peter Humele, *Greater Toronto Airports Authorities*
Emma Smith, *Osler, Hoskin & Harcourt LLP (Toronto)*

SCHEDULE "A"



GREATER TORONTO AIRPORTS AUTHORITY AIRPORT IMPROVEMENT FEE AGREEMENT

Toronto-Pearson International Airport
P.O. Box 6031, Toronto AMF, Ontario, L5P 1B2

DATE: January 1, 2023 (the "Effective Date")

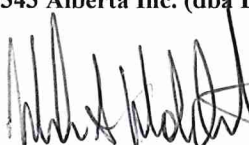
NAME OF CARRIER: 1263343 Alberta Inc. (dba Lynx Air)

As of the Effective Date, each of the Greater Toronto Airports Authority ("GTAA") and 1263343 Alberta Inc. (dba Lynx Air) ("Air Carrier") hereby agree as follows with respect to the imposition by GTAA of an Airport Improvement Fee, the collection of Deposits by Air Carrier from certain passengers and the remittance of Deposits by Air Carrier to GTAA as hereinafter set forth.

Greater Toronto Airports Authority

Per: 
Name: John Peellegoda
Title: Acting Chief Financial Officer

12633343 Alberta Inc. (dba Lynx Air)

Per: 
Name: Michael S. Holditch
Title: Chief Financial Officer

GTAA to evaluate, consult on and ultimately provide a recommendation to the ACC on the technical suitability of all Reviewable Capital Programs; and

“Vice President and Chief Financial Officer” means the GTAA employee holding the position of Vice-President and Chief Financial Officer from time to time and will include any acting Vice-President and Chief Financial Officer and, if the title of the position is changed, the employee who is able to exercise the authority of the Vice President and Chief Financial Officer for the purposes of this Agreement.

- 1.2. Words importing the singular number include the plural and vice versa and words importing gender include the masculine, feminine and neuter genders.
- 1.3. The division of this Agreement into Articles, Sections, Subsections, paragraphs and subparagraphs and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.
- 1.4. The words “hereof”, “herein”, “hereunder” and similar expressions used in any Article or Section of this Agreement relate to the whole of this Agreement and not to that Article or Section only, unless otherwise expressly provided.
- 1.5. Wherever in this Agreement the terms “include”, “includes”, “including” or any derivations thereof are used, such term will be interpreted to mean “including, without in any way limiting the generality of the foregoing,” such that any list following such term will not be construed so as to constitute an exhaustive list of the items so listed.
- 1.6. Except as otherwise indicated herein, at all times during the Term of this Agreement, the Parties will act reasonably in exercising their rights or discretions, making requests, making determinations and performing their duties and obligations under and in connection with this Agreement.

2. AIRPORT IMPROVEMENT FEE

2.1. Imposition and Usage of AIF and Remittance/Collection of Deposits

- 2.1.1 (a) The Parties agree that in general, AIF (specifically excluding amounts to be retained by Air Carrier in respect of the Administration Cost and amounts collected and remitted in respect of HST and other applicable taxes which will be remitted to the relevant authorities) will be used by GTAA for the purpose of Capital Programs and Capital Projects designed in furtherance of the:
 - (i) creation of operational efficiencies that reduce operating cost;
 - (ii) development of operating capacity;
 - (iii) generation of positive cash flow from non-aeronautical revenue sources;
and
 - (iv) other purposes set forth in Section 2.3 hereof,

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and for debt service on any Capital Projects or Programs (which, for clarity, include debt service on any capital projects or programs which have been incurred by GTAA prior to the Effective Date of this Agreement).

- (b) During the Term, GTAA intends to impose an AIF in respect of the Enplaned Passengers carried by air carriers (including Air Carrier) operating from the Airport. In consideration of the retention by Air Carrier of the Administration Cost referred in Section 2.5 of this Agreement, Air Carrier will make every commercially reasonable effort to collect, or cause to be collected, the Deposit for and on behalf of GTAA at the time of the sale of a Ticket to each prospective Enplaned Passenger which will be held as a Deposit by Air Carrier and remitted to GTAA as provided in this Agreement.
- (c) Subject to the terms of Section 2.4.2. of this Agreement, each of the Parties acknowledge and agree that: (i) the Deposits collected on behalf of GTAA by Air Carrier from the prospective Enplaned Passengers are funds properly belonging to GTAA and not Air Carrier; and (ii) the Deposits collected by Air Carrier will be held by Air Carrier in trust for the benefit of GTAA. Notwithstanding and without prejudice to the fact that the Deposits will be collected and held by Air Carrier in trust for GTAA, but subject to the terms of Section 2.4.2. of this Agreement, the Parties each acknowledge that such Deposits collected will be commingled in the accounts of Air Carrier with other funds collected during the normal course of business with no obligation to segregate the Deposits from these other funds, and GTAA will be under no obligation at any time to segregate AIF from any other funds it may have.
- (d) Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that, as of January 1, 2023, Air Carrier and all of the other Participating Air Carriers shall be permitted to: continue using the same IATA “ticket tax” code (IATA Code: SQ); reflect on their Tickets the current AIF description; and collect and remit the AIF in the manner currently being used by all of the Participating Air Carriers, and same will not constitute a breach of any obligation of this Agreement. The Participating Air Carriers will work with IATA and the other Canadian airports diligently to develop and publish, through the IATA Ticket Tax Box Service, a new IATA “ticket tax” code and description reflecting the collection of Deposits in the manner otherwise provided herein. After the publication of the new IATA “ticket tax” code, and as set-out therein, Air Carrier will: reflect the new IATA-approved description on their Tickets; and collect and remit the Deposits on the Remittance Forms to accordingly reflect the Deposit mechanism provided herein.

2.1.2. The obligation to collect and remit Deposits will not apply to Exempt Services provided by Air Carrier. In addition, air carriers who carry less than two thousand (2,000) Enplaned Passengers per calendar year will not be required to collect, hold and remit any Deposits, unless GTAA so elects such air carriers to require such collection, holding and remittance.

2.1.3. Any AIF or fee charged by GTAA on Non-Participating Air Carriers in lieu of the AIF imposed by GTAA will be set at a Canadian whole dollar amount per Enplaned Passenger

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for Participating Air Carriers or Non-Participating Air Carriers (as the case may be) plus HST and other applicable taxes. In addition, GTAA will also set an AIF in respect of Connecting Passengers for Participating Air Carriers or Non-Participating Air Carriers (as the case may be) which will be set at a Canadian whole dollar amount per Connecting Passenger.

- 2.1.4.** GTAA has the right at any time during the Term to increase or decrease the amount of the AIF payable by Enplaned Passengers as set out herein. GTAA has the right at any time during the Term to increase or decrease the amount of the Deposit to be collected, held in accordance with Section 2.1.1.(b) and remitted by Air Carrier, provided that GTAA will provide at least 90 calendar days prior written Notice to the ACC and to the Participating Air Carriers.
- 2.1.5.** Regardless of which air carrier sells a Ticket to a prospective Enplaned Passenger or which air carrier designator code is on the Enplaned Passenger's Ticket, the Parties acknowledge and agree that the Participating Air Carrier on whom the Enplaned Passenger actually travels will be the party responsible for the remittance of the Deposit for that prospective Enplaned Passenger in accordance with the other provisions of this Agreement, and, if Air Carrier also sold the Ticket to the prospective Enplaned Passenger, Air Carrier will be responsible for the collection of the Deposit for such Enplaned Passenger.
- 2.1.6.** Except as permitted under Section 2.1.2, GTAA will not levy GTAA Rates and Charges, including landing fees and general terminal charges, on any less favourable terms and conditions to Participating Air Carriers and their passengers, having regard to the AIF imposed by GTAA, than are levied on Non-Participating Air Carriers and their passengers, provided that nothing herein will be interpreted or construed so as to limit the unfettered right of GTAA to set GTAA Rates and Charges at such levels as it deems appropriate in its sole discretion or to offer incentive programs from time to time or to set different fees in lieu of AIF rates for Non-Participating Air Carriers than AIF rates for Participating Air Carriers. Air Carrier acknowledges and agrees that the current arrangement (which Air Carrier agrees is compliant with the foregoing) for Non-Participating Air Carriers is that they pay a fee in lieu of the AIF, which is not, and will not be, less than the dollar amount of the AIF, and which is on the basis of the number of seats instead of the number of Enplaned Passengers, and that GTAA may revise such charging and collection methodology in its sole discretion at any time, subject to the limitations stated in this Section 2.1.6.
- 2.1.7.** If, as a result of any of the following events (an "**AIF Legislative Initiative**"):
- (a) any order, directive, legislative initiative, regulatory change and/or binding policy statement issued by a government authority having jurisdiction over the imposition or collection of an AIF by GTAA; or
 - (b) any order or judgment of any court or administrative body of competent jurisdiction,

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GTAA is unable to impose an AIF or Participating Air Carriers are unable to collect the Deposits, the obligations of each Party contained in this Agreement will cease, save and except:

- (a) the obligation of Air Carrier to collect Deposits in accordance with Section 2.1.1.(b), up to and including the date upon which the government authority having jurisdiction or the court or administrative body, has issued, promulgated or enacted the AIF Legislative Event (the “**Event Date**”); and
- (b) the obligations of the Parties described in Section 2.5 to the extent of the Deposits collected, held in accordance with Section 2.1.1.(b) and remitted by Air Carrier for the period up to and including the Event Date.

2.2. Capital Review Process

2.2.1. Airport Master Plan and Capital Plan

Upon the execution of this Agreement, GTAA will provide to the TSC the most current version of the Airport Master Plan along with its five-year capital plan for the Airport (the “**Capital Plan**”) which will outline and detail (using written descriptions and illustrations) GTAA’s capital budget over the number of years covered by the Capital Plan, and its planned Capital Programs, including Reviewable Capital Programs. For clarity and certainty, and as applicable, the Capital Plan will include the terms related to any Permitted Transit Funding Amount. The Parties acknowledge that the Capital Plan is and will continue to be an evolving document as GTAA’s strategy and capital plans evolve, and accordingly GTAA will provide the TSC on an annual basis with an updated version of its Capital Plan. GTAA and the TSC may review and discuss the Airport Master Plan and the Capital Plan, provided that nothing herein will be construed so as to give the TSC or any Participating Air Carrier the right of consultation (including the Consultation Process) with GTAA with respect thereto.

2.2.2. Reporting

(a) Reporting on Airport Master Plan and Capital Plan

GTAA will, on a semi-annual basis (or more frequently if GTAA determines that more frequent reports are warranted to achieve the purposes of this Agreement) provide to the ACC updated information pertaining to:

- (i) Capital Plan impact on debt and debt service levels;
- (ii) Capital Plan impact on operating budget;
- (iii) Amendments to the Capital Plan; and
- (iv) Amendments to the Airport Master Plan.

Appendix “E” – Letter from Counsel to Various Airport Authorities dated March 28, 2024

Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
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March 28, 2024

File No.: 156416.1001

By Email

Osler, Hoskin & Harcourt LLP
Suite 2700, Brookfield Place
225 - 6 Avenue SW
Calgary AB
T2P 1N2

Attention : Randal Van de Mosselaer

Dear Mr. Van de Mosselaer:

Re: In the matter of Lynx Air Holdings Corporation - Airport Improvement Fee arrears

Please be advised that our office has been retained by the following Canadian airport authorities:

1. Vancouver Airport Authority;
2. Calgary Airport Authority;
3. Edmonton Regional Airport Authority;
4. Winnipeg Airport Authority Inc. and
5. Halifax International Airport Authority

Collectively, the "Airport Authorities".

Each of the Airport Authorities are owed money by 1263343 Alberta Ltd ("Lynx Air") pursuant to various agreements, including a Memorandum of Agreement between the Air Transport Association of Canada, Signatory Air Carriers (including Lynx Air) and the Airport Authorities and others ("the MOA").

Pursuant to the MOA, Lynx Air had an obligation to collect all Airport Improvement Fees ("AIF") charged by the Airport Authorities to Enplaned Passengers, and to remit such AIF collected on behalf of the Airport Authorities. The AIF collected by Lynx Air constitutes monies held in trust for the benefit of the Airport Authorities, by express, implied or constructive trust.

We are still collecting details of the amounts owing, but we are advised that the amount in issue is approximately \$4.1 million. On behalf of the Airport Authorities, we hereby demand return of these trust monies, subject to final confirmation of the exact amounts owing. As you know, pursuant to section 67(1)(a)

of the BIA, trust funds (property held by the bankrupt in trust for any other person) do not form part of the property of the debtor.

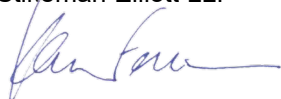
We understand that Mr. Shawn Irving of Oslers Toronto office has been engaged by the Greater Toronto Airports Authority ("GTAA") to make a similar claim on behalf of the Toronto Airport. I understand that Mr. Irving wrote to your office on March 5, 2024 but has not yet received a response.

We are copying this letter to the Monitor, and we understand the SISP is ongoing with respect to the exigible assets of Lynx Air. Please be assured that we do not wish to interfere in the SISP process in any way. However, it will be important that no distribution of sale proceeds is made until such time as it becomes clear that there will be sufficient funds to satisfy the trust claims. Given the expedited timelines proposed in the ARIO, we request a meeting with your office and counsel for the Monitor to discuss this issue, including scheduling a Court application (if necessary) and the resulting evidentiary matters.

I look forward to hearing from you at your earliest convenience.

Yours truly,

Stikeman Elliott LLP

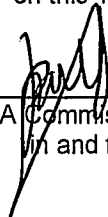


Karen Fellowes K.C.
Senior Counsel

KF/jw

cc: *Sean Irving of Osler, Hoskin & Harcourt LLP, counsel to the Greater Toronto Airports Authority ("GTAA")*
Sean Collins, Walker W. MacLeod, Pantelis Kyriakakis and Nathan Stewart of McCarthy Tétrault, counsel to the Monitor
Deryck Helkaa, Brett Wilson and Dustin Olver, of FTI Consulting, the Monitor

This is **Exhibit "D"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
in and for Alberta
My Commission Expires September 11, 2026

COURT FILE NUMBER 2401-02664
 COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS
 ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
 AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION
 and 1263343 ALBERTA INC. dba LYNX AIR



DOCUMENT **FOURTH REPORT OF FTI CONSULTING CANADA INC.,
 IN ITS CAPACITY AS MONITOR OF LYNX AIR
 HOLDINGS CORPORATION and 1263343 ALBERTA INC.
 dba LYNX AIR**

May 15, 2024

ADDRESS FOR SERVICE AND
 CONTACT INFORMATION OF
 PARTY FILING THIS
 DOCUMENT

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FOURTH REPORT OF THE MONITOR

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Appendix “A” – Letter from Koskie Minsky LLP dated April 19, 2024

Appendix “B” – Cash Flow Statement for the period ending June 29, 2024

INTRODUCTION

1. On February 22, 2024 (“**Initial Filing Date**”), Lynx Air Holdings Corporation (“**Lynx Holdco**”) and 1263343 Alberta Inc. dba Lynx Air (“**Lynx Opco**”, together with Lynx Holdco, “**Lynx Air**” the “**Applicants**” or the “**Company**”), sought and obtained an initial order (“**Initial Order**”) by the Court of King’s Bench of Alberta (“**Court**”) to commence proceedings (“**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”).
2. The Initial Order, among other things, established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants until March 4, 2024, and appointed FTI Consulting Canada Inc. as monitor (the “**Monitor**”) of the Applicants in these CCAA Proceedings;
3. On March 1, 2024, this Honourable Court granted an Amended and Restated Initial Order (the “**ARIO**”) which, among other things, provided the following relief:
 - (a) declared that the Applicants are companies to which the CCAA applies;
 - (b) authorized the Applicants to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the “**Property**”) and continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) or their Property;
 - (c) extended the Stay of Proceedings, until and including April 15, 2024, (the “**Stay Period**”), all proceedings, and remedies against the Applicants or its business or Property, except as otherwise set forth in the Initial Order or otherwise permitted by law;

- (d) granted a charge in favour of the Monitor, its legal counsel, and the Applicants' legal counsel in respect of their fees and disbursements in the amount of \$500,000 under section 11.52 of the CCAA (the "**Administrative Charge**");
- (e) granted a \$500,000 charge in favour of the Applicants' directors and officers ("**Directors' Charge**") as protection against obligations and liabilities that they may incur as directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of these CCAA Proceedings;
- (f) increased the amount available to the Applicants under an interim financing term sheet ("**Term Sheet**") made as of February 21, 2024, with Indigo Northern Ventures LP (the "**Interim Lender**" or "**Indigo**") from approximately \$1.0 million (US\$750,000) to approximately \$5.0 million (as same is denominated in USD, the "**Interim Facility**") and a corresponding increase to the court-ordered priority charge on the Property of the Applicants to secure the Interim Facility (the "**Interim Lender's Charge**");
- (g) granted a charge against the Applicants' Property for a key employee retention plan ("**KERP**") in the maximum amount of \$1.2 million (the "**KERP Charge**");
- (h) sealed the Confidential Affidavit of Michael Woodward in accordance with the terms of a restricted court access order granted by the Court; and
- (i) declared pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), S.C. 2005, c. 47, s.1 ("**WEPPA**"), that the Applicants and their former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations SOR/2008-222 (the "**WEPP Regulations**") and are individuals to whom the WEPPA applies as of the date of the Initial Order.

4. Also on March 1, 2024, this Honourable Court approved a sale and investment solicitation process (“**SISP**”) and granted an Order (the “**SISP Order**”) authorizing and directing the Applicants and the Monitor to implement the SISP in accordance with the terms thereof (the “**SISP Procedures**”).
5. On April 2, 2024, this Honourable Court granted the following Orders:
 - (a) an Order (the “**Termination Approval Order**”) approving a termination agreement and mutual release (the “**Termination Agreement**”) between The Boeing Company (“**Boeing**”) and Lynx Opco in respect of Purchase Agreement No. PA-04427 (the “**Boeing Purchase Agreement**”);
 - (b) a restricted Court access Order sealing the confidential affidavit of Michael Woodward, sworn March 25, 2024, which contains an unredacted copy of the Termination Agreement; and
 - (c) a restricted Court access Order sealing the confidential supplement to the second Report of the Monitor dated March 27, 2024.
6. On April 15, 2024, this Honourable Court granted the following Orders:
 - (a) authorizing the Applicants, with the approval of the Monitor, to repay the borrowings to the Interim Lender in an amount equal to the amounts owing to the Interim Lender under the Term Sheet;
 - (b) authorizing the Applicants to make further distributions to Indigo up to an amount equal to the secured obligations and amounts owing by the Applicants under the terms of the note purchase agreement dated December 20, 2018 (the “**Initial Notes**”), and the five bridge note purchase agreements, as amended (the “**Bridge Notes**” and collectively with the Initial Notes, the “**Secured Obligations**”); and

- (c) extending the Stay Period up to and including June 28, 2024.
7. On May 14, 2024, the Applicants filed and served a notice of application returnable on May 21, 2024, seeking orders:
- (a) authorizing and approving (the “**BOCA AVO**”) the transaction (the “**BOCA Transaction**”) contemplated by the asset purchase and sale agreement between Lynx Opco and BOC Aviation (Cayman) Limited (“**BOCA**”) dated May 13, 2024 (the “**BOCA APA**”);
- (b) authorizing and approving (the “**AERO AVO**”) the transaction (the “**AERO Transaction**”) and together with the BOCA Transaction, the “**Transactions**”) contemplated by an asset purchase and sale agreement between Lynx Opco and AERO3 Inc. (“**AERO**”) dated May 10, 2024 (the “**AERO APA**”); and
- (c) an order (the “**Restricted Court Access Order**”) sealing the Confidential Affidavit of Michael Woodward, sworn May 13, 2024 (the “**Confidential Woodward Affidavit**”).
- (the “**May 21 Application**”).
8. Electronic copies of all materials filed by the Applicants in connection with the May 21 Application and other statutory materials are available on the Monitor’s website at: <http://cfcanada.fticonsulting.com/lynxair/>.

PURPOSE

9. The Monitor has reviewed the Court materials filed by the Applicants in support of the May 21 Application. The purpose of this report (this “**Report**”) is to provide this Honourable Court and the Applicants’ stakeholders with information and the Monitor’s comments with respect to the following:

- (a) the activities of the Monitor since its third report dated April 11, 2024 (the “**Third Report**”);
 - (b) the status of the wind-down of the Applicants’ business and operations;
 - (c) the status of the SISP including the Applicants’ request for approval of the Transactions;
 - (d) the termination of the Applicants nine leases associated with the Boeing 737 MAX 8 aircrafts;
 - (e) the Applicants’ actual cash receipts and disbursements for the 5-week period ended May 11, 2024, as compared to the cash flow statement presented to this Honourable Court attached to the Third Report;
 - (f) the Applicants updated cash flow statement (the “**Fourth CFS**”) for the period of May 12, 2024, to June 29, 2024 (the “**Forecast Period**”) as well as the Monitor’s view on the reasonableness of the Cash Flow Statement and assumptions therein; and
 - (g) the Monitor’s conclusions and recommendations with respect to the above.
10. This Report should be read in conjunction with the affidavit of Mike Woodward sworn on May 13, 2024 (the “**Fifth Woodward Affidavit**”).

TERMS OF REFERENCE

11. Capitalized terms used but not defined herein have the same meaning ascribed to them in the Fifth Woodward Affidavit and the ARIO, as the context may require.

12. In preparing this Report, the Monitor has relied upon unaudited financial information, other information available to the Monitor and, where appropriate, the Applicants' books and records and discussions with various parties (collectively, the "**Information**").
13. Except as described in this Report:
- (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*;
 - (b) the Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*; and
 - (c) future oriented financial information reported or relied on in preparing this Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
14. The Monitor has prepared this Report in connection with the May 21 Application. This Report should not be relied on for other purposes.
15. Information and advice described in this Report that has been provided to the Monitor by its legal counsel, McCarthy Tétrault LLP (the "**Monitor's Counsel**"), was provided to assist the Monitor in considering its course of action, is subject to solicitor client privilege, not intended as legal or other advice to, and may not be relied upon by, any other person.
16. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

BACKGROUND INFORMATION

17. Detailed information with respect to the Applicants' business, operations and causes of financial difficulty are described in Affidavit of Mike Woodward sworn on February 22, 2024.
18. Additional background information on the Applicants and the CCAA Proceedings is available on the Monitor's Website, including the Fifth Woodward Affidavit.
19. The Applicants' primary assets, included:
 - (a) nine leased Boeing 737 MAX 8 aircraft (the "**Fleet**") and three leased CFM LEAP-1B25 spare engines (the "**Engine Leases**" and together with the Fleet, the "**Aircraft Leases**");
 - (b) the Boeing Purchase Agreement which included 29 aircraft remaining to be delivered;
 - (c) a sale and leaseback agreement between Lynx Opco and BOC Aviation Limited with respect to eight aircraft scheduled to be delivered in 2024 (the "**BOCA Aircraft**");
 - (d) an agreement between Lynx Opco and CFM International, Inc. to purchase four LEAP-1B25 engines (the "**Engine Purchase Agreement**");
 - (e) ancillary aircraft equipment, including wheels and brakes compatible with the Fleet (the "**Wheels and Brakes**"); and
 - (f) other buyer furnished equipment installed or to be installed on the BOCA Aircraft (the "**BFE**"),

(collectively, the "**Assets**").
20. Pursuant to the Aircraft Leases the Applicants are party to lease agreements with six counterparties (the "**Lessors**").

ACTIVITIES OF THE MONITOR

21. The Monitor's activities since the Third Report include the following:
- (a) monitoring the Applicants' finances (including cash flows) and operations;
 - (b) continuing to administer the WEPPA claims process in consultation with the Applicants human resource and payroll departments;
 - (c) participating in numerous discussions with the Applicants, the Lessors and other counterparties to conduct and carry out the SISP;
 - (d) assisting the Applicants in preparing the Fourth CFS; and
 - (e) responding to inquiries from suppliers and creditors who contacted the Monitor in connection with these CCAA Proceedings.

STATUS OF OPERATIONS AND BUSINESS

Operations

22. Upon granting of the Initial Order the Applicants commenced an expedited wind-down of flight operations which included operating scheduled flights for a period of four days, from the Initial Filing Date to the end of day on February 25, 2024 (the "**Operating Period**").
23. As of the date of this Report the Applicants continue the wind-down of operations including reconciling final accounts with vendors which provided services during the Operating Period and correspondence with counterparties that held security in the form of deposits and letters of credit to either effectuate the return of the collateral or release the security to vendors.

Employees

24. As of the date of this Report three employees and two contractors remain to assist with the administration of the SISP, the continued wind-down of the business and the administration of the CCAA Proceedings.
25. Upon their termination employees have been provided with directions on how to receive a copy of their record of employment from Service Canada and made aware of the WEPPA.
26. On March 13, 2024, within the timeline prescribed by the WEPP Regulations, the Monitor provided eligible employees with an instruction letter (“**WEPPA Instruction Letter**”) setting out the Applicants’ calculation of eligible wages owed under WEPPA and instructions on how to submit claims with Service Canada.
27. The following summarizes the status of WEPPA claims administered by the Monitor to date:
 - (a) sent 486 WEPPA Instruction Letters to eligible employees;
 - (b) 443 eligible employees have submitted a proof of claim (“**WEPPA Proofs of Claim**”) to the Monitor in accordance with the WEPPA Instruction Letter and in accordance with the requirements under WEPPA; and
 - (c) the Monitor has reviewed the WEPPA Proofs of Claim received to date and has submitted 443 WEPPA Proofs of Claim to Service Canada for processing. The Monitor continues to review and process claims as received from eligible employees.
28. The Applicants, in consultation with the Monitor, determined that a total of approximately \$1.5 million was owed to former employees for unpaid vacation and a total of \$1.5 million for severance and termination pay, which are considered eligible wages under the WEPP (the “**WEPP Claims**”).

29. Pursuant to section 81.4(4) of the *Bankruptcy and Insolvency Act*, the WEPP Claims are secured against the Applicants' current assets to the extent of \$2,000 per employee for wages and compensation (including vacation pay, but excluding severance and termination pay).
30. The Applicants have not yet received a statement from Service Canada asserting a subrogated priority claim (“**WEPP Priority Claim**”) related to the unpaid vacation pay portion of the WEPP Claims. However, the Monitor estimates the WEPP Priority Claim to be approximately \$1.0 million.
31. On April 19, 2024, the Monitor received a letter from Koskie Minsky LLP, in its capacity as counsel to CUPE as the bargaining agent for and on behalf of former cabin crew employees, that it continued to disagree with the calculation of the termination and severance pay and that it would respond to the Monitor further. A copy of the letter is attached as Appendix “A”. As of the date of this Report, the Monitor has not received any further correspondence in respect of this matter.
32. The Monitor notes that the positions articulated by CUPE in the above-noted letter do not impact the quantum of the WEPP Priority Claim inasmuch as severance and termination pay are not included in the definition of ‘compensation’ under 81.4(4) of the *Bankruptcy and Insolvency Act*.

Trust Claims for Airport Improvement Fees

33. As more fully described in the Third Report, the Applicants received notice from counsel to the Greater Toronto Airport Authority and to Vancouver Airport Authority, Calgary Airport Authority, Edmonton Regional Airport Authority, Winnipeg Airport Authority Inc. and Halifax International Airport Authority (collectively, the “**Airport Authorities**”) asserting trust claims for unpaid AIF pursuant to various agreements between the Lynx Opco and the Airport Authorities (the “**AIF Trust Claims**”).
34. The Applicants and the Airport Authorities are in the process of negotiating a litigation timetable to have this matter heard before this Honourable Court on June 24, 2024.

35. The Monitor notes that the Applicants continue to hold \$6.9 million which, based on the Applicants' books and records, are sufficient funds for the full amount of the asserted AIF Trust Claims. Such funds have been held by the Applicants on the basis that such withholding is without prejudice to the positions the Applicants may take with respect to any or all of the asserted AIF Trust Claims.

Delta Air Lines, Inc.

36. The Monitor is aware that Delta Air Lines, Inc. ("**Delta**") has filed liens in Alberta, Ontario, British Columbia, Manitoba and New Brunswick against the aircraft, which have been surrendered to the Lessors, relating to certain services provided under the terms of the Comprehensive Fleet Support Agreement dated September 20, 2023, between Lynx Opco and Delta.
37. The Monitor understands that Delta has set an application for 2:00pm on June 19, 2024. The Monitor notes that the Applicants' position is that this is a matter as between Delta and the Lessors and therefore do not plan to participate. There are no funds held back in respect of Delta's asserted non-possessory lien claim.

Trust Claims for US Immigration User Fees and Customs User Fees

38. On May 7, 2024, the Applicants and the Monitor received notice from counsel to the U.S. Transportation Security Administration, U.S. Customs and Border Protection, U.S. Department of Agriculture and US Department of Homeland Security, Customs and Boarder Protection asserting that they may have trust claims for unpaid Immigration User Fees and Customs User Fees (the "**US Trust Claims**").
39. As of the date of this Report, the Applicants have not received further detail in respect of the potential US Trust Claims and funds have not been withheld in respect of these potential claims. The Applicants estimate the total amount of the US Trust Claims to be less than \$1.0 million which there is sufficient cash on hand if the US Trust Claim were to attach to the Applicants' cash on hand.

Potential Lessor Post-Filing Claims

40. The Applicants and the Monitor are aware that two Lessors have asserted claims for post-filing rent owing under the Aircraft Leases (the “**Post Filing Rent Claims**”).
41. As of the date of this Report, neither the Applicants nor the Monitor have received further detail beyond the assertion of the Post Filing Rent Claims and no funds have been held back by the Applicants in respect of these potential claims. The Monitor notes that the Lessors hold deposits under the respective Aircraft Leases for either two or three months’ rent depending on the terms of the respective lease.
42. Counsel to the Lessors in question has advised that they do not accept that the Lessors’ recourse is limited to or can be satisfied by recourse solely to the deposits and are considering their position in respect of the issue of Post Filing Rent Claims.

STATUS OF THE SISP

43. The SISP contemplated a relatively short timeline due the repossession rights afforded to the Lessors under the Cape Town Convention and its Aircraft Protocol (the “**CTC and Protocol**”). The CTC and Protocol is an international treaty intended to standardize transactions involving movable property including high-value aviation assets, namely airframes, aircraft engines and helicopters which, by their nature, have no fixed location. The Aircraft Leases fall within the CTC and Protocol.
44. The CTC and Protocol sets out a 60-day waiting period (“**Waiting Period**”) with respect to the Fleet and the Aircraft Leases whereby the Applicants would have 60 days to either:
 - (a) cure all defaults and agree to perform future obligations under the Aircraft Leases; or
 - (b) come to a consensual agreement with the Aircraft Lessors.

45. The Applicants' Waiting Period expired on April 22, 2024.
46. This Honourable Court granted the SISP Order on March 1, 2024. For ease of reference, a summary of the key dates pursuant to the SISP are as follows:

Event	Target Date
Approval of the SISP and Bidding Procedures by the Court	March 1, 2024
Monitor and Lynx Air to create list of Pre-Qualified Known Potential Bidders	March 1, 2024
Monitor to prepare and have available for Potential Bidders the Data Room	By no later than March 4, 2024
Monitor to distribute Teaser and NDAs to Pre-Qualified Known Potential Bidders	By no later than March 8, 2024
Binding Bid Deadline	By no later than April 1, 2024, at 5:00 p.m.
Auction (if required)	By no later than April 5, 2024, at 5:00 p.m.
Definitive documentation	By no later than April 7, 2024
Approval Application – Successful Bid(s), if required	By no later than April 10, 2024
Outside Date - Closing	April 12, 2024

The Boeing Termination Agreement

47. On March 21, 2024, the Applicants and Boeing executed the Termination Agreement in respect of the Boeing Purchase Agreement.
48. On April 2, 2024, this Honourable Court granted the Termination Approval Order approving the Termination Agreement and on April 3, 2024, the Applicants received the amount payable under the Termination Agreement from Boeing.

Aircraft Leases

49. As described in the Third Report, the Lessors advised the Applicants and the Monitor that they intend to recover their respective aircraft pursuant to the CTC and the Protocol.
50. Since the date of the Third Report, the Applicants, with the assistance of the Monitor, and the respective Lessors entered into termination agreements with respect to the Aircraft Leases (the “**Lease Termination Agreements**”). The Lease Termination Agreements were finalized by May 8, 2024.

Engine Purchase Agreement

51. The Engine Purchase Agreement relates to the future purchase of four LEAP-1B25 engines. The Applicants, with assistance of the Monitor, and with the agreement of CFM, provided access to the Engine Purchase Agreement in the VDR and agreed upon a list of Pre-Qualified Known Potential Bidders.
52. The Applicants, with the assistance of the Monitor, engaged in discussions with several counterparties with respect to the Engine Purchase Agreement. A Successful Bid, as defined in the SISP, was selected and a draft sale agreement was prepared.
53. On May 9, 2024, counsel to CFM provided notice to the Applicants’ advising that they oppose any efforts to assign the Engine Purchase Agreement to an assignee.
54. The Applicants, with the assistance of the Monitor, are continuing to evaluate options with respect to the Engine Purchase Agreement.

BOCA APA

55. The Applicants, with the assistance of the Monitor, engaged with BOCA with respect to the BFE that had been delivered in connection with the BOCA Aircraft.

56. On May 13, 2024, the Applicants and BOCA executed the BOCA APA. A redacted copy of the AERO APA is included as Exhibit “E” to the Fifth Woodward Affidavit and an unredacted copy is included as Exhibit “A” to the Confidential Woodward Affidavit.
57. The key -commercial terms (without reference to the purchase price) of the BOCA APA are outlined below:
- (a) purchase price payable in cash on closing;
 - (b) conditional on receiving approval from this Honourable Court;
 - (c) assets to be purchased on an “as is, where is basis”; and
 - (d) closing to occur no later than four business days after satisfaction of conditions, including approval of this Honourable Court.

AERO APA

58. The Applicants, with the assistance of the Monitor, engaged with several parties with respect to certain ancillary equipment including the Wheels and Brakes. The process included the following:
- (a) the Applicants, in conjunction with the Monitor, reached out to six Pre-Qualified Known Potential Bidders, including parties known to the Applicants within the aviation industry, parties that participated in other aspects of the SISP and the party that was storing the Wheels and Brakes;
 - (b) the Applicants’ received three proposals from Pre-Qualified Known Potential Bidders;
 - (c) the Applicants’ requested that parties submit ‘best and final’ bids on April 12, 2024;

- (d) one party declined to participate further, and two others submitted revised bids; and
 - (e) AERO was selected as the Successful Bid.
59. On May 13, 2024, the Applicants and AERO executed the AERO APA. A redacted copy of the AERO APA is included as Exhibit “**F**” to the Fifth Woodward Affidavit and an unredacted copy is included as Exhibit “**B**” to the Confidential Woodward Affidavit.
60. The key commercial terms (without reference to the financial terms) of the AERO APA are outlined below:
- (a) purchase price payable in cash on closing;
 - (b) conditional on receiving approval from this Honourable Court;
 - (c) assets to be purchased on an “as is, where is basis”; and
 - (d) closing to occur no later than four business days after satisfaction of conditions, including approval of this Honourable Court.

Monitor’s Comments on the Proposed Transactions

61. The Monitor is supportive of the proposed Transactions and in its view the Transactions represent the best value that can be reasonably obtained in the current circumstances based on the following:
- (a) the Wheels and Brakes, were adequately exposed to the market through the SISP;
 - (b) the SISP was open and transparent and approved by this Honourable Court;

- (c) the BFE, a portion of which was already installed on the BOCA Aircraft, and therefore is being purchased by the logical buyer and would have been impractical and cost prohibitive to remove; the consideration represents fair value in the circumstances;
 - (d) the Transactions represents the highest and best overall recovery in the circumstances in terms of purchase price, certainty of the ability to close and other material terms;
 - (e) the Monitor's opinion that the sales contemplated by the proposed Transactions is more beneficial to creditors than in a bankruptcy for reasons including the time, cost, and administrative expense of conducting a bankruptcy sale combined with the fact that the Monitor views a sale under the CCAA as a vehicle that axiomatically yields more value than sales under the *Bankruptcy and Insolvency Act*; and
 - (f) Indigo, the fulcrum secured creditor in these CCAA Proceedings, is supportive of the Transactions.
62. The Monitor supports the Applicants request for the Restricted Court Access Order sealing the Confidential Woodward Affidavit as the BOCA APA and AERO APA contain commercially sensitized information and may impair the Applicants' ability to market the Wheels and Brakes and the BFE if the Transactions do not close.

BUDGET TO ACTUAL RESULTS

63. The Applicants, in consultation with the Monitor, prepared a cash flow statement (the "**Third CFS**") which was appended to the Second Report.
64. Actual cash flow as compared to those contained in the Third CFS for the five-week period of April 7, 2024, to May 11, 2024, are summarized below.

(C\$ 000s)			
For the period of April 7, 2024 to May 11, 2024	5-Week Period		
	Actual	Forecast	Variance
Receipts			
Revenue	-	\$ -	\$ -
Other / Recovery of Deposits	1,535	\$ 2,387	(852)
Total - Receipts	1,535	2,387	(852)
Disbursements			
Payroll and employee related obligations	(268)	(250)	(17)
SG&A expense	(1,579)	(1,726)	147
Operating costs	(36)	(59)	24
Fleet relocation recovery	(0)	-	(0)
Professional fees	(734)	(695)	(39)
PDP Commitment fees	-	-	-
KERP	(532)	(1,179)	647
Airport Improvement Fees	(6)	-	(6)
Maintenance reserves	(22)	(14)	(9)
Interim Facility - Interest and fees	(180)	(180)	0
Air Travellers Security Charge	(4)	(261)	258
Lease payments / deferrals	-	-	-
Total - Disbursements	(3,362)	(4,365)	1,003
Net change in cash	(1,827)	(1,979)	152
Opening cash	97,078	97,078	-
Interim Facility - Draw (repayment)	(1,013)	\$ (1,013)	-
Distribution to Indigo Partners LLC	(81,572)	-	(81,572)
Ending Cash	\$ 12,666	\$ 94,087	\$ (81,421)
Interim Facility			
Opening	\$ 1,013	1,013	\$ -
Draw (repayment)	(1,013)	(1,013)	-
Ending Interim Facility	\$ -	\$ -	\$ -

65. The variances in actual receipts and disbursements are primarily due to the following:
- (a) Other receipts were lower than anticipated due to the timing of the return of prepayment amounts for the Operating Period and letters of credit or deposits that exceeded the amount owed to such parties. These amounts are still anticipated to be collected in future periods; and
 - (b) lower than anticipated disbursements of approximately \$1.0 million primarily related to the following:

- lower than anticipated SG&A expense which is partially relating to the timing and payment of expenses;
- timing of payment of the KERP and Air Travelers Security Charge (“ATSC”) which are expected to reverse in future periods.

66. Ending cash is lower than forecast due to the distributions made to Indigo in respect of the Initial Notes and Bridge Notes as previously approved by this Honourable Court.

CASH FLOW STATEMENT

67. The Applicants, with the assistance of the Monitor, have prepared the Fourth CFS to set out the liquidity requirements of the Applicants during the Forecast Period. The Fourth CFS and management’s report on the cash-flow statement as required by section 10(2)(b) of the CCAA are attached hereto as Appendix “B”. The Fourth CFS is summarized in the following table:

(C\$ 000s)	
For the period of May 12, 2024 to June 29, 2024	7 Week
	Total
Receipts	
Revenue	\$ -
Other / Recovery of Deposits	5,098
Total - Receipts	5,098
Disbursements	
Payroll and employee related obligations	(226)
WEPP Priority Claim	(1,000)
SG&A expense	(72)
Operating costs	-
Professional fees	(1,070)
KERP	(645)
Maintenance reserves	-
Air Travellers Security Charge	(261)
Lease payments / deferrals	-
Total - Disbursements	(3,274)
Net change in cash	1,824
Opening cash	12,666
Ending Cash	\$ 14,490

68. The Fourth CFS indicates that during the Forecast Period (period ending on June 29, 2024), the Applicants will have net cash flow of approximately \$1.8 million comprising cash receipts of approximately \$5.1 million less total disbursements of \$3.3 million.
69. The Fourth CFS is based on the following key assumptions:
- (a) No revenue receipts in the Forecast Period. Reconciliation efforts with Elavon with respect to the post-filing period are ongoing, but the quantum and the timing of collection of the remaining receipts is uncertain based on the timing of customer chargebacks;
 - (b) Other receipts include proceeds from the proposed Transactions, collection of fuel tax rebates for periods prior to the Initial Filing Date, recovery of certain prepayments that were made during the Operating Period after completion of the reconciliation of accounts and recovery of certain deposits on account and return of letters of credit;
 - (c) Payroll and employee related obligations includes estimated amounts for remaining employees required to assist in the CCAA Proceedings;
 - (d) WEPP Priority Claim based on the calculation of Service Canada's subrogated super-priority claim;
 - (e) SG&A expense includes information technology and ongoing software costs to maintain access to the Applicants systems, and other costs associated with the Applicants office required during the CCAA Proceedings;
 - (f) Professional fees including the Monitor, the Monitor's Counsel and the Applicants' counsel;
 - (g) KERP includes payments to employees secured by the KERP Charge previously approved by this Honourable Court; and

- (h) Air Travelers Security Charge (“ATSC”) based on the final reconciliation of amounts owed.

Monitor's Comments on the Cash Flow Statement

70. Section 23(1)(b) of the CCAA states that the Monitor shall, “review the company’s cash-flow statement as to its reasonableness and file a report with the court on the Monitor’s findings”.
71. Pursuant to section 23(1)(b) of the CCAA, and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports as follows:
- (a) the Fourth CFS has been prepared by management of the Applicants for the purpose described in the notes to the Fourth CFS, using the probable assumptions and the hypothetical assumptions set out therein; and
 - (b) the Monitor’s review consisted of inquiries, analytical procedures and discussion related to information supplied by certain of the management and employees of the Applicants. Since hypothetical assumptions need not be supported, the Monitor’s procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the Fourth CFS. The Monitor has also reviewed the information provided by Management in support of the probable assumptions and the preparation and presentation of the Fourth CFS;
 - (c) Based on its review, and as at the date of this Report, nothing has come to the attention of the Monitor that causes it to believe that, in all material respects:
 - the hypothetical assumptions are not consistent with the purpose of the Fourth CFS;

- the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Fourth CFS, given the hypothetical assumptions; or
 - the Fourth CFS does not reflect the probable and hypothetical assumptions.
72. Since the Fourth CFS is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Fourth CFS will be achieved. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information present in this Report, or relied upon by the Monitor in preparing this Report.
73. The Fourth CFS has been prepared solely for the purpose of estimating liquidity requirements of the Applicants during the Forecast Period. The Fourth CFS should not be relied upon for any other purpose.

RELIEF SOUGHT BY THE APPLICANTS

Approval of the Transactions

74. The Applicants are seeking approval of BOCA APA and the AERO APA and the Restricted Court Access Order sealing the Confidential Woodward Affidavit.

CONCLUSIONS AND RECOMMENDATIONS

75. As outlined above the Transaction represent the highest and best value available in the circumstances and therefore the Monitor supports the relief being sought by the Applicants, and recommends this Honourable Court approve:

- (a) the Applicants' request for authorization to and approval of the BOCA APA and AERO APA; and
- (b) the Applicants' request for the Restricted Court Access Order sealing the Confidential Woodward Affidavit.

All of which is respectfully submitted this 15th day of May 2024.

FTI Consulting Canada Inc.,
 Licensed Insolvency Trustee in its capacity as
 Monitor of Lynx Air and not in its personal or
 corporate capacity.



Name: Deryck Helkaa, CPA, CA, CIRP, LIT
 Title: Senior Managing Director
 FTI Consulting Canada Inc.



Name: Dustin Olver, CPA, CA, CIRP, LIT
 Title: Senior Managing Director
 FTI Consulting Canada Inc.

Appendix “A” – Letter from Koskie Minsky LLP dated April 19, 2024



April 19, 2024

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Via E-mail

McCarthy Tétrault LLP
Suite 4000, 421-7th Avenue S. W.
Calgary, Alberta
T2P 4K9

Attention: Justin Turc

Dear Mr. Turc:

Re: *In the Matter of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air*, Court File No. 2401-02664
CUPE Cabin Crew Members Bargaining Unit
Undercalculation of Cabin Crew Severance Amounts for WEPPA Process
Our File No. 16407-240298

We acknowledge receipt of your letter dated April 16, 2024 enclosing the Monitor's claim calculations that it made for the CUPE cabin crew employees for the purpose of the WEPPA process, and which do not include 16 weeks pay *in lieu* of group termination under section 212 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the "*Code*").

The Monitor should not consider the issue of the exclusion of 16 weeks pay *in lieu* of group termination from the terminated employees' claims for WEPPA (nor a future claims process) closed.

We have previously provided you with sufficient legal authority that holds that pay *in lieu* of group termination should be included as a claim of the terminated employees against Lynx Air based on Lynx Air's termination of their employment without any prior notice.

We are also puzzled by your comment that common law reasonable notice is not included in the Monitor's claim it made for the employees' WEPPA applications, as that is also part of an employees' severance entitlement, and there is no exclusion for common law notice in the WEPPA Act nor the CCAA. If you have authority to exclude common law notice from the employees' claim for WEPPA, please provide it to us.

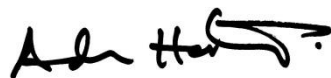
As we pointed out in previous correspondence, the exclusion of 16 weeks pay *in lieu* of group termination (as well as common law notice) results in an undercalculation of the employees' severance claims and in turn an underpayment of WEPPA to each of them. This adds to the hardship they are incurring caused by the loss of their jobs.

We have looked into the jurisdiction of the CIRB to determine the applicability of 16 weeks pay *in lieu* of group termination for the CUPE cabin crew employees in this case, and in light of the novel facts of this case that the Union was certified as the employees' bargaining agent, but no collective agreement was concluded prior to Lynx seeking CCAA protection and terminating the majority of its employees.

We will discuss with our client the position you convey in your letter that the Monitor will oppose a lift stay motion to proceed before the CIRB, and that the issue should instead be brought before the CCAA court for a determination. We will be back in touch with you shortly.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl

cc. Clients
Abir Shamim, *Koskie Minsky LLP*

Appendix “B” – Cash Flow Statement for the period ending June 29, 2024

Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air
 Consolidated Cash Flow Statement
 For the period of May 12, 2024 to June 29, 2024

(C\$ 000s)								
For the period of May 12, 2024 to June 29, 2024	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	7 Week
	18-May	25-May	1-Jun	8-Jun	15-Jun	22-Jun	29-Jun	Total
Receipts								
Revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other / Recovery of Deposits	-	3,735	-	-	-	-	1,363	5,098
Total - Receipts	-	3,735	-	-	-	-	1,363	5,098
Disbursements								
Payroll and employee related obligations	(58)	-	(56)	-	(56)	-	(56)	(226)
WEPP Priority Claim	-	-	-	-	-	-	(1,000)	(1,000)
SG&A expense	(12)	(12)	(11)	(9)	(9)	(9)	(9)	(72)
Operating costs	-	-	-	-	-	-	-	-
Professional fees	(620)	-	-	-	(450)	-	-	(1,070)
KERP	(100)	-	-	-	(545)	-	-	(645)
Maintenance reserves	-	-	-	-	-	-	-	-
Air Travellers Security Charge	-	-	-	(261)	-	-	-	(261)
Lease payments / deferrals	-	-	-	-	-	-	-	-
Total - Disbursements	(790)	(12)	(67)	(271)	(1,060)	(9)	(1,065)	(3,274)
Net change in cash	(790)	3,723	(67)	(271)	(1,060)	(9)	298	1,824
Opening cash	12,666	11,876	15,600	15,532	15,262	14,202	14,192	12,666
Ending Cash	\$ 11,876	\$ 15,600	\$ 15,532	\$ 15,262	\$ 14,202	\$ 14,192	\$ 14,490	\$ 14,490



Per: Mike Woodward, CFO
 Lynx Air

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

Notes and Assumptions to the Cash Flow Statement

For the period of May 12, 2024, to June 29, 2024 (the “**Forecast Period**”)

Disclaimer:

This cash flow statement (the “**Cash Flow Statement**”) has been prepared using unaudited financial information and the Monitor has not attempted to further verify the accuracy or completeness of such information.

The Cash Flow Statement is based on the probable and hypothetical assumption identified below.

Since the Cash Flow Statement is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Forecast Period will vary from the Cash Flow Statement, and such variation may be material. There is no representation, warranty or other assurance that any of the assumptions or estimates used in the Cash Flow Statement will be realized.

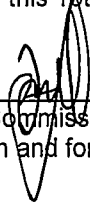
Overview:

The Cash Flow Statement includes estimated receipts and disbursements of Lynx Air during the Forecast Period. Lynx Air, with the assistance of FTI Consulting Canada Inc., in its capacity as Monitor, have prepared the Cash Flow Statement based primarily on estimated receipts and disbursements related to the CCAA proceedings. Receipts and disbursements are denominated in Canadian dollars (the foreign exchange conversion rate used to convert USD to CAD is 1.37).

1. **Revenue:** Lynx Air and Elavon are working diligently to reconcile the amounts owed during the Operating Period including initiating chargebacks to customers for cancelled flights. No amounts are anticipated to be collected during the Forecast Period;
2. **Other / Recovery of Deposits:** Other receipts include collection of proceeds from the proposed Transactions, fuel tax rebates for periods prior to the Initial Filing Date, recovery of certain prepayments that were made during the Operating Period after completion of the reconciliation of accounts and recovery of certain deposits on account;
3. **Payroll and employee related obligations:** includes estimated amounts for remaining employees and contractors required to assist in the administration of the CCAA Proceedings;
4. **WEPP Priority Claim:** based on the estimated calculation of Service Canada’s subrogated super-priority claim;

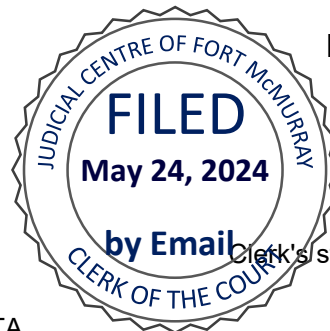
5. **SG&A expense:** includes, among other things, information technology and software licenses to maintain access to the Applicants' systems, bank fees and other miscellaneous costs;
6. **Operating costs:** remaining operating costs incurred during the Operating Period and reconciliation with vendors for post-filing amounts;
7. **Professional fees:** represents the fees and costs of the Monitor, the Monitor's Counsel and the Applicants' counsel;
8. **KERP:** relates to a retention plan proposed to be paid to key employees and executives for their assistance during the CCAA Proceedings, previously approved by this Honourable Court;
9. **Maintenance reserves:** represents remaining prorated amounts owing under the Aircraft Leases for the period after the Initial Filing Date and during the Operating Period;
10. **Air Travellers Security Charge:** based on the final reconciliation of amounts owed; and
11. **Lease payments / deferrals:** no amounts are contemplated to be paid to the Aircraft Lessors under the Aircraft Leases during the Waiting Period (other than pro-rated maintenance reserves after the date of the Initial Order).

This is **Exhibit "E"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSE
A Commissioner for Oaths
in and for Alberta
My Commission Expires September 11, 2026



LL
168

Clerk's stamp

C51676
Jun 24, 2024
COM

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c C-36, as amended
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION AND 1263343 ALBERTA INC. dba LYNX AIR

APPLICANTS EDMONTON REGIONAL AIRPORTS AUTHORITY, HALIFAX INTERNATIONAL AIRPORTS AUTHORITY, THE CALGARY AIRPORT AUTHORITY, VANCOUVER AIRPORT AUTHORITY, and WINNIPEG AIRPORTS AUTHORITY INC.

RESPONDENTS LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
4200 Bankers Hall West
888-3rd Street SW
Calgary, AB T2P 5C5

Karen Fellowes, K.C. / Archer Bell
Tel: (403) 724-9469 / (403) 724-9485
Fax: (403) 266-9034
Email: kfellowes@stikeman.com / abell@stikeman.com
Lawyers for the Applicants,
Edmonton Regional Airports Authority, Halifax International Airports Authority, The Calgary Airport Authority, Vancouver Airport Authority, and Winnipeg Airports Authority Inc.

File No.: 156280.1001

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.
You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	June 24, 2024
Time:	10:00 am 2pm
Where:	Calgary, Alberta
Before Whom:	The Honourable Justice Romaine presiding on the Calgary Commercial Duty List

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. Edmonton Regional Airports Authority (“**ERAA**”), Halifax International Airports Authority (“**HIAA**”), The Calgary Airport Authority (“**CAA**”), Vancouver Airport Authority (“**VAA**”), and Winnipeg Airports Authority Inc. (“**WAA**”) (collectively, the “**Airport Authorities**”) seek an Order, substantially in the form attached as **Schedule “A”**, for the following relief:
 - (a) a declaration stating that the unremitted Airport Improvement Fees (“**AIF**”) owed to the Airport Authorities by 1263343 Alberta Inc. dba Lynx Air (“**Lynx**”) is subject to either an express, implied, or constructive trust;
 - (b) instructing Lynx to release to the Airport Authorities the following amounts from the amount held in reserve by Lynx to satisfy claims relating to AIF:
 - (i) \$355,640.79 to the ERAA;
 - (ii) \$319,435.80 to the HIAA;
 - (iii) \$282,895.00 to the WAA;
 - (iv) \$2,031,140.16 to the CAA;
 - (v) \$1,110,231.54 to the VAA; and
 - (c) such further and other relief as counsel for the Airport Authorities may advise.

Grounds for making this application:

The Memorandum of Agreement

2. The Airport Authorities and Lynx are parties to a Memorandum of Agreement between the Air Transport Association of Canada, certain air carriers, and certain airport authorities (the “**MOA**”).
3. The MOA recognizes that the Airport Authorities have the responsibility to manage, operate and develop the airports for which they are responsible. In order to meet the air traffic demands on their respective airports and ensure that the public has access to quality air transport, the Airport Authorities from time to time must undertake airport expansion projects. As stated in the preamble to the MOA, the Airport Authorities may obtain the funds to undertake such expansion projects by imposing fees or charges upon all departing airport passengers. Such fees are referred to as “Airport Improvement Fees” or “AIF”.

4. Pursuant to section 6.1 of the MOA, the decision to charge AIF and at what rate to charge it is made by each Airport Authority. Further pursuant to the MOA, signatory air carriers such as Lynx agree to collect and remit AIF on behalf of the Airport Authorities.
5. The MOA states at section 20.1 that the parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise *except* as Lynx acting as agent for the Airport Authorities in collecting and remitting the AIF funds.

Collection and remittance of AIF by Lynx

6. At all times, the Airport Authorities understood that the AIF collected by Lynx was being held in trust by Lynx until its ultimate remittance to the Airport Authorities. At all times, the amount required to be charged per passenger in AIF was mandated by each of the Airport Authorities and then collected by Lynx on behalf of the Airport Authorities. The Airport Authorities set AIF rates as follows:
 - (a) ERAA: \$35.00 per passenger;
 - (b) HIAA: \$22.00 per intraprovincial passenger and \$35.00 per interprovincial and international passenger;
 - (c) WAA: \$38.00 per passenger;
 - (d) CAA: \$35.00 per passenger; and
 - (e) VAA: \$5.00 per passenger flying within British Columbia or the Yukon and \$25.00 per passenger flying to all other destinations.
7. In its reservation terms and conditions for passengers (the “**T&Cs**”), Lynx represented that “Airport Improvement Fees (AIF) ... are generally collected by Lynx at the time of booking. Lynx collects these fees from passengers and remits them directly to the airports.” (emphasis added)
8. After collecting the AIF on behalf of the Airport Authorities, Lynx would remit the AIF to the Airport Authorities on a monthly basis.
9. However, at the time that Lynx filed for CCAA protection, it was in arrears on its remittance of AIF to the Airport Authorities and owed the Airport Authorities the following amounts for unremitted AIF:
 - (a) ERAA: \$355,640.79;

- (b) HIAA: \$319,435.80;
- (c) WAA: \$282,895.00;
- (d) CAA: \$2,031,140.16; and
- (e) VAA: \$1,110,231.54.

Unremitted AIF held by Lynx is subject to a trust in favour of the Airport Authorities

10. Based on the MOA, Lynx's T&C's, and the relationship between the Parties, it is clear that the parties intended to create a trust relationship with respect to AIF in favour of the Airport Authorities.
11. Nonetheless, should this Court find that an express or implied trust relationship does not exist, a constructive trust should be imposed over the unremitted AIF in order to avoid an otherwise inequitable result.
12. All of the factors required to establish a constructive trust are present with respect to the unremitted AIF:
 - (a) The MOA clearly establishes that Lynx was acting as agent (if not trustee) to the Airport Authorities in collecting and remitting AIF funds and Lynx therefore has an equitable obligation in relation to the activities that caused it to obtain the AIF funds.
 - (b) The AIF funds came to be in Lynx's possession by virtue of this agency relationship and failing to remit them to the Airport Authorities constitutes a breach of its equitable obligations.
 - (c) Failing to grant the constructive trust remedy in this situation would result in the unjust enrichment of Lynx's creditors at the Airport Authorities' expense.
 - (d) There is nothing that would render the imposition of a constructive trust unjust; instead, it would be unjust if Lynx's creditors were to receive a windfall by gaining access to the AIF funds.
13. At no point did the Parties intend to create a creditor-debtor relationship with respect to AIF. Though the VAA and WAA had letters of credit from Lynx and the HIAA had a security deposit, these were not for the purpose of securing AIF. Instead, the security deposit and letters of credit were used to secure aeronautical fees, a different category of fees paid by Lynx to the Airport

Authorities. Neither the ERAA nor the CAA had recourse to any security deposits or letters of credit, whether with respect to aeronautical fees or otherwise.

14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

15. All pleadings and proceedings filed in the within Action;
16. Affidavit of Leslie Kwasny, affirmed on May 23, 2024;
17. Affidavit of Paul Brigley, sworn on May 23, 2024;
18. Affidavit of Jennifer Pon, affirmed on May 23, 2024;
19. Affidavit of Diana Vuong, affirmed on May 23, 2024;
20. Affidavit of Nicole Stefaniuk, sworn on May 23, 2024; and
21. Such further and other material as counsel for the Lender may advise and this Honourable Court may permit.

Applicable rules:

22. The *Alberta Rules of Court*, AR 124/2010, as amended; and
23. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

24. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36; and
25. Such further and other acts and regulations as counsel for the Lenders may advise or this Honourable Court may permit.

Any Irregularity Complained of or Objection Relied on:

26. There are no irregularities complained of or objections relied on.

How the Application is Proposed to be Heard or Considered

27. Via Webex Video Conference, before the Honourable Justice Romaine presiding on the Calgary Commercial Duty List on June 24, 2024 at 10:00am.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**SCHEDULE "A"
PROPOSED FORM OF ORDER**

COURT FILE NUMBER	2401-02664	Clerk's stamp
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
MATTERS	IN THE MATTER OF THE <i>COMPANIES' CREDITORS ARRANGEMENT ACT</i> , R.S.C. 1985, c C-36, as amended AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION AND 1263343 ALBERTA INC. dba LYNX AIR	
APPLICANTS	EDMONTON REGIONAL AIRPORTS AUTHORITY, HALIFAX INTERNATIONAL AIRPORTS AUTHORITY, THE CALGARY AIRPORT AUTHORITY, VANCOUVER AIRPORT AUTHORITY, and WINNIPEG AIRPORTS AUTHORITY INC.	
RESPONDENTS	LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR	
DOCUMENT	ORDER	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	STIKEMAN ELLIOTT LLP Barristers & Solicitors 4200 Bankers Hall West 888-3rd Street SW Calgary, AB T2P 5C5 Karen Fellowes, K.C. / Archer Bell Tel: (403) 724-9469 / (403) 724-9485 Fax: (403) 266-9034 Email: kfellowes@stikeman.com / abell@stikeman.com Lawyers for the Applicants, Edmonton Regional Airports Authority, Halifax International Airports Authority, The Calgary Airport Authority, Vancouver Airport Authority, and Winnipeg Airports Authority Inc. File No.: 156280.1001	

DATE ON WHICH ORDER WAS PRONOUNCED:	June 24, 2024
LOCATION OF HEARING:	Calgary Courts Centre, Calgary, Alberta
NAME OF JUSTICE WHO GRANTED THIS ORDER:	The Honourable Justice Romaine

UPON the application of Edmonton Regional Airports Authority ("**ERAA**"), Halifax International Airports Authority ("**HIAA**"), The Calgary Airport Authority ("**CAA**"), Vancouver Airport Authority ("**VAA**"),

and Winnipeg Airports Authority Inc. (“**WAA**”) (collectively, the “**Airport Authorities**”) in relation to Airport Improvement Fees (“**AIF**”) collected by 1263343 Alberta Inc. dba Lynx Air (“**Lynx**”) on behalf of the Airport Authorities pursuant to a Memorandum of Agreement dated January 20, 2004; **AND UPON** having read the Application, the Affidavit of Leslie Kwasny, affirmed on May 23, 2024, the Affidavit of Paul Brigley, sworn on May 23, 2024, the Affidavit of Jennifer Pon, affirmed on May 23, 2024, the Affidavit of Diana Vuong, affirmed on May 23, 2024, and the Affidavit of Nicole Stefaniuk, sworn on May 23, 2024; **AND UPON** hearing counsel for the Airport Authorities, Lynx, and any other counsel or interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

Declaration

1. The \$4,099,343.29 in unremitted AIF held by Lynx on behalf of the Airport Authorities is subject to a trust and therefore does not form part of Lynx’s insolvency estate.

Release of Holdback

2. Lynx shall release to the Airport Authorities the following amounts from the amount held in reserve by Lynx to satisfy claims relating to AIF:
 - a. \$355,640.79 to the ERAA;
 - b. \$319,435.80 to the HIAA;
 - c. \$282,895.00 to the WAA;
 - d. \$2,031,140.16 to the CAA; and
 - e. \$1,110,231.54 to the VAA.

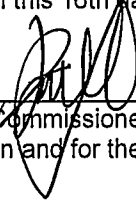
Service

3. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.
4. Service of this Order shall be deemed good and sufficient by:
 - a. serving the same on:
 - i. the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;

- ii. any other person served with notice of the application for this Order;
 - iii. any other parties attending or represented at the application for this Order;
 - iv. posting a copy of this Order on the Monitor's Website at: <http://cfcanada.fticonsulting.com/lynxair/>; and
 - v. service on any other person is hereby dispensed with.
5. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King's Bench of Alberta

This is **Exhibit "F"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
In and for Alberta
My Commission Expires September 11, 2026

Form 49
Rule 13.19

Clerk's stamp

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as
amended



LL

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF LYNX AIR HOLDINGS
CORPORATION and 1263343 ALBERTA INC. dba
LYNX AIR

C51676
Jun 24, 2024
COM

APPLICANTS EDMONTON REGIONAL AIRPORTS AUTHORITY,
HALIFAX INTERNATIONAL AIRPORTS AUTHORITY,
THE CALGARY AIRPORT AUTHORITY, VANCOUVER
AIRPORT AUTHORITY, and WINNIPEG AIRPORTS
AUTHORITY INC.

RESPONDENT LYNX AIR HOLDINGS CORPORATION and 1263343
ALBERTA INC. dba LYNX AIR

DOCUMENT AFFIDAVIT

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
4200 Bankers Hall West
888-3rd Street SW
Calgary, AB T2P 5C5

Karen Fellowes, K.C. / Archer Bell
Tel: (403) 724-9469 / (403) 724-9485
Fax: (403) 266-9034
Email: kfellowes@stikeman.com / abell@stikeman.com

Lawyers for the Applicants,
Edmonton Regional Airports Authority, Halifax International Airports
Authority, The Calgary Airport Authority, Vancouver Airport Authority, and
Winnipeg Airports Authority Inc.
File No.: 156280.1001

AFFIDAVIT OF JENNIFER PON

Affirmed on May 23, 2024

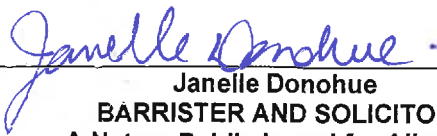
I, Jennifer Pon, of the City of Calgary, in the Province of Alberta, AFFIRM AND SAY THAT:

1. I am Chief Financial Officer of The Calgary Airport Authority (the “CAA”) and as such, I have personal knowledge of the facts and matters stated herein, except where stated to be based on information and belief, and, where so informed, I believe such matters to be true.
2. The CAA is a signatory to a Memorandum of Agreement between the Air Transport Association of Canada, certain air carriers, and certain airport authorities (the “MOA”). Attached and marked as **Exhibit “A”** is a copy of the MOA.
3. 1263343 Alberta Inc. dba Lynx Air (“Lynx”) became a signatory to the MOA on April 6, 2022.
4. The history of the MOA dates back to the federal government’s decision to transfer authority over airports in Canada to designated airport authorities, such as the CAA. This transfer began in 1992 with the introduction of the *Airport Transfer (Miscellaneous Matters) Act*, SC 1992, c 5, which allowed the federal government to retain ownership of 26 so-called National Airport System airports, while leasing these airports to locally controlled, not-for-profit, non-share private sector airport authorities. The CAA was designated as an airport authority in 1992 and was subsequently leased the Calgary International Airport (the “**Calgary Airport**”).
5. The result of these transfers is that federal government retains ownership of the airports but avoids the financial burden of maintaining, improving and expanding airports by transferring all financial liabilities to airport authorities. As such, upon transfer in 1992, the CAA became financially responsible for the Calgary Airport. Despite this transfer of responsibility, airport authorities like the CAA are still expected to provide a public service and must maintain and manage their respective airports in the public interest. In Alberta, the CAA and the Edmonton Regional Airports Authority are partially governed by the *Regional Airports Authorities Act*, RSA 2000, c R-9, which mandates that the CAA manage and operate the Calgary Airport in a safe, secure and efficient manner for the general benefit of the public, amongst other things. In order to meet this mandate, the CAA must regularly undertake capital expenditure projects to maintain, improve, and/or expand the Calgary Airport.
6. To fund these capital expenditure projects, various airport authorities, including the CAA, entered into the MOA. The MOA recognizes that airport authorities have the responsibility to manage, operate and develop the airports for which they are responsible and further recognizes that in order to meet the air traffic demands on their respective airports and ensure that the public has access to quality air transport, airport authorities such as the CAA from time to time must undertake capital expenditure projects. As stated in the preamble to the MOA, airport authorities may obtain the funds to undertake such capital expenditure projects by imposing fees or charges upon all departing airport passengers. Such fees are referred to as “Airport Improvement Fees” or “AIF”. AIF is critical to the health and financial viability of the Calgary Airport. As a non-profit with limited options for

generating revenue, it would be incredibly challenging for the CAA to maintain the safety, security, and efficiency of the Calgary Airport without the ability to charge AIF.

- 7. Pursuant to section 6.1 of the MOA, the decision to charge AIF and at what rate to charge it are made by each airport authority. Further pursuant to the MOA, signatory air carriers such as Lynx agree to collect and remit AIF on behalf of the airport authorities.
- 8. During the time that Lynx was a signatory to the MOA, the CAA mandated an AIF of \$35.00 per passenger. Pursuant to section 9.2 of the MOA, Lynx was to remit the collected AIF to the CAA on a monthly basis on the first working day of each month.
- 9. It was the CAA's understanding that the AIF collected by Lynx was being held in trust by Lynx until its ultimate remittance to the CAA. The MOA expressly states that the AIF is a charge imposed by the CAA on passengers and is collected by Lynx "on behalf" of the CAA. Furthermore, the MOA states at section 20.1 that the parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise *except* as Lynx acting as agent for the CAA in collecting and remitting the AIF funds.
- 10. Additionally, in its reservation terms and conditions (the "**Terms and Conditions**"), Lynx represented to its passengers that "Airport Improvement Fees (AIF) ... are generally collected by Lynx at the time of booking. Lynx collects these fees from passengers and remits them directly to the airports." Attached and marked as **Exhibit "B"** is a copy of the Terms and Conditions.
- 11. At the time that Lynx filed for CCAA protection, the CAA was owed substantial amounts by Lynx in unremitted AIF as Lynx had failed to remit collected AIF funds in accordance with its obligations under the MOA since January 1, 2024. In total, the CAA is owed \$2,031,140.16 (\$1,934,419.20 + GST) in unremitted AIF by Lynx. Attached and marked as **Exhibit "C"** is a bundle of three invoices showing the AIF owed to the CAA by Lynx.
- 12. The CAA did not have a deposit or a letter of credit from Lynx and has not recovered any of the unremitted AIF owed at the time of CCAA filing.

AFFIRMED this 23rd day of May, 2024.



Janelle Donohue
BARRISTER AND SOLICITOR
A Notary Public in and for Alberta



Jennifer Pon

This is **Exhibit "A"** referred to in the Affidavit of Jennifer Pon, sworn before me at the City of Calgary, in the Province of Alberta, this 23rd day of May 2024



Janelle Donohue
BARRISTER AND SOLICITOR
A Notary Public in and for Alberta

MEMORANDUM OF AGREEMENT

BETWEEN

THE AIR TRANSPORT ASSOCIATION OF CANADA

AND

SIGNATORY AIR CARRIERS

AND

CERTAIN AIRPORTS

As Amended Effective January 20, 2004

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SCHEDULES

A	Signatory Airports
B	Signatory Air Carriers
C	Accession Form
D	ACC Operating Terms of Reference
E	Excluded Jurisdictions
F	Capital Programs Deemed to Have Been Approved
G	Airport Improvement Fee Monthly Remittance Form
H	Administrative Duties of The Air Transport Association of Canada
I	Vancouver International Airport AIF Rates

MEMORANDUM OF AGREEMENT

AMONG: The Air Transport Association of Canada (“ATAC”)

- and -

Those airports listed on Schedule A to this Memorandum of Agreement
(collectively, “Airports”, and individually, an “Airport”)

- and -

Those air carriers listed on Schedule B to this Memorandum of Agreement
(collectively, “Signatory Air Carriers”, and individually, “Signatory Air
Carrier”)

(all collectively, the “Parties” and, individually, a “Party”);

WHEREAS Airports have the responsibility to manage, operate and develop the airports for which they are responsible;

AND WHEREAS member air carriers of ATAC are major users of the airport facilities provided by the Airports;

AND WHEREAS Airports may have the requirement to expand their airport facilities to meet traffic demands and in that event will require additional revenues to pay for those expanded facilities;

AND WHEREAS Airports may decide to obtain such additional revenues, in whole or in part, by imposing fees or charges upon passengers using such Airports;

AND WHEREAS Airports may wish to obtain the assistance of air carriers in collecting such fees or charges from passengers;

PAGE 2

AND WHEREAS the Parties jointly wish to ensure that a meaningful consultation process is established which will ensure that the views and requirements of Signatory Air Carriers are fully considered by airport operators in connection with the collection and use of any such additional revenues;

AND WHEREAS the Parties jointly wish to establish a regime whereby, in recognition of the establishment of a formal consultation process, Signatory Air Carriers agree to collect on behalf of Airports and remit a fee which an Airport might decide to impose upon passengers, all upon and subject to the terms and conditions contained herein;

AND WHEREAS the Parties in giving effect to the forgoing wishes, do not wish to abrogate or derogate from any of their respective, existing rights or obligations except as is expressly agreed to herein;

NOW THEREFORE, in consideration of the payment of the sum of one dollar (\$1.00) by each Party to each of the other Parties, the receipt of which is hereby acknowledged, and in respect of the mutual covenants and agreements contained herein, the Parties agree as follows:

1.0 Purpose of Memorandum of Agreement

1.1 The Parties agree that this Memorandum of Agreement ("MOA") establishes the terms in respect of:

- (a) a consultation process regarding the expansion of Airport facilities; and
- (b) the collection of fees by Signatory Air Carriers for Airports from air carrier passengers if an Airport decides to impose such fees to pay for the future expansion of certain Airport facilities.

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1.2 This MOA shall be legally binding upon the Parties.

2.0 Accession to MOA

2.1 The Parties agree that if any Canadian airport or any Canadian or foreign air carrier wishes to become a Party to this MOA, it may do so by:

(a) agreeing in writing in the form attached as Schedule C that it agrees to be bound by the terms and conditions of this MOA; and

(b) sending a copy of the duly executed form along with one dollar (\$1.00) to each of the existing Parties. Upon so doing, such Canadian airport or air carrier will become a Party to this MOA and shall be deemed to be listed on either Schedule A or Schedule B, as appropriate.

2.2 Notwithstanding the provisions of Section 2.1 of this MOA, the Parties recognize and acknowledge that the terms and conditions of this MOA are not designed to address the unique issues arising at airports with two or more separate and physically distinct air terminal buildings jointly serving at least 20 million enplaned/deplaned passengers as at December 31, 1998 ("Multi-terminal Airports").

The Parties further recognize and acknowledge that multi-terminal airports can present new and different issues to air carriers which may vary over both time and the particular circumstances of individual air carriers and individual Multi-terminal Airports.

The Parties therefore agree that the accession to this MOA by any Multi-terminal Airport, shall be conditional upon the approval of the two largest Canadian Signatory Air Carriers

PAGE 4

using that airport as determined by passenger boardings in the calendar year immediately preceding the requested accession by that Multi-terminal Airport".

The Parties further agree that this MOA may be amended to the extent required by agreement between the two largest Canadian Signatory Air Carriers using that airport as determined by passenger boardings in the calendar year immediately preceding the requested accession by that Multi-terminal Airport seeking accession to this MOA, provided any such amendment shall be applicable to the operation of the MOA solely at the Multi-terminal Airport seeking accession.

2.3 For further clarity it is understood that an Airport may, without cause but only after the expiry of 365 days from the date that Airport executes or accedes to this MOA and only upon giving not less than 180 days notice, withdraw from this MOA. The withdrawal from this agreement shall be on the day specified by that Airport in the notice but shall not be earlier than the 181st day after the notice is given. Signatory Air Carriers shall not be obliged to collect any AIF for that Airport in respect of travel scheduled to begin any time after the effective date of withdrawal of that Airport.

3.0 Airline Consultative Committee

3.1 Signatory Air Carriers at a given Airport shall be permitted to join the Airline Consultative Committee ("ACC") at each such Airport. Signatory Air Carriers shall exercise their rights and responsibilities as set out in Article 13 of this MOA (the "Air Carrier Consultation Process") through the ACC. The Chairman of the ACC shall inform that Airport of the Majority In Interest ("MIP") as determined in accordance with Section 3.3.

3.2 The ACC at each Airport shall be operated according to the ACC Operating Terms of Reference which is attached as Schedule D to this MOA, and the same may be amended by the ACC from time to time by providing written notice to each of the Parties. In the event of any inconsistency between the ACC Operating Terms of Reference and this MOA, the

PAGE 5

terms of this MOA shall prevail. Schedule D is included in this MOA for the purpose of providing direction relative to the Air Carrier Consultation Process and nothing in Schedule D shall impose any obligation, commitment or requirement upon any Airport or Signatory Air Carrier by virtue of Schedule D being included in this MOA.

- 3.3 Notwithstanding any voting procedures contained in the ACC Operating Terms of Reference, the MII referred to in this MOA shall mean those Signatory Air Carriers who constitute 66 2/3% or more of the total enplaned passengers (based on the Air Carrier Activity at Canadian Airports Statistics Canada catalogue, or its successor, containing the most recent calendar year data available from Statistics Canada) at a particular Airport.

4.0 Airport Improvement Fee

- 4.1 Any passenger fee or charge imposed by an Airport and implemented under this MOA shall be termed an Airport Improvement Fee ("AIF").
- 4.2 An Airport may require Signatory Air Carriers to commence the collection of AIF funds subject to the completion of the process set out in Article 13.

5.0 Capital Expenditure Programs

- 5.1 AIF revenues shall only be used as follows:
- (a) to fund an Airport's capital expenditure projects, the general purpose of which projects are to construct or improve "Airport Infrastructure", and to fund the cost of issuance of associated debt, debt service costs, debt service reserve obligations, debt coverage requirements, capitalized interest on debt and bad debts associated with the collection of AIF revenues; and

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(b) to fund capital expenditure projects, as referred to in Section 5.1(a) at airports which are owned or leased by the Airport identified in Schedule A and which are used as reliever airports for types of aircraft traffic that are not compatible with commercial operations at the Airport identified in Schedule A, subject to the condition that the value of capital expenditure projects at any such reliever airport shall not exceed 10% of the value of capital expenditure projects at the Airport identified in Schedule A which have been subjected to the Air Carrier Consultation Process as outlined in Article 13 of this MOA since the original commencement of this MOA.

5.2 For the purposes of this MOA, "Airport Infrastructure" means capital expenditures in respect of buildings, airfields, land, roads, navigational aids and other assets required for the operation of the Airport, but does not include operating or maintenance costs related to the Airport. For greater certainty, the Airport Infrastructure shall not include any buildings, airfields, land, roads, navigational aids and other assets required for the operation of the Airport located off the Airport that are not functionally related to commercial air operations, air navigation or the processing of passengers and their baggage and shall not include any costs associated with or related to the design, construction, development, maintenance or operation of any mass transit system beyond the boundary of the Airport.

5.3 Capital expenditure projects contemplated by an Airport shall be combined into capital expenditure programs ("Programs") for the purpose of consultation with Signatory Air Carriers and collection of any associated AIF. To qualify for collection of an associated AIF the actual period of construction contemplated by the Program must be for a minimum of two (2) years and a maximum of ten (10) years and the total estimated costs of all Programs tabled since the Airport's accession to this MOA must equal 50% or more of the Airport's annual revenue (not including AIF revenue) in the first year of the Program.

PAGE 7

- 5.4 Any construction of new runways or major expansion of existing runways or any other single project in excess of \$200,000,000 (in 2002 dollars) at an Airport must be by way of a separate Program and not combined with other projects.
- 5.5 With the exception of those Programs listed on Schedule F of this MOA, and except with the prior written approval of the Signatory Air Carriers forming the MII in accordance with Section 3.3. Airports may only require Signatory Air Carriers to collect and remit an AIF pursuant to this MOA for those Programs which have been subjected to the Air Carrier Consultation Process as outlined in Article 13 of this MOA. This provision shall not restrict the ability of an Airport to implement new projects during the period of a Program pursuant to Subsection 13.1(h) of this MOA.
- 5.6 With the exception of those projects within a Program listed on Schedule F of this MOA, and except with the prior written approval of the Signatory Air Carriers forming a MII, Airports may not award construction contracts related to any project in a Program for which that Airport will impose an AIF on passengers, prior to completing the steps contemplated by Subsections 13.1(a) and 13.1(c) through 13.1(e), inclusive and as appropriate, of the Air Carrier Consultation Process outlined in Article 13 of this MOA.

6.0 Rates

6.1 An Airport alone shall decide whether to obtain an AIF from passengers. The Airports have decided that any AIF imposed by an Airport and implemented under this MOA will be set at a Canadian whole dollar amount per Airport which shall be limited to two digits and shall not be less than \$3.00 per DEPAX passenger plus applicable provincial sales, goods and services, harmonized goods and services and other applicable taxes.

6.2 There shall be no more than three (3) different levels of AIF in place at any Airport as follows:

- (a) one (1) rate for all transborder (United States) and domestic DEPAX passengers not covered by Subsection 6.2(c) below;
- (b) one (1) rate for all international (not including transborder) DEPAX, such rate not to exceed one and one-half (1 1/2) times the rate in Subsection 6.2(a) above;
- (c) one (1) rate for all city-pairs ("short-haul destinations") within the Province or Territory that the Airport resides in and which are designated under this Subsection 6.2(c) by the Airport to be short-haul destinations; provided that, for any Airport other than the Vancouver International Airport, an Airport will be limited to four (4) short-haul destinations or with the concurrence of the Signatory Air Carriers forming the MII, up to ten (10) short-haul destinations. The maximum distance between short-haul destinations shall be three hundred (300) statute miles. While recognizing the authority of an Airport to determine the one (1) rate for short-haul destinations, Signatory Airports shall, where applicable, make reasonable efforts to establish the same level of AIF at both Airports involved in a short-haul destination city-pair; and

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- (d) in the case of Vancouver International Airport (i) if Vancouver International Airport becomes a signatory to this MOA on or before January 1, 2004, effective April 1, 2004, those rates indicated on Schedule I hereto; and (ii) if Vancouver International Airport becomes a signatory to this MOA on a date following January 1, 2004, effective on the day which is ninety (90) days after the date that Vancouver International Airport becomes a signatory to this MOA, those rates indicated on Schedule I hereto.

6.3 An Airport has the right to make changes in AIF levels upon at least ninety (90) days prior written notice to ATAC and to the Signatory Air Carriers of the ticketing sale date following which the change in AIF levels will be effective provided that the rates for international and short-haul destinations, pursuant to Subsections 6.2(b), (c) and (d), shall not be adjusted more frequently than once in any calendar year without the concurrence of the Signatory Air Carriers forming the MII at the Airport. No notice may be issued by an Airport hereunder until January 1, 2004.

7.0 Alternate Collection Method

7.1 With respect to a Program for which an AIF is being collected by Signatory Air Carriers, nothing in this MOA shall prevent an Airport from choosing to utilize an additional alternative to the revenue collection method outlined in this MOA provided that any such collection method does not:

- (a) involve the participation of Signatory Air Carriers; or
- (b) impose additional charges of any kind on Signatory Air Carriers in relation to the funding of such Program, unless otherwise agreed in writing between the respective Parties.

8.0 Handling Fee

8.1 In respect of enplanements occurring on or prior to December 31, 2003, Signatory Air Carriers shall be entitled to withhold a handling fee which is calculated as a percentage of the gross amount of AIF to be otherwise remitted to a particular airport together with related provincial sales, goods and services, harmonized goods and services and other applicable taxes. The handling fee shall be one of three amounts determined by the annual enplaned/deplaned passenger volume at that Airport, which volume shall be determined by that Airport at the end of the ninth month of each calendar year for the previous 12 months, subject to annual review and verification by a designee of the Signatory Air Carriers, as follows:

- 6% for Airports with more than 7 million enplaned/deplaned passengers annually;
- 7% for Airports with 3 million to 7 million enplaned/deplaned passengers annually;
- 8% for Airports with less than 3 million enplaned/deplaned passengers annually.

8.1(a) In respect of enplanements occurring on or after January 1, 2004, Signatory Air Carriers shall be entitled to withhold a handling fee which is calculated as a percent of the gross amount of AIF to be otherwise remitted to a particular Airport together with related provincial sales, goods and services, harmonized goods and services and other applicable taxes. The handling fee shall be one of four (4) amounts determined by the annual enplaned/deplaned passenger volume at that Airport, which volume shall be determined by that Airport at the end of the ninth (9th) month of each calendar year for the previous twelve (12) months, subject to annual review and verification by ATAC, as follows:

- 4% for Airports with more than 14 million enplaned/deplaned passengers annually;
- 5% for Airports with more than 7 million enplaned/deplaned passengers annually;

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6% for Airports with 3 million to 7 million enplaned/deplaned passengers annually; and

7% for Airports with less than 3 million enplaned/deplaned passengers annually.

- 8.2 Signatory Air Carriers that do not conduct audits of their financial records in their normal commercial operations shall be entitled to 75% of the applicable handling fee, subject to compliance with Section 10.9 of this MOA.

9.0 Remittance

- 9.1 "AIF collection commencement date" means the first day upon which an Airport can require Signatory Air Carriers to collect and remit an AIF, or a change to the level thereof, following the completion of the air carrier consultation process contemplated by Article 13.

For greater certainty, the AIF collection commencement dates for the following airports are deemed to be as follows:

Calgary Airport	October 1, 1997
Kelowna Airport	February 1, 1998
Winnipeg Airport	July 1, 1998

- 9.2 In respect of enplanements occurring on or prior to December 31, 2003, regardless of whether an AIF is collected from passengers, and subject only to Sections 9.5, 9.6 and 22.1, Signatory Air Carriers shall remit to an Airport the amount of the AIF imposed by that Airport pursuant to this MOA for all DEPAX passengers at that Airport for which the ticket sales occurred on or after the AIF collection commencement date for that Airport:

- (a) plus provincial sales, goods and services, harmonized goods and services and other applicable taxes; and

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- (b) less the handling fee and related provincial sales, goods and services, harmonized goods and services and other applicable taxes referred to in Article 8;

on a monthly basis no later than the end of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies (the "due date").

9.2(a) In respect of enplanements occurring on or after January 1, 2004, regardless of whether an AIF is collected from DEPAX passengers, and subject only to Sections 9.5, 9.6 and 22.1, Signatory Air Carriers shall remit to an Airport the amount of the AIF imposed by that Airport pursuant to this MOA for all DEPAX passengers at that Airport for which the ticket sales occurred on or after the AIF collection commencement date for that Airport:

- (i) plus provincial sales, goods and services, harmonized goods and services and other applicable taxes; and
- (ii) less the handling fee and related provincial sales, goods and services, harmonized goods and services and other applicable taxes referred to in Article 8;

on a monthly basis on the first working day of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies, such monthly remittances to be made on the basis of the estimated amount owing to the Airport for the previous month, with final adjustments made on a monthly basis on the first working day of the second month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies. The estimated amounts referred to in this Section 9.2(a) shall be based on reasonable, good faith estimates of DEPAX passengers using historical data and/or reasonable forward projections.

Notwithstanding the payment schedule contained in this Section 9.2(a), any Signatory Air Carrier with less than \$240,000 in gross annual AIF remittances for a particular Airport shall

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only be required to remit on a monthly basis no later than the end of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies.

9.3 The obligation to remit AIF revenues to an Airport arises upon the enplanement of a DEPAX passenger at a particular Airport provided that the DEPAX passenger purchased the ticket on or after the AIF collection commencement date for a particular Airport.

9.4 Each remittance will be accompanied by a statement identifying the number of DEPAX passenger enplanements associated with the remittance. The remittance shall separately identify the DEPAX passengers in Section 9.5 below.

9.5 With respect to DEPAX passengers who purchased tickets outside of North America:

- (a) provided that the Signatory Air Carrier has instituted a method of AIF collection which could commercially reasonably be expected to assess all DEPAX passengers in accordance with this MOA, and
- (b) provided that the Signatory Air Carrier has made commercially reasonable efforts to collect AIF revenues pursuant to the method instituted in Subsection 9.5(a), and
- (c) provided that the Signatory Air Carrier remitted all AIF revenues actually collected from DEPAX passengers in accordance with Section 9.2, Subsection 9.2(a) and as required by Article 11 during this period; and
- (d) provided that the Signatory Air Carrier has provided the audit certification required pursuant to Section 10.3 of this MOA;

then the particular Signatory Air Carrier's liability for making the AIF remittances for DEPAX passengers whose tickets are purchased outside of North America, shall, subject to

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Article 8, be limited to the actual amount of AIF revenues collected from such DEPAX passengers carried by the particular Signatory Air Carrier at that particular Airport.

9.6 With respect to DEPAX passengers who purchased tickets in North America (Canada, the United States of America and Mexico):

- (a) provided that the Signatory Air Carrier has instituted a method of AIF collection which could commercially reasonably be expected to assess all DEPAX passengers in accordance with this MOA; and
- (b) provided that the Signatory Air Carrier has made commercially reasonable efforts to assess the DEPAX passengers in accordance with this MOA and collect AIF revenues pursuant to the method instituted pursuant to Subsection 9.6(a); and
- (c) provided that the Signatory Air Carrier remitted all AIF revenues actually collected from DEPAX passengers in accordance with Section 9.2, Subsection 9.2(a) and as required by Section 11 during this period; and
- (d) provided that the Signatory Air Carrier has provided the audit certification pursuant to Section 10.3 of this MOA; and
- (e) provided that the Signatory Air Carrier has provided a management certificate on the reimbursement form attached as Schedule G stating:

"This Compliance Certificate is delivered to [Airport] pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of xxxxxx between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

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I, xxxxxname, xxxxxxxtitle, of xxxxxxxairline, certify that, to the best of my knowledge, information and belief, for the AIF remittance for the month of xxxxxmonth:

Proper and responsible due diligence has been exercised in establishing the remittance liability by personnel understanding the importance to the Airport of establishing the correct number of DEPAX passengers subject to the AIF (as defined in the MOA).

I give this Compliance Certificate in my capacity as xxxxttitle and no personal liability is assumed in the giving of this certificate."

then the particular Signatory Air Carrier's liability for making the AIF remittances, subject to Article 8, shall be limited to:

- (i) the greater of the amount collected or, during the first 12 months after the AIF collection commencement date for that Airport, 80% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period;
- (ii) the greater of the amount collected or, during the 13th through the 18th months after the AIF collection commencement date for that Airport, 90% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period; and

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(iii) the greater of the amount collected or, following the 18th month after the AIF collection commencement date for that Airport, 95% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period.

9.7 Interest will be charged to Signatory Air Carriers on a monthly basis, commencing after the due date, on all outstanding amounts at the prime rate established by the Royal Bank of Canada from time to time plus two (2%) per cent per annum. In the event that any month's remittances are more than 15 days in arrears, following the expiration of those 15 days, that Airport may cancel the agreement with a delinquent Signatory Air Carrier 15 days after providing notice in writing of the delinquency to the Signatory Air Carrier, provided that the Signatory Air Carrier does not pay the arrears during the said notice period, and require all AIF funds collected up to the date of cancellation to be remitted to that Airport.

10.0 Audit

10.1 Annually, within one hundred and twenty (120) days of the end of each Signatory Air Carrier's fiscal year, each Signatory Air Carrier shall deliver to each Airport an Annual Statement which details for that Airport, for that fiscal year, the following:

- (a) the number of DEPAX Passengers for each month and in aggregate;
- (b) the gross amount of AIF funds payable for each month and in aggregate;
- (c) the amount of handling fee deducted for each month and in aggregate;
- (d) the net amount of AIF funds payable for each month and in aggregate; and

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- (e) a statement that the Signatory Air Carrier has met the requirements of Subsections 9.5(a) and (c), or 9.6(a) and (c), as the case may be.
- 10.2 The Annual Statement referred to in Section 10.1 must contain a certification signed by a person authorized to sign on behalf of the Signatory Air Carrier which states that the Annual Statement is true and correct in all respects to the best of the such person's knowledge and belief after due inquiry.
- 10.3 At any time during the term of this MOA, an Airport may contract with the Signatory Air Carrier's external auditor to conduct an audit of the Signatory Air Carrier's records solely with regard to the matters described in any Annual Statement delivered after January 1, 2004 and referred to in Section 10.1 in respect of the relevant fiscal year. Airports shall advise a Signatory Air Carrier within sixty (60) days after the due date of the Annual Statement of their intention to commission an audit. In the event that more than one Airport advises of the intention to commission an audit of a Signatory Air Carrier, all Airports will coordinate their action into a single audit process, although individual reports will be prepared for each participating Airport. Signatory Air Carriers shall make reasonable efforts to ensure that their external auditor accepts this audit assignment and at a reasonable fee which in any event shall not exceed that which the Signatory Air Carrier would have paid had the audit been carried out at its request, failing which, the Airport(s) may contract with an external auditor of their choice.
- 10.4 The Airport(s) shall be entitled to bill and collect the costs of such audit from the Signatory Air Carrier in the event that such audit shows that remittances by the Signatory Air Carrier are understated by three percent (3%) or more of the amount due and payable to the Airport under this MOA for the year in question. In the case where multiple audits are combined into a single audit process pursuant to Section 10.3, the allocation of cost based on the percentage variance criteria shall be on an Airport-by-Airport basis.

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- 10.5 Any refunds owing or remittances required pursuant to the Annual Statement referred to in Section 10.1 or the audit referred to in Section 10.3 shall be paid, without interest, by an Airport or a Signatory Air Carrier as appropriate, within thirty (30) days of the receipt of such Annual Statement or audit report. Any refunds owing or remittances required but not paid within thirty (30) days shall be subject to interest as provided for in Section 9.7.
- 10.6 Annually, within 180 days of its fiscal year end, each Airport must provide to each Signatory Air Carrier at such Airport, a certification under section 8600, or its successor, of the Handbook of the Canadian Institute of Chartered Accountants from an external auditor (who is legally qualified in the jurisdiction of that Airport to issue a financial audit opinion) that:
- (a) the amount of AIF funds remitted to the Airport have been used only for the Program for which they were intended and that there has not been an over payment on the Program; and
 - (b) that Airport has been in compliance with Section 12.1.
- 10.7 In the event that an Airport does not provide that certification contemplated by Section 10.6 above, the Signatory Air Carriers may contract with an independent auditor to conduct an audit of that Airport in respect of the matters set out in Section 10.6. The Signatory Air Carriers shall be entitled to bill and collect the cost of such audit from that Airport.
- 10.8 If the audit referred to in Sections 10.6 or 10.7 above reveals that that Airport has utilized such AIF revenues in a manner which contravenes the terms of this MOA, then if:
- (a) that Airport has failed to remedy the default within 30 days of the auditor's report, or

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(b) that Airport has failed to present a plan, satisfactory to the Signatory Air Carriers, and proceeded diligently to implement such plan within 30 days of the auditor's report;

the Signatory Air Carriers may cease collecting and remitting the AIF until the default has been remedied to the satisfaction of the Signatory Air Carriers.

11.0 Application of AIF

11.1 Subject to the limitations described below, the AIF will apply to all departing enplaned passengers at a given Airport ("DEPAX passenger(s)").

11.2 For the purposes of this MOA, the term "ticket(s)" shall include paperless tickets where the equivalent of paper tickets with a travel itinerary for a passenger is kept in electronic form with a specific reference (commonly referred to as ticketless travel). A ticket may be comprised of a number of coupons.

11.3 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to a passenger (i) continuing a journey less than 4 hours after arrival at the Airport for domestic Canada and transborder itineraries and (ii) continuing a journey less than 24 hours after arrival at the Airport for international itineraries.

A passenger will be considered to be continuing a journey even though multiple air carriers may participate in the itinerary on one or more air carrier ticket(s).

11.4 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to airline employees travelling on business. For greater certainty, this includes duty travel of crews of one air carrier on another air carrier.

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- 11.5 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to infants under two years of age for whom no ticket was purchased (even though a no cost ticket may have been issued in the name of the infant).
- 11.6 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to customers travelling on passes or other travel documents with discount codes ID/IN. However, customers travelling on frequent flier mileage redemption programs or promotional tickets (such as two for one tickets) do not qualify as ID passengers within the meaning of this Section 11.6. Signatory Air Carriers agree to make reasonable efforts to refine the technical data necessary to limit exemptions to infants (IN) and airline employees travelling on business. Toward this end, Signatory Air Carriers agree to report on progress towards limiting inadvertent exemptions at a time not later than one year after the signing of this agreement after which time the Parties shall enter into consultations regarding alternative means of limiting exemptions.
- 11.7 Regardless of which air carrier sells a ticket to a DEPAX passenger or whose designator code is on the passenger's ticket, the air carrier on whom the DEPAX passenger actually travels shall be the Party responsible for the collection and remittance of the AIF for that DEPAX passenger.

12.0 Non-Discriminatory Charges to Signatory and Non-Signatory Air Carriers or Their Passengers

- 12.1 An Airport shall not grant access to any of its terminal buildings on any less favourable terms and conditions to Signatory Air Carriers and their passengers having regard to the AIF charges remitted and paid by such persons than are provided to non-Signatory Air Carriers and their passengers. An Airport shall achieve such equalized treatment through or by way of reasonably equivalent charges. Airports shall provide to ATAC and the Signatory Air Carriers, annually, the report of an independent, external auditor certifying that that nothing has come to the attention of the auditor to indicate the Airport is not in compliance with this section.
- 12.2 Except with respect to the Memorandum of Agreement between ATAC, the Calgary Airport Authority, the Winnipeg Airport Authority and the Kelowna Airport Authority and various air carriers dated September 23, 1997, as amended, and with respect to any Multi-terminal Airports, Signatory Air Carriers will not enter into an agreement concerning the collection of an AIF with a Canadian national airport on more favourable terms than those extended to Airports in Articles 8, 9, 11, 13 and 35 of this MOA.

13.0 Air Carrier Consultation Process

- 13.1 Signatory Air Carriers may be obligated to collect and remit an AIF pursuant to this MOA only after the Air Carrier Consultation Process has been completed in accordance herewith. This consultation process must be conducted, *inter alia*, in accordance with Article 3 and shall include the following requirements:
- (a) When an Airport has decided to implement an AIF and wants the assistance of Signatory Air Carriers in collecting and remitting such AIF pursuant to this MOA, that Airport shall prepare and forward to the Chair and each member of the Airport's

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ACC and to ATAC, a Program proposal and business plan setting out full details of and a rationale for the Program and notification to ATAC and to each Signatory Air Carrier of such proposal and business plan having been delivered. The proposal should include:

- (i) the cost, scope of work and construction period of each project within the Program;
 - (ii) the initial implementation date of the AIF, the initial amount of the AIF (which cannot be increased until 365 days after the AIF collection commencement date at the particular Airport) and a plan which sets out the anticipated AIF level and AIF revenue over the period required to recover the costs of the Program or extinguish the underlying debt incurred to finance the Program; and
 - (iii) the forecasts of traffic demand underlying the rationale for the Program.
- (b) After the delivery of the notice and information contemplated by Subsection 13.1(a):
- (i) an Airport may obtain the assistance of Signatory Air Carriers in collecting and remitting an initial Interim AIF limited to a maximum of C\$5 per DEPAX passenger, provided that Airport provides at least 90 days written notice to Signatory Air Carriers. The Interim AIF shall be collected for a term of one year, unless that Airport and the MII as determined in accordance with Section 3.3 agree to an extension. Notwithstanding any other provision of this MOA, the amount of the Interim AIF set out above shall not be subject to change by that Airport during this period; or, alternatively

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- (ii) After the delivery of the notice and information contemplated by Subsection 13.1(a) but prior to completion of the consultative process contemplated by Section 13, should both the Airport and the MII as determined in accordance with Section 3.3 of the Signatory Air Carriers to the MOA on the ACC agree that it is desirable, an Airport may obtain the assistance of Signatory Air Carriers in collecting and remitting a conditional AIF in an amount agreed upon by the Airport and the MII as determined in accordance with Section 3.3 for a time period and upon any other conditions so agreed upon by the Airport and the MII as determined in accordance with Section 3.3, provided the Signatory Air Carriers receive at least 90 days prior written notice of the AIF collection commencement date (the "Preliminary AIF"). This Preliminary AIF shall be in effect for not less than 365 days from its commencement. Notwithstanding any provisions in this MOA to the contrary, the amount of the Preliminary AIF shall not be subject to any increases by that Airport. The MII as determined in accordance with Section 3.3 shall have the right to discontinue collection of the Preliminary AIF by giving 90 days notice on or after 365 days from the AIF collection commencement date if, in its view, the consultation process has not proceeded satisfactorily, or if it continues to oppose a Program proposal. The Airport shall not be entitled to require the collection and remittance of an AIF pursuant to both sections 13.1(b)(i) and 13.1(b)(ii) during the same time period and in the event the Airport proceeds with a Preliminary AIF, the Signatory Air Carriers shall not be required to collect or remit an AIF pursuant to section

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13.1(b)(i) after the AIF collection commencement date for the Preliminary AIF.

- (c) The ACC shall have up to 180 days ("Phase One") to consider and discuss the Program and to request such other information as the ACC may, acting reasonably, require and request from the Airport in order to evaluate the Program with the Airport's officials. The Chair of the ACC will advise the Airport within 180 days of either its concurrence, its disagreement or its concurrence with exceptions to the Program submitted. The Signatory Air Carriers at that Airport shall arrive at its decision via an MII vote in accordance with Section 3.3. If there is concurrence with the Program, the Airport may, subject to this MOA, implement the AIF charging mechanism pursuant to Subsection 13.1(g)(i). If the Chair of the ACC does not advise the Airport in writing of the Phase One decision within 180 days of receiving the Program proposal, the Program is deemed to have concurrence. If the Airport's Program is not the subject of concurrence, the Chairman of the ACC or any Signatory Air Carrier will advise the Airport of the result of the vote of the Signatory Air Carriers. In the event that the Signatory Air Carriers at that Airport disagree or concur with the Program with exceptions and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, the consultation process outlined below will continue with respect to those individual projects for which an exception was noted.
- (d) In the event that either the Signatory Air Carriers at that Airport disagree with or the Signatory Air Carriers at that Airport concur with exceptions to the Program in Phase One of the consultation process and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, then, commencing on the date written notice is given under Subsection 13(1)(c), a one month consultation process ("Phase Two") will occur between the Airport's CEO and the CEO(s) (or their designates) of the Signatory Air Carriers forming the MII which

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disagreed with the Program. Any agreement reached in Phase Two will be confirmed to the Airport in writing through the Chairman of the ACC or any Signatory Air Carrier, following ratification by the MII but within 15 days of the end of Phase Two.

- (e) In the event that no agreement is reached during Phase Two and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, the Signatory Air Carriers forming the MII under Subsection 13.1(c) may, within 60 days, commencing at the conclusion of Phase Two ("Phase Three"), make an alternative proposal through the Signatory Air Carriers at that Airport provided that in the opinion of Signatory Air Carriers forming the MII under Subsection 13.1(c), the alternative proposal addresses all of the legitimate expansion requirements of the Airport over the term of the Program proposed by the Airport. The Airport will advise the Chairman of the ACC and all Signatory Air Carriers at that Airport in writing within 30 days of the conclusion of Phase Three whether it accepts or rejects the alternative proposal. If the Airport accepts the alternative proposal, the Airport may implement an AIF pursuant to Subsection 13.1(g)(i) of this MOA.
- (f) Should the Airport reject the alternative proposal made during Phase Three or if no alternative proposal is made, the Airport may, 24 months following the date upon which the Airport has provided to the Signatory Air Carriers at that Airport an Offer to Finance the proposed Program, conditional or otherwise, from a bona fide lender, group or syndicate of lenders, increase or initiate an AIF to be collected and remitted by Signatory Air Carriers, subject to the notification provisions of Subsection 13.1(g)(ii) of this MOA.
- (g) (i) Except as otherwise provided in Schedule F, following completion of the Air Carrier Consultation Process set out above, the Airport will advise each Signatory Air Carrier, in writing, at least 90 days prior to the collection

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commencement date of the AIF, of the level of the AIF and the collection commencement date. The level of the AIF on the initial collection commencement date must be no greater than the level which was identified in the Airport's Program submission.

- (ii) Subsequent to the initial collection commencement date, in respect of an AIF implemented pursuant to Paragraph 13.1(g)(i) and subject to Subsection 13.1(h), an Airport may change the level of the AIF, subject to a minimum 90 days prior written notice to Signatory Air Carriers, (although the Airport shall endeavour to provide greater than 90 days notice where possible) provided that any such increase shall only apply to DEPAX passengers who purchase their tickets 60 days or more after the Signatory Air Carriers receive this written notice and are travelling on or after the effective date of such increase.

- (h) An Airport may introduce new projects during the period of a Program which shall constitute an amendment to the Program. These amendments shall, subject to the provisions of this Subsection 13.1(h), qualify for the assistance of Signatory Air Carriers in the collection and remittance of an AIF pursuant to this MOA. The amendments contemplated by this section relate to new projects or existing projects which have a change of scope, but do not include changes to project cost estimates resulting only from changes in the cost of construction. Should any proposed amendment result in an increase in capital spending of 10% or more of the Program previously implemented or if the proposed amendment would result in an extension of the estimated term of the AIF related to the original Program by three years or more, the proposed amendment will be subject to the terms of the Air Carrier Consultation Process as if it were a new Program.

- (i) The attached Schedule F to this MOA lists those capital construction programs which, as of the date of signing of this MOA, are deemed to have been approved by

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the Signatory Air Carriers as a Program pursuant to the Air Carrier Consultation Process outlined in this MOA. In these cases, the Airport may proceed immediately with the AIF notification outlined in Subsection 13.1(g)(i) of the MOA.

14.0 AIF Term

14.1 No AIF implemented pursuant to this MOA shall have a term longer than that required to extinguish the underlying debt (including associated financing costs) incurred by the Airport to finance the proposed Program. Where possible and practical, a target date for the termination of an AIF will be agreed upon by the Parties at the time of imposition.

15.0 Information Disclosure

15.1 At the time an Airport presents a Program pursuant to Subsection 13.1(a) and so long as the Airport pursues the Program and/or an AIF has been imposed by an Airport and implemented with the assistance of Signatory Air Carriers pursuant to this MOA, the Airport shall provide to the Chair of the ACC and to each Signatory Air Carrier, with a copy to ATAC, the following information on an annual budgeted basis and an annual actual basis:

- (a) Cash flow statement for the Program indicating (as a minimum) net AIF revenues collected under this MOA, total expenditures on the Program, underlying debt incurred by the Airport to finance the Program and interest, bad debts related to the collection of the AIF and other debt service costs related to the debt incurred;
- (b) Statement of capital expenditures to date on the Program with reasonable detail on the composition of capital expenditures versus budget and indicating cost overruns, if any.

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- 15.2 Each Airport shall provide, at its own cost, signage which advises passengers that the Airport is collecting an AIF for capital improvements at the Airport. The ACC shall be notified of the proposed signage and given 30 days to provide comments.
- 15.3 The Signatory Air Carriers, for informational purposes only, shall provide to the Airport on a monthly basis commencing on the date that an Airport becomes a signatory hereto, the number of non-revenue and revenue passengers of such Signatory Air Carrier that arrived and departed from the particular Airport in the prior month. This information shall not in any way relate or be used with respect to the calculation of AIF revenues remitted by a Signatory Air Carrier pursuant to this MOA.

16.0 Airside Infrastructure

- 16.1 The Parties recognize that, in addition to air carriers who utilize the air terminal building(s), all other aircraft operators ("Significant Users"), are material beneficiaries of ongoing Airport improvements to runways, taxi-ways, aircraft aprons and ramps, airfield lighting, airfield signage and airfield drainage ("Airside Infrastructure"). Each Airport shall implement a charging method for such Significant Users to contribute to Airside Infrastructure costs in such a fashion that Signatory Air Carriers and their passengers or customers are treated no less favourably than Significant Users and their passengers or customers relative to the respective benefits they receive from Airside Infrastructure. The Airport shall, in its sole discretion, make the determination that the said charging method implemented meets the criteria identified in this Section 16.1. It is agreed that this charging method envisages a process whereby landing fees or other airside related charges shall not, in total, exceed the costs associated with providing and maintaining Airside Infrastructure.

17.0 Term

17.1 The initial term of this MOA shall be for a period of 20 years commencing on May 31, 1999, provided that in those cases where debt arising from the agreed Program is not yet extinguished, the obligation to collect and remit AIF shall continue until such debt is extinguished. The Parties agree to meet 24 months prior to the expiry of this MOA to discuss renewal terms.

18.0 Applicable Law

18.1 This MOA shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws applicable in the Province of Ontario and, subject to Article 19, the Parties agree to be bound by the non-exclusive jurisdiction of the courts of the Province of Ontario.

18.2 Notwithstanding Section 18.1, in the case of a dispute between an individual Airport and an individual Signatory Air Carrier, this MOA shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws applicable in the province in which the Airport is resident and the Parties shall attorn to the jurisdiction of the courts of that province.

19.0 Dispute Resolution

19.1 Despite anything contained in the MOA to the contrary, in the event that a dispute or difference arises with respect to this MOA that cannot be resolved by negotiation between the Parties and the Parties do not agree to terminate this MOA, then in such event the Parties may agree to use the services of a mediator to attempt to resolve their dispute or difference and, failing agreement on the procedure to be followed, the mediation shall be conducted in accordance with the "Rules of Procedure for the Conduct of Mediations" of the Arbitration and Mediation Institute of Ontario.

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19.2 In the event that the Parties choose not to mediate their dispute or difference or, if chosen, the mediation does not result in resolution of the dispute or the difference, and the Parties do not agree to terminate this MOA, then in such event any unresolved issue may be taken to any other appropriate dispute resolution process agreed to by the parties, including arbitration or an appropriate court process. Should arbitration be agreed upon, the arbitration will be conducted in accordance with the "Rule of Procedure for the Conduct of Arbitrations" of the Arbitration and Mediation Institute of Ontario.

20.0 Nature of Relationships

20.1 The Parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise. Nothing contained in this MOA nor any acts of any Party taken in conjunction hereunder, shall constitute or be deemed to constitute a partnership, joint venture, or principal/agency relationship in any way or for any purpose except as the Signatory Air Carriers acting as agents for the Airports in collecting and remitting the AIF funds. Except as expressly set forth herein, no Party, shall have any authority to act for, or to assume any obligations or responsibility on behalf of, any other Party.

20.2 Although this MOA is made among multiple Airports and multiple Signatory Air Carriers, all Parties agree that once an AIF is implemented by a particular Airport pursuant to this MOA, all obligations with respect to such AIF collection shall be deemed to be direct contractual obligations between each Airport and each respective Signatory Air Carrier.

21.0 Indemnity

21.1 The Airports agree to indemnify and save harmless ATAC, the Signatory Air Carriers, and their respective shareholders, directors, officers, employees and agents from all losses, including all claims, demands, proceedings, losses, damages (including, without limitation, direct, indirect, incidental, special, exemplary, consequential or other damages), liabilities, deficiencies, costs and expenses (including, without limitation, all legal fees on a solicitor/client basis and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly out of or in connection with any action by any person relating to the right of an Airport or Signatory Air Carrier to charge or collect an AIF in accordance with this MOA. Notwithstanding any other provision of this MOA, as long as the AIF mechanism contemplated by this MOA remains valid and in place, all costs incurred by an Airport in relation to this indemnity may, at the sole discretion of the Airport, be recovered by the Airport through the AIF mechanism established pursuant to this MOA. Nothing in this MOA shall require an Airport to indemnify a Signatory Air Carrier for any claim for damages arising out of the wilful misconduct or gross negligence of the Signatory Air Carrier.

22.0 Jurisdictional Restrictions

22.1 ATAC shall provide to each Airport a list, attached hereto as Schedule "E", which may be amended from time to time upon written notice to the Airports, of all countries ("jurisdictions") where the collection of an AIF as contemplated by this MOA is not permitted by law. Signatory Air Carriers shall not be required to collect or remit any AIF funds associated with tickets which are sold to persons physically present in the jurisdictions referred to in Schedule E, as amended from time to time. Prior to new jurisdictions being added to Schedule E, the Airports may seek an independent legal opinion as to the exclusion of collecting AIF revenues in such jurisdiction. In the event of a dispute regarding these additional jurisdictions, the matter shall be referred to arbitration pursuant to Article 19 of this MOA.

23.0 Mutual Agreement to Consult

- 23.1 The Parties to this MOA recognize that there are many complexities associated with the introduction of an AIF collection process as contemplated in this MOA and agree that a standing committee, which will be comprised of representatives of the Parties, will be established and will meet periodically to review issues associated with the administration of the MOA and attempt to reach mutual agreement on beneficial changes.
- 23.2 The Parties acknowledge and agree that this MOA may require amendment to facilitate the administration of taxes which may be applicable to AIF's collected pursuant to this MOA and in this respect the Parties agree to make such amendments as may be determined by ATAC and Signatory Air Carriers in an expeditious manner upon request provided that, such amendments would not materially reduce or impair the rights granted to Airports by the terms of this MOA.

24.0 Airport Specific Programs

24.1 For greater certainty, except as otherwise specifically provided in Sections 5.1 and 5.2, any Program shall relate only to the one (1) site-specific airport in respect of which the AIF is collected, notwithstanding that an Airport may own or operate more than one (1) airport.

25.0 Entire Agreement

25.1 This MOA supersedes, rescinds and revokes all negotiations, arrangements, letters of intent, brochures, representations, agreements and information conveyed, whether oral or in writing, between the Parties with respect to the subject matter hereof.

26.0 Headings

26.1 The division of this MOA into articles, sections, subsections, paragraphs and subparagraphs and the insertion of headings are for convenience or reference only and shall not affect the construction or interpretation of this MOA.

27.0 Schedules

27.1 Subject to the clarification provided in Section 3.2 of this MOA, the documents attached as Schedules to this MOA form an integral part of this MOA as fully as if they were set forth herein in full.

28.0 Notice

28.1 All notices or other communications necessary for the purposes of this MOA ("Notice") shall be in writing and shall be delivered personally or by courier, or shall be sent by registered mail or by prepaid post or sent by facsimile, addressed,

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- (a) in the case of an Airport, to each Airport listed on Schedule A or to such other address or facsimile number or addressed to such other person as the Airport may, from time to time, designate in writing to the other Parties:

- (b) in the case of ATAC or the Chairman of an ACC, to:

Chief Executive Officer
ATAC
255 Albert Street
Suite 1100
Ottawa, Ontario
K1P 6A9

Telephone: (613) 233-7727
Facsimile: (613) 230-8648

or to such other address or facsimile number or addressed to such other person as ATAC may, from time to time, designate in writing to the other Parties;

- (c) in the case of a Signatory Air Carrier, to each Signatory Air Carrier listed on Schedule B or to such other address or facsimile number or addressed to such other person as the Signatory Air Carrier may, from time to time, designate in writing to the other Parties.

28.2 Any Notice will be considered to have been received:

- (a) the case of facsimile, on actual receipt if the same is a business day, during normal business hours, and if not, then on the next business day, or

- (b) in all other cases, on the date of delivery.

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28.3 If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any Notice shall be delivered personally, by facsimile or by courier.

29.0 Time of Essence

29.1 Time is of the essence under this MOA.

30.0 Non-Waiver

30.1 Any failure by a Party to rely on its strict legal rights hereunder shall not constitute a waiver of any other rights of that Party hereunder.

31.0 Partial Invalidity

31.1 If, for any reason whatsoever, any term, covenant or condition of this MOA, or the application thereof to any person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition:

- (a) is deemed to be independent of the remainder of this MOA and to be severable and divisible therefrom, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this MOA or any part thereof; and
- (b) continues to be applicable and enforceable to the fullest extent permitted by law against any persons and any circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

32.0 Extended Meanings

32.1 The word "hereunder" and similar expressions used in this MOA relate to the whole of this MOA, unless the context indicates otherwise. Words importing a particular gender shall include all genders.

33.0 Counterparts

33.1 This MOA may be executed in one or more counterparts and by the different parties hereto in separate counterparts, each of which when executed will constitute an original and all of which taken together shall constitute one and the same instrument. Transmission by facsimile, in accordance with Article 28, of an executed counterpart shall constitute good and valid delivery of the same.

34.0 Amendments

34.1 This MOA may be amended from time to time in the following manner:

- (a) Any Party may initiate an amendment to the MOA by formally giving notice (as outlined in Schedule C) to all Parties specified under Article 28.0.
- (b) Parties receiving a notice of amendment have 90 days to express consent or rejection of the proposed amendment.
- (c) Subject to Section 2.2 and Subsections 34.1(d) and (e), amendments to this MOA require the consent of the majority of the Airports and the majority of the Signatory Air Carriers (including both of the two largest Canadian air carriers as determined by passenger boardings in the calendar year immediately preceding the requested amendment sought by Airports and Signatory Air Carriers).

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- (d) Subject to Section 2.2, amendments to Articles 8, 9, 11, 13, 34 and 35, of the MOA require the consent of 80% of the Airports and 80% of the Signatory Air Carriers (including both of the two largest Canadian air carriers as determined by passenger boardings in the immediately preceding calendar year).
- (e) Subject to Section 2.2, ATAC, an Airport and the Signatory Air Carriers as represented by the ACC at that Airport may agree to vary the provisions of this MOA as they apply at that Airport provided that, in no event whatsoever shall they derogate from, alter or amend the provisions of Articles 8, 9, 11, 13, 34 or 35 of this MOA and provided further that notice of such variation is given by ATAC, the Airport and the ACC to all other Parties to this MOA. For greater certainty, no such variation shall affect the provisions of this MOA at any other Airport or any other rights or obligations of any other Parties.
- (f) All notices of amendments and responses shall be sent to ATAC as outlined in Article 28.

35.0 ATAC Administration Fee

- 35.1 Airports agree to contribute proportionately a percentage of gross AIF collected to ATAC to cover ongoing administration functions in support of this MOA, as described in Schedule H of this MOA. The amount to be contributed shall be established annually through the presentation by ATAC of a budget for the information of the Airports. This budgeted amount may vary annually but shall not be less than .1% nor exceed .2% of amounts remitted by all Signatory Air Carriers on behalf of the Airports, together with applicable taxes. The apportionment of this cost amongst the Airports shall be on the basis of enplaned passengers at the Airports.

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IN WITNESS WHEREOF, the duly authorized signatories of the respective Parties hereto have set their signatures this on the date indicated.

AIR TRANSPORT ASSOCIATION OF CANADA

Per: _____ Date:
MICHAEL SKROBICA

Title: Vice President Finance

OTTAWA MACDONALD-CARTIER INTERNATIONAL AIRPORT AUTHORITY

Per: _____ Date:
PAUL BENOIT

Title: President and Chief Executive Officer

AIR CANADA

Per: _____ Date:

Title:

CANADIAN AIRLINES INTERNATIONAL LTD.

Per: _____ Date:

Title:

SCHEDULE A

Airports

Name Of Airport Authority

Specific Airport Which Is Included

Mr. John Weerdenburg
 Vice-President & CFO
**Ottawa Macdonald-Cartier
 International Airport Authority**
 50 Airport Road
 Gloucester ON K1V 9B4
 T: 613-248-2000 ext 1107 F: 248-2067
 Email: weerdej@ottawa-airport.ca

Ottawa International Airport

Mr. Steve Burchi
Regina Airport Authority
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 Regina, SK S4W 1B3
 T: 306-761-7563 / F: 306-761-7559
 Email: sburchi@yqr.ca

Mr. Bill Restall
 President & CEO
Saskatoon Airport Authority
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President & C.E.O.
Edmonton Regional Airports Authority
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City Clerk
City of Timmins
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Mr. Tom Hutchings
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Stephenville Airport Corporation
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SCHEDULE B

Signatory Air Carriers

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Halifax International Airport
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~~Ms. Shirley Campling~~
~~Secretary Treasurer~~
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~~La Ronge, SK—S0J 1L0~~
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~~**Pem Air Ltd.**~~

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General Counsel, NA
British Airways Plc
 North American Headquarters
 75 – 20 Astoria Boulevard
 Jackson Heights, NY 11370
 U.S.A.
 T: (347) 418-4385 / F: (347) 418-4204

Mr. Farid Zamakhchari
 General Manager, Canada
Royal Air Maroc
 1001, de Maisonneuve West, Suite 430
 Montreal, Quebec H3A 3C8
 T: 514-285-1688 / F: 514-285-1878

Mr. Osama Gharib
 General Manager
EgyptAir
 630 Réne-Lévesque Blvd West
 Suite 2860
 Montreal, Quebec H3B 1S6
 T: 514-875-9990 ext 223 / F: 514-875-5105

Mr. José Augusto Pavão de Sousa
 Finance Director
SATA Internacional
Seviços e Transportes Aéreos, S.A
 Av. Infante D.Henrique,55-6º
 9504 - 528 Ponta Delgada
 Portugal
 T: 351.296.209.751 / F: 351.296.209.752
 Email: pdlaasp@sata.pt

Ms. Kirsty Thomson
 Accounting Department
Air North Ltd.
 150 Condor Road
 Whitehorse, YT Y1A 6E6
 T: 867-668-6443 / F: 867-456-3111
 Email: kthomson@flyairnorth.com
 Ms. Marlene Mercier
Québecair Express Inc.
 C.P. 10
 L'Ancienne-Lorette, QC G2E 3M2
 T: 418-871-1125 / F: 418-871-9811
 Email: m.mercier@quebecairexpress.com

Mr. Chris Cowan
Kelowna Flightcraft
 #1 5655 Airport Way
 Kelowna, BC V1V 1S1
 T: 250-765-7289 / F: 250-491-5504
 Email: chrisc@flightcraft.ca

Mr. Rick Hill
 Vice President, Marketing
 & Commercial Alliances
Helijet International Inc.
 5911 Airport Road South
 Richmond, BC V7B 1B5
 T: 604-273-4688 / F: 604-273-5301
 Email: rickhill@helijet.com

SCHEDULE CAccession Form

TO: [Existing Parties to MOA]
 RE: Accession to Memorandum of Agreement dated ■

The [Airport/Signatory Air Carrier], having received a copy of the Memorandum of Agreement dated ■ between the Air Transport Association of Canada, certain Airports and certain Signatory Air Carriers, and desiring to be a Party to that Memorandum of Agreement, and now providing consideration of one dollar (\$1.00), in Canadian funds, to each of the existing Parties to the Memorandum of Agreement, hereby agrees to be bound to the Memorandum of Agreement and to abide by its terms and conditions.

DATE: _____

SIGNATURE

TITLE

SIGNATURE

TITLE

Any Notice pursuant to the Memorandum of Agreement should be sent to:

(Company Name and Full Mail Address)

(Contact Name, Title, Telephone Number & Facsimile Number)

SCHEDULE D

ACC Operating Terms of Reference

AIRLINE CONSULTATIVE COMMITTEE (ACC)

1. OBJECTIVES

- To provide a forum for airlines at an airport to discuss and analyse matters of common interest and concern with respect to the operation of the airport.
- To consolidate airline views on an issue(s) and officially present such views to the airport operator.
- To act as the on-site consultative representative of the airlines with the airport operator in respect of all capital projects or programs, all fees and charges and all exclusive rentals at the airport which will have a financial impact of any kind on the airlines or airline passengers and any other matters having a material impact on airline operations at the airport.
- To perform the obligations assigned to it as set out in any agreement between the airport operators and the airlines and/or ATAC.

2. ESTABLISHMENT

- An ACC shall be established at each National airport and, where a consensus exists amongst airlines serving the airport, at each Regional/Local airport. National and Regional/Local airports mean those airports as defined in the National Airports Policy of July 1994 and as listed in Appendix 'A' hereto.

3. MEMBERSHIP

- Voting membership is open to all airlines and/or their duly designated representative serving an airport on a regular and consistent basis.
- ATAC shall be an ex officio non-voting member of all ACCs and, at airports served by their non-Canadian airline membership, IATA and ATA shall be non-voting members ex officio.
- Each airline shall appoint a single official representative to exercise that airlines voting rights and may change this person at any time.
- Each airline may invite other company personnel with appropriate qualifications to attend ACC meetings when considering major capital projects or programs proposed by an airport.

- In order to ensure coordination with the day-to-day operations of the airlines, the ACC may invite the Chairman of the Airport Operator's Committee (AOC), to attend any meeting of the ACC as a non-voting participant.

4. GOVERNANCE

- Each ACC shall meet at least once every 12 months and additionally at the call of the Chair or upon request of any member airline.
- Each ACC shall appoint a Chairman from amongst the largest Canadian air carriers serving the airport based on passenger volumes of the airport. The ACC may also appoint a Vice-Chairman and a Secretary from amongst their voting members. Those officers shall hold office until the ACC or the voting member airlines appoints their successors.
- The officers shall retain their voting rights as their airlines' official representatives.
- The Chairman shall give notice of all ACC meetings to the members and shall preside over all such meetings and shall arrange for the recording and circulation to the members of the minutes of all ACC meetings.
- The ACC may appoint and set the mandate of sub-committees and/or specialist working groups to study and report to the ACC, through the Chairman, on any matter. Membership on such sub-committees or working groups is open to airline employees or advisors designated by the airline official representative to the ACC.
- The Chairman shall ensure that copies of the minutes of the ACC meetings are made known to and co-ordinated with ATAC, IATA and ATA as the case may be.
- The official representative of each ACC member airline shall be entitled to vote on any matter coming before the ACC which requires a vote. To be voted on, a motion must be proposed and seconded by airline official representatives.
- While consensus is the goal, it is recognized that some issues coming before the ACC may require a vote. For matters having a material financial impact on all ACC members, a motion will not be considered carried unless it passes with the concurrence of those ACC members whose total passenger traffic at the airport is at least 66% of the airport's total passenger traffic as determined from the previous calendar year's total traffic. For motions not having a material financial impact on all ACC members, a simple majority of 51% of members present and voting is sufficient to carry the motion.

- No motion may be voted upon unless notice in writing of the motion was given to all ACC members at least seven (7) days prior to the meeting at which the motion is to be introduced.
- Voting "in absentia" is permissible if done in writing. Proxy voting is also permissible if done in writing by authorizing another ACC official airline representative to cast the absent members ballot.
- ACC meetings are closed to anyone other than airline employees, airline advisors and representatives of ATAC, ATA or IATA except when persons are expressly invited by the Chairman, e.g. airport management.

SCHEDULE E**Excluded Jurisdictions**

BOLIVIA

CHILE

COLOMBIA

COSTA RICA

ECUADOR

EL SALVADOR

GUATEMALA

IRAN

IRAQ

LIBYA

PERU

SAUDI ARABIA

VENEZUELA

URUGUAY

SCHEDULE F**Capital Programs Deemed to Have Been Approved****OTTAWA INTERNATIONAL AIRPORT AUTHORITY****Combined Services Building**

The Combined Services Building is a new facility to be constructed which will combine and replace both the existing Fire Hall and the existing Maintenance Garage in one combined new location on the southeast side of the intersection of runways 07/25 and 14/32 next to taxiway Echo at Ottawa International Airport. The estimated cost of this facility is \$7 million.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****CALGARY AIRPORT AUTHORITY**

Ten-year Capital Expansion Program (1997 to 2006) as originally approved by the ACC at Calgary pursuant to a letter dated December 31, 1996 from the Chairperson of the ACC and further updated by the revised 10 year capital program (1998 to 2007) as approved by the ACC at Calgary pursuant to a letter dated April 13, 1999 from the Chairperson of the ACC. For greater certainty it is expressly recognized that this approved capital program includes an AIF funded project titled "96th Avenue" which is physically located off-airport and therefore represents an exception to the conditions imposed on the use of AIF revenues in Section 5.1 of this Agreement.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****KELOWNA AIRPORT**

Three-year Capital Expansion Project at Kelowna pursuant to minutes of an ACC meeting held November 24, 1997.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****WINNIPEG INTERNATIONAL AIRPORT**

Five-year Capital Expansion Program (1998-2003) as approved by the ACC at Winnipeg pursuant to a letter dated April 7, 1998 from the Chairman of the ACC.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****VANCOUVER INTERNATIONAL AIRPORT**

The 10 Year Capital Plan, which means the plan described in the document entitled "10 Year Capital Plan Update November 2003" presented to the ACC at its December 2, 2003 meeting. As more fully described in that document, the capital projects forming the 10 Year Capital Plan include:

1. ITB Expansion and Upgrades
2. Sustaining and Restoration Projects
3. RAV Line
4. DTB Upgrade and Expansion
5. Airfield Projects
6. Baggage System Upgrades/Expansion
7. Roads/Parking
8. CATSA Funded HBS

For greater certainty, it is recognized that the RAV Line described above includes the rapid transit line and related facilities connecting the on-Airport portion of RAV to the main line in Richmond, which will be located off the Airport, and the inclusion of the RAV Line in the approved 10 Year Capital Plan represents an express exception to the restrictions imposed in Section 5.1 with respect to the use of AIF revenues.

SCHEDULE G
Airport Improvement Fee
Monthly Remittance Form
Airport

Air Carrier _____ Month _____ Year _____
 Current Month DEPAX _____ X _____ =
 A.I.F. Rate Gross Remittance

	Gross AIF Remittance (per above)	Less	Handling Fee @ ____%	=	Net Remittance to Airport
Before Tax		Less		=	
<u>Applicable Tax</u> GST.....% HST.....% QST.....%		Less		=	
Total		Less		=	
					Remit this Amount

This compliance certificate is delivered to [Airport] pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of _____ between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

I _____ (name) _____ (title) _____ (airline) certify that, to the best of my knowledge, information and belief, the AIF remittance for the month of _____ (month):

Proper and responsible due diligence has been exercised in establishing the remittance by personnel understanding the importance to the Airport of establishing the correct number of DEPAX passengers subject to the AIF (as defined in the MOA). I give this compliance certificate in my capacity as _____ (title) and no personal liability is assumed in the giving of this certificate.

(signature)

(date)

SCHEDULE H

ADMINISTRATIVE DUTIES OF THE AIR TRANSPORT ASSOCIATION OF CANADA

The Air Transport Association of Canada shall:

1. Carry out the administrative duties noted in paragraph 35.1 of the Memorandum of Agreement on Airport Improvement Fees dated May 31, 1999, as follows -
 - 1) Mandate - The Air Transport Association of Canada shall act as Administrator for and Secretariat on behalf of the Memorandum of Agreement on Airport Improvement Fees dated May 31, 1999. These duties shall include:
 1. Advising Signatories and other interested parties (e.g. CRSs) of:
 - (1) new Signatories
 - (2) changes to AIF rates
 - (3) proposed amendments to the Agreement
 2. Establish and support the Technical Committee noted under section 23.1 of the MOA.
 3. To inform Signatories (chiefly new entrants) or other interested parties on the terms of the Agreement.
 4. To attempt to settle disputes by means of discussion and, if necessary, obtaining legal opinions to guide Signatories.
 - 2) Budget - ATAC shall submit a budgeted amount to the Signatory Airports no later than October 1 of each year and the Airports shall have until October 30 of each year to comment and add items to the budgeted amount. The budgeted amount shall contain sufficient detail to identify tasks noted in (a) above. A comparative of actual expenditures in the prior year ended September 30 shall be provided.
 - 3) Apportionment - Airports shall provide annual passenger volumes to ATAC in accordance with section 8 of the MOA.

Appendix 'A'**AIRPORTS IN THE NATIONAL AIRPORTS SYSTEM**

KELOWNA, B.C.
PRINCE GEORGE, B.C.
VANCOUVER, B.C.
VICTORIA, B.C.
CALGARY, ALTA.
EDMONTON, ALTA.
REGINA, SASK.
SASKATOON / JOHN G. DIEFENBAKER, SASK.
WINNIPEG, MAN.
LONDON, ONT.
OTTAWA / MACDONALD-CARTIER, ONT.
SUDBURY, ONT.
THUNDER BAY, ONT.
TORONTO / LESTER B. PEARSON, ONT.
MONTREAL / DORVAL-MIRABEL, QUE.
QUEBEC CITY / JEAN LESAGE, QUE.
FREDERICTON, N.B.
MONCTON, N.B.
SAINT JOHN, N.B.
HALIFAX, N.S.
CHARLOTTETOWN, P.E.I.
GANDER, NFLD.
ST. JOHN'S, NFLD.
YELLOWKNIFE, NWT
WHITEHORSE, YUKON

AIRPORTS IN THE REGIONAL/LOCAL CATEGORY

QUESNEL, B.C.
 PRINCE RUPERT, B.C.
 KAMLOOPS, B.C.
 NANAIMO, B.C.
 CRANBROOK, B.C.
 CASTLEGAR, B.C.
 TERRACE, B.C.
 FORT ST. JOHN, B.C.
 PENTICTON, B.C.
 CAMPBELL RIVER, B.C.
 SMITHERS, B.C.
 COMOX, B.C.
 ABBOTSFORD, B.C.
 DAWSON CREEK, B.C.
 WILLIAMS LAKE, B.C.
 FORT NELSON, B.C.
 POWELL RIVER, B.C.
 PORT HARDY, B.C.
 RAINBOW LAKE, ALTA.
 GRANDE PRAIRIE, ALTA.
 LETHBRIDGE, ALTA.
 FORT MCMURRAY, ALTA.
 PEACE RIVER, ALTA.
 LA RONGE, SASK.
 URANIUM CITY, SASK.
 PRINCE ALBERT, SASK.
 THOMPSON, MAN.
 THE PAS, MAN.
 NORWAY HOUSE, MAN.
 BRANDON, MAN.
 FLIN FLON, MAN.
 DAUPHIN, MAN.
 LYNN LAKE, MAN.
 GILLAM, MAN.
 DRYDEN, ONT.
 KAPUSKASING, ONT.
 GORE BAY, ONT.
 TIMMONS, ONT.
 SAULT STE. MARIE, ONT.
 TORONTO ISLAND, ONT.
 WINDSOR, ONT.
 NORTH BAY, ONT.
 SARNIA, ONT.
 HAMILTON, ONT.
 PICKERING, ONT. (UNDEVELOPED)
 RED LAKE, ONT.
 KENORA, ONT.
 PEMBROKE, ONT.
 EARLTON, ONT.
 FORT FRANCES, ONT.
 GASPE, QUE.
 RIMOUSKI, QUE.
 SEPT-ILES, QUE.
 VAL D'OR, QUE.
 BAGOTVILLE, QUE.
 ROUYN, QUE.
 BAIE-COMEAU, QUE.
 MONT-JOLI, QUE.
 HAVRE ST. PIERRE, QUE.
 ALMA, QUE.
 CHATAM, N.B.
 CHARLO, N.B.
 ST. LEONARD, N.B.
 YARMOUTH, N.S.
 SYDNEY, N.S.
 CHURCHILL FALLS, NFLD.
 DEER LAKE, NFLD.
 GOOSE BAY, NFLD.
 WABUSH, NFLD.
 STEPHENVILLE, NFLD.
 ST. ANTHONY, NFLD.

SCHEDULE I**Vancouver International Airport AIF Rates**

Rates by destination of DEPAX passenger (plus applicable taxes):

Within British Columbia
or the Yukon \$5

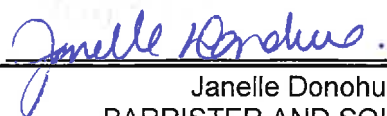
Within North America
(not including BC or the Yukon) \$10

Outside of North America
(including Hawaii and Mexico) \$15

Connecting passengers are exempt from payment of AIF.

The rates at Vancouver International Airport may be changed in accordance with the provisions of Section 6.3 of this MOA without having to amend this MOA.

This is **Exhibit "B"** referred to in the Affidavit of Jennifer Pon, sworn before me at the City of Calgary, in the Province of Alberta, this 23rd day of May 2024



Janelle Donohue
BARRISTER AND SOLICITOR
A Notary Public in and for Alberta

Reservation Terms and Conditions

Fare Information

Cancellations

No cancellations are permitted within 72 hours of departure.

Within 24 hours of booking:

- For flights booked more than 7 days before departure, if you cancel your flight you'll receive a refund to your original form of payment.
- For flights booked within 7 days of departure, if you cancel your flight you'll receive a travel voucher, minus the \$74*CAD + tax cancellation fee (per flight segment).

More than 24 hours after booking:

- For cancellations made more than 72 hours before departure, you'll be charged a \$74*CAD + tax (on or after January 11, 2024) cancellation fee per passenger (per flight segment). You'll receive a travel voucher for the remaining amount (if applicable).

Changes

No changes are permitted within 72 hours of departure. Changes to the origin and destination are not permitted.

Name changes are not permitted.

- For changes made more than 72 hours before departure, you'll be charged a change fee of \$74*CAD + tax (on or after January 11, 2024) per passenger (per flight segment).
- If you change your flight to one with a higher fare, you must pay the difference in fare as well as the change fee.
- If you change your flight to one with a lower fare, you must pay the change fee, but you won't receive the difference in fare.

Payments, Fees and Taxes



- Visa
- Mastercard
- Visa Debit
- Mastercard Debit
- Lynx Travel Voucher

Taxes and Fees

Taxes and fees vary based on the airports you're using. For domestic flights, the following taxes and fees may be added.

- Airport Improvement Fees (AIF) and Passenger Facility Charge (PFC) are generally collected by Lynx at the time of booking. Lynx collects these fees from passengers and remits them directly to the airports

Airport Code	Airport Improvement Fee (AIF)
YEG	\$35*CAD
YFC	\$30*CAD
YHM	\$25*CAD
YHZ	\$35*CAD
YLW	\$25.00*CAD
YUL	\$35*CAD
YVR (flying within BC or to the Yukon)	\$5.00*CAD
YVR (flying outside BC)	\$25.00*CAD
YWG	\$38.00*CAD
YYC	\$35.00*CAD



YYT

\$42*CAD

YYZ

\$30.00*CAD

All US airports

\$4.50*CAD

- Air Travellers Security Charge ("ATSC"): The ATSC is a security charge collected by the Government of Canada. Lynx collects this fee from passengers and remits it directly to Canada Revenue Agency.
- \$7.12*CAD per chargeable enplanement to a maximum of \$14.25*CAD for Canadian domestic flights.
- Goods and Services Tax ("GST"): GST of 5% applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights, excluding those that commence in Quebec, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador.
- Harmonized Sales Tax ("HST"): HST applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights commencing in the following provinces:
- U.S. Taxes & Fees do not apply to domestic Canadian flights.
- The US segment tax is also charged on flights between the US and a point in Canada within 225 miles of the border when payment is made within the US.
- For flights between the US and a point in Canada within 225 miles of the border, when payment is made within the US, a 7.5% tax is imposed on the base ticket price. For such flights and all other transborder flights, when payment is made within Canada, a flat rate of \$21.10 (USD) per passenger arrival and departure applies.
- US Agriculture Fee: The US government charges an agriculture inspection fee on all in-bound passengers of \$3.96 USD.
- US Immigration User Fee: For all transborder flights arriving in US, there is an Immigration User Fee of \$7.00 USD charged per passenger.
- US Sep 11th Security Fee: For all transborder flights departing the US, there is a Sep 11th Security Fee of \$5.60 USD charged per passenger.
- US Customs Processing Fee: For all transborder flights arriving in US, there is a US Customs User Fee of \$6.11 USD charged per passenger
- US Segment Tax: For all transborder flights, a US Segment Tax of \$4.50 USD is applied per passenger for US citizens. The US segment tax is also charged to US citizens on Canadian domestic flights if travel occurs in the US buffer zone near the border between the two countries
- US Transportation Tax: For all transborder flights, a US Transportation Tax is applied. For US citizens, it is 7.5% of the base ticket price (including surcharges) per



Province	Harmonized Sales Tax (HST)
Ontario	13%
Nova Scotia	15%
New Brunswick	15%
Prince Edward Island	15%
Newfoundland and Labrador	15%

- Quebec Sales Tax ("QST"): QST applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights commencing in Quebec.

Lynx Travel Vouchers

Unless otherwise specified, Lynx travel vouchers are valid for 12 months. Travel vouchers are non-transferable and can only be redeemed by the primary passenger on the booking. The owner of the travel voucher can use their voucher to book a flight for a third party. Travel vouchers can be applied towards base fare, taxes and fees.

Identification Requirements

Travel Within Canada

- a. All adult passengers must bring 1 valid (non-expired) identification document issued by a Canadian federal, provincial or territorial government that includes:
 - i. Photo
 - ii. Full name
 - iii. Date of birth
 - iv. Gender



documents must include:

- i. Full name
- ii. Date of birth
- iii. Gender

c. For more information on identification requirements, click **Canada - Domestic Air Travel Identification page** and **Transport Security Administration Identification page**. For more information on identification requirements for children, click **Travelling with children and infants**.

International Travel

- a. Adults, children and infants are required to have a valid passport for international travel.
- b. Each country may have specific travel document requirements, vaccination requirements or health protocols. It is the responsibility of each passenger to ensure they have the necessary documents for travel. Always travel with the proper documentation at all times when travelling.
- c. Please visit the U.S. Department of State for more information on requirements for travel to the United States. **Travel (state.gov)**

Check-in Guidelines

We recommend you arrive at the airport a minimum of 90 minutes before your scheduled departure time for domestic flights, and a minimum of 120 minutes before your scheduled departure time for international flights. If you'd rather check-in at the airport, please arrive 3 hours before your flight. Check-in and baggage drop-off closes 45 minutes prior to departure for domestic flights and 75 minutes prior to departure for international.

All security restrictions are subject to change. For the most up-to-date information, visit tc.gc.ca, catsa.gc.ca or tsa.gov.

Information Collection and Disclosure



destination, Canadian government authorities may require us to collect passenger information such as your full name, date of birth, citizenship, gender, passport number and country of issuance, payment method for flight purchase and booking details, as well as any other personal information as described by this policy or as required by such government authority.

Privacy Policy

Lynx is dedicated to protecting your personal information. Our privacy policy conforms with the Personal Information Protection and Electronic Documents Act. Additional information is available in **Privacy Policy**.

Rules of Carriage and Baggage Information

Carriage of passengers and goods on domestic flights, i.e., between, from and to points wholly within Canada, is subject to the applicable tariffs, conditions of carriage and related regulations available at the office of the carrier and **baggage**.

Checked Baggage Allowance

Checked baggage is subject to weight and size restrictions. Fees apply for each piece of baggage and may be combined. For example, if you check in 2 bags and both are overweight, you'll be charged 2 overweight fees. For more information visit: **Baggage Information | Lynx Air (flylynx.com)**

Checked baggage size

- Baggage may be up to 157cm (62") in combined dimensions (length + width + height) and weigh up to 23kg (50lbs).
- Oversized baggage (combined dimensions up to 203cm or 80") is accepted on a space-available basis.
- Overweight baggage (more than 23kg or 50lbs but not exceeding 45kg or 100lbs) is accepted on a space-available basis.
- For more information: **Baggage Information | Lynx Air (flylynx.com)**

Musical instruments



50lbs but not exceeding 45kg or 100lbs) and are subject to overweight fees.

Carry-on Baggage Allowance

Carry-on baggage is subject to a fee and must be stored in the overhead bin or placed under the seat directly in front of each passenger.

Each passenger may bring 1 carry-on item and 1 personal item. Each item must fit into the sizing devices and may not exceed the applicable measurements. This applies for both personal and carry-on items.

- Carry-on item: Maximum size of 23cm x 40cm x 55cm (9" x 15.75" x 21.5") and 10kg (22lbs). Carry-on fees apply.
- Personal item: Maximum size of 15cm x 33cm x 43cm (6" x 13" x 17"). Items that don't fit into the sizing device will be placed in checked baggage and charged a checked baggage fee.

Musical instruments

The combined length, width and height of the instrument (including the case) must be less than 113cm (45"). Instruments this size are considered carry-on and subject to carry-on fees. Musical instruments that don't meet the carry-on size criteria will have to be checked and follow the weight limits and fees for checked bags.

Can I bring this on a plane?

For travel within Canada, visit catsa.gc.ca for permitted and non-permitted items or call 1-800-O-Canada for more information. For travel to or from the United States, visit tsa.gov.

Baggage Loss or Damage

For carriage of baggage on domestic flights, Lynx's liability is limited to 1,131 Special Drawing Rights (SDRs) per person per incident, except for mobility aids.

Any complaint of any loss or damage to luggage must be in writing and must be made within 7 days of your flight.



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[Optional Fees](#)

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[Canadian Air Passenger Protection Regulations](#)

[Flight Status](#)

[Travel Advisory](#)

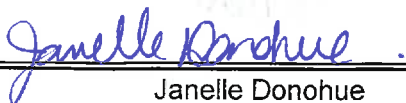
[Pets in Cabin](#)



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This is **Exhibit "C"** referred to in the Affidavit of Jennifer Pon, sworn before me at the City of Calgary, in the Province of Alberta, this 23rd day of May 2024



Janelle Donohue
BARRISTER AND SOLICITOR
A Notary Public in and for Alberta



The Calgary Airport Authority
 YYC Calgary International Airport
 2000 AIRPORT ROAD NE
 CALGARY, ALBERTA T2E 6W5

GST NO: 122556194

260
Page 1 of 1

INVOICE NO:
32859

INVOICE DATE
MM/DD/YYYY
01/15/24

CUST NO:
40004-53003-
175006

INVOICE

This Invoice is in CAD

ORIGINAL(S) EMAILED TO:
accounting@lynxair.com

INVOICE TO

Lynx Air
 123, 1440 AVIATION PARK NE
 AIF
 Calgary AB
 T2E 7E2 CA

DUE DATE: 01/15/2024 (MM/DD/YYYY)		AIRPORT: YYC		AIRPORT CHARGE		
DESCRIPTION	QTY	CHARGE	SUBTOTAL	GST	EXTENSION	
Airport Improvement Fees December 2023	0.00	0.00	0.00	0.00	0.00	
AIF Fee 23,188 PAX @ \$35/PAX	23188.00	35.00	811,580.00	40,579.00	852,159.00	
Less: Handling Fee - 4%	1.00	-32,463.20	-32,463.20	-1,623.16	-34,086.36	

SUBTOTAL:	CAD\$779,116.80
GST:	CAD\$38,955.84

Questions? Please Contact accting@yyc.com	INVOICE NO: 32859	TOTAL DUE:	CAD\$818,072.64
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The Authority accepts EFT/Interac transfer/Credit cards/Cheques as payment.
 Please contact accting@yyc.com<mailto:accting@yyc.com> for our banking details.



REMITTANCE FORM

Please detach and enclose with your payment for proper credit to your account

CUSTOMER 40004-53003-175006

Lynx Air
 123, 1440 AVIATION PARK NE
 AIF
 Calgary AB
 T2E 7E2

INVOICE NO: 32859
 AMOUNT DUE: CAD\$818,072.64
 DUE DATE: 01/15/2024
 (MM/DD/YYYY)

AMOUNT REMITTED



The Calgary Airport Authority

YYC Calgary International Airport
2000 AIRPORT ROAD NE
CALGARY, ALBERTA T2E 6W5

GST NO: 122556194

INVOICE NO:
33928

INVOICE DATE
MM/DD/YYYY
02/15/24

CUST NO:
40004-53003-
175006

INVOICE

This Invoice is in CAD

ORIGINAL(S) EMAILED TO:
accounting@lynxair.com

INVOICE TO
Lynx Air
123, 1440 AVIATION PARK NE
AIF
Calgary AB
T2E 7E2 CA

DUE DATE: 02/15/2024 (MM/DD/YYYY)		AIRPORT: YYC		AIRPORT CHARGE		
DESCRIPTION	QTY	CHARGE	SUBTOTAL	GST	EXTENSION	
Airport Improvement Fees January 2024	0.00	0.00	0.00	0.00	0.00	
AIF Fee 20,319 PAX @ \$35/PAX	20319.00	35.00	711,165.00	35,558.25	746,723.25	
Less: Handling Fee - 4%	1.00	-28,446.60	-28,446.60	-1,422.33	-29,868.93	

		SUBTOTAL:	CAD\$682,718.40
		GST:	CAD\$34,135.92
Questions? Please Contact acctning@yyc.com		TOTAL DUE:	CAD\$716,854.32
		INVOICE NO: 33928	

The Authority accepts EFT/Interac transfer/Credit cards/Cheques as payment.
Please contact acctning@yyc.com for our banking details.



REMITTANCE FORM

Please detach and enclose with your payment for proper credit to your account

CUSTOMER 40004-53003-175006

Lynx Air
123, 1440 AVIATION PARK NE
AIF
Calgary AB
T2E 7E2

INVOICE NO: 33928
AMOUNT DUE: CAD\$716,854.32
DUE DATE: 02/15/2024
(MM/DD/YYYY)

AMOUNT REMITTED



The Calgary Airport Authority

YYC Calgary International Airport
2000 AIRPORT ROAD NE
CALGARY, ALBERTA T2E 6W5

GST NO: 122556194

262
Page 1 of 1

INVOICE NO:
35205

INVOICE DATE
MM/DD/YYYY
03/20/24

CUST NO:
40004-53003-
175006

INVOICE

This Invoice is in CAD

ORIGINAL(S) EMAILED TO:
accounting@lynxair.com

INVOICE TO
Lynx Air
123, 1440 AVIATION PARK NE
AIF
Calgary AB
T2E 7E2 CA

DUE DATE: 04/04/2024 (MM/DD/YYYY)	AIRPORT: YYC	AIRPORT CHARGE				
DESCRIPTION	QTY	CHARGE	SUBTOTAL	GST	EXTENSION	
February 1-21, 2024 Billing	0.00	0.00	0.00	0.00	0.00	
Airport Improvement Fees 14,065 pax @ \$35	14065.00	35.00	492,275.00	24,613.75	516,888.75	
Less: Handling Fee	1.00	-19,691.00	-19,691.00	-984.55	-20,675.55	

Questions? Please Contact acctning@yyc.com	INVOICE NO:	SUBTOTAL:	CAD\$472,584.00
	35205	GST:	CAD\$23,629.20
		TOTAL DUE:	CAD\$496,213.20

The Authority accepts EFT/Interac transfer/Credit cards/Cheques as payment.
Please contact acctning@yyc.com for our banking details.



REMITTANCE FORM

Please detach and enclose with your payment for proper credit to your account

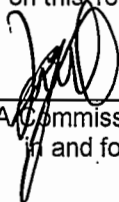
CUSTOMER 40004-53003-175006

Lynx Air
123, 1440 AVIATION PARK NE
AIF
Calgary AB
T2E 7E2

INVOICE NO: 35205
AMOUNT DUE: CAD\$496,213.20
DUE DATE: 04/04/2024
(MM/DD/YYYY)

AMOUNT REMITTED

This is **Exhibit "G"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
in and for Alberta
My Commission Expires September 11, 2026

Form 49
Rule 13.19

Clerk's stamp

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as
amended

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF LYNX AIR HOLDINGS
CORPORATION and 1263343 ALBERTA INC. dba
LYNX AIR

APPLICANTS EDMONTON REGIONAL AIRPORTS AUTHORITY,
HALIFAX INTERNATIONAL AIRPORTS AUTHORITY,
THE CALGARY AIRPORT AUTHORITY, VANCOUVER
AIRPORT AUTHORITY, and WINNIPEG AIRPORTS
AUTHORITY INC.

RESPONDENT LYNX AIR HOLDINGS CORPORATION and 1263343
ALBERTA INC. dba LYNX AIR

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
4200 Bankers Hall West
888-3rd Street SW
Calgary, AB T2P 5C5

C51676
Jun 24, 2024
COM

Karen Fellowes, K.C. / Archer Bell
Tel: (403) 724-9469 / (403) 724-9485
Fax: (403) 266-9034
Email: kfellowes@stikeman.com / abell@stikeman.com

Lawyers for the Applicants,
Edmonton Regional Airports Authority, Halifax International Airports
Authority, The Calgary Airport Authority, Vancouver Airport Authority, and
Winnipeg Airports Authority Inc.
File No.: 156280.1001

AFFIDAVIT OF DIANA VUONG**Affirmed on May 23, 2024**

I, Diana Vuong, of the City of Vancouver, in the Province of British Columbia, AFFIRM AND SAY THAT:

- I am Vice President, Finance and Chief Financial Officer of the Vancouver Airport Authority (the "VAA") and as such, I have personal knowledge of the facts and matters stated herein, except

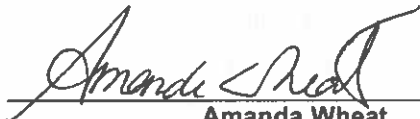
where stated to be based on information and belief, and, where so informed, I believe such matters to be true.

2. The VAA is a signatory to a Memorandum of Agreement between the Air Transport Association of Canada, certain air carriers, and certain airport authorities (the “**MOA**”). Attached and marked as **Exhibit “A”** is a copy of the MOA.
3. 1263343 Alberta Inc. dba Lynx Air (“**Lynx**”) became a signatory to the MOA on April 6, 2022.
4. The VAA came into existence following the federal government’s decision in the late 1980’s to transfer authority over airports in Canada to designated airport authorities. This transfer began in 1992 with the introduction of the *Airport Transfer (Miscellaneous Matters) Act*, SC 1992, c 5, which allowed the federal government to retain ownership of 26 so-called National Airport System airports, while leasing these airports to locally controlled, not-for-profit, non-share private sector airport authorities.
5. Vancouver International Airport (“**YVR**”) was one of the first airports to be transferred and the VAA formally began leasing YVR from the federal government and operating YVR on July 1, 1992. The VAA was initially incorporated under Part II of the *Canada Corporations Act* and was later continued under the *Canada Not-for-Profit Corporations Act* on January 21, 2013. It is neither a share capital corporation nor a crown corporation but is instead a private non-share corporation. The VAA was created for the purpose of acquiring the property comprising YVR and undertaking the management and operation of YVR in a safe and efficient manner for the general benefit of the public.
6. The MOA recognizes that airport authorities such as the VAA have the responsibility to manage, operate and develop the airports for which they are responsible. In order to meet the air traffic demands on their respective airports and ensure that the public has access to quality air transport, airport authorities such as the VAA from time to time must undertake capital expenditure projects. As stated in the preamble to the MOA, airport authorities may obtain the funds to undertake such capital expenditure projects by imposing fees or charges upon all departing airport passengers. Such fees are referred to as “Airport Improvement Fees” or “AIF”.
7. Pursuant to section 6.1 of the MOA, the decision to charge AIF and at what rate to charge it at are made by each airport authority. Further pursuant to the MOA, signatory air carriers such as Lynx agree to collect and remit AIF on behalf of the airport authorities.
8. During the time that Lynx was a signatory to the MOA, the VAA charged an AIF of \$5.00 per passenger flying within British Columbia or to the Yukon and \$25.00 per passengers flying to all other destinations. Pursuant to section 9.2 of the MOA, Lynx was to remit the collected AIF to the VAA on a monthly basis on the first working day of each month.

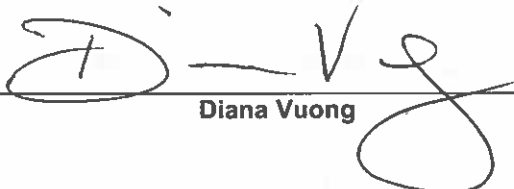
9. It was the VAA's understanding that the AIF collected by Lynx was being held in trust by Lynx until its ultimate remittance to the VAA. The MOA expressly states that the AIF is a charge imposed by the VAA on passengers and is collected by Lynx "on behalf" of the VAA. This same language is used at page 7 of the VAA's 2024 Schedule of Fees and Charges (the "**2024 Fee Schedule**") which states that "(e)ach Signatory Air Carrier must collect the AIF from passengers, on behalf of the Airport Authority, at the rates set out in the Schedule, and remit the AIF to the Airport Authority in accordance with the MOA". Similar language is used at page 7 of the VAA's 2023 Schedule of Fees and Charges (the "**2023 Fee Schedule**"). Attached and marked as **Exhibit "B"** are copies of the 2024 Fee Schedule and the 2023 Fee Schedule.
10. Furthermore, the MOA states at section 20.1 that the parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise *except* as Lynx acting as agent for the VAA in collecting and remitting the AIF funds.
11. Additionally, in its reservation terms and conditions (the "**Terms and Conditions**"), Lynx represented to its passengers that "Airport Improvement Fees (AIF) ... are generally collected by Lynx at the time of booking. Lynx collects these fees from passengers and remits them directly to the airports." Attached and marked as **Exhibit "C"** is a copy of the Terms and Conditions.
12. The nature of AIF is further outlined in the Airport Use Licence that Lynx signed with the VAA at the outset of their relationship (the "**Licence**"). Pursuant to Article 6.23 of the Licence, Lynx "covenants and agrees to co-operate with [the VAA] in the [VAA's] administration of the AIF for capital improvements at the Airport, and use reasonable efforts to inform its customer of the AIF, including responding to questions its customers may have about the AIF." Attached and marked as **Exhibit "D"** is a copy of the Licence.
13. At the time that Lynx filed for CCAA protection, the VAA was owed substantial amounts by Lynx in unremitted AIF as Lynx had failed to remit collected AIF funds in accordance with its obligations under the MOA since December 2023. In total, the VAA was owed \$1,185,768.45 in unremitted AIF by Lynx at the time of its CCAA filing. Attached and marked as **Exhibit "E"** is a bundle of three AIF remittance forms demonstrating the amounts owed by Lynx in unremitted AIF.
14. Pursuant to Article 10 of the Licence, the VAA is entitled to require Lynx to provide the VAA with an irrevocable letter of credit. As such, the VAA required, and Lynx provided, a letter of credit to the VAA in the amount of \$279,645.96 (the "**LOC**"). The purpose of the LOC was primarily to secure aeronautical fees. On March 27, 2024, the VAA called on the LOC. The VAA applied the funds received therefrom to outstanding aeronautical fees owed by Lynx to the VAA. After satisfying the outstanding aeronautical fees, the remaining \$75,536.91 was applied to the outstanding AIF

amount owing to the VAA. As a result, the total amount in unremitted AIF currently owing to the VAA from Lynx is \$1,110,231.54.

AFFIRMED this 23rd day of May, 2024.



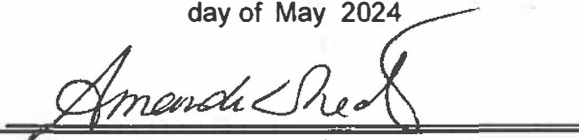
Amanda Wheat
BARRISTER AND SOLICITOR
A Notary Public in and for British Columbia



Diana Vuong

Amanda Wheat
Barrister & Solicitor
Vancouver Airport Authority
PO Box 44638
YVR Domestic Terminal RPO
V7B 1W2

This is **Exhibit "A"** referred to in the Affidavit of Diana Vuong, affirmed before me at City of Vancouver, in the Province of British Columbia, this 23rd day of May 2024

A handwritten signature in cursive script, appearing to read "Amanda Wheat", written over a horizontal line.

Amanda Wheat
BARRISTER AND SOLICITOR
A Notary Public in and for British Columbia

MEMORANDUM OF AGREEMENT

BETWEEN

THE AIR TRANSPORT ASSOCIATION OF CANADA

AND

SIGNATORY AIR CARRIERS

AND

CERTAIN AIRPORTS

As Amended Effective January 20, 2004

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SCHEDULES

A	Signatory Airports
B	Signatory Air Carriers
C	Accession Form
D	ACC Operating Terms of Reference
E	Excluded Jurisdictions
F	Capital Programs Deemed to Have Been Approved
G	Airport Improvement Fee Monthly Remittance Form
H	Administrative Duties of The Air Transport Association of Canada
I	Vancouver International Airport AIF Rates

MEMORANDUM OF AGREEMENT

AMONG: The Air Transport Association of Canada (“ATAC”)

- and -

Those airports listed on Schedule A to this Memorandum of Agreement
(collectively, “Airports”, and individually, an “Airport”)

- and -

Those air carriers listed on Schedule B to this Memorandum of Agreement
(collectively, “Signatory Air Carriers”, and individually, “Signatory Air
Carrier”)

(all collectively, the “Parties” and, individually, a “Party”);

WHEREAS Airports have the responsibility to manage, operate and develop the airports for which they are responsible;

AND WHEREAS member air carriers of ATAC are major users of the airport facilities provided by the Airports;

AND WHEREAS Airports may have the requirement to expand their airport facilities to meet traffic demands and in that event will require additional revenues to pay for those expanded facilities;

AND WHEREAS Airports may decide to obtain such additional revenues, in whole or in part, by imposing fees or charges upon passengers using such Airports;

AND WHEREAS Airports may wish to obtain the assistance of air carriers in collecting such fees or charges from passengers;

PAGE 2

AND WHEREAS the Parties jointly wish to ensure that a meaningful consultation process is established which will ensure that the views and requirements of Signatory Air Carriers are fully considered by airport operators in connection with the collection and use of any such additional revenues;

AND WHEREAS the Parties jointly wish to establish a regime whereby, in recognition of the establishment of a formal consultation process, Signatory Air Carriers agree to collect on behalf of Airports and remit a fee which an Airport might decide to impose upon passengers, all upon and subject to the terms and conditions contained herein;

AND WHEREAS the Parties in giving effect to the forgoing wishes, do not wish to abrogate or derogate from any of their respective, existing rights or obligations except as is expressly agreed to herein;

NOW THEREFORE, in consideration of the payment of the sum of one dollar (\$1.00) by each Party to each of the other Parties, the receipt of which is hereby acknowledged, and in respect of the mutual covenants and agreements contained herein, the Parties agree as follows:

1.0 Purpose of Memorandum of Agreement

1.1 The Parties agree that this Memorandum of Agreement (“MOA”) establishes the terms in respect of:

- (a) a consultation process regarding the expansion of Airport facilities; and
- (b) the collection of fees by Signatory Air Carriers for Airports from air carrier passengers if an Airport decides to impose such fees to pay for the future expansion of certain Airport facilities.

1.2 This MOA shall be legally binding upon the Parties.

2.0 Accession to MOA

2.1 The Parties agree that if any Canadian airport or any Canadian or foreign air carrier wishes to become a Party to this MOA, it may do so by:

(a) agreeing in writing in the form attached as Schedule C that it agrees to be bound by the terms and conditions of this MOA; and

(b) sending a copy of the duly executed form along with one dollar (\$1.00) to each of the existing Parties. Upon so doing, such Canadian airport or air carrier will become a Party to this MOA and shall be deemed to be listed on either Schedule A or Schedule B, as appropriate.

2.2 Notwithstanding the provisions of Section 2.1 of this MOA, the Parties recognize and acknowledge that the terms and conditions of this MOA are not designed to address the unique issues arising at airports with two or more separate and physically distinct air terminal buildings jointly serving at least 20 million enplaned/deplaned passengers as at December 31, 1998 ("Multi-terminal Airports").

The Parties further recognize and acknowledge that multi-terminal airports can present new and different issues to air carriers which may vary over both time and the particular circumstances of individual air carriers and individual Multi-terminal Airports.

The Parties therefore agree that the accession to this MOA by any Multi-terminal Airport, shall be conditional upon the approval of the two largest Canadian Signatory Air Carriers

PAGE 4

using that airport as determined by passenger boardings in the calendar year immediately preceding the requested accession by that Multi-terminal Airport".

The Parties further agree that this MOA may be amended to the extent required by agreement between the two largest Canadian Signatory Air Carriers using that airport as determined by passenger boardings in the calendar year immediately preceding the requested accession by that Multi-terminal Airport seeking accession to this MOA, provided any such amendment shall be applicable to the operation of the MOA solely at the Multi-terminal Airport seeking accession.

2.3 For further clarity it is understood that an Airport may, without cause but only after the expiry of 365 days from the date that Airport executes or accedes to this MOA and only upon giving not less than 180 days notice, withdraw from this MOA. The withdrawal from this agreement shall be on the day specified by that Airport in the notice but shall not be earlier than the 181st day after the notice is given. Signatory Air Carriers shall not be obliged to collect any AIF for that Airport in respect of travel scheduled to begin any time after the effective date of withdrawal of that Airport.

3.0 Airline Consultative Committee

3.1 Signatory Air Carriers at a given Airport shall be permitted to join the Airline Consultative Committee ("ACC") at each such Airport. Signatory Air Carriers shall exercise their rights and responsibilities as set out in Article 13 of this MOA (the "Air Carrier Consultation Process") through the ACC. The Chairman of the ACC shall inform that Airport of the Majority In Interest ("MII") as determined in accordance with Section 3.3.

3.2 The ACC at each Airport shall be operated according to the ACC Operating Terms of Reference which is attached as Schedule D to this MOA, and the same may be amended by the ACC from time to time by providing written notice to each of the Parties. In the event of any inconsistency between the ACC Operating Terms of Reference and this MOA, the

terms of this MOA shall prevail. Schedule D is included in this MOA for the purpose of providing direction relative to the Air Carrier Consultation Process and nothing in Schedule D shall impose any obligation, commitment or requirement upon any Airport or Signatory Air Carrier by virtue of Schedule D being included in this MOA.

- 3.3 Notwithstanding any voting procedures contained in the ACC Operating Terms of Reference, the MII referred to in this MOA shall mean those Signatory Air Carriers who constitute 66 2/3% or more of the total enplaned passengers (based on the Air Carrier Activity at Canadian Airports Statistics Canada catalogue, or its successor, containing the most recent calendar year data available from Statistics Canada) at a particular Airport.

4.0 Airport Improvement Fee

- 4.1 Any passenger fee or charge imposed by an Airport and implemented under this MOA shall be termed an Airport Improvement Fee (“AIF”).
- 4.2 An Airport may require Signatory Air Carriers to commence the collection of AIF funds subject to the completion of the process set out in Article 13.

5.0 Capital Expenditure Programs

- 5.1 AIF revenues shall only be used as follows:
- (a) to fund an Airport’s capital expenditure projects, the general purpose of which projects are to construct or improve “Airport Infrastructure”, and to fund the cost of issuance of associated debt, debt service costs, debt service reserve obligations, debt coverage requirements, capitalized interest on debt and bad debts associated with the collection of AIF revenues; and

PAGE 6

- (b) to fund capital expenditure projects, as referred to in Section 5.1(a) at airports which are owned or leased by the Airport identified in Schedule A and which are used as reliever airports for types of aircraft traffic that are not compatible with commercial operations at the Airport identified in Schedule A, subject to the condition that the value of capital expenditure projects at any such reliever airport shall not exceed 10% of the value of capital expenditure projects at the Airport identified in Schedule A which have been subjected to the Air Carrier Consultation Process as outlined in Article 13 of this MOA since the original commencement of this MOA.
- 5.2 For the purposes of this MOA, "Airport Infrastructure" means capital expenditures in respect of buildings, airfields, land, roads, navigational aids and other assets required for the operation of the Airport, but does not include operating or maintenance costs related to the Airport. For greater certainty, the Airport Infrastructure shall not include any buildings, airfields, land, roads, navigational aids and other assets required for the operation of the Airport located off the Airport that are not functionally related to commercial air operations, air navigation or the processing of passengers and their baggage and shall not include any costs associated with or related to the design, construction, development, maintenance or operation of any mass transit system beyond the boundary of the Airport.
- 5.3 Capital expenditure projects contemplated by an Airport shall be combined into capital expenditure programs ("Programs") for the purpose of consultation with Signatory Air Carriers and collection of any associated AIF. To qualify for collection of an associated AIF the actual period of construction contemplated by the Program must be for a minimum of two (2) years and a maximum of ten (10) years and the total estimated costs of all Programs tabled since the Airport's accession to this MOA must equal 50% or more of the Airport's annual revenue (not including AIF revenue) in the first year of the Program.

PAGE 7

- 5.4 Any construction of new runways or major expansion of existing runways or any other single project in excess of \$200,000,000 (in 2002 dollars) at an Airport must be by way of a separate Program and not combined with other projects.
- 5.5 With the exception of those Programs listed on Schedule F of this MOA, and except with the prior written approval of the Signatory Air Carriers forming the MII in accordance with Section 3.3. Airports may only require Signatory Air Carriers to collect and remit an AIF pursuant to this MOA for those Programs which have been subjected to the Air Carrier Consultation Process as outlined in Article 13 of this MOA. This provision shall not restrict the ability of an Airport to implement new projects during the period of a Program pursuant to Subsection 13.1(h) of this MOA.
- 5.6 With the exception of those projects within a Program listed on Schedule F of this MOA, and except with the prior written approval of the Signatory Air Carriers forming a MII, Airports may not award construction contracts related to any project in a Program for which that Airport will impose an AIF on passengers, prior to completing the steps contemplated by Subsections 13.1(a) and 13.1(c) through 13.1(e), inclusive and as appropriate, of the Air Carrier Consultation Process outlined in Article 13 of this MOA.

6.0 Rates

- 6.1 An Airport alone shall decide whether to obtain an AIF from passengers. The Airports have decided that any AIF imposed by an Airport and implemented under this MOA will be set at a Canadian whole dollar amount per Airport which shall be limited to two digits and shall not be less than \$3.00 per DEPAX passenger plus applicable provincial sales, goods and services, harmonized goods and services and other applicable taxes.
- 6.2 There shall be no more than three (3) different levels of AIF in place at any Airport as follows:
- (a) one (1) rate for all transborder (United States) and domestic DEPAX passengers not covered by Subsection 6.2(c) below;
 - (b) one (1) rate for all international (not including transborder) DEPAX, such rate not to exceed one and one-half (1 1/2) times the rate in Subsection 6.2(a) above;
 - (c) one (1) rate for all city-pairs ("short-haul destinations") within the Province or Territory that the Airport resides in and which are designated under this Subsection 6.2(c) by the Airport to be short-haul destinations; provided that, for any Airport other than the Vancouver International Airport, an Airport will be limited to four (4) short-haul destinations or with the concurrence of the Signatory Air Carriers forming the MII, up to ten (10) short-haul destinations. The maximum distance between short-haul destinations shall be three hundred (300) statute miles. While recognizing the authority of an Airport to determine the one (1) rate for short-haul destinations, Signatory Airports shall, where applicable, make reasonable efforts to establish the same level of AIF at both Airports involved in a short-haul destination city-pair; and

PAGE 9

- (d) in the case of Vancouver International Airport (i) if Vancouver International Airport becomes a signatory to this MOA on or before January 1, 2004, effective April 1, 2004, those rates indicated on Schedule I hereto; and (ii) if Vancouver International Airport becomes a signatory to this MOA on a date following January 1, 2004, effective on the day which is ninety (90) days after the date that Vancouver International Airport becomes a signatory to this MOA, those rates indicated on Schedule I hereto.

6.3 An Airport has the right to make changes in AIF levels upon at least ninety (90) days prior written notice to ATAC and to the Signatory Air Carriers of the ticketing sale date following which the change in AIF levels will be effective provided that the rates for international and short-haul destinations, pursuant to Subsections 6.2(b), (c) and (d), shall not be adjusted more frequently than once in any calendar year without the concurrence of the Signatory Air Carriers forming the MII at the Airport. No notice may be issued by an Airport hereunder until January 1, 2004.

7.0 Alternate Collection Method

7.1 With respect to a Program for which an AIF is being collected by Signatory Air Carriers, nothing in this MOA shall prevent an Airport from choosing to utilize an additional alternative to the revenue collection method outlined in this MOA provided that any such collection method does not:

- (a) involve the participation of Signatory Air Carriers; or
- (b) impose additional charges of any kind on Signatory Air Carriers in relation to the funding of such Program, unless otherwise agreed in writing between the respective Parties.

8.0 Handling Fee

8.1 In respect of enplanements occurring on or prior to December 31, 2003, Signatory Air Carriers shall be entitled to withhold a handling fee which is calculated as a percentage of the gross amount of AIF to be otherwise remitted to a particular airport together with related provincial sales, goods and services, harmonized goods and services and other applicable taxes. The handling fee shall be one of three amounts determined by the annual enplaned/deplaned passenger volume at that Airport, which volume shall be determined by that Airport at the end of the ninth month of each calendar year for the previous 12 months, subject to annual review and verification by a designee of the Signatory Air Carriers, as follows:

- 6% for Airports with more than 7 million enplaned/deplaned passengers annually;
- 7% for Airports with 3 million to 7 million enplaned/deplaned passengers annually;
- 8% for Airports with less than 3 million enplaned/deplaned passengers annually.

8.1(a) In respect of enplanements occurring on or after January 1, 2004, Signatory Air Carriers shall be entitled to withhold a handling fee which is calculated as a percent of the gross amount of AIF to be otherwise remitted to a particular Airport together with related provincial sales, goods and services, harmonized goods and services and other applicable taxes. The handling fee shall be one of four (4) amounts determined by the annual enplaned/deplaned passenger volume at that Airport, which volume shall be determined by that Airport at the end of the ninth (9th) month of each calendar year for the previous twelve (12) months, subject to annual review and verification by ATAC, as follows:

- 4% for Airports with more than 14 million enplaned/deplaned passengers annually;
- 5% for Airports with more than 7 million enplaned/deplaned passengers annually;

PAGE 11

6% for Airports with 3 million to 7 million enplaned/deplaned passengers annually; and

7% for Airports with less than 3 million enplaned/deplaned passengers annually.

- 8.2 Signatory Air Carriers that do not conduct audits of their financial records in their normal commercial operations shall be entitled to 75% of the applicable handling fee, subject to compliance with Section 10.9 of this MOA.

9.0 Remittance

- 9.1 "AIF collection commencement date" means the first day upon which an Airport can require Signatory Air Carriers to collect and remit an AIF, or a change to the level thereof, following the completion of the air carrier consultation process contemplated by Article 13.

For greater certainty, the AIF collection commencement dates for the following airports are deemed to be as follows:

Calgary Airport	October 1, 1997
Kelowna Airport	February 1, 1998
Winnipeg Airport	July 1, 1998

- 9.2 In respect of enplanements occurring on or prior to December 31, 2003, regardless of whether an AIF is collected from passengers, and subject only to Sections 9.5, 9.6 and 22.1, Signatory Air Carriers shall remit to an Airport the amount of the AIF imposed by that Airport pursuant to this MOA for all DEPAX passengers at that Airport for which the ticket sales occurred on or after the AIF collection commencement date for that Airport:

- (a) plus provincial sales, goods and services, harmonized goods and services and other applicable taxes; and

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- (b) less the handling fee and related provincial sales, goods and services, harmonized goods and services and other applicable taxes referred to in Article 8;

on a monthly basis no later than the end of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies (the "due date").

9.2(a) In respect of enplanements occurring on or after January 1, 2004, regardless of whether an AIF is collected from DEPAX passengers, and subject only to Sections 9.5, 9.6 and 22.1, Signatory Air Carriers shall remit to an Airport the amount of the AIF imposed by that Airport pursuant to this MOA for all DEPAX passengers at that Airport for which the ticket sales occurred on or after the AIF collection commencement date for that Airport:

- (i) plus provincial sales, goods and services, harmonized goods and services and other applicable taxes; and
- (ii) less the handling fee and related provincial sales, goods and services, harmonized goods and services and other applicable taxes referred to in Article 8;

on a monthly basis on the first working day of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies, such monthly remittances to be made on the basis of the estimated amount owing to the Airport for the previous month, with final adjustments made on a monthly basis on the first working day of the second month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies. The estimated amounts referred to in this Section 9.2(a) shall be based on reasonable, good faith estimates of DEPAX passengers using historical data and/or reasonable forward projections.

Notwithstanding the payment schedule contained in this Section 9.2(a), any Signatory Air Carrier with less than \$240,000 in gross annual AIF remittances for a particular Airport shall

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only be required to remit on a monthly basis no later than the end of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies.

- 9.3 The obligation to remit AIF revenues to an Airport arises upon the enplanement of a DEPAX passenger at a particular Airport provided that the DEPAX passenger purchased the ticket on or after the AIF collection commencement date for a particular Airport.
- 9.4 Each remittance will be accompanied by a statement identifying the number of DEPAX passenger enplanements associated with the remittance. The remittance shall separately identify the DEPAX passengers in Section 9.5 below.
- 9.5 With respect to DEPAX passengers who purchased tickets outside of North America:
- (a) provided that the Signatory Air Carrier has instituted a method of AIF collection which could commercially reasonably be expected to assess all DEPAX passengers in accordance with this MOA, and
 - (b) provided that the Signatory Air Carrier has made commercially reasonable efforts to collect AIF revenues pursuant to the method instituted in Subsection 9.5(a), and
 - (c) provided that the Signatory Air Carrier remitted all AIF revenues actually collected from DEPAX passengers in accordance with Section 9.2, Subsection 9.2(a) and as required by Article 11 during this period; and
 - (d) provided that the Signatory Air Carrier has provided the audit certification required pursuant to Section 10.3 of this MOA;

then the particular Signatory Air Carrier's liability for making the AIF remittances for DEPAX passengers whose tickets are purchased outside of North America, shall, subject to

Article 8, be limited to the actual amount of AIF revenues collected from such DEPAX passengers carried by the particular Signatory Air Carrier at that particular Airport.

9.6 With respect to DEPAX passengers who purchased tickets in North America (Canada, the United States of America and Mexico):

- (a) provided that the Signatory Air Carrier has instituted a method of AIF collection which could commercially reasonably be expected to assess all DEPAX passengers in accordance with this MOA; and
- (b) provided that the Signatory Air Carrier has made commercially reasonable efforts to assess the DEPAX passengers in accordance with this MOA and collect AIF revenues pursuant to the method instituted pursuant to Subsection 9.6(a); and
- (c) provided that the Signatory Air Carrier remitted all AIF revenues actually collected from DEPAX passengers in accordance with Section 9.2, Subsection 9.2(a) and as required by Section 11 during this period; and
- (d) provided that the Signatory Air Carrier has provided the audit certification pursuant to Section 10.3 of this MOA; and
- (e) provided that the Signatory Air Carrier has provided a management certificate on the reimbursement form attached as Schedule G stating:

"This Compliance Certificate is delivered to [Airport] pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of xxxxxx between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

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I, xxxxxname, xxxxxxxtitle, of xxxxxxxairline, certify that, to the best of my knowledge, information and belief, for the AIF remittance for the month of xxxxxmonth:

Proper and responsible due diligence has been exercised in establishing the remittance liability by personnel understanding the importance to the Airport of establishing the correct number of DEPAX passengers subject to the AIF (as defined in the MOA).

I give this Compliance Certificate in my capacity as xxxxxtitle and no personal liability is assumed in the giving of this certificate."

then the particular Signatory Air Carrier's liability for making the AIF remittances, subject to Article 8, shall be limited to:

- (i) the greater of the amount collected or, during the first 12 months after the AIF collection commencement date for that Airport, 80% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period;
- (ii) the greater of the amount collected or, during the 13th through the 18th months after the AIF collection commencement date for that Airport, 90% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period; and

- (iii) the greater of the amount collected or, following the 18th month after the AIF collection commencement date for that Airport, 95% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period.

9.7 Interest will be charged to Signatory Air Carriers on a monthly basis, commencing after the due date, on all outstanding amounts at the prime rate established by the Royal Bank of Canada from time to time plus two (2%) per cent per annum. In the event that any month's remittances are more than 15 days in arrears, following the expiration of those 15 days, that Airport may cancel the agreement with a delinquent Signatory Air Carrier 15 days after providing notice in writing of the delinquency to the Signatory Air Carrier, provided that the Signatory Air Carrier does not pay the arrears during the said notice period, and require all AIF funds collected up to the date of cancellation to be remitted to that Airport.

10.0 Audit

10.1 Annually, within one hundred and twenty (120) days of the end of each Signatory Air Carrier's fiscal year, each Signatory Air Carrier shall deliver to each Airport an Annual Statement which details for that Airport, for that fiscal year, the following:

- (a) the number of DEPAX Passengers for each month and in aggregate;
- (b) the gross amount of AIF funds payable for each month and in aggregate;
- (c) the amount of handling fee deducted for each month and in aggregate;
- (d) the net amount of AIF funds payable for each month and in aggregate; and

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- (e) a statement that the Signatory Air Carrier has met the requirements of Subsections 9.5(a) and (c), or 9.6(a) and (c), as the case may be.
- 10.2 The Annual Statement referred to in Section 10.1 must contain a certification signed by a person authorized to sign on behalf of the Signatory Air Carrier which states that the Annual Statement is true and correct in all respects to the best of the such person's knowledge and belief after due inquiry.
- 10.3 At any time during the term of this MOA, an Airport may contract with the Signatory Air Carrier's external auditor to conduct an audit of the Signatory Air Carrier's records solely with regard to the matters described in any Annual Statement delivered after January 1, 2004 and referred to in Section 10.1 in respect of the relevant fiscal year. Airports shall advise a Signatory Air Carrier within sixty (60) days after the due date of the Annual Statement of their intention to commission an audit. In the event that more than one Airport advises of the intention to commission an audit of a Signatory Air Carrier, all Airports will coordinate their action into a single audit process, although individual reports will be prepared for each participating Airport. Signatory Air Carriers shall make reasonable efforts to ensure that their external auditor accepts this audit assignment and at a reasonable fee which in any event shall not exceed that which the Signatory Air Carrier would have paid had the audit been carried out at its request, failing which, the Airport(s) may contract with an external auditor of their choice.
- 10.4 The Airport(s) shall be entitled to bill and collect the costs of such audit from the Signatory Air Carrier in the event that such audit shows that remittances by the Signatory Air Carrier are understated by three percent (3%) or more of the amount due and payable to the Airport under this MOA for the year in question. In the case where multiple audits are combined into a single audit process pursuant to Section 10.3, the allocation of cost based on the percentage variance criteria shall be on an Airport-by-Airport basis.

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- 10.5 Any refunds owing or remittances required pursuant to the Annual Statement referred to in Section 10.1 or the audit referred to in Section 10.3 shall be paid, without interest, by an Airport or a Signatory Air Carrier as appropriate, within thirty (30) days of the receipt of such Annual Statement or audit report. Any refunds owing or remittances required but not paid within thirty (30) days shall be subject to interest as provided for in Section 9.7.
- 10.6 Annually, within 180 days of its fiscal year end, each Airport must provide to each Signatory Air Carrier at such Airport, a certification under section 8600, or its successor, of the Handbook of the Canadian Institute of Chartered Accountants from an external auditor (who is legally qualified in the jurisdiction of that Airport to issue a financial audit opinion) that:
- (a) the amount of AIF funds remitted to the Airport have been used only for the Program for which they were intended and that there has not been an over payment on the Program; and
 - (b) that Airport has been in compliance with Section 12.1.
- 10.7 In the event that an Airport does not provide that certification contemplated by Section 10.6 above, the Signatory Air Carriers may contract with an independent auditor to conduct an audit of that Airport in respect of the matters set out in Section 10.6. The Signatory Air Carriers shall be entitled to bill and collect the cost of such audit from that Airport.
- 10.8 If the audit referred to in Sections 10.6 or 10.7 above reveals that that Airport has utilized such AIF revenues in a manner which contravenes the terms of this MOA, then if:
- (a) that Airport has failed to remedy the default within 30 days of the auditor's report, or

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- (b) that Airport has failed to present a plan, satisfactory to the Signatory Air Carriers, and proceeded diligently to implement such plan within 30 days of the auditor's report;

the Signatory Air Carriers may cease collecting and remitting the AIF until the default has been remedied to the satisfaction of the Signatory Air Carriers.

11.0 Application of AIF

- 11.1 Subject to the limitations described below, the AIF will apply to all departing enplaned passengers at a given Airport ("DEPAX passenger(s)").
- 11.2 For the purposes of this MOA, the term "ticket(s)" shall include paperless tickets where the equivalent of paper tickets with a travel itinerary for a passenger is kept in electronic form with a specific reference (commonly referred to as ticketless travel). A ticket may be comprised of a number of coupons.
- 11.3 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to a passenger (i) continuing a journey less than 4 hours after arrival at the Airport for domestic Canada and transborder itineraries and (ii) continuing a journey less than 24 hours after arrival at the Airport for international itineraries.

A passenger will be considered to be continuing a journey even though multiple air carriers may participate in the itinerary on one or more air carrier ticket(s).

- 11.4 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to airline employees travelling on business. For greater certainty, this includes duty travel of crews of one air carrier on another air carrier.

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- 11.5 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to infants under two years of age for whom no ticket was purchased (even though a no cost ticket may have been issued in the name of the infant).
- 11.6 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to customers travelling on passes or other travel documents with discount codes ID/IN. However, customers travelling on frequent flier mileage redemption programs or promotional tickets (such as two for one tickets) do not qualify as ID passengers within the meaning of this Section 11.6. Signatory Air Carriers agree to make reasonable efforts to refine the technical data necessary to limit exemptions to infants (IN) and airline employees travelling on business. Toward this end, Signatory Air Carriers agree to report on progress towards limiting inadvertent exemptions at a time not later than one year after the signing of this agreement after which time the Parties shall enter into consultations regarding alternative means of limiting exemptions.
- 11.7 Regardless of which air carrier sells a ticket to a DEPAX passenger or whose designator code is on the passenger's ticket, the air carrier on whom the DEPAX passenger actually travels shall be the Party responsible for the collection and remittance of the AIF for that DEPAX passenger.

12.0 Non-Discriminatory Charges to Signatory and Non-Signatory Air Carriers or Their Passengers

12.1 An Airport shall not grant access to any of its terminal buildings on any less favourable terms and conditions to Signatory Air Carriers and their passengers having regard to the AIF charges remitted and paid by such persons than are provided to non-Signatory Air Carriers and their passengers. An Airport shall achieve such equalized treatment through or by way of reasonably equivalent charges. Airports shall provide to ATAC and the Signatory Air Carriers, annually, the report of an independent, external auditor certifying that that nothing has come to the attention of the auditor to indicate the Airport is not in compliance with this section.

12.2 Except with respect to the Memorandum of Agreement between ATAC, the Calgary Airport Authority, the Winnipeg Airport Authority and the Kelowna Airport Authority and various air carriers dated September 23, 1997, as amended, and with respect to any Multi-terminal Airports, Signatory Air Carriers will not enter into an agreement concerning the collection of an AIF with a Canadian national airport on more favourable terms than those extended to Airports in Articles 8, 9, 11, 13 and 35 of this MOA.

13.0 Air Carrier Consultation Process

13.1 Signatory Air Carriers may be obligated to collect and remit an AIF pursuant to this MOA only after the Air Carrier Consultation Process has been completed in accordance herewith. This consultation process must be conducted, *inter alia*, in accordance with Article 3 and shall include the following requirements:

- (a) When an Airport has decided to implement an AIF and wants the assistance of Signatory Air Carriers in collecting and remitting such AIF pursuant to this MOA, that Airport shall prepare and forward to the Chair and each member of the Airport's

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ACC and to ATAC, a Program proposal and business plan setting out full details of and a rationale for the Program and notification to ATAC and to each Signatory Air Carrier of such proposal and business plan having been delivered. The proposal should include:

- (i) the cost, scope of work and construction period of each project within the Program;
 - (ii) the initial implementation date of the AIF, the initial amount of the AIF (which cannot be increased until 365 days after the AIF collection commencement date at the particular Airport) and a plan which sets out the anticipated AIF level and AIF revenue over the period required to recover the costs of the Program or extinguish the underlying debt incurred to finance the Program; and
 - (iii) the forecasts of traffic demand underlying the rationale for the Program.
- (b) After the delivery of the notice and information contemplated by Subsection 13.1(a):
- (i) an Airport may obtain the assistance of Signatory Air Carriers in collecting and remitting an initial Interim AIF limited to a maximum of C\$5 per DEPAX passenger, provided that Airport provides at least 90 days written notice to Signatory Air Carriers. The Interim AIF shall be collected for a term of one year, unless that Airport and the MII as determined in accordance with Section 3.3 agree to an extension. Notwithstanding any other provision of this MOA, the amount of the Interim AIF set out above shall not be subject to change by that Airport during this period; or, alternatively

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- (ii) After the delivery of the notice and information contemplated by Subsection 13.1(a) but prior to completion of the consultative process contemplated by Section 13, should both the Airport and the MII as determined in accordance with Section 3.3 of the Signatory Air Carriers to the MOA on the ACC agree that it is desirable, an Airport may obtain the assistance of Signatory Air Carriers in collecting and remitting a conditional AIF in an amount agreed upon by the Airport and the MII as determined in accordance with Section 3.3 for a time period and upon any other conditions so agreed upon by the Airport and the MII as determined in accordance with Section 3.3, provided the Signatory Air Carriers receive at least 90 days prior written notice of the AIF collection commencement date (the "Preliminary AIF"). This Preliminary AIF shall be in effect for not less than 365 days from its commencement. Notwithstanding any provisions in this MOA to the contrary, the amount of the Preliminary AIF shall not be subject to any increases by that Airport. The MII as determined in accordance with Section 3.3 shall have the right to discontinue collection of the Preliminary AIF by giving 90 days notice on or after 365 days from the AIF collection commencement date if, in its view, the consultation process has not proceeded satisfactorily, or if it continues to oppose a Program proposal. The Airport shall not be entitled to require the collection and remittance of an AIF pursuant to both sections 13.1(b)(i) and 13.1(b)(ii) during the same time period and in the event the Airport proceeds with a Preliminary AIF, the Signatory Air Carriers shall not be required to collect or remit an AIF pursuant to section

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13.1(b)(i) after the AIF collection commencement date for the Preliminary AIF.

- (c) The ACC shall have up to 180 days (“Phase One”) to consider and discuss the Program and to request such other information as the ACC may, acting reasonably, require and request from the Airport in order to evaluate the Program with the Airport's officials. The Chair of the ACC will advise the Airport within 180 days of either its concurrence, its disagreement or its concurrence with exceptions to the Program submitted. The Signatory Air Carriers at that Airport shall arrive at its decision via an MII vote in accordance with Section 3.3. If there is concurrence with the Program, the Airport may, subject to this MOA, implement the AIF charging mechanism pursuant to Subsection 13.1(g)(i). If the Chair of the ACC does not advise the Airport in writing of the Phase One decision within 180 days of receiving the Program proposal, the Program is deemed to have concurrence. If the Airport's Program is not the subject of concurrence, the Chairman of the ACC or any Signatory Air Carrier will advise the Airport of the result of the vote of the Signatory Air Carriers. In the event that the Signatory Air Carriers at that Airport disagree or concur with the Program with exceptions and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, the consultation process outlined below will continue with respect to those individual projects for which an exception was noted.
- (d) In the event that either the Signatory Air Carriers at that Airport disagree with or the Signatory Air Carriers at that Airport concur with exceptions to the Program in Phase One of the consultation process and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, then, commencing on the date written notice is given under Subsection 13(1)(c), a one month consultation process (“Phase Two”) will occur between the Airport's CEO and the CEO(s) (or their designates) of the Signatory Air Carriers forming the MII which

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disagreed with the Program. Any agreement reached in Phase Two will be confirmed to the Airport in writing through the Chairman of the ACC or any Signatory Air Carrier, following ratification by the MII but within 15 days of the end of Phase Two.

- (e) In the event that no agreement is reached during Phase Two and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, the Signatory Air Carriers forming the MII under Subsection 13.1(c) may, within 60 days, commencing at the conclusion of Phase Two (“Phase Three”), make an alternative proposal through the Signatory Air Carriers at that Airport provided that in the opinion of Signatory Air Carriers forming the MII under Subsection 13.1(c), the alternative proposal addresses all of the legitimate expansion requirements of the Airport over the term of the Program proposed by the Airport. The Airport will advise the Chairman of the ACC and all Signatory Air Carriers at that Airport in writing within 30 days of the conclusion of Phase Three whether it accepts or rejects the alternative proposal. If the Airport accepts the alternative proposal, the Airport may implement an AIF pursuant to Subsection 13.1(g)(i) of this MOA.
- (f) Should the Airport reject the alternative proposal made during Phase Three or if no alternative proposal is made, the Airport may, 24 months following the date upon which the Airport has provided to the Signatory Air Carriers at that Airport an Offer to Finance the proposed Program, conditional or otherwise, from a bona fide lender, group or syndicate of lenders, increase or initiate an AIF to be collected and remitted by Signatory Air Carriers, subject to the notification provisions of Subsection 13.1(g)(ii) of this MOA.
- (g) (i) Except as otherwise provided in Schedule F, following completion of the Air Carrier Consultation Process set out above, the Airport will advise each Signatory Air Carrier, in writing, at least 90 days prior to the collection

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commencement date of the AIF, of the level of the AIF and the collection commencement date. The level of the AIF on the initial collection commencement date must be no greater than the level which was identified in the Airport's Program submission.

- (ii) Subsequent to the initial collection commencement date, in respect of an AIF implemented pursuant to Paragraph 13.1(g)(i) and subject to Subsection 13.1(h), an Airport may change the level of the AIF, subject to a minimum 90 days prior written notice to Signatory Air Carriers, (although the Airport shall endeavour to provide greater than 90 days notice where possible) provided that any such increase shall only apply to DEPAX passengers who purchase their tickets 60 days or more after the Signatory Air Carriers receive this written notice and are travelling on or after the effective date of such increase.

- (h) An Airport may introduce new projects during the period of a Program which shall constitute an amendment to the Program. These amendments shall, subject to the provisions of this Subsection 13.1(h), qualify for the assistance of Signatory Air Carriers in the collection and remittance of an AIF pursuant to this MOA. The amendments contemplated by this section relate to new projects or existing projects which have a change of scope, but do not include changes to project cost estimates resulting only from changes in the cost of construction. Should any proposed amendment result in an increase in capital spending of 10% or more of the Program previously implemented or if the proposed amendment would result in an extension of the estimated term of the AIF related to the original Program by three years or more, the proposed amendment will be subject to the terms of the Air Carrier Consultation Process as if it were a new Program.

- (i) The attached Schedule F to this MOA lists those capital construction programs which, as of the date of signing of this MOA, are deemed to have been approved by

the Signatory Air Carriers as a Program pursuant to the Air Carrier Consultation Process outlined in this MOA. In these cases, the Airport may proceed immediately with the AIF notification outlined in Subsection 13.1(g)(i) of the MOA.

14.0 AIF Term

14.1 No AIF implemented pursuant to this MOA shall have a term longer than that required to extinguish the underlying debt (including associated financing costs) incurred by the Airport to finance the proposed Program. Where possible and practical, a target date for the termination of an AIF will be agreed upon by the Parties at the time of imposition.

15.0 Information Disclosure

15.1 At the time an Airport presents a Program pursuant to Subsection 13.1(a) and so long as the Airport pursues the Program and/or an AIF has been imposed by an Airport and implemented with the assistance of Signatory Air Carriers pursuant to this MOA, the Airport shall provide to the Chair of the ACC and to each Signatory Air Carrier, with a copy to ATAC, the following information on an annual budgeted basis and an annual actual basis:

- (a) Cash flow statement for the Program indicating (as a minimum) net AIF revenues collected under this MOA, total expenditures on the Program, underlying debt incurred by the Airport to finance the Program and interest, bad debts related to the collection of the AIF and other debt service costs related to the debt incurred;
- (b) Statement of capital expenditures to date on the Program with reasonable detail on the composition of capital expenditures versus budget and indicating cost overruns, if any.

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- 15.2 Each Airport shall provide, at its own cost, signage which advises passengers that the Airport is collecting an AIF for capital improvements at the Airport. The ACC shall be notified of the proposed signage and given 30 days to provide comments.
- 15.3 The Signatory Air Carriers, for informational purposes only, shall provide to the Airport on a monthly basis commencing on the date that an Airport becomes a signatory hereto, the number of non-revenue and revenue passengers of such Signatory Air Carrier that arrived and departed from the particular Airport in the prior month. This information shall not in any way relate or be used with respect to the calculation of AIF revenues remitted by a Signatory Air Carrier pursuant to this MOA.

16.0 Airside Infrastructure

- 16.1 The Parties recognize that, in addition to air carriers who utilize the air terminal building(s), all other aircraft operators ("Significant Users"), are material beneficiaries of ongoing Airport improvements to runways, taxi-ways, aircraft aprons and ramps, airfield lighting, airfield signage and airfield drainage ("Airside Infrastructure"). Each Airport shall implement a charging method for such Significant Users to contribute to Airside Infrastructure costs in such a fashion that Signatory Air Carriers and their passengers or customers are treated no less favourably than Significant Users and their passengers or customers relative to the respective benefits they receive from Airside Infrastructure. The Airport shall, in its sole discretion, make the determination that the said charging method implemented meets the criteria identified in this Section 16.1. It is agreed that this charging method envisages a process whereby landing fees or other airside related charges shall not, in total, exceed the costs associated with providing and maintaining Airside Infrastructure.

17.0 Term

17.1 The initial term of this MOA shall be for a period of 20 years commencing on May 31, 1999, provided that in those cases where debt arising from the agreed Program is not yet extinguished, the obligation to collect and remit AIF shall continue until such debt is extinguished. The Parties agree to meet 24 months prior to the expiry of this MOA to discuss renewal terms.

18.0 Applicable Law

18.1 This MOA shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws applicable in the Province of Ontario and, subject to Article 19, the Parties agree to be bound by the non-exclusive jurisdiction of the courts of the Province of Ontario.

18.2 Notwithstanding Section 18.1, in the case of a dispute between an individual Airport and an individual Signatory Air Carrier, this MOA shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws applicable in the province in which the Airport is resident and the Parties shall attorn to the jurisdiction of the courts of that province.

19.0 Dispute Resolution

19.1 Despite anything contained in the MOA to the contrary, in the event that a dispute or difference arises with respect to this MOA that cannot be resolved by negotiation between the Parties and the Parties do not agree to terminate this MOA, then in such event the Parties may agree to use the services of a mediator to attempt to resolve their dispute or difference and, failing agreement on the procedure to be followed, the mediation shall be conducted in accordance with the "Rules of Procedure for the Conduct of Mediations" of the Arbitration and Mediation Institute of Ontario.

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19.2 In the event that the Parties choose not to mediate their dispute or difference or, if chosen, the mediation does not result in resolution of the dispute or the difference, and the Parties do not agree to terminate this MOA, then in such event any unresolved issue may be taken to any other appropriate dispute resolution process agreed to by the parties, including arbitration or an appropriate court process. Should arbitration be agreed upon, the arbitration will be conducted in accordance with the "Rule of Procedure for the Conduct of Arbitrations" of the Arbitration and Mediation Institute of Ontario.

20.0 Nature of Relationships

20.1 The Parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise. Nothing contained in this MOA nor any acts of any Party taken in conjunction hereunder, shall constitute or be deemed to constitute a partnership, joint venture, or principal/agency relationship in any way or for any purpose except as the Signatory Air Carriers acting as agents for the Airports in collecting and remitting the AIF funds. Except as expressly set forth herein, no Party, shall have any authority to act for, or to assume any obligations or responsibility on behalf of, any other Party.

20.2 Although this MOA is made among multiple Airports and multiple Signatory Air Carriers, all Parties agree that once an AIF is implemented by a particular Airport pursuant to this MOA, all obligations with respect to such AIF collection shall be deemed to be direct contractual obligations between each Airport and each respective Signatory Air Carrier.

21.0 Indemnity

21.1 The Airports agree to indemnify and save harmless ATAC, the Signatory Air Carriers, and their respective shareholders, directors, officers, employees and agents from all losses, including all claims, demands, proceedings, losses, damages (including, without limitation, direct, indirect, incidental, special, exemplary, consequential or other damages), liabilities, deficiencies, costs and expenses (including, without limitation, all legal fees on a solicitor/client basis and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly out of or in connection with any action by any person relating to the right of an Airport or Signatory Air Carrier to charge or collect an AIF in accordance with this MOA. Notwithstanding any other provision of this MOA, as long as the AIF mechanism contemplated by this MOA remains valid and in place, all costs incurred by an Airport in relation to this indemnity may, at the sole discretion of the Airport, be recovered by the Airport through the AIF mechanism established pursuant to this MOA. Nothing in this MOA shall require an Airport to indemnify a Signatory Air Carrier for any claim for damages arising out of the wilful misconduct or gross negligence of the Signatory Air Carrier.

22.0 Jurisdictional Restrictions

22.1 ATAC shall provide to each Airport a list, attached hereto as Schedule "E", which may be amended from time to time upon written notice to the Airports, of all countries ("jurisdictions") where the collection of an AIF as contemplated by this MOA is not permitted by law. Signatory Air Carriers shall not be required to collect or remit any AIF funds associated with tickets which are sold to persons physically present in the jurisdictions referred to in Schedule E, as amended from time to time. Prior to new jurisdictions being added to Schedule E, the Airports may seek an independent legal opinion as to the exclusion of collecting AIF revenues in such jurisdiction. In the event of a dispute regarding these additional jurisdictions, the matter shall be referred to arbitration pursuant to Article 19 of this MOA.

23.0 Mutual Agreement to Consult

23.1 The Parties to this MOA recognize that there are many complexities associated with the introduction of an AIF collection process as contemplated in this MOA and agree that a standing committee, which will be comprised of representatives of the Parties, will be established and will meet periodically to review issues associated with the administration of the MOA and attempt to reach mutual agreement on beneficial changes.

23.2 The Parties acknowledge and agree that this MOA may require amendment to facilitate the administration of taxes which may be applicable to AIF's collected pursuant to this MOA and in this respect the Parties agree to make such amendments as may be determined by ATAC and Signatory Air Carriers in an expeditious manner upon request provided that, such amendments would not materially reduce or impair the rights granted to Airports by the terms of this MOA.

24.0 Airport Specific Programs

24.1 For greater certainty, except as otherwise specifically provided in Sections 5.1 and 5.2, any Program shall relate only to the one (1) site-specific airport in respect of which the AIF is collected, notwithstanding that an Airport may own or operate more than one (1) airport.

25.0 Entire Agreement

25.1 This MOA supersedes, rescinds and revokes all negotiations, arrangements, letters of intent, brochures, representations, agreements and information conveyed, whether oral or in writing, between the Parties with respect to the subject matter hereof.

26.0 Headings

26.1 The division of this MOA into articles, sections, subsections, paragraphs and subparagraphs and the insertion of headings are for convenience or reference only and shall not affect the construction or interpretation of this MOA.

27.0 Schedules

27.1 Subject to the clarification provided in Section 3.2 of this MOA, the documents attached as Schedules to this MOA form an integral part of this MOA as fully as if they were set forth herein in full.

28.0 Notice

28.1 All notices or other communications necessary for the purposes of this MOA ("Notice") shall be in writing and shall be delivered personally or by courier, or shall be sent by registered mail or by prepaid post or sent by facsimile, addressed,

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- (a) in the case of an Airport, to each Airport listed on Schedule A or to such other address or facsimile number or addressed to such other person as the Airport may, from time to time, designate in writing to the other Parties:

- (b) in the case of ATAC or the Chairman of an ACC, to:

Chief Executive Officer
ATAC
255 Albert Street
Suite 1100
Ottawa, Ontario
K1P 6A9

Telephone: (613) 233-7727

Facsimile: (613) 230-8648

or to such other address or facsimile number or addressed to such other person as ATAC may, from time to time, designate in writing to the other Parties;

- (c) in the case of a Signatory Air Carrier, to each Signatory Air Carrier listed on Schedule B or to such other address or facsimile number or addressed to such other person as the Signatory Air Carrier may, from time to time, designate in writing to the other Parties.

28.2 Any Notice will be considered to have been received:

- (a) the case of facsimile, on actual receipt if the same is a business day, during normal business hours, and if not, then on the next business day, or

- (b) in all other cases, on the date of delivery.

28.3 If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any Notice shall be delivered personally, by facsimile or by courier.

29.0 Time of Essence

29.1 Time is of the essence under this MOA.

30.0 Non-Waiver

30.1 Any failure by a Party to rely on its strict legal rights hereunder shall not constitute a waiver of any other rights of that Party hereunder.

31.0 Partial Invalidity

31.1 If, for any reason whatsoever, any term, covenant or condition of this MOA, or the application thereof to any person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition:

- (a) is deemed to be independent of the remainder of this MOA and to be severable and divisible therefrom, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this MOA or any part thereof; and
- (b) continues to be applicable and enforceable to the fullest extent permitted by law against any persons and any circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

32.0 Extended Meanings

32.1 The word “hereunder” and similar expressions used in this MOA relate to the whole of this MOA, unless the context indicates otherwise. Words importing a particular gender shall include all genders.

33.0 Counterparts

33.1 This MOA may be executed in one or more counterparts and by the different parties hereto in separate counterparts, each of which when executed will constitute an original and all of which taken together shall constitute one and the same instrument. Transmission by facsimile, in accordance with Article 28, of an executed counterpart shall constitute good and valid delivery of the same.

34.0 Amendments

34.1 This MOA may be amended from time to time in the following manner:

- (a) Any Party may initiate an amendment to the MOA by formally giving notice (as outlined in Schedule C) to all Parties specified under Article 28.0.
- (b) Parties receiving a notice of amendment have 90 days to express consent or rejection of the proposed amendment.
- (c) Subject to Section 2.2 and Subsections 34.1(d) and (e), amendments to this MOA require the consent of the majority of the Airports and the majority of the Signatory Air Carriers (including both of the two largest Canadian air carriers as determined by passenger boardings in the calendar year immediately preceding the requested amendment sought by Airports and Signatory Air Carriers).

- (d) Subject to Section 2.2, amendments to Articles 8, 9, 11, 13, 34 and 35, of the MOA require the consent of 80% of the Airports and 80% of the Signatory Air Carriers (including both of the two largest Canadian air carriers as determined by passenger boardings in the immediately preceding calendar year).

- (e) Subject to Section 2.2, ATAC, an Airport and the Signatory Air Carriers as represented by the ACC at that Airport may agree to vary the provisions of this MOA as they apply at that Airport provided that, in no event whatsoever shall they derogate from, alter or amend the provisions of Articles 8, 9, 11, 13, 34 or 35 of this MOA and provided further that notice of such variation is given by ATAC, the Airport and the ACC to all other Parties to this MOA. For greater certainty, no such variation shall affect the provisions of this MOA at any other Airport or any other rights or obligations of any other Parties.

- (f) All notices of amendments and responses shall be sent to ATAC as outlined in Article 28.

35.0 ATAC Administration Fee

- 35.1 Airports agree to contribute proportionately a percentage of gross AIF collected to ATAC to cover ongoing administration functions in support of this MOA, as described in Schedule H of this MOA. The amount to be contributed shall be established annually through the presentation by ATAC of a budget for the information of the Airports. This budgeted amount may vary annually but shall not be less than .1% nor exceed .2% of amounts remitted by all Signatory Air Carriers on behalf of the Airports, together with applicable taxes. The apportionment of this cost amongst the Airports shall be on the basis of enplaned passengers at the Airports.

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IN WITNESS WHEREOF, the duly authorized signatories of the respective Parties hereto have set their signatures this on the date indicated.

AIR TRANSPORT ASSOCIATION OF CANADA

Per: _____ Date:
MICHAEL SKROBICA

Title: Vice President Finance

OTTAWA MACDONALD-CARTIER INTERNATIONAL AIRPORT AUTHORITY

Per: _____ Date:
PAUL BENOIT

Title: President and Chief Executive Officer

AIR CANADA

Per: _____ Date:

Title:

CANADIAN AIRLINES INTERNATIONAL LTD.

Per: _____ Date:

Title:

SCHEDULE A

Airports

<u>Name Of Airport Authority</u>	<u>Specific Airport Which Is Included</u>
<p>Mr. John Weerdenburg Vice-President & CFO Ottawa Macdonald-Cartier International Airport Authority 50 Airport Road Gloucester ON K1V 9B4 T: 613-248-2000 ext 1107 F: 248-2067 Email: weerdej@ottawa-airport.ca</p>	<p>Ottawa International Airport</p>
<p>Mr. Steve Burchi Regina Airport Authority #1 - 5201 Regina Avenue Regina, SK S4W 1B3 T: 306-761-7563 / F: 306-761-7559 Email: sburchi@yqr.ca</p>	
<p>Mr. Bill Restall President & CEO Saskatoon Airport Authority 2625 Airport Drive, Suite 3 Saskatoon SK S7L 7L1 T: 306-975-6464 / F: 306-975-4233 Email: billrestall@yxe.ca</p>	
<p>Mr. Rex LeDrew President St. John's International Airport Authority Airport Terminal 80 Airport Terminal Access Road St. John's, NF A1A 3R1 T: 709-747-5188 / F: 709-758-8521 Email: rledrew@stjohnsairport.com</p>	

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Victoria Airport Authority
Victoria International Airport
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President & C.E.O.
Edmonton Regional Airports Authority
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E: sclements@edmontonairports.com

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City Clerk
City of Timmins
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SCHEDULE B

Signatory Air Carriers

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~~Ms. Shirley Campling~~
~~Secretary-Treasurer~~
~~**La Ronge Aviation Services Ltd.**~~
~~Box 320~~
~~La Ronge, SK S0J 1L0~~
~~* merged with Transwest Air~~

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~~**Pem-Air Ltd.**~~

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SCHEDULE C**Accession Form**

TO: [Existing Parties to MOA]
 RE: Accession to Memorandum of Agreement dated ■

The [Airport/Signatory Air Carrier], having received a copy of the Memorandum of Agreement dated ■ between the Air Transport Association of Canada, certain Airports and certain Signatory Air Carriers, and desiring to be a Party to that Memorandum of Agreement, and now providing consideration of one dollar (\$1.00), in Canadian funds, to each of the existing Parties to the Memorandum of Agreement, hereby agrees to be bound to the Memorandum of Agreement and to abide by its terms and conditions.

DATE: _____

SIGNATURE

TITLE

SIGNATURE

TITLE

Any Notice pursuant to the Memorandum of Agreement should be sent to:

(Company Name and Full Mail Address)

(Contact Name, Title, Telephone Number & Facsimile Number)

SCHEDULE D

ACC Operating Terms of Reference

AIRLINE CONSULTATIVE COMMITTEE (ACC)

1. OBJECTIVES

- To provide a forum for airlines at an airport to discuss and analyse matters of common interest and concern with respect to the operation of the airport.
- To consolidate airline views on an issue(s) and officially present such views to the airport operator.
- To act as the on-site consultative representative of the airlines with the airport operator in respect of all capital projects or programs, all fees and charges and all exclusive rentals at the airport which will have a financial impact of any kind on the airlines or airline passengers and any other matters having a material impact on airline operations at the airport.
- To perform the obligations assigned to it as set out in any agreement between the airport operators and the airlines and/or ATAC.

2. ESTABLISHMENT

- An ACC shall be established at each National airport and, where a consensus exists amongst airlines serving the airport, at each Regional/Local airport. National and Regional/Local airports mean those airports as defined in the National Airports Policy of July 1994 and as listed in Appendix 'A' hereto.

3. MEMBERSHIP

- Voting membership is open to all airlines and/or their duly designated representative serving an airport on a regular and consistent basis.
- ATAC shall be an ex officio non-voting member of all ACCs and, at airports served by their non-Canadian airline membership, IATA and ATA shall be non-voting members ex officio.
- Each airline shall appoint a single official representative to exercise that airlines voting rights and may change this person at any time.
- Each airline may invite other company personnel with appropriate qualifications to attend ACC meetings when considering major capital projects or programs proposed by an airport.

- In order to ensure coordination with the day-to-day operations of the airlines, the ACC may invite the Chairman of the Airport Operator's Committee (AOC), to attend any meeting of the ACC as a non-voting participant.

4. GOVERNANCE

- Each ACC shall meet at least once every 12 months and additionally at the call of the Chair or upon request of any member airline.
- Each ACC shall appoint a Chairman from amongst the largest Canadian air carriers serving the airport based on passenger volumes of the airport. The ACC may also appoint a Vice-Chairman and a Secretary from amongst their voting members. Those officers shall hold office until the ACC or the voting member airlines appoints their successors.
- The officers shall retain their voting rights as their airlines' official representatives.
- The Chairman shall give notice of all ACC meetings to the members and shall preside over all such meetings and shall arrange for the recording and circulation to the members of the minutes of all ACC meetings.
- The ACC may appoint and set the mandate of sub-committees and/or specialist working groups to study and report to the ACC, through the Chairman, on any matter. Membership on such sub-committees or working groups is open to airline employees or advisors designated by the airline official representative to the ACC.
- The Chairman shall ensure that copies of the minutes of the ACC meetings are made known to and co-ordinated with ATAC, IATA and ATA as the case may be.
- The official representative of each ACC member airline shall be entitled to vote on any matter coming before the ACC which requires a vote. To be voted on, a motion must be proposed and seconded by airline official representatives.
- While consensus is the goal, it is recognized that some issues coming before the ACC may require a vote. For matters having a material financial impact on all ACC members, a motion will not be considered carried unless it passes with the concurrence of those ACC members whose total passenger traffic at the airport is at least 66% of the airport's total passenger traffic as determined from the previous calendar year's total traffic. For motions not having a material financial impact on all ACC members, a simple majority of 51% of members present and voting is sufficient to carry the motion.

- No motion may be voted upon unless notice in writing of the motion was given to all ACC members at least seven (7) days prior to the meeting at which the motion is to be introduced.
- Voting “in absentia” is permissible if done in writing. Proxy voting is also permissible if done in writing by authorizing another ACC official airline representative to cast the absent members ballot.
- ACC meetings are closed to anyone other than airline employees, airline advisors and representatives of ATAC, ATA or IATA except when persons are expressly invited by the Chairman, e.g. airport management.

SCHEDULE E**Excluded Jurisdictions**

BOLIVIA

CHILE

COLOMBIA

COSTA RICA

ECUADOR

EL SALVADOR

GUATEMALA

IRAN

IRAQ

LIBYA

PERU

SAUDI ARABIA

VENEZUELA

URUGUAY

SCHEDULE F**Capital Programs Deemed to Have Been Approved****OTTAWA INTERNATIONAL AIRPORT AUTHORITY****Combined Services Building**

The Combined Services Building is a new facility to be constructed which will combine and replace both the existing Fire Hall and the existing Maintenance Garage in one combined new location on the southeast side of the intersection of runways 07/25 and 14/32 next to taxiway Echo at Ottawa International Airport. The estimated cost of this facility is \$7 million.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****CALGARY AIRPORT AUTHORITY**

Ten-year Capital Expansion Program (1997 to 2006) as originally approved by the ACC at Calgary pursuant to a letter dated December 31, 1996 from the Chairperson of the ACC and further updated by the revised 10 year capital program (1998 to 2007) as approved by the ACC at Calgary pursuant to a letter dated April 13, 1999 from the Chairperson of the ACC. For greater certainty it is expressly recognized that this approved capital program includes an AIF funded project titled "96th Avenue" which is physically located off-airport and therefore represents an exception to the conditions imposed on the use of AIF revenues in Section 5.1 of this Agreement.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****KELOWNA AIRPORT**

Three-year Capital Expansion Project at Kelowna pursuant to minutes of an ACC meeting held November 24, 1997.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****WINNIPEG INTERNATIONAL AIRPORT**

Five-year Capital Expansion Program (1998-2003) as approved by the ACC at Winnipeg pursuant to a letter dated April 7, 1998 from the Chairman of the ACC.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****VANCOUVER INTERNATIONAL AIRPORT**

The 10 Year Capital Plan, which means the plan described in the document entitled "10 Year Capital Plan Update November 2003" presented to the ACC at its December 2, 2003 meeting. As more fully described in that document, the capital projects forming the 10 Year Capital Plan include:

1. ITB Expansion and Upgrades
2. Sustaining and Restoration Projects
3. RAV Line
4. DTB Upgrade and Expansion
5. Airfield Projects
6. Baggage System Upgrades/Expansion
7. Roads/Parking
8. CATSA Funded HBS

For greater certainty, it is recognized that the RAV Line described above includes the rapid transit line and related facilities connecting the on-Airport portion of RAV to the main line in Richmond, which will be located off the Airport, and the inclusion of the RAV Line in the approved 10 Year Capital Plan represents an express exception to the restrictions imposed in Section 5.1 with respect to the use of AIF revenues.

SCHEDULE G
 Airport Improvement Fee
 Monthly Remittance Form
 Airport

Air Carrier _____ Month _____ Year _____
 Current Month DEPAX _____ X _____ =
 A.I.F. Rate Gross Remittance

	Gross AIF Remittance (per above)	Less	Handling Fee @ ____%	=	Net Remittance to Airport
Before Tax		Less		=	
<u>Applicable</u> Tax GST.....% HST.....% QST.....%		Less		=	
Total		Less		=	Remit this Amount

This compliance certificate is delivered to [Airport] pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of _____ between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

I _____ (name) _____ (title) _____ (airline)
 certify that, to the best of my knowledge, information and belief, the AIF
 remittance for the month of _____ (month):

Proper and responsible due diligence has been exercised in establishing the
 remittance by personnel understanding the importance to the Airport
 of establishing the correct number of DEPAX passengers subject to the AIF
 (as defined in the MOA). I give this compliance certificate in my capacity
 as _____ (title) and no personal liability is assumed in the giving
 of this certificate.

(signature)

(date)

SCHEDULE H**ADMINISTRATIVE DUTIES OF
THE AIR TRANSPORT ASSOCIATION OF CANADA**

The Air Transport Association of Canada shall:

1. Carry out the administrative duties noted in paragraph 35.1 of the Memorandum of Agreement on Airport Improvement Fees dated May 31, 1999, as follows -
 - 1) Mandate - The Air Transport Association of Canada shall act as Administrator for and Secretariat on behalf of the Memorandum of Agreement on Airport Improvement Fees dated May 31, 1999. These duties shall include:
 1. Advising Signatories and other interested parties (e.g. CRSs) of:
 - (1) new Signatories
 - (2) changes to AIF rates
 - (3) proposed amendments to the Agreement
 2. Establish and support the Technical Committee noted under section 23.1 of the MOA.
 3. To inform Signatories (chiefly new entrants) or other interested parties on the terms of the Agreement.
 4. To attempt to settle disputes by means of discussion and, if necessary, obtaining legal opinions to guide Signatories.
 - 2) Budget - ATAC shall submit a budgeted amount to the Signatory Airports no later than October 1 of each year and the Airports shall have until October 30 of each year to comment and add items to the budgeted amount. The budgeted amount shall contain sufficient detail to identify tasks noted in (a) above. A comparative of actual expenditures in the prior year ended September 30 shall be provided.
 - 3) Apportionment - Airports shall provide annual passenger volumes to ATAC in accordance with section 8 of the MOA.

Appendix 'A'**AIRPORTS IN THE NATIONAL AIRPORTS SYSTEM**

KELOWNA, B.C.
PRINCE GEORGE, B.C.
VANCOUVER, B.C.
VICTORIA, B.C.
CALGARY, ALTA.
EDMONTON, ALTA.
REGINA, SASK.
SASKATOON / JOHN G. DIEFENBAKER, SASK.
WINNIPEG, MAN.
LONDON, ONT.
OTTAWA / MACDONALD-CARTIER, ONT.
SUDBURY, ONT.
THUNDER BAY, ONT.
TORONTO / LESTER B. PEARSON, ONT.
MONTREAL / DORVAL-MIRABEL, QUE.
QUEBEC CITY / JEAN LESAGE, QUE.
FREDERICTON, N.B.
MONCTON, N.B.
SAINT JOHN, N.B.
HALIFAX, N.S.
CHARLOTTETOWN, P.E.I.
GANDER, NFLD.
ST. JOHN'S, NFLD.
YELLOWKNIFE, NWT
WHITEHORSE, YUKON

AIRPORTS IN THE REGIONAL/LOCAL CATEGORY

QUESNEL, B.C.
 PRINCE RUPERT, B.C.
 KAMLOOPS, B.C.
 NANAIMO, B.C.
 CRANBROOK, B.C.
 CASTLEGAR, B.C.
 TERRACE, B.C.
 FORT ST. JOHN, B.C.
 PENTICTON, B.C.
 CAMPBELL RIVER, B.C.
 SMITHERS, B.C.
 COMOX, B.C.
 ABBOTSFORD, B.C.
 DAWSON CREEK, B.C.
 WILLIAMS LAKE, B.C.
 FORT NELSON, B.C.
 POWELL RIVER, B.C.
 PORT HARDY, B.C.
 RAINBOW LAKE, ALTA.
 GRANDE PRAIRIE, ALTA.
 LETHBRIDGE, ALTA.
 FORT MCMURRAY, ALTA.
 PEACE RIVER, ALTA.
 LA RONGE, SASK.
 URANIUM CITY, SASK.
 PRINCE ALBERT, SASK.
 THOMPSON, MAN.
 THE PAS, MAN.
 NORWAY HOUSE, MAN.
 BRANDON, MAN.
 FLIN FLON, MAN.
 DAUPHIN, MAN.
 LYNN LAKE, MAN.
 GILLAM, MAN.
 DRYDEN, ONT.
 KAPUSKASING, ONT.
 GORE BAY, ONT.
 TIMMONS, ONT.
 SAULT STE. MARIE, ONT.
 TORONTO ISLAND, ONT.
 WINDSOR, ONT.
 NORTH BAY, ONT.
 SARNIA, ONT.
 HAMILTON, ONT.
 PICKERING, ONT. (UNDEVELOPED)
 RED LAKE, ONT.
 KENORA, ONT.
 PEMBROKE, ONT.
 EARLTON, ONT.
 FORT FRANCES, ONT.
 GASPE, QUE.
 RIMOUSKI, QUE.
 SEPT-ILES, QUE.
 VAL D'OR, QUE.
 BAGOTVILLE, QUE.
 ROUYN, QUE.
 BAIE-COMEAU, QUE.
 MONT-JOLI, QUE.
 HAVRE ST. PIERRE, QUE.
 ALMA, QUE.
 CHATAM, N.B.
 CHARLO, N.B.
 ST. LEONARD, N.B.
 YARMOUTH, N.S.
 SYDNEY, N.S.
 CHURCHILL FALLS, NFLD.
 DEER LAKE, NFLD.
 GOOSE BAY, NFLD.
 WABUSH, NFLD.
 STEPHENVILLE, NFLD.
 ST. ANTHONY, NFLD.

SCHEDULE I**Vancouver International Airport AIF Rates**

Rates by destination of DEPAX passenger (plus applicable taxes):

Within British Columbia \$5
or the Yukon

Within North America \$10
(not including BC or the Yukon)

Outside of North America \$15
(including Hawaii and Mexico)

Connecting passengers are exempt from payment of AIF.

The rates at Vancouver International Airport may be changed in accordance with the provisions of Section 6.3 of this MOA without having to amend this MOA.

This is **Exhibit "B"** referred to in the Affidavit of Diana
Vuong, affirmed before me at City of Vancouver, in the
Province of British Columbia, this 23rd
day of May 2024



Amanda Wheat
BARRISTER AND SOLICITOR
A Notary Public in and for British Columbia

VANCOUVER AIRPORT AUTHORITY
SCHEDULE OF FEES AND CHARGES
Effective January 1, 2023
Subject to Change

PAYMENT TERMS AND CONDITIONS

All fees and charges payable by an air carrier under the Schedule will be invoiced by the Airport Authority and invoiced amounts will be payable by the air carrier on the following payment terms except for the Airport Improvement Fee. All rates do not include applicable taxes, unless otherwise stated:

1. a) Unless otherwise provided in the Schedule, air carriers will have 30 days from the invoice date to pay to the Airport Authority all invoiced aeronautical fees and charges ("Fees"). Interest will be charged on any Fees not paid by the due date at the Prime Rate plus 12% and will be calculated on a per diem basis and compounded monthly. All applicable taxes will be applied on the invoice. In this document, "Prime Rate" means the prime rate set by the Airport Authority's lending bank at the relevant time.

b) All rental space fees and charges ("Fees") are due on or before the 1st of each month as outlined in the lease agreements. Interest will be charged on any Fees not paid by the due date at the Prime Rate plus 12% and will be calculated on a per diem basis and compounded monthly.

2. Air carriers have the option of paying by cheques and/or electronically. Cheques shall be made payable to and payment forwarded to:

The Vancouver Airport Authority
PO Box 44638 YVR Domestic Terminal RPO
Richmond, BC, V7B 1W2

For electronic payments, please contact the accounts receivable team at accounts_receivable@yvr.ca.

3. The Airport Authority may accept and cash any cheque or payment instrument received from or on behalf of an air carrier and may, at the option of the Airport Authority and notwithstanding any reference to an invoice number or any particular Fees on or accompanying such cheque or payment instrument, apply such payment on account of any Fees or interest owing by the air carrier without prejudice to the Airport Authority's right to recover any remaining balance of Fees or interest or to pursue any other right or remedy available to it.

4. No endorsement, direction or statement on any cheque or payment instrument or accompanying letter or other document shall be binding on the Airport Authority nor deemed to be an acknowledgement of full payment or an acceptance, accord and satisfaction by the Authority of such endorsement, statement or letter, etc.

5. All references in the Schedule to money amounts are to Canadian currency.

6. In the event any Fees are not paid in full when due or the air carrier is in default of any of these Payment Terms and Conditions, the air carrier will be deemed to be in default and the Airport Authority may give notice to such air carrier that all Fees payable by such air carrier, whether or not then due, are due and payable forthwith and interest will accrue from such date at the rate and upon the terms set out above.

7. The Airport Authority reserves the right to deny the use of or access to any Airport resource or suspend or otherwise restrict the exercise of any privileges including access to any part of the Airport by any air carrier in default until payment of all outstanding Fees is made in full or credit arrangements satisfactory to the Airport Authority are in place.

8. The Airport Authority reserves the right to amend the Schedule, at any time and from time to time on 60 days advance public notice, in any manner it deems appropriate including: increasing or decreasing any Fees; adding thereto or deleting therefrom categories of Fees or otherwise.

9. The terms and conditions in the Schedule are binding between the Airport Authority and the air carrier, except where there is a separate written agreement between the Airport Authority and the air carrier regarding the fees and charges listed in this Schedule.

VANCOUVER AIRPORT AUTHORITY
SCHEDULE OF FEES AND CHARGES
Effective January 1, 2023
Subject to Change

SECURITY FOR PAYMENT

As security for the payment of Fees hereunder, all air carriers shall deliver to the Airport Authority an irrevocable letter of credit issued in favour of the Airport Authority by a Canadian chartered bank acceptable to the Airport Authority in form and content determined by the Airport Authority. The amount shall be equal to three months Fees, all as reasonably estimated by the Airport Authority.

In the event the air carrier is in default of payment to the Airport Authority of any Fees or any other sum payable by the air carrier to the Airport Authority, and such default continues for five (5) days following written notice by the Airport Authority requiring the air carrier to pay the same, the Airport Authority may, in addition to any other right or remedy, draw on the letter of credit to pay the arrears or deduct the arrears from the security deposit, as the case may be.

The air carrier shall provide the Airport Authority with a renewal or replacement letter of credit at least sixty (60) days before the date on which any letter of credit expires and shall immediately after any drawing by the Airport Authority on a letter of credit, deposit an additional letter of credit with the Airport Authority in the amount paid by the issuer of the letter of credit to the Airport Authority failing which, in either case, the Airport Authority may draw the full amount of the letter of credit and hold the funds as a security deposit. The air carrier shall, immediately after the Airport Authority deducts arrears from the security deposit, deposit an additional security deposit in the amount of such arrears with the Airport Authority.

The Airport Authority shall have the right on at least thirty (30) days prior notice to the air carrier to impose the security requirement or to increase or decrease the amount of the security that the air carrier is required to maintain hereunder so that such amount represents the amount the Airport Authority's estimates will be payable for Fees over a period of three months.

When the air carrier ceases operations at YVR and upon payment by the air carrier to the Airport Authority of all Fees including all costs and expenses incurred by the Airport Authority in correcting or satisfying any default or fulfilling any obligations of the air carrier, the Airport Authority shall release the letter of credit or return the security deposit to the air carrier, without interest.

VANCOUVER AIRPORT AUTHORITY
SCHEDULE OF FEES AND CHARGES
 Effective January 1, 2023
 Subject to Change

LANDING FEES

For each landing of an aircraft the fee is the greater of the Standard Fees or Minimum Fees:

Standard Fees		Aircraft MTOW (kg)	Fee per 1000 kg of MTOW or fraction thereof
Aircraft Type	Flight Type		
Jet	Domestic & International	0 - 21,000	\$4.20
		21,001 - 45,000	\$5.25
		45,001 or greater	\$6.30
Turboprop, Piston, Helicopter	Domestic & International	0 - 21,000	\$3.68
		21,001 - 45,000	\$4.20
		45,001 or greater	\$5.25

Minimum Fees		Fee per Landing
Aircraft Type	Flight Type	
Fixed Wing (Jet, Turboprop, Piston), Helicopter	Domestic & International Flight	\$52.50

1. The landing fee is based on the maximum permissible take off weight (MTOW), as stated in the aircraft's registration documents. Until such time as the Vancouver Airport Authority receives an aircraft's registration documents, it shall base the MTOW for the aircraft on the highest known MTOW for the particular aircraft type. Any amendment to an aircraft's MTOW will be effective 30 days subsequent to the Vancouver Airport Authority's receipt of original or revised registration documents. No retroactive adjustments will be made. Submissions can be made via email to accounts_receivable@yvr.ca or by fax to 604-276-7747.

2. A domestic flight means a flight between two points within Canada.

3. An international flight means a flight between a point outside Canada and a point within Canada.

4. Landing fees are not payable where an aircraft or any person on board is threatened by serious or imminent danger and an unscheduled landing is made to a non-intended destination.

5. Landing fees are not payable for State aircraft.

VANCOUVER AIRPORT AUTHORITY
SCHEDULE OF FEES AND CHARGES
 Effective January 1, 2023
 Subject to Change

Airport Authority Managed Aprons - Aircraft Parking Fees	
Aircraft MTOW* (kg)	Fee per Aircraft (Daily rate)
0 - 2,000	\$14.70
2,001 - 5,000	\$16.28
5,001 - 10,000	\$18.11
10,001 - 30,000	\$31.24
30,001 - 60,000	\$49.09
60,001 - 100,000	\$73.76
100,001 - 200,000	\$123.11
200,001 - 300,000	\$170.63
300,001 or greater	\$221.55
All aircraft - periods more than 24 hours	\$420.00

*Maximum permissible take-off weight

1. Parking duration will be calculated from time of landing to time of take-off based on tower data.
2. Parking fees do not apply for any period less than 4 hours. Aircraft towed to hangars will not be subject to parking fees.
3. For periods more than 4 hours up to 24 hours, the airline will be charged the applicable daily rate indicated in the table above based on the MTOW of the aircraft.
4. For periods more than 24 hours, the airline will be charged a daily rate of \$420.00 per 24-hour period, or any portion thereof.
5. Aircraft are not permitted to park on the main apron (Apron VI) for more than 24 hours unless approved in writing by the Airport Capacity team at slot_coordination@yvr.ca or the day-of Integrated Operations Centre at gates@yvr.ca/604-207-7034.
6. All parking requests must be submitted in Slot Clearance Request format at least 3 business days in advance as per IATA world slot guidelines to ensure requests can be properly reviewed by the Airport Capacity team.
7. Aircraft are required to be towed on/off parking position within the timeslot approved by the Airport Capacity team or as instructed by the Baggage and Gate Schedulers. Aircraft that are not towed off parking position prior to expiry of the approved timeslot may be towed at the airline's expense unless parking is extended by written approval from the Airport Capacity team or the day-of Integrated Operations Centre.
8. YVR reserves the right to amend these rules at any time based on operational requirements.

VANCOUVER AIRPORT AUTHORITY
SCHEDULE OF FEES AND CHARGES
 Effective January 1, 2023
 Subject to Change

PRE-SECURITY FEE	
<i>Domestic Originating Passenger</i>	
Rate per domestic originating passenger	\$4.20
<i>Transborder and International Originating Passenger</i>	
Rate per transborder and international originating passenger	\$9.71

1. Pre-security fees are intended to partially recover the construction and operating costs of the terminal facilities located prior to the primary security line.
2. A domestic originating passenger means a passenger with a flight originating out of YVR to a point within Canada. Air carriers will be charged the domestic originating passenger pre-security fee for each domestic originating passenger.
3. A transborder originating passenger means a passenger with a flight originating out of YVR to a point within the United States. Air carriers will be charged the transborder and international originating passenger pre-security fee for each transborder originating passenger.
4. An international originating passenger means a passenger with a flight originating out of YVR to a point outside of Canada and the United States. Air carriers will be charged the transborder and international originating passenger pre-security fee for each international originating passenger.
5. Originating passenger information will be sourced from Airport Improvement Fee remittance data.

U.S. PRE-CLEARANCE FEES	
<i>U.S. Bound Pre-Cleared Passengers</i>	
Fee per U.S. Bound Pre-Cleared Passenger for Signatory Air Carriers:	\$2.10

1. U.S. pre-clearance fees are intended to partially recover the construction and operating costs of the U.S. pre-clearance facilities.
2. A U.S. bound pre-cleared passenger means any passenger using the U.S. pre-clearance facility at YVR. Air carriers will be charged the U.S. Bound pre-cleared passenger Fee for each U.S. bound pre-cleared passenger.
3. Air carriers will be charged the U.S. bound pre-cleared passenger fee for each U.S. bound pre-cleared passenger on their actual passenger traffic multiplied by the prevailing annual rate (subject to adjustments to payments, if required, at year end based upon final passenger numbers). Actual passenger traffic will be based on information remitted by the air carriers to the Vancouver Airport Authority.
4. The Airport Authority reserves the right to recover incremental costs incurred for additional services required outside of normal USCBP operating hours.

VANCOUVER AIRPORT AUTHORITY
SCHEDULE OF FEES AND CHARGES
 Effective January 1, 2023
 Subject to Change

POST-SECURITY FEE

The fee payable by an air carrier using the domestic or international terminal building gates is as follows:

<i>Domestic and International Terminals</i>	Fee per Aircraft Use of Terminal Gate	
	Domestic Terminal	International Terminal
	Gates 1 through to 49	Gates 50 through to 96
Regional Aircraft	\$199.97	\$362.76
Narrowbody Aircraft	\$399.95	\$725.53
Widebody Aircraft	\$799.89	\$1,451.05

<i>South Terminal</i>	No General Terminal Fee
-----------------------	-------------------------

1. Post-security fees are intended to partially recover the construction and operating costs of the terminal facilities located after the primary security line.
2. The post-security fees are recovered by charging all air carriers on a per use basis of terminal gates.
3. By way of example, below is a summary of aircraft types for the purposes of calculating post-security fees:

Regional	Narrowbody	Widebody
Beechcraft 1900/1900C/1900D	Airbus: 220, 319, 320 and 321	Airbus 310, 330, 340, 350 and 380
Piper light aircraft	Boeing: 717, 737 and 757	Boeing: 747, 767, 777, and 787
CRJ: 100, 700 and 900		
DHC-8: 100, 300 and 400		
Embraer: 170, 175 and 190		
Saab 340		

4. Busing Fee for Non-Bridged Gating Operations

Air carriers that use apron busing for non-bridged gating operations departing from the domestic terminal building will be charged the domestic post-security fee. Air carriers that use apron busing for non-bridged gating operations departing from the international terminal building will be charged the international post-security fee. Air carriers that use apron busing for non-bridged gating operations will be invoiced monthly in accordance with the terms outlined in the Airport Use License.

5. Instances of non-compliance with respect to towing of aircraft after receiving explicit instruction from the Airport Authority are subject to a \$1500 refusal to tow fee.

VANCOUVER AIRPORT AUTHORITY
SCHEDULE OF FEES AND CHARGES
 Effective January 1, 2023
 Subject to Change

AIRPORT IMPROVEMENT FEES		
<i>Domestic and International Terminals</i>		Fee per Passenger
Destination Category:		
British Columbia and Yukon		\$5.00
Outside British Columbia and Yukon		\$25.00

1. The Airport Authority is a signatory to a Memorandum of Agreement between ATAC, Signatory Air Carriers and Certain Airports concerning the collection of the AIF (the "MOA"). The MOA provides that each Signatory Air Carrier will collect and remit the Airport Improvement Fee ("AIF") on behalf of the Airport Authority in accordance with the terms of the MOA. Each Signatory Air Carrier is entitled to a handling fee, for these services.

2. Air carriers who are not a signatory to the MOA must follow the Airport Authority's *Airport Improvement Fee Collection and Remittance Procedures*.

3. For the purposes of determining the appropriate Destination Category, the destination of a departing enplaned passenger shall be defined as the first point of arrival after a departure from YVR where the departing enplaned passenger either makes a connection or stopover.

PASSENGER FACILITY CHARGE		
<i>South Terminal</i>	All Destinations	\$5.00

1. The Passenger Facility Charge ("PFC") for the South Terminal is inclusive of GST.

2. At the South Terminal, the PFC amount is paid by air carriers on behalf of each departing passenger. Children under two years of age are exempt from PFC.

VANCOUVER AIRPORT AUTHORITY
SCHEDULE OF FEES AND CHARGES
 Effective January 1, 2023
 Subject to Change

ANNUAL EXCLUSIVE USE RENTAL RATES

<i>Domestic Terminal</i>	Price per Square Foot	Price per Square Meter
A-B Connector Office	\$74.04	\$796.84
Premium Office	\$64.15	\$690.53
Regular Office	\$51.47	\$554.17
Industrial	\$24.04	\$258.71
Storage	\$15.96	\$171.69
Lounge	\$64.15	\$690.53
Counter / Queuing	\$64.15	\$690.53
Covered Outdoor	\$12.03	\$129.45
Temporary Construction Space	\$5.70	\$61.36
Apron Storage Space - Adjacent to Gates and Other Locations	\$2.67	\$28.86

<i>International Terminal</i>	Price per Square Foot	Price per Square Meter
Premium Office	\$74.04	\$796.84
Regular Office	\$59.42	\$639.61
Industrial	\$27.73	\$298.49
Storage	\$18.43	\$198.25
Lounge	\$74.04	\$796.84
Link Building Counter / Queuing	\$112.59	\$1,211.90
Counter / Queuing	\$145.03	\$1,561.23
Covered Outdoor	\$13.70	\$147.57
Apron Storage Space - Adjacent to Gates	\$4.58	\$49.33
Apron Storage Space - Other Locations	\$3.61	\$38.95

<i>South Terminal</i>	Price per Square Foot	Price per Square Meter
Premium Office	\$26.51	\$285.32
Regular Office / Freezers	\$21.28	\$228.99
Counter / Queuing	\$26.51	\$285.32
Storage	\$15.82	\$170.39
Industrial Cargo	\$9.94	\$106.91
Apron Storage Space - Adjacent to Gates and Other	\$2.67	\$28.86

VANCOUVER AIRPORT AUTHORITY
SCHEDULE OF FEES AND CHARGES
 Effective January 1, 2023
 Subject to Change

COMMON USE FACILITY FEES AND CHARGES

<i>South Terminal</i>	Fee
Common Use Counters :	
1st - 12th Flight / Month	\$15.00 / Flight
13th - 24th Flight / Month	\$10.00 / Flight
25th and More Flights / Month	\$5.00 / Flight
Public Address System	\$10.00 / Month / Microphone Line

YVR SEAPLANE FACILITY FEES

Dock Fee per Enplaned and Deplaned Passenger		\$2.89 including GST
Ramp Charge for Water to Airside Movements		\$5.25
Aircraft Docking Fee	Single Engine Aircraft	First 2 hours no charge \$26.25 for 2 to 24 hours
	Twin Engine Aircraft	First 2 hours no charge \$52.5 for 2 to 24 hours

1. With the exception of the dock fee, the stated rates above do not include applicable taxes. The dock fee is inclusive of GST.
2. Fee per enplaned and deplaned Passenger and aircraft docking fee only apply to use of the YVR Seaplane Facilities.
3. There is no ramp charge for airside to water movements.

VANCOUVER AIRPORT AUTHORITY
SCHEDULE OF FEES AND CHARGES
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PAYMENT TERMS AND CONDITIONS

1. In addition to terms defined elsewhere herein, the following terms have the following meanings in this schedule of fees and charges (the "Schedule"):

(a) "AIF" means the Airport Improvement Fees;

(b) "Fees" means all fees and charges payable by an air carrier that are set out in this Schedule, including aeronautical fees and charges, rental space fees and charges, non-compliance fees, and the AIF; and

(c) "Prime Rate" means, with respect to any time, the prime rate set by the Airport Authority's lending bank at such time.

2. All Fees, other than the AIF, will be invoiced by the Airport Authority, and invoiced amounts will be payable by the air carrier, on the following payment terms:

(a) Unless otherwise provided in the Schedule, air carriers will have 30 days from the invoice date to pay to the Airport Authority all invoiced Fees comprising aeronautical fees and charges. Interest will be charged on any such Fees not paid by the due date at the Prime Rate plus 12% and will be calculated on a per diem basis and compounded monthly. All applicable taxes will be applied on the invoice.

(b) All Fees comprising rental space fees and charges are due on or before the 1st of each month, as outlined in the lease agreements. Interest will be charged on any such Fees not paid by the due date at the Prime Rate plus 12% and will be calculated on a per diem basis and compounded monthly.

(c) Air carriers have the option of paying Fees by cheques and/or electronically. Cheques shall be made payable to and payment forwarded to:

The Vancouver Airport Authority
PO Box 44638 YVR Domestic Terminal RPO
Richmond, BC, V7B 1W2

For electronic payments, please contact the accounts receivable team at accounts_receivable@yvr.ca.

3. The AIF is payable by the air carrier in accordance with page 7 of the Schedule.

4. The Airport Authority may accept cash, cheque or any other payment instrument received from or on behalf of an air carrier and may, at the option of the Airport Authority and notwithstanding any reference to an invoice number or any particular Fees on or accompanying such cheque or payment instrument, apply such payment on account of any Fees or interest owing by the air carrier without prejudice to the Airport Authority's right to recover any remaining balance of Fees or interest or to pursue any other right or remedy available to it.

5. No endorsement, direction or statement on any cheque or payment instrument or accompanying letter or other document shall be binding on the Airport Authority nor deemed to be an acknowledgement of full payment or an acceptance, accord and satisfaction by the Authority of such endorsement, statement or letter, etc.

6. In the event any Fees are not paid in full when due or the air carrier is in default of any of the payment terms and conditions set out in the Schedule, the air carrier will be deemed to be in default and the Airport Authority may give notice to such air carrier that all Fees payable by such air carrier, whether or not then due, are due and payable forthwith, and interest may accrue from such date at the rate and upon the terms set out above.

7. All references in the Schedule to money amounts are to Canadian currency.

8. All amounts and rates of Fees in the Schedule do not include applicable taxes, unless otherwise stated.

9. The Airport Authority reserves the right to deny the use of or access to any Airport resource or suspend or otherwise restrict the exercise of any privileges including access to any part of the Airport by any air carrier in default until payment of all outstanding Fees is made in full or credit arrangements satisfactory to the Airport Authority are in place.

10. The Airport Authority reserves the right to amend the Schedule, at any time and from time to time on 60 days advance public notice, in any manner it deems appropriate including increasing or decreasing any Fees adding thereto, or deleting therefrom categories of Fees or otherwise.

11. The terms and conditions in the Schedule are binding between the Airport Authority and the air carrier, except where there is a separate written agreement between the Airport Authority and the air carrier regarding the fees and charges listed in the Schedule.

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SECURITY FOR PAYMENT

As security for the payment of Fees hereunder, all air carriers shall deliver to the Airport Authority an irrevocable letter of credit issued in favour of the Airport Authority by a Canadian chartered bank acceptable to the Airport Authority in form and content determined by the Airport Authority. The amount shall be equal to three months Fees, all as reasonably estimated by the Airport Authority.

In the event the air carrier is in default of payment to the Airport Authority of any Fees or any other sum payable by the air carrier to the Airport Authority, and such default continues for five (5) days following written notice by the Airport Authority requiring the air carrier to pay the same, the Airport Authority may, in addition to any other right or remedy, draw on the letter of credit to pay the arrears or deduct the arrears from the security deposit, as the case may be.

The air carrier shall provide the Airport Authority with a renewal or replacement letter of credit at least sixty (60) days before the date on which any letter of credit expires and shall immediately after any drawing by the Airport Authority on a letter of credit, deposit an additional letter of credit with the Airport Authority in the amount paid by the issuer of the letter of credit to the Airport Authority failing which, in either case, the Airport Authority may draw the full amount of the letter of credit and hold the funds as a security deposit. The air carrier shall, immediately after the Airport Authority deducts arrears from the security deposit, deposit an additional security deposit in the amount of such arrears with the Airport Authority.

The Airport Authority shall have the right on at least thirty (30) days prior notice to the air carrier to impose the security requirement or to increase or decrease the amount of the security that the air carrier is required to maintain hereunder so that such amount represents the amount the Airport Authority's estimates will be payable for Fees over a period of three months.

When the air carriers ceases operations at YVR and upon payment by the air carrier to the Airport Authority of all Fees including all costs and expenses incurred by the Airport Authority in correcting or satisfying any default or fulfilling any obligations of the air carrier, the Airport Authority shall release the letter of credit or return the security deposit to the air carrier, without interest.

VANCOUVER AIRPORT AUTHORITY
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LANDING FEES

For each landing of an aircraft, the fee is the greater of the Standard Fees or Minimum Fees:

<i>Standard Fees</i>		Aircraft MTOW (kg)	Fee per 1000 kg of MTOW or fraction thereof
Aircraft Type	Flight Type		
Jet	Domestic & International	0 - 21,000	\$4.33
		21,001 - 45,000	\$5.41
		45,001 or greater	\$6.49
Turboprop, Piston, Helicopter	Domestic & International	0 - 21,000	\$3.79
		21,001 - 45,000	\$4.33
		45,001 or greater	\$5.41

<i>Minimum Fees</i>		Fee per Landing
Aircraft Type	Flight Type	
Fixed Wing (Jet, Turboprop, Piston), Helicopter	Domestic & International	\$54.08

1. The landing fee is based on the maximum permissible take off weight (MTOW), as stated in the aircraft's registration documents. Until such time as the Vancouver Airport Authority receives an aircraft's registration documents, it shall base the MTOW for the aircraft on the highest known MTOW for the particular aircraft type. Any amendment to an aircraft's MTOW will be effective 30 days subsequent to the Vancouver Airport Authority's receipt of original or revised registration documents. No retroactive adjustments will be made. Submissions can be made via email to accounts_receivable@yvr.ca or by fax to 604-276-7747.

2. A domestic flight means a flight between two points within Canada.

3. An international flight means a flight between a point outside Canada and a point within Canada.

4. Landing fees are not payable where an aircraft or any person on board is threatened by serious or imminent danger and an unscheduled landing is made to a non-intended destination.

Landing fees are not payable for State aircraft.

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Airport Authority Managed Aprons - Aircraft Parking Fees	
Aircraft MTOW* (kg)	Fee per Aircraft (Daily rate)
0 - 2,000	\$15.14
2,001 - 5,000	\$16.76
5,001 - 10,000	\$18.66
10,001 - 30,000	\$32.17
30,001 - 60,000	\$50.56
60,001 - 100,000	\$75.98
100,001 - 200,000	\$126.81
200,001 - 300,000	\$175.74
300,001 or greater	\$228.20
All aircraft - periods more than 24 hours	\$432.60

*Maximum permissible take-off weight

1. Parking duration will be calculated from time of landing to time of take-off based on tower data.
2. Parking fees do not apply for any period less than 4 hours. Aircraft towed to hangars will not be subject to parking fees.
3. For periods more than 4 hours up to 24 hours, the airline will be charged the applicable daily rate indicated in the table above based on the MTOW of the aircraft.
4. For periods more than 24 hours, the airline will be charged a daily rate of \$432.60 per 24-hour period, or any portion thereof.
5. Aircraft are not permitted to park on the main apron (Apron VI) beyond the periods approved by the Airport Capacity team (slot_coordination@yvr.ca) in writing or the day-of Integrated Operations Centre (gates@yvr.ca / 604-207-7034).
6. All parking requests must be submitted in writing at least 3 business days in advance as per IATA Worldwide Airport Slot Guidelines (WASG) to ensure requests can be properly reviewed by the Airport Capacity team. Instances of non-compliance with the Conditional Approval are subject to a \$5,000.00 non-compliance fee.
7. Aircraft are required to be towed on/off parking position within the timeslot approved by the Airport Capacity team or as instructed by the Baggage and Gate Schedulers. Aircraft that are not towed off parking position prior to expiry of the approved timeslot may be towed at the airline's expense unless parking is extended by written approval from the Airport Capacity team or the day-of Integrated Operations Centre. Instances of non compliance with respect to towing of aircraft after receiving explicit instruction from the Airport Authority are subject to a \$1,500.00 refusal to tow fee.

Non-Compliance Fees	
Failure to comply with parking conditions	\$5,000.00
Refusal to tow	\$1,500.00

If any air carrier fails to comply with any of the Airport Authority's rules and requirements in the Schedule, then the air carrier will pay such non-compliance fees to the Airport Authority in accordance with this Schedule.

8. YVR reserves the right to amend these rules at any time based on operational requirements.

VANCOUVER AIRPORT AUTHORITY
SCHEDULE OF FEES AND CHARGES
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PRE-SECURITY FEE	
<i>Domestic Originating Passenger</i>	
Rate per domestic originating passenger	\$4.33
<i>Transborder and International Originating Passenger</i>	
Rate per transborder and international originating passenger	\$10.00

1. Pre-security fees are intended to partially recover the construction and operating costs of the terminal facilities located prior to the primary security line.
2. A domestic originating passenger means a passenger with a flight originating out of YVR to a point within Canada. Air carriers will be charged the domestic originating passenger pre-security fee for each domestic originating passenger.
3. A transborder originating passenger means a passenger with a flight originating out of YVR to a point within the United States. Air carriers will be charged the transborder and international originating passenger pre-security fee for each transborder originating passenger.
4. An international originating passenger means a passenger with a flight originating out of YVR to a point outside of Canada and the United States. Air carriers will be charged the transborder and international originating passenger pre-security fee for each international originating passenger.
5. Originating passenger information will be sourced from AIF remittance data.

U.S. PRE-CLEARANCE FEES	
<i>U.S. Bound Pre-Cleared Passengers</i>	
Fee per U.S. Bound Pre-Cleared Passenger for Signatory Air Carriers:	\$2.16

1. U.S. pre-clearance fees are intended to partially recover the construction and operating costs of the U.S. pre-clearance facilities.
2. A U.S. bound pre-cleared passenger means any passenger using the U.S. pre-clearance facility at YVR. Air carriers will be charged the U.S. Bound pre-cleared passenger Fee for each U.S. bound pre-cleared passenger.
3. Air carriers will be charged the U.S. bound pre-cleared passenger fee for each U.S. bound pre-cleared passenger on their actual passenger traffic multiplied by the prevailing annual rate (subject to adjustments to payments, if required, at year end based upon final passenger numbers). Actual passenger traffic will be based on information remitted by the air carriers to the Vancouver Airport Authority.
4. The Airport Authority reserves the right to recover incremental costs incurred for additional services required outside of normal USCBP operating hours.

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POST-SECURITY FEE

The fee payable by an air carrier using the domestic or international terminal building gates is as follows:

<i>Domestic and International Terminals</i>	Fee per Aircraft Use of Terminal Gate	
	Domestic Terminal	International Terminal
	Gates 1 through to 49	Gates 50 through to 96
Regional Aircraft	\$205.97	\$373.65
Narrowbody Aircraft	\$411.94	\$747.29
Widebody Aircraft	\$823.89	\$1,494.58

<i>South Terminal</i>	No General Terminal Fee
-----------------------	-------------------------

1. Post-security fees are intended to partially recover the construction and operating costs of the terminal facilities located after the primary security line.
2. The post-security fees are recovered by charging all air carriers on a per use basis of terminal gates.
3. By way of example, below is a summary of aircraft types for the purposes of calculating post-security fees:

Regional	Narrowbody	Widebody
Beechcraft 1900/1900C/1900D Piper light aircraft CRJ: 100, 700 and 900 DHC-8: 100, 300 and 400 Embraer: 170, 175 and 190 Saab 340	Airbus: 220, 319, 320 and 321 Boeing: 717, 737 and 757	Airbus 310, 330, 340, 350 and 380 Boeing: 747, 767, 777, and 787

4. Busing Fee for Non-Bridged Gating Operations

Air carriers that use apron busing for non-bridged gating operations departing from the domestic terminal building will be charged the domestic post-security fee. Air carriers that use apron busing for non-bridged gating operations departing from the international terminal building will be charged the international post-security fee. Air carriers that use apron busing for non-bridged gating operations will be invoiced monthly in accordance with the terms outlined in the Airport Use License.

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AIRPORT IMPROVEMENT FEES

<i>Domestic and International Terminals</i>	Fee per Passenger
Destination Category:	
British Columbia and Yukon	\$5.00
Outside British Columbia and Yukon	\$25.00

1. The Airport Authority is a signatory to a Memorandum of Agreement between ATAC, certain air carriers signatory thereto (the "Signatory Carriers") and certain airports, concerning the collection of the AIF (the "MOA"). Each Signatory Air Carrier must collect the AIF from passengers, on behalf of the Airport Authority, at the rates set out in the Schedule, and remit the AIF to the Airport Authority in accordance with the MOA and any other agreement from time to time in effect between such Signatory Air Carrier and the Airport Authority pertaining to the AIF (including any such airport use and license agreement). Each Signatory Air Carrier is entitled to a handling fee for these services.

2. Any air carrier that is not a Signatory Air Carrier must follow the Airport Authority's Airport Improvement Fee Collection and Remittance Procedures and any other agreement from time to time in effect between such air carrier and the Airport Authority pertaining to the AIF (including any such airport use and license agreement).

3. For the purposes of determining the appropriate Destination Category for the AIF, the destination of a departing enplaned passenger shall be defined as the first point of arrival after a departure from YVR where the departing enplaned passenger either makes a connection or stopover.

PASSENGER FACILITY CHARGE

<i>South Terminal</i>	All Destinations	\$5.00

1. The Passenger Facility Charge ("PFC") for the South Terminal is inclusive of GST.

2. At the South Terminal, the PFC amount is paid by air carriers on behalf of each departing passenger. Children under two years of age are exempt from PFC.

VANCOUVER AIRPORT AUTHORITY
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ANNUAL EXCLUSIVE USE RENTAL RATES

<i>Domestic Terminal</i>	Price per Square Foot	Price per Square Meter
A-B Connector Office	\$76.26	\$820.75
Premium Office	\$66.07	\$711.25
Regular Office	\$53.02	\$570.79
Industrial	\$24.76	\$266.47
Storage	\$16.44	\$176.84
Lounge	\$66.07	\$711.25
Counter / Queuing	\$66.07	\$711.25
Covered Outdoor	\$12.39	\$133.33
Temporary Construction Space	\$5.87	\$63.20
Apron Storage Space - Adjacent to Gates and Other Locations	\$2.75	\$29.72

<i>International Terminal</i>	Price per Square Foot	Price per Square Meter
Premium Office	\$76.26	\$820.75
Regular Office	\$61.20	\$658.79
Industrial	\$28.56	\$307.45
Storage	\$18.98	\$204.20
Lounge	\$76.26	\$820.75
Link Building Counter / Queuing	\$115.97	\$1,248.25
Counter / Queuing	\$149.38	\$1,608.06
Covered Outdoor	\$14.11	\$152.00
Apron Storage Space - Adjacent to Gates	\$4.72	\$50.81
Apron Storage Space - Other Locations	\$3.72	\$40.11

<i>South Terminal</i>	Price per Square Foot	Price per Square Meter
Premium Office	\$27.30	\$293.88
Regular Office / Freezers	\$21.92	\$235.86
Counter / Queuing	\$27.30	\$293.88
Storage	\$16.29	\$175.51
Industrial Cargo	\$10.24	\$110.12
Apron Storage Space - Adjacent to Gates and Other	\$2.75	\$29.72

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COMMON USE FACILITY FEES AND CHARGES

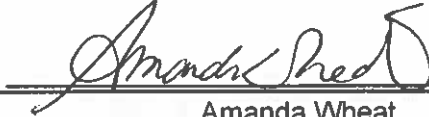
<i>South Terminal</i>	Fee
Common Use Counters :	
1st - 12th Flight / Month	\$15.45 / Flight
13th - 24th Flight / Month	\$10.30 / Flight
25th and More Flights / Month	\$5.15 / Flight
Public Address System	\$10.30 / Month / Microphone Line

YVR SEAPLANE FACILITY FEES

Dock Fee per Enplaned and Deplaned Passenger		\$2.98 including GST
Ramp Charge for Water to Airside Movements		\$5.41
Aircraft Docking Fee	Single Engine Aircraft	First 2 hours no charge \$27.04 for 2 to 24 hours
	Twin Engine Aircraft	First 2 hours no charge \$54.08 for 2 to 24 hours

1. With the exception of the dock fee, the stated rates above do not include applicable taxes. The dock fee is inclusive of GST.
2. Fee per enplaned and deplaned Passenger and aircraft docking fee only apply to use of the YVR Seaplane Facilities.
3. There is no ramp charge for airside to water movements.

This is **Exhibit "C"** referred to in the Affidavit of Diana Vuong, affirmed before me at City of Vancouver, in the Province of British Columbia, this 23rd day of May 2024

A handwritten signature in black ink, appearing to read "Amanda Wheat", written over a horizontal line.

Amanda Wheat
BARRISTER AND SOLICITOR
A Notary Public in and for British Columbia

Reservation Terms and Conditions

Fare Information

Cancellations

No cancellations are permitted within 72 hours of departure.

Within 24 hours of booking:

- For flights booked more than 7 days before departure, if you cancel your flight you'll receive a refund to your original form of payment.
- For flights booked within 7 days of departure, if you cancel your flight you'll receive a travel voucher, minus the \$74*CAD + tax cancellation fee (per flight segment).

More than 24 hours after booking:

- For cancellations made more than 72 hours before departure, you'll be charged a \$74*CAD + tax (on or after January 11, 2024) cancellation fee per passenger (per flight segment). You'll receive a travel voucher for the remaining amount (if applicable).

Changes

No changes are permitted within 72 hours of departure. Changes to the origin and destination are not permitted.

Name changes are not permitted.

- For changes made more than 72 hours before departure, you'll be charged a change fee of \$74*CAD + tax (on or after January 11, 2024) per passenger (per flight segment).
- If you change your flight to one with a higher fare, you must pay the difference in fare as well as the change fee.
- If you change your flight to one with a lower fare, you must pay the change fee, but you won't receive the difference in fare.

Payments Fees and Taxes



- Visa
- Mastercard
- Visa Debit
- Mastercard Debit
- Lynx Travel Voucher

Taxes and Fees

Taxes and fees vary based on the airports you're using. For domestic flights, the following taxes and fees may be added.

- Airport Improvement Fees (AIF) and Passenger Facility Charge (PFC) are generally collected by Lynx at the time of booking. Lynx collects these fees from passengers and remits them directly to the airports

Airport Code	Airport Improvement Fee (AIF)
YEG	\$35*CAD
YFC	\$30*CAD
YHM	\$25*CAD
YHZ	\$35*CAD
YLW	\$25.00*CAD
YUL	\$35*CAD
YVR (flying within BC or to the Yukon)	\$5.00*CAD
YVR (flying outside BC)	\$25.00*CAD
YWG	\$38.00*CAD
YYC	\$35.00*CAD



YYT	\$42*CAD
YYZ	\$30.00*CAD
All US airports	\$4.50*CAD

- Air Travellers Security Charge (“ATSC”): The ATSC is a security charge collected by the Government of Canada. Lynx collects this fee from passengers and remits it directly to Canada Revenue Agency.
- \$7.12*CAD per chargeable enplanement to a maximum of \$14.25*CAD for Canadian domestic flights.
- Goods and Services Tax (“GST”): GST of 5% applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights, excluding those that commence in Quebec, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador.
- Harmonized Sales Tax (“HST”): HST applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights commencing in the following provinces:
- U.S. Taxes & Fees do not apply to domestic Canadian flights.
- The US segment tax is also charged on flights between the US and a point in Canada within 225 miles of the border when payment is made within the US.
- For flights between the US and a point in Canada within 225 miles of the border, when payment is made within the US, a 7.5% tax is imposed on the base ticket price. For such flights and all other transborder flights, when payment is made within Canada, a flat rate of \$21.10 (USD) per passenger arrival and departure applies.
- US Agriculture Fee: The US government charges an agriculture inspection fee on all in-bound passengers of \$3.96 USD.
- US Immigration User Fee: For all transborder flights arriving in US, there is an Immigration User Fee of \$7.00 USD charged per passenger.
- US Sep 11th Security Fee: For all transborder flights departing the US, there is a Sep 11th Security Fee of \$5.60 USD charged per passenger.
- US Customs Processing Fee: For all transborder flights arriving in US, there is a US Customs User Fee of \$6.11 USD charged per passenger
- US Segment Tax: For all transborder flights, a US Segment Tax of \$4.50 USD is applied per passenger for US citizens. The US segment tax is also charged to US citizens on Canadian domestic flights if travel occurs in the US buffer zone near the border between the two countries
- US Transportation Tax: For all transborder flights, a US Transportation Tax is applied. For US citizens, it is 7.5% of the base ticket price (including surcharges) per



Province	Harmonized Sales Tax (HST)
Ontario	13%
Nova Scotia	15%
New Brunswick	15%
Prince Edward Island	15%
Newfoundland and Labrador	15%

- Quebec Sales Tax (“QST”): QST applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights commencing in Quebec.

Lynx Travel Vouchers

Unless otherwise specified, Lynx travel vouchers are valid for 12 months. Travel vouchers are non-transferable and can only be redeemed by the primary passenger on the booking. The owner of the travel voucher can use their voucher to book a flight for a third party. Travel vouchers can be applied towards base fare, taxes and fees.

Identification Requirements

Travel Within Canada

- a. All adult passengers must bring 1 valid (non-expired) identification document issued by a Canadian federal, provincial or territorial government that includes:
 - i. Photo
 - ii. Full name
 - iii. Date of birth
 - iv. Gender



documents must include:

- i. Full name
- ii. Date of birth
- iii. Gender

c. For more information on identification requirements, click [Canada - Domestic Air Travel Identification page](#) and [Transport Security Administration Identification page](#). For more information on identification requirements for children, click [Travelling with children and infants](#).

International Travel

- a. Adults, children and infants are required to have a valid passport for international travel.
- b. Each country may have specific travel document requirements, vaccination requirements or health protocols. It is the responsibility of each passenger to ensure they have the necessary documents for travel. Always travel with the proper documentation at all times when travelling.
- c. Please visit the U.S. Department of State for more information on requirements for travel to the United States. [Travel \(state.gov\)](#)

Check-in Guidelines

We recommend you arrive at the airport a minimum of 90 minutes before your scheduled departure time for domestic flights, and a minimum of 120 minutes before your scheduled departure time for international flights. If you'd rather check-in at the airport, please arrive 3 hours before your flight. Check-in and baggage drop-off closes 45 minutes prior to departure for domestic flights and 75 minutes prior to departure for international.

All security restrictions are subject to change. For the most up-to-date information, visit [tc.gc.ca](#), [catsa.gc.ca](#) or [tsa.gov](#).

Information Collection and Disclosure



destination, Canadian government authorities may require us to collect passenger information such as your full name, date of birth, citizenship, gender, passport number and country of issuance, payment method for flight purchase and booking details, as well as any other personal information as described by this policy or as required by such government authority.

Privacy Policy

Lynx is dedicated to protecting your personal information. Our privacy policy conforms with the Personal Information Protection and Electronic Documents Act. Additional information is available in [Privacy Policy](#).

Rules of Carriage and Baggage Information

Carriage of passengers and goods on domestic flights, i.e., between, from and to points wholly within Canada, is subject to the applicable tariffs, conditions of carriage and related regulations available at the office of the carrier and [baggage](#).

Checked Baggage Allowance

Checked baggage is subject to weight and size restrictions. Fees apply for each piece of baggage and may be combined. For example, if you check in 2 bags and both are overweight, you'll be charged 2 overweight fees. For more information visit: [Baggage Information | Lynx Air \(flylynx.com\)](#)

Checked baggage size

- Baggage may be up to 157cm (62") in combined dimensions (length + width + height) and weigh up to 23kg (50lbs).
- Oversized baggage (combined dimensions up to 203cm or 80") is accepted on a space-available basis.
- Overweight baggage (more than 23kg or 50lbs but not exceeding 45kg or 100lbs) is accepted on a space-available basis.
- For more information: [Baggage Information | Lynx Air \(flylynx.com\)](#)

Musical instruments



50lbs but not exceeding 45kg or 100lbs) and are subject to overweight fees.

Carry-on Baggage Allowance

Carry-on baggage is subject to a fee and must be stored in the overhead bin or placed under the seat directly in front of each passenger.

Each passenger may bring 1 carry-on item and 1 personal item. Each item must fit into the sizing devices and may not exceed the applicable measurements. This applies for both personal and carry-on items.

- Carry-on item: Maximum size of 23cm x 40cm x 55cm (9" x 15.75" x 21.5") and 10kg (22lbs). Carry-on fees apply.
- Personal item: Maximum size of 15cm x 33cm x 43cm (6" x 13" x 17"). Items that don't fit into the sizing device will be placed in checked baggage and charged a checked baggage fee.

Musical instruments

The combined length, width and height of the instrument (including the case) must be less than 113cm (45"). Instruments this size are considered carry-on and subject to carry-on fees. Musical instruments that don't meet the carry-on size criteria will have to be checked and follow the weight limits and fees for checked bags.

Can I bring this on a plane?

For travel within Canada, visit catsa.gc.ca for permitted and non-permitted items or call 1-800-O-Canada for more information. For travel to or from the United States, visit tsa.gov.

Baggage Loss or Damage

For carriage of baggage on domestic flights, Lynx's liability is limited to 1,131 Special Drawing Rights (SDRs) per person per incident, except for mobility aids.

Any complaint of any loss or damage to luggage must be in writing and must be made within 7 days of your flight.



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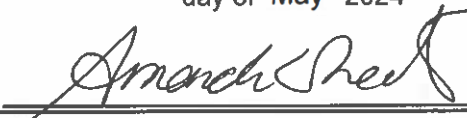
[Travel Advisory](#)

[Pets in Cabin](#)

[Terms of use](#) | [Privacy policy](#) | [Tariff \(Domestic\)](#) | [Tariff \(Transborder\)](#) | [U.S. Tarmac Delay Plan](#) | [U.S. Customer Service Plan](#) | [International Tariff \(Mexico\)](#) | [Mexico Compensation Policy](#)

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This is **Exhibit "D"** referred to in the Affidavit of Diana Vuong, affirmed before me at City of Vancouver, in the Province of British Columbia, this 23rd day of May 2024

A handwritten signature in black ink, appearing to read "Amanda Wheat", written over a horizontal line.

Amanda Wheat
BARRISTER AND SOLICITOR
A Notary Public in and for British Columbia

AIRPORT USE LICENCE

between

VANCOUVER AIRPORT AUTHORITY

and

1263343 ALBERTA INC. dba LYNX AIR

Licence No.:	YVR-TM-4946
Date of Licence:	Dated for reference October 15, 2021
Description:	The non-exclusive right to operate an Air Carrier Business at the Vancouver International Airport
Commencement Date:	November 16, 2021
Length of Term:	1 year, 1 month and 15 days (ending December 31, 2022)
Renewal:	1 x 3 Years (ending December 31, 2025) 1 x 5 Years

NOTES

AMENDMENTS

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EXECUTION OF LICENCE

SCHEDULE A	INSURANCE
SCHEDULE B	HEAD LEASE PROVISIONS
SCHEDULE C	ENVIRONMENTAL PROVISIONS OF THE HEAD LEASE
SCHEDULE D	PRECLEARANCE FACILITY
SCHEDULE E	BUSINESS PRINCIPLES
SCHEDULE F	OPERATION OF AIRPORT LANDS PROVISION OF THE HEAD LEASE

THIS AIRPORT USE LICENCE (this “Licence”) made as at October 15, 2021

BETWEEN:

VANCOUVER AIRPORT AUTHORITY,
P.O. Box 44638, YVR Domestic Terminal RPO
Richmond, B.C., V7B 1W2

(hereinafter called the “**Licensor**”)

OF THE FIRST PART

AND:

1263343 ALBERTA INC. dba LYNX AIR
123, 1440 Aviation Park, N.E.
Calgary, AB T2E 7E2

(hereinafter called the “**Licensee**”)

OF THE SECOND PART

WHEREAS:

- A. The Licensor manages and operates the Airport in the Province of British Columbia, Canada;
- B. The Licensee is an Air Carrier and desires to operate an Air Carrier Business at the Airport and to use, in common with others, the Licensor's Facilities; and
- C. The Licensor agrees to grant a licence to the Licensee to operate at the Airport on the terms and conditions set forth in this Licence.

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the parties hereto covenant and agree each with the other as follows:

ARTICLE 1- DEFINITIONS

In this Licence:

“**Affiliated Airline**” means any airline that is wholly owned by the Licensee.

“**Air Carrier**” means an air carrier providing commercial air transportation services to the routes it is serving to and from the Airport.

“**Air Carrier Business**” means the carriage and transportation by air of passengers, baggage, mail and cargo and as further described in Section 2.01.

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“**Air Transport Agreement**” has the meaning ascribed to it in Section 13.14.

“**Airline Consultative Committee**” means the representative body of the Air Carriers as acknowledged by the Licensor.

“**Airport**” means the Vancouver International Airport at Sea Island in the Province of British Columbia.

“**Airport Lands**” means the lands, buildings, improvements, facilities and equipment leased to the Licensor by the Crown pursuant to the Head Lease, including the Licensor's Facilities, that are not subleased for exclusive use.

“**Airside**” means that part of the Airport Lands inside the perimeter fences (which mark the restricted area as defined in the Canadian Aviation Security Regulations, 2012), but does not include areas within buildings.

“**Approving Authority**” means a Person or entity designated, from time to time, by the Licensor for the purpose of issuing Facility Permits.

“**Approving Authority's Land Development and Construction By-Law or Policies**” means the standard policies of the Approving Authority for the issuing of Facility Permits and other matters relating to land development and construction created either before or after the date of this Licence as a by-law or as policies of the Approving Authority, all as amended from time to time and together with all Rules and Regulations referred to therein.

“**Apron Staging Areas**” means the areas and staging facilities at the Airport that the Licensor designates for the common use of Air Carriers and others from time to time for the temporary staging of vehicles and equipment used to facilitate loading, unloading, servicing and maintenance of aircraft.

“**Business Principles**” means the principles established from time to time by the Licensor, in consultation with Air Carriers, on the efficient, orderly and equitable use of the Airport, a copy of which is annexed hereto as Schedule E.

“**Chicago Convention**” means the Convention on International Civil Aviation signed at Chicago on December 7, 1944.

“**Crown**” means Her Majesty the Queen, in right of Canada, represented by the Minister of Transport and Her successors and assigns, and in any section of this Licence that contains a release, hold harmless, indemnity or other exculpatory language in favour of the Crown, the term “Crown” also means any department of the Government of Canada, any Minister of the Crown, any officers, servants, employees, agents or contractors of the Crown and any other Person for whom the Crown may be responsible in law and any Person who has a right of contribution as against the Crown.

“Domestic Terminal Building” means the Licensor's domestic terminal building erected at the Airport and any future terminal building(s) handling domestic traffic.

“Environmental Adverse Effect” means one or more of the following in connection with an Environmental Matter:

- (i) impairment or adverse alteration of the quality of the Natural Environment for any use that can be made of it by humans, or by any animal, fish or plant;
- (ii) injury or damage to property or to water or air quality or food, plant or animal life;
- (iii) harm or material discomfort to any Person;
- (iv) an adverse effect on the health of any Person;
- (v) impairment of the safety of any Person;
- (vi) impairment or adverse alteration rendering any property or water or air quality or food, plant or animal life unfit for human use;
- (vii) non-compliance with applicable Environmental Laws and Regulations;
- (viii) material loss of enjoyment of normal use of property; and
- (ix) material interference with the normal conduct of business.

“Environmental Laws and Regulations” means all applicable environmental, health and safety laws, regulations, permits and orders of any governmental authority having jurisdiction and all common law applicable to the Licensee or any of its assets in connection with the Licensee's operations at the Airport, including:

- (i) all applicable laws, regulations, orders, permits and other similar documents and instruments of all courts and governmental authorities having jurisdiction relating to the environment whether issued by environmental or health and safety regulatory agencies or otherwise; and
- (ii) all applicable laws, regulations and orders relating to Environmental Matters.

“Environmental Matter” means any present or future activity, event or circumstances in respect of the environment, health or safety including the release, escape, leaking, disposal or migration of any toxic, hazardous or special waste or dangerous goods, pollutant or contaminant into the Natural Environment including any substance which is hazardous to Persons, animals, plants, or which has a detrimental effect on the soil, air or water, or the generation, treatment, storage, use, manufacture, holding, collection, processing, treatment, presence, transportation or disposal of any

toxic, hazardous or special wastes or other chemical substances or dangerous goods, pollutant or contaminant.

“**Facility Permit**” means the Approving Authority's written authority which may be granted to the Licensee upon application and payment of the Approving Authority's current fee, as set forth in the Licensor's Tariff of Fees and Charges, to conduct alterations, new construction or installation of equipment, all in accordance with guidelines which may be issued, from time to time, by the Approving Authority, and in accordance with the Approving Authority's Land Development and Construction By-Law or Policies.

“**Fees**” means any monies or amounts payable under this Licence.

“**Force Majeure**” means an event beyond the reasonable control and not attributable to the negligence of the affected party which renders continued performance by such party of all or part of its obligations pursuant to this Licence, impossible, commercially unreasonable or illegal (but shall not include delays or inability to perform caused by the financial inability of such Party) including without limitation strike, lockout, riot, insurrection, war, fire, tempest, act of God , or serious accident, provided that the party so delayed shall forthwith notify the other party upon becoming aware of the commencement of a “Force Majeure”.

“**Head Lease**” means the lease agreement in writing dated June 30, 1992, made between Her Majesty the Queen, in right of Canada, represented therein by the Minister of Transport as Lessor, and the Vancouver Airport Authority, as Lessee and registered in the New Westminster Land Title office under No. BF247009, as may be amended from time to time.

“**Insurance**” means any insurance which is required by this Licence to be carried by the Licensee.

“**International Terminal Building**” means the Licensor's international terminal building at the Airport and any future terminal building(s) handling international or trans-border traffic.

“**Lease**” means any lease entered into between the Licensor and the Licensee for premises in the Terminal Building that is in force and effect.

“**Licence**” means this Licence, including any schedules and/or attachments hereto annexed, and any amendments to such Licence as may be made from time to time in accordance with the provisions hereof.

“**Licensed Service**” means, where the Licensor at any time regulates, restricts or licenses any activity at the Airport, a contractor or supplier who is approved or authorized or licensed by the Licensor for that activity at the Airport.

“**Licensee**” means the party or parties of the second part as above designated or described and includes any of its or their successors or permitted assigns, and, in any section of this Licence that contains a release, hold harmless, indemnity or other exculpatory language in favour of the Licensee, the term “Licensee” also means any directors, officers, servants, employees, agents or

contractors of the Licensee and any other Person for whom the Licensee may be responsible in law and any Person who has a right of contribution as against the Licensee.

“**Licensee’s Aircraft**” means aircraft operated by the Licensee.

“**Licensee Family Carrier**” means (i) an Affiliated Airline; (ii) a third party Air Carrier with whom Licensee has a capacity purchase agreement for the operation of Licensee or a Licensee Affiliated Airline flights, operating under a same trade name of the Licensee or of its Affiliated Airline, or operating under the designator code of the Licensee or a Licensee Affiliated Airline, provided that the foregoing is limited to aircraft movements of that third party for which Licensee has purchased one hundred (100%) percent of the seats of that aircraft movement; (iii) any airline flying under its own livery, where all seats are being sold in the name of the Licensee; or (iv) a Sister Airline.

“**Licensee’s Statistics**” has the meaning ascribed to it in Section 4.03(a).

“**Licensor**” means the Vancouver Airport Authority and includes any of its successors or assigns, and, in any section of this Licence that contains a release, hold harmless, indemnity or other exculpatory language in favour of the Licensor, the term “Licensor” also means any directors, officers, servants, employees, agents or contractors of the Licensor and any other Person for whom the Licensor may be responsible in law and any Person who has a right of contribution as against the Licensor.

“**Licensor's Bank**” means the Canadian Imperial Bank of Commerce or such other financial institution as the Licensor may, from time to time, designate.

“**Licensor's Facilities**” means those current and future facilities, improvements and equipment owned by the Licensor, including but not limited to the Licensor's runways, taxiways, apron, navigational aids, other common use landing field facilities, the Apron Staging Areas, the common areas of the Terminal Building, in-bound and out-bound baggage systems, ticketing and check-in counters, Canadian Inspection Services, Preclearance Facility, transit without visa facilities, de-icing facilities, flight, baggage and ramp information displays, hold-rooms, passenger loading bridges, public address systems and transfer counters, that are not leased or licensed for exclusive use and that are designated by the Licensor, from time to time, to be for the common use of Air Carriers and others.

“**Natural Environment**” means the air, land, subsoil, surface water, ground water, marine water or any combination or part thereof.

“**Non-Signatory Air Carrier**” means any air carrier that has not entered into a contract with the Licensor in form and substance similar to the terms and conditions of this Licence.

“**Occupational Health and Safety Laws and Regulations**” means all applicable occupational health and safety laws, regulations, treaties, resolutions, ordinances, guidelines, policies, codes of practice, requirements, directions, authorizations, permits and orders of any governmental

authority having jurisdiction and all common law applicable to the Licensee or any of its assets in connection with the Licensee's operations at the Airport.

“**Period**” means a twelve month period beginning January 1 and ending December 31.

“**Person**” includes any individual, company, corporation, incorporated or unincorporated association, co-tenancy, joint venture, syndicate, fiduciary, partnership, firm, estate, trust, sole proprietorship, government or government agency, board, commission or authority, organization or any other form of entity however designated or constituted.

“**Preclearance Facility**” means those current (as more specifically shown in Schedule D hereto annexed) and future portions of the Terminal Building constructed by the Licensor for the purpose of clearing through the Airport an Air Carrier's passengers (such services including but not being limited to customs and immigration) travelling by air to the United States of America or any other international destination.

“**Preferential Use Principles**” means the principles established by the Licensor, in consultation with Air Carriers, which provide that in the allocation of the Licensor's Facilities, consideration will be given to operating efficiencies, passenger experience and service levels, Air Carrier strategic alliances and connecting passenger flows.

“**Prime Rate**” means the rate of interest expressed as an annual rate established from time to time by the Licensor's Bank as the interest rate charged by it on demand loans made in Canada in Canadian currency to its most credit-worthy commercial customers, and referred to by the Licensor's Bank as its prime rate; the certificate of an officer of the Licensor's Bank as to the Prime Rate for any specified day shall be in the absence of manifest error, conclusive evidence thereof.

“**Recoverable Costs**” has the meaning ascribed to it in Section 4.02.

“**Safety Management System**” means a coordinated process for the continual improvement around safety, including but not limited to identifying and reporting hazards investigating trends to determine root causes, assessing and applying solutions, and following up with inspections and auditors to ensure the hazard is reduced.

“**Sister Airline**” means any Air Carrier that is wholly owned by the same legal entity that wholly owns the Licensee.

“**Tariff of Fees and Charges**” means the Licensor's tariff of fees and charges as amended by the Licensor from time to time.

“**Terminal Building**” means the Licensor's Domestic Terminal Building and International Terminal Building, and any terminal building(s) handling passenger traffic that the Licensor may erect in the future.

ARTICLE 2 - PURPOSE**2.01 Privileges**

Provided that the Licensee pays all monies due under this Licence and performs the covenants in accordance with the terms and conditions herein on its part contained, the Licensor hereby grants to the Licensee the non-exclusive right, licence, liberty and privilege (hereinafter called the "Privileges") to:

- (a) operate an Air Carrier Business at the Airport and conduct, in connection therewith, any of the following activities:
 - (i) land, take-off, taxi, tow and park Licensee's Aircraft for its Air Carrier Business;
 - (ii) enplane and deplane passengers, baggage, mail and cargo onto and off of Licensee's Aircraft by itself or by a Licensed Service;
 - (iii) clean, service, repair and maintain Licensee's Aircraft by itself or by a Licensed Service;
 - (iv) de-ice Licensee's Aircraft in accordance with an approved de-icing fluid mitigation plan by a Licensed Service;
 - (v) fuel and defuel Licensee's Aircraft by a Licensed Service only;
 - (vi) take delivery onto Licensee's Aircraft of duty-free and tax-free goods, and goods and services intended for in-flight use from a Licensed Service;
 - (vii) sell air transportation tickets and services for the carriage of Persons, property and mail, including all activities necessary or incidental to such operations;
 - (viii) train at the Airport personnel in the employ of, or to be employed by the Licensee, and test aircraft and other equipment being utilized on the Airport Lands in the operation of its Air Carrier Business;
 - (ix) transport the Licensee's passengers needing or requesting assistance by wheelchairs, electrical motor vehicles or other means within the Terminal Building, by itself or by a Licensed Service;
 - (x) provide any activities and services approved by the Licensor acting reasonably; and
- (b) provide passenger, baggage, aircraft maintenance, mail and cargo handling services to other Air Carriers at the Airport provided the Licensee is a Licensed Service with respect to such services at the Airport. For greater clarity, if any of these services are performed:

-
- (i) on an ad-hoc basis where a Licensed Service is not available, or
 - (ii) on an urgent basis (irrespective of whether a Licensed Service is available),
- the Licensee is not required to be a Licensed Service.

The Licensee acknowledges and agrees that it shall make commercially reasonable efforts to exercise the Privileges in the spirit of the Business Principles, as they relate to the use of the Airport, and as may be applicable to the Licensee. For greater clarity, the Parties agree that the sections of the Business Principles which automatically will not apply to the Licensee are those which touch upon:

- (a) design, maintenance and operation of the Airport; or
- (b) customer care principles which refer to pricing and which may be in conflict with the Licensee's customer care training programs.

2.02 Use of Licensor's Facilities

For the purpose of exercising the Privileges, the Licensor grants to the Licensee:

- (a) the right to use in common with others, those portions of the Licensor's Facilities that the Licensor designates for use by the Licensee from time to time, provided that the assignment of any area or facilities shall not constitute any pre-emptive or exclusive right to the areas or facilities designated; and
- (b) the right of ingress, passage and egress by the Licensee and its agents, customers, employees, invitees, licensees and servants, over or on streets, roads and paths on Airport Lands, as made necessary by the Licensee's operations, provided that the right herein defined shall not be exercised in such manner and to such extent as to impede or interfere with the operation of the Airport by the Licensor, its tenants, licensees or others.

2.03 Prohibitions

The Licensee shall not use, and is specifically prohibited from using this Licence to:

- (a) conduct a business other than an Air Carrier Business on or about the Airport Lands, except as provided in this Licence or a separate agreement with the Licensor;
- (b) promote, offer, supply, sell or give away any duty-free or tax-free goods on or about the Airport Lands;
- (c) promote, offer, supply, sell or give away any goods or services on or about the Airport Lands, except as provided in this Licence or a separate agreement with the Licensor;

-
- (d) construct, erect, place or install any advertising sign or display on or about the Airport Lands except through a Licensed Service; or
 - (e) conduct promotions or distribute any promotional materials on or about the Airport Lands without the consent of the Licensor, which consent will not be unreasonably conditioned, withheld or delayed.

2.04 Rights Reserved

All rights not expressly granted to the Licensee are hereby reserved to the Licensor. Without in any way limiting its rights hereunder, or its rights as an airport operator, the Licensor reserves the right to amend the Privileges and the right to impose reasonable Fees if the Crown relinquishes responsibility for providing any services, including but not limited to air traffic, ramp control, or other aeronautical activities, or policing and security resulting in costs to the Licensor. The Licensor also reserves the right to impose, following discussions with Air Carriers on the orderly, efficient and equitable use of the Airport, additional Fees for the misuse or inefficient use of the Licensor's Facilities.

ARTICLE 3 - TERM

3.01 Length of Term

The term of this Licence shall be for a period beginning on November 16, 2021 and ending on December 31, 2022, subject to renewal as set out in Section 3.04.

3.02 Continued Operations

If the Licensee continues to exercise its Privileges after the end of the term of this Licence without the execution and delivery of a new licence or written renewal or extension of this Licence, then:

- (a) the Licensee will be considered to be exercising its Privileges on a month-to-month basis at the sufferance of the Licensor; and
- (b) the consideration for such use shall be equal to any Fees payable under this Licence during the final year of this Licence plus an additional Fee of ten (10%) percent, PROVIDED THAT such additional Fee shall not be payable where the Licensor has specifically consented to the continuation of operations by the Licensee without a written licence and such continued operations are not, in the opinion of the Licensor, acting reasonably, due to the unreasonable delay by the Licensee in negotiating a replacement licence or in ceasing operations at the Airport.

It is expressly agreed that neither the acceptance of any consideration during such period of continued operations nor the operation of any implied condition, nor any implication of law, shall be construed or shall operate so as to renew this Licence, and during such period of continued

operations, the parties shall be subject to the covenants and conditions herein contained except as to length of term and consideration.

3.03 Cancellation

- (a) If, during the term of this Licence, the Licensee terminates its Air Carrier Business at the Airport, then, this Licence may be terminated at any time by either party by giving thirty (30) days' notice to the other party.
- (b) Except in those cases where the Licensee is negotiating in good faith with the Licensor for a replacement Licence, if the Licensee is continuing operations without a written licence as described in Section 3.02 then such continuation of operations may be terminated at any time by either party by giving thirty (30) days' notice to the other party.

3.04 Renewal

- (a) If at the end of the term of this Licence the Licensee has performed all the Licensee's covenants and is not in default under any of the terms of this Licence or the Lease and no notice has been given pursuant to Section 3.05, then this Licence shall be automatically renewed for a renewal term of three (3) years (the "First Renewal Term") upon the same terms and conditions as contained in this Licence except as contained in this right of renewal. The First Renewal Term shall commence on the day immediately succeeding the last day of the term of this Licence and shall end at midnight on the day immediately preceding the third anniversary of the first day of the First Renewal Term, unless sooner terminated in accordance with the provisions of this Licence. The parties shall not be required to execute any document to give effect to this Section 3.04(a).
- (b) If at the end of the First Renewal Term the Licensee has performed all the Licensee's covenants and is not in default under any of the terms of this Licence or the Lease and no notice has been given pursuant to Section 3.05, then this Licence shall be automatically renewed for a renewal term of five (5) years, (the "Second Renewal Term") upon the same terms and conditions as contained in this Licence except as contained in this right of renewal. The Second Renewal Term shall commence on the day immediately succeeding the last day of the First Renewal Term of this Licence and shall end at midnight on the day immediately preceding the fifth anniversary of the first day of the Second Renewal Term, unless sooner terminated in accordance with the provisions of this Licence. The parties shall not be required to execute any document to give effect to this Section 3.04(b).

3.05 Review of Terms of Licence

- (a) The Licensor and the Licensee acknowledge and agree that the Airline Consultative Committee shall, for the purposes of discussion and re-negotiation of the terms of this Licence, act as the representative of all licensees operating an Air Carrier Business at the Airport. The Licensee hereby appoints and authorizes the Airline Consultative Committee to act as its representative for such purposes and to reach such agreements with the Licensor

as the Airline Consultative Committee deems appropriate. Without limiting the scope and authority of the Airline Consultative Committee's right to act as the Licensee's representative pursuant to this Section 3.05, the Licensee may discuss specific terms of the License with the Licensor independent of the Airline Consultative Committee. The Airline Consultative Committee has internally established "*Terms of Reference*" which outline the roles, responsibilities and governance of the Airline Consultative Committee.

- (b) If either of the Licensor or the Airline Consultative Committee (hereinafter called the "Negotiating Parties") wish to discuss or re-negotiate any of the terms of this Licence, the Negotiating Party wishing to discuss or re-negotiate terms shall give the other Negotiating Party detailed written notice not later than six (6) months prior to the last day of the term or any renewal term of this Licence. The Negotiating Parties shall immediately commence discussions or negotiations as to the disposition of the matters raised in such notice.
- (c) The Licensor and the Licensee agree that there will be no automatic renewal of this Licence as set out in Section 3.04 if notice has been given pursuant to Section 3.05(b).
- (d) The Licensor and the Licensee agree that once the Negotiating Parties have agreed as to the disposition of the matters raised in a notice given pursuant to Section 3.05(b), the Licensor and Licensee shall, provided the Licensee has performed all the Licensee's covenants and is not in default under any of the terms of this Licence or the Lease, execute such agreement as is necessary to give effect to the terms settled pursuant to the provisions of Section 3.05(b) and to renew this Licence for such renewal term as would have been granted pursuant to the provisions of 3.04(a) or 3.04(b) if notice had not been given pursuant to Section 3.05(b).

ARTICLE 4 – CONSIDERATION

4.01 Tariff of Fees and Charges

- (a) The Licensee covenants and agrees to pay to the Licensor, on demand, or as the same otherwise fall due, all applicable Fees specified from time to time by the Licensor in the Tariff of Fees and Charges on two (2) months' notice to the Licensee.
- (b) The Licensee covenants and agrees that all of the Licensee's international and trans-border flights will use the International Terminal Building unless prior written consent is obtained from the Licensor, or unless the Licensor directs the Licensee to use other facilities for temporary, emergency or security reasons. In any case, the Licensee agrees to pay all Fees levied in the International Terminal Building for international and trans-border flights, whether or not the international terminal is used.
- (c) The methodology for setting the fees and charges referred to in Section 4.01(a) shall be in accordance with the obligations set forth in the Chicago Convention and the Air Transport Agreement.

- (d) The methodology for setting the fees and charges referred to in Section 4.01(a) shall, in the case of Licensee, account for all Air Carrier Business operated by a Licensee Family Carrier.
- (e) The Licensee shall have the ability to pay to the Licensor, on behalf of any Licensee Family Carrier, all applicable Aeronautical Fees related to the Air Carrier Business conducted by such Licensee Family Carrier provided that the Licensee guarantee the payment of such fees related to such Licensee Family Carrier and execute the Licensor's form of guarantee and execute the Licensor's form of supplemental agreement, which shall also be signed by the Licensee Family Carrier.
- (f) The Licensee shall deliver to the Licensor evidence from time to time, at the Licensor's request, of its Licensee Family Carrier relationships. The Licensee shall immediately notify the Licensor of any changes in its Licensee Family carrier relationships.

4.02 Cost Recovery

The Parties acknowledge and agree that the Fees required to be paid by the Licensee to the Licensor pursuant to Section 4.01 herein are intended to allow the Licensor to recover, in aggregate with the corresponding fees collected from all Air Carriers using the Licensor's Facilities, up to one hundred percent (100%) of the Licensor's reasonable costs and expenses (including, without limitation, amortized capital costs (including principal and interest) and payments under the Head Lease) (hereinafter called the "Recoverable Costs") of maintaining and operating the Licensor's Facilities to which those fees apply.

4.03 Disclosure of Statistics

- (a) The Licensee covenants that it will, without expense to the Licensor, make and keep detailed, true and accurate summaries of records of all the Licensee's aircraft, passenger and cargo activities at the Airport with separate records for each Non-Signatory Air Carrier processed by the Licensee at the Airport, detailing the following (hereinafter called the "Licensee's Statistics"):
 - (i) The numbers of enplaned and deplaned and in-transit/connecting passengers (both revenue and non-revenue) and, to the extent that such data is available, the total weight of baggage, mail and cargo;
 - (ii) Total number of aircraft landings and Maximum Certificated Take-Off Weight (MCTOW) of the Licensee's Aircraft and the number of seats on each aircraft;
 - (iii) Total number of aircraft arrivals at the Domestic Terminal Building and the International Terminal Building;
 - (iv) Total number and weight of loaded and unloaded and in-transit mail and cargo carried by the Licensee's freighter operations at the Airport, by sub-sector.

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- (b) The Licensee shall maintain and present the statistics set out in Sub-section 4.03(a) above by terminal building (Domestic Terminal Building and International Terminal Building); and sub-sector (domestic, transborder, international and connecting).
- (c) The Licensee shall in each and every month during each and every Period prepare, in the forms and in the means (e.g. electronic format) requested by the Licensor, a written or electronic report of the Licensee's Statistics for the month in a manner that aggregates each category of statistics on a per month basis. The Licensee shall deliver the report to the Licensor within ten business (10) days after the end of such month.
- (d) The Licensor acknowledges that the Licensee's Statistics are confidential information and agrees not to disclose the Licensee's Statistics to any third party except as combined in the aggregate, by sub-sector, of the non-identifiable statistics of all Air Carriers. It is acknowledged and agreed that the Licensor may share such non-identifiable information with the duty-free operator(s) at the Airport to the extent required by the duty-free operator(s) for its operating plans, provided that the duty-free operator(s) signs a non-disclosure agreement in a form acceptable to the Licensor. It is further acknowledged and agreed that statistics obtained by the Licensor through the public domain or through other legal means shall not be subject to the confidentiality provisions set out in this Section 4.03(d).

4.04 Audit and Inspection

The Licensor, by accepting any statement as submitted by the Licensee under Section 4.03 or any payment made thereon, shall not be deemed to have waived any of its rights hereunder and the Licensor shall be entitled at any time at its own expense to have the records relating to the Licensee's Statistics audited by a nominee of the Licensor. Subject to reasonable notice, the Licensee's books and records relating to the Licensee's Statistics shall be open for examination and audit, and for taking extracts therefrom, during business hours by an appointed nominee of the Licensor. The cost of any audit performed pursuant to this clause shall be borne by the Licensor, PROVIDED HOWEVER, that should the result of such audit reveal a discrepancy of more than five percent (5%) between that reported and that recorded, then the full cost of such audit shall be borne by the Licensee.

4.05 Statement

After the end of each calendar year, the Licensor shall furnish to the Licensee a statement showing in reasonable detail, by each fee type specified in the Tariff of Fees and Charges, the actual Recoverable Costs for the preceding calendar year. The statement shall reconcile such actual Recoverable Costs to the aggregate amounts paid by Air Carriers to the Licensor during the preceding calendar year. In the event that the aggregate payments made during the preceding calendar year by the Air Carriers represent an amount greater than one hundred percent (100%) of Recoverable Costs, the Licensor shall credit to the Air Carriers, without interest, such overpayment within thirty (30) days of the date of delivery of the statement.

4.06 Payments Generally

All payments by the Licensee to the Licensor of whatsoever nature required or contemplated by this Licence shall be:

- (a) paid in lawful currency of Canada;
- (b) made, when due under this Licence, without prior demand therefor and without any set-off, compensation or deduction whatsoever, at the office of the Licensor at the Airport or such other place as the Licensor may designate from time to time in writing to the Licensee;
- (c) applied towards amounts then outstanding under this Licence, in such manner as the Licensor may see fit;
- (d) deemed to be Fees, in partial consideration for which this Licence has been entered into, and shall be payable as Fees, such that the Licensor shall have all rights and remedies against the Licensee for default in making any such payment which may not be expressly said to be Fees as the Licensor has for default in payment of Fees; and
- (e) subject to an overdue charge if any such payment is not made when due, which charge shall be additional Fees equal to the Prime Rate plus twelve percent (12%) per annum of the overdue amount payable with the next instalment of Fees, all without prejudice to any other right or remedy of the Licensor.

4.07 Payment of Taxes

- (a) The Licensee shall pay or cause to be paid all taxes, levies and charges imposed or assessed by any governmental or other taxing authority having jurisdiction over the Licensee or its operations at the Airport.
- (b) The Licensee may, in good faith, contest the applicability of any taxes imposed by any governmental or other taxing authority but shall not do or omit to do anything which will in any way subject the Licensor's property to seizure or encumbrance. The Licensor will, if requested by the Licensee, assist the Licensee at the Licensee's expense in contesting the applicability of any taxes, unless the Licensor is of the opinion that to do so would be detrimental to the Licensor.

ARTICLE 5 - FORCE MAJEURE

- (a) Whenever and to the extent that either party is bona fide unable to fulfil or is delayed or restricted in fulfilling any of its obligations under this Licence by an event of Force Majeure, such party shall be relieved from the fulfilment of the part of its obligations affected by Force Majeure for the duration of such event of Force Majeure.

- (b) Notwithstanding an event of Force Majeure, the party affected shall proceed with the performance of its obligations not thereby affected.
- (c) The provisions of this Article shall not operate to excuse the Licensee from the payment of any Fees, the provision of or payment for any Insurance or any other obligation to pay money.

ARTICLE 6 - CONDUCT OF BUSINESS

6.01 Compliance with Laws

The Licensee shall carry on and conduct its business on the Airport Lands in such manner as to comply with any and all applicable statutes, by-laws, rules and regulations of any federal, provincial, municipal or other competent authority having jurisdiction for the time being in force, and shall not do anything upon the Airport Lands in contravention thereof.

6.02 Rules and Regulations

Notwithstanding any reference in this Licence to specific statutes, regulations and reasonable directives, procedures, standards, rules, policies, programs, and guidelines, the Licensee shall:

- (a) comply and shall cause its directors, officers, employees and agents to comply with all applicable statutes and regulations and all reasonable directives, procedures, by-laws, standards, rules, policies, programs, and guidelines in force at the Airport as they may exist from time to time, and
- (b) make commercially reasonable efforts to act in the spirit of the Business Principles, as may be applicable to the Licensee.

6.03 Use In Common

The parties hereto acknowledge and agree that:

- (a) the Licensor's Facilities are designed and intended for the use in common by the Licensee, all Air Carriers and other parties designated from time to time by the Licensor;
- (b) the Licensor may grant permission from time to time and at any time to any Air Carrier or other party designated by the Licensor for the use thereof; and
- (c) no portion of the Licensor's Facilities is reserved or intended to be reserved for the exclusive use of the Licensee.

6.04 Participation in Committees

The Licensee shall participate in the Airline Consultative Committee and other such meetings, including but not limited to the Airline Operations Committee, Ramp Operators Committee, Annual Chief Pilots Meeting, Annual Winter Operations Briefing, International Passenger Working Group, Transborder Passenger Working Group, Domestic Passenger Working Group, Passenger Loading Bridge Working Group and such other committees established by the Licensor from time to time. It is understood that the Licensee will make commercially reasonable efforts to attend such meetings and attendance may be in the form of physical presence or by telephone conference, as may be applicable to the Licensee.

6.05 Safety

In exercising its Privileges the Licensee shall:

- (a) keep the Airside surfaces free and clear of all foreign objects and litter at all times;
- (b) immediately remove its equipment and anything else related to its operation from the Airside surfaces or a portion thereof when directed by the Licensor acting reasonably;
- (c) at all times keep the Licensor's Facilities in a neat, clean and orderly condition, free from litter, debris, refuse, petroleum products or grease that may accumulate thereon as a result of the use of the Licensor's Facilities by its passengers, or its employees, contractors or others servicing and operating its aircraft;
- (d) train and require its employees to abide by and comply with the Licensor's Airside Vehicle Operator's Permit (AVOP) Program and the Licensor's Terminal Traffic Directives/Terminal Electrical Vehicle Operator's Regulations (TEVOP) Program and shall cooperate with the Licensor in airside safety matters and enforcement of the AVOP and TEVOP Programs;
- (e) not engage in or allow any activities which may result in a nuisance or that may cause annoyance to adjoining occupants or any other users of the Airport, the whole as determined by the Licensor, acting reasonably;
- (f) maintain an up-to-date plan establishing its procedures at the Airport for aircraft recovery, communications, passenger, family and friends supporting an emergency situation (the "Emergency Management Plan") that is in accordance with the Licensor's aircraft recovery plan, emergency response and communications plans, policies and procedures, a copy of which will be provided to the Licensor for review within thirty (30) days of the date of execution of this Licence;
- (g) report to the Licensor through SMS all incidents, accidents and injuries at the Airport involving the Licensee's Aircraft, equipment and employees;
- (h) comply with Occupational Health and Safety Laws and Regulations at all times;

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- (i) maintain and comply with an up-to-date Safety Management System that works in conjunction with the Licensor's safety policies and procedures; and
 - (j) work cooperatively with the Licensor to ensure that best practices with respect to occupational health and safety at the Airport are promoted and maintained.

6.06 Fire Prevention

The Licensee, in exercising its Privileges, shall:

- (a) take all reasonable precautions to prevent fire from occurring on or about the Airport Lands; and
- (b) observe and comply with:
 - (i) applicable laws and regulations in force respecting fire prevention at the Airport; and
 - (ii) all instructions given from time to time by the Licensor with respect to fire prevention and extinguishing of fires.

6.07 Environmental Matters

- (a) The Licensee shall conduct its business and affairs on the Airport Lands in a prudent and responsible manner and with all due care and due diligence with respect to Environmental Matters, all in accordance with Environmental Laws and Regulations and in a manner that is consistent with the Licensor's obligations under the Head Lease contained in Schedule C hereto.
- (b) The Licensee shall clean-up any parts of the Airport Lands where the Licensee or any Person for whom the Licensee is responsible, has caused an Environmental Adverse Effect, including, but not limited to, a release of a hazardous substance caused by the seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of toxic, hazardous or special wastes or dangerous goods, into the Natural Environment, with all due care and due diligence.
- (c) The Licensee shall in connection with the Licensee's operations on the Airport Lands comply with all applicable Environmental Laws and Regulations.
- (d) The Licensee shall forthwith notify and provide information to the Licensor concerning any failure of the Licensee to comply with any of the requirements of any Environmental Laws and Regulations in connection with the Licensee's operations on the Airport Lands, or whether the Licensee is the subject of any pending or, to the knowledge of the Licensee after due enquiry, threatened environmental proceeding in connection with the Licensee's operations on the Airport Lands.

- (e) The Licensee shall forthwith notify the Licensor, with written follow-up, of any release of a hazardous substance or if an Environmental Adverse Effect of which it is aware occurs or is threatened relating to the Licensee's operation on the Airport. The Licensee shall forthwith inform any agencies of any release of a hazardous substance or if an Environmental Adverse Effect of which it is aware occurs or is threatened relating to the Licensee's operation on the Airport as required by Environmental Laws and Regulations.
- (f) The Licensee shall, concurrently upon execution of this Licence, have in place an Environmental Management System (EMS) approved by the Licensor which will include a separate environmental emergency response plan, and shall make such amendments as, in the Licensor's reasonable opinion, are from time to time required, and the Licensee shall carry out its operation in accordance with the EMS. The Licensee's EMS policy and procedures shall address, but are not limited to fuel storage and handling; storage, transport, use, handling, containment, clean-up and disposal of hazardous materials and special waste; water quality practice; and waste management.
- (g) In the event that at any time during the term of this Licence there is an Environmental Adverse Effect arising out of the Licensee's operations on or about the Licensor's Facilities and, in the reasonable opinion of the Licensor, it is necessary to take any measures to minimize any damages, expenses, penalties and related fees or costs, arising from such Environmental Adverse Effect, the Licensor, in addition to any other rights and remedies under this Licence, may, upon such prior notice to the Licensee as the Licensor considers reasonable, take all necessary measures to minimize such damages, expenses, penalties and related fees and costs, and to ensure compliance with Environmental Laws and Regulations, all at the Licensee's expense.
- (h) The Licensee shall not discharge or permit to be discharged by any Person for whom the Licensee is responsible or allow to pass into the sewer systems, storm drains or surface drainage facilities on the Airport, any material or substance that may cause an Environmental Adverse Effect.
- (i) Except to the extent caused by the negligence or wilful misconduct of the Licensor or any Person for whom it is in law responsible, the Licensee shall indemnify and hold harmless the Licensor against any and all costs including fines, penalties or administrative costs that may be associated with any Environmental Adverse Effect or breaches of Environmental Laws and Regulations arising out of the Licensee's operations on the Airport Lands (including all of the Licensor's costs of labour, materials and equipment based on cost recovery plus a premium of fifteen percent (15%) as an administrative and overhead charge) and all related costs, damages, fines or penalties of any kind incurred by or assessed or charged to the Licensor arising out of any operations carried out on the Airport Lands by the Licensee or by Persons for whom the Licensee is, at law, responsible, in order to comply with Environmental Laws or Regulations or to remediate Environmental Adverse Effect. The provisions of this Section 6.07 and the indemnity contained herein shall

survive the expiration of this Licence to the extent that the Environmental Adverse Effect or breach of Environmental Laws and Regulations occurred during the term of this Licence.

- (j) Nothing in this Section 6.07 will limit the right of the Licensee to recover its costs of complying with this Section from the Licensor or any other party.

6.08 Corporate Sponsors

The Licensee will cooperate, to the extent commercially practical, with the Licensor's corporate sponsor program as it is implemented from time to time, but cannot guarantee full compliance if there is a conflict with the Licensee's own contractual commitments and internal policies.

6.09 Airport Security

The Licensee acknowledges that the security obligations of the Licensor and the Licensee are established and governed by the Aeronautics Act of Canada and the Canadian Aviation Security Regulations and all security measures and orders made thereunder. The Licensee shall comply with such Act and Regulations and use commercially reasonable efforts to act in the spirit of, and in a manner not inconsistent with, the Business Principles as they relate to airport security, including but not limited to those relating to restricted area passes, passenger escorts, use of courtesy lounges or conference rooms, personnel identification systems and security clearance procedures, and shall pay to the Licensor on demand all Fees levied by the Licensor pursuant to the Licensor's Tariff of Fees and Charges for those security measures.

6.10 Official Languages

The Licensee acknowledges that the English and French language obligations of the Licensor and Licensee are established and governed by the Official Languages Act of Canada and the Official Languages (Communications with and Services to the Public) Regulations. The Licensee shall comply with such Act and Regulations at the Airport.

6.11 Non-Smokers' Health

The Licensee acknowledges that the non-smokers' health obligations of the Licensor and the Licensee are established and governed by the Non-Smokers' Health Act, the Non-Smokers' Health Regulations and any other such applicable legislation with regards to e-cigarettes. The Licensee shall comply with such Act and Regulations and with the Licensor's non-smoking policies and procedures and shall make commercially reasonable efforts to act in the spirit of, and in a manner not inconsistent with, the Business Principles.

6.12 Public Health Standards

The Licensee covenants and agrees to submit to the jurisdiction of the Licensor's public health agency, which shall be Health Canada or such other public health agency as designated by Health Canada.

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6.13 International and Other Wastes

The Licensee covenants and agrees to transport and dispose of international wastes in compliance with applicable federal, provincial and municipal laws and guidelines and to make commercially reasonable efforts to comply with the Licensor's waste reduction, recycling and disposal programs.

6.14 Flight Information Display Systems

Provided that the Licensee's logos and trade-marks meet the Licensor's technical specifications and are in accordance with the Licensor's signage policy and standard, the Licensor agrees to display the Licensee's logos and trade-marks in connection with the operation of electronic display screens at the Airport. For the purposes of this Section 6.14, the Licensee hereby authorizes the Licensor to display the Licensee's logos and trade-marks as directed by Licensee.

6.15 Signage and Displays

The Licensee shall not construct, erect, place, apply or install on the Airport Lands any graphics, design, poster, sign or display, of any kind whatsoever, without first obtaining the written consent of the Licensor. The cost of installing, maintaining, changing and removing all graphics, designs, posters, signs or displays shall be borne by the Licensee.

6.16 Damage

It is hereby expressly agreed between the Licensor and the Licensee that if during the term hereof the Airport Lands or any part thereof shall be damaged or destroyed by any cause, event, or casualty and the Licensee is unable to use the Airport Lands or any part thereof, or exercise any right or privilege pursuant to this Licence, then the Licensee shall have no claim against the Licensor as a result thereof. The Licensee agrees and acknowledges that the Licensor will be under no obligation under this Licence to replace, renew or repair the Airport Lands or any part thereof. The Licensor will provide written notice of such decision to Licensee upon determination and if the Licensor decides not to replace, renew or repair the Airport Lands such that the Licensee's ability to conduct operations at the Airport are substantially reduced, the Licensee may terminate this Licence.

6.17 Repair of Damage

If, at any time or times hereafter, any damage or injury (ordinary wear and tear and damage by fire, lightning, tempest, act of God and any perils for which the Licensor is insured only excepted) should be occasioned to the Airport Lands by reason of or on account of the operations of the Licensee hereunder, then, and in every such case, the Licensee shall within a reasonable time upon written notice thereof from the Licensor, repair, rebuild, and restore the same in good, sufficient and workmanlike manner and in the event of failure on the part of the Licensee following such written notice from Licensor to so repair, rebuild and restore the Licensor may, at its option, repair, rebuild and restore such damage or injury in which case the Licensee shall reimburse the Licensor

for all costs and expenses connected therewith or incidental thereto to the extent the Licensee is liable pursuant to this Licence plus an additional charge of fifteen percent (15%) of such costs for administration and overhead forthwith upon receipt by the Licensee of accounts therefor from the Licensor. In the event of failure on the part of the Licensee to repair, rebuild or restore such damage or injury, as the case may be, in a timely fashion, and in the event the Licensor elects not to repair, rebuild or restore, the Licensee shall remain liable to the Licensor for the amount of such damage or injury and payment of such amount shall be made by the Licensee to the Licensor forthwith, upon receipt by the Licensee of notice thereof from the Licensor.

6.18 Approval of Alterations and Utility Services

- (a) The Licensee shall not make any improvements or alterations to the Licensor's Facilities including equipment, utility services, telecommunication lines and equipment or electrical and other wiring, without first obtaining the Licensor's consent and a Facility Permit. The Licensee agrees to make the alterations at the Licensee's cost, in accordance with the requirements, terms and conditions specified in the Facility Permit, and all such alterations shall, unless otherwise mutually agreed, be for the common use of the Licensee and other Air Carriers who may, from time to time, be granted permission by the Licensor to use the same.
- (b) Unless otherwise mutually agreed by the parties, any repairs, alterations or fixed improvements made by the Licensee to the Licensor's Facilities shall forthwith be and become vested in title in the Licensor without any payment of compensation to the Licensee in respect thereof, except such items as may be mutually agreed upon in writing at the time of installation.
- (c) The Licensee shall, in all respects, comply with the Approving Authority's Land Development and Construction By-Law or Policies.

6.19 Interference or Hazards

The Licensee shall not during the term of this Licence or any period when it is exercising its Privileges conduct any operation, make any addition, improvement or other work, or install any facility or equipment, or do anything else which will, in any manner cause physical, visual or electronic interference or hazard to the navigation of any aircraft or violate any safety-related standards, procedures or recommended practices affecting aircraft safety or airport certification.

6.20 Temporary Suspension of Services

Notwithstanding Section 8.02 herein, the Licensee shall not have nor make any claim or demand, nor bring any action or suit or petition against the Licensor for any damage which the Licensee may sustain by reason of any temporary suspension, interruption, or discontinuance of any services supplied hereunder, in whole or in part, from whatever cause arising. Where there is a temporary suspension, interruption, or discontinuance of

any services supplied hereunder, the Licensor shall make commercially reasonable efforts to cause such services to be restored in a timely manner.

6.21 Liens

- (a) The Licensee shall promptly pay all amounts due to Licensee's contractors, material suppliers and workers so as to minimize the possibility of a lien attaching to the Airport provided that, so long as no lien attaches to any title of the Licensor, the Licensee shall be entitled to contest its obligations to pay any amount and to not pay any such amount being contested.
- (b) The Licensee shall, forthwith upon demand by the Licensor, remove or cause to be removed and thereafter institute and diligently prosecute any action pertinent thereto, any builders or other lien or claim of lien for any work done or materials provided or services rendered for alterations, improvements or repairs made by or on behalf of the Licensee to the Airport, noted or filed against or otherwise constituting an encumbrance on any title of the Licensor. Without limiting the foregoing obligations of the Licensee, the Licensor may, after such notice to the Licensee as the Licensor considers to be reasonable, cause the same to be removed, in which case the Licensee shall pay to the Licensor, on demand, the cost thereof, including the Licensor's legal fees and expenses.
- (c) The Licensee shall post and keep posted all notices in connection with any work to be performed by or on behalf of the Licensee at the Airport in order to prevent any lien or claim of lien being noted or filed or otherwise constituting an encumbrance on any title of the Licensor or the Crown.

6.22 Noise Management and Abatement

The Licensee covenants and agrees to abide by and comply with all applicable aeroplane noise management and abatement laws and regulations and the Licensor's Noise Management Plan as revised from time to time to the extent it is not in contravention of applicable laws, including any procedures or directions of the Licensor with respect to noise management and abatement at the Airport.

6.23 Airport Improvement Fee

Subject to the terms and conditions of any existing or future written agreements between the Licensor and the Licensee other than this Licence regarding the Airport Improvement Fee ("AIF"), the Licensee covenants and agrees to co-operate with the Licensor in the Licensor's administration of the AIF for capital improvements at the Airport, and use reasonable efforts to inform its customers of the AIF, including responding to questions its customers may have about the AIF.

6.24 Operation of Airport Lands

The Licensor shall operate the Airport Lands in compliance with Section 8.02.01 of the Head Lease, a copy of which is attached hereto as Schedule F, and in all respects in a manner consistent with standards, rules and regulations established by itself in accordance with the Business Principles.

ARTICLE 7 - ASSIGNMENT

7.01 Assignment, Transfer

The Licensee shall not assign, transfer or sub-licence its interest in this Licence nor shall the Licensee sub-licence, other than as herein provided, any part of the Airport utilized by it without first having obtained the written consent of the Licensor thereto and PROVIDED THAT such consent shall be subject to the Licensor's obligations under the Head Lease.

7.02 Attornment to the Crown

The Licensee agrees that in the event of any early termination of the Head Lease and a re-entry by the Crown pursuant to the terms of the Head Lease, the Licensee shall, at the option and request of the Crown, attorn to the Crown for the unexpired term of this Licence on the same terms and conditions as contained in this Licence.

ARTICLE 8 - INDEMNITY AND RELEASE

8.01 Indemnity

- (a) In consideration of the Licensor permitting the Licensee to enter upon and to use or operate aircraft Airside and to use or operate the Licensor's Facilities, the Licensee agrees to indemnify and hold harmless and keep indemnified the Licensor from and against all and any loss, damage, cost, charge, expense or other liability however suffered, paid or incurred by or threatened against the Licensor in relation to or arising out of or in consequence of:
- (i) any breach, violation or non-performance by the Licensee of any covenant, term or provision of this Licence or any wrongful act or omission, default or negligence on the part of the Licensee or any of its agents, contractors or employees in or about the Airport or, (to the extent the Licensee has the legal power to control them), the Licensee's invitees or licensees in or about the Airport;
 - (ii) any action, proceeding, claim or demand which is or may be brought, made or prosecuted or threatened against the Licensor in respect of any loss or damage to property, loss of life or personal injury or other loss that may arise in any way from the use or operation of any aircraft or vehicle Airside by the Licensee or any Person for whom in law it is responsible for, or the use or operation of the Licensor's Facilities by the Licensee or any Person for whom in law it is responsible for (including but not limited to any loss of or damage to property or loss of life or personal injury or other loss suffered or incurred by the Licensee);

- (iii) the use of or operation of any aircraft or vehicle Airside by the Licensee or any Person for whom in law it is responsible for;
 - (iv) the presence Airside of any aircraft or vehicle (whether or not being used or operated at the time) under the control of the Licensee; and
 - (v) the presence Airside for any reason whatever of any employee, officer, agent or contractor of the Licensee, acting within the scope of their employment.
- (b) The Licensee shall pay any monies owing under this Section 8.01 to the Licensor immediately upon demand by the Licensor.
- (c) The indemnity in Section 8.01(a) does not apply to the extent that any such loss, damage, cost, charge, expense or other liability was caused by the negligence or wilful misconduct of the Licensor, or any of its directors, officers, employees, agents, contractors or anyone for whom in law it is responsible.
- (d) The Licensee's obligations under this Section 8.01 shall survive the termination of this Licence, whether by effluxion of time or otherwise, with respect to occurrences during the term of this Licence.

8.02 Release

- (a) The Licensee releases the Licensor from all claims, actions, causes of action, proceedings and demands which the Licensee now has or, but for this Section 8.02 would or might at any time in the future have, against the Licensor and all present or future liability of the Licensor to the Licensee however caused in consequence of:
- (i) the use or operation of any aircraft or vehicle Airside by the Licensee or any Person for whom in law it is responsible for, or the use or operation of the Licensor's Facilities by the Licensee or any Person for whom in law it is responsible for; or
 - (ii) the presence Airside of any aircraft or vehicle (whether or not being used or operated at the time) under the control of the Licensee; or
 - (iii) the presence Airside for any reason whatever of any employee, officer, agent or contractor of the Licensee.
- (b) The release contained in Section 8.02(a) operates even if the Licensee is not now aware of, or has no present knowledge of, or at any future time is not aware or has knowledge of, any fact or circumstance which may now or in the future be relevant to or apply in relation to any such claim, action, cause of action, proceeding, demand or liability.

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- (c) The Licensee shall not make or commence or threaten to make or commence any claim, action, cause of action, proceeding or demand referred to in Section 8.02(a).
- (d) The release set out in Section 8.02(a) shall not operate to the extent such claims, demands or liabilities are caused by negligence or wilful misconduct on the part of the Licensor, or any of its directors, officers, employees, agents, contractors or anyone for whom in law it is responsible.
- (e) Notwithstanding any of the provisions of this Licence, the Licensor shall not, under any circumstances, be liable or responsible in any way for:
- (i) any personal injury or consequential damage of any nature whatsoever that may be suffered or sustained by the Licensee, or any property belonging to the Licensee or any other Person while such property is on or about the Airport:
 - (A) caused by failure, by reason of breakdown or other cause, to supply adequate drainage, snow or ice removal, or by interruptions of any utility or elevator or escalator or other services, or by steam, water, rain, snow, or other substances leaking into, issuing or flowing into any part of the Airport or from the water, steam, sprinkler or drainage pipes or plumbing of the Airport or from any other place or quarter; or
 - (B) caused by anything done or omitted to be done by any other Air Carrier, Licensed Service, or tenant or licensee of the Licensor; or
 - (C) caused by any act (including theft), omission, malfeasance or negligence on the part of the agent, contractor or Person from time to time contracted by the Licensor to perform janitorial services on or about the Airport Lands (except to the extent the Licensor is able to recover on the Licensee's behalf from such contractor or Person or any security bond provided by such contractor or Person); or
 - (D) resulting in any way from any act or omission by any officer, agent or employee of the Approving Authority related to the Approving Authority's Land Development and Construction By-Law or Policies; or
 - (ii) any business, economic or indirect loss or damage of the Licensee of any nature whatsoever, however caused.

ARTICLE 9 - TERMINATION UPON DEFAULT OR BREACH

If and whenever during the term of this Licence:

- (a) the Licensee shall be in default in the payment of any money payable pursuant to this Licence, and such default shall continue for five (5) days following notice by the Licensor requiring the Licensee to pay the same;
- (b) all or substantially all of the goods, chattels or equipment of the Licensee located on the Airport Lands shall be taken or seized in execution or attachment, or if any writ of execution shall issue against the Licensee, or the Licensee shall become bankrupt or take the benefit of any Act that may be in force for bankrupt or insolvent debtors or become involved in voluntary or involuntary winding up, dissolution or liquidation proceedings, or if a receiver shall be appointed for the affairs, business, property or revenues of the Licensee (unless such event is dismissed prior to the Licensor exercising its rights to cancel this Licence pursuant to this Article 9);
- (c) the Licensee shall not observe, perform and keep each and every of the covenants, agreements, stipulations, obligations, conditions and other provisions of this Licence to be observed, performed and kept by the Licensee and shall persist in such default, in the case of monetary payments, beyond the five (5) day period stipulated in Article 9(a) or, in the case of any other default, after twenty-one (21) days following notice from the Licensor requiring that the Licensee remedy, correct or comply or, in the case of any such default which would reasonably require more than twenty-one (21) days to rectify, unless the Licensee shall commence rectification within the said twenty-one (21) day notice period and thereafter promptly and diligently and continuously proceed with the rectification of any such default,

then the Licensor may forthwith cancel this Licence by delivering to the Licensee notice in writing to that effect and, upon such delivery, this Licence shall cease but without prejudice to the rights of the Licensor and without limiting the obligations of the Licensee accruing under this Licence before such cancellation.

ARTICLE 10- SECURITY FOR PAYMENT

10.01 Provide Security

As security for the payment of Fees hereunder and the performance of all of the obligations of the Licensee, the Licensee shall, if required by the Licensor, provide the security specified in Section 10.02.

10.02 Form, Content and Amount

The Licensee shall, if required by the Licensor, deliver to the Licensor an irrevocable letter of credit issued in favour of the Licensor by a Canadian chartered bank acceptable to the Licensor

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and in form and content determined by the Licensor. The amount shall be equal to three months Fees under this Licence, all as reasonably estimated by the Licensor.

10.03 Drawings

In the event the Licensee is in default of payment to the Licensor of any Fees or any other sum payable by the Licensee to the Licensor, and such default continues for five (5) days following written notice by the Licensor requiring the Licensee to pay the same, the Licensor may, in addition to any other right or remedy, draw on the letter of credit to pay the arrears or deduct the arrears from the security deposit, as the case may be.

10.04 Renewal or Replacement

- (a) The Licensee shall provide the Licensor with a renewal or replacement letter of credit at least sixty (60) days before the date on which any letter of credit expires and shall immediately after any drawing by the Licensor on a letter of credit, deposit an additional letter of credit with the Licensor in the amount paid by the issuer of the letter of credit to the Licensor failing which, in either case, the Licensor may draw the full amount of the letter of credit and hold the funds as a security deposit pursuant to this Article 10.
- (b) The Licensee shall, immediately after the Licensor deducts arrears from the security deposit, deposit an additional security deposit in the amount of such arrears with the Licensor.

10.05 Increase or Decrease Amount

The Licensor shall have the right on at least thirty (30) days prior notice to the Licensee to impose the security requirement or to increase or decrease the amount of the security that the Licensee is required to maintain hereunder so that such amount represents the amount the Licensor estimates will be payable for Fees under this Licence over a period of three months.

10.06 Return of Security

At the end of the term of this Licence and upon payment by the Licensee to the Licensor of all Fees including all costs and expenses incurred by the Licensor in correcting or satisfying any default or fulfilling any obligation of the Licensee under this Licence, the Licensor shall release the letter of credit or return the security deposit to the Licensee, without interest.

ARTICLE 11 - SURRENDER OF LICENCE

- (a) At the expiration or sooner termination of this Licence, the Licensee shall peacefully surrender and yield up to the Licensor all of the Licensor's Facilities used or occupied by the Licensee PROVIDED THAT, prior to the date of such expiration or termination, the Licensee shall remove all chattels, goods, supplies, articles, equipment, materials or effects belonging to the Licensee as directed by the Licensor notwithstanding that some or part of

them be affixed so as to form part of the Licensor's Facilities, and in so doing, the Licensee shall, to the satisfaction of the Licensor, repair all and every damage and injury occasioned to the Licensor's Facilities by reason of such removal or in the performance thereof, but the Licensee shall not, by reason of any action taken or things performed or required under this clause, be entitled to any compensation whatsoever.

- (b) In the event that the Licensee shall fail to remove from and about the Licensor's Facilities its chattels, goods, supplies, articles, equipment, materials or effects, as aforesaid, the Licensor may at its option, and following written notice to Licensee, remove at the risk of and at the cost and expense of the Licensee, the chattels, goods, supplies, articles, equipment, materials, effects or things and the Licensee shall reimburse the Licensor forthwith upon receipt of appropriate accounts therefor and for any storage charges which may have been or will be incurred by the Licensor as a result of such removal. Where not removed by the Licensee, the Licensor may consider the chattels, goods, supplies, articles, equipment, materials, effects or things to be abandoned, and take title thereto in the name of the Licensor.

ARTICLE 12 - INSURANCE

- (a) The Licensee covenants and agrees that throughout the term of this Licence and any period when it is using the Airport, it shall purchase, provide and maintain, at its expense, or cause to be maintained the Insurance set out in Schedule A attached hereto subject to reasonable deductibles and the requirements, terms and conditions set out below.
- (b) Each policy of the Insurance shall:
- (i) be enforceable by any party named as an insured thereunder and contain a cross liability and severability of interest clause;
 - (ii) be primary and non-contributing with respect to any policies carried by the Licensor and that any coverage carried by the Licensor shall be excess coverage;
 - (iii) specify that the Licensor and the Crown are named as additional insureds to the extent of the Licensee's obligations hereunder;
 - (iv) contain a prohibition against cancellation or material change that reduces or restricts the Insurance except on no less than thirty (30) days' prior written notice to the Licensor; and
 - (v) be in a form and with insurers satisfactory to the Licensor, acting reasonably.
- (c) The Licensee shall not do nor omit to do nor suffer anything to be done in or about the Airport which will in any way invalidate, adversely affect or limit any Insurance.

- (d) If any Insurance policy shall be cancelled or shall be threatened by the insurer to be cancelled, refused to be renewed or the coverage thereunder reduced in any way by the insurer by reason of the use, occupation, operation or maintenance of the Airport or any part thereof by the Licensee or anyone permitted by the Licensee to be upon the Airport, or if the Licensee neglects or omits to pay any premiums or other sums of money payable for maintaining Insurance, or if the Licensee fails to forthwith remedy the condition giving rise to cancellation, threatened cancellation or reduction in coverage or if the Licensee is unable or unwilling to purchase, provide or maintain any Insurance required hereunder, then the Licensor, in addition to any other remedy, may, at its option:
- (i) remedy the condition giving rise to such cancellation, threatened cancellation or reduction in coverage and the Licensee shall forthwith pay the costs thereof to the Licensor as additional fees; and
 - (ii) without assuming any obligation in connection therewith and without prejudice to any other rights and remedies of the Licensor, pay such premiums or other amounts or effect such Insurance at the sole cost of the Licensee, and all outlays and expenses incurred by the Licensor shall be immediately paid by the Licensee to the Licensor as additional fees.
- (e) The Licensee shall, prior to its effective date, deliver to the Licensor certificates of insurance reasonably acceptable to the Licensor signed by the Licensee's insurer, agent or broker evidencing the required Insurance and shall provide evidence from time to time, at the Licensor's request, that any such policy is in full force and effect during the term of this Licence and any period of time when the Licensee is using the Airport and shall provide to the Licensor evidence of renewal of such Insurance. Where the Licensor is of the reasonable opinion that any such certificates of insurance do not sufficiently describe the Insurance then the Licensee shall provide such further information respecting the Insurance as the Licensor may request other than the actual policies of Insurance. Delivery to and examination by the Licensor of any certificate of Insurance or other evidence of Insurance in no way shall relieve the Licensee of any of its obligations to ensure strict compliance with the provisions of this Article 12 nor in respect of its obligations to indemnify as contained in this Licence, and in no way shall operate as a waiver by the Licensor of any of its rights. The Licensor may rely on certificates of Insurance previously delivered to the Licensor in respect of other agreements that may exist between the parties.

ARTICLE 13 - GENERAL

13.01 Agency

The parties hereto specifically agree that nothing contained in this Licence shall be deemed or construed to establish any relationship of agent and principal as between the Licensor and the Licensee herein.

13.02 Index, Headings, Number and Gender

The index and headings in this Licence have been inserted for convenience and reference only and shall not define, limit or expand the scope of meaning of the present Licence or any of its provisions. Whenever the singular or masculine or neuter is used in this Licence, the same shall be construed to mean the plural or feminine or body corporate where the context or the parties hereto may so require. The words “include” or “including” as used herein shall not be construed as words of limitation.

13.03 Enurement

This Licence and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Licensor, and upon the successors and permitted assigns of the Licensee. Nothing herein shall restrict the ability of the Licensor to transfer or assign its interests herein.

13.04 Construed Covenant, Severability

All of the provisions of this Licence are to be construed as covenants and agreements. Should any provision of this Licence be or become illegal, invalid or not enforceable, it shall be considered separate and severable from this Licence and the remaining provisions shall remain in force and be binding upon the parties hereto and be enforceable to the fullest extent of the law.

13.05 Waiver Negated

The waiver or acquiescence by either party or any breach of any covenant, term or condition of this Licence shall not be deemed to be a waiver of the covenant, term or condition or any subsequent or other breach of any covenant, term or condition of this Licence.

13.06 Applicable Law, Court, Language

- (a) This Licence and all related matters will be governed by, and construed in accordance with the laws of British Columbia, Canada and the federal laws of Canada applicable therein.
- (b) All disputes arising out of or in connection with the Licence, or in respect of any legal relationship associated with or derived from this Licence, will be finally resolved by arbitration under the Arbitration Rules of the ADR Institute of Canada, Inc. The Seat of Arbitration will be Vancouver, British Columbia, Canada. The language of the arbitration will be English.
- (c) The parties hereto have required that the present agreement and all deeds, documents or notices relating thereto be drafted in the English language.

Les parties aux présentes ont exigé que le présent contrat et tout autre contrat, document ou avis afferant ou ancillaire aux présentes soient rédigés en langue anglaise.

13.07 Time of the Essence

Time shall be strictly of the essence hereof.

13.08 Entire Agreement

This Licence shall be deemed to constitute the entire agreement between the Licensor and the Licensee hereto with respect to the subject matter hereof and shall supersede all previous negotiations, representations and documents in relation hereto made by any party to this Licence.

13.09 Approvals

No provisions in this Licence requiring the Licensor's consent or approval shall be deemed to have been fulfilled or waived unless the written consent or approval of the Licensor relating to the particular matter or instance has first been obtained and, without limiting the generality of the foregoing, no prior consent or approval and no condoning, excusing or overlooking by the Licensor on previous occasions when such a consent or approval was required shall be taken to operate as a waiver of the necessity of such consent or approval whenever required under this Licence.

13.10 Joint Venture

The Licensee agrees that it will not assert that a joint venture, partnership or principal and agent relationship exists between the Licensor and the Crown.

13.11 Members of the House of Commons

No Member of the House of Commons shall be admitted to any share or part of this Licence or to any benefit to arise therefrom.

13.12 Head Lease

The Licensee acknowledges that this Licence is subject to the terms of the Head Lease. The parties agree that this Licence is an Occupant Agreement in the Ordinary Course of Operations as defined in Section 18.02 of the Head Lease, a copy of which is attached hereto as Schedule B. Without limiting the foregoing, to the extent that said Section 18.02 of the Head Lease requires that this Licence contain certain covenants, obligations and agreements in order that this Licence qualify as an Occupant Agreement in the Ordinary Course of Operations. The parties agree that those covenants, obligations and agreements are hereby incorporated into this Licence as fully as if such covenants were set forth in this Licence, and, to the extent of a conflict between the terms of the said Section 18.02 of the Head Lease and the specific terms of this Licence, the terms of the said Section 18.02 of the Head Lease shall prevail.

13.13 Other Air Carriers

The Licensor shall not enter into a licence to use the Airport with an Air Carrier other than the Licensee on financial and operational terms which, taken as a whole, are more favourable to such Air Carrier than the financial and operational terms contained in this Licence.

13.14 Provisions of Canadian Air Transport Agreements

Nothing in this Licence shall be deemed to limit Licensee's right to contest the legality or validity of the Fees, and any rentals, fees and charges imposed under this Licence if such Fees, rentals, fees and charges are not in accordance with any in force and applicable air transport agreements (for example, the air transport agreement between the Government of the United States of America and the Government of Canada, dated March 12, 2007 and any amendment thereto or any successor agreement) between the Government of Canada and any foreign government (collectively, the "Air Transport Agreement"). The Parties agree that this Licence shall be subject to the Air Transport Agreement, and any applicable rights and obligations thereunder. The parties agree to abide by any ruling made under the Air Transport Agreement by the Government of Canada, an appropriate arbitral panel or a court of competent jurisdiction.

ARTICLE 14 - NOTICES

- (a) Whenever this Licence requires or permits that notice or demand be given or served by either party of this Licence to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by registered mail, priority post mail, or sent by email or facsimile to the parties' respective addresses, as follows:

To the Licensor: VANCOUVER AIRPORT AUTHORITY
 Mailing Address:
 P.O. Box 44638, YVR Domestic Terminal RPO
 Richmond, B.C., V7B 1W2
 Email: legal@yvr.ca
 Attention: Airport Operations Department and
 A copy to: Legal Services Department

or

VANCOUVER AIRPORT AUTHORITY
 Courier Address:
 3211 Grant McConachie Way
 Link Building, Level 5
 Richmond, British Columbia
 V7B 1Y2 CANADA
 Email: legal@yvr.ca
 Attention: Airport Operations Department and
 A copy to: Legal Services Department

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To the Licensee: 1263343 ALBERTA INC. dba LYNX AIR
 123, 1440 Aviation Park, N.E.
 Calgary, AB T2E 7E2
 Attention: Karen Ali, Airports Operations Manager
 Email: karen.ali@enerjet.ca

- (b) Any party hereto may at any time give notice as provided above to the other of any change of address of the party.
- (c) If any question arises as to whether any notice was or was not communicated by one party to the other, it shall be deemed to have been effectively communicated or given on the day delivered or sent by facsimile or in the case of being given by mail, on the fifth day after it was mailed.

IN WITNESS WHEREOF, the parties have executed this Licence effective as of the day and year first above written:

EXECUTED ON BEHALF OF
VANCOUVER AIRPORT AUTHORITY
 by its duly authorized representatives:

Per: 
Andy Margolis (Mar 16, 2022 11:00 PDT)

Print Name: Andy Margolis

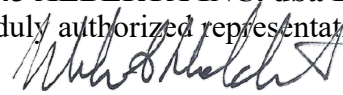
Title: VP Airport Capacity and System Design

Per: 

Print Name: Diana Vuong

Title: VP Finance & CFO

EXECUTED ON BEHALF OF
1263343 ALBERTA INC. dba LYNX AIR
 by its duly authorized representatives:

Per: 

Print Name: Michael S Holditch

Title: Chief Financial Officer

Per: _____

Print Name: _____

Title: _____



**SCHEDULE A
INSURANCE**

The Insurance shall, at a minimum, consist of the following:

- (a) air carrier liability to passengers and public liability insurance (including aircraft and premises/operations liability insurance) in an amount of not less than:
 - (i) \$250,000,000 for jet carriers; and
 - (ii) \$50,000,000 for propeller carriers.
- (b) five million dollars of a broad form of inclusive limits comprehensive general liability insurance, on an occurrence basis, covering all operations and activities of the Licensee, subject to policy terms, conditions and exclusions including, coverage, extensions or additions for:
 - (i) owners' and contractors' protective (as applicable);
 - (ii) products and completed operations (as applicable);
 - (iii) bodily injury;
 - (iv) personal injury;
 - (v) blanket contractual liability;
 - (vi) occurrence property damage; and
 - (vii) defence costs.
- (c) five million dollars motor vehicle liability insurance for owned or non-owned vehicles if vehicles are to be operated on the airfield or ramp areas; and
- (d) any other form or amount of insurance that the Licensor acting reasonably requires from time to time.

**SCHEDULE B
HEAD LEASE PROVISIONS**

Section 18.02 Occupant Agreement in the Ordinary Course of Operations

- 18.02.01 Subject to the Tenant remaining liable on this Lease, the Tenant may, without the consent of the Minister, enter into an Occupant Agreement in respect of a part of the Demised Premises, provided that:
- (a) the land or space which is the subject matter of the Occupant Agreement is not
 - (i) all or substantially all of Airside;
 - (ii) any part of Airside except if such part is used only for the purpose of agriculture, aircraft parking, aircraft servicing or aircraft fuelling;
 - (iii) the whole or any part of the Ground Transportation Reserve;
 - (iv) all or substantially all of the concession area of any Air Terminal Building; or
 - (v) all or substantially all of the general terminal area of any Air Terminal Building;
 - (vi) [Intentionally deleted]
 - (b) the Occupant Agreement contains a covenant whereby the parties hereto covenant that the land or space which is the subject matter of the Occupant Agreement shall not be used or occupied for the purpose of constructing or operating any Air Terminal Building.
 - (c) the Occupant Agreement contains a covenant whereby the parties thereto covenant that the land or space which is the subject matter of the Occupant Agreement is not used or occupied
 - (i) for any purpose other than a permitted use as set out in the Approved Land Use Plan, or
 - (ii) for a use that is inconsistent with the use clause herein.
 - (d) the Occupant Agreement is for less than the total remainder of the Term.
 - (e) the Occupant Agreement does not create any privity of estate or privity of contract between the Occupant and the Landlord.

- (f) the Occupant Agreement contains an agreement by the Occupant whereby, subject to any rights of non-disturbance granted by the Landlord, the Occupant acknowledges and agrees that, upon the default hereunder of the Tenant and early termination of this Lease and re-entry by the Landlord, the Landlord has the option, in Her sole unfettered discretion, to require the Occupant to attorn to the Landlord in which event the Occupant shall forthwith attorn to the Landlord.
- (g) the Occupant Agreement contains covenants, obligations and agreements by the Occupant in terms which are no less stringent than the provisions of this Lease so as to enable the Tenant to comply with its obligations under this Lease to ensure a covenant or obligation of an Occupant or Transferee of any part of the Demised Premises;
- (h) the Occupant Agreement is not inconsistent with any of the terms of this Lease; and
- (i) the Occupant Agreement contains a covenant which prohibits any further assigning, subletting or sharing of possession by the Occupant unless such assigning, subletting or sharing of possession:
 - (i) meets all the requirements of this Subsection 18.02.01; or
 - (ii) is approved by the Minister.

- 18.02.02 The Tenant shall, upon entering into any Occupant Agreement give written notice to the Landlord of any relevant details of such Occupant Agreement and shall, upon request made by or on behalf of the Landlord, deliver to the Landlord a copy of such Occupant Agreement (or in the case of an oral Occupant Agreement, a detailed written description of such Occupant Agreement) within five (5) Business Days of the request.
- 18.02.03 An Occupant Agreement which meets all of the requirements set out in Section 18.02.01 is an Occupant Agreement in the Ordinary Course of Operations.
- 18.02.04 An Occupant Agreement which does not meet all of the requirements set out in Subsection 18.02.01 is not an Occupant Agreement in the Ordinary Course of Operations and shall be an Occupant Agreement Requiring Consent.
- 18.02.05 Nothing herein contained shall authorize the Tenant, or imply any consent or agreement on the part of the Landlord, to subject the Landlord's estate and interest in the Demised Premises or any part thereof to any Occupant or Occupant Agreement.

SCHEDULE C
ENVIRONMENTAL PROVISIONS OF THE HEAD LEASE

Section 37.01 Environmental Audit Report

- 37.01.01 The Landlord has commissioned at its cost an environmental audit and the preparation of an environmental report (the “Environmental Audit Report”) of the Lands and Existing Facilities by an independent consultant (the “Landlord's Environmental Consultant”) on the effective date of the Environmental Audit Report in accordance with terms and conditions agreed to as between the parties hereto prior to the commissioning of such audit.
- 37.01.02 The Landlord shall furnish to the Tenant a copy of the Environmental Audit Report forthwith upon receipt of the said report by the Landlord.
- 37.01.03 The Environmental Audit Report shall be *prima facie* evidence between the parties hereto as to the existence of any Hazardous Substances affecting the soil of or the water in, on, over or under the Lands and the quantity thereof immediately prior to the Date of Commencement notwithstanding the effective date of the Environmental Audit Report.

Section 37.02 Definitions

“Applicable Federal Environmental Laws” means all applicable federal laws respecting environmental matters, but excludes Part II of the *Canada Labour Code*, as amended.

“Applicable Provincial Environmental Laws” means all applicable laws of the Province of British Columbia respecting environmental matters.

“Crown Building” means any Existing Facility other than an Existing Facility which, immediately prior to the Date of Commencement, was owned by a third party pursuant to an Existing Revenue Agreement.

“Hazardous Substance” means:

- A. any substance which is hazardous to persons, animals, plants and which affects the soil of or the water in, on, over or under the Lands immediately prior to the Date of Commencement, or
- B. the asbestos which is present in any Crown Building immediately prior to the Date of Commencement,

and for which Remedial Work is required.

“Remedial Work” means any work required to remedy an adverse environmental condition caused by the existence of a Hazardous Substance affecting

- (a) the soil of or the water in, on, over or under the Lands, or
- (b) Crown Buildings

immediately prior to the Date of Commencement which is required under:

- (c) the Applicable Federal Environmental Laws of general application, as amended or
- (d) the Applicable Provincial Environmental Laws of general application in existence immediately prior to the day on which the Agreement to Transfer was executed and delivered

as those laws apply to the Tenant.

Section 37.03 Limitations on Landlord's Liability

37.03.01 The Landlord's obligations shall be restricted to a Hazardous Substance present in the soil of or the water in, on, over or under the Lands or in Crown Buildings prior to the Date of Commencement;

37.03.02 The Landlord's obligations herein are for the exclusive benefit of the Tenant and successors and permitted assigns and shall not be for the benefit of any other Person. The Tenant may assign its rights under Article 37 provided that it complies with the requirements of the *Financial Administration Act*.

37.03.03 For greater certainty, it is agreed that in no event shall the Landlord be responsible or liable for Remedial Work relating to any Hazardous Substance:

- (a) to the extent that such Hazardous Substance was added to or put in, on or over the Demised Premises on or after the Date of Commencement;
- (b) to the extent that any act or omission of any Person on or after the Date of Commencement contributed to any substance becoming a Hazardous Substance;
- (c) which, on or after the Date of Commencement, is released, spilled, leaks or flows from any container, tank, pipe, conduit, tube or any

related or other equipment in which any substance is contained or by or through which any substance is transmitted or transported; or

- (d) if the Hazardous Substance is asbestos, to the extent that asbestos was added to or put in, on or over any part of the Demised Premises on or after the Date of Commencement.

Section 37.04 Exclusions from Landlord's Liability

37.04.01 [Intentionally deleted]

Section 37.05 Notice of Hazardous Substance

37.05.01 In the event that, at any time during the Term, there is a Hazardous Substance present in the soil, on or in the water, in, on, over or under the Lands or in the Crown Buildings immediately prior to the Date of Commencement and the Tenant receives a formal notice from any governmental body or authority or any regulatory agency, body or tribunal having jurisdiction requiring the performance of any Remedial Work, the Tenant shall provide the Landlord with a copy of such formal notice, an estimate from a qualified engineering consultant of the cost of performing the said Remedial Work and a notice requesting performance of such Remedial Work (the "Notice to Perform Remedial Work").

Section 37.06 Landlord's Obligation Concerning Remedial Work

37.06.01 The Landlord shall, subject to Subsection 37.06.03, have a period of ninety (90) days from the receipt of the Notice to Perform Remedial Work in which to determine whether:

- (a) at Her own cost and expense, to perform or have performed any Remedial Work for which She is responsible; or
- (b) to contribute to the Tenant the portion of the contract price or any contract entered into by the Tenant which portion relates solely to the performance of the Remedial Work for which the Landlord is responsible.

37.06.02 In the event that the Landlord has not made an election permitted by Section 37.06.01 within ninety (90) days from receipt by the Landlord of the Notice to Perform Remedial Work with respect to Remedial Work for which the Landlord is responsible, the Landlord shall be deemed to have chosen the option referred to in Paragraph 37.06.01(b).

37.06.03 In the event that the formal notice referred to in Subsection 37.05.01 requires the commencement of the Remedial Work within the ninety (90) days

referred to in Subsection 37.06.01, the Tenant may request in the Notice to Perform Remedial Work that the Landlord make the election permitted by Subsection 37.06.01 within a period of five (5) Business Days and in such case the provisions of Subsection 37.06.01 and 37.06.02 shall apply as if the references to ninety (90) days were five (5) Business days.

37.06.04 The Landlord shall perform Her obligation as elected or deemed to have been elected pursuant to this Section.

Section 37.07 Contract

37.07.01 The Tenant shall not perform any Remedial Work or enter into any contract to perform any Remedial Work for which it will claim any contribution from the Landlord without the prior written consent of the Minister which consent may not be unreasonably withheld. In the event the contract to perform Remedial Work includes the performance of any other Work, then the contract shall identify and separate the portion of the contract price related solely to the Remedial Work for which the Landlord is responsible from the balance of the contract price. The Landlord's liability shall be limited to the portion of the contract price directly and solely related to the Remedial Work for which the Landlord is responsible. If the contract entered into by the Tenant is to perform more than the Remedial Work for which the Landlord is responsible, then the Landlord's obligation to contribute the portion of the contract price directly and solely related to the Remedial Work for which the Landlord is responsible shall be conditional upon the identification and separation by the contractor in the contract on a fair and accurate basis of the portion of the contract price which is directly and solely related to the Remedial Work for which the Landlord is responsible from all other Work being performed pursuant to that contract.

Section 37.08 Landlord's Access to Perform Work

37.08.01 In the event the Landlord elects to perform or have performed the Remedial Work for which the Landlord is responsible, the Tenant shall provide the Landlord and Her officers, servants, employees, agents, contractors, subcontractors and consultants unrestricted and unimpeded access to the Demised Premises at all times and without cost in order to perform such Remedial Work.

Section 37.09 Compliance with Laws

- 37.09.01 Without limiting the generality of any other covenant herein, the Tenant shall, at its own cost and expense, comply with, and shall ensure that all Occupants and Transferees comply with all applicable laws from time to time in force relating to environmental matters, the manufacture, use, storage, disposal and transportation of any substance and the protection of the environment generally and shall immediately give written notice to the Landlord of the occurrence of any event in or on the Demised Premises constituting an offence thereunder or a breach of this provision and, if the Tenant shall, either alone or with others, cause the happening of any such event, the Tenant shall, at its own expense:
- (a) immediately give the Landlord notice to that effect and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's compliance with the following provisions of this Subsection:
 - (b) promptly perform any Work which will result in conformity and compliance with all applicable laws governing such substance;
 - (c) if requested by the Landlord, obtain a certificate from an independent consultant designated or approved by the Landlord verifying the complete and proper compliance with the requirements of any applicable law relating to such substances or, if such is not the case, reporting as to the extent and nature of any failure to comply with the foregoing provisions of this Subsection;
 - (d) promptly cease any activity which causes or permits any substance to be released, spilled, leaked or to flow onto or into the Demised Premises or any adjacent land, air or water or results in any substance being released into the environment; and
 - (e) if requested by the Landlord, obtain a certificate from an independent consultant designated or approved by the Landlord verifying that any activity referred to in Paragraph (d) above has ceased.
- 37.09.02 The Tenant shall, at its own cost and expense, remedy any damage to the Demised Premises or adjacent land, air or water caused by the occurrence of any such event in or on the Demised Premises or caused by the performance or lack of performance of any of the Tenant's obligations under this Section.

37.09.03 If any governmental authority having jurisdiction shall require the clean-up of any substance held, released, spilled, leaked, abandoned, flowing onto or into or placed upon the Demised Premises or any adjacent land, air or water or released into the environment on or after the Date of Commencement as a result of any use or occupancy of the whole or any part of the Demised Premises on or after the Date of Commencement then the Tenant shall, at its own cost and expense, prepare all necessary studies, plans and proposals and submit the same to the Landlord for approval, provide all bonds and other security required by governmental authorities having jurisdiction and carry out the Work required, and shall keep the Landlord fully informed and provide to the Landlord full information with respect to proposed plans and comply with the Minister's reasonable requirements with respect to such plans. The Tenant further agrees that if the Landlord determines, in Her own discretion, that the Landlord, Her property or Her reputation is placed in jeopardy by the requirement for any such Work, the Landlord may Herself undertake such Work or any part thereof at the cost and expense of the Tenant.

Section 37.10 Inquiries by Landlord

37.10.01 The Tenant hereby authorizes the Landlord to make enquiries from time to time of any government or governmental agency with respect to the Tenant's compliance with any applicable environmental laws pertaining to the Tenant, any Occupant or any Transferee, the Demised Premises and any business conducted on or from the Demised Premises, including any law pertaining to an adverse environmental condition and the protection of the environment; and the Tenant covenants and agrees that the Tenant will from time to time forthwith on demand provide to the Landlord such written authorization as the Minister may reasonably require in order to facilitate the obtaining by the Landlord of such information.

Section 37.11 Landlord's Right to have Environmental Audit Performed

37.11.01 The Landlord may, at any time, enter on the Demised Premises to determine the existence of any substance in or on any part of the Demised Premises which causes or contributes to an adverse environmental condition, and for such purpose the Landlord may, without limitation, carry out soils, water, environmental or other tests, measurements or surveys in, on or below the Demised Premises or any part thereof.

Section 37.12 Tenant to Perform

37.12.01 The Tenant shall, forthwith on Notice, at its cost and expense, carry out

- (a) any Work required by applicable laws to remedy any adverse environmental condition caused or contributed to by the existence of any substance on the Demised Premises or by any act or omission of any Person on or after the Date of Commencement;
- (b) any Work required by the Landlord to remedy any adverse environmental condition caused or contributed to by the existence of any substance on the Demised Premises or by any act or omission of any Person on or after the Date of Commencement to the extent that any such substance, act or omission may significantly adversely affect the value of the Demised Premises;

provided that any such substance is not a Hazardous Substance present in the soil of or the water in, on, over or under the Lands or in Crown Buildings prior to the Date of Commencement.

Section 37.13 Landlord May Perform

37.13.01 In the event that the Tenant fails to promptly commence and diligently complete any Work it is required to perform pursuant to Sections 37.09 or 37.12, the Landlord may enter onto the Demised Premises Herself or by Her agents, servants, employees, contractors and subcontractors and perform any such Work at the cost and expense of the Tenant, but having commenced such Work, the Landlord shall have no obligation to the Tenant to complete such Work.

Section 37.14 Ownership of Substances

37.14.01 If the Tenant shall bring, permit, suffer or create in or on the Demised Premises any substance or if the conduct of any business or undertaking on any part of the Demised Premises or the use of any part of the Demised Premises shall cause there to be any substances upon the whole or any part of the Demised Premises which cause or contribute to any adverse environmental condition then, notwithstanding any rule of law to the contrary, such substances shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord notwithstanding the degree of affixation of the substance or the goods containing the substance to the Demised Premises and notwithstanding the expiry or early termination of this Lease.

Section 37.15 Survival of Covenants

37.15.01 The obligations of the Tenant hereunder relating to substances referred to in this Article 37 shall survive the expiry or early termination of this Lease save only that, to the extent that the performance of those obligations

requires access to or entry upon the Demised Premises or any part thereof, the Tenant shall have such entry and access only at such times and upon such terms and conditions as the Minister may from time to time specify; and the Landlord may, at the Tenant's cost and expense, Herself or by Her agents, servants, employees, contractors and subcontractors, undertake the performance of any necessary Work in order to complete such obligations of the Tenant; but having commenced such Work, the Landlord shall have no obligation to the Tenant to complete such Work.

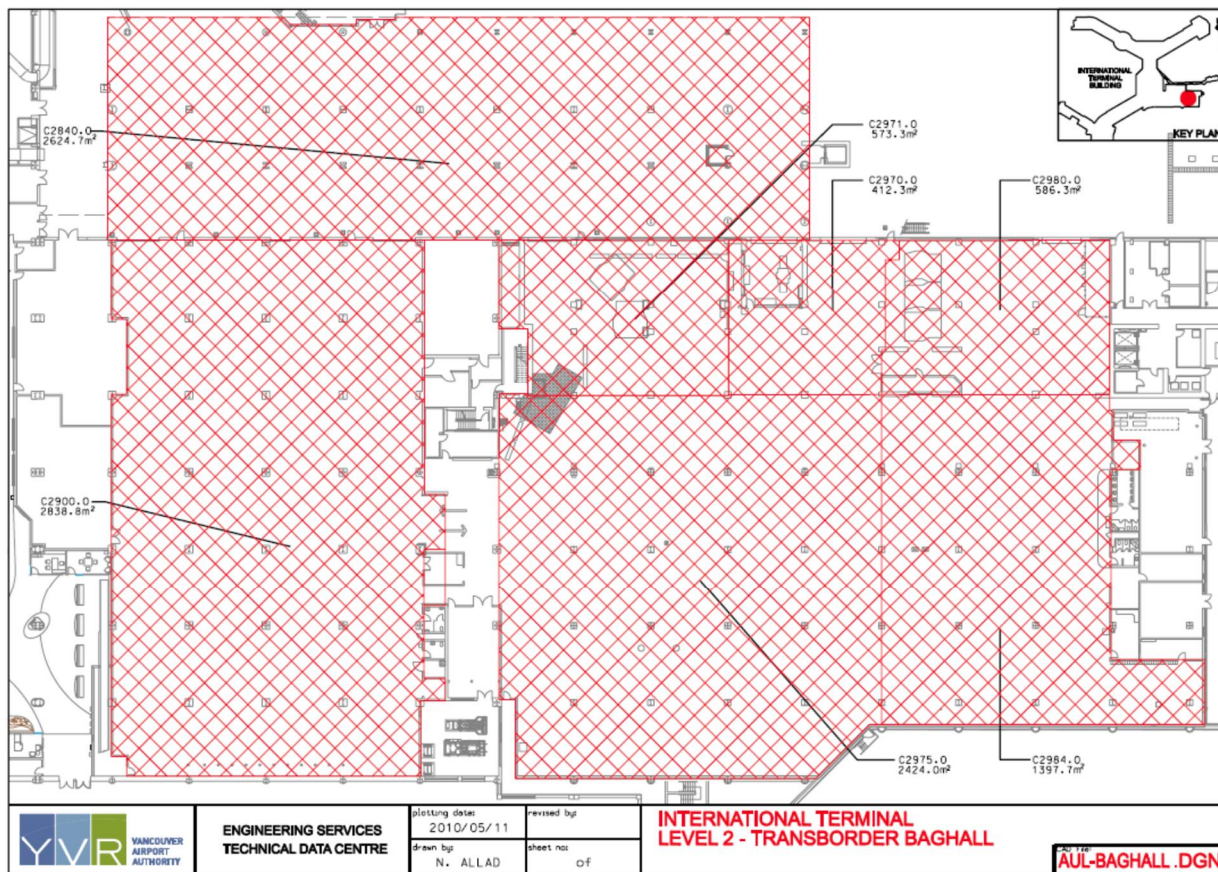
Section 37.16 Transitional Relief

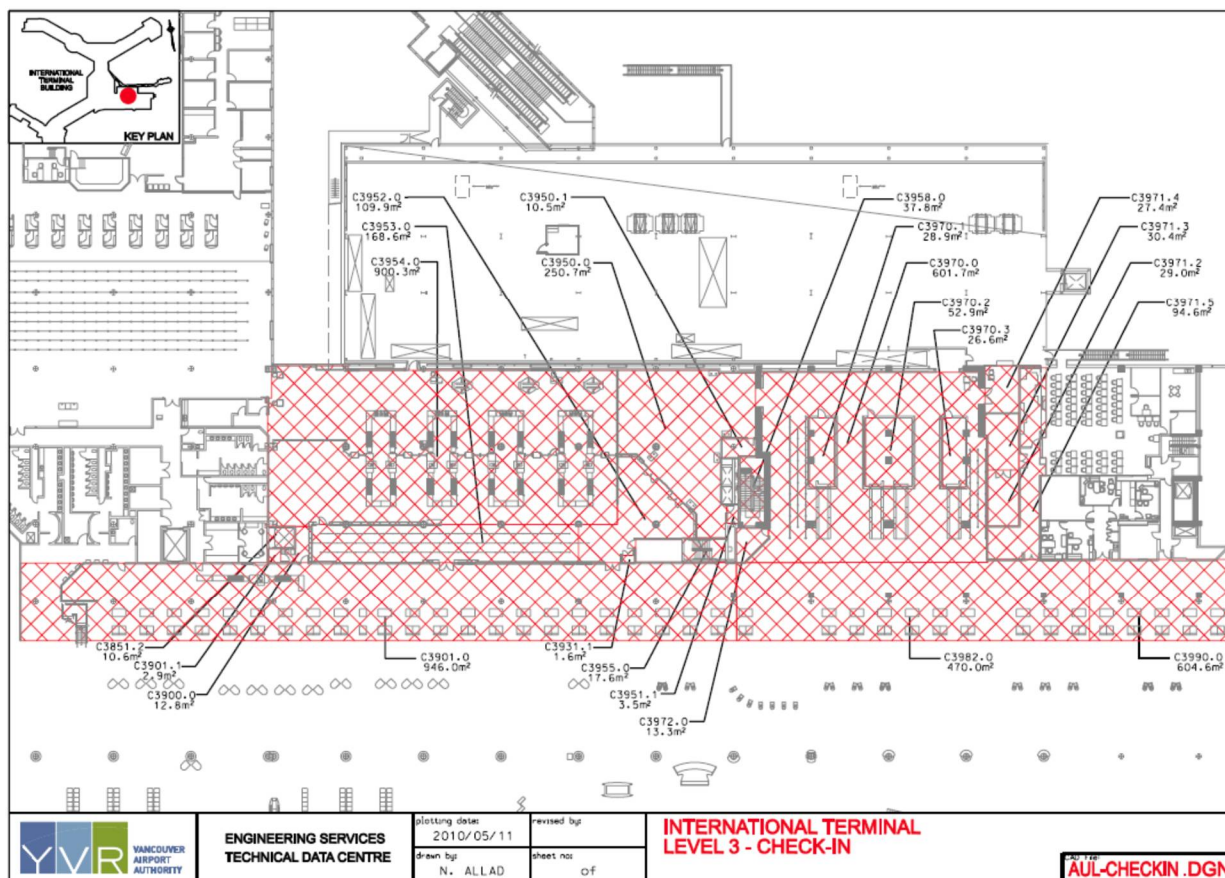
37.16.01 Notwithstanding any of the provisions of this Article 37, the Tenant shall not, for a period of four (4) years from the Date of Commencement or for such longer period as the Minister may in his discretion authorize, be in default of this Lease by reason of a failure to comply with any of its obligations under this Article 37 by continuing a practice or by allowing a condition to exist if

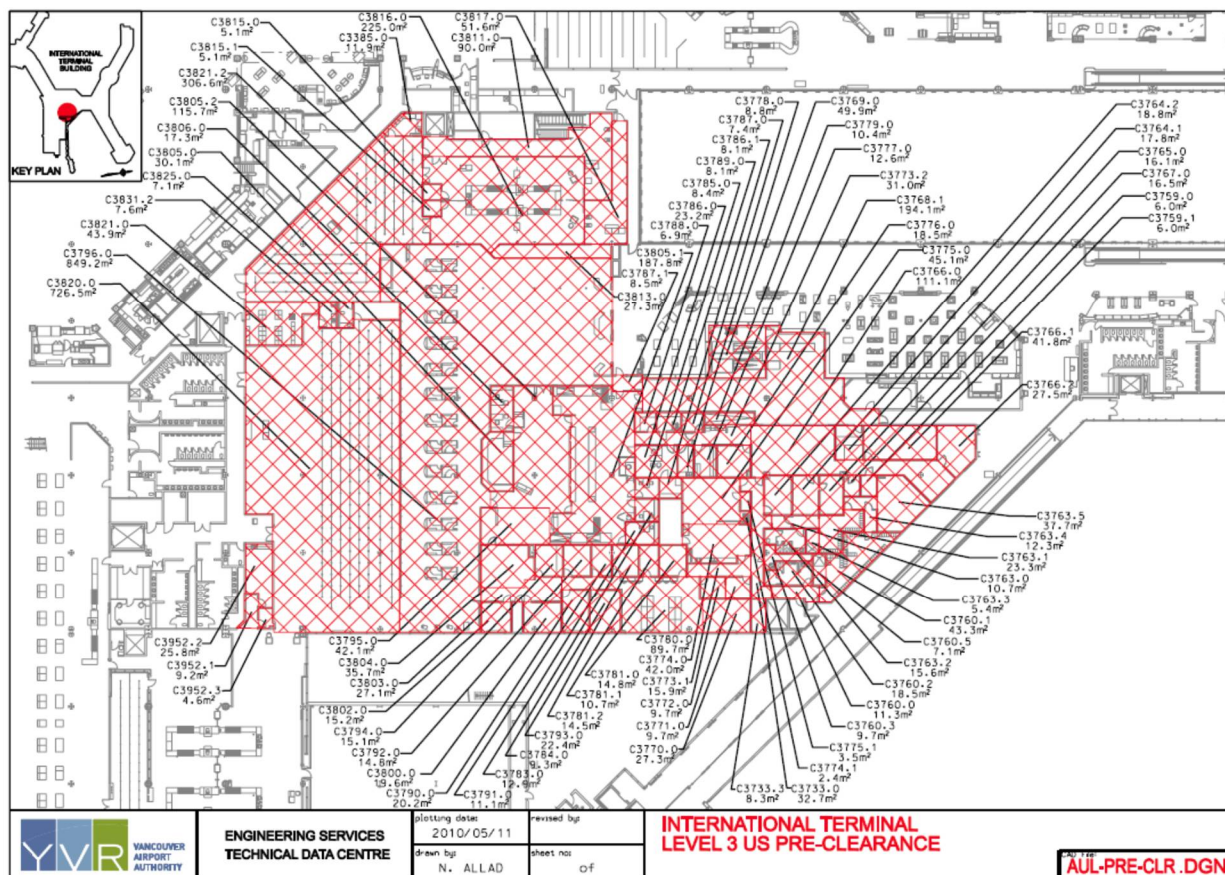
- (a) such practice was a practice generally followed by the Landlord, or
- (b) such condition existed

immediately prior to the Date of Commencement.

SCHEDULE D PRECLEARANCE FACILITY







SCHEDULE E
BUSINESS PRINCIPLES

OPERATING PRINCIPLES

Vancouver Airport Authority (the “Airport Authority”) is a not-for-profit, local body, whose goal is to become a major destination and North American West Coast gateway ensuring the needs of all airport users are met or exceeded. Our fundamental objective is the provision of exceptional service to our customers in a safe and secure manner. Our other objectives address the optimum utilization of airport facilities and the support of air carrier efficiencies. The Airport Authority will be guided by these principles in a fair and commercially responsible manner.

I) PASSENGER/CARGO SERVICE:

1. Airport Safety will meet or exceed airport certification requirements.
2. Airport Security will meet or exceed Canadian legislated requirements.
3. Passenger convenience for the largest number of passengers will be a prominent factor in facility allocation.
4. Facilitate Cargo Operations through more efficient facilities and streamlined ground handling procedures.

II) OPTIMUM USE OF FACILITIES:

5. Common use philosophy will be applied by the Airport Authority in the allocation of all facilities except exclusive leased space.
6. International flights will have priority in gate allocation in accordance with IATA scheduling process.
7. There will be sensitivity to the needs of other airport tenants in the allocation of all facilities.
8. There will be equity of airport access for air carriers in accordance with International rules and guidelines.

III) AIR CARRIER EFFICIENCY

9. Internationally accepted rules, guidelines, protocols and processes will be respected.
10. To extent reasonably possible, the Airport Authority will assist to provide operational efficiencies to air carriers.
11. Consideration will be given to air carrier strategic alliances, connecting passengers, and assessed future requirements in the allocation of facilities.
12. Each air carrier will be given a competitive choice of ground handling services subject to constraints of capacity, commercial viability, congestion, safety or security.

CONFIDENTIAL



13. Air carriers will be consulted on the application and amendment of operating principles.

IV) SUSTAINABILITY:

14. The Airport will operate in a sustainable manner from an economic, social, governance and environmental standpoint. Projects and choices will demonstrate a balanced approach seeking to produce positive benefits for businesses at the Vancouver International Airport, the Airport Authority, environment and the public.

FINANCIAL PRINCIPLES

The Airport Authority is incorporated as a not-for-profit corporation without share capital. Revenues received will be used for the operation, maintenance and development of airport related facilities and services.

1. The Airport Authority will collect sufficient revenue to carry out its function properly and achieve and maintain quality service to users.
2. The Airport Authority has the right and responsibility to determine its own economic and commercial policies to ensure its financial independence. Rates and charges will take into account national and local policy, commercial competitive rates and international conventions to which Canada is a signatory.
3. The Airport Authority will consult with the airlines and other interested parties with respect to proposed changes in rates and charges in an effort to reach general agreement. Failing such agreement, the Airport Authority will establish these rates and charges.
4. The Airport Authority will develop non-aeronautical revenue sources to their fullest to maintain YVR as a highly competitive airport while keeping increases in aeronautical fees to a minimum.
5. The Airport Authority requires sufficient funds to finance the investments which are needed to meet forecast demand. The Airport Authority will ensure the interests of all users are protected by applying sound economic and business principles to its operations.

CUSTOMER CARE PRINCIPLES

In support of the Airport Authority's mandate to manage and operate the airport for the general benefit of the public and the provision of exceptional service to the customers the Customer Care Principles were developed. The Airport Authority will work cooperatively with all our business partners to ensure the Customer Care principles are applied to all airport users.

1. Airport facilities and services will be operated in a safe, secure and environmentally responsible way.
2. Staff will provide courteous, friendly and efficient service.
3. Facilities will be clean, convenient, reliable, and efficient.
4. The customer will have access to a variety of quality goods and services at competitive prices.
5. An interesting and pleasing environment will be provided by creating a sense of place at the Vancouver International Airport through the celebration of nature and culture of British Columbia.
6. The Airport Authority is committed to being a leader in accessibility. The Airport Authority will work towards ensuring that the design of the Licensor's Facilities meets or exceeds all applicable building code requirements and standards established by the Canada Transportation Act as they related to the safety, comfort and dignity of passengers with reduced mobility, passengers with other disabilities, or otherwise requiring special assistance.
7. The passenger experience is to be enjoyable and entertaining.
8. The Airport Authority will respond and assist when passengers are experiencing sub-optimal conditions, including working with partners, such as airlines or security agencies, etc., to resolve matters no matter whose care a passenger may be under at a given time.
9. Efficient passenger, baggage and cargo connections will be stressed as the highest priority for developing YVR as a major Gateway.

ENVIRONMENTAL PRINCIPLES

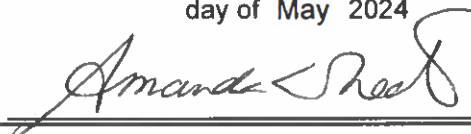
The Airport Authority's goal is to ensure that activities undertaken at the Vancouver International Airport are carried out in an environmentally responsible manner in compliance with applicable laws and regulations, accepted management practices and with sensitivity to community and public concerns. The Airport Authority is committed to environmental protection and to safeguarding the health of its employees, tenants, customers and the general public. The Airport Authority will work cooperatively with all our business partners to ensure the following Environmental Principles are applied to all airport users.

1. Meet or exceed all applicable laws, regulations and industry codes of practice while providing superior airport services.
2. Identify, assess and manage environmental hazards associated with airport operations.
3. Integrate environmental management measures with the planning, design, construction and operation of airport facilities.
4. Prepare for emergencies and coordinate our contingency plans with responsible authorities in adjacent communities.
5. Communicate openly with employees, tenants, customers, governments and the public on the environmental aspects of airport operations and development.
6. Encourage personnel to be aware of and meet their responsibility for environmental protection, providing training where necessary.
7. Strive for the continual improvement of environmental performance including the use of best available control technology where cost effective.
8. The Airport Authority will continue to take measures to minimize the impact of aircraft noise exposure to surrounding communities.

SCHEDULE F
OPERATION OF AIRPORT LANDS PROVISION OF THE HEAD LEASE

- 8.02.01 The Tenant shall, alone and not in partnership with any other Person, at all times throughout the Term, continuously, actively, diligently and carefully, manage, operate, and maintain the Airport, on its own behalf and at its own cost and expense, in accordance with this Lease, in an up-to-date and reputable manner befitting a First Class Facility and a Major International Airport, as those standards are understood from time to time, and in a condition and at a level of service to meet the capacity demands at the Airport from time to time and the capacity demands for airport services from users within seventy-five (75) kilometres from any point on the perimeter of the Lands to the extent practicable under Her Majesty's policies, procedures and practices which pertain to the services described in the Aviation Services and Facilities Agreement, the Canadian Inspections Services Agreement and the Memorandum of Agreement on Police and Security and which affect the Tenant's ability to meet capacity demands.

This is **Exhibit "E"** referred to in the Affidavit of Diana Vuong, affirmed before me at City of Vancouver, in the Province of British Columbia, this 23rd day of May 2024

A handwritten signature in cursive script, appearing to read "Amanda Wheat".

Amanda Wheat
BARRISTER AND SOLICITOR
A Notary Public in and for British Columbia

Schedule A Airport Improvement Fee Monthly Remittance Form						
Vancouver International Airport GST Remittance number: = 12726-7383 RT						
Air Carrier	LYNX AIR			Estimate		
Month	DECEMBER			Actual Adjustment	19213	
Year	2023					
Total Enplaned Pax (including AIF exemptions)	19472					

DEPAX Category	Where tickets were purchased	Current Month DEPAX	x	AIF Rate	=	Gross AIF	Plus	GST* @5%	=	Total Before Handling Fee
Within British Columbia or Yukon	Tickets purchased within North America		x	5	=	0.00	+	0.00	=	0.00
	Tickets purchased outside of North America		x	5	=	0.00	+	0.00	=	0.00
Outside British Columbia or Yukon	Tickets purchased within North America	19213	x	25	=	480,325.00	+	24,016.25	=	504,341.25
	Tickets purchased outside of North America		x	25	=	0.00	+	0.00	=	0.00
Total						480,325.00	+	24,016.25	=	504,341.25

A

* GST = Canadian Goods & Service Tax

Handling Fee:	Total Gross AIF	480,325.00	x	4%	=	19,213.00
Applicable Taxes on Handling Fee:						
GST				5%	=	960.65
Total of Handling Fee plus Applicable Taxes on Handling Fee					=	20,173.65

B

Net Remittance	A minus B	→	484,167.60
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Year "2022" Handling Fee Adjustment 20,495.25

Total Remittance	504,662.85
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Remit This Amount

This Compliance Certificate is delivered to Vancouver International Airport Authority pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of May 31, 1999 between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

The month of December Year 2023 plus Year "2022" under remittance due to Handling Fee adjustment

I, Heather Mckinnon, Controller, Lynx Air

certify that, to the best of my knowledge, information and belief, the AIF remittance for the month of December: Proper and responsible due diligence has been exercised in establishing the remittance by personnel understanding the importance to the Vancouver International Airport Authority of establishing the correct number of DEPAX passengers subject to the AIF (as defined in the MOA). I give this compliance certificate in my capacity as Controller and no personal liability is assumed in the giving of this certificate.

(signature) _____ (date)

**Schedule A
Airport Improvement Fee
Monthly Remittance Form**

Vancouver International Airport GST Remittance number: = 12726-7383 RT

Air Carrier	LYNX AIR
Month	JANUARY
Year	2024
Total Enplaned Pax (including AIF exemptions)	15749

Estimate	
Actual Adjustment	15547

DEPAX Category	Where tickets were purchased	Current Month DEPAX	x	AIF Rate	=	Gross AIF	Plus	GST* @5%	=	Total Before Handling Fee
Within British Columbia or Yukon	Tickets purchased within North America		x	5	=	0.00	+	0.00	=	0.00
	Tickets purchased outside of North America		x	5	=	0.00	+	0.00	=	0.00
Outside British Columbia or Yukon	Tickets purchased within North America	15547	x	25	=	388,675.00	+	19,433.75	=	408,108.75
	Tickets purchased outside of North America		x	25	=	0.00	+	0.00	=	0.00
Total						388,675.00	+	19,433.75	=	408,108.75

A

* GST = Canadian Goods & Service Tax

Handling Fee:	Total Gross AIF	388,675.00	x	4%	=	15,547.00
Applicable Taxes on Handling Fee:						
GST				5%	=	777.35
Total of Handling Fee plus Applicable Taxes on Handling Fee					=	16,324.35

B

Net Remittance A minus B → **391,784.40**

Total Remittance ↑ **391,784.40**

Remit This Amount

This Compliance Certificate is delivered to Vancouver International Airport Authority pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of May 31, 1999 between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

The month of January Year 2024

I, Heather Mckinnon, Controller, Lynx Air

certify that, to the best of my knowledge, information and belief, the AIF remittance for the month of **January**:
Proper and responsible due diligence has been exercised in establishing the remittance by personnel understanding the importance to the Vancouver International Airport Authority of establishing the correct number of DEPAX passengers subject to the AIF (as defined in the MOA). I give this compliance certificate in my capacity as Controller and no personal liability is assumed in the giving of this certificate.

(signature) _____ (date)

**Schedule A
Airport Improvement Fee
Monthly Remittance Form**

Vancouver International Airport GST Remittance number: = 12726-7383 RT

Air Carrier
Month
Year

LYNX AIR
FEBRUARY
2024
11612

Estimate
Actual Adjustment

11481

Total Enplaned Pax (including AIF exemptions)

DEPAX Category	Where tickets were purchased	Current Month DEPAX	x	AIF Rate	=	Gross AIF	Plus	GST* @5%	=	Total Before Handling Fee
Within British Columbia or Yukon	Tickets purchased within North America		x	5	=	0.00	+	0.00	=	0.00
	Tickets purchased outside of North America		x	5	=	0.00	+	0.00	=	0.00
Outside British Columbia or Yukon	Tickets purchased within North America	11481	x	25	=	287,025.00	+	14,351.25	=	301,376.25
	Tickets purchased outside of North America		x	25	=	0.00	+	0.00	=	0.00
Total						287,025.00	+	14,351.25	=	301,376.25

A

* GST = Canadian Goods & Service Tax

Handling Fee:	Total Gross AIF	287,025.00	x	4%	=	11,481.00
Applicable Taxes on Handling Fee:						
GST				5%	=	574.05
Total of Handling Fee plus Applicable Taxes on Handling Fee						12,055.05

B

Net Remittance A minus B → **289,321.20**

Total Remittance ↑ **289,321.20**

Remit This Amount

This Compliance Certificate is delivered to Vancouver International Airport Authority pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of May 31, 1999 between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

The month of February (1-21) Year 2024

I, Hanna Prokopiv, Director FP&A, Lyncx Air

certify that, to the best of my knowledge, information and belief, the AIF remittance for the month of **February (1-21)**:
Proper and responsible due diligence has been exercised in establishing the remittance by personnel understanding the importance to the Vancouver International Airport Authority of establishing the correct number of DEPAX passengers subject to the AIF (as defined in the MOA). I give this compliance certificate in my capacity as Director FP&A and no personal liability is assumed in the giving of this certificate.

(signature) _____ (date)

This is **Exhibit "H"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
in and for Alberta
My Commission Expires September 11, 2026

Form 49
Rule 13.19

Clerk's stamp

LL

C51676
Jun 24, 2024
COM

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

APPLICANTS EDMONTON REGIONAL AIRPORTS AUTHORITY, HALIFAX INTERNATIONAL AIRPORTS AUTHORITY, THE CALGARY AIRPORT AUTHORITY, VANCOUVER AIRPORT AUTHORITY, and WINNIPEG AIRPORTS AUTHORITY INC.

RESPONDENT LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
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888-3rd Street SW
Calgary, AB T2P 5C5

Karen Fellowes, K.C. / Archer Bell
Tel: (403) 724-9469 / (403) 724-9485
Fax: (403) 266-9034
Email: kfellowes@stikeman.com / abell@stikeman.com

Lawyers for the Applicants,
Edmonton Regional Airports Authority, Halifax International Airports Authority, The Calgary Airport Authority, Vancouver Airport Authority, and Winnipeg Airports Authority Inc.
File No.: 156280.1001

AFFIDAVIT OF LESLIE KWASNY

Affirmed on May 23, 2024

I, Leslie Kwasny, of the City of Edmonton, in the Province of Alberta, AFFIRM AND SAY THAT:

1. I am Chief Financial Officer and Vice President, Finance, Culture and Real Estate of the Edmonton Regional Airports Authority (the "ERAA") and as such, I have personal knowledge of the facts and

matters stated herein, except where stated to be based on information and belief, and, where so informed, I believe such matters to be true.

2. The ERAA is a signatory to a Memorandum of Agreement between the Air Transport Association of Canada, certain Signatory Air Carriers, and certain airport authorities (the “MOA”). Attached and marked as **Exhibit “A”** is a copy of the MOA.
3. 1263343 Alberta Inc. dba Lynx Air (“**Lynx**”) became a signatory to the MOA on April 6, 2022.
4. The history of the MOA dates back to the federal government’s decision to transfer authority over airports in Canada to designated airport authorities, such as the ERAA. Transfers began in 1992 with the introduction of the *Airport Transfer (Miscellaneous Matters) Act*, SC 1992, c 5, which allowed the federal government to retain ownership of 26 so-called National Airport System airports, while leasing these airports to locally controlled, not-for-profit, non-share private sector airport authorities. The ERAA was designated as an airport authority in 1990 and effective August 1, 1992, was leased the Edmonton International Airport (the “**Edmonton Airport**”) from the federal government.
5. The ultimate result of these transfers is that the federal government retains ownership of the airports but avoids the financial burden of maintaining, improving and expanding airports by transferring all financial liabilities to airport authorities. As such, upon transfer in 1992, the ERAA became financially responsible for the Edmonton Airport. Despite this transfer of responsibility, airport authorities like the ERAA are still expected to provide a public service and must maintain and manage their respective airports in the public interest. The lease with the federal government for the Edmonton Airport requires the ERAA to ensure it continuously, actively, diligently and carefully, manage, operate and maintain the Edmonton Airport, on its own behalf and at its own cost and expense, in an up-to-date and reputable manner befitting a “First Class Facility” and a “Major International Airport”. In Alberta, the ERAA and The Calgary Airport Authority are partially governed by the *Regional Airports Authorities Act*, RSA 2000, c R-9, which mandates that the ERAA manage and operate the Edmonton Airport in a safe, secure and efficient manner for the general benefit of the public, amongst other things. In order to meet these mandates, the ERAA must regularly undertake capital expenditure projects to maintain, improve, and/or expand the Edmonton Airport.
6. To fund these capital expenditure projects, various airport authorities, including the ERAA, entered into the MOA. The MOA recognizes that airport authorities have the responsibility to manage, operate and develop the airports for which they are responsible and further recognizes that in order to meet the air traffic demands on their respective airports and ensure that the public has access to quality air transport, airport authorities such as the ERAA from time to time must undertake

capital expenditure projects. As stated in the preamble to the MOA, airport authorities may obtain the funds to undertake such capital expenditure projects by imposing fees or charges upon all departing airport passengers. Such fees are referred to as "Airport Improvement Fees" or "AIF". AIF is critical to the health and financial viability of the Edmonton Airport. As a non-profit with limited options for generating revenue, it would be incredibly challenging for the ERAA to maintain the safety, security, and efficiency of the Edmonton Airport without the ability to charge AIF.

7. Pursuant to section 6.1 of the MOA, the decision to charge AIF and at what rate to charge it are made by each airport authority. Further pursuant to the MOA, signatory air carriers such as Lynx agree to collect and remit AIF on behalf of the airport authorities.
8. During the time that Lynx was a signatory to the MOA, the ERAA mandated an AIF of \$35.00 per passenger. Pursuant to section 9.2 of the MOA, Lynx was to remit the collected AIF to the ERAA on a monthly basis on the first working day of each month.
9. It was the ERAA's understanding that the AIF collected by Lynx was being held in trust by Lynx until its ultimate remittance to the ERAA. The MOA expressly states that the AIF is a charge imposed by the ERAA on passengers and is collected by Lynx "on behalf" of the ERAA. Furthermore, the MOA states at section 20.1 that the parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise *except* as Lynx acting as agent for the ERAA in collecting and remitting the AIF funds.
10. Additionally, in its reservation terms and conditions (the "**Terms and Conditions**"), Lynx represented to its passengers that "Airport Improvement Fees (AIF) ... are generally collected by Lynx at the time of booking. Lynx collects these fees from passengers and remits them directly to the airports." Attached and marked as **Exhibit "B"** is a copy of the Terms and Conditions.
11. At the time that Lynx filed for CCAA protection, the ERAA was owed substantial amounts by Lynx in unremitted AIF as Lynx had failed to remit collected AIF funds in accordance with its obligations under the MOA since November 2023. In total, the ERAA is owed \$355,640.79 in unremitted AIF by Lynx. Attached and marked as **Exhibit "C"** is an ERAA accounting spreadsheet demonstrating the amount owed to the ERAA by Lynx in unremitted AIF.
12. The ERAA did not have a deposit or a letter of credit from Lynx and has not recovered any of the unremitted AIF owed at the time of CCAA filing.

AFFIRMED this 23rd day of May, 2024.



William Wright
BARRISTER AND SOLICITOR
A Notary Public in and for Alberta



Leslie Kwasny

This is **Exhibit "A"** referred to in the Affidavit of Leslie Kwasny, sworn before me at the City of Edmonton, in the Province of Alberta, this 23rd day of May 2024



William Wright
BARRISTER AND SOLICITOR
A Notary Public in and for Alberta

MEMORANDUM OF AGREEMENT

BETWEEN

THE AIR TRANSPORT ASSOCIATION OF CANADA

AND

SIGNATORY AIR CARRIERS

AND

CERTAIN AIRPORTS

As Amended Effective January 20, 2004

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SCHEDULES

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D	ACC Operating Terms of Reference
E	Excluded Jurisdictions
F	Capital Programs Deemed to Have Been Approved
G	Airport Improvement Fee Monthly Remittance Form
H	Administrative Duties of The Air Transport Association of Canada
I	Vancouver International Airport AIF Rates

MEMORANDUM OF AGREEMENT

AMONG: The Air Transport Association of Canada (“ATAC”)

- and -

Those airports listed on Schedule A to this Memorandum of Agreement
(collectively, “Airports”, and individually, an “Airport”)

- and -

Those air carriers listed on Schedule B to this Memorandum of Agreement
(collectively, “Signatory Air Carriers”, and individually, “Signatory Air
Carrier”)

(all collectively, the “Parties” and, individually, a “Party”);

WHEREAS Airports have the responsibility to manage, operate and develop the airports for which they are responsible;

AND WHEREAS member air carriers of ATAC are major users of the airport facilities provided by the Airports;

AND WHEREAS Airports may have the requirement to expand their airport facilities to meet traffic demands and in that event will require additional revenues to pay for those expanded facilities;

AND WHEREAS Airports may decide to obtain such additional revenues, in whole or in part, by imposing fees or charges upon passengers using such Airports;

AND WHEREAS Airports may wish to obtain the assistance of air carriers in collecting such fees or charges from passengers;

PAGE 2

AND WHEREAS the Parties jointly wish to ensure that a meaningful consultation process is established which will ensure that the views and requirements of Signatory Air Carriers are fully considered by airport operators in connection with the collection and use of any such additional revenues;

AND WHEREAS the Parties jointly wish to establish a regime whereby, in recognition of the establishment of a formal consultation process, Signatory Air Carriers agree to collect on behalf of Airports and remit a fee which an Airport might decide to impose upon passengers, all upon and subject to the terms and conditions contained herein;

AND WHEREAS the Parties in giving effect to the forgoing wishes, do not wish to abrogate or derogate from any of their respective, existing rights or obligations except as is expressly agreed to herein;

NOW THEREFORE, in consideration of the payment of the sum of one dollar (\$1.00) by each Party to each of the other Parties, the receipt of which is hereby acknowledged, and in respect of the mutual covenants and agreements contained herein, the Parties agree as follows:

1.0 Purpose of Memorandum of Agreement

1.1 The Parties agree that this Memorandum of Agreement ("MOA") establishes the terms in respect of:

- (a) a consultation process regarding the expansion of Airport facilities; and
- (b) the collection of fees by Signatory Air Carriers for Airports from air carrier passengers if an Airport decides to impose such fees to pay for the future expansion of certain Airport facilities.

PAGE 3

1.2 This MOA shall be legally binding upon the Parties.

2.0 Accession to MOA

2.1 The Parties agree that if any Canadian airport or any Canadian or foreign air carrier wishes to become a Party to this MOA, it may do so by:

(a) agreeing in writing in the form attached as Schedule C that it agrees to be bound by the terms and conditions of this MOA; and

(b) sending a copy of the duly executed form along with one dollar (\$1.00) to each of the existing Parties. Upon so doing, such Canadian airport or air carrier will become a Party to this MOA and shall be deemed to be listed on either Schedule A or Schedule B, as appropriate.

2.2 Notwithstanding the provisions of Section 2.1 of this MOA, the Parties recognize and acknowledge that the terms and conditions of this MOA are not designed to address the unique issues arising at airports with two or more separate and physically distinct air terminal buildings jointly serving at least 20 million enplaned/deplaned passengers as at December 31, 1998 ("Multi-terminal Airports").

The Parties further recognize and acknowledge that multi-terminal airports can present new and different issues to air carriers which may vary over both time and the particular circumstances of individual air carriers and individual Multi-terminal Airports.

The Parties therefore agree that the accession to this MOA by any Multi-terminal Airport, shall be conditional upon the approval of the two largest Canadian Signatory Air Carriers

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using that airport as determined by passenger boardings in the calendar year immediately preceding the requested accession by that Multi-terminal Airport".

The Parties further agree that this MOA may be amended to the extent required by agreement between the two largest Canadian Signatory Air Carriers using that airport as determined by passenger boardings in the calendar year immediately preceding the requested accession by that Multi-terminal Airport seeking accession to this MOA, provided any such amendment shall be applicable to the operation of the MOA solely at the Multi-terminal Airport seeking accession.

2.3 For further clarity it is understood that an Airport may, without cause but only after the expiry of 365 days from the date that Airport executes or accedes to this MOA and only upon giving not less than 180 days notice, withdraw from this MOA. The withdrawal from this agreement shall be on the day specified by that Airport in the notice but shall not be earlier than the 181st day after the notice is given. Signatory Air Carriers shall not be obliged to collect any AIF for that Airport in respect of travel scheduled to begin any time after the effective date of withdrawal of that Airport.

3.0 Airline Consultative Committee

3.1 Signatory Air Carriers at a given Airport shall be permitted to join the Airline Consultative Committee ("ACC") at each such Airport. Signatory Air Carriers shall exercise their rights and responsibilities as set out in Article 13 of this MOA (the "Air Carrier Consultation Process") through the ACC. The Chairman of the ACC shall inform that Airport of the Majority In Interest ("MII") as determined in accordance with Section 3.3.

3.2 The ACC at each Airport shall be operated according to the ACC Operating Terms of Reference which is attached as Schedule D to this MOA, and the same may be amended by the ACC from time to time by providing written notice to each of the Parties. In the event of any inconsistency between the ACC Operating Terms of Reference and this MOA, the

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terms of this MOA shall prevail. Schedule D is included in this MOA for the purpose of providing direction relative to the Air Carrier Consultation Process and nothing in Schedule D shall impose any obligation, commitment or requirement upon any Airport or Signatory Air Carrier by virtue of Schedule D being included in this MOA.

- 3.3 Notwithstanding any voting procedures contained in the ACC Operating Terms of Reference, the MII referred to in this MOA shall mean those Signatory Air Carriers who constitute 66 2/3% or more of the total enplaned passengers (based on the Air Carrier Activity at Canadian Airports Statistics Canada catalogue, or its successor, containing the most recent calendar year data available from Statistics Canada) at a particular Airport.

4.0 Airport Improvement Fee

- 4.1 Any passenger fee or charge imposed by an Airport and implemented under this MOA shall be termed an Airport Improvement Fee (“AIF”).
- 4.2 An Airport may require Signatory Air Carriers to commence the collection of AIF funds subject to the completion of the process set out in Article 13.

5.0 Capital Expenditure Programs

- 5.1 AIF revenues shall only be used as follows:
- (a) to fund an Airport’s capital expenditure projects, the general purpose of which projects are to construct or improve “Airport Infrastructure”, and to fund the cost of issuance of associated debt, debt service costs, debt service reserve obligations, debt coverage requirements, capitalized interest on debt and bad debts associated with the collection of AIF revenues; and

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- (b) to fund capital expenditure projects, as referred to in Section 5.1(a) at airports which are owned or leased by the Airport identified in Schedule A and which are used as reliever airports for types of aircraft traffic that are not compatible with commercial operations at the Airport identified in Schedule A, subject to the condition that the value of capital expenditure projects at any such reliever airport shall not exceed 10% of the value of capital expenditure projects at the Airport identified in Schedule A which have been subjected to the Air Carrier Consultation Process as outlined in Article 13 of this MOA since the original commencement of this MOA.
- 5.2 For the purposes of this MOA, "Airport Infrastructure" means capital expenditures in respect of buildings, airfields, land, roads, navigational aids and other assets required for the operation of the Airport, but does not include operating or maintenance costs related to the Airport. For greater certainty, the Airport Infrastructure shall not include any buildings, airfields, land, roads, navigational aids and other assets required for the operation of the Airport located off the Airport that are not functionally related to commercial air operations, air navigation or the processing of passengers and their baggage and shall not include any costs associated with or related to the design, construction, development, maintenance or operation of any mass transit system beyond the boundary of the Airport.
- 5.3 Capital expenditure projects contemplated by an Airport shall be combined into capital expenditure programs ("Programs") for the purpose of consultation with Signatory Air Carriers and collection of any associated AIF. To qualify for collection of an associated AIF the actual period of construction contemplated by the Program must be for a minimum of two (2) years and a maximum of ten (10) years and the total estimated costs of all Programs tabled since the Airport's accession to this MOA must equal 50% or more of the Airport's annual revenue (not including AIF revenue) in the first year of the Program.

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- 5.4 Any construction of new runways or major expansion of existing runways or any other single project in excess of \$200,000,000 (in 2002 dollars) at an Airport must be by way of a separate Program and not combined with other projects.
- 5.5 With the exception of those Programs listed on Schedule F of this MOA, and except with the prior written approval of the Signatory Air Carriers forming the MII in accordance with Section 3.3. Airports may only require Signatory Air Carriers to collect and remit an AIF pursuant to this MOA for those Programs which have been subjected to the Air Carrier Consultation Process as outlined in Article 13 of this MOA. This provision shall not restrict the ability of an Airport to implement new projects during the period of a Program pursuant to Subsection 13.1(h) of this MOA.
- 5.6 With the exception of those projects within a Program listed on Schedule F of this MOA, and except with the prior written approval of the Signatory Air Carriers forming a MII, Airports may not award construction contracts related to any project in a Program for which that Airport will impose an AIF on passengers, prior to completing the steps contemplated by Subsections 13.1(a) and 13.1(c) through 13.1(e), inclusive and as appropriate, of the Air Carrier Consultation Process outlined in Article 13 of this MOA.

6.0 Rates

- 6.1 An Airport alone shall decide whether to obtain an AIF from passengers. The Airports have decided that any AIF imposed by an Airport and implemented under this MOA will be set at a Canadian whole dollar amount per Airport which shall be limited to two digits and shall not be less than \$3.00 per DEPAX passenger plus applicable provincial sales, goods and services, harmonized goods and services and other applicable taxes.
- 6.2 There shall be no more than three (3) different levels of AIF in place at any Airport as follows:
- (a) one (1) rate for all transborder (United States) and domestic DEPAX passengers not covered by Subsection 6.2(c) below;
 - (b) one (1) rate for all international (not including transborder) DEPAX, such rate not to exceed one and one-half (1 1/2) times the rate in Subsection 6.2(a) above;
 - (c) one (1) rate for all city-pairs (“short-haul destinations”) within the Province or Territory that the Airport resides in and which are designated under this Subsection 6.2(c) by the Airport to be short-haul destinations; provided that, for any Airport other than the Vancouver International Airport, an Airport will be limited to four (4) short-haul destinations or with the concurrence of the Signatory Air Carriers forming the MII, up to ten (10) short-haul destinations. The maximum distance between short-haul destinations shall be three hundred (300) statute miles. While recognizing the authority of an Airport to determine the one (1) rate for short-haul destinations, Signatory Airports shall, where applicable, make reasonable efforts to establish the same level of AIF at both Airports involved in a short-haul destination city-pair; and

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- (d) in the case of Vancouver International Airport (i) if Vancouver International Airport becomes a signatory to this MOA on or before January 1, 2004, effective April 1, 2004, those rates indicated on Schedule I hereto; and (ii) if Vancouver International Airport becomes a signatory to this MOA on a date following January 1, 2004, effective on the day which is ninety (90) days after the date that Vancouver International Airport becomes a signatory to this MOA, those rates indicated on Schedule I hereto.

6.3 An Airport has the right to make changes in AIF levels upon at least ninety (90) days prior written notice to ATAC and to the Signatory Air Carriers of the ticketing sale date following which the change in AIF levels will be effective provided that the rates for international and short-haul destinations, pursuant to Subsections 6.2(b), (c) and (d), shall not be adjusted more frequently than once in any calendar year without the concurrence of the Signatory Air Carriers forming the MII at the Airport. No notice may be issued by an Airport hereunder until January 1, 2004.

7.0 **Alternate Collection Method**

7.1 With respect to a Program for which an AIF is being collected by Signatory Air Carriers, nothing in this MOA shall prevent an Airport from choosing to utilize an additional alternative to the revenue collection method outlined in this MOA provided that any such collection method does not:

- (a) involve the participation of Signatory Air Carriers; or
- (b) impose additional charges of any kind on Signatory Air Carriers in relation to the funding of such Program, unless otherwise agreed in writing between the respective Parties.

8.0 Handling Fee

8.1 In respect of enplanements occurring on or prior to December 31, 2003, Signatory Air Carriers shall be entitled to withhold a handling fee which is calculated as a percentage of the gross amount of AIF to be otherwise remitted to a particular airport together with related provincial sales, goods and services, harmonized goods and services and other applicable taxes. The handling fee shall be one of three amounts determined by the annual enplaned/deplaned passenger volume at that Airport, which volume shall be determined by that Airport at the end of the ninth month of each calendar year for the previous 12 months, subject to annual review and verification by a designee of the Signatory Air Carriers, as follows:

- 6% for Airports with more than 7 million enplaned/deplaned passengers annually;
- 7% for Airports with 3 million to 7 million enplaned/deplaned passengers annually;
- 8% for Airports with less than 3 million enplaned/deplaned passengers annually.

8.1(a) In respect of enplanements occurring on or after January 1, 2004, Signatory Air Carriers shall be entitled to withhold a handling fee which is calculated as a percent of the gross amount of AIF to be otherwise remitted to a particular Airport together with related provincial sales, goods and services, harmonized goods and services and other applicable taxes. The handling fee shall be one of four (4) amounts determined by the annual enplaned/deplaned passenger volume at that Airport, which volume shall be determined by that Airport at the end of the ninth (9th) month of each calendar year for the previous twelve (12) months, subject to annual review and verification by ATAC, as follows:

- 4% for Airports with more than 14 million enplaned/deplaned passengers annually;
- 5% for Airports with more than 7 million enplaned/deplaned passengers annually;

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6% for Airports with 3 million to 7 million enplaned/deplaned passengers annually; and
 7% for Airports with less than 3 million enplaned/deplaned passengers annually.

8.2 Signatory Air Carriers that do not conduct audits of their financial records in their normal commercial operations shall be entitled to 75% of the applicable handling fee, subject to compliance with Section 10.9 of this MOA.

9.0 Remittance

9.1 "AIF collection commencement date" means the first day upon which an Airport can require Signatory Air Carriers to collect and remit an AIF, or a change to the level thereof, following the completion of the air carrier consultation process contemplated by Article 13.

For greater certainty, the AIF collection commencement dates for the following airports are deemed to be as follows:

Calgary Airport	October 1, 1997
Kelowna Airport	February 1, 1998
Winnipeg Airport	July 1, 1998

9.2 In respect of enplanements occurring on or prior to December 31, 2003, regardless of whether an AIF is collected from passengers, and subject only to Sections 9.5, 9.6 and 22.1, Signatory Air Carriers shall remit to an Airport the amount of the AIF imposed by that Airport pursuant to this MOA for all DEPAX passengers at that Airport for which the ticket sales occurred on or after the AIF collection commencement date for that Airport:

- (a) plus provincial sales, goods and services, harmonized goods and services and other applicable taxes; and

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- (b) less the handling fee and related provincial sales, goods and services, harmonized goods and services and other applicable taxes referred to in Article 8;

on a monthly basis no later than the end of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies (the "due date").

9.2(a) In respect of enplanements occurring on or after January 1, 2004, regardless of whether an AIF is collected from DEPAX passengers, and subject only to Sections 9.5, 9.6 and 22.1, Signatory Air Carriers shall remit to an Airport the amount of the AIF imposed by that Airport pursuant to this MOA for all DEPAX passengers at that Airport for which the ticket sales occurred on or after the AIF collection commencement date for that Airport:

- (i) plus provincial sales, goods and services, harmonized goods and services and other applicable taxes; and
- (ii) less the handling fee and related provincial sales, goods and services, harmonized goods and services and other applicable taxes referred to in Article 8;

on a monthly basis on the first working day of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies, such monthly remittances to be made on the basis of the estimated amount owing to the Airport for the previous month, with final adjustments made on a monthly basis on the first working day of the second month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies. The estimated amounts referred to in this Section 9.2(a) shall be based on reasonable, good faith estimates of DEPAX passengers using historical data and/or reasonable forward projections.

Notwithstanding the payment schedule contained in this Section 9.2(a), any Signatory Air Carrier with less than \$240,000 in gross annual AIF remittances for a particular Airport shall

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only be required to remit on a monthly basis no later than the end of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies.

9.3 The obligation to remit AIF revenues to an Airport arises upon the enplanement of a DEPAX passenger at a particular Airport provided that the DEPAX passenger purchased the ticket on or after the AIF collection commencement date for a particular Airport.

9.4 Each remittance will be accompanied by a statement identifying the number of DEPAX passenger enplanements associated with the remittance. The remittance shall separately identify the DEPAX passengers in Section 9.5 below.

- 9.5 With respect to DEPAX passengers who purchased tickets outside of North America:
- (a) provided that the Signatory Air Carrier has instituted a method of AIF collection which could commercially reasonably be expected to assess all DEPAX passengers in accordance with this MOA, and
 - (b) provided that the Signatory Air Carrier has made commercially reasonable efforts to collect AIF revenues pursuant to the method instituted in Subsection 9.5(a), and
 - (c) provided that the Signatory Air Carrier remitted all AIF revenues actually collected from DEPAX passengers in accordance with Section 9.2, Subsection 9.2(a) and as required by Article 11 during this period; and
 - (d) provided that the Signatory Air Carrier has provided the audit certification required pursuant to Section 10.3 of this MOA;

then the particular Signatory Air Carrier's liability for making the AIF remittances for DEPAX passengers whose tickets are purchased outside of North America, shall, subject to

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Article 8, be limited to the actual amount of AIF revenues collected from such DEPAX passengers carried by the particular Signatory Air Carrier at that particular Airport.

9.6 With respect to DEPAX passengers who purchased tickets in North America (Canada, the United States of America and Mexico):

- (a) provided that the Signatory Air Carrier has instituted a method of AIF collection which could commercially reasonably be expected to assess all DEPAX passengers in accordance with this MOA; and
- (b) provided that the Signatory Air Carrier has made commercially reasonable efforts to assess the DEPAX passengers in accordance with this MOA and collect AIF revenues pursuant to the method instituted pursuant to Subsection 9.6(a); and
- (c) provided that the Signatory Air Carrier remitted all AIF revenues actually collected from DEPAX passengers in accordance with Section 9.2, Subsection 9.2(a) and as required by Section 11 during this period; and
- (d) provided that the Signatory Air Carrier has provided the audit certification pursuant to Section 10.3 of this MOA; and
- (e) provided that the Signatory Air Carrier has provided a management certificate on the reimbursement form attached as Schedule G stating:

"This Compliance Certificate is delivered to [Airport] pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of xxxxxx between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

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I, xxxxxxname, xxxxxxxxtitle, of xxxxxxxxairline, certify that, to the best of my knowledge, information and belief, for the AIF remittance for the month of xxxxxmonth:

Proper and responsible due diligence has been exercised in establishing the remittance liability by personnel understanding the importance to the Airport of establishing the correct number of DEPAX passengers subject to the AIF (as defined in the MOA).

I give this Compliance Certificate in my capacity as xxxxxtitle and no personal liability is assumed in the giving of this certificate."

then the particular Signatory Air Carrier's liability for making the AIF remittances, subject to Article 8, shall be limited to:

- (i) the greater of the amount collected or, during the first 12 months after the AIF collection commencement date for that Airport, 80% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period;
- (ii) the greater of the amount collected or, during the 13th through the 18th months after the AIF collection commencement date for that Airport, 90% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period; and

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- (iii) the greater of the amount collected or, following the 18th month after the AIF collection commencement date for that Airport, 95% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period.

9.7 Interest will be charged to Signatory Air Carriers on a monthly basis, commencing after the due date, on all outstanding amounts at the prime rate established by the Royal Bank of Canada from time to time plus two (2%) per cent per annum. In the event that any month's remittances are more than 15 days in arrears, following the expiration of those 15 days, that Airport may cancel the agreement with a delinquent Signatory Air Carrier 15 days after providing notice in writing of the delinquency to the Signatory Air Carrier, provided that the Signatory Air Carrier does not pay the arrears during the said notice period, and require all AIF funds collected up to the date of cancellation to be remitted to that Airport.

10.0 Audit

10.1 Annually, within one hundred and twenty (120) days of the end of each Signatory Air Carrier's fiscal year, each Signatory Air Carrier shall deliver to each Airport an Annual Statement which details for that Airport, for that fiscal year, the following:

- (a) the number of DEPAX Passengers for each month and in aggregate;
- (b) the gross amount of AIF funds payable for each month and in aggregate;
- (c) the amount of handling fee deducted for each month and in aggregate;
- (d) the net amount of AIF funds payable for each month and in aggregate; and

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- (e) a statement that the Signatory Air Carrier has met the requirements of Subsections 9.5(a) and (c), or 9.6(a) and (c), as the case may be.
- 10.2 The Annual Statement referred to in Section 10.1 must contain a certification signed by a person authorized to sign on behalf of the Signatory Air Carrier which states that the Annual Statement is true and correct in all respects to the best of the such person's knowledge and belief after due inquiry.
- 10.3 At any time during the term of this MOA, an Airport may contract with the Signatory Air Carrier's external auditor to conduct an audit of the Signatory Air Carrier's records solely with regard to the matters described in any Annual Statement delivered after January 1, 2004 and referred to in Section 10.1 in respect of the relevant fiscal year. Airports shall advise a Signatory Air Carrier within sixty (60) days after the due date of the Annual Statement of their intention to commission an audit. In the event that more than one Airport advises of the intention to commission an audit of a Signatory Air Carrier, all Airports will coordinate their action into a single audit process, although individual reports will be prepared for each participating Airport. Signatory Air Carriers shall make reasonable efforts to ensure that their external auditor accepts this audit assignment and at a reasonable fee which in any event shall not exceed that which the Signatory Air Carrier would have paid had the audit been carried out at its request, failing which, the Airport(s) may contract with an external auditor of their choice.
- 10.4 The Airport(s) shall be entitled to bill and collect the costs of such audit from the Signatory Air Carrier in the event that such audit shows that remittances by the Signatory Air Carrier are understated by three percent (3%) or more of the amount due and payable to the Airport under this MOA for the year in question. In the case where multiple audits are combined into a single audit process pursuant to Section 10.3, the allocation of cost based on the percentage variance criteria shall be on an Airport-by-Airport basis.

- 10.5 Any refunds owing or remittances required pursuant to the Annual Statement referred to in Section 10.1 or the audit referred to in Section 10.3 shall be paid, without interest, by an Airport or a Signatory Air Carrier as appropriate, within thirty (30) days of the receipt of such Annual Statement or audit report. Any refunds owing or remittances required but not paid within thirty (30) days shall be subject to interest as provided for in Section 9.7.
- 10.6 Annually, within 180 days of its fiscal year end, each Airport must provide to each Signatory Air Carrier at such Airport, a certification under section 8600, or its successor, of the Handbook of the Canadian Institute of Chartered Accountants from an external auditor (who is legally qualified in the jurisdiction of that Airport to issue a financial audit opinion) that:
- (a) the amount of AIF funds remitted to the Airport have been used only for the Program for which they were intended and that there has not been an over payment on the Program; and
 - (b) that Airport has been in compliance with Section 12.1.
- 10.7 In the event that an Airport does not provide that certification contemplated by Section 10.6 above, the Signatory Air Carriers may contract with an independent auditor to conduct an audit of that Airport in respect of the matters set out in Section 10.6. The Signatory Air Carriers shall be entitled to bill and collect the cost of such audit from that Airport.
- 10.8 If the audit referred to in Sections 10.6 or 10.7 above reveals that that Airport has utilized such AIF revenues in a manner which contravenes the terms of this MOA, then if:
- (a) that Airport has failed to remedy the default within 30 days of the auditor's report, or

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- (b) that Airport has failed to present a plan, satisfactory to the Signatory Air Carriers, and proceeded diligently to implement such plan within 30 days of the auditor's report;

the Signatory Air Carriers may cease collecting and remitting the AIF until the default has been remedied to the satisfaction of the Signatory Air Carriers.

11.0 Application of AIF

11.1 Subject to the limitations described below, the AIF will apply to all departing enplaned passengers at a given Airport ("DEPAX passenger(s)").

11.2 For the purposes of this MOA, the term "ticket(s)" shall include paperless tickets where the equivalent of paper tickets with a travel itinerary for a passenger is kept in electronic form with a specific reference (commonly referred to as ticketless travel). A ticket may be comprised of a number of coupons.

11.3 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to a passenger (i) continuing a journey less than 4 hours after arrival at the Airport for domestic Canada and transborder itineraries and (ii) continuing a journey less than 24 hours after arrival at the Airport for international itineraries.

A passenger will be considered to be continuing a journey even though multiple air carriers may participate in the itinerary on one or more air carrier ticket(s).

11.4 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to airline employees travelling on business. For greater certainty, this includes duty travel of crews of one air carrier on another air carrier.

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- 11.5 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to infants under two years of age for whom no ticket was purchased (even though a no cost ticket may have been issued in the name of the infant).
- 11.6 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to customers travelling on passes or other travel documents with discount codes ID/IN. However, customers travelling on frequent flier mileage redemption programs or promotional tickets (such as two for one tickets) do not qualify as ID passengers within the meaning of this Section 11.6. Signatory Air Carriers agree to make reasonable efforts to refine the technical data necessary to limit exemptions to infants (IN) and airline employees travelling on business. Toward this end, Signatory Air Carriers agree to report on progress towards limiting inadvertent exemptions at a time not later than one year after the signing of this agreement after which time the Parties shall enter into consultations regarding alternative means of limiting exemptions.
- 11.7 Regardless of which air carrier sells a ticket to a DEPAX passenger or whose designator code is on the passenger's ticket, the air carrier on whom the DEPAX passenger actually travels shall be the Party responsible for the collection and remittance of the AIF for that DEPAX passenger.

12.0 Non-Discriminatory Charges to Signatory and Non-Signatory Air Carriers or Their Passengers

12.1 An Airport shall not grant access to any of its terminal buildings on any less favourable terms and conditions to Signatory Air Carriers and their passengers having regard to the AIF charges remitted and paid by such persons than are provided to non-Signatory Air Carriers and their passengers. An Airport shall achieve such equalized treatment through or by way of reasonably equivalent charges. Airports shall provide to ATAC and the Signatory Air Carriers, annually, the report of an independent, external auditor certifying that that nothing has come to the attention of the auditor to indicate the Airport is not in compliance with this section.

12.2 Except with respect to the Memorandum of Agreement between ATAC, the Calgary Airport Authority, the Winnipeg Airport Authority and the Kelowna Airport Authority and various air carriers dated September 23, 1997, as amended, and with respect to any Multi-terminal Airports, Signatory Air Carriers will not enter into an agreement concerning the collection of an AIF with a Canadian national airport on more favourable terms than those extended to Airports in Articles 8, 9, 11, 13 and 35 of this MOA.

13.0 Air Carrier Consultation Process

13.1 Signatory Air Carriers may be obligated to collect and remit an AIF pursuant to this MOA only after the Air Carrier Consultation Process has been completed in accordance herewith. This consultation process must be conducted, *inter alia*, in accordance with Article 3 and shall include the following requirements:

- (a) When an Airport has decided to implement an AIF and wants the assistance of Signatory Air Carriers in collecting and remitting such AIF pursuant to this MOA, that Airport shall prepare and forward to the Chair and each member of the Airport's

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ACC and to ATAC, a Program proposal and business plan setting out full details of and a rationale for the Program and notification to ATAC and to each Signatory Air Carrier of such proposal and business plan having been delivered. The proposal should include:

- (i) the cost, scope of work and construction period of each project within the Program;
 - (ii) the initial implementation date of the AIF, the initial amount of the AIF (which cannot be increased until 365 days after the AIF collection commencement date at the particular Airport) and a plan which sets out the anticipated AIF level and AIF revenue over the period required to recover the costs of the Program or extinguish the underlying debt incurred to finance the Program; and
 - (iii) the forecasts of traffic demand underlying the rationale for the Program.
- (b) After the delivery of the notice and information contemplated by Subsection 13.1(a):
- (i) an Airport may obtain the assistance of Signatory Air Carriers in collecting and remitting an initial Interim AIF limited to a maximum of C\$5 per DEPAX passenger, provided that Airport provides at least 90 days written notice to Signatory Air Carriers. The Interim AIF shall be collected for a term of one year, unless that Airport and the MII as determined in accordance with Section 3.3 agree to an extension. Notwithstanding any other provision of this MOA, the amount of the Interim AIF set out above shall not be subject to change by that Airport during this period; or, alternatively

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- (ii) After the delivery of the notice and information contemplated by Subsection 13.1(a) but prior to completion of the consultative process contemplated by Section 13, should both the Airport and the MII as determined in accordance with Section 3.3 of the Signatory Air Carriers to the MOA on the ACC agree that it is desirable, an Airport may obtain the assistance of Signatory Air Carriers in collecting and remitting a conditional AIF in an amount agreed upon by the Airport and the MII as determined in accordance with Section 3.3 for a time period and upon any other conditions so agreed upon by the Airport and the MII as determined in accordance with Section 3.3, provided the Signatory Air Carriers receive at least 90 days prior written notice of the AIF collection commencement date (the "Preliminary AIF"). This Preliminary AIF shall be in effect for not less than 365 days from its commencement. Notwithstanding any provisions in this MOA to the contrary, the amount of the Preliminary AIF shall not be subject to any increases by that Airport. The MII as determined in accordance with Section 3.3 shall have the right to discontinue collection of the Preliminary AIF by giving 90 days notice on or after 365 days from the AIF collection commencement date if, in its view, the consultation process has not proceeded satisfactorily, or if it continues to oppose a Program proposal. The Airport shall not be entitled to require the collection and remittance of an AIF pursuant to both sections 13.1(b)(i) and 13.1(b)(ii) during the same time period and in the event the Airport proceeds with a Preliminary AIF, the Signatory Air Carriers shall not be required to collect or remit an AIF pursuant to section

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13.1(b)(i) after the AIF collection commencement date for the Preliminary AIF.

- (c) The ACC shall have up to 180 days (“Phase One”) to consider and discuss the Program and to request such other information as the ACC may, acting reasonably, require and request from the Airport in order to evaluate the Program with the Airport's officials. The Chair of the ACC will advise the Airport within 180 days of either its concurrence, its disagreement or its concurrence with exceptions to the Program submitted. The Signatory Air Carriers at that Airport shall arrive at its decision via an MII vote in accordance with Section 3.3. If there is concurrence with the Program, the Airport may, subject to this MOA, implement the AIF charging mechanism pursuant to Subsection 13.1(g)(i). If the Chair of the ACC does not advise the Airport in writing of the Phase One decision within 180 days of receiving the Program proposal, the Program is deemed to have concurrence. If the Airport's Program is not the subject of concurrence, the Chairman of the ACC or any Signatory Air Carrier will advise the Airport of the result of the vote of the Signatory Air Carriers. In the event that the Signatory Air Carriers at that Airport disagree or concur with the Program with exceptions and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, the consultation process outlined below will continue with respect to those individual projects for which an exception was noted.
- (d) In the event that either the Signatory Air Carriers at that Airport disagree with or the Signatory Air Carriers at that Airport concur with exceptions to the Program in Phase One of the consultation process and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, then, commencing on the date written notice is given under Subsection 13(1)(c), a one month consultation process (“Phase Two”) will occur between the Airport's CEO and the CEO(s) (or their designates) of the Signatory Air Carriers forming the MII which

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disagreed with the Program. Any agreement reached in Phase Two will be confirmed to the Airport in writing through the Chairman of the ACC or any Signatory Air Carrier, following ratification by the MII but within 15 days of the end of Phase Two.

- (e) In the event that no agreement is reached during Phase Two and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, the Signatory Air Carriers forming the MII under Subsection 13.1(c) may, within 60 days, commencing at the conclusion of Phase Two (“Phase Three”), make an alternative proposal through the Signatory Air Carriers at that Airport provided that in the opinion of Signatory Air Carriers forming the MII under Subsection 13.1(c), the alternative proposal addresses all of the legitimate expansion requirements of the Airport over the term of the Program proposed by the Airport. The Airport will advise the Chairman of the ACC and all Signatory Air Carriers at that Airport in writing within 30 days of the conclusion of Phase Three whether it accepts or rejects the alternative proposal. If the Airport accepts the alternative proposal, the Airport may implement an AIF pursuant to Subsection 13.1(g)(i) of this MOA.
- (f) Should the Airport reject the alternative proposal made during Phase Three or if no alternative proposal is made, the Airport may, 24 months following the date upon which the Airport has provided to the Signatory Air Carriers at that Airport an Offer to Finance the proposed Program, conditional or otherwise, from a bona fide lender, group or syndicate of lenders, increase or initiate an AIF to be collected and remitted by Signatory Air Carriers, subject to the notification provisions of Subsection 13.1(g)(ii) of this MOA.
- (g) (i) Except as otherwise provided in Schedule F, following completion of the Air Carrier Consultation Process set out above, the Airport will advise each Signatory Air Carrier, in writing, at least 90 days prior to the collection

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commencement date of the AIF, of the level of the AIF and the collection commencement date. The level of the AIF on the initial collection commencement date must be no greater than the level which was identified in the Airport's Program submission.

- (ii) Subsequent to the initial collection commencement date, in respect of an AIF implemented pursuant to Paragraph 13.1(g)(i) and subject to Subsection 13.1(h), an Airport may change the level of the AIF, subject to a minimum 90 days prior written notice to Signatory Air Carriers, (although the Airport shall endeavour to provide greater than 90 days notice where possible) provided that any such increase shall only apply to DEPAX passengers who purchase their tickets 60 days or more after the Signatory Air Carriers receive this written notice and are travelling on or after the effective date of such increase.
- (h) An Airport may introduce new projects during the period of a Program which shall constitute an amendment to the Program. These amendments shall, subject to the provisions of this Subsection 13.1(h), qualify for the assistance of Signatory Air Carriers in the collection and remittance of an AIF pursuant to this MOA. The amendments contemplated by this section relate to new projects or existing projects which have a change of scope, but do not include changes to project cost estimates resulting only from changes in the cost of construction. Should any proposed amendment result in an increase in capital spending of 10% or more of the Program previously implemented or if the proposed amendment would result in an extension of the estimated term of the AIF related to the original Program by three years or more, the proposed amendment will be subject to the terms of the Air Carrier Consultation Process as if it were a new Program.
- (i) The attached Schedule F to this MOA lists those capital construction programs which, as of the date of signing of this MOA, are deemed to have been approved by

the Signatory Air Carriers as a Program pursuant to the Air Carrier Consultation Process outlined in this MOA. In these cases, the Airport may proceed immediately with the AIF notification outlined in Subsection 13.1(g)(i) of the MOA.

14.0 AIF Term

14.1 No AIF implemented pursuant to this MOA shall have a term longer than that required to extinguish the underlying debt (including associated financing costs) incurred by the Airport to finance the proposed Program. Where possible and practical, a target date for the termination of an AIF will be agreed upon by the Parties at the time of imposition.

15.0 Information Disclosure

15.1 At the time an Airport presents a Program pursuant to Subsection 13.1(a) and so long as the Airport pursues the Program and/or an AIF has been imposed by an Airport and implemented with the assistance of Signatory Air Carriers pursuant to this MOA, the Airport shall provide to the Chair of the ACC and to each Signatory Air Carrier, with a copy to ATAC, the following information on an annual budgeted basis and an annual actual basis:

- (a) Cash flow statement for the Program indicating (as a minimum) net AIF revenues collected under this MOA, total expenditures on the Program, underlying debt incurred by the Airport to finance the Program and interest, bad debts related to the collection of the AIF and other debt service costs related to the debt incurred;
- (b) Statement of capital expenditures to date on the Program with reasonable detail on the composition of capital expenditures versus budget and indicating cost overruns, if any.

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- 15.2 Each Airport shall provide, at its own cost, signage which advises passengers that the Airport is collecting an AIF for capital improvements at the Airport. The ACC shall be notified of the proposed signage and given 30 days to provide comments.
- 15.3 The Signatory Air Carriers, for informational purposes only, shall provide to the Airport on a monthly basis commencing on the date that an Airport becomes a signatory hereto, the number of non-revenue and revenue passengers of such Signatory Air Carrier that arrived and departed from the particular Airport in the prior month. This information shall not in any way relate or be used with respect to the calculation of AIF revenues remitted by a Signatory Air Carrier pursuant to this MOA.

16.0 Airside Infrastructure

- 16.1 The Parties recognize that, in addition to air carriers who utilize the air terminal building(s), all other aircraft operators ("Significant Users"), are material beneficiaries of ongoing Airport improvements to runways, taxi-ways, aircraft aprons and ramps, airfield lighting, airfield signage and airfield drainage ("Airside Infrastructure"). Each Airport shall implement a charging method for such Significant Users to contribute to Airside Infrastructure costs in such a fashion that Signatory Air Carriers and their passengers or customers are treated no less favourably than Significant Users and their passengers or customers relative to the respective benefits they receive from Airside Infrastructure. The Airport shall, in its sole discretion, make the determination that the said charging method implemented meets the criteria identified in this Section 16.1. It is agreed that this charging method envisages a process whereby landing fees or other airside related charges shall not, in total, exceed the costs associated with providing and maintaining Airside Infrastructure.

17.0 Term

17.1 The initial term of this MOA shall be for a period of 20 years commencing on May 31, 1999, provided that in those cases where debt arising from the agreed Program is not yet extinguished, the obligation to collect and remit AIF shall continue until such debt is extinguished. The Parties agree to meet 24 months prior to the expiry of this MOA to discuss renewal terms.

18.0 Applicable Law

18.1 This MOA shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws applicable in the Province of Ontario and, subject to Article 19, the Parties agree to be bound by the non-exclusive jurisdiction of the courts of the Province of Ontario.

18.2 Notwithstanding Section 18.1, in the case of a dispute between an individual Airport and an individual Signatory Air Carrier, this MOA shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws applicable in the province in which the Airport is resident and the Parties shall attorn to the jurisdiction of the courts of that province.

19.0 Dispute Resolution

19.1 Despite anything contained in the MOA to the contrary, in the event that a dispute or difference arises with respect to this MOA that cannot be resolved by negotiation between the Parties and the Parties do not agree to terminate this MOA, then in such event the Parties may agree to use the services of a mediator to attempt to resolve their dispute or difference and, failing agreement on the procedure to be followed, the mediation shall be conducted in accordance with the "Rules of Procedure for the Conduct of Mediations" of the Arbitration and Mediation Institute of Ontario.

19.2 In the event that the Parties choose not to mediate their dispute or difference or, if chosen, the mediation does not result in resolution of the dispute or the difference, and the Parties do not agree to terminate this MOA, then in such event any unresolved issue may be taken to any other appropriate dispute resolution process agreed to by the parties, including arbitration or an appropriate court process. Should arbitration be agreed upon, the arbitration will be conducted in accordance with the "Rule of Procedure for the Conduct of Arbitrations" of the Arbitration and Mediation Institute of Ontario.

20.0 Nature of Relationships

20.1 The Parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise. Nothing contained in this MOA nor any acts of any Party taken in conjunction hereunder, shall constitute or be deemed to constitute a partnership, joint venture, or principal/agency relationship in any way or for any purpose except as the Signatory Air Carriers acting as agents for the Airports in collecting and remitting the AIF funds. Except as expressly set forth herein, no Party, shall have any authority to act for, or to assume any obligations or responsibility on behalf of, any other Party.

20.2 Although this MOA is made among multiple Airports and multiple Signatory Air Carriers, all Parties agree that once an AIF is implemented by a particular Airport pursuant to this MOA, all obligations with respect to such AIF collection shall be deemed to be direct contractual obligations between each Airport and each respective Signatory Air Carrier.

21.0 Indemnity

21.1 The Airports agree to indemnify and save harmless ATAC, the Signatory Air Carriers, and their respective shareholders, directors, officers, employees and agents from all losses, including all claims, demands, proceedings, losses, damages (including, without limitation, direct, indirect, incidental, special, exemplary, consequential or other damages), liabilities, deficiencies, costs and expenses (including, without limitation, all legal fees on a solicitor/client basis and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly out of or in connection with any action by any person relating to the right of an Airport or Signatory Air Carrier to charge or collect an AIF in accordance with this MOA. Notwithstanding any other provision of this MOA, as long as the AIF mechanism contemplated by this MOA remains valid and in place, all costs incurred by an Airport in relation to this indemnity may, at the sole discretion of the Airport, be recovered by the Airport through the AIF mechanism established pursuant to this MOA. Nothing in this MOA shall require an Airport to indemnify a Signatory Air Carrier for any claim for damages arising out of the wilful misconduct or gross negligence of the Signatory Air Carrier.

22.0 Jurisdictional Restrictions

22.1 ATAC shall provide to each Airport a list, attached hereto as Schedule "E", which may be amended from time to time upon written notice to the Airports, of all countries ("jurisdictions") where the collection of an AIF as contemplated by this MOA is not permitted by law. Signatory Air Carriers shall not be required to collect or remit any AIF funds associated with tickets which are sold to persons physically present in the jurisdictions referred to in Schedule E, as amended from time to time. Prior to new jurisdictions being added to Schedule E, the Airports may seek an independent legal opinion as to the exclusion of collecting AIF revenues in such jurisdiction. In the event of a dispute regarding these additional jurisdictions, the matter shall be referred to arbitration pursuant to Article 19 of this MOA.

23.0 Mutual Agreement to Consult

23.1 The Parties to this MOA recognize that there are many complexities associated with the introduction of an AIF collection process as contemplated in this MOA and agree that a standing committee, which will be comprised of representatives of the Parties, will be established and will meet periodically to review issues associated with the administration of the MOA and attempt to reach mutual agreement on beneficial changes.

23.2 The Parties acknowledge and agree that this MOA may require amendment to facilitate the administration of taxes which may be applicable to AIF's collected pursuant to this MOA and in this respect the Parties agree to make such amendments as may be determined by ATAC and Signatory Air Carriers in an expeditious manner upon request provided that, such amendments would not materially reduce or impair the rights granted to Airports by the terms of this MOA.

24.0 Airport Specific Programs

24.1 For greater certainty, except as otherwise specifically provided in Sections 5.1 and 5.2, any Program shall relate only to the one (1) site-specific airport in respect of which the AIF is collected, notwithstanding that an Airport may own or operate more than one (1) airport.

25.0 Entire Agreement

25.1 This MOA supersedes, rescinds and revokes all negotiations, arrangements, letters of intent, brochures, representations, agreements and information conveyed, whether oral or in writing, between the Parties with respect to the subject matter hereof.

26.0 Headings

26.1 The division of this MOA into articles, sections, subsections, paragraphs and subparagraphs and the insertion of headings are for convenience or reference only and shall not affect the construction or interpretation of this MOA.

27.0 Schedules

27.1 Subject to the clarification provided in Section 3.2 of this MOA, the documents attached as Schedules to this MOA form an integral part of this MOA as fully as if they were set forth herein in full.

28.0 Notice

28.1 All notices or other communications necessary for the purposes of this MOA ("Notice") shall be in writing and shall be delivered personally or by courier, or shall be sent by registered mail or by prepaid post or sent by facsimile, addressed,

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- (a) in the case of an Airport, to each Airport listed on Schedule A or to such other address or facsimile number or addressed to such other person as the Airport may, from time to time, designate in writing to the other Parties:
- (b) in the case of ATAC or the Chairman of an ACC, to:

Chief Executive Officer
ATAC
255 Albert Street
Suite 1100
Ottawa, Ontario
K1P 6A9

Telephone: (613) 233-7727
Facsimile: (613) 230-8648

or to such other address or facsimile number or addressed to such other person as ATAC may, from time to time, designate in writing to the other Parties;

- (c) in the case of a Signatory Air Carrier, to each Signatory Air Carrier listed on Schedule B or to such other address or facsimile number or addressed to such other person as the Signatory Air Carrier may, from time to time, designate in writing to the other Parties.

28.2 Any Notice will be considered to have been received:

- (a) the case of facsimile, on actual receipt if the same is a business day, during normal business hours, and if not, then on the next business day, or
- (b) in all other cases, on the date of delivery.

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28.3 If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any Notice shall be delivered personally, by facsimile or by courier.

29.0 Time of Essence

29.1 Time is of the essence under this MOA.

30.0 Non-Waiver

30.1 Any failure by a Party to rely on its strict legal rights hereunder shall not constitute a waiver of any other rights of that Party hereunder.

31.0 Partial Invalidity

31.1 If, for any reason whatsoever, any term, covenant or condition of this MOA, or the application thereof to any person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition:

- (a) is deemed to be independent of the remainder of this MOA and to be severable and divisible therefrom, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this MOA or any part thereof; and
- (b) continues to be applicable and enforceable to the fullest extent permitted by law against any persons and any circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

32.0 Extended Meanings

32.1 The word “hereunder” and similar expressions used in this MOA relate to the whole of this MOA, unless the context indicates otherwise. Words importing a particular gender shall include all genders.

33.0 Counterparts

33.1 This MOA may be executed in one or more counterparts and by the different parties hereto in separate counterparts, each of which when executed will constitute an original and all of which taken together shall constitute one and the same instrument. Transmission by facsimile, in accordance with Article 28, of an executed counterpart shall constitute good and valid delivery of the same.

34.0 Amendments

34.1 This MOA may be amended from time to time in the following manner:

- (a) Any Party may initiate an amendment to the MOA by formally giving notice (as outlined in Schedule C) to all Parties specified under Article 28.0.
- (b) Parties receiving a notice of amendment have 90 days to express consent or rejection of the proposed amendment.
- (c) Subject to Section 2.2 and Subsections 34.1(d) and (e), amendments to this MOA require the consent of the majority of the Airports and the majority of the Signatory Air Carriers (including both of the two largest Canadian air carriers as determined by passenger boardings in the calendar year immediately preceding the requested amendment sought by Airports and Signatory Air Carriers).

- (d) Subject to Section 2.2, amendments to Articles 8, 9, 11, 13, 34 and 35, of the MOA require the consent of 80% of the Airports and 80% of the Signatory Air Carriers (including both of the two largest Canadian air carriers as determined by passenger boardings in the immediately preceding calendar year).
- (e) Subject to Section 2.2, ATAC, an Airport and the Signatory Air Carriers as represented by the ACC at that Airport may agree to vary the provisions of this MOA as they apply at that Airport provided that, in no event whatsoever shall they derogate from, alter or amend the provisions of Articles 8, 9, 11, 13, 34 or 35 of this MOA and provided further that notice of such variation is given by ATAC, the Airport and the ACC to all other Parties to this MOA. For greater certainty, no such variation shall affect the provisions of this MOA at any other Airport or any other rights or obligations of any other Parties.
- (f) All notices of amendments and responses shall be sent to ATAC as outlined in Article 28.

35.0 ATAC Administration Fee

- 35.1 Airports agree to contribute proportionately a percentage of gross AIF collected to ATAC to cover ongoing administration functions in support of this MOA, as described in Schedule H of this MOA. The amount to be contributed shall be established annually through the presentation by ATAC of a budget for the information of the Airports. This budgeted amount may vary annually but shall not be less than .1% nor exceed .2% of amounts remitted by all Signatory Air Carriers on behalf of the Airports, together with applicable taxes. The apportionment of this cost amongst the Airports shall be on the basis of enplaned passengers at the Airports.

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IN WITNESS WHEREOF, the duly authorized signatories of the respective Parties hereto have set their signatures this on the date indicated.

AIR TRANSPORT ASSOCIATION OF CANADA

Per: _____ Date:
MICHAEL SKROBICA

Title: Vice President Finance

OTTAWA MACDONALD-CARTIER INTERNATIONAL AIRPORT AUTHORITY

Per: _____ Date:
PAUL BENOIT

Title: President and Chief Executive Officer

AIR CANADA

Per: _____ Date:

Title:

CANADIAN AIRLINES INTERNATIONAL LTD.

Per: _____ Date:

Title:

SCHEDULE A

Airports

Name Of Airport Authority

Specific Airport Which Is Included

Mr. John Weerdenburg
 Vice-President & CFO
**Ottawa Macdonald-Cartier
 International Airport Authority**
 50 Airport Road
 Gloucester ON K1V 9B4
 T: 613-248-2000 ext 1107 F: 248-2067
 Email: weerdej@ottawa-airport.ca

Ottawa International Airport

Mr. Steve Burchi
Regina Airport Authority
 #1 - 5201 Regina Avenue
 Regina, SK S4W 1B3
 T: 306-761-7563 / F: 306-761-7559
 Email: sburchi@yqr.ca

Mr. Bill Restall
 President & CEO
Saskatoon Airport Authority
 2625 Airport Drive, Suite 3
 Saskatoon SK S7L 7L1
 T: 306-975-6464 / F: 306-975-4233
 Email: billrestall@yxe.ca

Mr. Rex LeDrew
 President
St. John's International Airport Authority
 Airport Terminal
 80 Airport Terminal Access Road
 St. John's, NF A1A 3R1
 T: 709-747-5188 / F: 709-758-8521
 Email: rledrew@stjohnsairport.com

Mr. Richard Paquette
Victoria Airport Authority
Victoria International Airport
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E: richard.paquette@victoriaairport.com

Mr. Wayne Ford
Controller
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Mr. Scott Clements
President & C.E.O.
Edmonton Regional Airports Authority
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E: sclements@edmontonairports.com

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Mr. R. J. Watson, AMCT, CMO
City Clerk
City of Timmins
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Timmins ON P4N 1B3
T: 705-264-1331 / F: 705-360-1392

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Mr. Dennis Shigematsu
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Ms. Joyce F. Carter, CA
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Ms. Brenda Calce
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Vice President, Finance & CFO
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President & CEO
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Montréal (Québec) H3B 4X8
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Mr. Stieg Hoeg
Airport General Manager
Prince George Airport Authority Inc.
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Prince George, BC V2N 4M6
T: 250-963-2400 / F: 250-963-3313
Email: shoeg@pgairport.ca

Mr. Tom Hutchings
Airport Manager
Stephenville Airport Corporation
13 Tennessee Drive
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T: 709-643-8455 / F: 709-643-1293
Email: tomhutchings@cyjt.com

SCHEDULE B

Signatory Air Carriers

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Senior Director, Corporate Real Estate
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Air Canada Center 1443 - Bldg 4-4th Floor
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Email: david.robinson@aircanada.ca

Ms. Jolene Mahody
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Pem Air Ltd.~~

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~~Icelandair~~ *no longer in operation
 Halifax NS

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SCHEDULE CAccession Form

TO: [Existing Parties to MOA]

RE: Accession to Memorandum of Agreement dated ■

The [Airport/Signatory Air Carrier], having received a copy of the Memorandum of Agreement dated ■ between the Air Transport Association of Canada, certain Airports and certain Signatory Air Carriers, and desiring to be a Party to that Memorandum of Agreement, and now providing consideration of one dollar (\$1.00), in Canadian funds, to each of the existing Parties to the Memorandum of Agreement, hereby agrees to be bound to the Memorandum of Agreement and to abide by its terms and conditions.

DATE: _____

SIGNATURE

TITLE

SIGNATURE

TITLE

Any Notice pursuant to the Memorandum of Agreement should be sent to:

(Company Name and Full Mail Address)

(Contact Name, Title, Telephone Number & Facsimile Number)

SCHEDULE D

ACC Operating Terms of Reference

AIRLINE CONSULTATIVE COMMITTEE (ACC)

1. OBJECTIVES

- To provide a forum for airlines at an airport to discuss and analyse matters of common interest and concern with respect to the operation of the airport.
- To consolidate airline views on an issue(s) and officially present such views to the airport operator.
- To act as the on-site consultative representative of the airlines with the airport operator in respect of all capital projects or programs, all fees and charges and all exclusive rentals at the airport which will have a financial impact of any kind on the airlines or airline passengers and any other matters having a material impact on airline operations at the airport.
- To perform the obligations assigned to it as set out in any agreement between the airport operators and the airlines and/or ATAC.

2. ESTABLISHMENT

- An ACC shall be established at each National airport and, where a consensus exists amongst airlines serving the airport, at each Regional/Local airport. National and Regional/Local airports mean those airports as defined in the National Airports Policy of July 1994 and as listed in Appendix 'A' hereto.

3. MEMBERSHIP

- Voting membership is open to all airlines and/or their duly designated representative serving an airport on a regular and consistent basis.
- ATAC shall be an ex officio non-voting member of all ACCs and, at airports served by their non-Canadian airline membership, IATA and ATA shall be non-voting members ex officio.
- Each airline shall appoint a single official representative to exercise that airlines voting rights and may change this person at any time.
- Each airline may invite other company personnel with appropriate qualifications to attend ACC meetings when considering major capital projects or programs proposed by an airport.

- In order to ensure coordination with the day-to-day operations of the airlines, the ACC may invite the Chairman of the Airport Operator's Committee (AOC), to attend any meeting of the ACC as a non-voting participant.

4. GOVERNANCE

- Each ACC shall meet at least once every 12 months and additionally at the call of the Chair or upon request of any member airline.
- Each ACC shall appoint a Chairman from amongst the largest Canadian air carriers serving the airport based on passenger volumes of the airport. The ACC may also appoint a Vice-Chairman and a Secretary from amongst their voting members. Those officers shall hold office until the ACC or the voting member airlines appoints their successors.
- The officers shall retain their voting rights as their airlines' official representatives.
- The Chairman shall give notice of all ACC meetings to the members and shall preside over all such meetings and shall arrange for the recording and circulation to the members of the minutes of all ACC meetings.
- The ACC may appoint and set the mandate of sub-committees and/or specialist working groups to study and report to the ACC, through the Chairman, on any matter. Membership on such sub-committees or working groups is open to airline employees or advisors designated by the airline official representative to the ACC.
- The Chairman shall ensure that copies of the minutes of the ACC meetings are made known to and co-ordinated with ATAC, IATA and ATA as the case may be.
- The official representative of each ACC member airline shall be entitled to vote on any matter coming before the ACC which requires a vote. To be voted on, a motion must be proposed and seconded by airline official representatives.
- While consensus is the goal, it is recognized that some issues coming before the ACC may require a vote. For matters having a material financial impact on all ACC members, a motion will not be considered carried unless it passes with the concurrence of those ACC members whose total passenger traffic at the airport is at least 66% of the airport's total passenger traffic as determined from the previous calendar year's total traffic. For motions not having a material financial impact on all ACC members, a simple majority of 51% of members present and voting is sufficient to carry the motion.

- No motion may be voted upon unless notice in writing of the motion was given to all ACC members at least seven (7) days prior to the meeting at which the motion is to be introduced.
- Voting “in absentia” is permissible if done in writing. Proxy voting is also permissible if done in writing by authorizing another ACC official airline representative to cast the absent members ballot.
- ACC meetings are closed to anyone other than airline employees, airline advisors and representatives of ATAC, ATA or IATA except when persons are expressly invited by the Chairman, e.g. airport management.

SCHEDULE EExcluded Jurisdictions

BOLIVIA

CHILE

COLOMBIA

COSTA RICA

ECUADOR

EL SALVADOR

GUATEMALA

IRAN

IRAQ

LIBYA

PERU

SAUDI ARABIA

VENEZUELA

URUGUAY

SCHEDULE F**Capital Programs Deemed to Have Been Approved****OTTAWA INTERNATIONAL AIRPORT AUTHORITY****Combined Services Building**

The Combined Services Building is a new facility to be constructed which will combine and replace both the existing Fire Hall and the existing Maintenance Garage in one combined new location on the southeast side of the intersection of runways 07/25 and 14/32 next to taxiway Echo at Ottawa International Airport. The estimated cost of this facility is \$7 million.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****CALGARY AIRPORT AUTHORITY**

Ten-year Capital Expansion Program (1997 to 2006) as originally approved by the ACC at Calgary pursuant to a letter dated December 31, 1996 from the Chairperson of the ACC and further updated by the revised 10 year capital program (1998 to 2007) as approved by the ACC at Calgary pursuant to a letter dated April 13, 1999 from the Chairperson of the ACC. For greater certainty it is expressly recognized that this approved capital program includes an AIF funded project titled "96th Avenue" which is physically located off-airport and therefore represents an exception to the conditions imposed on the use of AIF revenues in Section 5.1 of this Agreement.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****KELOWNA AIRPORT**

Three-year Capital Expansion Project at Kelowna pursuant to minutes of an ACC meeting held November 24, 1997.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****WINNIPEG INTERNATIONAL AIRPORT**

Five-year Capital Expansion Program (1998-2003) as approved by the ACC at Winnipeg pursuant to a letter dated April 7, 1998 from the Chairman of the ACC.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****VANCOUVER INTERNATIONAL AIRPORT**

The 10 Year Capital Plan, which means the plan described in the document entitled "10 Year Capital Plan Update November 2003" presented to the ACC at its December 2, 2003 meeting. As more fully described in that document, the capital projects forming the 10 Year Capital Plan include:

1. ITB Expansion and Upgrades
2. Sustaining and Restoration Projects
3. RAV Line
4. DTB Upgrade and Expansion
5. Airfield Projects
6. Baggage System Upgrades/Expansion
7. Roads/Parking
8. CATSA Funded HBS

For greater certainty, it is recognized that the RAV Line described above includes the rapid transit line and related facilities connecting the on-Airport portion of RAV to the main line in Richmond, which will be located off the Airport, and the inclusion of the RAV Line in the approved 10 Year Capital Plan represents an express exception to the restrictions imposed in Section 5.1 with respect to the use of AIF revenues.

SCHEDULE G
 Airport Improvement Fee
 Monthly Remittance Form
 Airport

Air Carrier _____ Month _____ Year _____
 Current Month DEPAX _____ X _____ =
 A.I.F. Rate Gross Remittance

	Gross AIF Remittance (per above)	Less	Handling Fee @ _____%	=	Net Remittance to Airport
Before Tax		Less		=	
Applicable Tax GST.....% HST.....% QST.....%		Less		=	
Total		Less		=	

Remit this Amount

This compliance certificate is delivered to [Airport] pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of _____ between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

I _____ (name) _____ (title) _____ (airline) certify that, to the best of my knowledge, information and belief, the AIF remittance for the month of _____ (month):

Proper and responsible due diligence has been exercised in establishing the remittance by personnel understanding the importance to the Airport of establishing the correct number of DEPAX passengers subject to the AIF (as defined in the MOA). I give this compliance certificate in my capacity as _____ (title) and no personal liability is assumed in the giving of this certificate.

(signature)

(date)

SCHEDULE H

ADMINISTRATIVE DUTIES OF THE AIR TRANSPORT ASSOCIATION OF CANADA

The Air Transport Association of Canada shall:

1. Carry out the administrative duties noted in paragraph 35.1 of the Memorandum of Agreement on Airport Improvement Fees dated May 31, 1999, as follows -
 - 1) Mandate - The Air Transport Association of Canada shall act as Administrator for and Secretariat on behalf of the Memorandum of Agreement on Airport Improvement Fees dated May 31, 1999. These duties shall include:
 1. Advising Signatories and other interested parties (e.g. CRSs) of:
 - (1) new Signatories
 - (2) changes to AIF rates
 - (3) proposed amendments to the Agreement
 2. Establish and support the Technical Committee noted under section 23.1 of the MOA.
 3. To inform Signatories (chiefly new entrants) or other interested parties on the terms of the Agreement.
 4. To attempt to settle disputes by means of discussion and, if necessary, obtaining legal opinions to guide Signatories.
 - 2) Budget - ATAC shall submit a budgeted amount to the Signatory Airports no later than October 1 of each year and the Airports shall have until October 30 of each year to comment and add items to the budgeted amount. The budgeted amount shall contain sufficient detail to identify tasks noted in (a) above. A comparative of actual expenditures in the prior year ended September 30 shall be provided.
 - 3) Apportionment - Airports shall provide annual passenger volumes to ATAC in accordance with section 8 of the MOA.

AIRPORTS IN THE NATIONAL AIRPORTS SYSTEM

KELOWNA, B.C.
PRINCE GEORGE, B.C.
VANCOUVER, B.C.
VICTORIA, B.C.
CALGARY, ALTA.
EDMONTON, ALTA.
REGINA, SASK.
SASKATOON / JOHN G. DIEFENBAKER, SASK.
WINNIPEG, MAN.
LONDON, ONT.
OTTAWA / MACDONALD-CARTIER, ONT.
SUDBURY, ONT.
THUNDER BAY, ONT.
TORONTO / LESTER B. PEARSON, ONT.
MONTREAL / DORVAL-MIRABEL, QUE.
QUEBEC CITY / JEAN LESAGE, QUE.
FREDERICTON, N.B.
MONCTON, N.B.
SAINT JOHN, N.B.
HALIFAX, N.S.
CHARLOTTETOWN, P.E.I.
GANDER, NFLD.
ST. JOHN'S, NFLD.
YELLOWKNIFE, NWT
WHITEHORSE, YUKON

AIRPORTS IN THE REGIONAL/LOCAL CATEGORY

QUESNEL, B.C.	SARNIA, ONT.
PRINCE RUPERT, B.C.	HAMILTON, ONT.
KAMLOOPS, B.C.	PICKERING, ONT. (UNDEVELOPED)
NANAIMO, B.C.	RED LAKE, ONT.
CRANBROOK, B.C.	KENORA, ONT.
CASTLEGAR, B.C.	PEMBROKE, ONT.
TERRACE, B.C.	EARLTON, ONT.
FORT ST. JOHN, B.C.	FORT FRANCES, ONT.
PENTICTON, B.C.	GASPE, QUE.
CAMPBELL RIVER, B.C.	RIMOUSKI, QUE.
SMITHERS, B.C.	SEPT-ILES, QUE.
COMOX, B.C.	VAL D'OR, QUE.
ABBOTSFORD, B.C.	BAGOTVILLE, QUE.
DAWSON CREEK, B.C.	ROUYN, QUE.
WILLIAMS LAKE, B.C.	BAIE-COMEAU, QUE.
FORT NELSON, B.C.	MONT-JOLI, QUE.
POWELL RIVER, B.C.	HAVRE ST. PIERRE, QUE.
PORT HARDY, B.C.	ALMA, QUE.
RAINBOW LAKE, ALTA.	CHATAM, N.B.
GRANDE PRAIRIE, ALTA.	CHARLO, N.B.
LETHBRIDGE, ALTA.	ST. LEONARD, N.B.
FORT MCMURRAY, ALTA.	YARMOUTH, N.S.
PEACE RIVER, ALTA.	SYDNEY, N.S.
LA RONGE, SASK.	CHURCHILL FALLS, NFLD.
URANIUM CITY, SASK.	DEER LAKE, NFLD.
PRINCE ALBERT, SASK.	GOOSE BAY, NFLD.
THOMPSON, MAN.	WABUSH, NFLD.
THE PAS, MAN.	STEPHENVILLE, NFLD.
NORWAY HOUSE, MAN.	ST. ANTHONY, NFLD.
BRANDON, MAN.	
FLIN FLON, MAN.	
DAUPHIN, MAN.	
LYNN LAKE, MAN.	
GILLAM, MAN.	
DRYDEN, ONT.	
KAPUSKASING, ONT.	
GORE BAY, ONT.	
TIMMONS, ONT.	
SAULT STE. MARIE, ONT.	
TORONTO ISLAND, ONT.	
WINDSOR, ONT.	
NORTH BAY, ONT.	

SCHEDULE I

Vancouver International Airport AIF Rates

Rates by destination of DEPAX passenger (plus applicable taxes):

Within British Columbia
or the Yukon \$5

Within North America
(not including BC or the Yukon) \$10

Outside of North America
(including Hawaii and Mexico) \$15

Connecting passengers are exempt from payment of AIF.

The rates at Vancouver International Airport may be changed in accordance with the provisions of Section 6.3 of this MOA without having to amend this MOA.

This is **Exhibit "B"** referred to in the Affidavit of Leslie Kwasny, sworn before me at the City of Edmonton, in the Province of Alberta, this 23rd day of May 2024



William Wright
BARRISTER AND SOLICITOR
A Notary Public in and for Alberta

Reservation Terms and Conditions

Fare Information

Cancellations

No cancellations are permitted within 72 hours of departure.

Within 24 hours of booking:

- For flights booked more than 7 days before departure, if you cancel your flight you'll receive a refund to your original form of payment.
- For flights booked within 7 days of departure, if you cancel your flight you'll receive a travel voucher, minus the \$74*CAD + tax cancellation fee (per flight segment).

More than 24 hours after booking:

- For cancellations made more than 72 hours before departure, you'll be charged a \$74*CAD + tax (on or after January 11, 2024) cancellation fee per passenger (per flight segment). You'll receive a travel voucher for the remaining amount (if applicable).

Changes

No changes are permitted within 72 hours of departure. Changes to the origin and destination are not permitted.

Name changes are not permitted.

- For changes made more than 72 hours before departure, you'll be charged a change fee of \$74*CAD + tax (on or after January 11, 2024) per passenger (per flight segment).
- If you change your flight to one with a higher fare, you must pay the difference in fare as well as the change fee.
- If you change your flight to one with a lower fare, you must pay the change fee, but you won't receive the difference in fare.

Payments Fees and Taxes



- Visa
- Mastercard
- Visa Debit
- Mastercard Debit
- Lynx Travel Voucher

Taxes and Fees

Taxes and fees vary based on the airports you're using. For domestic flights, the following taxes and fees may be added.

- Airport Improvement Fees (AIF) and Passenger Facility Charge (PFC) are generally collected by Lynx at the time of booking. Lynx collects these fees from passengers and remits them directly to the airports

Airport Code	Airport Improvement Fee (AIF)
YEG	\$35*CAD
YFC	\$30*CAD
YHM	\$25*CAD
YHZ	\$35*CAD
YLW	\$25.00*CAD
YUL	\$35*CAD
YVR (flying within BC or to the Yukon)	\$5.00*CAD
YVR (flying outside BC)	\$25.00*CAD
YWG	\$38.00*CAD
YYC	\$35.00*CAD



YYT

\$42*CAD

YYZ

\$30.00*CAD

All US airports

\$4.50*CAD

- Air Travellers Security Charge (“ATSC”): The ATSC is a security charge collected by the Government of Canada. Lynx collects this fee from passengers and remits it directly to Canada Revenue Agency.
- \$7.12*CAD per chargeable enplanement to a maximum of \$14.25*CAD for Canadian domestic flights.
- Goods and Services Tax (“GST”): GST of 5% applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights, excluding those that commence in Quebec, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador.
- Harmonized Sales Tax (“HST”): HST applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights commencing in the following provinces:
- U.S. Taxes & Fees do not apply to domestic Canadian flights.
- The US segment tax is also charged on flights between the US and a point in Canada within 225 miles of the border when payment is made within the US.
- For flights between the US and a point in Canada within 225 miles of the border, when payment is made within the US, a 7.5% tax is imposed on the base ticket price. For such flights and all other transborder flights, when payment is made within Canada, a flat rate of \$21.10 (USD) per passenger arrival and departure applies.
- US Agriculture Fee: The US government charges an agriculture inspection fee on all in-bound passengers of \$3.96 USD.
- US Immigration User Fee: For all transborder flights arriving in US, there is an Immigration User Fee of \$7.00 USD charged per passenger.
- US Sep 11th Security Fee: For all transborder flights departing the US, there is a Sep 11th Security Fee of \$5.60 USD charged per passenger.
- US Customs Processing Fee: For all transborder flights arriving in US, there is a US Customs User Fee of \$6.11 USD charged per passenger
- US Segment Tax: For all transborder flights, a US Segment Tax of \$4.50 USD is applied per passenger for US citizens. The US segment tax is also charged to US citizens on Canadian domestic flights if travel occurs in the US buffer zone near the border between the two countries
- US Transportation Tax: For all transborder flights, a US Transportation Tax is applied. For US citizens, it is 7.5% of the base ticket price (including surcharges) per



Province	Harmonized Sales Tax (HST)
Ontario	13%
Nova Scotia	15%
New Brunswick	15%
Prince Edward Island	15%
Newfoundland and Labrador	15%

- Quebec Sales Tax (“QST”): QST applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights commencing in Quebec.

Lynx Travel Vouchers

Unless otherwise specified, Lynx travel vouchers are valid for 12 months. Travel vouchers are non-transferable and can only be redeemed by the primary passenger on the booking. The owner of the travel voucher can use their voucher to book a flight for a third party. Travel vouchers can be applied towards base fare, taxes and fees.

Identification Requirements

Travel Within Canada

- a. All adult passengers must bring 1 valid (non-expired) identification document issued by a Canadian federal, provincial or territorial government that includes:
 - i. Photo
 - ii. Full name
 - iii. Date of birth
 - iv. Gender



documents must include:

i. Full name

ii. Date of birth

iii. Gender

c. For more information on identification requirements, click **Canada - Domestic Air Travel Identification page** and **Transport Security Administration Identification page**. For more information on identification requirements for children, click **Travelling with children and infants**.

International Travel

a. Adults, children and infants are required to have a valid passport for international travel.

b. Each country may have specific travel document requirements, vaccination requirements or health protocols. It is the responsibility of each passenger to ensure they have the necessary documents for travel. Always travel with the proper documentation at all times when travelling.

c. Please visit the U.S. Department of State for more information on requirements for travel to the United States. **Travel (state.gov)**

Check-in Guidelines

We recommend you arrive at the airport a minimum of 90 minutes before your scheduled departure time for domestic flights, and a minimum of 120 minutes before your scheduled departure time for international flights. If you'd rather check-in at the airport, please arrive 3 hours before your flight. Check-in and baggage drop-off closes 45 minutes prior to departure for domestic flights and 75 minutes prior to departure for international.

All security restrictions are subject to change. For the most up-to-date information, visit **tc.gc.ca**, **catsa.gc.ca** or **tsa.gov**.

Information Collection and Disclosure



destination, Canadian government authorities may require us to collect passenger information such as your full name, date of birth, citizenship, gender, passport number and country of issuance, payment method for flight purchase and booking details, as well as any other personal information as described by this policy or as required by such government authority.

Privacy Policy

Lynx is dedicated to protecting your personal information. Our privacy policy conforms with the Personal Information Protection and Electronic Documents Act. Additional information is available in **Privacy Policy**.

Rules of Carriage and Baggage Information

Carriage of passengers and goods on domestic flights, i.e., between, from and to points wholly within Canada, is subject to the applicable tariffs, conditions of carriage and related regulations available at the office of the carrier and **baggage**.

Checked Baggage Allowance

Checked baggage is subject to weight and size restrictions. Fees apply for each piece of baggage and may be combined. For example, if you check in 2 bags and both are overweight, you'll be charged 2 overweight fees. For more information visit: **Baggage Information | Lynx Air (flylynx.com)**

Checked baggage size

- Baggage may be up to 157cm (62") in combined dimensions (length + width + height) and weigh up to 23kg (50lbs).
- Oversized baggage (combined dimensions up to 203cm or 80") is accepted on a space-available basis.
- Overweight baggage (more than 23kg or 50lbs but not exceeding 45kg or 100lbs) is accepted on a space-available basis.
- For more information: **Baggage Information | Lynx Air (flylynx.com)**

Musical instruments

50lbs but not exceeding 45kg or 100lbs) and are subject to overweight fees.

Carry-on Baggage Allowance

Carry-on baggage is subject to a fee and must be stored in the overhead bin or placed under the seat directly in front of each passenger.

Each passenger may bring 1 carry-on item and 1 personal item. Each item must fit into the sizing devices and may not exceed the applicable measurements. This applies for both personal and carry-on items.

- Carry-on item: Maximum size of 23cm x 40cm x 55cm (9" x 15.75" x 21.5") and 10kg (22lbs). Carry-on fees apply.
- Personal item: Maximum size of 15cm x 33cm x 43cm (6" x 13" x 17"). Items that don't fit into the sizing device will be placed in checked baggage and charged a checked baggage fee.

Musical instruments

The combined length, width and height of the instrument (including the case) must be less than 113cm (45"). Instruments this size are considered carry-on and subject to carry-on fees. Musical instruments that don't meet the carry-on size criteria will have to be checked and follow the weight limits and fees for checked bags.

Can I bring this on a plane?

For travel within Canada, visit catsa.gc.ca for permitted and non-permitted items or call 1-800-O-Canada for more information. For travel to or from the United States, visit tsa.gov.

Baggage Loss or Damage

For carriage of baggage on domestic flights, Lynx's liability is limited to 1,131 Special Drawing Rights (SDRs) per person per incident, except for mobility aids.

Any complaint of any loss or damage to luggage must be in writing and must be made within 7 days of your flight.



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This is **Exhibit "C"** referred to in the Affidavit of Leslie Kwasny, sworn before me at the City of Edmonton, in the Province of Alberta, this 23rd day of May 2024



William Wright
BARRISTER AND SOLICITOR
A Notary Public in and for Alberta

Customer Aging									
Edmonton Regional Airports Authority									
C902712	1263343 Alberta Inc. dba. Lynx Air		462,262.32	0.00	11,963.01	179,242.85	242,143.12	28,913.34	
	Statement Balance as of Feb 29th								
	Reversal of February AIF Estimate		-88,961.60						
	February AIF Actual		93,409.69						
	Balance as of March 28		466,710.41	0.00	11,963.01	179,242.85	242,143.12	28,913.34	
C902712	1263343 Alberta Inc. dba. Lynx Air		Balance	120	90	60	30	Current	
	AIF		355,640.79		140,079.98	139,181.81	76,379.00		
	AGT		111,069.62	11,963.01	39,162.87	41,060.71	18,883.03		
	Total		466,710.41	11,963.01	179,242.85	180,242.52	95,262.03	0.00	

Voucher#	Last settle	Transaction type	Payment reference	Invoice	Amount in transac	Balance	Description	Date	Due date	Created date and time	Contract id	Property	Created by	Currency	Method of	Voucher2
ALF0019053				A00032596	11,963.01	11,963.01	Aeronautical: 1263343 Alberta Inc. dba. Lynx Air	11/30/2023	12/30/2023	12/7/2023 8:11			jbaird	CAD		ALF0019053
ALF0019226				A00032730	10,254.01	10,254.01	Aeronautical: 1263343 Alberta Inc. dba. Lynx Air	12/19/2023	1/18/2024	12/19/2023 15:05			jbaird	CAD		ALF0019226
ALF0019248				A00032752	11,963.01	11,963.01	Aeronautical: 1263343 Alberta Inc. dba. Lynx Air	12/31/2023	1/30/2024	1/10/2024 14:54			jbaird	CAD		ALF0019248
ALF0019286				R00023137	16,945.85	16,945.85	Non-aeronautical: 1263343 Alberta Inc. dba. Lynx A	1/31/2023	1/31/2024	1/10/2024 14:56			jbaird	CAD		ALF0019286
AIFM0001188					140,079.98	140,079.98	AIF DAT 1223 Actual	1/31/2024	1/31/2024	2/12/2024 8:08	FPPR0001		jbaird	CAD		AIFM0001188
ALF0019404				A00032867	23,325.39	23,325.39	Aeronautical: 1263343 Alberta Inc. dba. Lynx Air	1/31/2024	3/1/2024	2/8/2024 8:58			jbaird	CAD		ALF0019404
ALF0019427				M00005650	52.04	52.04	Miscellaneous: 1263343 Alberta Inc. dba. Lynx Air	1/31/2024	3/1/2024	2/8/2024 15:22			jbaird	CAD		ALF0019427
ALF0019438				R00023156	17,683.28	17,683.28	Non-aeronautical: 1263343 Alberta Inc. dba. Lynx A	1/31/2024	3/1/2024	2/9/2024 14:18			jbaird	CAD		ALF0019438
ARR0046902	Payment	Lynx Air			-27,061.00	-27,061.00	Unknown Unapplied	2/23/2024	2/23/2024	2/26/2024 17:32			achase	CAD	EFT	ARR0046902
AIFM0001202					139,181.81	139,181.81	AIF DAT 0124 Actual	2/29/2024	2/29/2024	3/12/2024 8:28	FPPR0001		jbaird	CAD		AIFM0001202
ALF0019563				A00032986	17,045.48	17,045.48	Aeronautical: 1263343 Alberta Inc. dba. Lynx Air	2/29/2024	3/30/2024	3/8/2024 17:05			jbaird	CAD		ALF0019563
ALF0019597				R00023173	11,867.86	11,867.86	Non-aeronautical: 1263343 Alberta Inc. dba. Lynx A	2/29/2024	3/30/2024	3/10/2024 23:38			jbaird	CAD		ALF0019597
					93,409.69	93,409.69	AIF DAT 0224 Actual	2/29/2024	2/29/2024	3/12/2024 15:45	FPPR0001		jbaird	CAD		AIFA0003769

466,710.41

	AIF	ACT
Nov 2023		11,963.01 120
Dec 2023	140,079.98	39,162.67 90
Jan 2024	139,181.81	41,060.71 60
Feb 2024 AIF (Actual)	93,409.69	28,913.34 30
Total balance	372,671.48	121,099.93
Payments not yet applied		-10,030.31 30
Payments applied to Feb	17,030.69	
Outstanding	355,640.79	111,069.62 466,710.41

This is **Exhibit "I"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
In and for Alberta
My Commission Expires September 11, 2026

Form 49
Rule 13.19

Clerk's stamp

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended



LL

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

C51676
Jun 24, 2024
COM

APPLICANTS EDMONTON REGIONAL AIRPORTS AUTHORITY, HALIFAX INTERNATIONAL AIRPORTS AUTHORITY, THE CALGARY AIRPORT AUTHORITY, VANCOUVER AIRPORT AUTHORITY, and WINNIPEG AIRPORTS AUTHORITY INC.

RESPONDENT LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **AFFIDAVIT**

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Lawyers for the Applicants,
Edmonton Regional Airports Authority, Halifax International Airports Authority, The Calgary Airport Authority, Vancouver Airport Authority, and Winnipeg Airports Authority Inc.
File No.: 156280.1001

AFFIDAVIT OF PAUL BRIGLEY

Sworn on May 23, 2024

I, Paul Brigley, of the City of Halifax, in the Province of Nova Scotia, SWEAR AND SAY THAT:

1. I am the Vice President, Finance & Chief Financial Officer of the Halifax International Airports Authority ("**HIAA**") and as such, I have personal knowledge of the facts and matters stated herein,

except where stated to be based on information and belief, and, where so informed, I believe such matters to be true.

2. HIAA is a signatory to a Memorandum of Agreement between the Air Transport Association of Canada, certain air carriers, and certain airport authorities (the “**MOA**”). Attached and marked as **Exhibit “A”** is a copy of the MOA.
3. 1263343 Alberta Inc. dba Lynx Air (“**Lynx**”) became a signatory to the MOA on April 6, 2022.
4. The history of the MOA dates back to the federal government’s decision to transfer authority over airports in Canada to designated airport authorities, such as HIAA. This transfer began in 1992 with the introduction of the *Airport Transfer (Miscellaneous Matters) Act*, SC 1992, c 5, which allowed the federal government to retain ownership of 26 so-called National Airport System airports, while leasing these airports to locally controlled, not-for-profit, non-share private sector airport authorities. HIAA was designated as a designated airport authority in 1999 and on February 1, 2000 HIAA signed a ground lease with Her Majesty the Queen in Right of Canada, represented by the Minister of Transport, and assumed responsibility for the management, operation, and maintenance of the Halifax Stanfield International Airport (the “**Halifax Airport**”).
5. The result of these transfers is that the federal government retains ownership of the airports but avoids the financial burden of maintaining, improving and expanding airports by transferring all financial liabilities to airport authorities. As such, upon transfer in 2000, HIAA became financially responsible for the Halifax Airport. Despite this transfer of responsibility, airport authorities like HIAA are still expected to provide a public service and must maintain and manage their respective airports in the public interest.
6. The MOA recognizes that airport authorities have the responsibility to manage, operate, maintain, and develop the airports for which they are responsible. In order to meet the air traffic demands on their respective airports and ensure that the public has access to quality air transport, airport authorities such as HIAA from time to time must undertake airport expansion projects. As stated in the preamble to the MOA, airport authorities may obtain the funds to undertake such expansion projects by imposing fees or charges upon all departing airport passengers. Such fees are referred to as “Airport Improvement Fees” or “AIF”.
7. Pursuant to section 6.1 of the MOA, the decision to charge AIF and at what rate to charge it at are made by each airport authority. Further pursuant to the MOA, signatory air carriers such as Lynx agree to collect and remit AIF on behalf of the airport authorities.
8. During the time that Lynx was a signatory to the MOA, HIAA mandated an AIF of \$35.00 per passenger for interprovincial and international flights and \$22.00 for intraprovincial flights. Pursuant

to section 9.2 of the MOA, Lynx was to remit the collected AIF to HIAA on a monthly basis on the first working day of each month. This was amended by the Air Carrier Operating Agreement (the “**ACOA**”) between HIAA and Lynx which provided that Lynx was to remit the collected AIF no later than by the end of the month following the month of enplanement. Attached and marked as **Exhibit “B”** is a copy of the ACOA.

9. It was HIAA’s understanding that the AIF collected by Lynx was being held in trust by Lynx until its ultimate remittance to HIAA. The MOA expressly states that the AIF is a charge imposed by HIAA on passengers and is collected by Lynx “on behalf” of HIAA. Similar language is used in the ACOA which states that Lynx is to collect the AIF from passengers and remit it back to HIAA.
10. Furthermore, the MOA states at section 20.1 that the parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise *except* as Lynx acting as agent for HIAA in collecting and remitting the AIF funds.
11. Additionally, in its reservation terms and conditions (the “**Terms and Conditions**”), Lynx represented to its passengers that “Airport Improvement Fees (AIF) ... are generally collected by Lynx at the time of booking. Lynx collects these fees from passengers and remits them directly to the airports.” Attached and marked as **Exhibit “C”** is a copy of the Terms and Conditions.
12. At the time that Lynx filed for CCAA protection, HIAA was owed substantial amounts by Lynx in unremitted AIF as Lynx had failed to remit collected AIF funds in accordance with its obligations under the MOA since November 2023, save for one payment of \$601.65 made by Lynx to the HIAA on March 26, 2024. In total, HIAA was owed \$377,205.30 (\$328,004.60 + HST) in unremitted AIF by Lynx at the time of Lynx’s CCAA filing and following the application of the payment of \$601.65 to outstanding AIF, the amount owed was \$376,603.65 (\$327,481.43 + HST). Attached and marked as **Exhibit “D”** is an HIAA accounting spreadsheet demonstrating the amount owed to HIAA by Lynx in unremitted AIF.
13. Pursuant to the ACOA, Lynx was also required to provide HIAA with a deposit of \$100,000 (the “**Deposit**”). It was HIAA’s understanding that this Deposit was to secure aeronautical fees, not AIF, and the amount of the Deposit was based on a pre-estimate of three months of aeronautical fees. After Lynx filed for CCAA protection, HIAA applied the Deposit to outstanding aeronautical fees owed by Lynx to HIAA. Due to a payment made by Lynx on January 19, 2024 of \$89,752.77 that Lynx instructed be applied to aeronautical fees, the amount owed by Lynx in outstanding aeronautical fees at the time it filed for CCAA protection was only \$42,832.15. As such, after the deposit was applied to aeronautical fees, \$57,167.85 was leftover; this residual amount was applied to outstanding AIF. The total amount in unremitted AIF currently owing to HIAA from Lynx is \$319,435.80.

SWORN this 23rd day of May, 2024.

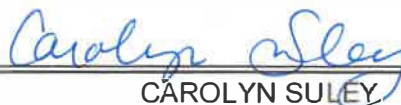


CAROLYN SULEY
BARRISTER AND SOLICITOR
A Notary Public in and for Nova Scotia



PAUL BRIGLEY

This is **Exhibit "A"** referred to in the Affidavit of Paul
Brigley, sworn before me at the City of Halifax, in the
Province of Nova Scotia, this 23rd
day of May 2024



CAROLYN SULEY
BARRISTER AND SOLICITOR
A Notary Public in and for Nova Scotia

MEMORANDUM OF AGREEMENT

BETWEEN

THE AIR TRANSPORT ASSOCIATION OF CANADA

AND

SIGNATORY AIR CARRIERS

AND

CERTAIN AIRPORTS

As Amended Effective January 20, 2004

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SCHEDULES

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- B Signatory Air Carriers
- C Accession Form
- D ACC Operating Terms of Reference
- E Excluded Jurisdictions
- F Capital Programs Deemed to Have Been Approved
- G Airport Improvement Fee Monthly Remittance Form
- H Administrative Duties of The Air Transport Association of Canada
- I Vancouver International Airport AIF Rates

MEMORANDUM OF AGREEMENT

AMONG: The Air Transport Association of Canada (“ATAC”)

- and -

Those airports listed on Schedule A to this Memorandum of Agreement
(collectively, “Airports”, and individually, an “Airport”)

- and -

Those air carriers listed on Schedule B to this Memorandum of Agreement
(collectively, “Signatory Air Carriers”, and individually, “Signatory Air
Carrier”)

(all collectively, the “Parties” and, individually, a “Party”);

WHEREAS Airports have the responsibility to manage, operate and develop the airports for which they are responsible;

AND WHEREAS member air carriers of ATAC are major users of the airport facilities provided by the Airports;

AND WHEREAS Airports may have the requirement to expand their airport facilities to meet traffic demands and in that event will require additional revenues to pay for those expanded facilities;

AND WHEREAS Airports may decide to obtain such additional revenues, in whole or in part, by imposing fees or charges upon passengers using such Airports;

AND WHEREAS Airports may wish to obtain the assistance of air carriers in collecting such fees or charges from passengers;

PAGE 2

AND WHEREAS the Parties jointly wish to ensure that a meaningful consultation process is established which will ensure that the views and requirements of Signatory Air Carriers are fully considered by airport operators in connection with the collection and use of any such additional revenues;

AND WHEREAS the Parties jointly wish to establish a regime whereby, in recognition of the establishment of a formal consultation process, Signatory Air Carriers agree to collect on behalf of Airports and remit a fee which an Airport might decide to impose upon passengers, all upon and subject to the terms and conditions contained herein;

AND WHEREAS the Parties in giving effect to the forgoing wishes, do not wish to abrogate or derogate from any of their respective, existing rights or obligations except as is expressly agreed to herein;

NOW THEREFORE, in consideration of the payment of the sum of one dollar (\$1.00) by each Party to each of the other Parties, the receipt of which is hereby acknowledged, and in respect of the mutual covenants and agreements contained herein, the Parties agree as follows:

1.0 Purpose of Memorandum of Agreement

1.1 The Parties agree that this Memorandum of Agreement (“MOA”) establishes the terms in respect of:

- (a) a consultation process regarding the expansion of Airport facilities; and
- (b) the collection of fees by Signatory Air Carriers for Airports from air carrier passengers if an Airport decides to impose such fees to pay for the future expansion of certain Airport facilities.

1.2 This MOA shall be legally binding upon the Parties.

2.0 Accession to MOA

2.1 The Parties agree that if any Canadian airport or any Canadian or foreign air carrier wishes to become a Party to this MOA, it may do so by:

(a) agreeing in writing in the form attached as Schedule C that it agrees to be bound by the terms and conditions of this MOA; and

(b) sending a copy of the duly executed form along with one dollar (\$1.00) to each of the existing Parties. Upon so doing, such Canadian airport or air carrier will become a Party to this MOA and shall be deemed to be listed on either Schedule A or Schedule B, as appropriate.

2.2 Notwithstanding the provisions of Section 2.1 of this MOA, the Parties recognize and acknowledge that the terms and conditions of this MOA are not designed to address the unique issues arising at airports with two or more separate and physically distinct air terminal buildings jointly serving at least 20 million enplaned/deplaned passengers as at December 31, 1998 ("Multi-terminal Airports").

The Parties further recognize and acknowledge that multi-terminal airports can present new and different issues to air carriers which may vary over both time and the particular circumstances of individual air carriers and individual Multi-terminal Airports.

The Parties therefore agree that the accession to this MOA by any Multi-terminal Airport, shall be conditional upon the approval of the two largest Canadian Signatory Air Carriers

PAGE 4

using that airport as determined by passenger boardings in the calendar year immediately preceding the requested accession by that Multi-terminal Airport".

The Parties further agree that this MOA may be amended to the extent required by agreement between the two largest Canadian Signatory Air Carriers using that airport as determined by passenger boardings in the calendar year immediately preceding the requested accession by that Multi-terminal Airport seeking accession to this MOA, provided any such amendment shall be applicable to the operation of the MOA solely at the Multi-terminal Airport seeking accession.

2.3 For further clarity it is understood that an Airport may, without cause but only after the expiry of 365 days from the date that Airport executes or accedes to this MOA and only upon giving not less than 180 days notice, withdraw from this MOA. The withdrawal from this agreement shall be on the day specified by that Airport in the notice but shall not be earlier than the 181st day after the notice is given. Signatory Air Carriers shall not be obliged to collect any AIF for that Airport in respect of travel scheduled to begin any time after the effective date of withdrawal of that Airport.

3.0 Airline Consultative Committee

3.1 Signatory Air Carriers at a given Airport shall be permitted to join the Airline Consultative Committee ("ACC") at each such Airport. Signatory Air Carriers shall exercise their rights and responsibilities as set out in Article 13 of this MOA (the "Air Carrier Consultation Process") through the ACC. The Chairman of the ACC shall inform that Airport of the Majority In Interest ("MII") as determined in accordance with Section 3.3.

3.2 The ACC at each Airport shall be operated according to the ACC Operating Terms of Reference which is attached as Schedule D to this MOA, and the same may be amended by the ACC from time to time by providing written notice to each of the Parties. In the event of any inconsistency between the ACC Operating Terms of Reference and this MOA, the

PAGE 5

terms of this MOA shall prevail. Schedule D is included in this MOA for the purpose of providing direction relative to the Air Carrier Consultation Process and nothing in Schedule D shall impose any obligation, commitment or requirement upon any Airport or Signatory Air Carrier by virtue of Schedule D being included in this MOA.

- 3.3 Notwithstanding any voting procedures contained in the ACC Operating Terms of Reference, the MII referred to in this MOA shall mean those Signatory Air Carriers who constitute 66 2/3% or more of the total enplaned passengers (based on the Air Carrier Activity at Canadian Airports Statistics Canada catalogue, or its successor, containing the most recent calendar year data available from Statistics Canada) at a particular Airport.

4.0 Airport Improvement Fee

- 4.1 Any passenger fee or charge imposed by an Airport and implemented under this MOA shall be termed an Airport Improvement Fee (“AIF”).
- 4.2 An Airport may require Signatory Air Carriers to commence the collection of AIF funds subject to the completion of the process set out in Article 13.

5.0 Capital Expenditure Programs

- 5.1 AIF revenues shall only be used as follows:
- (a) to fund an Airport’s capital expenditure projects, the general purpose of which projects are to construct or improve “Airport Infrastructure”, and to fund the cost of issuance of associated debt, debt service costs, debt service reserve obligations, debt coverage requirements, capitalized interest on debt and bad debts associated with the collection of AIF revenues; and

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- (b) to fund capital expenditure projects, as referred to in Section 5.1(a) at airports which are owned or leased by the Airport identified in Schedule A and which are used as reliever airports for types of aircraft traffic that are not compatible with commercial operations at the Airport identified in Schedule A, subject to the condition that the value of capital expenditure projects at any such reliever airport shall not exceed 10% of the value of capital expenditure projects at the Airport identified in Schedule A which have been subjected to the Air Carrier Consultation Process as outlined in Article 13 of this MOA since the original commencement of this MOA.
- 5.2 For the purposes of this MOA, "Airport Infrastructure" means capital expenditures in respect of buildings, airfields, land, roads, navigational aids and other assets required for the operation of the Airport, but does not include operating or maintenance costs related to the Airport. For greater certainty, the Airport Infrastructure shall not include any buildings, airfields, land, roads, navigational aids and other assets required for the operation of the Airport located off the Airport that are not functionally related to commercial air operations, air navigation or the processing of passengers and their baggage and shall not include any costs associated with or related to the design, construction, development, maintenance or operation of any mass transit system beyond the boundary of the Airport.
- 5.3 Capital expenditure projects contemplated by an Airport shall be combined into capital expenditure programs ("Programs") for the purpose of consultation with Signatory Air Carriers and collection of any associated AIF. To qualify for collection of an associated AIF the actual period of construction contemplated by the Program must be for a minimum of two (2) years and a maximum of ten (10) years and the total estimated costs of all Programs tabled since the Airport's accession to this MOA must equal 50% or more of the Airport's annual revenue (not including AIF revenue) in the first year of the Program.

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- 5.4 Any construction of new runways or major expansion of existing runways or any other single project in excess of \$200,000,000 (in 2002 dollars) at an Airport must be by way of a separate Program and not combined with other projects.
- 5.5 With the exception of those Programs listed on Schedule F of this MOA, and except with the prior written approval of the Signatory Air Carriers forming the MII in accordance with Section 3.3. Airports may only require Signatory Air Carriers to collect and remit an AIF pursuant to this MOA for those Programs which have been subjected to the Air Carrier Consultation Process as outlined in Article 13 of this MOA. This provision shall not restrict the ability of an Airport to implement new projects during the period of a Program pursuant to Subsection 13.1(h) of this MOA.
- 5.6 With the exception of those projects within a Program listed on Schedule F of this MOA, and except with the prior written approval of the Signatory Air Carriers forming a MII, Airports may not award construction contracts related to any project in a Program for which that Airport will impose an AIF on passengers, prior to completing the steps contemplated by Subsections 13.1(a) and 13.1(c) through 13.1(e), inclusive and as appropriate, of the Air Carrier Consultation Process outlined in Article 13 of this MOA.

6.0 Rates

- 6.1 An Airport alone shall decide whether to obtain an AIF from passengers. The Airports have decided that any AIF imposed by an Airport and implemented under this MOA will be set at a Canadian whole dollar amount per Airport which shall be limited to two digits and shall not be less than \$3.00 per DEPAX passenger plus applicable provincial sales, goods and services, harmonized goods and services and other applicable taxes.
- 6.2 There shall be no more than three (3) different levels of AIF in place at any Airport as follows:
- (a) one (1) rate for all transborder (United States) and domestic DEPAX passengers not covered by Subsection 6.2(c) below;
 - (b) one (1) rate for all international (not including transborder) DEPAX, such rate not to exceed one and one-half (1 1/2) times the rate in Subsection 6.2(a) above;
 - (c) one (1) rate for all city-pairs ("short-haul destinations") within the Province or Territory that the Airport resides in and which are designated under this Subsection 6.2(c) by the Airport to be short-haul destinations; provided that, for any Airport other than the Vancouver International Airport, an Airport will be limited to four (4) short-haul destinations or with the concurrence of the Signatory Air Carriers forming the MII, up to ten (10) short-haul destinations. The maximum distance between short-haul destinations shall be three hundred (300) statute miles. While recognizing the authority of an Airport to determine the one (1) rate for short-haul destinations, Signatory Airports shall, where applicable, make reasonable efforts to establish the same level of AIF at both Airports involved in a short-haul destination city-pair; and

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- (d) in the case of Vancouver International Airport (i) if Vancouver International Airport becomes a signatory to this MOA on or before January 1, 2004, effective April 1, 2004, those rates indicated on Schedule I hereto; and (ii) if Vancouver International Airport becomes a signatory to this MOA on a date following January 1, 2004, effective on the day which is ninety (90) days after the date that Vancouver International Airport becomes a signatory to this MOA, those rates indicated on Schedule I hereto.

6.3 An Airport has the right to make changes in AIF levels upon at least ninety (90) days prior written notice to ATAC and to the Signatory Air Carriers of the ticketing sale date following which the change in AIF levels will be effective provided that the rates for international and short-haul destinations, pursuant to Subsections 6.2(b), (c) and (d), shall not be adjusted more frequently than once in any calendar year without the concurrence of the Signatory Air Carriers forming the MII at the Airport. No notice may be issued by an Airport hereunder until January 1, 2004.

7.0 **Alternate Collection Method**

7.1 With respect to a Program for which an AIF is being collected by Signatory Air Carriers, nothing in this MOA shall prevent an Airport from choosing to utilize an additional alternative to the revenue collection method outlined in this MOA provided that any such collection method does not:

- (a) involve the participation of Signatory Air Carriers; or
- (b) impose additional charges of any kind on Signatory Air Carriers in relation to the funding of such Program, unless otherwise agreed in writing between the respective Parties.

8.0 Handling Fee

8.1 In respect of enplanements occurring on or prior to December 31, 2003, Signatory Air Carriers shall be entitled to withhold a handling fee which is calculated as a percentage of the gross amount of AIF to be otherwise remitted to a particular airport together with related provincial sales, goods and services, harmonized goods and services and other applicable taxes. The handling fee shall be one of three amounts determined by the annual enplaned/deplaned passenger volume at that Airport, which volume shall be determined by that Airport at the end of the ninth month of each calendar year for the previous 12 months, subject to annual review and verification by a designee of the Signatory Air Carriers, as follows:

- 6% for Airports with more than 7 million enplaned/deplaned passengers annually;
- 7% for Airports with 3 million to 7 million enplaned/deplaned passengers annually;
- 8% for Airports with less than 3 million enplaned/deplaned passengers annually.

8.1(a) In respect of enplanements occurring on or after January 1, 2004, Signatory Air Carriers shall be entitled to withhold a handling fee which is calculated as a percent of the gross amount of AIF to be otherwise remitted to a particular Airport together with related provincial sales, goods and services, harmonized goods and services and other applicable taxes. The handling fee shall be one of four (4) amounts determined by the annual enplaned/deplaned passenger volume at that Airport, which volume shall be determined by that Airport at the end of the ninth (9th) month of each calendar year for the previous twelve (12) months, subject to annual review and verification by ATAC, as follows:

- 4% for Airports with more than 14 million enplaned/deplaned passengers annually;
- 5% for Airports with more than 7 million enplaned/deplaned passengers annually;

6% for Airports with 3 million to 7 million enplaned/deplaned passengers annually; and

7% for Airports with less than 3 million enplaned/deplaned passengers annually.

- 8.2 Signatory Air Carriers that do not conduct audits of their financial records in their normal commercial operations shall be entitled to 75% of the applicable handling fee, subject to compliance with Section 10.9 of this MOA.

9.0 Remittance

- 9.1 "AIF collection commencement date" means the first day upon which an Airport can require Signatory Air Carriers to collect and remit an AIF, or a change to the level thereof, following the completion of the air carrier consultation process contemplated by Article 13.

For greater certainty, the AIF collection commencement dates for the following airports are deemed to be as follows:

Calgary Airport	October 1, 1997
Kelowna Airport	February 1, 1998
Winnipeg Airport	July 1, 1998

- 9.2 In respect of enplanements occurring on or prior to December 31, 2003, regardless of whether an AIF is collected from passengers, and subject only to Sections 9.5, 9.6 and 22.1, Signatory Air Carriers shall remit to an Airport the amount of the AIF imposed by that Airport pursuant to this MOA for all DEPAX passengers at that Airport for which the ticket sales occurred on or after the AIF collection commencement date for that Airport:

- (a) plus provincial sales, goods and services, harmonized goods and services and other applicable taxes; and

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- (b) less the handling fee and related provincial sales, goods and services, harmonized goods and services and other applicable taxes referred to in Article 8;

on a monthly basis no later than the end of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies (the "due date").

9.2(a) In respect of enplanements occurring on or after January 1, 2004, regardless of whether an AIF is collected from DEPAX passengers, and subject only to Sections 9.5, 9.6 and 22.1, Signatory Air Carriers shall remit to an Airport the amount of the AIF imposed by that Airport pursuant to this MOA for all DEPAX passengers at that Airport for which the ticket sales occurred on or after the AIF collection commencement date for that Airport:

- (i) plus provincial sales, goods and services, harmonized goods and services and other applicable taxes; and
- (ii) less the handling fee and related provincial sales, goods and services, harmonized goods and services and other applicable taxes referred to in Article 8;

on a monthly basis on the first working day of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies, such monthly remittances to be made on the basis of the estimated amount owing to the Airport for the previous month, with final adjustments made on a monthly basis on the first working day of the second month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies. The estimated amounts referred to in this Section 9.2(a) shall be based on reasonable, good faith estimates of DEPAX passengers using historical data and/or reasonable forward projections.

Notwithstanding the payment schedule contained in this Section 9.2(a), any Signatory Air Carrier with less than \$240,000 in gross annual AIF remittances for a particular Airport shall

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only be required to remit on a monthly basis no later than the end of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies.

- 9.3 The obligation to remit AIF revenues to an Airport arises upon the enplanement of a DEPAX passenger at a particular Airport provided that the DEPAX passenger purchased the ticket on or after the AIF collection commencement date for a particular Airport.
- 9.4 Each remittance will be accompanied by a statement identifying the number of DEPAX passenger enplanements associated with the remittance. The remittance shall separately identify the DEPAX passengers in Section 9.5 below.
- 9.5 With respect to DEPAX passengers who purchased tickets outside of North America:
- (a) provided that the Signatory Air Carrier has instituted a method of AIF collection which could commercially reasonably be expected to assess all DEPAX passengers in accordance with this MOA, and
 - (b) provided that the Signatory Air Carrier has made commercially reasonable efforts to collect AIF revenues pursuant to the method instituted in Subsection 9.5(a), and
 - (c) provided that the Signatory Air Carrier remitted all AIF revenues actually collected from DEPAX passengers in accordance with Section 9.2, Subsection 9.2(a) and as required by Article 11 during this period; and
 - (d) provided that the Signatory Air Carrier has provided the audit certification required pursuant to Section 10.3 of this MOA;

then the particular Signatory Air Carrier's liability for making the AIF remittances for DEPAX passengers whose tickets are purchased outside of North America, shall, subject to

Article 8, be limited to the actual amount of AIF revenues collected from such DEPAX passengers carried by the particular Signatory Air Carrier at that particular Airport.

9.6 With respect to DEPAX passengers who purchased tickets in North America (Canada, the United States of America and Mexico):

- (a) provided that the Signatory Air Carrier has instituted a method of AIF collection which could commercially reasonably be expected to assess all DEPAX passengers in accordance with this MOA; and
- (b) provided that the Signatory Air Carrier has made commercially reasonable efforts to assess the DEPAX passengers in accordance with this MOA and collect AIF revenues pursuant to the method instituted pursuant to Subsection 9.6(a); and
- (c) provided that the Signatory Air Carrier remitted all AIF revenues actually collected from DEPAX passengers in accordance with Section 9.2, Subsection 9.2(a) and as required by Section 11 during this period; and
- (d) provided that the Signatory Air Carrier has provided the audit certification pursuant to Section 10.3 of this MOA; and
- (e) provided that the Signatory Air Carrier has provided a management certificate on the reimbursement form attached as Schedule G stating:

"This Compliance Certificate is delivered to [Airport] pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of xxxxxx between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

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I, xxxxxname, xxxxxxxtitle, of xxxxxxxairline, certify that, to the best of my knowledge, information and belief, for the AIF remittance for the month of xxxxxmonth:

Proper and responsible due diligence has been exercised in establishing the remittance liability by personnel understanding the importance to the Airport of establishing the correct number of DEPAX passengers subject to the AIF (as defined in the MOA).

I give this Compliance Certificate in my capacity as xxxxttitle and no personal liability is assumed in the giving of this certificate."

then the particular Signatory Air Carrier's liability for making the AIF remittances, subject to Article 8, shall be limited to:

- (i) the greater of the amount collected or, during the first 12 months after the AIF collection commencement date for that Airport, 80% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period;
- (ii) the greater of the amount collected or, during the 13th through the 18th months after the AIF collection commencement date for that Airport, 90% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period; and

- (iii) the greater of the amount collected or, following the 18th month after the AIF collection commencement date for that Airport, 95% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period.

9.7 Interest will be charged to Signatory Air Carriers on a monthly basis, commencing after the due date, on all outstanding amounts at the prime rate established by the Royal Bank of Canada from time to time plus two (2%) per cent per annum. In the event that any month's remittances are more than 15 days in arrears, following the expiration of those 15 days, that Airport may cancel the agreement with a delinquent Signatory Air Carrier 15 days after providing notice in writing of the delinquency to the Signatory Air Carrier, provided that the Signatory Air Carrier does not pay the arrears during the said notice period, and require all AIF funds collected up to the date of cancellation to be remitted to that Airport.

10.0 Audit

10.1 Annually, within one hundred and twenty (120) days of the end of each Signatory Air Carrier's fiscal year, each Signatory Air Carrier shall deliver to each Airport an Annual Statement which details for that Airport, for that fiscal year, the following:

- (a) the number of DEPAX Passengers for each month and in aggregate;
- (b) the gross amount of AIF funds payable for each month and in aggregate;
- (c) the amount of handling fee deducted for each month and in aggregate;
- (d) the net amount of AIF funds payable for each month and in aggregate; and

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- (e) a statement that the Signatory Air Carrier has met the requirements of Subsections 9.5(a) and (c), or 9.6(a) and (c), as the case may be.
- 10.2 The Annual Statement referred to in Section 10.1 must contain a certification signed by a person authorized to sign on behalf of the Signatory Air Carrier which states that the Annual Statement is true and correct in all respects to the best of the such person's knowledge and belief after due inquiry.
- 10.3 At any time during the term of this MOA, an Airport may contract with the Signatory Air Carrier's external auditor to conduct an audit of the Signatory Air Carrier's records solely with regard to the matters described in any Annual Statement delivered after January 1, 2004 and referred to in Section 10.1 in respect of the relevant fiscal year. Airports shall advise a Signatory Air Carrier within sixty (60) days after the due date of the Annual Statement of their intention to commission an audit. In the event that more than one Airport advises of the intention to commission an audit of a Signatory Air Carrier, all Airports will coordinate their action into a single audit process, although individual reports will be prepared for each participating Airport. Signatory Air Carriers shall make reasonable efforts to ensure that their external auditor accepts this audit assignment and at a reasonable fee which in any event shall not exceed that which the Signatory Air Carrier would have paid had the audit been carried out at its request, failing which, the Airport(s) may contract with an external auditor of their choice.
- 10.4 The Airport(s) shall be entitled to bill and collect the costs of such audit from the Signatory Air Carrier in the event that such audit shows that remittances by the Signatory Air Carrier are understated by three percent (3%) or more of the amount due and payable to the Airport under this MOA for the year in question. In the case where multiple audits are combined into a single audit process pursuant to Section 10.3, the allocation of cost based on the percentage variance criteria shall be on an Airport-by-Airport basis.

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- 10.5 Any refunds owing or remittances required pursuant to the Annual Statement referred to in Section 10.1 or the audit referred to in Section 10.3 shall be paid, without interest, by an Airport or a Signatory Air Carrier as appropriate, within thirty (30) days of the receipt of such Annual Statement or audit report. Any refunds owing or remittances required but not paid within thirty (30) days shall be subject to interest as provided for in Section 9.7.
- 10.6 Annually, within 180 days of its fiscal year end, each Airport must provide to each Signatory Air Carrier at such Airport, a certification under section 8600, or its successor, of the Handbook of the Canadian Institute of Chartered Accountants from an external auditor (who is legally qualified in the jurisdiction of that Airport to issue a financial audit opinion) that:
- (a) the amount of AIF funds remitted to the Airport have been used only for the Program for which they were intended and that there has not been an over payment on the Program; and
 - (b) that Airport has been in compliance with Section 12.1.
- 10.7 In the event that an Airport does not provide that certification contemplated by Section 10.6 above, the Signatory Air Carriers may contract with an independent auditor to conduct an audit of that Airport in respect of the matters set out in Section 10.6. The Signatory Air Carriers shall be entitled to bill and collect the cost of such audit from that Airport.
- 10.8 If the audit referred to in Sections 10.6 or 10.7 above reveals that that Airport has utilized such AIF revenues in a manner which contravenes the terms of this MOA, then if:
- (a) that Airport has failed to remedy the default within 30 days of the auditor's report, or

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- (b) that Airport has failed to present a plan, satisfactory to the Signatory Air Carriers, and proceeded diligently to implement such plan within 30 days of the auditor's report;

the Signatory Air Carriers may cease collecting and remitting the AIF until the default has been remedied to the satisfaction of the Signatory Air Carriers.

11.0 Application of AIF

- 11.1 Subject to the limitations described below, the AIF will apply to all departing enplaned passengers at a given Airport ("DEPAX passenger(s)").
- 11.2 For the purposes of this MOA, the term "ticket(s)" shall include paperless tickets where the equivalent of paper tickets with a travel itinerary for a passenger is kept in electronic form with a specific reference (commonly referred to as ticketless travel). A ticket may be comprised of a number of coupons.
- 11.3 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to a passenger (i) continuing a journey less than 4 hours after arrival at the Airport for domestic Canada and transborder itineraries and (ii) continuing a journey less than 24 hours after arrival at the Airport for international itineraries.

A passenger will be considered to be continuing a journey even though multiple air carriers may participate in the itinerary on one or more air carrier ticket(s).

- 11.4 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to airline employees travelling on business. For greater certainty, this includes duty travel of crews of one air carrier on another air carrier.

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- 11.5 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to infants under two years of age for whom no ticket was purchased (even though a no cost ticket may have been issued in the name of the infant).
- 11.6 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to customers travelling on passes or other travel documents with discount codes ID/IN. However, customers travelling on frequent flier mileage redemption programs or promotional tickets (such as two for one tickets) do not qualify as ID passengers within the meaning of this Section 11.6. Signatory Air Carriers agree to make reasonable efforts to refine the technical data necessary to limit exemptions to infants (IN) and airline employees travelling on business. Toward this end, Signatory Air Carriers agree to report on progress towards limiting inadvertent exemptions at a time not later than one year after the signing of this agreement after which time the Parties shall enter into consultations regarding alternative means of limiting exemptions.
- 11.7 Regardless of which air carrier sells a ticket to a DEPAX passenger or whose designator code is on the passenger's ticket, the air carrier on whom the DEPAX passenger actually travels shall be the Party responsible for the collection and remittance of the AIF for that DEPAX passenger.

12.0 Non-Discriminatory Charges to Signatory and Non-Signatory Air Carriers or Their Passengers

12.1 An Airport shall not grant access to any of its terminal buildings on any less favourable terms and conditions to Signatory Air Carriers and their passengers having regard to the AIF charges remitted and paid by such persons than are provided to non-Signatory Air Carriers and their passengers. An Airport shall achieve such equalized treatment through or by way of reasonably equivalent charges. Airports shall provide to ATAC and the Signatory Air Carriers, annually, the report of an independent, external auditor certifying that that nothing has come to the attention of the auditor to indicate the Airport is not in compliance with this section.

12.2 Except with respect to the Memorandum of Agreement between ATAC, the Calgary Airport Authority, the Winnipeg Airport Authority and the Kelowna Airport Authority and various air carriers dated September 23, 1997, as amended, and with respect to any Multi-terminal Airports, Signatory Air Carriers will not enter into an agreement concerning the collection of an AIF with a Canadian national airport on more favourable terms than those extended to Airports in Articles 8, 9, 11, 13 and 35 of this MOA.

13.0 Air Carrier Consultation Process

13.1 Signatory Air Carriers may be obligated to collect and remit an AIF pursuant to this MOA only after the Air Carrier Consultation Process has been completed in accordance herewith. This consultation process must be conducted, *inter alia*, in accordance with Article 3 and shall include the following requirements:

- (a) When an Airport has decided to implement an AIF and wants the assistance of Signatory Air Carriers in collecting and remitting such AIF pursuant to this MOA, that Airport shall prepare and forward to the Chair and each member of the Airport's

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ACC and to ATAC, a Program proposal and business plan setting out full details of and a rationale for the Program and notification to ATAC and to each Signatory Air Carrier of such proposal and business plan having been delivered. The proposal should include:

- (i) the cost, scope of work and construction period of each project within the Program;
 - (ii) the initial implementation date of the AIF, the initial amount of the AIF (which cannot be increased until 365 days after the AIF collection commencement date at the particular Airport) and a plan which sets out the anticipated AIF level and AIF revenue over the period required to recover the costs of the Program or extinguish the underlying debt incurred to finance the Program; and
 - (iii) the forecasts of traffic demand underlying the rationale for the Program.
- (b) After the delivery of the notice and information contemplated by Subsection 13.1(a):
- (i) an Airport may obtain the assistance of Signatory Air Carriers in collecting and remitting an initial Interim AIF limited to a maximum of C\$5 per DEPAX passenger, provided that Airport provides at least 90 days written notice to Signatory Air Carriers. The Interim AIF shall be collected for a term of one year, unless that Airport and the MII as determined in accordance with Section 3.3 agree to an extension. Notwithstanding any other provision of this MOA, the amount of the Interim AIF set out above shall not be subject to change by that Airport during this period; or, alternatively

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- (ii) After the delivery of the notice and information contemplated by Subsection 13.1(a) but prior to completion of the consultative process contemplated by Section 13, should both the Airport and the MII as determined in accordance with Section 3.3 of the Signatory Air Carriers to the MOA on the ACC agree that it is desirable, an Airport may obtain the assistance of Signatory Air Carriers in collecting and remitting a conditional AIF in an amount agreed upon by the Airport and the MII as determined in accordance with Section 3.3 for a time period and upon any other conditions so agreed upon by the Airport and the MII as determined in accordance with Section 3.3, provided the Signatory Air Carriers receive at least 90 days prior written notice of the AIF collection commencement date (the "Preliminary AIF"). This Preliminary AIF shall be in effect for not less than 365 days from its commencement. Notwithstanding any provisions in this MOA to the contrary, the amount of the Preliminary AIF shall not be subject to any increases by that Airport. The MII as determined in accordance with Section 3.3 shall have the right to discontinue collection of the Preliminary AIF by giving 90 days notice on or after 365 days from the AIF collection commencement date if, in its view, the consultation process has not proceeded satisfactorily, or if it continues to oppose a Program proposal. The Airport shall not be entitled to require the collection and remittance of an AIF pursuant to both sections 13.1(b)(i) and 13.1(b)(ii) during the same time period and in the event the Airport proceeds with a Preliminary AIF, the Signatory Air Carriers shall not be required to collect or remit an AIF pursuant to section

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13.1(b)(i) after the AIF collection commencement date for the Preliminary AIF.

- (c) The ACC shall have up to 180 days (“Phase One”) to consider and discuss the Program and to request such other information as the ACC may, acting reasonably, require and request from the Airport in order to evaluate the Program with the Airport's officials. The Chair of the ACC will advise the Airport within 180 days of either its concurrence, its disagreement or its concurrence with exceptions to the Program submitted. The Signatory Air Carriers at that Airport shall arrive at its decision via an MII vote in accordance with Section 3.3. If there is concurrence with the Program, the Airport may, subject to this MOA, implement the AIF charging mechanism pursuant to Subsection 13.1(g)(i). If the Chair of the ACC does not advise the Airport in writing of the Phase One decision within 180 days of receiving the Program proposal, the Program is deemed to have concurrence. If the Airport's Program is not the subject of concurrence, the Chairman of the ACC or any Signatory Air Carrier will advise the Airport of the result of the vote of the Signatory Air Carriers. In the event that the Signatory Air Carriers at that Airport disagree or concur with the Program with exceptions and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, the consultation process outlined below will continue with respect to those individual projects for which an exception was noted.
- (d) In the event that either the Signatory Air Carriers at that Airport disagree with or the Signatory Air Carriers at that Airport concur with exceptions to the Program in Phase One of the consultation process and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, then, commencing on the date written notice is given under Subsection 13(1)(c), a one month consultation process (“Phase Two”) will occur between the Airport's CEO and the CEO(s) (or their designates) of the Signatory Air Carriers forming the MII which

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disagreed with the Program. Any agreement reached in Phase Two will be confirmed to the Airport in writing through the Chairman of the ACC or any Signatory Air Carrier, following ratification by the MII but within 15 days of the end of Phase Two.

- (e) In the event that no agreement is reached during Phase Two and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, the Signatory Air Carriers forming the MII under Subsection 13.1(c) may, within 60 days, commencing at the conclusion of Phase Two (“Phase Three”), make an alternative proposal through the Signatory Air Carriers at that Airport provided that in the opinion of Signatory Air Carriers forming the MII under Subsection 13.1(c), the alternative proposal addresses all of the legitimate expansion requirements of the Airport over the term of the Program proposed by the Airport. The Airport will advise the Chairman of the ACC and all Signatory Air Carriers at that Airport in writing within 30 days of the conclusion of Phase Three whether it accepts or rejects the alternative proposal. If the Airport accepts the alternative proposal, the Airport may implement an AIF pursuant to Subsection 13.1(g)(i) of this MOA.
- (f) Should the Airport reject the alternative proposal made during Phase Three or if no alternative proposal is made, the Airport may, 24 months following the date upon which the Airport has provided to the Signatory Air Carriers at that Airport an Offer to Finance the proposed Program, conditional or otherwise, from a bona fide lender, group or syndicate of lenders, increase or initiate an AIF to be collected and remitted by Signatory Air Carriers, subject to the notification provisions of Subsection 13.1(g)(ii) of this MOA.
- (g) (i) Except as otherwise provided in Schedule F, following completion of the Air Carrier Consultation Process set out above, the Airport will advise each Signatory Air Carrier, in writing, at least 90 days prior to the collection

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commencement date of the AIF, of the level of the AIF and the collection commencement date. The level of the AIF on the initial collection commencement date must be no greater than the level which was identified in the Airport's Program submission.

- (ii) Subsequent to the initial collection commencement date, in respect of an AIF implemented pursuant to Paragraph 13.1(g)(i) and subject to Subsection 13.1(h), an Airport may change the level of the AIF, subject to a minimum 90 days prior written notice to Signatory Air Carriers, (although the Airport shall endeavour to provide greater than 90 days notice where possible) provided that any such increase shall only apply to DEPAX passengers who purchase their tickets 60 days or more after the Signatory Air Carriers receive this written notice and are travelling on or after the effective date of such increase.

- (h) An Airport may introduce new projects during the period of a Program which shall constitute an amendment to the Program. These amendments shall, subject to the provisions of this Subsection 13.1(h), qualify for the assistance of Signatory Air Carriers in the collection and remittance of an AIF pursuant to this MOA. The amendments contemplated by this section relate to new projects or existing projects which have a change of scope, but do not include changes to project cost estimates resulting only from changes in the cost of construction. Should any proposed amendment result in an increase in capital spending of 10% or more of the Program previously implemented or if the proposed amendment would result in an extension of the estimated term of the AIF related to the original Program by three years or more, the proposed amendment will be subject to the terms of the Air Carrier Consultation Process as if it were a new Program.

- (i) The attached Schedule F to this MOA lists those capital construction programs which, as of the date of signing of this MOA, are deemed to have been approved by

the Signatory Air Carriers as a Program pursuant to the Air Carrier Consultation Process outlined in this MOA. In these cases, the Airport may proceed immediately with the AIF notification outlined in Subsection 13.1(g)(i) of the MOA.

14.0 AIF Term

14.1 No AIF implemented pursuant to this MOA shall have a term longer than that required to extinguish the underlying debt (including associated financing costs) incurred by the Airport to finance the proposed Program. Where possible and practical, a target date for the termination of an AIF will be agreed upon by the Parties at the time of imposition.

15.0 Information Disclosure

15.1 At the time an Airport presents a Program pursuant to Subsection 13.1(a) and so long as the Airport pursues the Program and/or an AIF has been imposed by an Airport and implemented with the assistance of Signatory Air Carriers pursuant to this MOA, the Airport shall provide to the Chair of the ACC and to each Signatory Air Carrier, with a copy to ATAC, the following information on an annual budgeted basis and an annual actual basis:

- (a) Cash flow statement for the Program indicating (as a minimum) net AIF revenues collected under this MOA, total expenditures on the Program, underlying debt incurred by the Airport to finance the Program and interest, bad debts related to the collection of the AIF and other debt service costs related to the debt incurred;
- (b) Statement of capital expenditures to date on the Program with reasonable detail on the composition of capital expenditures versus budget and indicating cost overruns, if any.

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- 15.2 Each Airport shall provide, at its own cost, signage which advises passengers that the Airport is collecting an AIF for capital improvements at the Airport. The ACC shall be notified of the proposed signage and given 30 days to provide comments.
- 15.3 The Signatory Air Carriers, for informational purposes only, shall provide to the Airport on a monthly basis commencing on the date that an Airport becomes a signatory hereto, the number of non-revenue and revenue passengers of such Signatory Air Carrier that arrived and departed from the particular Airport in the prior month. This information shall not in any way relate or be used with respect to the calculation of AIF revenues remitted by a Signatory Air Carrier pursuant to this MOA.

16.0 Airside Infrastructure

- 16.1 The Parties recognize that, in addition to air carriers who utilize the air terminal building(s), all other aircraft operators ("Significant Users"), are material beneficiaries of ongoing Airport improvements to runways, taxi-ways, aircraft aprons and ramps, airfield lighting, airfield signage and airfield drainage ("Airside Infrastructure"). Each Airport shall implement a charging method for such Significant Users to contribute to Airside Infrastructure costs in such a fashion that Signatory Air Carriers and their passengers or customers are treated no less favourably than Significant Users and their passengers or customers relative to the respective benefits they receive from Airside Infrastructure. The Airport shall, in its sole discretion, make the determination that the said charging method implemented meets the criteria identified in this Section 16.1. It is agreed that this charging method envisages a process whereby landing fees or other airside related charges shall not, in total, exceed the costs associated with providing and maintaining Airside Infrastructure.

17.0 Term

17.1 The initial term of this MOA shall be for a period of 20 years commencing on May 31, 1999, provided that in those cases where debt arising from the agreed Program is not yet extinguished, the obligation to collect and remit AIF shall continue until such debt is extinguished. The Parties agree to meet 24 months prior to the expiry of this MOA to discuss renewal terms.

18.0 Applicable Law

18.1 This MOA shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws applicable in the Province of Ontario and, subject to Article 19, the Parties agree to be bound by the non-exclusive jurisdiction of the courts of the Province of Ontario.

18.2 Notwithstanding Section 18.1, in the case of a dispute between an individual Airport and an individual Signatory Air Carrier, this MOA shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws applicable in the province in which the Airport is resident and the Parties shall attorn to the jurisdiction of the courts of that province.

19.0 Dispute Resolution

19.1 Despite anything contained in the MOA to the contrary, in the event that a dispute or difference arises with respect to this MOA that cannot be resolved by negotiation between the Parties and the Parties do not agree to terminate this MOA, then in such event the Parties may agree to use the services of a mediator to attempt to resolve their dispute or difference and, failing agreement on the procedure to be followed, the mediation shall be conducted in accordance with the "Rules of Procedure for the Conduct of Mediations" of the Arbitration and Mediation Institute of Ontario.

19.2 In the event that the Parties choose not to mediate their dispute or difference or, if chosen, the mediation does not result in resolution of the dispute or the difference, and the Parties do not agree to terminate this MOA, then in such event any unresolved issue may be taken to any other appropriate dispute resolution process agreed to by the parties, including arbitration or an appropriate court process. Should arbitration be agreed upon, the arbitration will be conducted in accordance with the "Rule of Procedure for the Conduct of Arbitrations" of the Arbitration and Mediation Institute of Ontario.

20.0 Nature of Relationships

20.1 The Parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise. Nothing contained in this MOA nor any acts of any Party taken in conjunction hereunder, shall constitute or be deemed to constitute a partnership, joint venture, or principal/agency relationship in any way or for any purpose except as the Signatory Air Carriers acting as agents for the Airports in collecting and remitting the AIF funds. Except as expressly set forth herein, no Party, shall have any authority to act for, or to assume any obligations or responsibility on behalf of, any other Party.

20.2 Although this MOA is made among multiple Airports and multiple Signatory Air Carriers, all Parties agree that once an AIF is implemented by a particular Airport pursuant to this MOA, all obligations with respect to such AIF collection shall be deemed to be direct contractual obligations between each Airport and each respective Signatory Air Carrier.

21.0 Indemnity

21.1 The Airports agree to indemnify and save harmless ATAC, the Signatory Air Carriers, and their respective shareholders, directors, officers, employees and agents from all losses, including all claims, demands, proceedings, losses, damages (including, without limitation, direct, indirect, incidental, special, exemplary, consequential or other damages), liabilities, deficiencies, costs and expenses (including, without limitation, all legal fees on a solicitor/client basis and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly out of or in connection with any action by any person relating to the right of an Airport or Signatory Air Carrier to charge or collect an AIF in accordance with this MOA. Notwithstanding any other provision of this MOA, as long as the AIF mechanism contemplated by this MOA remains valid and in place, all costs incurred by an Airport in relation to this indemnity may, at the sole discretion of the Airport, be recovered by the Airport through the AIF mechanism established pursuant to this MOA. Nothing in this MOA shall require an Airport to indemnify a Signatory Air Carrier for any claim for damages arising out of the wilful misconduct or gross negligence of the Signatory Air Carrier.

22.0 Jurisdictional Restrictions

22.1 ATAC shall provide to each Airport a list, attached hereto as Schedule "E", which may be amended from time to time upon written notice to the Airports, of all countries ("jurisdictions") where the collection of an AIF as contemplated by this MOA is not permitted by law. Signatory Air Carriers shall not be required to collect or remit any AIF funds associated with tickets which are sold to persons physically present in the jurisdictions referred to in Schedule E, as amended from time to time. Prior to new jurisdictions being added to Schedule E, the Airports may seek an independent legal opinion as to the exclusion of collecting AIF revenues in such jurisdiction. In the event of a dispute regarding these additional jurisdictions, the matter shall be referred to arbitration pursuant to Article 19 of this MOA.

23.0 Mutual Agreement to Consult

23.1 The Parties to this MOA recognize that there are many complexities associated with the introduction of an AIF collection process as contemplated in this MOA and agree that a standing committee, which will be comprised of representatives of the Parties, will be established and will meet periodically to review issues associated with the administration of the MOA and attempt to reach mutual agreement on beneficial changes.

23.2 The Parties acknowledge and agree that this MOA may require amendment to facilitate the administration of taxes which may be applicable to AIF's collected pursuant to this MOA and in this respect the Parties agree to make such amendments as may be determined by ATAC and Signatory Air Carriers in an expeditious manner upon request provided that, such amendments would not materially reduce or impair the rights granted to Airports by the terms of this MOA.

24.0 Airport Specific Programs

24.1 For greater certainty, except as otherwise specifically provided in Sections 5.1 and 5.2, any Program shall relate only to the one (1) site-specific airport in respect of which the AIF is collected, notwithstanding that an Airport may own or operate more than one (1) airport.

25.0 Entire Agreement

25.1 This MOA supersedes, rescinds and revokes all negotiations, arrangements, letters of intent, brochures, representations, agreements and information conveyed, whether oral or in writing, between the Parties with respect to the subject matter hereof.

26.0 Headings

26.1 The division of this MOA into articles, sections, subsections, paragraphs and subparagraphs and the insertion of headings are for convenience or reference only and shall not affect the construction or interpretation of this MOA.

27.0 Schedules

27.1 Subject to the clarification provided in Section 3.2 of this MOA, the documents attached as Schedules to this MOA form an integral part of this MOA as fully as if they were set forth herein in full.

28.0 Notice

28.1 All notices or other communications necessary for the purposes of this MOA ("Notice") shall be in writing and shall be delivered personally or by courier, or shall be sent by registered mail or by prepaid post or sent by facsimile, addressed,

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- (a) in the case of an Airport, to each Airport listed on Schedule A or to such other address or facsimile number or addressed to such other person as the Airport may, from time to time, designate in writing to the other Parties:

- (b) in the case of ATAC or the Chairman of an ACC, to:

Chief Executive Officer
ATAC
255 Albert Street
Suite 1100
Ottawa, Ontario
K1P 6A9

Telephone: (613) 233-7727

Facsimile: (613) 230-8648

or to such other address or facsimile number or addressed to such other person as ATAC may, from time to time, designate in writing to the other Parties;

- (c) in the case of a Signatory Air Carrier, to each Signatory Air Carrier listed on Schedule B or to such other address or facsimile number or addressed to such other person as the Signatory Air Carrier may, from time to time, designate in writing to the other Parties.

28.2 Any Notice will be considered to have been received:

- (a) the case of facsimile, on actual receipt if the same is a business day, during normal business hours, and if not, then on the next business day, or

- (b) in all other cases, on the date of delivery.

28.3 If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any Notice shall be delivered personally, by facsimile or by courier.

29.0 Time of Essence

29.1 Time is of the essence under this MOA.

30.0 Non-Waiver

30.1 Any failure by a Party to rely on its strict legal rights hereunder shall not constitute a waiver of any other rights of that Party hereunder.

31.0 Partial Invalidity

31.1 If, for any reason whatsoever, any term, covenant or condition of this MOA, or the application thereof to any person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition:

- (a) is deemed to be independent of the remainder of this MOA and to be severable and divisible therefrom, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this MOA or any part thereof; and
- (b) continues to be applicable and enforceable to the fullest extent permitted by law against any persons and any circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

32.0 Extended Meanings

32.1 The word “hereunder” and similar expressions used in this MOA relate to the whole of this MOA, unless the context indicates otherwise. Words importing a particular gender shall include all genders.

33.0 Counterparts

33.1 This MOA may be executed in one or more counterparts and by the different parties hereto in separate counterparts, each of which when executed will constitute an original and all of which taken together shall constitute one and the same instrument. Transmission by facsimile, in accordance with Article 28, of an executed counterpart shall constitute good and valid delivery of the same.

34.0 Amendments

34.1 This MOA may be amended from time to time in the following manner:

- (a) Any Party may initiate an amendment to the MOA by formally giving notice (as outlined in Schedule C) to all Parties specified under Article 28.0.
- (b) Parties receiving a notice of amendment have 90 days to express consent or rejection of the proposed amendment.
- (c) Subject to Section 2.2 and Subsections 34.1(d) and (e), amendments to this MOA require the consent of the majority of the Airports and the majority of the Signatory Air Carriers (including both of the two largest Canadian air carriers as determined by passenger boardings in the calendar year immediately preceding the requested amendment sought by Airports and Signatory Air Carriers).

- (d) Subject to Section 2.2, amendments to Articles 8, 9, 11, 13, 34 and 35, of the MOA require the consent of 80% of the Airports and 80% of the Signatory Air Carriers (including both of the two largest Canadian air carriers as determined by passenger boardings in the immediately preceding calendar year).
- (e) Subject to Section 2.2, ATAC, an Airport and the Signatory Air Carriers as represented by the ACC at that Airport may agree to vary the provisions of this MOA as they apply at that Airport provided that, in no event whatsoever shall they derogate from, alter or amend the provisions of Articles 8, 9, 11, 13, 34 or 35 of this MOA and provided further that notice of such variation is given by ATAC, the Airport and the ACC to all other Parties to this MOA. For greater certainty, no such variation shall affect the provisions of this MOA at any other Airport or any other rights or obligations of any other Parties.
- (f) All notices of amendments and responses shall be sent to ATAC as outlined in Article 28.

35.0 ATAC Administration Fee

- 35.1 Airports agree to contribute proportionately a percentage of gross AIF collected to ATAC to cover ongoing administration functions in support of this MOA, as described in Schedule H of this MOA. The amount to be contributed shall be established annually through the presentation by ATAC of a budget for the information of the Airports. This budgeted amount may vary annually but shall not be less than .1% nor exceed .2% of amounts remitted by all Signatory Air Carriers on behalf of the Airports, together with applicable taxes. The apportionment of this cost amongst the Airports shall be on the basis of enplaned passengers at the Airports.

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IN WITNESS WHEREOF, the duly authorized signatories of the respective Parties hereto have set their signatures this on the date indicated.

AIR TRANSPORT ASSOCIATION OF CANADA

Per: _____ Date:
MICHAEL SKROBICA

Title: Vice President Finance

OTTAWA MACDONALD-CARTIER INTERNATIONAL AIRPORT AUTHORITY

Per: _____ Date:
PAUL BENOIT

Title: President and Chief Executive Officer

AIR CANADA

Per: _____ Date:

Title:

CANADIAN AIRLINES INTERNATIONAL LTD.

Per: _____ Date:

Title:

SCHEDULE A

Airports

<u>Name Of Airport Authority</u>	<u>Specific Airport Which Is Included</u>
<p>Mr. John Weerdenburg Vice-President & CFO Ottawa Macdonald-Cartier International Airport Authority 50 Airport Road Gloucester ON K1V 9B4 T: 613-248-2000 ext 1107 F: 248-2067 Email: weerdej@ottawa-airport.ca</p>	<p>Ottawa International Airport</p>
<p>Mr. Steve Burchi Regina Airport Authority #1 - 5201 Regina Avenue Regina, SK S4W 1B3 T: 306-761-7563 / F: 306-761-7559 Email: sburchi@yqr.ca</p>	
<p>Mr. Bill Restall President & CEO Saskatoon Airport Authority 2625 Airport Drive, Suite 3 Saskatoon SK S7L 7L1 T: 306-975-6464 / F: 306-975-4233 Email: billrestall@yxe.ca</p>	
<p>Mr. Rex LeDrew President St. John's International Airport Authority Airport Terminal 80 Airport Terminal Access Road St. John's, NF A1A 3R1 T: 709-747-5188 / F: 709-758-8521 Email: rledrew@stjohnsairport.com</p>	

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SCHEDULE B

Signatory Air Carriers

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 Phoenix, AZ 85034
 U.S.A.
 T: 480-693-5838 / F: 480-693-5155

Mr. Thierry Briand
 General Manager
Air Saint-Pierre
 18 Rue Albert-Briand
 B.P. 4225
 97500 Saint-Pierre et Miquelon
 France
 T: 011-508-41-0007 / F: 011-508-41-0002
 Email: tbriand@airsaintpierre.com

Mr. John Drpich
 Area Director Ground Services
 The Americas
KLM Royal Dutch Airlines
 Kennedy International Airport
 Jamaica, NY 11430
 U.S.A.
 T: 718-995-7210 / F: 718-656-3435
 Email: john.drpich@klm.com

Mr. Karan Deswal
 Director Ground Services
 Canada & Northern U.S.A.
KLM Royal Dutch Airlines
 Lester B. Pearson International Airport
 P.O. Box 81
 Toronto, ON L5P 1A2
 T: 905-612-6733 / F: 905-612-1387
 Email: karan.deswal@klm.com

Mr. Abdul M. Houssami
 Accounts Manager
Royal Jordanian Airlines
 1801 McGill College Avenue, Suite 940
 Montreal, Quebec H3A 2N4
 T: (514) 288-1655 / F: (514) 288-7572
 Email: ahussami@rja.com.jo

General Counsel, NA
British Airways Plc
 North American Headquarters
 75 – 20 Astoria Boulevard
 Jackson Heights, NY 11370
 U.S.A.
 T: (347) 418-4385 / F: (347) 418-4204

Mr. Farid Zamakhchari
General Manager, Canada
Royal Air Maroc
1001, de Maisonneuve West, Suite 430
Montreal, Quebec H3A 3C8
T: 514-285-1688 / F: 514-285-1878

Mr. Osama Gharib
General Manager
EgyptAir
630 René-Lévesque Blvd West
Suite 2860
Montreal, Quebec H3B 1S6
T: 514-875-9990 ext 223 / F: 514-875-5105

Mr. José Augusto Pavão de Sousa
Finance Director
SATA Internacional
Seviços e Transportes Aéreos, S.A
Av. Infante D. Henrique, 55-6º
9504 - 528 Ponta Delgada
Portugal
T: 351.296.209.751 / F: 351.296.209.752
Email: pdlaasp@sata.pt

Ms. Kirsty Thomson
Accounting Department
Air North Ltd.
150 Condor Road
Whitehorse, YT Y1A 6E6
T: 867-668-6443 / F: 867-456-3111
Email: kthomson@flyairnorth.com

Ms. Marlene Mercier
Québecair Express Inc.
C.P. 10
L'Ancienne-Lorette, QC G2E 3M2
T: 418-871-1125 / F: 418-871-9811
Email: m.mercier@quebecairexpress.com

Mr. Chris Cowan
Kelowna Flightcraft
#1 5655 Airport Way
Kelowna, BC V1V 1S1
T: 250-765-7289 / F: 250-491-5504
Email: chrisc@flightcraft.ca

Mr. Rick Hill
Vice President, Marketing
& Commercial Alliances
Helijet International Inc.
5911 Airport Road South
Richmond, BC V7B 1B5
T: 604-273-4688 / F: 604-273-5301
Email: rickhill@helijet.com

SCHEDULE C**Accession Form**

TO: [Existing Parties to MOA]
 RE: Accession to Memorandum of Agreement dated ■

The [Airport/Signatory Air Carrier], having received a copy of the Memorandum of Agreement dated ■ between the Air Transport Association of Canada, certain Airports and certain Signatory Air Carriers, and desiring to be a Party to that Memorandum of Agreement, and now providing consideration of one dollar (\$1.00), in Canadian funds, to each of the existing Parties to the Memorandum of Agreement, hereby agrees to be bound to the Memorandum of Agreement and to abide by its terms and conditions.

DATE: _____

SIGNATURE

TITLE

SIGNATURE

TITLE

Any Notice pursuant to the Memorandum of Agreement should be sent to:

(Company Name and Full Mail Address)

(Contact Name, Title, Telephone Number & Facsimile Number)

SCHEDULE D

ACC Operating Terms of Reference

AIRLINE CONSULTATIVE COMMITTEE (ACC)

1. OBJECTIVES

- To provide a forum for airlines at an airport to discuss and analyse matters of common interest and concern with respect to the operation of the airport.
- To consolidate airline views on an issue(s) and officially present such views to the airport operator.
- To act as the on-site consultative representative of the airlines with the airport operator in respect of all capital projects or programs, all fees and charges and all exclusive rentals at the airport which will have a financial impact of any kind on the airlines or airline passengers and any other matters having a material impact on airline operations at the airport.
- To perform the obligations assigned to it as set out in any agreement between the airport operators and the airlines and/or ATAC.

2. ESTABLISHMENT

- An ACC shall be established at each National airport and, where a consensus exists amongst airlines serving the airport, at each Regional/Local airport. National and Regional/Local airports mean those airports as defined in the National Airports Policy of July 1994 and as listed in Appendix 'A' hereto.

3. MEMBERSHIP

- Voting membership is open to all airlines and/or their duly designated representative serving an airport on a regular and consistent basis.
- ATAC shall be an ex officio non-voting member of all ACCs and, at airports served by their non-Canadian airline membership, IATA and ATA shall be non-voting members ex officio.
- Each airline shall appoint a single official representative to exercise that airlines voting rights and may change this person at any time.
- Each airline may invite other company personnel with appropriate qualifications to attend ACC meetings when considering major capital projects or programs proposed by an airport.

- In order to ensure coordination with the day-to-day operations of the airlines, the ACC may invite the Chairman of the Airport Operator's Committee (AOC), to attend any meeting of the ACC as a non-voting participant.

4. GOVERNANCE

- Each ACC shall meet at least once every 12 months and additionally at the call of the Chair or upon request of any member airline.
- Each ACC shall appoint a Chairman from amongst the largest Canadian air carriers serving the airport based on passenger volumes of the airport. The ACC may also appoint a Vice-Chairman and a Secretary from amongst their voting members. Those officers shall hold office until the ACC or the voting member airlines appoints their successors.
- The officers shall retain their voting rights as their airlines' official representatives.
- The Chairman shall give notice of all ACC meetings to the members and shall preside over all such meetings and shall arrange for the recording and circulation to the members of the minutes of all ACC meetings.
- The ACC may appoint and set the mandate of sub-committees and/or specialist working groups to study and report to the ACC, through the Chairman, on any matter. Membership on such sub-committees or working groups is open to airline employees or advisors designated by the airline official representative to the ACC.
- The Chairman shall ensure that copies of the minutes of the ACC meetings are made known to and co-ordinated with ATAC, IATA and ATA as the case may be.
- The official representative of each ACC member airline shall be entitled to vote on any matter coming before the ACC which requires a vote. To be voted on, a motion must be proposed and seconded by airline official representatives.
- While consensus is the goal, it is recognized that some issues coming before the ACC may require a vote. For matters having a material financial impact on all ACC members, a motion will not be considered carried unless it passes with the concurrence of those ACC members whose total passenger traffic at the airport is at least 66% of the airport's total passenger traffic as determined from the previous calendar year's total traffic. For motions not having a material financial impact on all ACC members, a simple majority of 51% of members present and voting is sufficient to carry the motion.

- No motion may be voted upon unless notice in writing of the motion was given to all ACC members at least seven (7) days prior to the meeting at which the motion is to be introduced.
- Voting “in absentia” is permissible if done in writing. Proxy voting is also permissible if done in writing by authorizing another ACC official airline representative to cast the absent members ballot.
- ACC meetings are closed to anyone other than airline employees, airline advisors and representatives of ATAC, ATA or IATA except when persons are expressly invited by the Chairman, e.g. airport management.

SCHEDULE E**Excluded Jurisdictions**

BOLIVIA
CHILE
COLOMBIA
COSTA RICA
ECUADOR
EL SALVADOR
GUATEMALA
IRAN
IRAQ
LIBYA
PERU
SAUDI ARABIA
VENEZUELA
URUGUAY

SCHEDULE F**Capital Programs Deemed to Have Been Approved****OTTAWA INTERNATIONAL AIRPORT AUTHORITY****Combined Services Building**

The Combined Services Building is a new facility to be constructed which will combine and replace both the existing Fire Hall and the existing Maintenance Garage in one combined new location on the southeast side of the intersection of runways 07/25 and 14/32 next to taxiway Echo at Ottawa International Airport. The estimated cost of this facility is \$7 million.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****CALGARY AIRPORT AUTHORITY**

Ten-year Capital Expansion Program (1997 to 2006) as originally approved by the ACC at Calgary pursuant to a letter dated December 31, 1996 from the Chairperson of the ACC and further updated by the revised 10 year capital program (1998 to 2007) as approved by the ACC at Calgary pursuant to a letter dated April 13, 1999 from the Chairperson of the ACC. For greater certainty it is expressly recognized that this approved capital program includes an AIF funded project titled "96th Avenue" which is physically located off-airport and therefore represents an exception to the conditions imposed on the use of AIF revenues in Section 5.1 of this Agreement.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****KELOWNA AIRPORT**

Three-year Capital Expansion Project at Kelowna pursuant to minutes of an ACC meeting held November 24, 1997.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****WINNIPEG INTERNATIONAL AIRPORT**

Five-year Capital Expansion Program (1998-2003) as approved by the ACC at Winnipeg pursuant to a letter dated April 7, 1998 from the Chairman of the ACC.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****VANCOUVER INTERNATIONAL AIRPORT**

The 10 Year Capital Plan, which means the plan described in the document entitled "10 Year Capital Plan Update November 2003" presented to the ACC at its December 2, 2003 meeting. As more fully described in that document, the capital projects forming the 10 Year Capital Plan include:

1. ITB Expansion and Upgrades
2. Sustaining and Restoration Projects
3. RAV Line
4. DTB Upgrade and Expansion
5. Airfield Projects
6. Baggage System Upgrades/Expansion
7. Roads/Parking
8. CATSA Funded HBS

For greater certainty, it is recognized that the RAV Line described above includes the rapid transit line and related facilities connecting the on-Airport portion of RAV to the main line in Richmond, which will be located off the Airport, and the inclusion of the RAV Line in the approved 10 Year Capital Plan represents an express exception to the restrictions imposed in Section 5.1 with respect to the use of AIF revenues.

SCHEDULE G
 Airport Improvement Fee
 Monthly Remittance Form
 Airport

Air Carrier _____ Month _____ Year _____
 Current Month DEPAX _____ X _____ =
 A.I.F. Rate Gross Remittance

	Gross AIF Remittance (per above)	Less	Handling Fee @ ____%	=	Net Remittance to Airport
Before Tax		Less		=	
<u>Applicable</u> Tax GST.....% HST.....% QST.....%		Less		=	
Total		Less		=	Remit this Amount

This compliance certificate is delivered to [Airport] pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of _____ between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

I _____ (name) _____ (title) _____ (airline)
 certify that, to the best of my knowledge, information and belief, the AIF
 remittance for the month of _____ (month):

Proper and responsible due diligence has been exercised in establishing the
 remittance by personnel understanding the importance to the Airport
 of establishing the correct number of DEPAX passengers subject to the AIF
 (as defined in the MOA). I give this compliance certificate in my capacity
 as _____ (title) and no personal liability is assumed in the giving
 of this certificate.

(signature)

(date)

SCHEDULE H**ADMINISTRATIVE DUTIES OF
THE AIR TRANSPORT ASSOCIATION OF CANADA**

The Air Transport Association of Canada shall:

1. Carry out the administrative duties noted in paragraph 35.1 of the Memorandum of Agreement on Airport Improvement Fees dated May 31, 1999, as follows -
 - 1) Mandate - The Air Transport Association of Canada shall act as Administrator for and Secretariat on behalf of the Memorandum of Agreement on Airport Improvement Fees dated May 31, 1999. These duties shall include:
 1. Advising Signatories and other interested parties (e.g. CRSS) of:
 - (1) new Signatories
 - (2) changes to AIF rates
 - (3) proposed amendments to the Agreement
 2. Establish and support the Technical Committee noted under section 23.1 of the MOA.
 3. To inform Signatories (chiefly new entrants) or other interested parties on the terms of the Agreement.
 4. To attempt to settle disputes by means of discussion and, if necessary, obtaining legal opinions to guide Signatories.
 - 2) Budget - ATAC shall submit a budgeted amount to the Signatory Airports no later than October 1 of each year and the Airports shall have until October 30 of each year to comment and add items to the budgeted amount. The budgeted amount shall contain sufficient detail to identify tasks noted in (a) above. A comparative of actual expenditures in the prior year ended September 30 shall be provided.
 - 3) Apportionment - Airports shall provide annual passenger volumes to ATAC in accordance with section 8 of the MOA.

AIRPORTS IN THE NATIONAL AIRPORTS SYSTEM

KELOWNA, B.C.
PRINCE GEORGE, B.C.
VANCOUVER, B.C.
VICTORIA, B.C.
CALGARY, ALTA.
EDMONTON, ALTA.
REGINA, SASK.
SASKATOON / JOHN G. DIEFENBAKER, SASK.
WINNIPEG, MAN.
LONDON, ONT.
OTTAWA / MACDONALD-CARTIER, ONT.
SUDBURY, ONT.
THUNDER BAY, ONT.
TORONTO / LESTER B. PEARSON, ONT.
MONTREAL / DORVAL-MIRABEL, QUE.
QUEBEC CITY / JEAN LESAGE, QUE.
FREDERICTON, N.B.
MONCTON, N.B.
SAINT JOHN, N.B.
HALIFAX, N.S.
CHARLOTTETOWN, P.E.I.
GANDER, NFLD.
ST. JOHN'S, NFLD.
YELLOWKNIFE, NWT
WHITEHORSE, YUKON

AIRPORTS IN THE REGIONAL/LOCAL CATEGORY

QUESNEL, B.C.
PRINCE RUPERT, B.C.
KAMLOOPS, B.C.
NANAIMO, B.C.
CRANBROOK, B.C.
CASTLEGAR, B.C.
TERRACE, B.C.
FORT ST. JOHN, B.C.
PENTICTON, B.C.
CAMPBELL RIVER, B.C.
SMITHERS, B.C.
COMOX, B.C.
ABBOTSFORD, B.C.
DAWSON CREEK, B.C.
WILLIAMS LAKE, B.C.
FORT NELSON, B.C.
POWELL RIVER, B.C.
PORT HARDY, B.C.
RAINBOW LAKE, ALTA.
GRANDE PRAIRIE, ALTA.
LETHBRIDGE, ALTA.
FORT MCMURRAY, ALTA.
PEACE RIVER, ALTA.
LA RONGE, SASK.
URANIUM CITY, SASK.
PRINCE ALBERT, SASK.
THOMPSON, MAN.
THE PAS, MAN.
NORWAY HOUSE, MAN.
BRANDON, MAN.
FLIN FLON, MAN.
DAUPHIN, MAN.
LYNN LAKE, MAN.
GILLAM, MAN.
DRYDEN, ONT.
KAPUSKASING, ONT.
GORE BAY, ONT.
TIMMONS, ONT.
SAULT STE. MARIE, ONT.
TORONTO ISLAND, ONT.
WINDSOR, ONT.
NORTH BAY, ONT.
SARNIA, ONT.
HAMILTON, ONT.
PICKERING, ONT. (UNDEVELOPED)
RED LAKE, ONT.
KENORA, ONT.
PEMBROKE, ONT.
EARLTON, ONT.
FORT FRANCES, ONT.
GASPE, QUE.
RIMOUSKI, QUE.
SEPT-ILES, QUE.
VAL D'OR, QUE.
BAGOTVILLE, QUE.
ROUYN, QUE.
BAIE-COMEAU, QUE.
MONT-JOLI, QUE.
HAVRE ST. PIERRE, QUE.
ALMA, QUE.
CHATAM, N.B.
CHARLO, N.B.
ST. LEONARD, N.B.
YARMOUTH, N.S.
SYDNEY, N.S.
CHURCHILL FALLS, NFLD.
DEER LAKE, NFLD.
GOOSE BAY, NFLD.
WABUSH, NFLD.
STEPHENVILLE, NFLD.
ST. ANTHONY, NFLD.

SCHEDULE I**Vancouver International Airport AIF Rates**

Rates by destination of DEPAX passenger (plus applicable taxes):

Within British Columbia \$5
or the Yukon

Within North America \$10
(not including BC or the Yukon)

Outside of North America \$15
(including Hawaii and Mexico)

Connecting passengers are exempt from payment of AIF.

The rates at Vancouver International Airport may be changed in accordance with the provisions of Section 6.3 of this MOA without having to amend this MOA.

This is **Exhibit "B"** referred to in the Affidavit of Paul Brigley, sworn before me at the City of Halifax, in the Province of Nova Scotia, this 23rd day of May 2024



CAROLYN SULEY
BARRISTER AND SOLICITOR
A Notary Public in and for Nova Scotia



AIR CARRIER OPERATING AGREEMENT

Between:

HALIFAX INTERNATIONAL AIRPORT AUTHORITY ("HIAA")
at Halifax Robert L. Stanfield International Airport (the "Airport")

and

1263343 Alberta Inc. DBA Lynx Air

Air carrier's legal name, head office address and telephone no.(s) (the "Air Carrier") 1263343 Alberta Inc. dba Lynx Air 780.721.3485		Notice address/billing address: 3215 12th Street NE Calgary, AB T2E 7S9	
Operating agreement no. AA3115	Effective date Year Month Day 2022 June 29		For a term of 5 Years
The Canadian Transportation Agency has issued licence No. 100127 to the Air Carrier to operate the following class(es) of air service(s) for transportation of:			
(a) <input checked="" type="checkbox"/> passengers and goods on OR <input type="checkbox"/> goods on aircraft equipped for the carriage of passengers on small / medium / large aircraft OR <input type="checkbox"/> goods on aircraft equipped for the carriage of goods only on all-cargo aircraft			
(b) <input checked="" type="checkbox"/> domestic service OR <input type="checkbox"/> scheduled international service OR <input type="checkbox"/> non-scheduled international service			
Transport Canada has issued:			
<input checked="" type="checkbox"/> Air operator certificate no. 11035 to the Canadian Air Carrier OR <input type="checkbox"/> Canadian foreign air operator certificate no. ● to the foreign Air Carrier			
NOTICES The Air Carrier shall address all notices given under this Agreement to HIAA's Director, Air Service & Airport Experience at 747 Bell Blvd., Goffs, NS, Canada B2T 1K2 Email: leasing@hiao.ca with a copy to legal@hiao.ca or at such other address/email as HIAA may advise in writing from time to time.			
PLAN OF OPERATIONS The Air Carrier proposes to use the aircraft listed in Appendix 'A' in its operations at the Airport. The Air Carrier must notify the Senior VP, Operations and Chief Operating Officer of any changes or additions to this list after the commencement of operations.			
FLIGHT SCHEDULE The Air Carrier proposes the schedule of flights as listed in Appendix 'B'. The Air Carrier must notify the Director, Cargo & Real Estate Development of any proposed changes to the schedule of flights 30 days before implementation of the proposed changes or, where 30 days advance notice cannot be provided, the Air Carrier shall provide as much notice as reasonably possible in the circumstances.			
SECURITY DEPOSIT			
(1) The Air Carrier shall deposit with HIAA on or before the day on which it commences operations at the Airport, a security deposit in the amount of \$100,000.00 in the form of a letter of credit.			
(2) The security deposit shall be in the form of cash, cash equivalent or irrevocable letter of credit.			
(3) Where the security deposit is in the form of a letter of credit, such letter of credit shall be an unconditional irrevocable letter of credit in form satisfactory to HIAA, and from a financial institution or a local co-operative credit society that is a member of the Canadian Payments Association. The Air Carrier shall cause such letter of credit, or an extension or replacement thereof, to remain in full force and effect throughout the term of this Agreement together with an additional 60 days or until the date of any termination of this Agreement provided that such termination does not result from any default on the part of the Air Carrier and HIAA has no claim against the Air Carrier or any affiliate of the Air Carrier arising out of or relating in any manner to this Agreement or any other agreement or against any performing carrier acting in such capacity for the Air Carrier.			
(4) HIAA shall retain the security deposit for the term of this Agreement and shall return the security deposit to the Air Carrier within 60 days following the end of the said term or the date of any earlier termination of this Agreement, provided that: (a) such termination does not result from any default on the part of the Air Carrier, any affiliate of the Air Carrier or any performing carrier acting in such capacity for the Air Carrier; and (b) HIAA has no claim against the Air Carrier or any affiliate of the Air Carrier arising out of or relating in any manner to this Agreement or against any performing carrier acting in such capacity for the Air Carrier.			
(5) If (a) the Air Carrier fails to pay any fees and/or charges to HIAA pursuant to this Agreement or any other agreement between the Air Carrier and HIAA; (b) any affiliate of the Air Carrier fails to pay any fees and/or charges due to HIAA; (c) any performing carrier acting in such capacity for the Air Carrier fails to pay any fees and/or charges due to HIAA; (d) the Air Carrier or any affiliate of the Air Carrier or any performing carrier acting in such capacity for the Air Carrier is in default of any of its obligations to HIAA and HIAA suffers damages as a result of such default; or (e) if the Air Carrier or any affiliate of the Air Carrier or any performing carrier acting in such capacity for the Air Carrier has caused damage or injury to the Airport or any part thereof, then HIAA may, in addition to any other right or remedy available to it, and whether or not a judgment against the Air Carrier and/or any affiliate or performing carrier has been obtained, use, apply or retain the whole or any part of the security deposit, to the extent required for the payment of the fees and charges owing to HIAA or the damages or damage suffered by HIAA.			
(6) HIAA may, at any time, amend the amount required as a security deposit should any of the following conditions apply:			
a) the Air Carrier makes substantial changes to its plan of operations which results in significant changes to the amount of the Air Carrier's monthly billings or increases HIAA's financial risk as determined solely by HIAA, acting reasonably; or			
b) the Air Carrier is frequently in arrears of payment of fees and/or charges owing to HIAA under this Agreement or any other agreement between the Air Carrier and HIAA or any affiliate of the Air Carrier or any performing carrier acting in such capacity for the Air Carrier is frequently in arrears of payment of fees and/or charges owing to HIAA, such determinations to be made at the sole discretion of HIAA, acting reasonably.			
Security Deposit Amount: \$100,000.00			

TERMS AND CONDITIONS

AIRPORT IMPROVEMENT FEE

The Air Carrier shall collect or cause to be collected from each enplaned passenger the fee then in effect as an airport improvement fee, or any such similar fee, and shall remit, on a monthly basis no later than the end of the month following the month of enplanement by the departing passengers at the Airport plus any applicable taxes, to HIAA.

ASSIGNMENT

The Air Carrier shall neither assign nor transfer this Agreement in whole or in part. HIAA may assign or transfer this Agreement either in whole or in part without the consent of the Air Carrier who shall be obligated to accept any such assignee of HIAA and shall have no right to approve or disapprove such assignee on any basis whatsoever.

TERMINATION

This agreement may be terminated at any time by either party on 60 days' notice in writing delivered to the other party or mailed to its last known address.

COMPLIANCE WITH APPLICABLE LAWS AND DIRECTIVES

The Air Carrier shall, and shall cause its affiliates and performing carriers and all of its and their agents to, in all respects abide and comply with all applicable federal, provincial and municipal laws and with all directives issued from time to time by HIAA concerning operation of the Airport.

Without limiting the foregoing, the Air Carrier shall, and shall cause its affiliates and performing carriers and all of its and their agents to, ensure that all services provided or made available to the travelling public at the Airport are provided or made available in both official languages as required by the Official Languages Act (Canada).

DAMAGE

Any damage or injury which may, during the existence of this Agreement be occasioned to the Airport or any part thereof, or works connected therewith, by the Air Carrier, its affiliates, its performing carriers or its or their agents, or by the activities of any of them, shall immediately upon notice thereof from HIAA given either verbally or in writing be repaired, rebuilt and restored by the Air Carrier to the entire satisfaction of HIAA, or HIAA may, at its option, repair such damage or injury, in which case the Air Carrier shall upon demand promptly repay and reimburse HIAA for all costs and expenses connected therewith or incidental thereto.

DEFAULT OR BREACH

Upon default or breach in respect of any provision or condition herein, or if the Air Carrier becomes insolvent or has committed an act of bankruptcy, HIAA may, with or without notice, retake possession of any areas used by the Air Carrier or its affiliates or performing carriers under this Agreement and thereupon, the Air Carrier shall promptly remove its personal property from the said premises and upon its failure to do so, that personal property shall become the property of and shall vest in HIAA, without any right of compensation on the part of the Air Carrier therefore. "Personal Property" for this purpose shall not include cargo owned by a third party and in the possession of the Air Carrier or its affiliates or performing carriers. The Air Carrier shall reimburse HIAA for all costs incurred by HIAA in removing and storing any such cargo.

FEES

The Air Carrier shall pay all fees and charges levied by HIAA in accordance with rates and tariffs then in effect or as amended from time to time, plus any applicable, provincial sales, good and services, harmonized goods and services taxes, with respect to the operation of aircraft and the conduct of business at the Airport (including but not limited to landing, general terminal, passenger loading bridge, aircraft parking, employee parking, and police and security fees).

AFFILIATES AND PERFORMING CARRIERS

In addition to HIAA aeronautical fees and charges incurred by the Air Carrier, it shall pay HIAA or cause to be paid to HIAA all HIAA aeronautical fees and charges incurred by the Air Carrier's affiliated and performing carriers (including without limitation, those listed in Schedule C). Such payment shall be without prejudice to HIAA's rights under section 9 of the *Airport Transfer (Miscellaneous Matters) Act*. For greater certainty, nothing in this Agreement shall prevent HIAA from exercising its statutory seizure and detention rights in respect of the Air Carrier's aircraft or its affiliates' or performing carriers' aircraft. The Air Carrier shall promptly notify HIAA in writing of any changes to its affiliates and performing carriers as set out in Schedule C.

TERMS AND CONDITIONS

FORM

This document and any attachments mentioned as forming part of this Agreement constitute the entire Agreement between both parties when duly executed by authorized officers of both parties. No amendment to this Agreement shall be effective without the written consent of both parties. No local, general or trade customs shall affect the terms and conditions of this Agreement.

GATE ASSIGNMENT

Gates will be assigned in HIAA's sole discretion.

INDEMNIFICATION

The Air Carrier shall indemnify and save harmless HIAA and Her Majesty the Queen in Right of Canada (the "Crown") from and against any and all manner of actions, causes of action, claims, demands, losses, costs, expenses, damages, liability awards and proceedings of every kind and nature whatsoever by whomsoever made or brought, or prosecuted, based upon or attributable to this Agreement, or any action taken or things done or omitted to be done by the Air Carrier or any of its affiliates, performing carriers or agents, except to the extent such damage or injury is due to HIAA's negligence.

INSURANCE

No later than the first day of operations under this Agreement, the Air Carrier shall provide HIAA with a current certificate evidencing (i) insurance coverage of the type and in an amount not less than that required under the *Air Transportation Regulations* (Canada); and (ii) Commercial General Liability covering liability for Bodily Injury & Property Damage on Airport Premises with a limit of not less than \$50 million.

If the *Air Transportation Regulations* are subsequently amended to change the type and amount of insurance required to be maintained by the Air Carrier, the Air Carrier shall promptly provide HIAA with a certificate evidencing such amended insurance coverage. The Air Carrier's insurance coverage shall specify HIAA, the Crown and the Air Carrier's affiliates as additional insureds with respect to the operations of the Air Carrier and its affiliates. The Air Carrier shall cause its performing carriers to comply with this section as if they were a party to this Agreement.

LAW AND FORUM

The laws of Nova Scotia and the laws of Canada applicable therein shall govern any dispute arising under this Agreement, and courts situated in Halifax, Nova Scotia shall have exclusive jurisdiction over any litigation arising under this Agreement.

PROVISION OF INFORMATION

The Air Carrier shall give HIAA information specific to its traffic and operations at the Airport (such as domestic, trans-border and other international passengers, aircraft movements, cargo and mail) in such form and at such times as specified by HIAA. Furthermore, the Air Carrier hereby consents to Transport Canada's disclosure to HIAA of disaggregated statistics specific to the Air Carrier's traffic and operations at the Airport. Except as required by law and except for inclusion in reports of the Airport's total passenger, aircraft, cargo and mail movements without reference to a particular air carrier, HIAA shall keep all such information confidential.

RISKS

All personal property of the Air Carrier, its affiliates and its agents, at any time brought on the Airport, shall be entirely at the risk of the Air Carrier, with the exception only of any such loss, damage or injury caused by HIAA's negligence.

SIGNED by the parties' duly authorized representatives:

SIGNATURE PAGE TO FOLLOW



TERMS AND CONDITIONS

HALIFAX INTERNATIONAL AIRPORT AUTHORITY

1263343 ALBERTA INC. dba LYNX AIR

By: *Marie Manning*

By: *[Signature]*

Name: Marie Manning

Name: MICHAEL HOLDITCH

Title: VP Business Development & CCO

Title: CHIEF FINANCIAL OFFICER

Date: _____

Date: JUNE 27 / 2022

By: *[Signature]*

By: *[Signature]*

Name: Paul Brigley

Name: ROBERT HOFFART

Title: VP Finance & CFO

Title: AIRPORT OPERATIONS MGR.

Date: _____

Date: JUNE 27 / 2022

AIR CARRIER OPERATING AGREEMENT

Schedule A Plan of Operations

Company: 1263343 ALBERTA INC. dba LYNX AIR **Agreement No.:** AA3115

Civil Registration Number	Aircraft Type	Company Fleet Number	Maximum Gross Take-Off Weight	Seating Capacity
C-FULH	B38M-737 MAX 8	4803	71,000 kg	189
C-FULI	B38M-737 MAX 8	4802	71,000 kg	189
C-GJSL	B38M-737 MAX 8	4801	71,000 kg	189
C-FULJ	B38M-737 MAX 8	4807	71,000 kg	189
C-GUUL	B38M-737 MAX 8	4806	71,000 kg	189
C-GULN	B38M-737 MAX 8	4805	71,000 kg	189

Note: If the maximum permissible take-off weight or the number of passenger seats is not standardized for each type of aircraft listed, the Air Carrier will be required to provide semi-monthly reports identifying the actual aircraft used for each flight. This report is due within two days of the 15th and last days of the month.

Air Carrier contact for the provision of the aircraft usage reports and information:

Name: Rob Hoffart, Airport Operations Manager

Address: 3215 12th Street NE

Calgary, AB T2E 7S9

Telephone No.: 780.721.3485

Email: Rob.Hoffart@lynxair.com

Billing: accounting@lynxair.com



**Schedule C
Air Carrier's Affiliates and Performing Carriers**

Affiliate's or Performing Carrier's full legal name:	
The Canadian Transportation Agency has issued licence No. to the Air Carrier or its affiliate and/or performing carrier for the affiliate to operate the following classes of air services for transportation of:	
(a)	<input checked="" type="checkbox"/> passengers and goods on aircraft equipped for the carriage of passengers on small / medium / large aircraft OR <input type="checkbox"/> goods on aircraft equipped for the carriage of goods only on all-cargo aircraft
(b)	<input checked="" type="checkbox"/> domestic service OR <input type="checkbox"/> scheduled service international OR <input type="checkbox"/> non-scheduled international service
Transport Canada has issued:	
<input checked="" type="checkbox"/> Air Operator Certificate No. <u>11035</u> to the Canadian Air Carrier OR <input type="checkbox"/> Canadian Foreign Air Operator Certificate No. _____ to the foreign Air Carrier	
Affiliate's full legal name: 1263343 Alberta Inc. DBA Lynx Air	
The Canadian Transportation Agency has issued licence No. to the Air Carrier or its affiliate and/or performing carrier for the affiliate and/or performing carrier to operate the following classes of air services for transportation of:	
(c)	<input type="checkbox"/> passengers and goods on aircraft equipped for the carriage of passengers on small / medium / large aircraft OR <input type="checkbox"/> goods on aircraft equipped for the carriage of goods only on all-cargo aircraft
(d)	<input type="checkbox"/> domestic service OR <input type="checkbox"/> scheduled service international OR <input type="checkbox"/> non-scheduled international service
Transport Canada has issued:	
<input type="checkbox"/> Air Operator Certificate No. _____ to the Canadian Air Carrier OR <input type="checkbox"/> Canadian Foreign Air Operator Certificate No. _____ to the foreign Air Carrier	

This is **Exhibit "C"** referred to in the Affidavit of Paul Brigley, sworn before me at the City of Halifax, in the Province of Nova Scotia, this 23rd day of May 2024



CAROLYN SULEY
BARRISTER AND SOLICITOR
A Notary Public in and for Nova Scotia

Reservation Terms and Conditions

Fare Information

Cancellations

No cancellations are permitted within 72 hours of departure.

Within 24 hours of booking:

- For flights booked more than 7 days before departure, if you cancel your flight you'll receive a refund to your original form of payment.
- For flights booked within 7 days of departure, if you cancel your flight you'll receive a travel voucher, minus the \$74*CAD + tax cancellation fee (per flight segment).

More than 24 hours after booking:

- For cancellations made more than 72 hours before departure, you'll be charged a \$74*CAD + tax (on or after January 11, 2024) cancellation fee per passenger (per flight segment). You'll receive a travel voucher for the remaining amount (if applicable).

Changes

No changes are permitted within 72 hours of departure. Changes to the origin and destination are not permitted.

Name changes are not permitted.

- For changes made more than 72 hours before departure, you'll be charged a change fee of \$74*CAD + tax (on or after January 11, 2024) per passenger (per flight segment).
- If you change your flight to one with a higher fare, you must pay the difference in fare as well as the change fee.
- If you change your flight to one with a lower fare, you must pay the change fee, but you won't receive the difference in fare.

Payments Fees and Taxes



- Visa
- Mastercard
- Visa Debit
- Mastercard Debit
- Lynx Travel Voucher

Taxes and Fees

Taxes and fees vary based on the airports you're using. For domestic flights, the following taxes and fees may be added.

- Airport Improvement Fees (AIF) and Passenger Facility Charge (PFC) are generally collected by Lynx at the time of booking. Lynx collects these fees from passengers and remits them directly to the airports

Airport Code	Airport Improvement Fee (AIF)
YEG	\$35*CAD
YFC	\$30*CAD
YHM	\$25*CAD
YHZ	\$35*CAD
YLW	\$25.00*CAD
YUL	\$35*CAD
YVR (flying within BC or to the Yukon)	\$5.00*CAD
YVR (flying outside BC)	\$25.00*CAD
YWG	\$38.00*CAD
YYC	\$35.00*CAD



YYT	\$42*CAD
YYZ	\$30.00*CAD
All US airports	\$4.50*CAD

- Air Travellers Security Charge (“ATSC”): The ATSC is a security charge collected by the Government of Canada. Lynx collects this fee from passengers and remits it directly to Canada Revenue Agency.
- \$7.12*CAD per chargeable enplanement to a maximum of \$14.25*CAD for Canadian domestic flights.
- Goods and Services Tax (“GST”): GST of 5% applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights, excluding those that commence in Quebec, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador.
- Harmonized Sales Tax (“HST”): HST applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights commencing in the following provinces:
- U.S. Taxes & Fees do not apply to domestic Canadian flights.
- The US segment tax is also charged on flights between the US and a point in Canada within 225 miles of the border when payment is made within the US.
- For flights between the US and a point in Canada within 225 miles of the border, when payment is made within the US, a 7.5% tax is imposed on the base ticket price. For such flights and all other transborder flights, when payment is made within Canada, a flat rate of \$21.10 (USD) per passenger arrival and departure applies.
- US Agriculture Fee: The US government charges an agriculture inspection fee on all in-bound passengers of \$3.96 USD.
- US Immigration User Fee: For all transborder flights arriving in US, there is an Immigration User Fee of \$7.00 USD charged per passenger.
- US Sep 11th Security Fee: For all transborder flights departing the US, there is a Sep 11th Security Fee of \$5.60 USD charged per passenger.
- US Customs Processing Fee: For all transborder flights arriving in US, there is a US Customs User Fee of \$6.11 USD charged per passenger
- US Segment Tax: For all transborder flights, a US Segment Tax of \$4.50 USD is applied per passenger for US citizens. The US segment tax is also charged to US citizens on Canadian domestic flights if travel occurs in the US buffer zone near the border between the two countries
- US Transportation Tax: For all transborder flights, a US Transportation Tax is applied. For US citizens, it is 7.5% of the base ticket price (including surcharges) per



Province	Harmonized Sales Tax (HST)
Ontario	13%
Nova Scotia	15%
New Brunswick	15%
Prince Edward Island	15%
Newfoundland and Labrador	15%

- Quebec Sales Tax (“QST”): QST applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights commencing in Quebec.

Lynx Travel Vouchers

Unless otherwise specified, Lynx travel vouchers are valid for 12 months. Travel vouchers are non-transferable and can only be redeemed by the primary passenger on the booking. The owner of the travel voucher can use their voucher to book a flight for a third party. Travel vouchers can be applied towards base fare, taxes and fees.

Identification Requirements

Travel Within Canada

- a. All adult passengers must bring 1 valid (non-expired) identification document issued by a Canadian federal, provincial or territorial government that includes:
 - i. Photo
 - ii. Full name
 - iii. Date of birth
 - iv. Gender



documents must include:

- i. Full name
- ii. Date of birth
- iii. Gender

c. For more information on identification requirements, click [Canada - Domestic Air Travel Identification page](#) and [Transport Security Administration Identification page](#). For more information on identification requirements for children, click [Travelling with children and infants](#).

International Travel

- a. Adults, children and infants are required to have a valid passport for international travel.
- b. Each country may have specific travel document requirements, vaccination requirements or health protocols. It is the responsibility of each passenger to ensure they have the necessary documents for travel. Always travel with the proper documentation at all times when travelling.
- c. Please visit the U.S. Department of State for more information on requirements for travel to the United States. [Travel \(state.gov\)](#)

Check-in Guidelines

We recommend you arrive at the airport a minimum of 90 minutes before your scheduled departure time for domestic flights, and a minimum of 120 minutes before your scheduled departure time for international flights. If you'd rather check-in at the airport, please arrive 3 hours before your flight. Check-in and baggage drop-off closes 45 minutes prior to departure for domestic flights and 75 minutes prior to departure for international.

All security restrictions are subject to change. For the most up-to-date information, visit [tc.gc.ca](#), [catsa.gc.ca](#) or [tsa.gov](#).

Information Collection and Disclosure



destination, Canadian government authorities may require us to collect passenger information such as your full name, date of birth, citizenship, gender, passport number and country of issuance, payment method for flight purchase and booking details, as well as any other personal information as described by this policy or as required by such government authority.

Privacy Policy

Lynx is dedicated to protecting your personal information. Our privacy policy conforms with the Personal Information Protection and Electronic Documents Act. Additional information is available in [Privacy Policy](#).

Rules of Carriage and Baggage Information

Carriage of passengers and goods on domestic flights, i.e., between, from and to points wholly within Canada, is subject to the applicable tariffs, conditions of carriage and related regulations available at the office of the carrier and [baggage](#).

Checked Baggage Allowance

Checked baggage is subject to weight and size restrictions. Fees apply for each piece of baggage and may be combined. For example, if you check in 2 bags and both are overweight, you'll be charged 2 overweight fees. For more information visit: [Baggage Information | Lynx Air \(flylynx.com\)](#)

Checked baggage size

- Baggage may be up to 157cm (62") in combined dimensions (length + width + height) and weigh up to 23kg (50lbs).
- Oversized baggage (combined dimensions up to 203cm or 80") is accepted on a space-available basis.
- Overweight baggage (more than 23kg or 50lbs but not exceeding 45kg or 100lbs) is accepted on a space-available basis.
- For more information: [Baggage Information | Lynx Air \(flylynx.com\)](#)

Musical instruments



50lbs but not exceeding 45kg or 100lbs) and are subject to overweight fees.

Carry-on Baggage Allowance

Carry-on baggage is subject to a fee and must be stored in the overhead bin or placed under the seat directly in front of each passenger.

Each passenger may bring 1 carry-on item and 1 personal item. Each item must fit into the sizing devices and may not exceed the applicable measurements. This applies for both personal and carry-on items.

- Carry-on item: Maximum size of 23cm x 40cm x 55cm (9" x 15.75" x 21.5") and 10kg (22lbs). Carry-on fees apply.
- Personal item: Maximum size of 15cm x 33cm x 43cm (6" x 13" x 17"). Items that don't fit into the sizing device will be placed in checked baggage and charged a checked baggage fee.

Musical instruments

The combined length, width and height of the instrument (including the case) must be less than 113cm (45"). Instruments this size are considered carry-on and subject to carry-on fees. Musical instruments that don't meet the carry-on size criteria will have to be checked and follow the weight limits and fees for checked bags.

Can I bring this on a plane?

For travel within Canada, visit catsa.gc.ca for permitted and non-permitted items or call 1-800-O-Canada for more information. For travel to or from the United States, visit tsa.gov.

Baggage Loss or Damage

For carriage of baggage on domestic flights, Lynx's liability is limited to 1,131 Special Drawing Rights (SDRs) per person per incident, except for mobility aids.

Any complaint of any loss or damage to luggage must be in writing and must be made within 7 days of your flight.



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[Terms of use](#) | [Privacy policy](#) | [Tariff \(Domestic\)](#) | [Tariff \(Transborder\)](#) | [U.S. Tarmac Delay Plan](#) | [U.S. Customer Service Plan](#) | [International Tariff \(Mexico\)](#) | [Mexico Compensation Policy](#)

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This is **Exhibit "D"** referred to in the Affidavit of Paul Brigley, sworn before me at the City of Halifax, in the Province of Nova Scotia, this 23rd day of May 2024



CAROLYN SULEY
BARRISTER AND SOLICITOR
A Notary Public in and for Nova Scotia

HIAA Affidavit - Lynx

as of May 23, 2024

Exhibit D - Lynx unremitted AIF Fees

AIF

Invoice #	Invoice Description	Net	HST	Gross
AIF Nov 2023	Nov 2023 AIF	91,100.10	13,665.02	104,765.12
AIF Dec 2023	Dec 2023 AIF	85,869.00	12,880.35	98,749.35
YHZ-AIFHF-007	AIF Handling Fee Adjustment (Jan-Oct)	9,927.40	1,489.11	11,416.51
AIF Jan 2024	Jan AIF	88,797.10	13,319.57	102,116.67
AIF Feb 2024	Feb AIF (Feb 1-21)	52,311.00	7,846.65	60,157.65
	Total unremitted AIF (bf Mar 26 payment)	328,004.60	49,200.70	377,205.30
26-Mar-24	Payment (applied to AIF billings)	(523.17)	(78.48)	(601.65)
	Application of Security Deposit	(49,711.17)	(7,456.68)	(57,167.85)
	Total unremitted AIF	277,770.25	41,665.54	319,435.80

Aeronautical

Invoice #	Invoice Description	Net	HST	Gross
YHZA00053527	Aeronautical Billings (Jan 15-31) - Partial	14,508.28	2,176.24	16,684.52
YHZA00053641	Aeronautical Billings (Feb 1-14)	15,525.23	2,328.78	17,854.01
YHZA00053708	Aeronautical Billings (Feb 15-22)	7,176.84	1,076.53	8,253.37
YHZA00053691	Employee Parking (Feb 2024)	35.00	5.25	40.25
	Total unremitted Aeronautical	37,245.35	5,586.80	42,832.15
	Application of Security Deposit	(37,245.35)	(5,586.80)	(42,832.15)
	Security Deposit Remaining	0.00	0.00	0.00

This is **Exhibit "J"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
In and for Alberta
My Commission Expires September 11, 2026

Form 49
Rule 13.19

Clerk's stamp

LL

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended



AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

C51676
Jun 24, 2024
COM

APPLICANTS EDMONTON REGIONAL AIRPORTS AUTHORITY, HALIFAX INTERNATIONAL AIRPORTS AUTHORITY, THE CALGARY AIRPORT AUTHORITY, VANCOUVER AIRPORT AUTHORITY, and WINNIPEG AIRPORTS AUTHORITY INC.

RESPONDENT LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **AFFIDAVIT**

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Email: kfellowes@stikeman.com / abell@stikeman.com

Lawyers for the Applicants,
Edmonton Regional Airports Authority, Halifax International Airports Authority, The Calgary Airport Authority, Vancouver Airport Authority, and Winnipeg Airports Authority Inc.
File No.: 156280.1001

AFFIDAVIT OF NICOLE STEFANIUK

Affirmed on May 23, 2024

I, Nicole Stefaniuk, of the City of Winnipeg, in the Province of Manitoba, AFFIRM AND SAY THAT:

1. I am the Chief Financial Officer of the Winnipeg Airports Authority Inc. (the "**WAA**") and as such, I have personal knowledge of the facts and matters stated herein, except where stated to be based on information and belief, and, where so informed, I believe such matters to be true.
2. The WAA is a signatory to a Memorandum of Agreement between the Air Transport Association of Canada, certain air carriers, and certain airport authorities (the "**MOA**"). Attached and marked as **Exhibit "A"** is a copy of the MOA.
3. 1263343 Alberta Inc. dba Lynx Air ("**Lynx**") became a signatory to the MOA on April 6, 2022.
4. The history of the MOA dates back to the federal government's decision to transfer authority over airports in Canada to designated airport authorities, such as the WAA. This transfer began in 1992 with the introduction of the *Airport Transfer (Miscellaneous Matters) Act*, SC 1992, c 5, which allowed the federal government to retain ownership of 26 so-called National Airport System airports, while leasing these airports to locally controlled, not-for-profit, non-share private sector airport authorities. The WAA was designated as an airport authority in 1996 and was subsequently leased the Winnipeg James Armstrong Richardson International Airport (the "**Winnipeg Airport**").
5. The result of these transfers is that the federal government retains ownership of the airports but avoids the financial burden of maintaining, improving and expanding airports by transferring all financial liabilities to airport authorities. As such, upon transfer in 1996, the WAA became financially responsible for the Winnipeg Airport. Despite this transfer of responsibility, airport authorities like the WAA are still expected to provide a public service and must maintain and manage their respective airports in the public interest.
6. The MOA recognizes that airport authorities have the responsibility to manage, operate and develop the airports for which they are responsible. In order to meet the air traffic demands on their respective airports and ensure that the public has access to quality air transport, airport authorities such as the WAA from time to time must undertake capital expenditure projects. As stated in the preamble to the MOA, airport authorities may obtain the funds to undertake such capital expenditure projects by imposing fees or charges upon all departing airport passengers. Such fees are referred to as "Airport Improvement Fees" or "AIF".
7. Pursuant to section 6.1 of the MOA, the decision to charge AIF and at what rate to charge it are made by each airport authority. Further pursuant to the MOA, signatory air carriers such as Lynx agree to collect and remit AIF on behalf of the airport authorities.
8. During the time that Lynx was a signatory to the MOA, the WAA mandated an AIF of \$38.00 per passenger. Pursuant to section 9.2 of the MOA, Lynx was to remit the collected AIF to the WAA on a monthly basis on the first working day of each month.

9. It was the WAA's understanding that the AIF collected by Lynx was being held in trust by Lynx until its ultimate remittance to the WAA. The MOA expressly states that the AIF is a charge imposed by the WAA on passengers and is collected by Lynx "on behalf" of the WAA. The WAA's Tariff of Aviation Fees (the "**Tariff**") uses similar language, stating that AIF is charged by the WAA to each departing enplaned passenger, is collected by Lynx, and is remitted back to the WAA. Attached and marked as **Exhibit "B"** is a copy of the Tariff.
10. Furthermore, the MOA states at section 20.1 that the parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise *except* as Lynx acting as agent for the WAA in collecting and remitting the AIF funds.
11. Additionally, in its reservation terms and conditions (the "**Terms and Conditions**"), Lynx represented to its passengers that "Airport Improvement Fees (AIF) ... are generally collected by Lynx at the time of booking. Lynx collects these fees from passengers and remits them directly to the airports." Attached and marked as **Exhibit "C"** is a copy of the Terms and Conditions.
12. At the time that Lynx filed for CCAA protection, the WAA was owed substantial amounts by Lynx in unremitted AIF as Lynx had failed to remit collected AIF funds in accordance with its obligations under the MOA since December 2023. In total, the WAA is owed \$282,895.00 in unremitted AIF by Lynx. Attached and marked as **Exhibit "D"** is a bundle of WAA accounting documents including a copy of an Excel spreadsheet outlining WAA invoices to Lynx from the period covering January 17, 2024, through to February 29, 2024, as well as three invoices outlining the AIF owed to WAA by Lynx for the January and February 2024.
13. Pursuant to the Tariff, the WAA is entitled to require a cash deposit or an irrevocable letter of credit from Lynx in order to secure the payment of any monies due under the Tariff. At the outset of their relationship, the WAA required a deposit of \$83,333.00 (the "**Deposit**") from Lynx in order to secure aeronautical fees. The Deposit was not used to secure AIF. After Lynx filed for CCAA protection, the WAA used the entirety of the Deposit to offset outstanding aeronautical fees owed by Lynx to the WAA; no part of the Deposit was applied to AIF.

AFFIRMED this 23rd day of May, 2024.

Andrew Stewart
A BARRISTER-AT-LAW entitled to practice
in and for the Province of Manitoba

Nicole Stefaniuk

This is **Exhibit "A"** referred to in the Affidavit of Nicole Stefaniuk, affirmed before me at City of Winnipeg, in the Province of Manitoba, this 23rd day of May 2024



Andrew Stewart
A BARRISTER-AT-LAW entitled to practice
in and for the Province of Manitoba

MEMORANDUM OF AGREEMENT

BETWEEN

THE AIR TRANSPORT ASSOCIATION OF CANADA

AND

SIGNATORY AIR CARRIERS

AND

CERTAIN AIRPORTS

As Amended Effective January 20, 2004

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SCHEDULES

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B	Signatory Air Carriers
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D	ACC Operating Terms of Reference
E	Excluded Jurisdictions
F	Capital Programs Deemed to Have Been Approved
G	Airport Improvement Fee Monthly Remittance Form
H	Administrative Duties of The Air Transport Association of Canada
I	Vancouver International Airport AIF Rates

MEMORANDUM OF AGREEMENT

AMONG: The Air Transport Association of Canada (“ATAC”)

- and -

Those airports listed on Schedule A to this Memorandum of Agreement
(collectively, “Airports”, and individually, an “Airport”)

- and -

Those air carriers listed on Schedule B to this Memorandum of Agreement
(collectively, “Signatory Air Carriers”, and individually, “Signatory Air
Carrier”)

(all collectively, the “Parties” and, individually, a “Party”);

WHEREAS Airports have the responsibility to manage, operate and develop the airports for which they are responsible;

AND WHEREAS member air carriers of ATAC are major users of the airport facilities provided by the Airports;

AND WHEREAS Airports may have the requirement to expand their airport facilities to meet traffic demands and in that event will require additional revenues to pay for those expanded facilities;

AND WHEREAS Airports may decide to obtain such additional revenues, in whole or in part, by imposing fees or charges upon passengers using such Airports;

AND WHEREAS Airports may wish to obtain the assistance of air carriers in collecting such fees or charges from passengers;

PAGE 2

AND WHEREAS the Parties jointly wish to ensure that a meaningful consultation process is established which will ensure that the views and requirements of Signatory Air Carriers are fully considered by airport operators in connection with the collection and use of any such additional revenues;

AND WHEREAS the Parties jointly wish to establish a regime whereby, in recognition of the establishment of a formal consultation process, Signatory Air Carriers agree to collect on behalf of Airports and remit a fee which an Airport might decide to impose upon passengers, all upon and subject to the terms and conditions contained herein;

AND WHEREAS the Parties in giving effect to the forgoing wishes, do not wish to abrogate or derogate from any of their respective, existing rights or obligations except as is expressly agreed to herein;

NOW THEREFORE, in consideration of the payment of the sum of one dollar (\$1.00) by each Party to each of the other Parties, the receipt of which is hereby acknowledged, and in respect of the mutual covenants and agreements contained herein, the Parties agree as follows:

1.0 Purpose of Memorandum of Agreement

1.1 The Parties agree that this Memorandum of Agreement ("MOA") establishes the terms in respect of:

- (a) a consultation process regarding the expansion of Airport facilities; and
- (b) the collection of fees by Signatory Air Carriers for Airports from air carrier passengers if an Airport decides to impose such fees to pay for the future expansion of certain Airport facilities.

PAGE 3

1.2 This MOA shall be legally binding upon the Parties.

2.0 Accession to MOA

2.1 The Parties agree that if any Canadian airport or any Canadian or foreign air carrier wishes to become a Party to this MOA, it may do so by:

(a) agreeing in writing in the form attached as Schedule C that it agrees to be bound by the terms and conditions of this MOA; and

(b) sending a copy of the duly executed form along with one dollar (\$1.00) to each of the existing Parties. Upon so doing, such Canadian airport or air carrier will become a Party to this MOA and shall be deemed to be listed on either Schedule A or Schedule B, as appropriate.

2.2 Notwithstanding the provisions of Section 2.1 of this MOA, the Parties recognize and acknowledge that the terms and conditions of this MOA are not designed to address the unique issues arising at airports with two or more separate and physically distinct air terminal buildings jointly serving at least 20 million enplaned/deplaned passengers as at December 31, 1998 ("Multi-terminal Airports").

The Parties further recognize and acknowledge that multi-terminal airports can present new and different issues to air carriers which may vary over both time and the particular circumstances of individual air carriers and individual Multi-terminal Airports.

The Parties therefore agree that the accession to this MOA by any Multi-terminal Airport, shall be conditional upon the approval of the two largest Canadian Signatory Air Carriers

PAGE 4

using that airport as determined by passenger boardings in the calendar year immediately preceding the requested accession by that Multi-terminal Airport".

The Parties further agree that this MOA may be amended to the extent required by agreement between the two largest Canadian Signatory Air Carriers using that airport as determined by passenger boardings in the calendar year immediately preceding the requested accession by that Multi-terminal Airport seeking accession to this MOA, provided any such amendment shall be applicable to the operation of the MOA solely at the Multi-terminal Airport seeking accession.

2.3 For further clarity it is understood that an Airport may, without cause but only after the expiry of 365 days from the date that Airport executes or accedes to this MOA and only upon giving not less than 180 days notice, withdraw from this MOA. The withdrawal from this agreement shall be on the day specified by that Airport in the notice but shall not be earlier than the 181st day after the notice is given. Signatory Air Carriers shall not be obliged to collect any AIF for that Airport in respect of travel scheduled to begin any time after the effective date of withdrawal of that Airport.

3.0 Airline Consultative Committee

3.1 Signatory Air Carriers at a given Airport shall be permitted to join the Airline Consultative Committee ("ACC") at each such Airport. Signatory Air Carriers shall exercise their rights and responsibilities as set out in Article 13 of this MOA (the "Air Carrier Consultation Process") through the ACC. The Chairman of the ACC shall inform that Airport of the Majority In Interest ("MII") as determined in accordance with Section 3.3.

3.2 The ACC at each Airport shall be operated according to the ACC Operating Terms of Reference which is attached as Schedule D to this MOA, and the same may be amended by the ACC from time to time by providing written notice to each of the Parties. In the event of any inconsistency between the ACC Operating Terms of Reference and this MOA, the

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terms of this MOA shall prevail. Schedule D is included in this MOA for the purpose of providing direction relative to the Air Carrier Consultation Process and nothing in Schedule D shall impose any obligation, commitment or requirement upon any Airport or Signatory Air Carrier by virtue of Schedule D being included in this MOA.

- 3.3 Notwithstanding any voting procedures contained in the ACC Operating Terms of Reference, the MII referred to in this MOA shall mean those Signatory Air Carriers who constitute 66 2/3% or more of the total enplaned passengers (based on the Air Carrier Activity at Canadian Airports Statistics Canada catalogue, or its successor, containing the most recent calendar year data available from Statistics Canada) at a particular Airport.

4.0 Airport Improvement Fee

- 4.1 Any passenger fee or charge imposed by an Airport and implemented under this MOA shall be termed an Airport Improvement Fee ("AIF").
- 4.2 An Airport may require Signatory Air Carriers to commence the collection of AIF funds subject to the completion of the process set out in Article 13.

5.0 Capital Expenditure Programs

- 5.1 AIF revenues shall only be used as follows:
- (a) to fund an Airport's capital expenditure projects, the general purpose of which projects are to construct or improve "Airport Infrastructure", and to fund the cost of issuance of associated debt, debt service costs, debt service reserve obligations, debt coverage requirements, capitalized interest on debt and bad debts associated with the collection of AIF revenues; and

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- (b) to fund capital expenditure projects, as referred to in Section 5.1(a) at airports which are owned or leased by the Airport identified in Schedule A and which are used as reliever airports for types of aircraft traffic that are not compatible with commercial operations at the Airport identified in Schedule A, subject to the condition that the value of capital expenditure projects at any such reliever airport shall not exceed 10% of the value of capital expenditure projects at the Airport identified in Schedule A which have been subjected to the Air Carrier Consultation Process as outlined in Article 13 of this MOA since the original commencement of this MOA.
- 5.2 For the purposes of this MOA, "Airport Infrastructure" means capital expenditures in respect of buildings, airfields, land, roads, navigational aids and other assets required for the operation of the Airport, but does not include operating or maintenance costs related to the Airport. For greater certainty, the Airport Infrastructure shall not include any buildings, airfields, land, roads, navigational aids and other assets required for the operation of the Airport located off the Airport that are not functionally related to commercial air operations, air navigation or the processing of passengers and their baggage and shall not include any costs associated with or related to the design, construction, development, maintenance or operation of any mass transit system beyond the boundary of the Airport.
- 5.3 Capital expenditure projects contemplated by an Airport shall be combined into capital expenditure programs ("Programs") for the purpose of consultation with Signatory Air Carriers and collection of any associated AIF. To qualify for collection of an associated AIF the actual period of construction contemplated by the Program must be for a minimum of two (2) years and a maximum of ten (10) years and the total estimated costs of all Programs tabled since the Airport's accession to this MOA must equal 50% or more of the Airport's annual revenue (not including AIF revenue) in the first year of the Program.

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- 5.4 Any construction of new runways or major expansion of existing runways or any other single project in excess of \$200,000,000 (in 2002 dollars) at an Airport must be by way of a separate Program and not combined with other projects.
- 5.5 With the exception of those Programs listed on Schedule F of this MOA, and except with the prior written approval of the Signatory Air Carriers forming the MII in accordance with Section 3.3. Airports may only require Signatory Air Carriers to collect and remit an AIF pursuant to this MOA for those Programs which have been subjected to the Air Carrier Consultation Process as outlined in Article 13 of this MOA. This provision shall not restrict the ability of an Airport to implement new projects during the period of a Program pursuant to Subsection 13.1(h) of this MOA.
- 5.6 With the exception of those projects within a Program listed on Schedule F of this MOA, and except with the prior written approval of the Signatory Air Carriers forming a MII, Airports may not award construction contracts related to any project in a Program for which that Airport will impose an AIF on passengers, prior to completing the steps contemplated by Subsections 13.1(a) and 13.1(c) through 13.1(e), inclusive and as appropriate, of the Air Carrier Consultation Process outlined in Article 13 of this MOA.

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6.0 Rates

6.1 An Airport alone shall decide whether to obtain an AIF from passengers. The Airports have decided that any AIF imposed by an Airport and implemented under this MOA will be set at a Canadian whole dollar amount per Airport which shall be limited to two digits and shall not be less than \$3.00 per DEPAX passenger plus applicable provincial sales, goods and services, harmonized goods and services and other applicable taxes.

6.2 There shall be no more than three (3) different levels of AIF in place at any Airport as follows:

- (a) one (1) rate for all transborder (United States) and domestic DEPAX passengers not covered by Subsection 6.2(c) below;
- (b) one (1) rate for all international (not including transborder) DEPAX, such rate not to exceed one and one-half (1 1/2) times the rate in Subsection 6.2(a) above;
- (c) one (1) rate for all city-pairs ("short-haul destinations") within the Province or Territory that the Airport resides in and which are designated under this Subsection 6.2(c) by the Airport to be short-haul destinations; provided that, for any Airport other than the Vancouver International Airport, an Airport will be limited to four (4) short-haul destinations or with the concurrence of the Signatory Air Carriers forming the MII, up to ten (10) short-haul destinations. The maximum distance between short-haul destinations shall be three hundred (300) statute miles. While recognizing the authority of an Airport to determine the one (1) rate for short-haul destinations, Signatory Airports shall, where applicable, make reasonable efforts to establish the same level of AIF at both Airports involved in a short-haul destination city-pair; and

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- (d) in the case of Vancouver International Airport (i) if Vancouver International Airport becomes a signatory to this MOA on or before January 1, 2004, effective April 1, 2004, those rates indicated on Schedule I hereto; and (ii) if Vancouver International Airport becomes a signatory to this MOA on a date following January 1, 2004, effective on the day which is ninety (90) days after the date that Vancouver International Airport becomes a signatory to this MOA, those rates indicated on Schedule I hereto.
- 6.3 An Airport has the right to make changes in AIF levels upon at least ninety (90) days prior written notice to ATAC and to the Signatory Air Carriers of the ticketing sale date following which the change in AIF levels will be effective provided that the rates for international and short-haul destinations, pursuant to Subsections 6.2(b), (c) and (d), shall not be adjusted more frequently than once in any calendar year without the concurrence of the Signatory Air Carriers forming the MII at the Airport. No notice may be issued by an Airport hereunder until January 1, 2004.
- 7.0 Alternate Collection Method**
- 7.1 With respect to a Program for which an AIF is being collected by Signatory Air Carriers, nothing in this MOA shall prevent an Airport from choosing to utilize an additional alternative to the revenue collection method outlined in this MOA provided that any such collection method does not:
- (a) involve the participation of Signatory Air Carriers; or
- (b) impose additional charges of any kind on Signatory Air Carriers in relation to the funding of such Program, unless otherwise agreed in writing between the respective Parties.

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8.0 Handling Fee

8.1 In respect of enplanements occurring on or prior to December 31, 2003, Signatory Air Carriers shall be entitled to withhold a handling fee which is calculated as a percentage of the gross amount of AIF to be otherwise remitted to a particular airport together with related provincial sales, goods and services, harmonized goods and services and other applicable taxes. The handling fee shall be one of three amounts determined by the annual enplaned/deplaned passenger volume at that Airport, which volume shall be determined by that Airport at the end of the ninth month of each calendar year for the previous 12 months, subject to annual review and verification by a designee of the Signatory Air Carriers, as follows:

- 6% for Airports with more than 7 million enplaned/deplaned passengers annually;
- 7% for Airports with 3 million to 7 million enplaned/deplaned passengers annually;
- 8% for Airports with less than 3 million enplaned/deplaned passengers annually.

8.1(a) In respect of enplanements occurring on or after January 1, 2004, Signatory Air Carriers shall be entitled to withhold a handling fee which is calculated as a percent of the gross amount of AIF to be otherwise remitted to a particular Airport together with related provincial sales, goods and services, harmonized goods and services and other applicable taxes. The handling fee shall be one of four (4) amounts determined by the annual enplaned/deplaned passenger volume at that Airport, which volume shall be determined by that Airport at the end of the ninth (9th) month of each calendar year for the previous twelve (12) months, subject to annual review and verification by ATAC, as follows:

- 4% for Airports with more than 14 million enplaned/deplaned passengers annually;
- 5% for Airports with more than 7 million enplaned/deplaned passengers annually;

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6% for Airports with 3 million to 7 million enplaned/deplaned passengers annually; and

7% for Airports with less than 3 million enplaned/deplaned passengers annually.

8.2 Signatory Air Carriers that do not conduct audits of their financial records in their normal commercial operations shall be entitled to 75% of the applicable handling fee, subject to compliance with Section 10.9 of this MOA.

9.0 Remittance

9.1 "AIF collection commencement date" means the first day upon which an Airport can require Signatory Air Carriers to collect and remit an AIF, or a change to the level thereof, following the completion of the air carrier consultation process contemplated by Article 13.

For greater certainty, the AIF collection commencement dates for the following airports are deemed to be as follows:

Calgary Airport	October 1, 1997
Kelowna Airport	February 1, 1998
Winnipeg Airport	July 1, 1998

9.2 In respect of enplanements occurring on or prior to December 31, 2003, regardless of whether an AIF is collected from passengers, and subject only to Sections 9.5, 9.6 and 22.1, Signatory Air Carriers shall remit to an Airport the amount of the AIF imposed by that Airport pursuant to this MOA for all DEPAX passengers at that Airport for which the ticket sales occurred on or after the AIF collection commencement date for that Airport:

- (a) plus provincial sales, goods and services, harmonized goods and services and other applicable taxes; and

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- (b) less the handling fee and related provincial sales, goods and services, harmonized goods and services and other applicable taxes referred to in Article 8;

on a monthly basis no later than the end of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies (the "due date").

9.2(a) In respect of enplanements occurring on or after January 1, 2004, regardless of whether an AIF is collected from DEPAX passengers, and subject only to Sections 9.5, 9.6 and 22.1, Signatory Air Carriers shall remit to an Airport the amount of the AIF imposed by that Airport pursuant to this MOA for all DEPAX passengers at that Airport for which the ticket sales occurred on or after the AIF collection commencement date for that Airport:

- (i) plus provincial sales, goods and services, harmonized goods and services and other applicable taxes; and
- (ii) less the handling fee and related provincial sales, goods and services, harmonized goods and services and other applicable taxes referred to in Article 8;

on a monthly basis on the first working day of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies, such monthly remittances to be made on the basis of the estimated amount owing to the Airport for the previous month, with final adjustments made on a monthly basis on the first working day of the second month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies. The estimated amounts referred to in this Section 9.2(a) shall be based on reasonable, good faith estimates of DEPAX passengers using historical data and/or reasonable forward projections.

Notwithstanding the payment schedule contained in this Section 9.2(a), any Signatory Air Carrier with less than \$240,000 in gross annual AIF remittances for a particular Airport shall

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only be required to remit on a monthly basis no later than the end of the month following the month of enplanement by the DEPAX passenger at the Airport to which the AIF applies.

- 9.3 The obligation to remit AIF revenues to an Airport arises upon the enplanement of a DEPAX passenger at a particular Airport provided that the DEPAX passenger purchased the ticket on or after the AIF collection commencement date for a particular Airport.
- 9.4 Each remittance will be accompanied by a statement identifying the number of DEPAX passenger enplanements associated with the remittance. The remittance shall separately identify the DEPAX passengers in Section 9.5 below.
- 9.5 With respect to DEPAX passengers who purchased tickets outside of North America:
- (a) provided that the Signatory Air Carrier has instituted a method of AIF collection which could commercially reasonably be expected to assess all DEPAX passengers in accordance with this MOA, and
 - (b) provided that the Signatory Air Carrier has made commercially reasonable efforts to collect AIF revenues pursuant to the method instituted in Subsection 9.5(a), and
 - (c) provided that the Signatory Air Carrier remitted all AIF revenues actually collected from DEPAX passengers in accordance with Section 9.2, Subsection 9.2(a) and as required by Article 11 during this period; and
 - (d) provided that the Signatory Air Carrier has provided the audit certification required pursuant to Section 10.3 of this MOA;

then the particular Signatory Air Carrier's liability for making the AIF remittances for DEPAX passengers whose tickets are purchased outside of North America, shall, subject to

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Article 8, be limited to the actual amount of AIF revenues collected from such DEPAX passengers carried by the particular Signatory Air Carrier at that particular Airport.

9.6 With respect to DEPAX passengers who purchased tickets in North America (Canada, the United States of America and Mexico):

- (a) provided that the Signatory Air Carrier has instituted a method of AIF collection which could commercially reasonably be expected to assess all DEPAX passengers in accordance with this MOA; and
- (b) provided that the Signatory Air Carrier has made commercially reasonable efforts to assess the DEPAX passengers in accordance with this MOA and collect AIF revenues pursuant to the method instituted pursuant to Subsection 9.6(a); and
- (c) provided that the Signatory Air Carrier remitted all AIF revenues actually collected from DEPAX passengers in accordance with Section 9.2, Subsection 9.2(a) and as required by Section 11 during this period; and
- (d) provided that the Signatory Air Carrier has provided the audit certification pursuant to Section 10.3 of this MOA; and
- (e) provided that the Signatory Air Carrier has provided a management certificate on the reimbursement form attached as Schedule G stating:

"This Compliance Certificate is delivered to [Airport] pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of xxxxxx between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

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I, xxxxxxname, xxxxxxxxtitle, of xxxxxxxxairline, certify that, to the best of my knowledge, information and belief, for the AIF remittance for the month of xxxxxmonth:

Proper and responsible due diligence has been exercised in establishing the remittance liability by personnel understanding the importance to the Airport of establishing the correct number of DEPAX passengers subject to the AIF (as defined in the MOA).

I give this Compliance Certificate in my capacity as xxxxxtitle and no personal liability is assumed in the giving of this certificate."

then the particular Signatory Air Carrier's liability for making the AIF remittances, subject to Article 8, shall be limited to:

- (i) the greater of the amount collected or, during the first 12 months after the AIF collection commencement date for that Airport, 80% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period;
- (ii) the greater of the amount collected or, during the 13th through the 18th months after the AIF collection commencement date for that Airport, 90% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period; and

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- (iii) the greater of the amount collected or, following the 18th month after the AIF collection commencement date for that Airport, 95% of the liability otherwise calculated from the total numbers of DEPAX passenger enplanements, eligible to be charged the AIF, who purchased tickets in North America and were carried by the particular Signatory Air Carrier at the particular Airport during this period.

9.7 Interest will be charged to Signatory Air Carriers on a monthly basis, commencing after the due date, on all outstanding amounts at the prime rate established by the Royal Bank of Canada from time to time plus two (2%) per cent per annum. In the event that any month's remittances are more than 15 days in arrears, following the expiration of those 15 days, that Airport may cancel the agreement with a delinquent Signatory Air Carrier 15 days after providing notice in writing of the delinquency to the Signatory Air Carrier, provided that the Signatory Air Carrier does not pay the arrears during the said notice period, and require all AIF funds collected up to the date of cancellation to be remitted to that Airport.

10.0 Audit

10.1 Annually, within one hundred and twenty (120) days of the end of each Signatory Air Carrier's fiscal year, each Signatory Air Carrier shall deliver to each Airport an Annual Statement which details for that Airport, for that fiscal year, the following:

- (a) the number of DEPAX Passengers for each month and in aggregate;
- (b) the gross amount of AIF funds payable for each month and in aggregate;
- (c) the amount of handling fee deducted for each month and in aggregate;
- (d) the net amount of AIF funds payable for each month and in aggregate; and

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- (e) a statement that the Signatory Air Carrier has met the requirements of Subsections 9.5(a) and (c), or 9.6(a) and (c), as the case may be.

- 10.2 The Annual Statement referred to in Section 10.1 must contain a certification signed by a person authorized to sign on behalf of the Signatory Air Carrier which states that the Annual Statement is true and correct in all respects to the best of the such person's knowledge and belief after due inquiry.

- 10.3 At any time during the term of this MOA, an Airport may contract with the Signatory Air Carrier's external auditor to conduct an audit of the Signatory Air Carrier's records solely with regard to the matters described in any Annual Statement delivered after January 1, 2004 and referred to in Section 10.1 in respect of the relevant fiscal year. Airports shall advise a Signatory Air Carrier within sixty (60) days after the due date of the Annual Statement of their intention to commission an audit. In the event that more than one Airport advises of the intention to commission an audit of a Signatory Air Carrier, all Airports will coordinate their action into a single audit process, although individual reports will be prepared for each participating Airport. Signatory Air Carriers shall make reasonable efforts to ensure that their external auditor accepts this audit assignment and at a reasonable fee which in any event shall not exceed that which the Signatory Air Carrier would have paid had the audit been carried out at its request, failing which, the Airport(s) may contract with an external auditor of their choice.

- 10.4 The Airport(s) shall be entitled to bill and collect the costs of such audit from the Signatory Air Carrier in the event that such audit shows that remittances by the Signatory Air Carrier are understated by three percent (3%) or more of the amount due and payable to the Airport under this MOA for the year in question. In the case where multiple audits are combined into a single audit process pursuant to Section 10.3, the allocation of cost based on the percentage variance criteria shall be on an Airport-by-Airport basis.

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- 10.5 Any refunds owing or remittances required pursuant to the Annual Statement referred to in Section 10.1 or the audit referred to in Section 10.3 shall be paid, without interest, by an Airport or a Signatory Air Carrier as appropriate, within thirty (30) days of the receipt of such Annual Statement or audit report. Any refunds owing or remittances required but not paid within thirty (30) days shall be subject to interest as provided for in Section 9.7.
- 10.6 Annually, within 180 days of its fiscal year end, each Airport must provide to each Signatory Air Carrier at such Airport, a certification under section 8600, or its successor, of the Handbook of the Canadian Institute of Chartered Accountants from an external auditor (who is legally qualified in the jurisdiction of that Airport to issue a financial audit opinion) that:
- (a) the amount of AIF funds remitted to the Airport have been used only for the Program for which they were intended and that there has not been an over payment on the Program; and
 - (b) that Airport has been in compliance with Section 12.1.
- 10.7 In the event that an Airport does not provide that certification contemplated by Section 10.6 above, the Signatory Air Carriers may contract with an independent auditor to conduct an audit of that Airport in respect of the matters set out in Section 10.6. The Signatory Air Carriers shall be entitled to bill and collect the cost of such audit from that Airport.
- 10.8 If the audit referred to in Sections 10.6 or 10.7 above reveals that that Airport has utilized such AIF revenues in a manner which contravenes the terms of this MOA, then if:
- (a) that Airport has failed to remedy the default within 30 days of the auditor's report, or

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- (b) that Airport has failed to present a plan, satisfactory to the Signatory Air Carriers, and proceeded diligently to implement such plan within 30 days of the auditor's report;

the Signatory Air Carriers may cease collecting and remitting the AIF until the default has been remedied to the satisfaction of the Signatory Air Carriers.

11.0 Application of AIF

- 11.1 Subject to the limitations described below, the AIF will apply to all departing enplaned passengers at a given Airport ("DEPAX passenger(s)").
- 11.2 For the purposes of this MOA, the term "ticket(s)" shall include paperless tickets where the equivalent of paper tickets with a travel itinerary for a passenger is kept in electronic form with a specific reference (commonly referred to as ticketless travel). A ticket may be comprised of a number of coupons.
- 11.3 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to a passenger (i) continuing a journey less than 4 hours after arrival at the Airport for domestic Canada and transborder itineraries and (ii) continuing a journey less than 24 hours after arrival at the Airport for international itineraries.

A passenger will be considered to be continuing a journey even though multiple air carriers may participate in the itinerary on one or more air carrier ticket(s).

- 11.4 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to airline employees travelling on business. For greater certainty, this includes duty travel of crews of one air carrier on another air carrier.

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- 11.5 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to infants under two years of age for whom no ticket was purchased (even though a no cost ticket may have been issued in the name of the infant).
- 11.6 The obligation imposed by an Airport pursuant to this MOA upon Signatory Air Carriers to collect and remit an AIF will not apply to customers travelling on passes or other travel documents with discount codes ID/IN. However, customers travelling on frequent flier mileage redemption programs or promotional tickets (such as two for one tickets) do not qualify as ID passengers within the meaning of this Section 11.6. Signatory Air Carriers agree to make reasonable efforts to refine the technical data necessary to limit exemptions to infants (IN) and airline employees travelling on business. Toward this end, Signatory Air Carriers agree to report on progress towards limiting inadvertent exemptions at a time not later than one year after the signing of this agreement after which time the Parties shall enter into consultations regarding alternative means of limiting exemptions.
- 11.7 Regardless of which air carrier sells a ticket to a DEPAX passenger or whose designator code is on the passenger's ticket, the air carrier on whom the DEPAX passenger actually travels shall be the Party responsible for the collection and remittance of the AIF for that DEPAX passenger.

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12.0 Non-Discriminatory Charges to Signatory and Non-Signatory Air Carriers or Their Passengers

- 12.1 An Airport shall not grant access to any of its terminal buildings on any less favourable terms and conditions to Signatory Air Carriers and their passengers having regard to the AIF charges remitted and paid by such persons than are provided to non-Signatory Air Carriers and their passengers. An Airport shall achieve such equalized treatment through or by way of reasonably equivalent charges. Airports shall provide to ATAC and the Signatory Air Carriers, annually, the report of an independent, external auditor certifying that that nothing has come to the attention of the auditor to indicate the Airport is not in compliance with this section.
- 12.2 Except with respect to the Memorandum of Agreement between ATAC, the Calgary Airport Authority, the Winnipeg Airport Authority and the Kelowna Airport Authority and various air carriers dated September 23, 1997, as amended, and with respect to any Multi-terminal Airports, Signatory Air Carriers will not enter into an agreement concerning the collection of an AIF with a Canadian national airport on more favourable terms than those extended to Airports in Articles 8, 9, 11, 13 and 35 of this MOA.

13.0 Air Carrier Consultation Process

- 13.1 Signatory Air Carriers may be obligated to collect and remit an AIF pursuant to this MOA only after the Air Carrier Consultation Process has been completed in accordance herewith. This consultation process must be conducted, *inter alia*, in accordance with Article 3 and shall include the following requirements:
- (a) When an Airport has decided to implement an AIF and wants the assistance of Signatory Air Carriers in collecting and remitting such AIF pursuant to this MOA, that Airport shall prepare and forward to the Chair and each member of the Airport's

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ACC and to ATAC, a Program proposal and business plan setting out full details of and a rationale for the Program and notification to ATAC and to each Signatory Air Carrier of such proposal and business plan having been delivered. The proposal should include:

- (i) the cost, scope of work and construction period of each project within the Program;
 - (ii) the initial implementation date of the AIF, the initial amount of the AIF (which cannot be increased until 365 days after the AIF collection commencement date at the particular Airport) and a plan which sets out the anticipated AIF level and AIF revenue over the period required to recover the costs of the Program or extinguish the underlying debt incurred to finance the Program; and
 - (iii) the forecasts of traffic demand underlying the rationale for the Program.
- (b) After the delivery of the notice and information contemplated by Subsection 13.1(a):
- (i) an Airport may obtain the assistance of Signatory Air Carriers in collecting and remitting an initial Interim AIF limited to a maximum of C\$5 per DEPAX passenger, provided that Airport provides at least 90 days written notice to Signatory Air Carriers. The Interim AIF shall be collected for a term of one year, unless that Airport and the MII as determined in accordance with Section 3.3 agree to an extension. Notwithstanding any other provision of this MOA, the amount of the Interim AIF set out above shall not be subject to change by that Airport during this period; or, alternatively

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- (ii) After the delivery of the notice and information contemplated by Subsection 13.1(a) but prior to completion of the consultative process contemplated by Section 13, should both the Airport and the MII as determined in accordance with Section 3.3 of the Signatory Air Carriers to the MOA on the ACC agree that it is desirable, an Airport may obtain the assistance of Signatory Air Carriers in collecting and remitting a conditional AIF in an amount agreed upon by the Airport and the MII as determined in accordance with Section 3.3 for a time period and upon any other conditions so agreed upon by the Airport and the MII as determined in accordance with Section 3.3, provided the Signatory Air Carriers receive at least 90 days prior written notice of the AIF collection commencement date (the "Preliminary AIF"). This Preliminary AIF shall be in effect for not less than 365 days from its commencement. Notwithstanding any provisions in this MOA to the contrary, the amount of the Preliminary AIF shall not be subject to any increases by that Airport. The MII as determined in accordance with Section 3.3 shall have the right to discontinue collection of the Preliminary AIF by giving 90 days notice on or after 365 days from the AIF collection commencement date if, in its view, the consultation process has not proceeded satisfactorily, or if it continues to oppose a Program proposal. The Airport shall not be entitled to require the collection and remittance of an AIF pursuant to both sections 13.1(b)(i) and 13.1(b)(ii) during the same time period and in the event the Airport proceeds with a Preliminary AIF, the Signatory Air Carriers shall not be required to collect or remit an AIF pursuant to section

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13.1(b)(i) after the AIF collection commencement date for the Preliminary AIF.

- (c) The ACC shall have up to 180 days ("Phase One") to consider and discuss the Program and to request such other information as the ACC may, acting reasonably, require and request from the Airport in order to evaluate the Program with the Airport's officials. The Chair of the ACC will advise the Airport within 180 days of either its concurrence, its disagreement or its concurrence with exceptions to the Program submitted. The Signatory Air Carriers at that Airport shall arrive at its decision via an MII vote in accordance with Section 3.3. If there is concurrence with the Program, the Airport may, subject to this MOA, implement the AIF charging mechanism pursuant to Subsection 13.1(g)(i). If the Chair of the ACC does not advise the Airport in writing of the Phase One decision within 180 days of receiving the Program proposal, the Program is deemed to have concurrence. If the Airport's Program is not the subject of concurrence, the Chairman of the ACC or any Signatory Air Carrier will advise the Airport of the result of the vote of the Signatory Air Carriers. In the event that the Signatory Air Carriers at that Airport disagree or concur with the Program with exceptions and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, the consultation process outlined below will continue with respect to those individual projects for which an exception was noted.
- (d) In the event that either the Signatory Air Carriers at that Airport disagree with or the Signatory Air Carriers at that Airport concur with exceptions to the Program in Phase One of the consultation process and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, then, commencing on the date written notice is given under Subsection 13(1)(c), a one month consultation process ("Phase Two") will occur between the Airport's CEO and the CEO(s) (or their designates) of the Signatory Air Carriers forming the MII which

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disagreed with the Program. Any agreement reached in Phase Two will be confirmed to the Airport in writing through the Chairman of the ACC or any Signatory Air Carrier, following ratification by the MII but within 15 days of the end of Phase Two.

- (e) In the event that no agreement is reached during Phase Two and the Airport continues to want the assistance of Signatory Air Carriers in collecting and remitting an AIF pursuant to this MOA, the Signatory Air Carriers forming the MII under Subsection 13.1(c) may, within 60 days, commencing at the conclusion of Phase Two ("Phase Three"), make an alternative proposal through the Signatory Air Carriers at that Airport provided that in the opinion of Signatory Air Carriers forming the MII under Subsection 13.1(c), the alternative proposal addresses all of the legitimate expansion requirements of the Airport over the term of the Program proposed by the Airport. The Airport will advise the Chairman of the ACC and all Signatory Air Carriers at that Airport in writing within 30 days of the conclusion of Phase Three whether it accepts or rejects the alternative proposal. If the Airport accepts the alternative proposal, the Airport may implement an AIF pursuant to Subsection 13.1(g)(i) of this MOA.
- (f) Should the Airport reject the alternative proposal made during Phase Three or if no alternative proposal is made, the Airport may, 24 months following the date upon which the Airport has provided to the Signatory Air Carriers at that Airport an Offer to Finance the proposed Program, conditional or otherwise, from a bona fide lender, group or syndicate of lenders, increase or initiate an AIF to be collected and remitted by Signatory Air Carriers, subject to the notification provisions of Subsection 13.1(g)(ii) of this MOA.
- (g) (i) Except as otherwise provided in Schedule F, following completion of the Air Carrier Consultation Process set out above, the Airport will advise each Signatory Air Carrier, in writing, at least 90 days prior to the collection

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commencement date of the AIF, of the level of the AIF and the collection commencement date. The level of the AIF on the initial collection commencement date must be no greater than the level which was identified in the Airport's Program submission.

- (ii) Subsequent to the initial collection commencement date, in respect of an AIF implemented pursuant to Paragraph 13.1(g)(i) and subject to Subsection 13.1(h), an Airport may change the level of the AIF, subject to a minimum 90 days prior written notice to Signatory Air Carriers, (although the Airport shall endeavour to provide greater than 90 days notice where possible) provided that any such increase shall only apply to DEPAX passengers who purchase their tickets 60 days or more after the Signatory Air Carriers receive this written notice and are travelling on or after the effective date of such increase.

- (h) An Airport may introduce new projects during the period of a Program which shall constitute an amendment to the Program. These amendments shall, subject to the provisions of this Subsection 13.1(h), qualify for the assistance of Signatory Air Carriers in the collection and remittance of an AIF pursuant to this MOA. The amendments contemplated by this section relate to new projects or existing projects which have a change of scope, but do not include changes to project cost estimates resulting only from changes in the cost of construction. Should any proposed amendment result in an increase in capital spending of 10% or more of the Program previously implemented or if the proposed amendment would result in an extension of the estimated term of the AIF related to the original Program by three years or more, the proposed amendment will be subject to the terms of the Air Carrier Consultation Process as if it were a new Program.

- (i) The attached Schedule F to this MOA lists those capital construction programs which, as of the date of signing of this MOA, are deemed to have been approved by

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the Signatory Air Carriers as a Program pursuant to the Air Carrier Consultation Process outlined in this MOA. In these cases, the Airport may proceed immediately with the AIF notification outlined in Subsection 13.1(g)(i) of the MOA.

14.0 AIF Term

14.1 No AIF implemented pursuant to this MOA shall have a term longer than that required to extinguish the underlying debt (including associated financing costs) incurred by the Airport to finance the proposed Program. Where possible and practical, a target date for the termination of an AIF will be agreed upon by the Parties at the time of imposition.

15.0 Information Disclosure

15.1 At the time an Airport presents a Program pursuant to Subsection 13.1(a) and so long as the Airport pursues the Program and/or an AIF has been imposed by an Airport and implemented with the assistance of Signatory Air Carriers pursuant to this MOA, the Airport shall provide to the Chair of the ACC and to each Signatory Air Carrier, with a copy to ATAC, the following information on an annual budgeted basis and an annual actual basis:

- (a) Cash flow statement for the Program indicating (as a minimum) net AIF revenues collected under this MOA, total expenditures on the Program, underlying debt incurred by the Airport to finance the Program and interest, bad debts related to the collection of the AIF and other debt service costs related to the debt incurred;
- (b) Statement of capital expenditures to date on the Program with reasonable detail on the composition of capital expenditures versus budget and indicating cost overruns, if any.

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- 15.2 Each Airport shall provide, at its own cost, signage which advises passengers that the Airport is collecting an AIF for capital improvements at the Airport. The ACC shall be notified of the proposed signage and given 30 days to provide comments.
- 15.3 The Signatory Air Carriers, for informational purposes only, shall provide to the Airport on a monthly basis commencing on the date that an Airport becomes a signatory hereto, the number of non-revenue and revenue passengers of such Signatory Air Carrier that arrived and departed from the particular Airport in the prior month. This information shall not in any way relate or be used with respect to the calculation of AIF revenues remitted by a Signatory Air Carrier pursuant to this MOA.

16.0 Airside Infrastructure

- 16.1 The Parties recognize that, in addition to air carriers who utilize the air terminal building(s), all other aircraft operators ("Significant Users"), are material beneficiaries of ongoing Airport improvements to runways, taxi-ways, aircraft aprons and ramps, airfield lighting, airfield signage and airfield drainage ("Airside Infrastructure"). Each Airport shall implement a charging method for such Significant Users to contribute to Airside Infrastructure costs in such a fashion that Signatory Air Carriers and their passengers or customers are treated no less favourably than Significant Users and their passengers or customers relative to the respective benefits they receive from Airside Infrastructure. The Airport shall, in its sole discretion, make the determination that the said charging method implemented meets the criteria identified in this Section 16.1. It is agreed that this charging method envisages a process whereby landing fees or other airside related charges shall not, in total, exceed the costs associated with providing and maintaining Airside Infrastructure.

17.0 Term

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17.1 The initial term of this MOA shall be for a period of 20 years commencing on May 31, 1999, provided that in those cases where debt arising from the agreed Program is not yet extinguished, the obligation to collect and remit AIF shall continue until such debt is extinguished. The Parties agree to meet 24 months prior to the expiry of this MOA to discuss renewal terms.

18.0 Applicable Law

18.1 This MOA shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws applicable in the Province of Ontario and, subject to Article 19, the Parties agree to be bound by the non-exclusive jurisdiction of the courts of the Province of Ontario.

18.2 Notwithstanding Section 18.1, in the case of a dispute between an individual Airport and an individual Signatory Air Carrier, this MOA shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws applicable in the province in which the Airport is resident and the Parties shall attorn to the jurisdiction of the courts of that province.

19.0 Dispute Resolution

19.1 Despite anything contained in the MOA to the contrary, in the event that a dispute or difference arises with respect to this MOA that cannot be resolved by negotiation between the Parties and the Parties do not agree to terminate this MOA, then in such event the Parties may agree to use the services of a mediator to attempt to resolve their dispute or difference and, failing agreement on the procedure to be followed, the mediation shall be conducted in accordance with the "Rules of Procedure for the Conduct of Mediations" of the Arbitration and Mediation Institute of Ontario.

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19.2 In the event that the Parties choose not to mediate their dispute or difference or, if chosen, the mediation does not result in resolution of the dispute or the difference, and the Parties do not agree to terminate this MOA, then in such event any unresolved issue may be taken to any other appropriate dispute resolution process agreed to by the parties, including arbitration or an appropriate court process. Should arbitration be agreed upon, the arbitration will be conducted in accordance with the "Rule of Procedure for the Conduct of Arbitrations" of the Arbitration and Mediation Institute of Ontario.

20.0 Nature of Relationships

20.1 The Parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise. Nothing contained in this MOA nor any acts of any Party taken in conjunction hereunder, shall constitute or be deemed to constitute a partnership, joint venture, or principal/agency relationship in any way or for any purpose except as the Signatory Air Carriers acting as agents for the Airports in collecting and remitting the AIF funds. Except as expressly set forth herein, no Party, shall have any authority to act for, or to assume any obligations or responsibility on behalf of, any other Party.

20.2 Although this MOA is made among multiple Airports and multiple Signatory Air Carriers, all Parties agree that once an AIF is implemented by a particular Airport pursuant to this MOA, all obligations with respect to such AIF collection shall be deemed to be direct contractual obligations between each Airport and each respective Signatory Air Carrier.

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21.0 Indemnity

21.1 The Airports agree to indemnify and save harmless ATAC, the Signatory Air Carriers, and their respective shareholders, directors, officers, employees and agents from all losses, including all claims, demands, proceedings, losses, damages (including, without limitation, direct, indirect, incidental, special, exemplary, consequential or other damages), liabilities, deficiencies, costs and expenses (including, without limitation, all legal fees on a solicitor/client basis and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly out of or in connection with any action by any person relating to the right of an Airport or Signatory Air Carrier to charge or collect an AIF in accordance with this MOA. Notwithstanding any other provision of this MOA, as long as the AIF mechanism contemplated by this MOA remains valid and in place, all costs incurred by an Airport in relation to this indemnity may, at the sole discretion of the Airport, be recovered by the Airport through the AIF mechanism established pursuant to this MOA. Nothing in this MOA shall require an Airport to indemnify a Signatory Air Carrier for any claim for damages arising out of the wilful misconduct or gross negligence of the Signatory Air Carrier.

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22.0 Jurisdictional Restrictions

22.1 ATAC shall provide to each Airport a list, attached hereto as Schedule "E", which may be amended from time to time upon written notice to the Airports, of all countries ("jurisdictions") where the collection of an AIF as contemplated by this MOA is not permitted by law. Signatory Air Carriers shall not be required to collect or remit any AIF funds associated with tickets which are sold to persons physically present in the jurisdictions referred to in Schedule E, as amended from time to time. Prior to new jurisdictions being added to Schedule E, the Airports may seek an independent legal opinion as to the exclusion of collecting AIF revenues in such jurisdiction. In the event of a dispute regarding these additional jurisdictions, the matter shall be referred to arbitration pursuant to Article 19 of this MOA.

23.0 Mutual Agreement to Consult

23.1 The Parties to this MOA recognize that there are many complexities associated with the introduction of an AIF collection process as contemplated in this MOA and agree that a standing committee, which will be comprised of representatives of the Parties, will be established and will meet periodically to review issues associated with the administration of the MOA and attempt to reach mutual agreement on beneficial changes.

23.2 The Parties acknowledge and agree that this MOA may require amendment to facilitate the administration of taxes which may be applicable to AIF's collected pursuant to this MOA and in this respect the Parties agree to make such amendments as may be determined by ATAC and Signatory Air Carriers in an expeditious manner upon request provided that, such amendments would not materially reduce or impair the rights granted to Airports by the terms of this MOA.

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24.0 Airport Specific Programs

24.1 For greater certainty, except as otherwise specifically provided in Sections 5.1 and 5.2, any Program shall relate only to the one (1) site-specific airport in respect of which the AIF is collected, notwithstanding that an Airport may own or operate more than one (1) airport.

25.0 Entire Agreement

25.1 This MOA supersedes, rescinds and revokes all negotiations, arrangements, letters of intent, brochures, representations, agreements and information conveyed, whether oral or in writing, between the Parties with respect to the subject matter hereof.

26.0 Headings

26.1 The division of this MOA into articles, sections, subsections, paragraphs and subparagraphs and the insertion of headings are for convenience or reference only and shall not affect the construction or interpretation of this MOA.

27.0 Schedules

27.1 Subject to the clarification provided in Section 3.2 of this MOA, the documents attached as Schedules to this MOA form an integral part of this MOA as fully as if they were set forth herein in full.

28.0 Notice

28.1 All notices or other communications necessary for the purposes of this MOA ("Notice") shall be in writing and shall be delivered personally or by courier, or shall be sent by registered mail or by prepaid post or sent by facsimile, addressed,

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- (a) in the case of an Airport, to each Airport listed on Schedule A or to such other address or facsimile number or addressed to such other person as the Airport may, from time to time, designate in writing to the other Parties:
- (b) in the case of ATAC or the Chairman of an ACC, to:

Chief Executive Officer
ATAC
255 Albert Street
Suite 1100
Ottawa, Ontario
K1P 6A9

Telephone: (613) 233-7727
Facsimile: (613) 230-8648

or to such other address or facsimile number or addressed to such other person as ATAC may, from time to time, designate in writing to the other Parties;

- (c) in the case of a Signatory Air Carrier, to each Signatory Air Carrier listed on Schedule B or to such other address or facsimile number or addressed to such other person as the Signatory Air Carrier may, from time to time, designate in writing to the other Parties.

28.2 Any Notice will be considered to have been received:

- (a) the case of facsimile, on actual receipt if the same is a business day, during normal business hours, and if not, then on the next business day, or
- (b) in all other cases, on the date of delivery.

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28.3 If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any Notice shall be delivered personally, by facsimile or by courier.

29.0 Time of Essence

29.1 Time is of the essence under this MOA.

30.0 Non-Waiver

30.1 Any failure by a Party to rely on its strict legal rights hereunder shall not constitute a waiver of any other rights of that Party hereunder.

31.0 Partial Invalidity

31.1 If, for any reason whatsoever, any term, covenant or condition of this MOA, or the application thereof to any person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition:

- (a) is deemed to be independent of the remainder of this MOA and to be severable and divisible therefrom, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this MOA or any part thereof; and
- (b) continues to be applicable and enforceable to the fullest extent permitted by law against any persons and any circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

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32.0 Extended Meanings

32.1 The word "hereunder" and similar expressions used in this MOA relate to the whole of this MOA, unless the context indicates otherwise. Words importing a particular gender shall include all genders.

33.0 Counterparts

33.1 This MOA may be executed in one or more counterparts and by the different parties hereto in separate counterparts, each of which when executed will constitute an original and all of which taken together shall constitute one and the same instrument. Transmission by facsimile, in accordance with Article 28, of an executed counterpart shall constitute good and valid delivery of the same.

34.0 Amendments

34.1 This MOA may be amended from time to time in the following manner:

- (a) Any Party may initiate an amendment to the MOA by formally giving notice (as outlined in Schedule C) to all Parties specified under Article 28.0.
- (b) Parties receiving a notice of amendment have 90 days to express consent or rejection of the proposed amendment.
- (c) Subject to Section 2.2 and Subsections 34.1(d) and (e), amendments to this MOA require the consent of the majority of the Airports and the majority of the Signatory Air Carriers (including both of the two largest Canadian air carriers as determined by passenger boardings in the calendar year immediately preceding the requested amendment sought by Airports and Signatory Air Carriers).

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- (d) Subject to Section 2.2, amendments to Articles 8, 9, 11, 13, 34 and 35, of the MOA require the consent of 80% of the Airports and 80% of the Signatory Air Carriers (including both of the two largest Canadian air carriers as determined by passenger boardings in the immediately preceding calendar year).
- (e) Subject to Section 2.2, ATAC, an Airport and the Signatory Air Carriers as represented by the ACC at that Airport may agree to vary the provisions of this MOA as they apply at that Airport provided that, in no event whatsoever shall they derogate from, alter or amend the provisions of Articles 8, 9, 11, 13, 34 or 35 of this MOA and provided further that notice of such variation is given by ATAC, the Airport and the ACC to all other Parties to this MOA. For greater certainty, no such variation shall affect the provisions of this MOA at any other Airport or any other rights or obligations of any other Parties.
- (f) All notices of amendments and responses shall be sent to ATAC as outlined in Article 28.

35.0 ATAC Administration Fee

- 35.1 Airports agree to contribute proportionately a percentage of gross AIF collected to ATAC to cover ongoing administration functions in support of this MOA, as described in Schedule H of this MOA. The amount to be contributed shall be established annually through the presentation by ATAC of a budget for the information of the Airports. This budgeted amount may vary annually but shall not be less than .1% nor exceed .2% of amounts remitted by all Signatory Air Carriers on behalf of the Airports, together with applicable taxes. The apportionment of this cost amongst the Airports shall be on the basis of enplaned passengers at the Airports.

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IN WITNESS WHEREOF, the duly authorized signatories of the respective Parties hereto have set their signatures this on the date indicated.

AIR TRANSPORT ASSOCIATION OF CANADA

Per: _____ Date:
MICHAEL SKROBICA

Title: Vice President Finance

OTTAWA MACDONALD-CARTIER INTERNATIONAL AIRPORT AUTHORITY

Per: _____ Date:
PAUL BENOIT

Title: President and Chief Executive Officer

AIR CANADA

Per: _____ Date:

Title:

CANADIAN AIRLINES INTERNATIONAL LTD.

Per: _____ Date:

Title:

SCHEDULE A

Airports

Name Of Airport Authority

Specific Airport Which Is Included

Mr. John Weerdenburg
 Vice-President & CFO
**Ottawa Macdonald-Cartier
 International Airport Authority**
 50 Airport Road
 Gloucester ON K1V 9B4
 T: 613-248-2000 ext 1107 F: 248-2067
 Email: weerdej@ottawa-airport.ca

Ottawa International Airport

Mr. Steve Burchi
Regina Airport Authority
 #1 - 5201 Regina Avenue
 Regina, SK S4W 1B3
 T: 306-761-7563 / F: 306-761-7559
 Email: sburchi@yqr.ca

Mr. Bill Restall
 President & CEO
Saskatoon Airport Authority
 2625 Airport Drive, Suite 3
 Saskatoon SK S7L 7L1
 T: 306-975-6464 / F: 306-975-4233
 Email: billrestall@yxe.ca

Mr. Rex LeDrew
 President
St. John's International Airport Authority
 Airport Terminal
 80 Airport Terminal Access Road
 St. John's, NF A1A 3R1
 T: 709-747-5188 / F: 709-758-8521
 Email: rledrew@stjohnsairport.com

Mr. Richard Paquette
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Victoria International Airport
201-1640 Electra Boulevard
Sidney BC V8L 5V4
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E: richard.paquette@victoriaairport.com

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2000 Wellington Avenue, Room 249
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T: 204-987-9461 / F: 204-987-9401
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Mr. Scott Clements
President & C.E.O.
Edmonton Regional Airports Authority
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President and C.E.O.
London International Airport
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Mr. R. J. Watson, AMCT, CMO
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Mr. Stieg Hoeg
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Prince George Airport Authority Inc.
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SCHEDULE B

Signatory Air Carriers

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Email: jolene.mahody@flyjazz.ca

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 T: 416-679-5810 / F: 416-679-5918
 Email: len_corrado@skyservice.com

Mr. Alec Stewart
Skyservice
 31 Fasken Drive
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Mr. John Giesbrecht
 President
Airspeed Aviation Inc.
 #3-30440 Liberator Avenue
 Abbotsford BC V2T 6H5
 T: 604-852-9245 / F: 604-852-9295
*** (do not send him general information)*

Mr. David Rossi
 Director of Finance
Pacific Coastal Airlines
 117-4440 Cowley Crescent
 Richmond BC V7B 1B8
 T: 604-214-2359 / F: 604-273-8343
 Email: david@pacific-coastal.com

Mr. Tim Vaillancourt
 Vice President Operations
Provincial Airlines
 P.O. Box 29030, Hangar #4
 St. John's International Airport
 St. John's, NF A1A 5B5
 T: 709-576-1800 / F: 709-576-1802
 Email: tvallancourt@provair.com

Raymond Moore
 Principal, Corporate Real Estate
American Airlines, Incorporated
 P.O. Box 619616 – MD 5317
 DFW Airport, TX 75261-9616
 USA
 T: 817-967-1310 F: 817-967-3111
 Email: raymond.moore@aa.com

Mr. Chris Kelly
 I.M.P. Group Limited
CanJet Airlines Division
 Halifax International Airport
 677 Barnes Road, Hangar 7, PO Box 970
 Enfield, NS B2T 1R6
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 Email: dmccrea@cmair.bc.ca

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 Email: ylacasse@jetsgo.net

Mr. Stephen Smith
 President & CEO
Zip Air Inc.
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 Calgary, AB T2E 7H6
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 Email: stephen.smith@4321zip.com

Mr. Gabriel Vidal
 General Manager, USA/Canada
Air Plus Comet
 420 Lexington Avenue, Suite 2631
 New York, NY 10170
 U.S.A.
 T: 212-983-1277 / F: 212-983-1156

Mr. Tim Attley
 Vice-President, Ground Operations
Zoom Airlines Inc.
 160 Elgin Street, Suite 2406
 Ottawa, ON K2P 2C4
 T: 613-760-4721 / F: 613-231-7340
 Email: tim.attley@flyzoom.com

Mr. Olivier Schlegel
 General Manager for Canada
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 Montreal, Quebec H3A 3L8
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Mr. George Paquette
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Czech Airlines
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Mr. Juan Ceballos
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Ms. Linda M. Mitchell
 Vice President & General Counsel
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Mr. Thierry Briand
 General Manager
Air Saint-Pierre
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 B.P. 4225
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 France
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 Area Director Ground Services
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 Email: john.drpich@klm.com

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 Director Ground Services
 Canada & Northern U.S.A.
KLM Royal Dutch Airlines
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British Airways Plc
 North American Headquarters
 75 – 20 Astoria Boulevard
 Jackson Heights, NY 11370
 U.S.A.
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Mr. Farid Zamakhchari
 General Manager, Canada
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Mr. José Augusto Pavão de Sousa
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 Portugal
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 & Commercial Alliances
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SCHEDULE C**Accession Form**

TO: [Existing Parties to MOA]
 RE: Accession to Memorandum of Agreement dated ■

The [Airport/Signatory Air Carrier], having received a copy of the Memorandum of Agreement dated ■ between the Air Transport Association of Canada, certain Airports and certain Signatory Air Carriers, and desiring to be a Party to that Memorandum of Agreement, and now providing consideration of one dollar (\$1.00), in Canadian funds, to each of the existing Parties to the Memorandum of Agreement, hereby agrees to be bound to the Memorandum of Agreement and to abide by its terms and conditions.

DATE: _____

SIGNATURE

TITLE

SIGNATURE

TITLE

Any Notice pursuant to the Memorandum of Agreement should be sent to:

(Company Name and Full Mail Address)

(Contact Name, Title, Telephone Number & Facsimile Number)

SCHEDULE D

ACC Operating Terms of Reference

AIRLINE CONSULTATIVE COMMITTEE (ACC)

1. OBJECTIVES

- To provide a forum for airlines at an airport to discuss and analyse matters of common interest and concern with respect to the operation of the airport.
- To consolidate airline views on an issue(s) and officially present such views to the airport operator.
- To act as the on-site consultative representative of the airlines with the airport operator in respect of all capital projects or programs, all fees and charges and all exclusive rentals at the airport which will have a financial impact of any kind on the airlines or airline passengers and any other matters having a material impact on airline operations at the airport.
- To perform the obligations assigned to it as set out in any agreement between the airport operators and the airlines and/or ATAC.

2. ESTABLISHMENT

- An ACC shall be established at each National airport and, where a consensus exists amongst airlines serving the airport, at each Regional/Local airport. National and Regional/Local airports mean those airports as defined in the National Airports Policy of July 1994 and as listed in Appendix 'A' hereto.

3. MEMBERSHIP

- Voting membership is open to all airlines and/or their duly designated representative serving an airport on a regular and consistent basis.
- ATAC shall be an ex officio non-voting member of all ACCs and, at airports served by their non-Canadian airline membership, IATA and ATA shall be non-voting members ex officio.
- Each airline shall appoint a single official representative to exercise that airlines voting rights and may change this person at any time.
- Each airline may invite other company personnel with appropriate qualifications to attend ACC meetings when considering major capital projects or programs proposed by an airport.

- In order to ensure coordination with the day-to-day operations of the airlines, the ACC may invite the Chairman of the Airport Operator's Committee (AOC), to attend any meeting of the ACC as a non-voting participant.

4. GOVERNANCE

- Each ACC shall meet at least once every 12 months and additionally at the call of the Chair or upon request of any member airline.
- Each ACC shall appoint a Chairman from amongst the largest Canadian air carriers serving the airport based on passenger volumes of the airport. The ACC may also appoint a Vice-Chairman and a Secretary from amongst their voting members. Those officers shall hold office until the ACC or the voting member airlines appoints their successors.
- The officers shall retain their voting rights as their airlines' official representatives.
- The Chairman shall give notice of all ACC meetings to the members and shall preside over all such meetings and shall arrange for the recording and circulation to the members of the minutes of all ACC meetings.
- The ACC may appoint and set the mandate of sub-committees and/or specialist working groups to study and report to the ACC, through the Chairman, on any matter. Membership on such sub-committees or working groups is open to airline employees or advisors designated by the airline official representative to the ACC.
- The Chairman shall ensure that copies of the minutes of the ACC meetings are made known to and co-ordinated with ATAC, IATA and ATA as the case may be.
- The official representative of each ACC member airline shall be entitled to vote on any matter coming before the ACC which requires a vote. To be voted on, a motion must be proposed and seconded by airline official representatives.
- While consensus is the goal, it is recognized that some issues coming before the ACC may require a vote. For matters having a material financial impact on all ACC members, a motion will not be considered carried unless it passes with the concurrence of those ACC members whose total passenger traffic at the airport is at least 66% of the airport's total passenger traffic as determined from the previous calendar year's total traffic. For motions not having a material financial impact on all ACC members, a simple majority of 51% of members present and voting is sufficient to carry the motion.

- No motion may be voted upon unless notice in writing of the motion was given to all ACC members at least seven (7) days prior to the meeting at which the motion is to be introduced.
- Voting "in absentia" is permissible if done in writing. Proxy voting is also permissible if done in writing by authorizing another ACC official airline representative to cast the absent members ballot.
- ACC meetings are closed to anyone other than airline employees, airline advisors and representatives of ATAC, ATA or LATA except when persons are expressly invited by the Chairman, e.g. airport management.

SCHEDULE E**Excluded Jurisdictions**

BOLIVIA

CHILE

COLOMBIA

COSTA RICA

ECUADOR

EL SALVADOR

GUATEMALA

IRAN

IRAQ

LIBYA

PERU

SAUDI ARABIA

VENEZUELA

URUGUAY

SCHEDULE F**Capital Programs Deemed to Have Been Approved****OTTAWA INTERNATIONAL AIRPORT AUTHORITY****Combined Services Building**

The Combined Services Building is a new facility to be constructed which will combine and replace both the existing Fire Hall and the existing Maintenance Garage in one combined new location on the southeast side of the intersection of runways 07/25 and 14/32 next to taxiway Echo at Ottawa International Airport. The estimated cost of this facility is \$7 million.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****CALGARY AIRPORT AUTHORITY**

Ten-year Capital Expansion Program (1997 to 2006) as originally approved by the ACC at Calgary pursuant to a letter dated December 31, 1996 from the Chairperson of the ACC and further updated by the revised 10 year capital program (1998 to 2007) as approved by the ACC at Calgary pursuant to a letter dated April 13, 1999 from the Chairperson of the ACC. For greater certainty it is expressly recognized that this approved capital program includes an AIF funded project titled "96th Avenue" which is physically located off-airport and therefore represents an exception to the conditions imposed on the use of AIF revenues in Section 5.1 of this Agreement.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****KELOWNA AIRPORT**

Three-year Capital Expansion Project at Kelowna pursuant to minutes of an ACC meeting held November 24, 1997.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****WINNIPEG INTERNATIONAL AIRPORT**

Five-year Capital Expansion Program (1998-2003) as approved by the ACC at Winnipeg pursuant to a letter dated April 7, 1998 from the Chairman of the ACC.

SCHEDULE F**Capital Programs Deemed to Have Been Approved****VANCOUVER INTERNATIONAL AIRPORT**

The 10 Year Capital Plan, which means the plan described in the document entitled "10 Year Capital Plan Update November 2003" presented to the ACC at its December 2, 2003 meeting. As more fully described in that document, the capital projects forming the 10 Year Capital Plan include:

1. ITB Expansion and Upgrades
2. Sustaining and Restoration Projects
3. RAV Line
4. DTB Upgrade and Expansion
5. Airfield Projects
6. Baggage System Upgrades/Expansion
7. Roads/Parking
8. CATSA Funded HBS

For greater certainty, it is recognized that the RAV Line described above includes the rapid transit line and related facilities connecting the on-Airport portion of RAV to the main line in Richmond, which will be located off the Airport, and the inclusion of the RAV Line in the approved 10 Year Capital Plan represents an express exception to the restrictions imposed in Section 5.1 with respect to the use of AIF revenues.

SCHEDULE G
Airport Improvement Fee
Monthly Remittance Form
Airport

Air Carrier _____ Month _____ Year _____
 Current Month DEPAX _____ X _____ =
 A.I.F. Rate _____ Gross Remittance _____ =

	Gross AIF Remittance (per above)	Less	Handling Fee @ ____%	=	Net Remittance to Airport
Before Tax		Less		=	
<u>Applicable Tax</u> GST.....% HST.....% QST.....%		Less		=	
Total		Less		=	
					Remit this Amount

This compliance certificate is delivered to [Airport] pursuant to Article 9.5 of the Memorandum of Agreement (the "MOA") dated as of _____ between the Air Transport Association of Canada and Signatory Air Carriers and certain Airports.

I _____ (name) _____ (title) _____ (airline) certify that, to the best of my knowledge, information and belief, the AIF remittance for the month of _____ (month):

Proper and responsible due diligence has been exercised in establishing the remittance by personnel understanding the importance to the Airport of establishing the correct number of DEPAX passengers subject to the AIF (as defined in the MOA). I give this compliance certificate in my capacity as _____ (title) and no personal liability is assumed in the giving of this certificate.

(signature)

(date)

SCHEDULE H

ADMINISTRATIVE DUTIES OF THE AIR TRANSPORT ASSOCIATION OF CANADA

The Air Transport Association of Canada shall:

1. Carry out the administrative duties noted in paragraph 35.1 of the Memorandum of Agreement on Airport Improvement Fees dated May 31, 1999, as follows -
 - 1) Mandate - The Air Transport Association of Canada shall act as Administrator for and Secretariat on behalf of the Memorandum of Agreement on Airport Improvement Fees dated May 31, 1999. These duties shall include:
 1. Advising Signatories and other interested parties (e.g. CRSs) of:
 - (1) new Signatories
 - (2) changes to AIF rates
 - (3) proposed amendments to the Agreement
 2. Establish and support the Technical Committee noted under section 23.1 of the MOA.
 3. To inform Signatories (chiefly new entrants) or other interested parties on the terms of the Agreement.
 4. To attempt to settle disputes by means of discussion and, if necessary, obtaining legal opinions to guide Signatories.
 - 2) Budget - ATAC shall submit a budgeted amount to the Signatory Airports no later than October 1 of each year and the Airports shall have until October 30 of each year to comment and add items to the budgeted amount. The budgeted amount shall contain sufficient detail to identify tasks noted in (a) above. A comparative of actual expenditures in the prior year ended September 30 shall be provided.
 - 3) Apportionment - Airports shall provide annual passenger volumes to ATAC in accordance with section 8 of the MOA.

Appendix 'A'**AIRPORTS IN THE NATIONAL AIRPORTS SYSTEM**

KELOWNA, B.C.
PRINCE GEORGE, B.C.
VANCOUVER, B.C.
VICTORIA, B.C.
CALGARY, ALTA.
EDMONTON, ALTA.
REGINA, SASK.
SASKATOON / JOHN G. DIEFENBAKER, SASK.
WINNIPEG, MAN.
LONDON, ONT.
OTTAWA / MACDONALD-CARTIER, ONT.
SUDBURY, ONT.
THUNDER BAY, ONT.
TORONTO / LESTER B. PEARSON, ONT.
MONTREAL / DORVAL-MIRABEL, QUE.
QUEBEC CITY / JEAN LESAGE, QUE.
FREDERICTON, N.B.
MONCTON, N.B.
SAINT JOHN, N.B.
HALIFAX, N.S.
CHARLOTTETOWN, P.E.I.
GANDER, NFLD.
ST. JOHN'S, NFLD.
YELLOWKNIFE, NWT
WHITEHORSE, YUKON

AIRPORTS IN THE REGIONAL/LOCAL CATEGORY

QUESNEL, B.C.
 PRINCE RUPERT, B.C.
 KAMLOOPS, B.C.
 NANAIMO, B.C.
 CRANBROOK, B.C.
 CASTLEGAR, B.C.
 TERRACE, B.C.
 FORT ST. JOHN, B.C.
 PENTICTON, B.C.
 CAMPBELL RIVER, B.C.
 SMITHERS, B.C.
 COMOX, B.C.
 ABBOTSFORD, B.C.
 DAWSON CREEK, B.C.
 WILLIAMS LAKE, B.C.
 FORT NELSON, B.C.
 POWELL RIVER, B.C.
 PORT HARDY, B.C.
 RAINBOW LAKE, ALTA.
 GRANDE PRAIRIE, ALTA.
 LETHBRIDGE, ALTA.
 FORT MCMURRAY, ALTA.
 PEACE RIVER, ALTA.
 LA RONGE, SASK.
 URANIUM CITY, SASK.
 PRINCE ALBERT, SASK.
 THOMPSON, MAN.
 THE PAS, MAN.
 NORWAY HOUSE, MAN.
 BRANDON, MAN.
 FLIN FLON, MAN.
 DAUPHIN, MAN.
 LYNN LAKE, MAN.
 GILLAM, MAN.
 DRYDEN, ONT.
 KAPUSKASING, ONT.
 GORE BAY, ONT.
 TIMMONS, ONT.
 SAULT STE. MARIE, ONT.
 TORONTO ISLAND, ONT.
 WINDSOR, ONT.
 NORTH BAY, ONT.
 SARNIA, ONT.
 HAMILTON, ONT.
 PICKERING, ONT. (UNDEVELOPED)
 RED LAKE, ONT.
 KENORA, ONT.
 PEMBROKE, ONT.
 EARLTON, ONT.
 FORT FRANCES, ONT.
 GASPE, QUE.
 RIMOUSKI, QUE.
 SEPT-ILES, QUE.
 VAL D'OR, QUE.
 BAGOTVILLE, QUE.
 ROUYN, QUE.
 BAIE-COMEAU, QUE.
 MONT-JOLI, QUE.
 HAVRE ST. PIERRE, QUE.
 ALMA, QUE.
 CHATAM, N.B.
 CHARLO, N.B.
 ST. LEONARD, N.B.
 YARMOUTH, N.S.
 SYDNEY, N.S.
 CHURCHILL FALLS, NFLD.
 DEER LAKE, NFLD.
 GOOSE BAY, NFLD.
 WABUSH, NFLD.
 STEPHENVILLE, NFLD.
 ST. ANTHONY, NFLD.

SCHEDULE I**Vancouver International Airport AIF Rates**

Rates by destination of DEPAX passenger (plus applicable taxes):

Within British Columbia \$5
or the Yukon

Within North America \$10
(not including BC or the Yukon)

Outside of North America \$15
(including Hawaii and Mexico)

Connecting passengers are exempt from payment of AIF.

The rates at Vancouver International Airport may be changed in accordance with the provisions of Section 6.3 of this MOA without having to amend this MOA.

This is **Exhibit "B"** referred to in the Affidavit of Nicole Stefaniuk, affirmed before me at City of Winnipeg, in the Province of Manitoba, this 23rd day of May 2024



Andrew Stewart
A BARRISTER-AT-LAW entitled to practice
in and for the Province of Manitoba



**WINNIPEG
AIRPORTS AUTHORITY**

WINNIPEG AIRPORTS AUTHORITY INC.

TARIFF OF AVIATION FEES

Effective April 1, 2021

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PAYMENT TERMS AND CONDITIONS OF USE

The Winnipeg James Armstrong Richardson International Airport (the "Airport") is operated by Winnipeg Airports Authority Inc. ("WAA"). WAA has duly imposed the fees described below for the use of the services and facilities of the Airport described in the Tariff.

Unless otherwise advised in writing by WAA or as otherwise specified in the Tariff, all fees described in the Tariff related to the Airport will be invoiced weekly or monthly, in arrears.

Fees described in the Tariff do not include Canadian Goods and Services Tax which must be paid by the Customer in addition to any fee payable hereunder.

In consideration of the use of the Airport Resources at the Airport, with respect to which this Tariff applies, Customers:

- (a) become liable to pay WAA the applicable fees as described in the Tariff; and
- (b) agree to accept, be bound by and comply with the Terms and Conditions for use of Facilities, Equipment, Systems, Information and Services as set out below.

The fees described in WAA's Tariff of Aviation Fees in effect immediately prior to this Tariff will remain in effect until the respective fees come into effect pursuant to this Tariff.

TARIFF – WINNIPEG JAMES ARMSTRONG RICHARDSON INTERNATIONAL AIRPORT

PASSENGER PROCESSING FEES

For each use of the Air Terminal Building on arrival of or subsequent departure of a flight from the aerodrome based on maximum seating capacity of aircraft, charged per such landed seats:

Domestic fee per seat	\$ 7.50
Trans-border fee per seat	\$17.00
International fee per seat	\$12.90

PASSENGER AIRCRAFT RELATED FEES

LANDING FEES

Landing fees are charged **\$11.40** per 1,000 kg or fraction thereof of the Maximum Design Takeoff Weight¹ ("MTOW") of the aircraft, subject to a minimum fee of **\$57.00**.

¹ As defined under Terms and Conditions

EMERGENCY LANDING FEES

No landing fee is payable if an aircraft is required to return to the Airport and land due to a mechanical or medical emergency.

STATE AIRCRAFT FEES

State Aircraft are exempt from the fees outlined in the Tariff. Aircraft leased or chartered by the state from a commercial carrier are not exempt from the Tariff.

TRAINING AIRCRAFT FEES

Upon the landing of an aircraft on a flight conducted exclusively for the purpose of improving the skill and knowledge of the aircrew personnel of an air carrier licensed pursuant to Part II of the National Transportation Act, 1987, **and provided that arrangements are approved in advance by WAA**, the landing charge for each such landing of the aircraft is 20% of the applicable charge, subject always to the minimum landing fee described above.

LOADING BRIDGE FEES

For each 3-hour period or portion thereof that the bridge is connected, the fee is **\$122.00**.

GROUND LOADING FEES

A ground loading fee of **\$81.00** will be applied for all aircraft with 50 or more seats and **\$34.00** for all aircraft with less than 50 seats.

APRON USAGE FEES

Aircraft stopping or parking on aprons will be assessed an apron usage fee for any aircraft parked more than 6 hours. Daily parking fees are determined as follows

CODE OF AIRCRAFT	DAILY PARKING FEE
A – B	\$45.00
C – F	\$68.00

SEWAGE DUMP CHARGES

Aircraft sewage dump charges (per use) **\$51.50**

CARGO AIRCRAFT RELATED FEES

Cargo aircraft will pay a landing fee of **\$16.50** per 1,000 kg or fraction thereof of the Maximum Design Takeoff Weight ("MTOW") of the aircraft subject to a minimum fee of **\$62.00**. This rate includes landing fees, cargo stand fees, and parking.

PASSENGER FEES

AIRPORT IMPROVEMENT FEE ("AIF")

An AIF in the amount of **\$38.00** is charged to each originating departing enplaned passenger and is payable by all air carriers operating a commercial air carrier passenger service at the Airport which is available, directly or indirectly, to the public.

Subject to the limitations and exceptions described in sections (a) to (c) below, the AIF will apply to all originating departing enplaned passengers at the Airport using the Air Terminal Building ("DEPAX passenger(s)").

- a) For the purposes of this Tariff, the term "ticket(s)" shall include any documentation issued by an air carrier, or their agent, with a passenger name record that provides a right of carriage to the named individual for either charter or scheduled air travel on an air carriers' aircraft departing from the Airport. b) The obligation of the air carrier to collect and remit an AIF pursuant to this Tariff will not apply to:
 - i. a passenger continuing a journey less than 4 hours after arrival at the Airport for domestic Canada and transborder itineraries;
 - ii. a passenger continuing a journey less than 24 hours after arrival at the Airport for international itineraries (a passenger will be considered to be "continuing" a journey even though multiple air carriers may participate in the itinerary on air carrier ticket(s));
 - iii. an air carrier employee travelling on business;

- iv. infants under 2 years of age for whom no ticket was purchased (even though a no cost ticket may have been issued in the name of the infant);
 - v. a passenger who is a personal attendant to and who is accompanying a passenger with disabilities for travel within Canada as defined in Part V of the *Canadian Transportation Act* (Canada) or any other applicable legislation; when Federal or provincial legislation requires the air carrier to carry a passenger for travel which may include, but not be limited to, peace officers, air marshals or any other person as identified by such legislation;
 - vi. any flights operated for a charitable cause or purpose where passengers have not paid any compensation for the right of carriage; and
 - vii. any flights operated by air carriers for the purposes of providing medical or emergency services.
- c) Regardless of which air carrier sells a ticket to a DEPAX passenger or whose designator code is on the passenger's ticket, the air carrier on whom the DEPAX passenger actually travels shall be the party responsible for the remittance of the AIF for that DEPAX passenger.

AIRPORT INFRASTRUCTURE FEE

An Airport Infrastructure Fee in the amount of **\$13.00** per aircraft seat is payable by all aircraft operators for all passenger aircraft operations using facilities other than the Air Terminal Building. This includes scheduled service as well as entity charters.

However, where an Airport Infrastructure Fee Agreement is in effect with WAA, the Airport Infrastructure Fee will be based on **\$11.00** per originating departing enplaned passenger according to the terms and conditions of such agreement. For information on entering into an Airport Infrastructure Fee Agreement, please contact WAA.

USE OF PASSENGER FEES

The Passenger Fees, including Airport Improvement Fees and Airport Infrastructure Fees, remitted to WAA will be used to:

- pay Airport Infrastructure Expenditures related to Passenger Fee Funded Projects only;
- pay the associated Debt for those Passenger Fee Funded Projects;
- pay the Service Fee to Signatory Air Carriers; and
- cover any bad debts associated with any failure of a Signatory Air Carrier.

OTHER FEES

CENTRAL DE-ICING FACILITY

The central de-icing facility is operated by Inland Technologies Canada Inc. ("Inland"). A portion of the operating costs are recovered through a fixed fee per landing of \$19.11, which is invoiced by WAA throughout the de-icing season and subsequently remitted to Inland. The de-icing season is defined as September 1 through April 30. The remaining operating costs are recovered directly from users of the central de-icing facility by Inland based on usage and related supplies.

FUEL FEES

Unless otherwise agreed with WAA, fuel surcharges collected by the fuel suppliers are as follows:

- \$0.1075 per litre on AvGas;
- \$0.0275 per litre on engine crankcase lubricating oil; and
- \$0.0055 per litre on Jet Fuel.

TERMS AND CONDITIONS FOR USE OF FACILITIES, EQUIPMENT, SYSTEMS, INFORMATION AND SERVICES

These terms and conditions shall govern the use by Customers of Airport Resources of WAA at the Airport.

DEFINITIONS

Unless otherwise defined herein or the context otherwise requires, the terms hereinafter defined will have the meanings set out below:

“Airport Resource” means any System, Facility, Equipment, Information or Service;

“Airport” means the Winnipeg James Armstrong Richardson International Airport;

“Air Terminal Building” means the passenger air terminal building and associated facilities located at 1970 Wellington Avenue in Winnipeg Manitoba.

“WAA” means Winnipeg Airports Authority Inc. and includes its wholly owned subsidiaries and its successors and assigns. In any section of the Terms and Conditions that contains a release, hold harmless, indemnity or other exculpatory language in favour of WAA, the term “WAA” also means and includes any directors, officers, employees, agents or contractors of WAA and any other Person for whom WAA may be responsible in law and any Person who has a right of contribution as against WAA;

“Customer” means any Person that uses any Airport Resource to which the Tariff applies and includes a Customer-Related Entity;

“Customer in Default” means a Customer described in section 2 or 9 below;

“Customer-Related Entities” means the Customer's Affiliates, and the Customer's and any Affiliate's agents, employees, consultants or contractors and any other Person for whom the Customer may be responsible in law;

“Debt” means debt associated with any Passenger Fee Funded Project including but not limited to the cost of issuance of associated debt, debt service costs, debt retirement, debt service reserve obligations, debt coverage requirements, and capitalized interest on debt related to any Passenger Fee Funded Project;

“De-icing Season” means September 1 through to April 30 annually.

“Domestic” means all flights that both originate and depart within Canada.

“Entity Charter” means the operation of an aircraft according to the conditions of a charter contract under which the cost of transportation of passengers is paid by one person, corporation or entity without any contribution, direct or indirect, from any other person and no charge or other financial obligation is imposed on a passenger as a condition of carriage or otherwise in connection with the transportation;

“Equipment” means any equipment, component, hardware, machinery, tool, apparatus, device, material, matter or object provided by or available from WAA, directly or indirectly, at the Airport;

“Facility” means any facility provided by or available from WAA, directly or indirectly, at the Airport and includes any building, structure, land, apron, runway, taxiway, sidewalk, road, driveway, parking lot, storage container, storage tank, passenger loading bridge, elevator, escalator or moving walkway located at the Airport;

“Fees” or **“fees”** means the fees payable for use of any Airport Resource as set out in this Tariff, any interest payable on overdue fees and any other amounts payable by the Customer pursuant to this Tariff;

“Information” means any information or data, in tangible or intangible form, provided by or available from WAA, directly or indirectly;

“International” means flights from which disembarking passengers or aircrew are required to report pursuant to the Customs Act (Canada).

“MTOW” means the Maximum Designated Takeoff Weight of an aircraft either, in WAA's sole discretion, as published by the manufacturer or as stated in the aircraft specific certificate of airworthiness as officially registered;

“Passenger Fee Funded Project” means airport infrastructure improvements that are funded either in whole or in part with proceeds of Airport Improvement Fees or Airport Infrastructure Fees;

“Person” or **“person”** means any individual, company, corporation, partnership firm, trust, government, authority or entity, however designated or constituted;

“Prime Rate” means the rate of interest expressed as an annual rate established from time to time by WAA's bank as the interest rate charged by it on demand loans made in Canada in Canadian currency to its most creditworthy customers and referred to by WAA's bank as its prime rate. The certificate of an officer of WAA's bank as to the prime rate for any specified day shall be, in the absence of manifest error, conclusive evidence thereof. The prime rate for a given month will be the prime rate as determined above in existence on the last business day of the previous month;

“Service” means any service provided by or available from WAA, directly or indirectly, at the Airport;

“Service Fee” means each Signatory Air Carrier shall be paid a service fee equal to four percent (4%) of the amount of the Airport Improvement Fee, excluding any Taxes, that is to be remitted by the Signatory Air Carrier;

“Signatory Air Carrier” means the air carrier or air carriers, as may be applicable, that are party to the Airport Improvement Fee Agreement, as amended from time to time;

“State Aircraft” means an aircraft, other than a commercial aircraft, owned and operated by the government of any country or the government of a colony, dependency, province, state, territory or municipality of a country;

“System” means any system provided by or available from WAA, directly or indirectly, at the Airport, including any mechanical system, electrical system, circuit, telecommunications system, communications system, scheduling system, flight information display system, baggage system, baggage inspection system, baggage reconciliation system, snow removal system, communications band or radio frequency, security system, traffic control system, parking system or information technology system, including any computer system, computer program and any associated module, database or interface;

“Tariff” means the document entitled “Tariff of Aviation Fees” published by WAA (which includes these Terms and Conditions) as may be amended or supplemented from time to time by WAA; and

“Terms and Conditions” means that part of the Tariff headed “Terms and Conditions for Use of Facilities, Equipment, Systems, Information and Services” as may be amended from time to time.

“Transborder” means flights to and from the continental United States, Hawaii and Alaska.

PAYMENT TERMS

1. (a) Unless otherwise provided in the Tariff, Customers will have 15 days from invoice date to pay to WAA all invoiced fees. Interest will be charged on any fees not paid by the due date at the Prime Rate, plus 3% from the respective due date for payment of fees. Interest will be calculated on a per diem basis on the basis of a year of 365 days calculated and compounded monthly retroactive from the date any such amount is due and payable until paid. Goods and Services Tax will be added to fees.

Electronic payment transfers are the preferred method of payment. Remittance information is included on the invoices.

Cheques are also accepted and shall be made payable to: **Winnipeg Airports Authority Inc.**

Mailing Address: Winnipeg Airports Authority Inc.
249-2000 Wellington Avenue
Winnipeg, MB R3H 1C2

- (b) No endorsement or statement on any cheque or payment instrument or use of any letter or statement accompanying or referring to any cheque or payment of any fees shall be binding on WAA nor deemed to be an acknowledgement of full payment or an acceptance, accord and satisfaction by WAA of such endorsement, statement or letter.

WAA may accept and cash any such cheque or payment instrument and, at the option of WAA, apply such payment on account of the earliest stipulated fees without prejudice to WAA's right, having so applied such payment, to recover the balance of fees or pursue any other right or remedy provided in the Tariff or at law.

(c) All references in the Tariff to money amounts are to Canadian currency.

In the event any fees are not paid in full when due or the Customer is in default of any of the Terms and Conditions, the Customer will be deemed to be a "Customer in Default" and WAA may give notice to such Customer that all fees payable by such Customer, whether or not then due, are due and payable forthwith and interest will accrue from such date at the rate and upon the terms set out in section 1 above. Further, payment for the use of any Airport Resource to which the Tariff applies after such notice will be due and payable in advance of each such use.

2. WAA reserves the right to deny the use of or access to any Airport Resource or suspend or otherwise restrict the exercise of any privileges including access to the Airport by any Customer in Default until payment of all outstanding fees is made in full or credit arrangements satisfactory to WAA are in place or, in the event of a non-monetary default, the default is cured or the Customer has commenced and is diligently proceeding to cure the default, to the reasonable satisfaction of WAA.
3. As security for the payment of monies due hereunder, the Customer will provide security to WAA in such form and in such amount as may be required by WAA from time to time. Such form of security may include a cash deposit or an irrevocable letter of credit in a form, and issued by, a financial institution acceptable to WAA, or any combination thereof. The Customer hereby grants to WAA a security interest in and to any such security deposit and agrees that the possession of any security by WAA shall protect WAA's interest in the security.
4. If a Customer defaults in timely payment of any monies due hereunder, WAA may, without limitation, realize on the security referred to herein and may exercise all rights and powers of seizure of aircraft or other assets of the Customer and take any other legal remedies available to it to realize payment of any monies due hereunder. The Customer shall pay all expenses, costs and charges including legal fees (on a solicitor and client basis) incurred by WAA to collect or enforce payment of any monies due hereunder. The foregoing shall also include all expenses, costs and charges related, directly or indirectly, to any aircraft seizure including, without limitation, those related to storing, maintaining, insuring and securing seized aircraft and any charges by any Person engaged by WAA to affect a seizure.
5. WAA reserves the right to amend the Tariff, at any time and from time to time, in any manner it deems appropriate including: increasing or decreasing any fees; adding thereto or deleting therefrom categories of fees or otherwise. WAA shall provide not less than 60 days advance notice of any changes to the Tariff.

AIRCRAFT LANDING FEES, PASSENGER PROCESSING FEES, AND APRON USAGE FEES

6. Aircraft Landing Fees, Passenger Processing Fees, and Apron Usage Fees (collectively referred to in this section as "Aircraft Configuration Fees") payable pursuant to the Tariff, will be based on the MTOW and seat configuration as published on the applicable aircraft manufacturer's website or in documents issued by such manufacturer. WAA may, in its sole discretion, use aircraft specific configuration information provided by a Customer in which case WAA reserves the right to require supporting documentation and to conduct an independent verification of the information supplied.
7. The Customer shall notify WAA of the aircraft specific configuration information including the MTOW set out in the Customer's aircraft certificate of air worthiness, seat configuration and aircraft type, for all aircraft owned or operated by the Customer at the Airport.

Where Aircraft Configuration Fees invoiced by WAA are based on information supplied by a Customer, WAA may make adjustments to invoiced fees where WAA determines that such information is not correct and, where appropriate, provide credits to the Customer. No credit to the Customer will be considered in respect of incorrect information supplied by the Customer unless WAA is notified by the Customer, within three (3) months of the date such information was supplied, that information previously provided by the Customer is incorrect.

STATISTICS

8. The Customer covenants that it will, without expense to WAA, make and keep detailed, true and accurate records of all the Customer's aircraft, passenger and cargo activities at the Airport, with separate records for each Non-Signatory Air Carrier processed by the Customer at the Airport. These will be reported to WAA within five (5) days after the end of the month.

BANKRUPTCY AND INSOLVENCY/LIENS

9. The Customer shall be deemed to be a "Customer in Default" if the Customer becomes bankrupt or insolvent, makes an assignment for the benefit of creditors or makes an assignment or has a receiving order made against it under the *Bankruptcy and Insolvency Act* of Canada (as amended or replaced from time to time) or if the Customer takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors or if a receiver or interim receiver and manager, custodian or liquidator is appointed for the business or property of the Customer or any material assets of the Customer are seized under any writ of execution or security instrument and such seizure is not vacated within 30 days of such seizure.
10. The Customer covenants that it shall not permit any construction or builder's liens to be, or to remain, registered against the title to the Airport by reason of work, labour, services or material supplied or performed in relation to the operations of the Customer and Customer-Related Entities at the Airport. The Customer shall cause any such liens to be discharged or vacated, as the case may be, within 60 days of receiving notice that any such liens have been registered. The foregoing shall not prevent the Customer or the Customer-Related Entities from contesting any liability to a third party for any claim for lien or the validity of any lien so discharged or vacated.

INSURANCE, RISK, LIMITATION OF LIABILITY AND INDEMNITY

11. The Customer and its Customer-Related Entities shall maintain adequate liability insurance at all times, which meets or exceeds the industry standard for the type of operations carried on by the Customer and any Customer-Related Entity at the Airport. The Customer shall provide proof of such insurance to WAA upon request.
12. The use of the Airport including any Airport Resource by the Customer or any Customer-Related Entity is entirely at the risk of the Customer or the Customer-Related Entity, as the case may be. WAA shall not be liable, directly or indirectly, to the Customer or any Customer-Related Entity for any injury, loss, expense, claim, damage (including, any direct, consequential, special, punitive, indirect or incidental damage), loss of income or profit, other loss or cost, including attorney's fees and costs, of any nature arising from anything done or omitted to be done by WAA, whether by accident, negligence, willful misconduct or otherwise, in relation to or arising from any use, operation, condition or provision of any Airport Resource or any of WAA's activities or operations relating to the Airport or any actions taken to collect fees, all even if WAA is advised of the possibility of such injury, loss, expense, claim, damage or other loss or cost, and all whether or not such injury, loss, expense, claim, damage or other loss or cost arises in contract or tort, under statute, in equity, at law or otherwise.

Without limiting any of the foregoing, under no circumstances will WAA be liable for any of the following: the accuracy, availability or reliability of any Airport Resource or any part thereof, or any unauthorized access or damage to, alteration, theft, destruction or loss of any of a Customer's or its Customer-Related Entities' property, including records, data, content, transmission facilities or equipment.

WAA DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, GUARANTEES AND ASSURANCES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, IN RELATION TO THE AIRPORT OR ANY AIRPORT RESOURCE, INCLUDING, ANY REPRESENTATION, WARRANTY, GUARANTEE, OR ASSURANCE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WAA DISCLAIMS ANY REPRESENTATION, WARRANTY, GUARANTEE OR ASSURANCE THAT THE FUNCTIONS PERFORMED BY ANY MECHANICAL, AUTOMATED OR COMPUTER-RELATED AIRPORT RESOURCE WILL BE UNINTERRUPTED OR ERROR FREE, OR AVAILABLE OR SUFFICIENT FOR ANY PARTICULAR PURPOSE, THAT ANY DEFECTS WILL BE CORRECTED, OR THAT ANY SUCH AIRPORT RESOURCE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

13. In relation to any matter arising from the Customer's or any Customer-Related Entity's use or occupation of the Airport or use of or access to any Airport Resource, the Customer expressly agrees to defend, indemnify and hold harmless WAA from and against any and all losses, liabilities, demands, claims, suits, actions, judicial or administrative proceedings, damages, penalties, fines, costs and expenses (collectively referred to in this section as "Liabilities"), including attorney's fees and costs, whatsoever advanced by any Person against WAA for any injury or damage of any nature

whatsoever or which WAA may suffer or incur including those which are or are alleged to be caused by, result from, arise from or contributed to by reason of any of the following:

- (a) any act or omission of the Customer or any Customer-Related Entities at or in relation to the Airport;
- (b) any breach of the Terms and Conditions by the Customer or any Customer-Related Entities; or
- (c) any matter in respect of which WAA's liability is limited pursuant to section 14 hereof.

WAA reserves the right, subject to indemnification by the Customer, to assume the exclusive defence and control of any matter initially subject to the defence, indemnification and hold harmless obligations of the Customer hereunder and the Customer shall not in any event settle any matter without the prior written consent of WAA.

ENVIRONMENTAL MATTERS

14. (a) Without limiting the generality of any other provisions contained herein, the Customer shall comply with, and shall ensure that any Customer-Related Entity complies with, all applicable laws, statutes, by-laws, ordinances, rules and regulations from time to time in force relating to environmental matters, the manufacture, use, storage, disposal and transportation of any hazardous or toxic substance and the protection of the environment generally, (collectively referred to in this section as, the "Environmental Laws").

The Customer shall immediately give written notice to WAA of the occurrence of any act or omission of the Customer or any Customer-Related Entities in or on the Airport constituting a breach of or an offence under any Environmental Laws including any breach which results in an adverse environmental condition at, on or under the Airport. If the Customer or a Customer-Related Entity causes or contributes to the happening of any such event, the Customer shall, at its own expense:

- (i) immediately give WAA notice to that effect and thereafter give WAA from time to time written notice of the extent and nature of the Customer's compliance with the following provisions of this section 16(a);
- (ii) promptly perform any work or take any action which will result in conformity and compliance with all Environmental Laws including those laws governing such adverse environmental condition; and
- (iii) promptly cease any activity which constitutes a breach of the Environmental Laws including any activity which causes or permits any substance to be released, spilled, leaked or to flow onto or into the Airport or any adjacent land, air or water or results in any substance being

released into the environment and which constitutes a breach of Environmental Laws.

- (b) The Customer shall, at its own cost and expense, remedy any adverse environmental condition on the Airport or adjacent land, air or water caused by the occurrence of an event of the nature described in section 16(a) above or caused by the performance or lack of performance of any of the Customer's obligations under this section 16, failing which, WAA may perform such remedial work at the expense of the Customer and such expense shall be deemed to be additional fees payable by the Customer under the Tariff.
- (c) To the extent that it is commercially reasonable so to do, the Customer shall at all times maintain pollution liability insurance in an amount and form and with loss payable satisfactory to WAA and shall submit proof thereof to WAA upon request of WAA.

AVAILABILITY AND USE OF AIRPORT RESOURCES

- 15. (a) The Customer shall comply with and shall cause any Customer-Related Entity to comply with all rules, regulations, policies and procedures of WAA as issued or published by WAA from time to time and all applicable laws, statutes, by-laws, ordinances, rules and regulations from time to time in force relating to the Airport or the activities of the Customer and any Customer-Related Entities at the Airport including the use of any Airport Resources.
- (b) Unless otherwise agreed to in writing by WAA, the Customer will not enplane or deplane any passengers on any commercial flight which is available directly or indirectly to the public at any location at the Winnipeg James Armstrong Richardson International Airport other than the main passenger terminal building on Wellington Avenue.
- 16. All right, title and interest to the Airport Resources is reserved to WAA notwithstanding any use of or access to them provided by WAA.
- 17. The Customer shall ensure that all of its activities and all of its Customer-Related Entities activities at the Airport are conducted in a safe and professional manner.
- 18. The Customer shall comply with, and shall ensure that all Customer-Related Entities comply with, the Terms and Conditions. The Customer accepts responsibility for the acts or omissions of any Customer-Related Entities as if they were the Customer's own acts or omissions. The Customer agrees that any act or omission of any Customer-Related Entity which constitutes a violation of the Terms and Conditions shall constitute a breach of the Terms and Conditions as if carried out by the Customer.
- 19. (a) The Airport is subject to WAA's overall control, management and operation and WAA has the unfettered right to operate the Airport in such manner as it may, in its sole discretion, determine. Accordingly, WAA reserves the unfettered right from time to time to adopt, promulgate, issue, reissue, amend, cancel, impose

and enforce any rules, regulations, policies, procedures, restrictions, fees, charges, incentives or disincentives designed to control or restrict activities of airport users including the movement, use, parking, storage, repair or operations of aircraft at the Airport by any Person, including the Customer, any Customer-Related Entity and any other user of the Airport.

- (b) If as a result of the exercise by WAA of any of its rights set out above:
- (i) the Airport or any part thereof are diminished, expanded or altered in any manner whatsoever; or
 - (ii) the use and enjoyment of the Airport by the Customer or any Customer-Related Entity or any business carried on therein is affected in any manner whatsoever;
- WAA is not subject to any liability.

20. Notwithstanding anything to the contrary in the Tariff, WAA shall have the right, in its sole discretion, at any time and from time to time, and without notice or liability, to:

- (a) maintain, operate, modify and provide any Airport Resource in such manner, configuration, format and condition as WAA deems appropriate;
- (b) modify, suspend, withdraw or discontinue the availability of, access to, use of and provision of any and all Airport Resources or any part thereof;
- (c) suspend or terminate a Customer's operations at the Airport when, in WAA's opinion, such suspension or termination is necessary for Airport operations or Airport safety; and
- (d) monitor and restrict or limit where necessary the Customer's and any Customer-Related Entity's use of any and all Airport Resources from time to time through such means as WAA deems appropriate.

21. Except to the extent expressly authorized by the Terms and Conditions or pursuant to an express written permission from WAA, the Customer shall not, and shall not permit any Customer-Related Entities, to do any of the following:

- (a) modify, copy, reproduce, operate, decompile, reverse engineer, disassemble, translate or create derivative works based on any Airport Resource, or adapt any Airport Resource provided or made available to the Customer or any Customer-Related Entity;
- (b) damage, interfere with or disrupt any Airport operations or the operation or condition of any Airport Resource;
- (c) do anything which will cause physical, visual or electronic interference or hazard to the navigation of any aircraft or violate any safety-related standards, procedures or recommended practices affecting aircraft safety or airport certification;

- (d) disable, breach, violate or circumvent any security system, access control or related device, process or procedure established with respect to any Airport Resource;
 - (e) publish, retransmit, redirect, distribute or publicly perform or display, electronically or otherwise, any Airport Resource; or
 - (f) sell, assign, rent, market, loan, lease, license, sub-license, grant a security interest in, distribute or otherwise transfer rights to, in whole or in part, any Airport Resource.
22. If any Customer or Customer-Related Entity experiences difficulties related to access to or use of any Airport Resource, the Customer shall immediately notify WAA and shall not take any steps to modify, restart or repair any applicable Airport Resource without WAA's prior approval.
23. If any of a Customer's or any Customer-Related Entity's equipment or materials causes any disruption of or interference with any Airport operations, then WAA, in its sole and absolute discretion, may direct the Customer to remove and relocate from the Airport the offending equipment or materials (as the case may be) and the Customer shall do so as directed without delay. Without limiting WAA's rights and remedies, the cost of removing and relocating same will be the Customer's responsibility.
24. If any of a Customer's or any Customer-Related Entity's personnel causes any disruption of or interference with any Airport operations, then WAA, in its sole and absolute discretion, may direct the Customer to remove and relocate from the Airport the offending personnel and the Customer shall do so as directed without delay.
25. The Customer shall not, and shall ensure that Customer-Related Entities do not, allow any equipment, system or information under their control to communicate, interconnect or interface with any computing, cabling or telecommunications equipment, device, system, software or service at the Airport, without the express written consent of WAA.
26. A Customer shall deliver to WAA all Airport Resources, including any copies (if any), in the Customer's possession or control, including any of same in the possession or control of any Customer-Related Entities, at the request of WAA, or, in the absence of such a request, upon termination of the Customer's operations at the Airport. Without limiting the foregoing, the Customer shall return Airport Resources in its possession or control to WAA upon the earlier of the following:
- (a) at the request of WAA if WAA indicates that it requires the return of such Airport Resources in order to upgrade, replace or modify such Airport Resources; or
 - (b) immediately if the Customer is no longer using such Airport Resources in the ordinary course of business in connection with the Airport.

GENERAL PROVISIONS

27. Time is of the essence hereof.
28. The Tariff shall be deemed to constitute the entire agreement between WAA and the Customer with respect to the use by the Customer of the Airport and the Airport Resources and shall supersede all previous negotiations, representations and documents in relation to the use by the Customer of the Airport Resources except where there is a separate written agreement between WAA and the Customer with respect to the specific subject matter thereof and then only to the extent so specified in said separate written agreement with respect to such specific subject matter.
29. The Tariff shall enure to the benefit of and be binding upon the successors and permitted assigns of the Customer and WAA, as the case may be, and nothing herein shall restrict the ability of WAA to transfer or assign its interests herein. The Customer shall not assign, in whole or in part, any of its rights or obligations under the Tariff without the prior written consent of WAA.
30. If any covenant, obligation, agreement, term or condition of the Tariff or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the Tariff, or the application of such covenant, obligation, agreement, term or condition to persons or circumstances other than those in respect of which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation, agreement, term and condition of the Tariff shall be separately valid and enforceable to the fullest extent permitted by law and the invalid or unenforceable covenant, obligation, agreement, term or condition (as the case may be) shall be modified so as to be enforced to the fullest extent permitted at law, with retroactive effect to the date of the Tariff.
31. The Customer shall adhere to the *Official Languages Act* of Canada (as amended or replaced from time to time) and the regulations made thereunder as may be amended from time to time and all applicable policies of the Government of Canada and of WAA relating thereto, to the extent the same shall be applicable to the operations of the Customer at the Airport.
32. Except as expressly set forth herein, any notice or other writing required or permitted to be given under the Tariff shall be in writing and, if hand delivered or transmitted by facsimile, shall be deemed to have been given on the date of such delivery or transmission. If sent by prepaid registered mail, any such notice or other writing shall be deemed to have been given three (3) business days after the date of posting. The last known address of the Customer as shown in the records of WAA shall be deemed the Customer's valid address for service.
33. In any circumstances where the consent or approval of WAA is required herein, or where WAA is entitled to exercise discretion, WAA shall, except to the extent (if any) expressly stated otherwise herein, be entitled to withhold such consent or to exercise such discretion in its sole and absolute discretion. WAA shall not be required to give any reason for refusing to provide any consent or approval, nor shall WAA be required to disclose the manner in which it exercised any discretion.

34. The division of the Tariff into sections, subsections, and paragraphs and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of the Tariff.
35. All words used herein shall be construed to include the plural as well as the singular, and words in the present tense shall include the future tense.
36. The language in all parts of the Tariff shall be construed simply according to its fair meaning and not strictly for or against either WAA or the Customer.
37. Each of the terms "including", "include" and "includes", when used in the Tariff is not limiting, whether or not non-limiting language (such as "without limitation", "without limiting the foregoing", "but not limited to" or words of similar import) is used with reference thereto.
38. The expressions "herein", "hereto", "hereof", "hereby", "hereunder" and other similar terms refer to the Tariff and any amendments hereto, and not just to the particular clause or paragraph in which those words appear.
39. No waiver or acquiescence by WAA of any breach of the Tariff is valid except if given in writing. Any such waiver or acquiescence shall not constitute a consent to or waiver of or excuse for any other different or subsequent breach or act unless such waiver or consent is in writing.
40. No remedy conferred upon or reserved in favour of WAA under the Tariff will exclude any other remedy so conferred or reserved or existing at law or in equity but each will be cumulative and in addition to every other remedy given under the Tariff or existing at law or in equity.
41. Nothing in the Terms and Conditions will prevent WAA from applying for or obtaining any interim, interlocutory or preliminary injunctive or declaratory relief or from bringing any claim for contribution or indemnity in the same court in which a suit is brought either by or against WAA.
42. The Tariff shall be governed by and construed in accordance with the laws of the Province of Manitoba (without reference to its conflict of laws provisions), including the laws of Canada applicable therein. The Courts of Manitoba shall have exclusive jurisdiction to entertain and determine all Customer disputes and claims, whether for specific performance, injunction, declaration, damages or otherwise, both at law and in equity, arising out of or in any way relating to the Tariff. The Customer hereby irrevocably attorns to and accepts the jurisdiction of the Courts of Manitoba.

43. Any judgment or court order rendered by any of the Courts of Manitoba may be entered in any court of law in any province, country, state or territory (referred to in this section as an "Other Court") having jurisdiction over the Customer or any of the Customer's assets. WAA may commence and prosecute any action in an Other Court or apply to any Other Court for a remedy at law or equity, or for judicial acceptance of a Manitoba judgment or court order (as the case may be) and for an order of enforcement thereof. A judgment or court order of the Courts of Manitoba or any Other Court (as the case may be) may be enforced in any Other Court, and the Customer waives any defence thereto and shall submit to the jurisdiction of the Other Court.

This is **Exhibit "C"** referred to in the Affidavit of Nicole Stefaniuk, affirmed before me at City of Winnipeg, in the Province of Manitoba, this 23rd day of May 2024



Andrew Stewart
A BARRISTER-AT-LAW entitled to practice
in and for the Province of Manitoba

Reservation Terms and Conditions

Fare Information

Cancellations

No cancellations are permitted within 72 hours of departure.

Within 24 hours of booking:

- For flights booked more than 7 days before departure, if you cancel your flight you'll receive a refund to your original form of payment.
- For flights booked within 7 days of departure, if you cancel your flight you'll receive a travel voucher, minus the \$74*CAD + tax cancellation fee (per flight segment).

More than 24 hours after booking:

- For cancellations made more than 72 hours before departure, you'll be charged a \$74*CAD + tax (on or after January 11, 2024) cancellation fee per passenger (per flight segment). You'll receive a travel voucher for the remaining amount (if applicable).

Changes

No changes are permitted within 72 hours of departure. Changes to the origin and destination are not permitted.

Name changes are not permitted.

- For changes made more than 72 hours before departure, you'll be charged a change fee of \$74*CAD + tax (on or after January 11, 2024) per passenger (per flight segment).
- If you change your flight to one with a higher fare, you must pay the difference in fare as well as the change fee.
- If you change your flight to one with a lower fare, you must pay the change fee, but you won't receive the difference in fare.

Payments Fees and Taxes

[Skip to main content](#)



- Visa
- Mastercard
- Visa Debit
- Mastercard Debit
- Lynx Travel Voucher

Taxes and Fees

Taxes and fees vary based on the airports you're using. For domestic flights, the following taxes and fees may be added.

- Airport Improvement Fees (AIF) and Passenger Facility Charge (PFC) are generally collected by Lynx at the time of booking. Lynx collects these fees from passengers and remits them directly to the airports

Airport Code	Airport Improvement Fee (AIF)
YEG	\$35*CAD
YFC	\$30*CAD
YHM	\$25*CAD
YHZ	\$35*CAD
YLW	\$25.00*CAD
YUL	\$35*CAD
YVR (flying within BC or to the Yukon)	\$5.00*CAD
YVR (flying outside BC)	\$25.00*CAD
YWG	\$38.00*CAD
YYC	\$35.00*CAD



YYT	\$42*CAD
YYZ	\$30.00*CAD
All US airports	\$4.50*CAD

- Air Travellers Security Charge ("ATSC"): The ATSC is a security charge collected by the Government of Canada. Lynx collects this fee from passengers and remits it directly to Canada Revenue Agency.
- \$7.12*CAD per chargeable enplanement to a maximum of \$14.25*CAD for Canadian domestic flights.
- Goods and Services Tax ("GST"): GST of 5% applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights, excluding those that commence in Quebec, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador.
- Harmonized Sales Tax ("HST"): HST applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights commencing in the following provinces:
- U.S. Taxes & Fees do not apply to domestic Canadian flights.
- The US segment tax is also charged on flights between the US and a point in Canada within 225 miles of the border when payment is made within the US.
- For flights between the US and a point in Canada within 225 miles of the border, when payment is made within the US, a 7.5% tax is imposed on the base ticket price. For such flights and all other transborder flights, when payment is made within Canada, a flat rate of \$21.10 (USD) per passenger arrival and departure applies.
- US Agriculture Fee: The US government charges an agriculture inspection fee on all in-bound passengers of \$3.96 USD.
- US Immigration User Fee: For all transborder flights arriving in US, there is an Immigration User Fee of \$7.00 USD charged per passenger.
- US Sep 11th Security Fee: For all transborder flights departing the US, there is a Sep 11th Security Fee of \$5.60 USD charged per passenger.
- US Customs Processing Fee: For all transborder flights arriving in US, there is a US Customs User Fee of \$6.11 USD charged per passenger
- US Segment Tax: For all transborder flights, a US Segment Tax of \$4.50 USD is applied per passenger for US citizens. The US segment tax is also charged to US citizens on Canadian domestic flights if travel occurs in the US buffer zone near the border between the two countries
- US Transportation Tax: For all transborder flights, a US Transportation Tax is applied. For US citizens, it is 7.5% of the base ticket price (including surcharges) per



Province	Harmonized Sales Tax (HST)
Ontario	13%
Nova Scotia	15%
New Brunswick	15%
Prince Edward Island	15%
Newfoundland and Labrador	15%

- Quebec Sales Tax ("QST"): QST applies to base fare, services, AIF and ATSC charges for all Canadian domestic flights commencing in Quebec.

Lynx Travel Vouchers

Unless otherwise specified, Lynx travel vouchers are valid for 12 months. Travel vouchers are non-transferable and can only be redeemed by the primary passenger on the booking. The owner of the travel voucher can use their voucher to book a flight for a third party. Travel vouchers can be applied towards base fare, taxes and fees.

Identification Requirements

Travel Within Canada

- a. All adult passengers must bring 1 valid (non-expired) identification document issued by a Canadian federal, provincial or territorial government that includes:
 - i. Photo
 - ii. Full name
 - iii. Date of birth
 - iv. Gender



documents must include:

- i. Full name
- ii. Date of birth
- iii. Gender

c. For more information on identification requirements, click **Canada - Domestic Air Travel Identification page** and **Transport Security Administration Identification page**. For more information on identification requirements for children, click **Travelling with children and infants**.

International Travel

- a. Adults, children and infants are required to have a valid passport for international travel.
- b. Each country may have specific travel document requirements, vaccination requirements or health protocols. It is the responsibility of each passenger to ensure they have the necessary documents for travel. Always travel with the proper documentation at all times when travelling.
- c. Please visit the U.S. Department of State for more information on requirements for travel to the United States. **Travel (state.gov)**

Check-in Guidelines

We recommend you arrive at the airport a minimum of 90 minutes before your scheduled departure time for domestic flights, and a minimum of 120 minutes before your scheduled departure time for international flights. If you'd rather check-in at the airport, please arrive 3 hours before your flight. Check-in and baggage drop-off closes 45 minutes prior to departure for domestic flights and 75 minutes prior to departure for international.

All security restrictions are subject to change. For the most up-to-date information, visit **tc.gc.ca**, **catsa.gc.ca** or **tsa.gov**.

Information Collection and Disclosure



destination, Canadian government authorities may require us to collect passenger information such as your full name, date of birth, citizenship, gender, passport number and country of issuance, payment method for flight purchase and booking details, as well as any other personal information as described by this policy or as required by such government authority.

Privacy Policy

Lynx is dedicated to protecting your personal information. Our privacy policy conforms with the Personal Information Protection and Electronic Documents Act. Additional information is available in [Privacy Policy](#).

Rules of Carriage and Baggage Information

Carriage of passengers and goods on domestic flights, i.e., between, from and to points wholly within Canada, is subject to the applicable tariffs, conditions of carriage and related regulations available at the office of the carrier and [baggage](#).

Checked Baggage Allowance

Checked baggage is subject to weight and size restrictions. Fees apply for each piece of baggage and may be combined. For example, if you check in 2 bags and both are overweight, you'll be charged 2 overweight fees. For more information visit: [Baggage Information | Lynx Air \(flylynx.com\)](#)

Checked baggage size

- Baggage may be up to 157cm (62") in combined dimensions (length + width + height) and weigh up to 23kg (50lbs).
- Oversized baggage (combined dimensions up to 203cm or 80") is accepted on a space-available basis.
- Overweight baggage (more than 23kg or 50lbs but not exceeding 45kg or 100lbs) is accepted on a space-available basis.
- For more information: [Baggage Information | Lynx Air \(flylynx.com\)](#)

Musical instruments

[Skip to main content](#)



50lbs but not exceeding 45kg or 100lbs) and are subject to overweight fees.

Carry-on Baggage Allowance

Carry-on baggage is subject to a fee and must be stored in the overhead bin or placed under the seat directly in front of each passenger.

Each passenger may bring 1 carry-on item and 1 personal item. Each item must fit into the sizing devices and may not exceed the applicable measurements. This applies for both personal and carry-on items.

- Carry-on item: Maximum size of 23cm x 40cm x 55cm (9" x 15.75" x 21.5") and 10kg (22lbs). Carry-on fees apply.
- Personal item: Maximum size of 15cm x 33cm x 43cm (6" x 13" x 17"). Items that don't fit into the sizing device will be placed in checked baggage and charged a checked baggage fee.

Musical Instruments

The combined length, width and height of the instrument (including the case) must be less than 113cm (45"). Instruments this size are considered carry-on and subject to carry-on fees. Musical instruments that don't meet the carry-on size criteria will have to be checked and follow the weight limits and fees for checked bags.

Can I bring this on a plane?

For travel within Canada, visit catsa.gc.ca for permitted and non-permitted items or call 1-800-O-Canada for more information. For travel to or from the United States, visit tsa.gov.

Baggage Loss or Damage

For carriage of baggage on domestic flights, Lynx's liability is limited to 1,131 Special Drawing Rights (SDRs) per person per incident, except for mobility aids.

Any complaint of any loss or damage to luggage must be in writing and must be made within 7 days of your flight.



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[Reservation Terms and Conditions](#)

[Canadian Air Passenger Protection Regulations](#)

[Flight Status](#)

[Travel Advisory](#)

[Pets in Cabin](#)



This is **Exhibit "D"** referred to in the Affidavit of Nicole Stefaniuk, affirmed before me at City of Winnipeg, in the Province of Manitoba, this 23rd day of May 2024



Andrew Stewart
A BARRISTER-AT-LAW entitled to practice
in and for the Province of Manitoba

Posting Date	Document Type	Document No.	Customer No.	Description	Original Amount	Remaining Amount
2/29/2024	Invoice	S-15976	00011606	Feb 16-29 2024 flights	16,348.00	16,348.00
2/29/2024	Invoice	S-15970	00011606	Feb 2024 AIF	117,806.35	117,806.35
2/19/2024	Invoice	S-15744	00011606	Feb 1-15 2024 flights	38,145.32	38,145.32
2/5/2024	Invoice	S-15670	00011606	Jan 2024 AIF	150,136.52	150,136.52
1/31/2024	Invoice	S-15559	00011606	Jan 16-31 2024 flights	33,008.47	33,008.47
2/1/2024	Invoice	S-15438	00011606	Feb 1 2024 leasing	472.50	472.50
1/25/2024	Invoice	S-15394	00011606	Lynx 1% AIF handling fee Jan 2023 to Dec 2023	14,952.13	14,952.13
1/17/2024	Invoice	S-15319	00011606	Jan 1-15 2024 flights	43,594.66	43,594.66
2/29/2024	Payment		00011606	Security Deposit applied to outstanding aeronautical bills	-83,333.00	-83,333.00
					331,130.95	331,130.95

Leasing	472.50
AIF	282,895.00
Aeronautical	131,096.45
Deposit	-83,333.00
	331,130.95



WINNIPEG
AIRPORTS AUTHORITY

Winnipeg Airports Authority Inc.
249-2000 Wellington Avenue
R3H 1C2 Winnipeg
MB

INVOICE

Page: 1

Invoice Number: S-15670
Invoice Date: 2024-02-05

Bill

To: 1263343 Alberta Inc
dba Lynx Airlines
3215-12 Street NE
Calgary, AB T2E 7S9
Canada

Tax Registration No. 136628591 Customer ID 00011606
Due Date 2024-02-05
Terms Due Upon Receipt

Item/Description	Unit	Order Qty	Quantity	Unit Price	Total Price
Jan 2024 AIF		4,003	4,003	38.00	152,114.00
Jan 2024 AIF processing fee 6%		1	1	-9,126.84	-9,126.84
GST on Processing fee		1	1	-456.34	-456.34

Incoming Wires in CDN funds sent to:
Beneficiary Bank: Canadian Imperial Bank of Commerce
Transit #: 00007 Account #: 9706917 Bank #: 0010
One Lombard Place, 375 Main Street, Winnipeg, MB, Canada, R3C 2P3
Swift Code: CIBCATT
Beneficiary: Winnipeg Airports Authority Inc.
For Payment Inquiries: (204) 987-9466
For General Inquiries: (204) 987-2072
Interest will be charged on overdue accounts.
Remittances are payable in Canadian Funds or USD equivalent.

Subtotal: 142,530.82
GST 7,605.70

Total CAD: 150,136.52



WINNIPEG
AIRPORTS AUTHORITY

Winnipeg Airports Authority Inc.
249-2000 Wellington Avenue
R3H 1C2 Winnipeg
MB

INVOICE

Page: 1

Invoice Number: S-15970
Invoice Date: 2024-02-29

Bill

To: 1263343 Alberta Inc
dba Lynx Airlines
3215-12 Street NE
Calgary, AB T2E 7S9
Canada

Tax Registration No. 136628591 Customer ID 00011606
Due Date 2024-02-29
Terms Due Upon Receipt

Item/Description	Unit	Order Qty	Quantity	Unit Price	Total Price
Feb 2024 AIF		3,141	3,141	38.00	119,358.00
Feb 2024 AIF processing fee 6%		1	1	-7,161.48	-7,161.48
GST on Processing fee		1	1	-358.07	-358.07

Incoming Wires in CDN funds sent to:
Beneficiary Bank: Canadian Imperial Bank of Commerce
Transit #: 00007 Account #: 9706917 Bank #: 0010
One Lombard Place, 375 Main Street, Winnipeg, MB, Canada, R3C 2P3
Swift Code: CIBCCATT
Beneficiary: Winnipeg Airports Authority Inc.
For Payment Inquiries: (204) 987-9466
For General Inquiries: (204) 987-2072
Interest will be charged on overdue accounts.
Remittances are payable in Canadian Funds or USD equivalent.

Subtotal: 111,838.45
GST 5,967.90

Total CAD: 117,806.35



WINNIPEG
AIRPORTS AUTHORITY

Winnipeg Airports Authority Inc.
249-2000 Wellington Avenue
R3H 1C2 Winnipeg
MB

INVOICE

Page: 1

Invoice Number: S-15394
Invoice Date: 2024-01-25

Bill

To: 1263343 Alberta Inc
dba Lynx Airlines
3215-12 Street NE
Calgary, AB T2E 7S9
Canada

Tax Registration No. 136628591 Customer ID 00011606
Due Date 2024-01-25
Terms Due Upon Receipt

Item/Description	Unit	Order Qty	Quantity	Unit Price	Total Price
1% AIF handling fee 2023 as per ATAC agreement		1	1	14,240.12	14,240.12

Incoming Wires in CDN funds sent to:
Beneficiary Bank: Canadian Imperial Bank of Commerce
Transit #: 00007 Account #: 9706917 Bank #: 0010
One Lombard Place, 375 Main Street, Winnipeg, MB, Canada, R3C 2P3
Swift Code: CIBCCATT
Beneficiary: Winnipeg Airports Authority Inc.
For Payment Inquiries: (204) 987-9466
For General Inquiries: (204) 987-2072
Interest will be charged on overdue accounts.
Remittances are payable in Canadian Funds or USD equivalent.

Subtotal: 14,240.12
GST 712.01

Total CAD: 14,952.13

This is **Exhibit "K"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
in and for Alberta
My Commission Expires September 11, 2026

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c C-36, as amended
AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION
AND 1263343 ALBERTA INC. dba LYNX AIR

APPLICANTS GREATER TORONTO AIRPORTS AUTHORITY

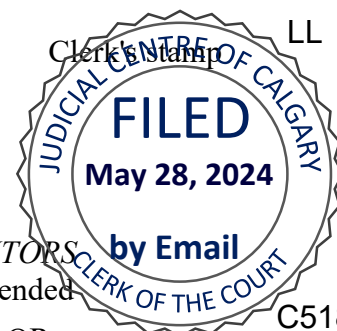
RESPONDENTS LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA
INC. dba LYNX AIR

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

TYR LLP
488 Wellington Street W
Suite 300-302
Toronto, Ontario M5V 1E3

Solicitor: Jason Wadden
Telephone: 416.627.9815
Facsimile: 416.862.6666
Email: jwadden@tyr.com



C51830

Jun 24, 2024
COM

NOTICE TO THE RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: June 24, 2024
Time: **2:00 pm MT**
Where: Calgary, Alberta
Before: The Honourable Justice Romaine presiding on the Calgary Commercial Duty List

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. Greater Toronto Airports Authority (“GTAA”) seeks an order, substantially in the form attached hereto as **Schedule “B”**, for the following relief:
 - (a) a declaration that the unremitted Airport Improvement Fees (the “AIF”) collected and held by 1263343 Alberta Inc. dba Lynx Air (“Lynx Air”) on behalf of the GTAA pursuant to the AIF Agreement (as defined below) (the “Unremitted AIF”) is subject to a trust in favour of the GTAA;
 - (b) directing Lynx Air to release the Unremitted AIF in the amount of CAD \$1,659,580.87 to the GTAA from the amount currently held in reserve by Lynx Air to satisfy claims relating to AIF;
 - (c) directing Lynx Air to pay the outstanding balance of the Post-Filing Obligations (as defined below) in the amount of \$59,424.30, as required under the ARIO (as defined below);
 - (d) the GTAA’s costs of this application on a full indemnity basis; and
 - (e) such further and other relief as the GTAA may request and this Honourable Court may grant.

Grounds for making this application:*Parties*

2. The GTAA is the operator of Toronto Pearson Airport (“**Pearson Airport**”) pursuant to a Ground Lease dated December 2, 1996, as amended, with Her Majesty the Queen in Right of Canada (the “**Ground Lease**”).
3. Lynx Air commenced operating at Pearson Airport in Toronto on April 11, 2022.

Business Relationship between the GTAA and Lynx Air

4. In order to operate at Pearson Airport, the GTAA requires Air Carriers to enter into a series of agreements governing the relationship between the parties, including the following:
 - a. Air Carrier – Application for Entry (the “**Application for Entry**”);
 - b. GTAA Rules; and
 - c. AIF Agreement.
5. Lynx Air entered into each of the above-noted agreements with the GTAA in order to operate at Pearson Airport. At all relevant times, Lynx Air was an Airport User, Air Operator and Air Carrier (as those terms are used therein and below).
 - (a) *Application for Entry*
6. By signing the Application for Entry, Lynx Air confirmed, among other things, that:
 - a. Lynx Air intended to become a Participating Air Carrier under the AIF Agreement (as defined and described below);

- b. Lynx Air agreed to observe and be bound by the terms and directives issued by the GTAA; and
- c. Lynx Air was required to deliver a security deposit consisting of an Irrevocable Letter of Credit or Letter of Guarantee for Landing Fees, General Terminal Fees, Apron Fees, Check-In Fees, and AIF (collectively, the “**Aeronautical Fees and Charges**”).

(b) GTAA Rules

7. The GTAA Rules, among other things, set out certain minimum standards and requirements regarding the Aeronautical Fees and Charges, including:
- a. Air Operators must pay Aeronautical Fees and Charges;
 - b. Air Carriers must enter into the AIF Agreement; and
 - c. Air Carriers must submit a security deposit in a form and amount determined by the GTAA’s Finance Controller and the GTAA may apply the security deposit towards overdue amounts of Aeronautical Fees and Charges or to cover costs associated with violations of the GTAA Rules or under any other agreements.

(c) AIF Agreement

8. Pursuant to the AIF Agreement, Lynx Air agreed to collect AIF from each Enplaned Passenger (i.e., departing passengers, including connecting passengers) using Pearson Airport at the time of the sale of a ticket to such passengers.
9. Lynx Air acknowledged and agreed that: (i) the AIF collected on behalf of the GTAA by Lynx Air are funds or revenues properly belonging to the GTAA and not Lynx Air; (ii) the AIF shall

be held in trust for the benefit of the GTAA; and (iii) that Lynx Air shall remit the AIF to the GTAA on a monthly basis.

10. The AIF collected by Lynx Air was to be used by the GTAA for the purposes of capital programs and capital projects at Pearson Airport.

11. Consistent with the Application for Entry and the GTAA Rules, the AIF Agreement required Lynx Air to deliver to the GTAA a security payment which would act as a guarantee of Lynx Air's obligation to collect and remit AIF.

Letter of Credit

12. On April 12, 2022, Lynx Air provided the GTAA with a security deposit in the form of an Irrevocable Letter of Credit (No. 356141) in favour of the GTAA (the "**Letter of Credit**"). The Letter of Credit was amended several times since April 12, 2022, most recently in June 2023 to the amount of \$3,100,000.

Lynx Air Defaults

13. Following the commencement of operations at Pearson Airport, Lynx Air would collect and remit the AIF to the GTAA on a monthly basis, together with other amounts owing.

14. In October 2023, Lynx Air began falling into arrears on payment of the Aeronautical Fees and Charges (including the remittance of AIF).

15. On February 16, 2024, the GTAA provided notice that Lynx Air was in default of its obligations to pay the Aeronautical Fees and Charges (the "**Notice of Default**").

16. Lynx Air did not respond to the Notice of Default and failed to cure the defaults by February 21, 2024, the deadline provided in the Notice of Default.

17. Under the GTAA Rules, the Notice of Default constitutes a “Notice of Non-Compliance”.

CCAA Proceedings

18. On February 22, 2024, Lynx Air and Lynx Air Holdings Corporation sought and obtained an initial order (the “**Initial Order**”) from this Court commencing proceedings under the *Companies’ Creditors Arrangement Act, RSC 1985, c. C-36* (as amended, the “**CCAA**”).

19. On March 1, 2024, this Court granted an Amended and Restated Initial Order (the “**ARIO**”).

Outstanding Aeronautical Fees and Charges

20. At the time the Initial Order was granted (the “**Filing Date**”), Lynx Air owed \$4,759,580.87 to the GTAA on account of Aeronautical Fees and Charges, consisting of the following (the “**Outstanding Pre-Filing Obligations**”):

a. AIF: \$1,782,424.04

b. Aeronautical Fees: \$2,977,156.83

21. In the period following the Filing Date until the cessation of its operations, Lynx Air incurred additional Aeronautical Fees and rent at Pearson Airport totalling \$247,208.30 (the “**Post-Filing Obligations**”).

22. On February 23, 2024, Lynx Air made payment to the GTAA in the amount of \$187,784.00 in respect of the Post-Filing Obligations, leaving an unpaid balance of \$59,424.30 (of which \$50,567.36 is post-filing unremitted AIF).

23. The ARIO requires Lynx Air to pay for all Post-Filing Obligations.

GTAA draws on the Letter of Credit

24. Given Lynx Air's failure to cure the above-noted defaults, on February 23, 2024, the GTAA drew on the Letter of Credit.

25. On February 29, 2024, the GTAA received payment under the Letter of Credit.

26. As it was entitled to do in its sole discretion, the GTAA applied the Letter of Credit as follows:

- a. first, to the Aeronautical Fees outstanding in the Pre-Filing Period, in the total amount of \$2,977,156; and
- b. second, the remaining funds in the amount of \$122,843.17 were applied to the AIF incurred in the Pre-Filing Period that was unremitted.

27. After application of the funds from the Letter of Credit, AIF in the amount of \$1,659,580.87 remains unremitted (as above, the "**Unremitted AIF**").

28. In February 2024, Lynx Air made several payments towards the Post-Filing Obligations. However, Post-Filing Obligations in the amount of CAD \$59,424.30 remain owing and outstanding.

Lynx Air Fails to Pay Unremitted AIF

29. On April 12, 2024, Lynx Air acknowledged and agreed that the AIF Agreement created a trust relationship in respect of the Remaining AIF Monies.
30. Lynx Air takes the position that all AIF collected by Lynx Air on behalf of the GTAA has been satisfied by the application of the Letter of Credit.
31. To date, the Unremitted AIF remains to be remitted and transferred to the GTAA.

AIF Reserve

32. On April 15, 2024, this Court granted an order, among other things, (i) requiring Lynx Air to establish a reserve to satisfy claims (“**AIF Claims**”) by the GTAA and certain other airport authorities to the AIF, if any, in an amount no less than \$6,879,000 (the “**AIF Reserve**”); (ii) directing that all AIF Claims (if any) may be asserted exclusively against the AIF Reserve; and (iii) directing that AIF Claims against the AIF Reserve shall be paid out of the AIF Reserve only after the existence of any such AIF Claims have been proven.

Material or evidence to be relied on:

33. All pleadings and proceedings filed in the within Action;
34. Affidavit of Jason Boyd, sworn May 24, 2024; and
35. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

36. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.

37. *Judicature Act*, RSA 2000, c J-2.

38. *Alberta Rules of Court*, Alta Reg 124/2010, as amended.

39. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

40. None.

How the application is proposed to be heard or considered:

41. By WebEx Video Conference, before the Honourable Justice Romaine presiding on the Calgary Commercial Duty List on June 24, 2024 at 2:00 pm MT.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered

Schedule "A"

Please see the below Webex details for the hearing scheduled in 2401 02664 - LYNX AIR HOLDINGS CORPORATION v. COMPANIES CREDITORS ARRANGEMENT ACT on June 24 at 2:00 PM MT before Justice Romaine.

Counsel: Please ensure that all relevant parties have received Webex information.

Virtual Courtroom 60 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:
<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

Schedule "B"

PROPOSED FORM OF ORDER

COURT FILE NUMBER	2401-02664	Clerk's stamp
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
MATTERS	IN THE MATTER OF THE <i>COMPANIES' CREDITORS ARRANGEMENT ACT</i> , R.S.C. 1985, c C-36, as amended AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION AND 1263343 ALBERTA INC. dba LYNX AIR	
APPLICANTS	GREATER TORONTO AIRPORTS AUTHORITY	
RESPONDENTS	LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR	
DOCUMENT	ORDER	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	TYR LLP 488 Wellington Street W Suite 300-302 Toronto, Ontario M5V 1E3 Solicitor: Jason Wadden Telephone: 416.627.9815 Facsimile: 416.862.6666 Email: jwadden@tyr.com	

DATE ON WHICH ORDER WAS PRONOUNCED: June 24, 2024

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

JUSTICE WHO MADE THIS ORDER: The Honourable Justice Romaine

UPON THE APPLICATION of the Greater Toronto Airports Authority (“**GTAA**”) in relation to Airport Improvement Fees (“**AIF**”) collected and held by 1263343 Alberta Inc. dba Lynx Air (“**Lynx Air**”) on behalf of the GTAA pursuant to the AIF Agreement dated January 1, 2023 and certain other agreements; **AND UPON** having read the Application, the Affidavit of Jason Boyd sworn on May 24, 2024, and the Affidavit of Service of [●] sworn [●]; **AND UPON** hearing the submissions of counsel for the GTAA, counsel for Lynx Air, and any other counsel or interested parties present;

IT IS HERBY ORDERED AND DECLARED THAT:

Declaration

1. The \$1,659,580.87 in unremitted AIF collected and held by Lynx Air on behalf of the GTAA (the “**Unremitted AIF**”) is subject to a trust and therefore does not form part of the Lynx Air insolvency estate.

Release of Unremitted AIF from AIF Reserve

2. Lynx Air shall release the Unremitted AIF to the GTAA from the amount held in reserve by Lynx Air to satisfy claims relating to AIF.

Payment of Post-Filing Obligations

3. Lynx Air shall pay the outstanding balance of Aeronautical Fees and rent incurred by Lynx Air following the date of the Initial Order to the GTAA in the amount of CAD \$59,424.30.

Costs

4. Lynx Air shall pay the GTAA’s costs of this Application on a full indemnity basis.

Service

5. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.
6. Service of this Order shall be deemed good and sufficient by:
 - a. serving the same on:
 - i. the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - ii. any other person served with notice of the application for this Order;
 - iii. any other parties attending or represented at the application for this Order;
 - iv. posting a copy of this Order on the Monitor’s Website at: <http://cfcanada.fticonsulting.com/lynxair/>; and
 - v. service on any other person is hereby dispensed with.
7. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

This is **Exhibit "L"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
in and for Alberta
My Commission Expires September 11, 2026

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c C-36, as amended
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION COM AND 1263343 ALBERTA INC. dba LYNX AIR

APPLICANTS GREATER TORONTO AIRPORTS AUTHORITY

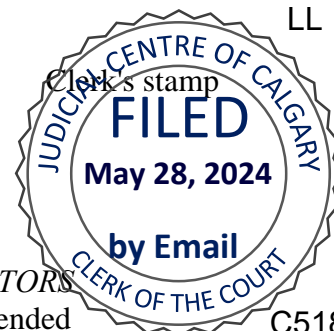
RESPONDENTS LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

TYR LLP
488 Wellington Street W
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Toronto, Ontario M5V 1E3

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Email: jwadden@tyr.com



C51830

Jun 24, 2024

AFFIDAVIT OF JASON BOYD
(Sworn on May 24, 2024)

I, Jason Boyd, of the City of Toronto, in the Province of Ontario MAKE OATH AND SAY:

- I am the Corporate Controller of the Greater Toronto Airports Authority (the "GTAA"). As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources of information, I have so stated, and I believe them to be true and accurate. In preparing

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this affidavit, I have also consulted with members of the senior management team of the GTAA and its legal advisors. The GTAA does not waive or intend to waive any applicable privilege by any statement herein.

2. I affirm this Affidavit in support of the application (the “**Application**”) by the GTAA for an order:

- (a) declaring that the unremitted Airport Improvement Fees (the “**AIF**”) collected and held by 1263343 Alberta Inc. dba Lynx Air (“**Lynx Air**”) on behalf of the GTAA pursuant to the AIF Agreement (as defined below) (the “**Unremitted AIF**”) is subject to a trust in favour of the GTAA;
- (b) directing Lynx Air to release the Unremitted AIF in the amount of CAD \$1,659,580.87 to the GTAA from the amount currently held in reserve by Lynx Air to satisfy claims relating to AIF;
- (c) directing Lynx Air to pay the outstanding balance of the Post-Filing Obligations (as defined below) in the amount of \$59,424.30, as required under the ARIO (as defined below);
- (d) the GTAA’s costs of this application on a full indemnity basis; and
- (e) such further and other relief as the GTAA may request and this Honourable Court may grant.

3. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

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A. Parties

4. The GTAA is a not-for-profit corporation continued under the *Canada Not-for-profit Corporations Act*, R.S.C. 2009, c.23, as amended.

5. The GTAA is the operator of Toronto Pearson Airport (“**Pearson Airport**”) pursuant to a Ground Lease dated December 2, 1996, as amended, with Her Majesty the Queen in Right of Canada (the “**Ground Lease**”). The Ground Lease has a term of 60 years. The GTAA derives its authority to operate Pearson Airport through, among other things, federal laws and the Ground Lease.

6. Lynx Air Holdings Corporation (“**Lynx Holdco**”) is a corporation incorporated under the laws of the Province of Alberta.

7. Lynx Holdco is the 100% parent of 1263343 Alberta Inc. (dba Lynx Air) (“**Lynx Air**”). Lynx Air is a corporation incorporated under the laws of the Province of Alberta. Both Lynx Holdco and Lynx Air have registered offices at 1400, 350-7 Avenue SW, Calgary, AB.

8. As described in further detail below, Lynx Air commenced operating at Pearson Airport on April 11, 2022. At all relevant times, Lynx Air was an Airport User, Air Operator and Air Carrier (as those terms are used and defined below).

9. On February 22, 2024, Lynx Air and Lynx Holdco sought and obtained an initial order (the “**Initial Order**”) from the Court of King’s Bench of Alberta (the “**Court**”) commencing proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”). Lynx Air’s last flight from Pearson Airport took place on February 25, 2024. It is my understanding that Lynx Air ceased business operations shortly thereafter.

B. The Business Relationship between the GTAA and Lynx Air

10. Below I have provided an overview of the key agreements and relevant material terms governing the relationship between the GTAA and Lynx Air during the relevant period:

(a) Application for Entry

11. In early 2022, Lynx Air applied to operate an air carrier service at Pearson Airport. To do so, Lynx Air was required to execute an Air Carrier – Application for Entry agreement with the GTAA (the “**Application for Entry**”). Attached hereto as **Exhibit “A”** is a copy of the Application for Entry.

12. By signing the Application for Entry, Lynx Air confirmed, among other things, that:

- (a) Lynx Air intended to become a Participating Air Carrier under the AIF Agreement (as defined and described below);
- (b) Lynx Air had received a copy of the Toronto Pearson Handbook for Business Partners (the “**Pearson Handbook**”), and that Lynx Air agreed to observe and be bound by its terms and the directives issued by the GTAA; and
- (c) Lynx Air was required to deliver a security deposit consisting of an Irrevocable Letter of Credit or Letter of Guarantee in an amount calculated by the GTAA Finance Controller that could be called upon to cover any outstanding Landing Fees, General Terminal Fees, Apron Fees, Check-In Fees, and AIF.

13. On April 5, 2022, the GTAA wrote to Lynx Air to advise that, following a review of the Application for Entry, Lynx Air was approved to operate at Pearson Airport (the “**Approval**”).

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Letter”). The Approval Letter was expressly subject to the undertaking, acknowledgement and agreement given on behalf of Lynx Air by Mr. Merren McArthur, its CEO and President, that Lynx Air shall pay “all fees and charges relating to its use of [Pearson Airport]” and shall “comply with all directions of the GTAA relating to Lynx Air’s operation at [Pearson Airport] and all applicable statutes, regulations, notices, procedures, standards, rules, policies, programs, guidelines and documents of like kind in force at Pearson Airport as they may exist from time to time, including as stipulated in the Pearson Handbook, as amended from time to time”. A copy of the Approval Letter, acknowledged and agreed to by Mr. McArthur, is attached hereto as **Exhibit “B”**.

14. Lynx Air commenced air operations out of Pearson Airport on or about April 11, 2022. By January and February 2024, shortly before it obtained the Initial Order, Lynx Air was averaging approximately six to seven flights per day in and out of Pearson Airport in January and February 2024.

(b) Toronto Pearson Handbook for Business Partners

15. As confirmed by the Application for Entry, Lynx Air received a copy of, and agreed to observe and be bound by the terms of, the Pearson Handbook. Attached hereto as **Exhibit “C”** is a copy of the Pearson Handbook.

16. Section 9 of the Pearson Handbook provides, among other things, that the Pearson Handbook is incorporated into any contract that Lynx Air may have with the GTAA, and that any breach by Lynx Air of the Pearson Handbook will result in a breach of such contract. Section 9 also explicitly confirms the GTAA’s rights to pursue remedies against Lynx Air for breaches of the Pearson Handbook, including, *inter alia*, restitution for any loss the GTAA has suffered.

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(c) **The Pearson Standard: Rules & Regulations**

17. On or about June 1, 2023, the Pearson Handbook was superseded by the Pearson Standard: Rules and Regulations (the “**GTAA Rules**”). I understand that Lynx Air received a copy of the GTAA Rules. Lynx Air was provided a copy of the GTAA Rules via email to Rob Hoffart, Director, Airport, from thepearsonstandard@gtaa.com on June 5, 2023. Attached hereto as **Exhibit “D”** is a copy of the June 5th email attaching the GTAA Rules.

18. The GTAA Rules contain a comprehensive set of rules, regulations and standards required of Airport Users to foster compliance with GTAA policies, directives, contracts and agreements, and to ensure that operations at Pearson Airport are carried out in a safe, secure, efficient, and sustainable manner. Among other things,

- (a) Rule 2.1.4 provides that Airport Users must carry out all their activities at the Airport in compliance with existing contracts, agreements, licences, permits, and leases between the GTAA and Airport Users; and
- (b) Rule 2.1.5 provides that Airport Users must carry out all their activities at the Airport in conformity with the GTAA Rules and any other document issued by the GTAA in relation to the use of Airport infrastructure, services, or facilities.

19. Rules 2.34 – 2.39 of the GTAA Rules set out the following minimum standards and requirements regarding “Aeronautical Fees and Charges”, which are defined to include, but are not limited to, the following categories: (i) general terminal charges, (ii) landing fees, (iii) Aircraft fees for commercial, business, and General Aviation, (iv) apron fees, (v) de-icing facility fees, (vi) AIF, (vii) Aircraft parking charges, and (viii) slot administration fees (collectively, the “**Aeronautical Fees and Charges**”):

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- (a) Rule 2.34: Air Operators must pay Aeronautical Fees and Charges, as set out in the fee schedules;
 - (b) Rule 2.35: Certain Air Carriers who have entered into an agreement with the GTAA will be billed in accordance with the charges and fees set out in that agreement;
 - (c) Rule 2.36: the GTAA reserves the right to adjust Aeronautical Fees and Charges from time to time;
 - (d) Rule 2.37: Air Carriers must enter into an Airport Improvement Fee (AIF) agreement with the GTAA and adjustments to AIF shall be governed by the terms of that agreement;
 - (e) Rule 2.38: Air Carriers must submit a security deposit in a form and amount determined by the GTAA's Finance Controller and detailed in the GTAA's Air Carrier – Application for Entry prior to commencing operations. The GTAA may apply the security deposit towards overdue amounts of Aeronautical Fees and Charges or to cover costs associated with violations of the GTAA Rules or under any other agreements [emphasis added]; and
 - (f) Rule 2.39: the GTAA will notify the Air Carrier of any overdue and unpaid amounts and give an opportunity to pay prior to applying the security deposit. The GTAA is not required to give notice to apply the security deposit if the Air Carrier has declared bankruptcy or commenced insolvency proceedings in any jurisdiction.
20. Lynx Air is considered both an Air Carrier and an Air Operator under the GTAA Rules, and thus, must comply with Rules 2.34 – 2.39 inclusive.

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21. The GTAA Rules also address the issue of non-compliance by Airport Users. Specifically, Rule 13.1 contemplates that a Notice of Non-Compliance will be issued to Airport Users where non-compliance with the GTAA Rules has been investigated and assessed. Rule 13.5 further provides that failure by an Airport User to address a Notice of Non-Compliance may result in, among other things, “any other actions that are appropriate and necessary in the circumstances and at the sole discretion of the GTAA”.

(d) AIF Agreement

22. As part of its obligations under the Ground Lease, the GTAA has undertaken, on an ongoing basis, the capital development and improvement of Pearson Airport. To help finance this obligation, the GTAA has the authority to levy a fee – known as an “airport improvement fee” or “**AIF**” – upon passengers using Pearson Airport.

23. As noted above, both the Application for Entry and the GTAA Rules require Air Carriers to enter into an agreement (referred to as an AIF Agreement), which addresses the collection, remittance and use of AIF. On April 11, 2022, Lynx Air first signed an AIF Agreement. That initial AIF agreement was subsequently amended, and the parties signed an amended AIF agreement dated January 1, 2023 (hereinafter, the “**AIF Agreement**”). A copy of the AIF Agreement, redacted to exclude certain confidential and commercial sensitive information relating to the Administration Fee (defined below), is attached hereto as **Exhibit “E”** to this affidavit.

24. Pursuant to the AIF Agreement, the Air Carrier agrees to make commercially reasonable efforts to collect AIF (referred to therein as “Deposits”) from each Enplaned Passenger (*i.e.*, departing passengers, including connecting passengers) at the time of the sale of a ticket to such passengers, instead of requiring passengers to pay the AIF directly to the GTAA, in order to

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minimize inconvenience to passengers. The Air Carrier acknowledges and agrees that (i) the AIF collected on behalf of the GTAA by Lynx Air are funds or revenues properly belonging to the GTAA and not the Air Carrier; and (ii) the AIF shall be held in trust for the benefit of the GTAA.

25. With respect to the remittance of AIF, the AIF Agreement provides that the Air Carrier shall remit the AIF to the GTAA on a monthly basis on the first working day of the month following the month of the enplanement by the Enplaned Passenger at Pearson Airport, with such monthly remittances to be made on the basis of the estimated amount owing to the GTAA for the previous month, with final adjustments to be made on a monthly basis. The Air Carrier is required to remit the amount of AIF owing regardless of whether the Air Carrier collected the AIF from Enplaned Passengers.

26. In addition, and consistent with the obligations set out in the GTAA Rules, the AIF Agreement requires the Air Carrier to deliver to the GTAA a security payment (defined therein as the “**Security Amount**”) which will act as a guarantee of the Air Carrier’s obligation to collect and remit AIF, which Security Amount can take the form of a letter of credit or delivery of cash, in an amount equal to a minimum of 30 calendar days of activity. The GTAA may elect to call upon and collect the Security Amount in whole or in part where the Air Carrier has failed to comply with any obligations thereunder with respect to the collection or remittance of AIF or where, in the GTAA’s sole opinion (acting reasonably) an Event of Default (as defined therein) may reasonably be anticipated to be committed.

27. As consideration for performing its obligations under the AIF Agreement, including collecting and holding AIF from Enplaned Passengers on behalf of the GTAA, the Air Carrier is entitled to retain an administration fee, which is calculated as a specified percentage amount (plus

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HST and other applicable taxes) of the amount of the AIF (exclusive of any HST or other applicable taxes) remitted to the GTAA (the “**Administration Fee**”). During the time in which it operated out of Pearson Airport, Lynx Air received Administration Fees totaling \$629,216.60 plus HST and other applicable taxes.

28. The AIF Agreement provides that if legal action is brought by the GTAA for the recovery of AIF, or because of the breach of any other terms, covenants or conditions contained therein, the Air Carrier shall pay to the GTAA all expenses incurred therefor, including solicitors’ fees, if awarded by a court of competent jurisdiction.

(e) Fee Schedule: Aeronautical Fees

29. As noted above, the GTAA also establishes certain other fees, including landing fees, general terminal charges, apron fees and other charges (collectively, the “**Aeronautical Fees**”) related to the use of the facilities and services supplied by the GTAA at Pearson Airport. The GTAA provides to all Air Carriers a copy of its current Fee Schedule (the “**Fee Schedule**”) at the start of every calendar year. A copy of the Fee Schedule effective January 1, 2023, attached hereto as **Exhibit “F”**, was provided to Lynx Air prior to its commencement of operations at Pearson Airport. The Fee Schedule was revised effective January 1, 2024, a copy of which is attached hereto as **Exhibit “G”**.

30. Overall, the Application for Entry, the GTAA Rules, the Fee Schedule and the AIF Agreement work in tandem to create a comprehensive scheme regarding the collection, remittance and use of Aeronautical Fees and Charges (which, as above, includes both the Aeronautical Fees and AIF).

C. Letter of Credit

31. On April 12, 2022, Lynx Air provided the GTAA with a security deposit in the form of an Irrevocable Letter of Credit (No. 356141) in favour of the GTAA from ATB Financial, in its capacity as issuer of the Letter of Credit (the “**Issuer**”), in the amount of \$500,000 (the “**Letter of Credit**”).

32. The Letter of Credit was amended several times since April 12, 2022, with the last amendment occurring on June 5, 2023.

33. In early June 2023, the GTAA re-assessed the quantum of the security deposit required by the GTAA’s credit policy based on Lynx Air’s slot filings for the summer of 2023. The GTAA determined that the amount required was \$3,066,113 and promptly communicated that amount to Lynx Air, as well as providing a breakdown demonstrating how the quantum of the security deposit was calculated (“**Schedule 1-A**”). Attached hereto as **Exhibit “H”** is a copy of Schedule A-1. Schedule 1-A has no bearing on how the Letter of Credit can be applied by the GTAA. As noted below, this is a decision solely within the discretion of the GTAA.

34. The Letter of Credit was amended and increased from \$2,950,000 to \$3,100,000 on June 5, 2023.

D. Lynx Air Defaults

35. Following the commencement of operations at Pearson Airport, Lynx Air initially collected and remitted the Aeronautical Fees and Charges to the GTAA on a monthly basis, together with other amounts owing.

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36. In or about October 2023, Lynx Air started falling into arrears on payment of the Aeronautical Fees and Charges, including its remittance of AIF.

37. Beginning in October 2023, the GTAA sent emails to Lynx Air demanding payment of the overdue amounts. Lynx Air paid some of the overdue Aeronautical Fees and Charges, however, significant amounts remained outstanding.

38. On February 16, 2024, the GTAA sent a letter to Lynx Air providing notice that Lynx Air was in default of its obligations to pay the Aeronautical Fees and Charges (the “**Notice of Default**”). Attached hereto as **Exhibit “I”** is a copy of the Notice of Default. The Notice of Default specified the following breaches and defaults, among other things (the “**Defaults**”):

- (a) Failure to pay the Aeronautical Fees and Charges is a breach of the GTAA Rules and that the Notice of Default constitutes a Notice of Non-Compliance under section 13 of the GTAA Rules; and
- (b) Failure to pay the AIF constituted an Event of Default under the section 3.1.1 of the AIF Agreement.

39. The GTAA demanded payment of the total overdue and outstanding Aeronautical Fees and Charges (which, as noted above, includes the AIF) by no later than 5:00 pm on February 21, 2024, failing which the GTAA may, without limiting any other remedies available to it, immediately draw against the Letter of Credit for the amount overdue and outstanding without further notice. The GTAA specifically noted that if the GTAA applied all or any part of the LOC security deposit, it did not alter Lynx Air’s obligation to maintain and/or replenish a security deposit in accordance with the GTAA’s credit policy. The GTAA reserved all rights and remedies available to it

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including, without limitation, under section 13.5 of the GTAA Rules, at law, in equity, and under statute to collect any amounts owing by Lynx Air.

40. Lynx Air did not provide a response to the Notice of Default and failed to cure the Defaults by February 21, 2024.

E. CCAA Proceedings

41. As noted above, the Initial Order was granted on February 22, 2024. On March 1, 2024, the Court granted an Amended and Restated Initial Order (the “**ARIO**”).

42. At the time the Initial Order was granted (the “**Filing Date**”), Lynx Air owed \$4,759,580.87 to the GTAA on account of outstanding Aeronautical Fees and Charges, consisting of the following (the “**Outstanding Pre-Filing Obligations**”):

- (a) AIF: in the amount of \$1,782,424.04; and
- (b) Aeronautical Fees: in the amount of \$2,977,156.83

43. A copy of an excel spreadsheet prepared by GTAA’s finance department outlining the Outstanding Pre-Filing Obligations is attached hereto as **Exhibit “J”**.

44. In addition, in the period following the Filing Date until the cessation of its operations, Lynx Air incurred additional Aeronautical Fees and Charges (including post-filing AIF) and rent totalling \$247,208.30 (the “**Post-Filing Obligations**”). On or about February 23, 2024, Lynx Air made payment to the GTAA in the amount of \$187,784.00 in respect of the Post-Filing Obligations, leaving an unpaid balance of \$59,424.30 (of which \$50,567.36 is post-

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filing unremitted AIF). A copy of an excel spreadsheet prepared by GTAA's finance department outlining the Post-Filing Obligations is attached hereto as **Exhibit "K"**.

F. GTAA Draws on the Letter of Credit

45. Given Lynx Air's failure to cure the above-noted Defaults, on February 23, 2024, the GTAA sent a letter to ATB Financial, in its capacity as issuer of the Letter of Credit (the "**Issuer**"), advising that the GTAA was entitled to receive payment under the Letter of Credit in the full amount of \$3,100,000, and instructed the Issuer to immediately transfer those funds to the GTAA. Attached hereto as **Exhibit "L"** is a copy of the February 23, 2024 letter.

46. On February 29, 2024, the GTAA received \$3,100,000 in respect of the Letter of Credit.

47. As it was entitled to do in its sole discretion, the GTAA applied the funds from the Letter of Credit as follows:

- (a) First, to the Aeronautical Fees outstanding, in the total amount of \$2,977,156;
- (b) Second, the remaining funds in the amount of \$122,843.17 were applied to the AIF amounts collected by Lynx Air in the Pre-Filing Period that were not remitted to the GTAA.

48. After the application of the funds from the Letter of Credit, AIF that had been collected by Lynx Air in the amount of \$1,659,580.87 is still to be remitted to the GTAA (as above, the "**Unremitted AIF**").

49. A detailed breakdown of how the proceeds of the Letter of Credit was applied to the Aeronautical Fees and Charges is included within **Exhibit "J"**.

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G. Lynx Air Fails to Remit Unremitted AIF

50. On March 5, 2024, the GTAA, through its local counsel, wrote to Lynx Air, copying the Monitor, asserting its trust claim over the Unremitted AIF. Attached hereto as **Exhibit “M”** is a copy of the letter the GTAA sent to Lynx Air, the Monitor, and their respective counsel, dated March 5, 2024 (the “**March 5 Letter**”).

51. On March 28, 2024, the GTAA, through its local counsel, sent another letter to Lynx Air, the Monitor, and their respective counsel, reiterating that Lynx Air was holding the Unremitted AIF in trust on behalf of the GTAA and demanding that Lynx Air immediately remit those funds to the GTAA (the “**March 28 Letter**”). Attached hereto as **Exhibit “N”** is a copy of the March 28 Letter.

52. On April 2, 2024, Lynx Air responded to the GTAA, and certain other airport authorities who have also asserted trust claims with respect to unremitted AIF (the “**April 2 Letter**”). The April 2 letter sets out Lynx Air’s general position with respect to AIF amounts collected, and informed the airport authorities that a separate accounting for each airport authority would be provided in due course. Attached hereto as **Exhibit “O”** is a copy of the April 2 Letter.

53. On April 12, 2024, Lynx Air provided the GTAA with a so-called “individual accounting” of its AIF trust claim (the “**April 12 Letter**”). Lynx Air acknowledged that the AIF Agreement created a trust relationship in respect of the Unremitted AIF and did not dispute the quantum of the Aeronautical Fees and AIF owing. However, Lynx Air took the position that all AIF amounts had been remitted to the GTAA on account of the application of the Letter of Credit, and that no further AIF amounts were owing. Attached as **Exhibit “P”** is a copy of the April 12 Letter.

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54. On April 25, 2024, the GTAA, through its local counsel, responded to the April 12 Letter and communicated the GTAA's disagreement with Lynx Air's position regarding the manner of the allocation of the Letter of Credit (the "**April 25 Letter**"). Attached as **Exhibit "Q"** is a copy of the April 25 Letter.

H. Conclusion


55. Lynx Air has conceded that the Unremitted AIF is subject to a trust and does not form part of Lynx Air's property. The Notice of Default constitutes a Notice of Non-Compliance, which Lynx Air failed to cure, and as such the GTAA was empowered under the GTAA Rules and the AIF Agreement to take any actions that were appropriate and necessary in the circumstances and at its sole discretion. Thus, I believe it was entirely within the GTAA's direction to apply the proceeds of the Letter of Credit first to the Aeronautical Fees owing, before applying any remaining amounts to the unremitted AIF.

56. To date, the Unremitted AIF remains in the possession of Lynx Air and should be remitted to the GTAA, together with the Outstanding Post-Filing Obligations. The GTAA is also contractually entitled to recover all expenses incurred by it to recover the Unremitted AIF, including solicitors' fees.

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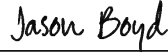
SWORN BEFORE ME over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.

}



Commissioner for Taking Affidavits
(or as may be)

Shimon Sherrington



JASON BOYD

-
- ^A Application for Entry
 - ^B Approval Letter
 - ^C Pearson Handbook
 - ^D GTAA Rules
 - ^E AIF Agreement
 - ^F Fee Schedule
 - ^G Fee Schedule
 - ^H Schedule 1-A
 - ^I Notice of Default
 - ^J Outstanding Pre-Filing Obligations
 - ^K Post-Filing Obligations
 - ^L Issuer Letter
 - ^M March 5 Letter
 - ^N March 28 Letter
 - ^O April 2 Letter
 - ^P April 12 Letter
 - ^Q April 25 Letter

This is Exhibit "A" referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)
Shimon Sherrington



Greater Toronto Airports Authority

Air Carrier – Application for Entry

Version 1

Toronto Pearson International Airport

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1 General Identification

Please contact Susan Danks, Manager, Slots Coordination at susan.danks@gtaa.com or (416) 776-5708 for assistance if required.

Please complete all applicable information:

Airline Name:	Lynx Air
Designation Code:	3 letter:DAT 2 letter:Y9
Full Delivery/Courier Address:	123 1440 Aviation Parkway NE Calgary, AB T2E 7E2
Corporate Telephone Number:	403-648-2800
Corporate Facsimile Number:	403-648-2840
Corporate Website:	www.enerjet.ca
Chief Executive Officer (CEO):	Merren McArthur
Chief Operating Officer (COO):	Tim Morgan
Chief Financial Officer (CFO):	Michael Holditch
Controller:	Catherine P
Accounts Payable Contact:	Name: Harmeet Sandhu Telephone:403-648-2800 Email: accounting@enerjet.ca
Leasing/Property Management Contact:	Name: Telephone: Email:
Fleet Maintenance Supervisor:	Name: Wes Cruickshank Telephone: 403-648-2800 ext 2002 Email: wes.cruickshank@enerjet.ca
Chief Pilot:	Name: Geoff Brown Telephone:403-648-2800 ext 2817 Email: geoff.brown@enerjet.c
Media Spokesperson:	Name: Shauna Macdonald Telephone: Email: smacdonald@brookline.pr

2 Station Operations

2.1 Local Station:

Address:	ATS – 6301 Silver Dart Dr.
Business Telephone Number:	416-574-4958
Emergency Telephone Number:	416-574-4958
Facsimile Number:	N/A
Teletype Address:	N/A
Internet/Email Address:	TBD

2.2 Local Station Manager:

Name:	Lynx OCC
24 hour Contact Details Home Address:	3215 12th Street NE, Calgary
Home Telephone Number:	
Work Telephone Number:	1-877-248-2828 (24hrs)
Cellular Phone Number:	

2.3 Proposed Station Operations:

Inbound Route:	Arrival Time:	Outbound Route:	Departure Time:	Day of Week:	Aircraft Type:
YYC-YYZ	1726	YYZ-YYC	1820	1.2.3.4.5.6.7.	B38M
YVR-YYZ	1554	YYZ-YVR	1655	1.2.3.4.5.6.7.	B38M
YWG-YYZ	1446	YYZ-YWG	1540	4.7.	B38M

Scheduling Department Email: **aviva.mandleman@enerjet.ca**
Teletype: N/A

Terminal Requested:

1 3 Other Specify:

Service Type:



Passenger

Cargo



Schedule Type:

Scheduled Charter

Projected Start Date for operations at YYZ: 11Apr22

Projected Monthly Passenger Forecast: 14000-34000

Projected Monthly Cargo/Mail Forecast (kg): N/A

Proposed Hours of Operation

Office Location:	From:	To:	Days	Telephone Numbers:
Check-in Counter	1230	1830	1.2.3.4.5.6.7.	N/A
Administrative Office	N/A	N/A	N/A	N/A
Reservations/Operations	N/A	N/A	N/A	N/A
Maintenance	TBD	TBD	TBD	TBD
Cargo	N/A	N/A	N/A	N/A

Baggage

Is 100% Hold Baggage Screening (HBS) mandated by your:

Airline? **Country of Origin?**

X x

Yes No Yes No

List the High Risk Destination airports you will be operating to/from affecting YYZ routings:

2.4 Off Gate Parking

The GTAA provides limited off gate parking for aircraft storage. Do you require a GTAA managed parking position?

Yes No Where will you park your aircraft? TBD

2.5 Vendor Identification

Please identify the vendors selected to perform the following services:

Service:	Vendor:	Telephone:
Ground Handling - Ramp Operations	ATS	416-574-4958
Ground Handling – Passenger Services	ATS	416-574-4958
Ground Handling - Cargo	N/A	N/A
Aircraft Maintenance	TBD	TBD

2.6 Lease Arrangements

Please indicate what arrangements you are planning to make for the leasing of property/resources:

Property/Resource:	GTA A Sublease (subject to approval):	Other mechanism/arrangement:
Ticket Counters		
Administrative Offices		
Crew Rooms/Ready Rooms		
Maintenance Space		

2.7 Airport Improvement Fee Agreement

Please contact Kelly Lecours at Kelly.lecours@gtaa.com or (416) 776-4034 for further information about this agreement.

We intend to become a Participating Air Carrier under the GTA A Airport Improvement Fee Agreement.

Yes

Signature:	
Name and Title:	Robyn Barnable
Telephone Number:	403-648-2800 ext 2006

3 Acknowledgement and Appointment

WHEREAS the Greater Toronto Airports Authority (the ‘GTAA’) operates Toronto Pearson International Airport (the ‘Airport’);

AND WHEREAS the undersigned (the ‘Air Carrier’) wishes to operate an air service at the Airport;

NOW THEREFORE in consideration of the GTAA authorizing the Air Carrier to operate an air service at the Airport, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Air Carrier), the Air Carrier hereby agrees as follows:

1. The Air Carrier irrevocably attorns and submits to the jurisdiction of any Ontario court sitting in Toronto in any action or proceeding arising out of or related to its operations at the Airport and irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such Ontario court. The Air Carrier irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. The Air Carrier consents to service of process to the agent appointed pursuant to paragraph 2 hereof or in any other manner authorized by Ontario Law. The Air Carrier agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
2. The Air Carrier constitutes and appoints _____ its true and lawful agent for service, to act as such and generally on behalf of the Air Carrier within Ontario to accept service of process and to receive all lawful notices and, for the purpose of the Air Carrier, to do all acts and to execute all deeds and other instruments relating to the matters within the scope of this appointment. Until due and lawful notice of the appointment of another and subsequent agent has been given to and accepted by the GTAA, service of process or of papers and notices upon the said agent for service shall be accepted by the Air Carrier as sufficient service.
3. The Air Carrier has received a copy of the Toronto Pearson Handbook for Business Partners and agrees to observe and be bound by its terms and the directives issued by the GTAA.

DATED _____, 20__

Name of Air Carrier:	
Name:	
Title:	
Address:	

4 Required Insurance Documentation

Prior to commencing operations, your company is required to submit the following document. Any omission will result in your company's operating authority being either delayed or denied.

A Certified Insurance Certificate(s), signed by an Authorized Representative, evidencing Aviation General Liability Insurance applying to all operations of the Air Carrier or any of the acts, omissions or negligence of the Air Carrier or any of its agents, employees, servants, assignees, or those for whom in law they are responsible. Such coverage shall include bodily injury liability (including death), property damage liability (including damage to aircraft on ground or in flight), personal injury liability, employer's liability, non-owned automobile, contractual liability and products and completed operations (on a twenty-four (24) month basis). Such policies shall be written on a comprehensive basis and all limits shall be written on a per occurrence limit.

Please contact Corporate Risk at Insurance.Services@gtaa.com for assistance if required.

4.1 Policy Amounts

If the Air Carrier is utilizing aircraft with a maximum takeoff weight of 5,670 kg. or less, such policies shall be written for not less than Ten Million Dollars (\$10 Million CDN) per occurrence. If the maximum takeoff weight is greater than 5,670 kg. But less than or equal to 9,072 kg., such policies shall be written for not less than Fifty Million Dollars (\$50 Million CDN) per occurrence. If the maximum takeoff weight is greater than 9,072 kg. but less than or equal to 22,680 kg., such policies shall be written for not less than Seventy-Five Million Dollars (\$75 Million CDN) per occurrence. If the maximum takeoff weight is greater than 22,680 kg. but less than 68,040 kg., such policies shall be written for not less than One Hundred and Fifty Million Dollars (\$150 Million CDN) per occurrence. If the Air Carrier is utilizing aircraft over a maximum takeoff weight of 68,040 kg., such policies shall be written for not less than Three Hundred and Fifty Million Dollars (\$350,000,000 CDN) per occurrence.

Be advised that your company's security passes will expire in accordance with the expiry date on the Certificate of Insurance. Ensure that your Certificate of Insurance is renewed 10 days prior to your expiry date, otherwise your security passes may be delayed or revoked altogether.

4.2 Required Insurance Endorsement (Additional Name Insured)

Notwithstanding any inconsistent statement in the policy described in the certificate referenced herein or attached hereto, it is agreed as follows:

Her Majesty The Queen in Right of Canada, Greater Toronto Airports Authority and its members and all of their officers, employees, agents and those for whom in law they are responsible are hereby named as additional named insured hereunder; but only with respect to the liability arising out of the activities on the named insured.

The policy(ies) listed on this endorsement shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

Written notice of cancellation or any limits reduction or material change in said policy shall be mailed to the Director, Corporate Risk, Greater Toronto Airports Authority, Toronto Pearson International Airport, P.O. Box 6031, Toronto AMF, Ontario, L5P 1B2, thirty (30) days in advance of the effective date thereof.

Insurance under the policy(ies) listed on this endorsement shall be primary insurance and no other insurance or self insured retention carried or held by Greater Toronto Airports Authority shall be called upon to contribute to a loss covered by insurance for the named insured.

Except as stated above and not in conflict with this endorsement, nothing contained herein shall be held to waive, alter or extend any of the limits, agreements, or exclusions of the policy(ies) to which this endorsement applies.

Named Insured:	
Attachment for Policy Number:	
Date:	
Name of Insurance Company:	
Authorized Signature of Insurance Company:	
Print Name:	
Title:	

5 FINANCIAL

Prior to commencing operations at Toronto Pearson International Airport, you are required to submit the following documents. Any omission may result in your company's operating authority being either delayed or denied. Airport staff is available to assist you with any questions.

5.0 Financial

- Certified Financial Statements or Annual Report of the Company;
Financial information may be shared with a third-party credit reporting organization for analysis and report to the 'GTAA'. All information is kept completely Confidential.
- A Security Deposit consisting of an Irrevocable Letter of Credit or Letter of Guarantee in an amount calculated by the GTAA Finance Controller for Landing Fees, General Terminal Fees, Apron Fees, Check-In Fees and Airport Improvement Fees, the Irrevocable Letter of Credit or Guarantee, being an undertaking by a financial institution that is a member of the Canadian Bankers Association, on schedule 1 or 2, shown on the website www.cba.ca. The Irrevocable Letter of Credit or Guarantee must be drafted to pay on demand the amount of the Security Deposit to the GTAA on presentation of a written demand for payment. The Irrevocable Letter of Credit or Guarantee shall adhere to the format and the wording set out in the Irrevocable Letter of Credit or Guarantee form provided in this Section 5 **OR** provide a Security Deposit in the form of cash in Canadian Funds on which the GTAA will pay interest bi-annually.

5.1 Wire Transfer Information

The following is the information required for wire transfers to our account:

Bank:

CIBC

Main Branch, Commerce Court

Toronto, Ontario M9L 1G8

Bank Code: 010

Account Name: Greater Toronto Airports Authority - General Revenue

Transit Number: 00002

Account Number: 36-57817

Swift Code: CIBCCATT

IBAN Code: CC 0010000023657817

5.2 Irrevocable Letter of Credit / Irrevocable Letter of Guarantee

The following is the information required for wire transfers to our account:

TO: Greater Toronto Airports Authority
Toronto Pearson International Airport
P.O. Box 6031
Toronto, AMF, Ontario, L5P 1B2`

hereinafter referred to as the “Beneficiary”

1. We, the undersigned (name and address of financial institution), (“the Financial Institution”) hereby establish an Irrevocable Letter of Credit (“Irrevocable Letter of Credit”) or Letter of Guarantee (“Irrevocable Letter of Guarantee”) in favour of the Beneficiary in the amount of: CAD-Dollars (\$_____) which may be drawn upon by the Beneficiary by presentation to the Financial Institution of a written demand for payment signed by an authorized officer of the beneficiary indicating that the Beneficiary is entitled to receive payment under this letter of credit or letter of Guarantee.

2. Upon presentation of the written demand for payment, the Financial Institution shall forthwith pay the face amount of this Irrevocable Letter of Credit or Irrevocable Letter of Guarantee to the Beneficiary without:

Inquiring about the validity or sufficiency of the demand or right of the Beneficiary to make the demand;

Recognizing a claim by any person; AND

Making any reference to the state of accounts as between the Financial Institution and the Applicant.

3. This Irrevocable Letter of Credit or Irrevocable Letter of Guarantee expires on the ___ day of _____ 20__, subject to the following:

This Irrevocable Letter of Credit or Irrevocable Letter of Guarantee shall be deemed to be automatically extended without any formal amendment for one year from the above stated expiration date or any future expiry date unless, not less than ninety (90) days prior to any such expiration date, the Financial Institution notifies the Beneficiary in writing that the Financial Institution elects not to extend this Irrevocable Letter of Credit or Irrevocable Letter of Guarantee for any further period, in which event the Financial Institution shall pay the Beneficiary, with such written notice of election, a Bill of Exchange in the amount of this Irrevocable Letter of Credit or Irrevocable Letter of Guarantee, less the amount of any previous drawings by the Beneficiary on such Irrevocable Letter of Credit or Irrevocable Letter of Guarantee.

4. Partial drawings are permitted under this Irrevocable Letter of Credit or Irrevocable Letter of Guarantee where a written demand for payment is presented by the Beneficiary, signed by its authorized official, indicating entitlement to receive partial payment under this Irrevocable Letter

of Credit or Irrevocable Letter of Guarantee. The provision of Section 2 hereinabove shall apply mutatis mutandis to any demand for any partial drawings. The amount so drawn under this clause shall be subtracted from the face amount of this Irrevocable Letter of Credit or Irrevocable Letter of Guarantee and shall be endorsed on the reverse side of this Irrevocable Letter of Credit or Irrevocable Letter of Guarantee.

This irrevocable Letter of Credit or Irrevocable Letter of Guarantee bears the following reference number of the Financial Institution:

This Irrevocable Letter of Credit or Irrevocable Letter of Guarantee is subject to the "Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Paris, France, Publication No. 600" as revised from time to time and engages us in accordance with the terms thereof.

For: _____

(Name of Financial Institution)

Signed: _____

(Authorized signature)

Countersigned: _____

(Authorized signature)

Important Note: Upon receipt of this package, submit your planned schedule (slot request) to the IATA Slot office as per section 6.

It will also be necessary to remit a fleet list with the MTOW and seating capacity to:

Susan Danks, Manager, Slot Coordination

susan.danks@gtaa.com

Greater Toronto Airports Authority

Telephone (416) 776-5708

Once the slots are allocated and financial statements are received a financial evaluation of the applicant company will be completed by the Finance Controller of the GTAA.

The Finance Controller will communicate the security deposit, or the prepayment calculation to the GTAA, Manager, Slot Coordination. In order to facilitate the application process this will be communicated to the applicant by the office of the Slot Coordination. If the security deposit is the option of choice, it must be received no later than 10 business days prior to the proposed start date of operations. If the prepayment is the option of choice, the first prepayment must be received no later than 10 business days prior to the proposed start date of operations.

6.0 Slot Allocation Procedure

Toronto Pearson Airport has been designated as an IATA Level 3 fully slot coordinated airport and any carrier planning to operate must apply for and be allocated an arrival and departure slot for every operation.

All slot messages to Toronto Pearson International Airport (YYZ) must be submitted in LOCAL Time.

- The Greater Toronto Airports Authority will only process slot messages that are in LOCAL time.
- All slot response messages including SCR, SHL, SAL and SIR will be in LOCAL time only.
- SCR messages must be in the IATA SSIM format identifying that the message is in LOCAL time. See IATA SSIM manual, section 6.4.2.

Example of correctly formatted header:

```
SCR
//LT
W21
14SEP
YYZ
```

On e-mail slot messages please add the creator address after the //LT e.g. //LT/aaaaa@aaaa.com

In the SI field of the SCR please include the text **ALL TIMES LOCAL**

E-mail is preferred for all slot messages.

For the GTAA send slot messages to: slots@gtaa.com



2.5 Vendor Identification

Please identify the vendors selected to perform the following services:

Service:	Vendor:	Telephone:
Ground Handling - Ramp Operations		
Ground Handling – Passenger Services		
Ground Handling - Cargo		
Aircraft Maintenance		

2.6 Lease Arrangements

Please indicate what arrangements you are planning to make for the leasing of property/resources:

Property/Resource:	GTAA Sublease (subject to approval):	Other mechanism/arrangement:
Ticket Counters		
Administrative Offices		
Crew Rooms/Ready Rooms		
Maintenance Space		

2.7 Airport Improvement Fee Agreement

Please contact Kelly Lecours at Kelly.lecours@gtaa.com or (416) 776-4034 for further information about this agreement.

We intend to become a Participating Air Carrier under the GTAA Airport Improvement Fee Agreement.

Yes

Signature:

Name and Title:

Telephone Number:

[Handwritten Signature]
Michael S. Wooditch, CFO
416-648-2863





3 Acknowledgement and Appointment

WHEREAS the Greater Toronto Airports Authority (the 'GTAA') operates Toronto Pearson International Airport (the 'Airport');

AND WHEREAS the undersigned (the 'Air Carrier') wishes to operate an air service at the Airport;

NOW THEREFORE in consideration of the GTAA authorizing the Air Carrier to operate an air service at the Airport, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Air Carrier), the Air Carrier hereby agrees as follows:

1. The Air Carrier irrevocably attorns and submits to the jurisdiction of any Ontario court sitting in Toronto in any action or proceeding arising out of or related to its operations at the Airport and irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such Ontario court. The Air Carrier irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. The Air Carrier consents to service of process to the agent appointed pursuant to paragraph 2 hereof or in any other manner authorized by Ontario Law. The Air Carrier agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
2. The Air Carrier constitutes and appoints Northland Lindsey LLP its true and lawful agent for service, to act as such and generally on behalf of the Air Carrier within Ontario to accept service of process and to receive all lawful notices and, for the purpose of the Air Carrier, to do all acts and to execute all deeds and other instruments relating to the matters within the scope of this appointment. Until due and lawful notice of the appointment of another and subsequent agent has been given to and accepted by the GTAA, service of process or of papers and notices upon the said agent for service shall be accepted by the Air Carrier as sufficient service.
3. The Air Carrier has received a copy of the Toronto Pearson Handbook for Business Partners and agrees to observe and be bound by its terms and the directives issued by the GTAA.

DATED _____, 20__

Name of Air Carrier: 1863343 Alberta Inc (letter "by name Air")
 Name: Michael S. Housley
 Title: CEO
 Address: 123, 1440 Aviation Park NE, Calgary, AB, T2E 7E2

Michael S. Housley



This is Exhibit "B" referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)
Shimon Sherrington



April 5, 2022

Merren McArthur
 CEO Lynx Air
 123 - 1440 Aviation Parkway NE
 Calgary, AB
 T2E 7E2

Re: Application for Entry

**Greater Toronto
 Airports Authority**

P.O. Box 6031
 3111 Conair Drive
 Toronto ON M9W 6T1
 Canada L5P 1B2

P 416.776.3000
 F 416.776.7966

GTAA.com

Dear Ms. McArthur,

I am pleased to advise you that following review of your "Application for Entry", Lynx Air is approved to operate at Toronto Pearson International Airport ("Toronto Pearson"). Thank you for choosing to provide air service at YYZ. We appreciate your business and warmly welcome you.

The Greater Toronto Airports Authority ("GTAA") manages and operates Toronto Pearson in a manner befitting a world class international airport in accordance with its Ground Lease with the government of Canada. At Toronto Pearson, the terminal buildings, including boarding gates, counters and other facilities, belong to the GTAA. The GTAA may, at any time, direct Lynx Air to use any gate, terminal building, concourse or other location for its aircraft operations as the GTAA determines appropriate in its sole discretion.

This approval is subject to an undertaking signified in the space indicated below, by a duly authorized officer of Lynx Air, that Lynx Air shall pay all fees and charges relating to its use of Toronto Pearson and shall comply, and shall cause its directors, officers, employees, agents and contractors to comply with all directions of the GTAA relating to Lynx Air's operation at Toronto Pearson and all applicable statutes, regulations, notices, procedures, standards, rules, policies, programs, guidelines and documents of like kind in force at Toronto Pearson as they may exist from time to time, including as stipulated in the Toronto Pearson Handbook for Business Partners, as amended from time to time.

Please return the signed original of this letter to the attention of Susan Danks, Manager, Slot Coordination.

GREATER TORONTO AIRPORTS AUTHORITY

Deborah Flint
 President and Chief Executive Officer

ACKNOWLEDGED AND AGREED TO BY

Signature of Duly Authorized Officer

MERREN MCARTHUR

Print Name and Title of Duly Authorized Officer

CEO AND PRESIDENT



torontopearson.com

This is Exhibit "C" referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)

Shimon Sherrington



Toronto Pearson Handbook for Business Partners

Toronto Pearson International Airport



For You. The World.



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Greater Toronto Airports Authority
P.O. Box 6031
3111 Convair Drive
Toronto AMF, Ontario L5P 1B2
416-776-3000
www.TorontoPearson.com

Document Governance

This Handbook for Business Partners is a living document. As Toronto Pearson evolves, amendments will be made to this electronic document, available on TorontoPearson.com.

This Handbook shall be reviewed in its entirety at least annually, and updates made as required. Please refer to this online version frequently for the latest information.

If you have any feedback to offer, click on the link below and send us your thoughts by e-mail: publication@GTAA.com.

Version Control

Version	Date	Changes	Prepared by	Approved by
1.0	2011-11-15	Initial publication	J. Catney	H. Bohan
2.0	2013-04-22	Updated contact information throughout, added new Section 1.1 Safety and Section 2.3 Airside Vehicle Operators Permit, following sections renumbered accordingly	W. MacMillan	H. Bohan

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PREFACE



This Toronto Pearson Handbook for Business Partners provides a useful reference for commercial users, tenants, contractors, employees and others working at Toronto Pearson to ensure both their success and the success of the entire Toronto Pearson community. It states the rules of the GTAA who operate Toronto Pearson to ensure the safety, security and sustainability of all operations at the Airport.

This Handbook replaces the GTAA's Rules and Regulations, dated March 1, 1997. The GTAA derives its authority to operate the Airport and establish its rules through federal legislation and a Ground Lease between Her Majesty the Queen as landlord and the GTAA as tenant.

This Handbook recites the GTAA's basic rules and provides useful information on how to comply with such rules. This Handbook does not recite in full the GTAA's policies, but refers to the most important policies and provides links to either the policies themselves or contact persons who can provide the necessary information.

Every person or company conducting business at Toronto Pearson is subject to government laws and regulations, as well as the rules and policies of the GTAA. This Handbook does not list or reference the government laws and regulations that apply. Users are expected to familiarize themselves with and comply with the applicable laws and regulations.

In the event of a conflict or inconsistency between rules in this Handbook and any law or regulation, the applicable law or regulation shall prevail to the extent of the inconsistency or conflict.

The rules set out in this Handbook are incorporated by reference into the GTAA's agreements, licences and leases with Toronto Pearson community members. A breach of these rules may result in the GTAA terminating an agreement, license or lease.

From time to time, the GTAA issues directives to the Toronto Pearson community. These directives are deemed to be incorporated into the rules of the Toronto Pearson Handbook for Business Partners.

We trust you will read the Handbook and find it helpful.

Howard Eng
President and Chief Executive Officer



SECTION

1

General**1.1 Safety**

Toronto Pearson is a city in itself. On an average day, 95,000 passengers move through the Airport. There are 40,000 employees working at Toronto Pearson. We have our own division of Peel Regional Police, our own Fire and Emergency Services, our own snow removal and maintenance support. We also have our own call centre for emergencies and security or safety concerns.

The safety and security of everyone who works, visits or flies through Toronto Pearson is a shared responsibility. All 40,000 of us have a duty to ensure that our airport is free of hazards and operated in a safe and secure manner to support our vision of zero injuries.

1.2 Reporting Emergencies and Concerns

All tenants, stakeholders, agencies and employees shall report all emergencies, incidents or accidents that occur at Toronto Pearson. This includes leased spaces as well as public areas.

The GTAA shall keep all such reports confidential and shall use the compiled data to create safety awareness campaigns and promote a culture of safety at the airport to support our vision of zero injuries.

Emergencies

Report all emergencies, such as fire, medical or vehicle accidents occurring at Toronto Pearson, on the Airport Emergency Line to ensure the fastest and most appropriate response.

Contact: Airport Emergency Line, 416-776-3033

Non-Emergency Accidents or Injuries

Non-emergency accidents or injuries are those where the threat to life or safety is neither present nor imminent.

Report all non-emergency accidents, incidents and injuries occurring at Toronto Pearson to the Integrated Operations Control Centre as soon as possible.

Contact: Integrated Operations Control Centre, 416-776-3055

Security Concerns

To maintain the high level of security at Toronto Pearson, report any security concerns or threats immediately on the Airport Emergency Line, including such concerns as:

- suspicious behaviour, such as unnecessary loitering near or prolonged observation of secure areas, people obviously out of place for the environment
- threats against aircraft
- infrastructure deficiencies that could compromise security
- unattended items, such as luggage or packages

Contact: Airport Emergency Line, 416-776-3033

Safety Concerns

See it, report it. Prevent it.

Report all safety concerns wherever they occur that are likely to cause injury to any person or damage the environment or Airport property, or that address any other concerns, to the Integrated Operations Control Centre as soon as they become known.

Contact: Integrated Operations Control Centre, 416-776-3055, or report_it@gtaa.com

1.3 Emergency Management

Emergency Management is a comprehensive set of processes aimed at mitigating, preventing, preparing for, responding to, and recovering from emergencies.

As part of the Airport's emergency response process, the GTAA has developed and made available to all business partners the Emergency Response Plan (ERP). All Airport business partners are expected to develop emergency preparedness plans in compliance with the ERP.

Contact: Manager, Emergency Management and Operational Continuity, 416-776-4364

1.4 Airport Construction

All construction at Toronto Pearson, initiated by GTAA, any tenant or other person, requires a [Facility Alteration Permit \(FAP\)](#) issued in accordance with the requirements of the [Airport Construction Code](#).

Contact: [Construction Control Office](#), 416-776-5400
GTAA Administration Building, 3111 Convair Drive,
Toronto, ON L5P 1B2

1.5 Obstruction Control

An assessment and permit from the GTAA is required whenever any physical object on land could potentially obstruct the airspace reserved for aircraft approaching or departing the Airport.

Contact: [Aerodrome Planning](#), 416-776-5022 for an assessment;
for a permit, [Aviation Compliance and Coordination](#), 416-776-4260

1.6 Damage to Airport Property

If you become aware of any damage to the Airport or any property at the Airport, report it immediately to the Integrated Operations Control Centre.

Contact: [Integrated Operations Control Centre](#), 416-776-3055

1.7 Unauthorized Activities

No person shall assist or permit any person to engage in any activity at the Airport that is contrary to any applicable laws, this Handbook, or to any directives or instructions of the GTAA.

Contact: [Integrated Operations Control Centre](#), 416-776-3055

1.8 Special Events

All persons planning to conduct a non-operational activity at Toronto Pearson must obtain an [Activity Permit](#) prior to the event.

Contact: [Commercial Agreement Administration](#), 416-776-7398

1.9 Directives to the Toronto Pearson Community

[Directives](#) to the Toronto Pearson community issued by the GTAA from time to time shall be considered as addenda to this Handbook. At least annually, directives in force will be reviewed and where appropriate included in this Handbook.

Some directives may contain confidential information. Access to these directives is provided only to authorized members of the Toronto Pearson community.

Contact: Director, Integrated Operations Control Centre, 416-776-3054



SECTION

2

Aircraft and Airside Operations

GTAA Aviation Services provides procedures and coordination to ensure the safe and efficient movement of aircraft and vehicles using the runways, taxiways, aprons and service roads at Toronto Pearson. Related activities include, but are not limited to, the following: safety management, airside construction coordination, airside parking allocation, airfield standards, apron management service, deicing operations, noise management and low visibility operations.

2.1 Safety Management Systems

Safety Management Systems are a process-driven method that involves all Airport employees in support of a proactive approach to safety management on the airside area. Aviation safety is our collective responsibility and remains our highest priority in all airside activities.

Our Safety Management Systems rely on all employees reporting their aviation safety concerns in a timely manner, either proactively, or as an incident or accident occurs.

All persons must promptly report safety concerns to the Integrated Operations Control Centre.

Contact: Integrated Operations Control Centre, 416-776-3055
Proactive concerns can be sent by e-mail: report_it@GTAA.com

2.2 Foreign Object Debris

All persons holding a Restricted Area Identification Card (RAIC) are responsible for controlling foreign object debris (FOD) on the Movement Area and in all areas adjacent to the Movement Area where FOD can be generated, including but not limited to baggage rooms, holdrooms, ready rooms, service areas, garages and terminal service roads. FOD shall be removed immediately and deposited in an appropriate container or storage area. When FOD cannot be removed safely, contact the Integrated Operations Control Centre.

Contact: Integrated Operations Control Centre, 416-776-3055—provide location and description of the observed FOD.

2.3 Airside Vehicle Operators Permits

Airside Vehicle Operators Permits (AVOPs) are issued by the GTAA to certify those that demonstrate a regular and ongoing operational need to drive airside in our gate, runway and taxiway areas. AVOP holders must comply with the [Airport Traffic Directives \(ATDs\)](#).

Contact: AVOP Office, 416-776-2867

Aircraft Operations

2.4 Operation of Aircraft

All persons shall navigate, land, service, maintain and repair aircraft at Toronto Pearson in compliance with all applicable laws, orders, rules and regulations issued by [Transport Canada](#), [Nav Canada](#) and the GTAA.

Contact: Manager, Aviation Programs, 416-776-7117, or
Manager, Operations—Airside/Groundside, 416-776-1102

2.5 Aircraft Accident or Incident Reports

An aircraft operator involved in an accident causing personal injury or property damage shall immediately call the Airport Emergency Line. All reports required by federal or provincial agencies, pursuant to any federal or provincial statute or regulation, shall also be submitted to the GTAA Associate Director, Operations and Response, or designate.

Contact: Associate Director, Operations and Response, 416-776-4655
GTAA Administration Building, 3111 Convair Drive,
Toronto, ON L5P 1B2

2.6 Disabled Aircraft

Any owner, lessee, operator or other person having the control, or right of control, of any disabled aircraft shall be responsible for the prompt removal and disposal thereof, and any and all parts thereof, subject to any requirements or direction by the [Transportation Safety Board of Canada \(TSB\)](#) or the GTAA that such removal or disposal be delayed pending an investigation of an accident or other cause of the disability.

If the responsible party cannot remove the disabled aircraft expeditiously, the GTAA will arrange for the disabled aircraft to be removed at the cost of the responsible party.

Contact: Manager, Operations—Airside/Groundside, 416-776-1102

2.7 Taxiing or Moving of Aircraft on Operational Areas

Except for re-positioning of aircraft on leased land, whenever any aircraft is being taxied, towed or otherwise moved on the Movement Areas, contact must be established with Ground Control or Apron Management as appropriate, prior to moving the aircraft. There shall be a person attending the controls of the aircraft and a person in the aircraft monitoring by radio the transmitting frequency in use by either the Control Tower or Apron Management. For all related activities, please review the Apron and Maintenance Run Procedures.

Contact: Manager, Aviation Programs, 416-776-7117, or
Manager, Operations—Airside/Groundside, 416-776-1102

2.8 Apron Operations and Maintenance Run Procedures

Rules specific to operations on apron areas can be found in the Apron and Maintenance Run Procedures.

This document includes, but is not limited to, the following:

- starting or running of aircraft engines
- run-up of aircraft engines
- use of auxillary power units (APUs) on aircraft gates
- aircraft parking responsibility
- aircraft repairs

Contact: Manager, Aviation Programs, 416-776-7117, or
Manager, Operations—Airside/Groundside, 416-776-1102

2.9 Terminal, Apron and Gate Restrictions

General aviation, private, business or corporate aircraft shall not enter or use gates at the terminal buildings without prior permission of the GTAA. If permission is granted, the owner or operator making the request for such entry or use assumes sole and full responsibility for the safety and security of all aircraft, the terminal building and persons using such facilities.

Further, no surface painting or marking on the apron or gate areas is allowed without a Facility Alteration Permit as described in 1.3 Airport Construction.

Contact: Manager, Aviation Programs, 416-776-7117, or
Manager, Operations—Airside/Groundside, 416-776-1102

2.10 Slot Reservations

Toronto Pearson is designated as an [International Air Transport Association \(IATA\) Level 3 Slot Co-ordinated Airport](#). Slot allocation is obtained through the established process, as outlined in the [International Air Transport Association's Worldwide Slot Guidelines](#).

Contact: Manager, Slots and Capacity Allocation, 416-776-4566

2.11 Ground Handling

All persons, companies, air carriers or service providers engaged in any activities as defined in the current version of Annex A of the [International Air Transport Association's Standard Ground Handling Agreement](#) shall obtain a ground handling licence issued by the GTAA and operate in accordance with the GTAA Ground Handling Policy.

Contact: Manager, Aviation Programs, 416-776-7117

2.12 Noise Management

All owners, lessees, operators or other persons having the control or right of control of any aircraft at the Airport must comply with regulations under the [Aeronautics Act](#) for noise abatement and noise emission standards, and all GTAA policies regarding noise mitigation procedures, including without limitation, preferential runway use, night flight restrictions and aircraft operating procedures.

To minimize noise, the GTAA works with [Nav Canada](#) to maintain flight procedures for arriving and departing aircraft at Toronto Pearson. For more information, please refer to the current [Canada Air Pilot](#) and [Canada Flight Supplement](#) publication.

All aircraft operations are monitored for compliance. Failure to comply may result in enforcement through the [Canadian Aviation Regulations](#).

Contact: Manager, Aviation Compliance and Coordination, 416-776-6310

2.13 Aircraft Deicing

No person shall engage in deicing or anti-icing activities without a [Deicing Operations and Mitigation Plan](#) that was approved by Manager, Airside Procedures.

In order to maintain environmental compliance and facilitate the process of determining cause, responsibility and corrective action, the GTAA shall allow only one deicing service provider in a defined area and only in areas where glycol recovery is possible and under conditions specified in the approved plan.

The GTAA reserves the right to inspect operations to ensure compliance with the approved plan. In the event that the approved plan does not ensure environmental compliance, additional mitigation efforts will be required before engaging in deicing or anti-icing activities.

Contact: Manager, Aviation Compliance and Coordination, 416-776-6310

Deicing Locations

Deicing and anti-icing shall occur only at the Central Deicing Facility (CDF) or in specified locations designated by the GTAA in accordance with 2.13 Aircraft Deicing above.

Contact: Manager, Aviation Compliance and Coordination, 416-776-6310

Fuelling of Aircraft

2.14 Fuelling Medevac

If the aircraft being fuelled is operating as a medevac and contains a passenger, GTAA Fire and Emergency Services shall be present.

Contact: Integrated Operations Control Centre, 416-776-3055

2.15 Fuel Spills

In the event of a fuel spill, the air carrier, aircraft operator or fuelling company shall call the Airport Emergency Line and immediately ensure that all appropriate precautions are taken to contain and clean up the spill.

When there is no apparent presence of fire, fuel delivery units shall not be moved until the spillage is removed or remediated to the satisfaction of the GTAA. Spilled fuel shall be cleaned up immediately and the area secured. Every effort shall be made to contain the fuel and keep it from entering the storm drains. No aircraft or vehicle movement shall be allowed in the area until authorized by GTAA Fire and Emergency Services.

Should passengers be evacuated because of a fuel spill, passengers shall not be re-admitted to the loading bridge or the aircraft until authorized by the GTAA Fire and Emergency Services.

Contact: Airport Emergency Line, 416-776-3033

2.16 Lavatory Spills

Spilled lavatory fluids are treated as a hazardous materials spill. All spills shall be reported immediately to the Airport Emergency Line.

Under no circumstance shall a lavatory spill be washed into the storm sewer or sanitary sewer. The air carrier, aircraft operator or other responsible person shall comply with the current Environmental Emergency Contingency Plan (see 7.1 [Environmental Emergency Contingency Plan](#)) regarding cleanup of contaminated (used) and uncontaminated (unused) lavatory fluid.

Contact: Airport Emergency Line, 416-776-3033

2.17 Clean-Up and Containment of Spills

No person shall allow fuel, oil, hydraulic fluid or any other contaminants of any kind to leak or spill onto the Airport property. No fuel, oil, hydraulic fluid, or any other contaminants of any kind, including detergents used to wash aircraft or other surfaces, shall be allowed to flow into or be placed in any sewer system or open water areas.

Whenever a hazardous material spill or leak occurs, the owner, agent in control or the generator of the hazardous material shall immediately take all steps necessary to discover (including notifying appropriate parties), contain, clean up, dispose of and follow up on the spill or leak, in compliance with the current Environmental Emergency Contingency Plan. Additional remediation and restoration of the affected area may be required as instructed by the GTAA.

All spills shall be reported immediately to the Airport Emergency Line.

Contact: Airport Emergency Line, 416-776-3033

2.18 Non-Compliance

If any person, owner, agent in control or the generator of the hazardous material fails to contain and clean up any hazardous material, spill or leak forthwith upon becoming aware of the spill or leak at the Airport, the GTAA may, in addition to its rights and remedies described in 9 [Enforcement](#), contain and clean up such hazardous material, spill or leak at that person's cost. The said person shall pay all costs including labour, materials and services required, including overhead, as incurred or determined by the GTAA as necessary to contain and clean up such hazardous material, spill or leak.

Contact: Manager, Environmental Services, 416-776-3049



SECTION

3

Terminal Buildings and Landside Areas

We are committed to ensuring that all guests have a comfortable and positive experience when visiting Toronto Pearson. Many persons want to join the Toronto Pearson community and conduct business with our guests. By obtaining the required permits, business partners ensure that their activities contribute to the success of all and offer our guests a delightful experience.

3.1 Airport Signs

No signs exposed to public view shall be installed on the Airport without prior written approval from the GTAA. Sign installations shall conform to the requirements of the [Airport Construction Code](#).

No person shall post, distribute, or display signs, advertisements, circulars, printed or written matter at the Airport, without the express written approval of the GTAA.

Contact: Manager, Guest Flow and Facilitation, 416-776-9649

3.2 Logistics

To maintain the safety and security of the Airport and the effective movement of goods and materials through the terminal buildings, the GTAA has developed and established a [Logistics Program](#). An on-site logistics company delivers the program.

Goods and materials transported through the terminal buildings must first be verified and authorized to prevent the introduction of prohibited items. All tenants and service providers shall adhere to the Logistics Program and the security measures associated with the program.

Contact: Logistics service provider, 416-776-5444

3.3 Commercial Activities

Persons conducting any business or commercial undertaking at the Airport shall have either a permit from the GTAA or shall have entered into a lease, licence agreement or other contract with the GTAA in respect to the operation of their business or undertaking.

Before affixing, installing or placing anything at the Airport for the purpose of a business or commercial undertaking, persons must obtain a permit from the GTAA issued pursuant to the [Airport Construction Code](#).

Contact: Senior Manager, Retail Development, 416-776-3255, submit a [Business Interest Application form](#), or Senior Manager, Property Leasing and Development, 416-776-5187

3.4 Commercial Photography

Other than representatives of the news media on official assignments, all still, motion, television, or sound pictures filmed at the Airport for commercial purposes shall only be conducted in accordance with GTAA policies and procedures.

Contact: [Commercial Agreement Administration](#), 416-776-7398

3.5 Litter and Refuse

No person shall place, discharge, or deposit in any manner, papers, trash, rubbish or other refuse anywhere at the Airport, except in receptacles and other such places. All litter and refuse must be covered when transported in vehicles, and all receptacles for said materials must have covers.

Any deposit of garbage, debris or refuse in unauthorized locations shall be collected and removed from the Airport by the responsible tenant. The GTAA may arrange for collection and removal, and charge the responsible tenant for all costs incurred in so doing.

3.6 Dogs and Other Animals

No person shall enter a terminal building with any animal except:

- a service animal
- a house pet properly confined or ready for shipment
- dogs used by enforcement agencies, such as police

3.7 Labour Disputes

Employers and unions who conduct business at the Airport shall notify the GTAA of any pending labour disruption or other labour activity, including picketing, to be conducted in connection with any legal lockout or strike involving the employer at the Airport.

Strike and informational pickets may only be conducted in connection with a legal lockout or strike. The GTAA requires that unions sign a picket protocol before engaging in any picketing activity.

Contact: Security Intelligence, 416-776-5760

3.8 Religious, Political or Charitable Activities

Religious, political or charitable activities shall only be conducted at the Airport in accordance with GTAA policies and procedures.

Contact: Commercial Agreement Administration, 416-776-7398



SECTION

4

Real Estate

Any company that needs land or building premises to operate their business at Toronto Pearson may make a request to the GTAA. Due to limited space availability, the GTAA will determine whether such request will be granted. Land is not available for sale at Toronto Pearson.

If the GTAA determines that it will lease or license premises to the company, the company shall enter into a lease or licence with the GTAA as the landlord or licensor as applicable.

A number of approvals are necessary for tenants to improve their premises at the Airport. Tenants are required to obtain a [Facility Alteration Permit \(FAP\)](#) from the GTAA Construction Control Office before constructing or renovating its premises. Arrangements need to be made to supply utilities to the premises. Land tenants may also require approvals from the City of Mississauga or the Region of Peel if they require new access from a public road. Tenants constructing their own building require approval from Nav Canada.

Contact: Senior Manager, Property Leasing and Development,
416-776-5187



SECTION

5

Ground Transportation

At Toronto Pearson, ground transportation service providers play a significant role in serving our guests. There are many different categories ranging from taxis and limousines, to pre-arranged, off-airport, car rentals, out-of-town van service, Downtown Express and hotel shuttles. Operators of these services may access commercial curbs designated by class at Terminal 1, Terminal 3, and at the Viscount Station. All commercial operators are required to obtain a permit or a licence before they conduct business at Toronto Pearson.

5.1 Taxi and Limousine Licenses

Toronto Pearson has a dedicated taxi and limousine fleet to serve the Airport. These vehicles pick up passengers at the taxi and limousine stands located at the terminal curbs on a first come, first serve basis.

Taxi and limousine licences are issued on an infrequent basis through a competitive process, not on the basis of seniority. Individuals who wish to drive an existing GTAA taxi or limousine must be sponsored by a holder of a taxi or limousine permit or licence. The GTAA requires that all drivers hold municipal licenses, successfully complete sensitivity training and defensive driving, and pass the GTAA's driver examination prior to receiving an Airport Drivers Certificate.

Contact: Commercial Vehicle Clerk, 416-776-4529

5.2 Pre-Arranged Services

The GTAA has established a pre-arranged service to allow any municipally licensed taxi, limousine or charter bus to pick up passengers at the Airport on a pre-arranged basis. To arrange for a taxi or limousine of your choice, please contact your preferred taxi or limousine company. Upon arrival at the Airport, proceed to the designated area listed below, and notify the Pre-Arranged Dispatcher there that you are waiting. The designated areas follow:

- Terminal 1—Door B3
- Terminal 3—Post 29

Taxi and limousine drivers shall attend the pre-arranged service building, located on the approach road to Terminal 3 at 6340-1 Silverdart Drive, to obtain a permit. Upon receipt of the permit, the driver shall remain in the staging lot there until dispatched to the terminal curb. The cost of pre-arranged permits is published on TorontoPearson.com.

Contact: Pre-Arranged Dispatcher, 416-776-7048

5.3 Out of Town Van Services

Currently, there are many [ground transportation service providers](#) operating from Toronto Pearson to destinations in Ontario and the United States. Individuals who wish to provide service from Toronto Pearson require special licensing from the [Ontario Highway Transport Board \(OHTB\)](#) and a licence from the GTAA.

Contact: Manager, Ground Transportation, 416-776-4519

5.4 Hotel Shuttles

Many hotels close to Toronto Pearson have complimentary shuttles to and from the Airport. These shuttles operate at Toronto Pearson under a permit or licence from the GTAA.

Contact: Your hotel for service

5.5 Illegal Taxi/Limousine Operators

Persons who perform commercial pickups for hire are reminded that a permit or licence is required to operate at Toronto Pearson. Individuals who fail to obtain a permit or licence are subject to significant fines under the Ontario Highway Traffic Act, and their vehicle may be impounded.

Employees who notice unauthorized persons soliciting passengers for taxi cabs or limousines should immediately call the Airport Emergency Line.

Contact: Coordinator, Ground Transportation, 416-776-9867
Integrated Operations Control Centre, 416-776-3055



SECTION

6

Fire and Safety

All persons conducting business or other approved activities at the Airport shall comply with all fire and fire-related safety provisions of this Handbook, including hazardous materials, and shall abide by applicable laws, rules and regulations, including the [National Fire Code of Canada](#), the [National Fire Protection Association \(NFPA\)](#) and all other GTAA directives and standards relating to fire and life safety enforced by the Airport Fire Chief.

6.1 Fire Chief

The Airport Fire Chief, Fire and Emergency Services, as the authority having jurisdiction, shall enforce all applicable sections of this Handbook pertaining to life safety, fire protection, fire prevention and fire spread control at Toronto Pearson.

All building, structures and premises shall be inspected annually by Fire and Emergency Services to ensure compliance with this Handbook.

6.2 Reporting Fire and Emergencies

Every person shall immediately report all emergencies on Airport property to the Airport Emergency Line. This will ensure a multi-agency response of fire, police, and ambulance services as appropriate. Persons without immediate access to a phone may report emergencies by GTAA radio or door intercom.

Persons reporting emergencies shall identify themselves by name and organization, giving contact information; describe the nature of the emergency, such as fire, medical emergency, motor vehicle accident; the location of the emergency, giving specifics; and any other pertinent information, such as actions taken.

Contact: Airport Emergency Line, 416-776-3033

6.3 Fire and Life Safety Hazards

Every person shall report fire and life safety hazards immediately to the Integrated Operations Control Centre.

All reports of fire and life safety hazards will be investigated and kept confidential.

Contact: Integrated Operations Control Centre, 416-776-3055

6.4 Fire Extinguishers and Equipment

All fire extinguishers and other such equipment shall be regularly inspected by tenants or their contractors, and shall meet the requirements of the [National Fire Code of Canada](#).

Fire extinguishers and equipment shall not be tampered with at any time, nor used for any purpose other than dealing with a fire emergency. Portable fire extinguishers are intended as a first line of defence to cope with fires of limited size.

Anyone who discovers defective or missing life safety equipment shall report the matter immediately to the Integrated Operations Control Centre.

All employees shall be trained in the use of portable fire extinguishers. Training is available through the Fire and Emergency Services Training Institute (FESTI).

Contact: Integrated Operations Control Centre, 416-776-3055 to report, or to arrange training, FESTI, 416-776-5997

6.5 Inspection and Cleaning of Commercial Cooking Equipment

Maintenance and cleaning procedures for commercial cooking exhaust systems and related equipment on Airport lands shall comply with the GTAA Fire and Emergency Services Kitchen Exhaust System Cleaning Protocol FP-02.

Contact: GTAA Fire and Emergency Services, 416-776-4515

6.6 Fire Department Access to Buildings

Access to buildings shall be maintained in good repair and free of obstructions at all times so fire vehicles can respond quickly to any location at any time. Similarly, access to fire department connections for sprinkler, standpipe systems, fire hydrants and other emergency equipment used by firefighters shall be maintained free of obstructions at all times.

Vehicles shall be parked only in approved areas to maintain free access to building for fire department vehicles. Signs shall be posted identifying approved parking areas and prohibiting parking in areas required for fire department access.

Contact: GTAA Fire and Emergency Services, 416-776-4515

6.7 Fire Safety Plan

A fire safety plan is required by all North American national, state and provincial fire codes based on building use or occupancy types. Generally, the owner of the building is responsible for the preparation of a fire safety plan. Developing plans for buildings with elaborate emergency systems may require the assistance of a fire protection consultant.

Fire safety plans for Airport buildings must be submitted to the Airport Fire Chief or authority having jurisdiction for approval. Once the plan is approved, the owner is responsible for implementing the fire safety plan and training all staff in their duties. It is also the owner's responsibility to ensure that all visitors and staff are informed of their duties in case of fire. During a fire emergency, a copy of the approved fire safety plan shall be prominently posted on each floor area or tenant space for the responding fire departments to use.

Contact: GTAA Fire and Emergency Services, 416-776-4515

6.8 Building and Occupant Fire Safety

Tenants shall keep their premises free from rubbish and debris at all times. For the safety of the occupants in existing buildings, tenants shall comply with the [National Fire Code of Canada, Division B, Part 2](#), dealing with eliminating or controlling fire hazards in and around buildings, installing and maintaining certain life safety systems in buildings, and installing and maintaining related signs and information.

Tenants shall ensure that fire safety training is provided to all of their employees including emergency procedures, use of portable fire extinguisher, and any special fire equipment within their areas. Training records shall be kept for at least two years and shall be made available to GTAA Fire and Emergency Services for review upon request.

Contact: GTAA Fire and Emergency Services, 416-776-4515

6.9 Fire Protection Installations

Fire protection installations shall be maintained in operating condition for the intended use of the system.

6.9.1 Shutdown Notification

When tests, repairs or alterations are made to fire protection installations, including sprinkler and standpipe systems, the following shutdown notifications shall be made in advance whenever possible:

- Integrated Operations Control Centre, who will inform GTAA Fire and Emergency Services
- third-party monitoring agency
- supervisory staff in the building
- occupants of the building

Contact: Integrated Operations Control Centre, 416-776-3055

6.9.2 Protection During Shutdown

When any portion of a fire protection system is temporarily shut down, alternative measures shall be taken to ensure that the level of safety intended by the [National Fire Code of Canada](#) is maintained.

Interruption of normal operation of a fire protection system for any purpose constitutes a “temporary shutdown.” Types of interruptions include, but are not limited to, periodic inspection, testing, maintenance, and repairs.

When a sprinkler system is shut down, alternative measures that can be taken include providing emergency hose lines, portable extinguishers, extra fire watch service, and where practicable temporary water connections to the sprinkler system.

Contact: GTAA Fire and Emergency Services, 416-776-4515

6.10 Open Flames or Fire

No person shall start any open flames or fire of any type on any part of the Airport without permission from the Airport Fire Chief.

No person shall operate an oxyacetylene torch, electric arc or similar flame or spark-producing device on any part of the Airport except in areas specifically designated for such use by the GTAA, unless a hot work permit from the Airport Fire Chief has first been obtained. Such a permit may be obtained by calling the Integrated Operations Control Centre.

Contact: Integrated Operations Control Centre, 416-776-3055

6.11 Flammable and Combustible Liquids

Wherever flammable or combustible liquids are used or stored, the [National Fire Code of Canada](#), Part 4, applies.

Contact: GTAA Fire and Emergency Services, 416-776-4515

6.12 Hazardous Activities

Activities that create a hazard and that were not considered in the original building design shall not be carried out in a building unless provisions are made to control the hazard in compliance with the [National Fire Code of Canada](#).

Contact: GTAA Fire and Emergency Services, 416-776-4515



SECTION

7

Environment

The GTAA is committed to ensuring that activities undertaken at Toronto Pearson are carried out in an environmentally responsible manner, in compliance with applicable environmental laws and regulations, good environmental management practices, and with sensitivity to community and public concerns. The GTAA has made significant operational and capital investments to mitigate the environmental impact of Airport operations.

7.1 Environmental Emergency Contingency Plan

The GTAA makes its Environmental Emergency Contingency Plan (EECP) available to all business partners at the Airport. Tenants are required to develop their own contingency plans, consistent with the EECP, relating to their operations.

Contact: Manager, Environmental Services, 416-776-3049

7.2 Unauthorized Release of Hazardous Material

Tenants shall comply with the GTAA's current Environmental Emergency Contingency Plan. Every person shall immediately report any release or threatened release of a hazardous material on the Airport property using the Airport Emergency Line.

Contact: Airport Emergency Line, 416-776-3033

7.3 Waste Water

Tenants shall comply with the current [Airport Construction Code](#) and the applicable provisions of their leases or occupancy agreements, including the municipal sewer use bylaws regarding the discharge of

sanitary sewage and industrial waste, and the limitations on the concentration of specified constituents.

Contact: Manager, Environmental Services, 416-776-3049



SECTION

8

Security

At Toronto Pearson, security is critical to our collective success. As the busiest airport in Canada, moving 35 million passengers a year, as a key port of entry into Canada and a place where 40,000 people are employed, we all share the responsibility for keeping Toronto Pearson safe and secure.

Threats at the Airport exist and must be managed by the GTAA and our Airport security partners. These threats can take many forms ranging from threats against civil aviation to criminal acts.

In response to threats against civil aviation, Transport Canada may increase the national Aviation Security Level, and the GTAA will respond by making appropriate adjustments in the Airport security program. We ask that business partners remain flexible and accommodating with any identified requirements. Examples of security program changes may include, but are not limited to:

- Increase in security patrols
- Fewer airside or terminal access points open or available
- Increased vigilance and awareness

8.1 Roles and Responsibilities

There are many organizations within the Toronto Pearson community that form part of the Airport security program. A few are listed below.

8.1.1 Greater Toronto Airports Authority

The GTAA coordinates security activities collaboratively with tenants, airlines and security partners. This approach ensures that the Airport is protected against legitimate threat scenarios without compromising the well-being of guests.

8.1.2 Business Partners

All business partners play an integral role in the Airport security program by remaining vigilant in their everyday activities, participating in security committees, reporting security concerns, complying with all applicable legal requirements and supporting Airport security initiatives.

8.1.3 Peel Regional Police

[Peel Regional Police](#) are the police service of jurisdiction and provide full police response and enforcement at Toronto Pearson. The Airport division protect life and property, and prevent or investigate criminal acts. They are an integral part of the Airport security program.

Information: Peel Regional Police Airport division, 905-453-3311

8.1.4 Primary Security Line Partners

Primary security line partners (with some exceptions) are businesses that occupy an area that is on the Airport's Primary Security Line and that have an access point into the Restricted Area. These businesses have specific duties and obligations under the [Canadian Aviation Security Regulations](#).

All primary security line partners are responsible to prevent the following actions:

- unauthorized persons from accessing the restricted area from the facility under their responsibility or control
- unauthorized persons from accessing aircraft, cargo or other assets within a tenant's facility
- the introduction of any weapons, explosives or incendiary devices, and components of such devices that may be used to commit an unlawful act against civil aviation

These partners report any security incidents immediately to the GTAA Integrated Operations Control Centre so that the incident can be mitigated.

Contact: Integrated Operations Control Centre, 416-776-3055

8.2 Security Programs

The following security programs are ongoing at Toronto Pearson.

8.2.1 Restricted Area Identification Card Process

The GTAA [Pass/Permit Control Office](#) issues and administers security clearances, Restricted Area Identification Cards (RAICs) and other security items to Airport business partners that have demonstrated a frequent need and right of entry into Airport restricted areas while in the performance of their duties.

Business partners shall designate a management representative who shall contact the Manager, Pass/Permit Control Office, and coordinate requirements, on behalf of the company, for the issuance of security items relevant to duties performed in restricted areas.

The designated management representative shall be the point of contact and assist the Pass/Permit Control Office in the administration and control of any security items issued to that company or any employee of that company.

Contact: Manager, Pass/Permit Control Office, 416-776-7277

Information: [Pass/Permit Control Office page](#) on TorontoPearson.com

8.2.2 Security Awareness

To provide a better understanding of the role our business partners play at Toronto Pearson, the GTAA provides a mandatory security awareness program for all RAIC holders that includes an interactive session for persons who have a requirement to access the restricted area throughout the facilities.

Information: [Security Awareness Training page](#) on TorontoPearson.com

8.2.3 Primary Security Line Partners/Tenant Security Program

Primary security line tenants play an important role in controlling access to restricted areas at Toronto Pearson.

The Tenant Security Program identifies the security obligations of tenants who have or control access to the Airport's restricted areas as part of their business operations. All primary security line tenants, including their sub-tenants, shall develop and submit a Tenant Security Plan to GTAA in compliance with the program and the [Canadian Aviation Security Regulations](#).

Contact: Manager, Aviation Safety and Security Response Programs, 416-776-4700

8.2.4 Unscreened Flights

Air carriers and ground handling agencies seeking approval for regularly scheduled, unscreened flight arrivals into Terminals 1 or 3 shall forward a written request detailing the specifics of the flight to the GTAA.

Contact: Associate Director, Corporate Policy, Safety and Security, 416-776-3260

8.2.5 Trespass Control

The GTAA maintains a trespass control program and can issue trespass notices. Any person encountering a person who is not considered a travelling passenger or greeter and who is engaged in questionable

behaviour such as loitering, cart scooping or illegal taxi operations, shall contact the Integrated Operations Control Centre.

Contact: Integrated Operations Control Centre, 416-776-3055

8.3 Security Controls

Security controls include barriers and the prohibition of certain items at the Airport.

8.3.1 Security Barriers

All buildings, obstacles and fences that form a part of the security barrier must comply with the [Canadian Aviation Security Regulations](#). The security barrier must remain secure while not in use and be kept clear of obstructions. No one is permitted to undertake any modifications or construction activities that could impact the security barrier or security posture without GTAA approval.

Snow, baggage carts, containers and equipment parking may encroach on the clearance limits of the security barrier. If the GTAA determines it necessary to remove these materials or equipment, they may be removed at the owner's expense.

Persons authorized to access or control access through the security barrier are required to prevent access by unauthorized persons.

Information: Senior Manager, Security Plans and Infrastructure, 416-776-3567

8.3.2 Sale of Weapons

The sale of weapons or any model or miniature of a weapon at Toronto Pearson is strictly prohibited.

Information: Senior Manager, Security Plans and Infrastructure, 416-776-3567

8.3.3 Prohibited Items on the Airport

The list of prohibited items published by the [Canada Air Transport Security Authority](#) identifies items that are not permitted within the secure area at Toronto Pearson as they may interfere with the safe and secure operation of aircraft or Airport facilities.

Employees may enter the secure area with prohibited items provided they are approved as tools of the trade.

Weapons, ammunition and explosives are not permitted to be accessible or in the possession of any person on Airport property unless the person is authorized by regulations and is licensed to carry such weapons, ammunition or explosives.

Authorized persons may have a firearm in their possession or accessible to them while engaged by the GTAA in wildlife control at Toronto Pearson.

Information: [Transport Canada's website](#)



SECTION

9

Enforcement

This Handbook has been developed in part to assist business partners and others in understanding their obligations with respect to the business or activities they conduct at the Airport. This Handbook establishes minimum standards of behaviour that must be complied with to ensure the safe, secure, and efficient operation of the Airport.

In addition to any action that may be taken by government authorities or agencies relating to a violation of any statute, regulation, by-law or other lawful requirement, the GTAA shall take such action and pursue the remedies available to it that it believes are appropriate in the event any of the provisions of this Handbook are violated.

Some of the actions and remedies that the GTAA may take include, but are not limited to, the following:

1. Seek restitution by requiring the person to compensate the GTAA for any loss, damage or injury suffered by the GTAA or the Airport, including to property or the environment.
2. Require the person to rectify at their expense any loss, damage or injury caused by the person to the GTAA's property, the Airport, the property of others, or the environment.
3. Deny the person access or use of any part or all of the Airport or any facility.
4. Require the person to pay the GTAA \$5,000 as a genuine pre-estimate of the GTAA's loss, damage or injury, and not as a penalty.
5. Publish the name of any person who violates any provision contained in this Handbook.

In addition, because this Handbook is incorporated into any contract that any person may have with the GTAA—such as a lease, license or permit—any breach of this Handbook will result in a breach of such contract. In that event, the GTAA may pursue the rights and remedies described in the contract, including termination of the contract.



APPENDIX

A

Glossary

The following terms are used in this Handbook.

Term	Definition
Access Control System	a system designed to control access through a barrier at a restricted area access point
air carrier	an aircraft operator licensed by the National Transportation Agency of Canada to transport persons, mail and goods by air for remuneration
aircraft	any and all machines capable of deriving support in the atmosphere from reactions of the air
aircraft operator	in respect of an aircraft, the person who is in charge of the aircraft, whether or not the person is actually attending the controls of the aircraft
Airport	all land and improvements within the geographical boundaries of Lester B. Pearson International Airport, also known as Toronto Pearson
Airport Construction Code	the manual issued by the GTAA from time to time that regulates construction at the Airport
Airport People Mover (APM)	automated elevated rail connection between stations at Terminals 1 and 3, and the Viscount Station, also known as the LINK train
Airport Terminal Information System	a continuous broadcast of recorded non-control information for pilots containing essential information such as weather, active runways, available approaches and important Notices to Airmen

Term	Definition
Airport Traffic Directives (ATDs)	description of the driving environment and rules and regulations for operating a motor vehicle on the airside area of Toronto Pearson, complies with Transport Canada's Aerodrome Standards and Recommended Practices
airside area	the subsystem of the Airport that provides the means for the operation and maintenance of aircraft, including such facilities as runways, taxiways, gates, aprons, aircraft holding areas, aircraft servicing and maintenance areas, and the air traffic control system
Airside Vehicle Operator's Permit (AVOP)	designation issued by the GTAA to certify that the holder can operate a motor vehicle safely on the airside area for the purpose of performing work-related duties, requires the holder to maintain a valid provincial driver's licence, RAIC, and successfully complete AVOP program testing
apron	the part of the Airport, other than the Manoeuvring Area, intended to accommodate the loading and unloading of passengers and cargo; the refuelling, servicing, maintenance and parking of aircraft; and any movement of aircraft, vehicles and pedestrians necessary for such purposes
bus	a commercial passenger vehicle operated on a per-passenger fare basis and serving a specific route or destination
business partner	commercial users of Toronto Pearson, including but not limited to air carriers, tenants, contractors, service providers, and their employees
Central Deicing Facility (CDF)	Toronto Pearson airside facility dedicated to deicing and anti-icing aircraft with a glycol processing system
Chapter 2 aircraft	The International Civil Aviation Organization's initial noise standard for jet-powered aircraft designed before 1977, included in Chapter 2 of Annex 16, <i>Environmental Protection</i> , Volume I, of the <i>Aircraft Noise to the Convention on International Civil Aviation</i> . Examples of Chapter 2 aircraft include the Boeing 727 and the Douglas DC-9.

Term	Definition
commercial passenger vehicle	a rental motor vehicle or a motor vehicle that is used in the transportation of persons for compensation
construction	any new facilities; and alteration, replacement, renovation, relocation or demolition of existing facilities at the Airport
courtesy vehicle	a motor vehicle operated by a commercial enterprise for the purpose of transporting customers of that enterprise between the Airport and the place of business of that enterprise
directive	Toronto Pearson community communication published by the GTAA from time to time that amends this Handbook
driver	with respect to a motor vehicle, the person who is driving or has care and control of that motor vehicle
emergency	an accident or incident requiring a prompt response to protect life or the safety of people, property, or the environment due to a present or imminent threat <i>See also non-emergency</i>
Emergency Response Plan (ERP)	GTAA plan that identifies the integrated response strategies for handling different emergencies at Toronto Pearson, complies with Canadian Aviation Regulations , Canadian Aerodrome Security Measures , and Canadian Aviation Security Regulations
Environmental Emergency Contingency Plan (EECP)	GTAA contingency plan that outlines emergency procedures to be used in the event of an environmental incident at Toronto Pearson to ensure a prompt and orderly response
federal statute or regulation	legislation passed under the authority of Her Majesty in Right of Canada
foreign object debris or damage (FOD)	any metal, plastic or paper litter that could potentially cause damage to jet engines and injury to persons
general vehicle station	an area at the Airport described or delineated pursuant to Rule 4 for the parking and standing of a courtesy vehicle or a commercial passenger vehicle, other than a taxi cab or limousine, used to provide transportation for passengers or goods

Term	Definition
Greater Toronto Airports Authority (GTAA)	the Canadian Airport Authority that manages Toronto Pearson International Airport
groundside	the subsystem of the Airport that provides the means of interchange, for both passengers and goods, between ground transport and air transport, including such facilities as terminal buildings, parking areas and structures, and the road system on the Airport property
Guest Services Representatives (GSRs)	GTAA service representatives dedicated to Toronto Pearson's guests, answering public calls, inquiries, and staffing information counters
hazardous materials	any biological, chemical or physical agent or material that could harm people, other living organisms or the environment because of its quantity, concentration or physical or chemical properties; classified as flammable, combustible, explosive, toxic, radioactive or corrosive materials; oxidizers; aerosols; or compressed gases
Integrated Operations Control Centre	GTAA call centre for emergency, security and maintenance issues; coordinates response; monitors systems; reports
key	any device designed to provide access to a restricted area at a restricted area access point
Lightning Detection System (LDS)	system that warns of imminent lightning strikes at Toronto Pearson using a combination of real-time lightning strike information and sensors that measure the local electric field
limousine	a commercial passenger vehicle other than a bus that has a seating capacity of not more than six passengers, including the driver, that is used for the transportation of passengers on a zone fare basis
limousine station	an area at the Airport described or delineated pursuant to Rule 4 for the parking or standing of any limousines
Manoeuvring Area	that part of the Airport used for the takeoff and landing of aircraft, and for the movement of aircraft associated with takeoff and landing, excluding aprons

Term	Definition
Movement Area	that part of the Airport used for the surface movement of aircraft, including the Manoeuvring Area and aprons
non-emergency	an accident or incident where the threat to life or the safety of people, property, or the environment is neither present nor imminent <i>See also</i> emergency
Notice to Airmen (NOTAM)	alerts to pilots of any hazards en route to a specific location, published by government agencies and airport operators
operator	in respect of commercial passenger vehicles or courtesy vehicles, the person who is in charge of the vehicle, whether or not the actual driver
permit	a licence to operate at Toronto Pearson issued pursuant to Rule 4
permit holder	the operator specified in the permit
person	any individual, firm, co-partnership, corporation, company, association or political body, including any trustee, receiver, assignee, or representative thereof
plate	a plate, card, sticker or other device provided pursuant to Rule 4
police officer	a person employed by a municipal or regional police service to preserve the public peace, and who is engaged in the execution of his or her duties
provincial statute or regulation	legislation passed under the authority of Her Majesty in Right of Ontario
restricted area	an area of the Airport designated by a sign as an area to which access by persons or vehicles requires the authorization (RAIC) and need and right
restricted area access point	a point in a barrier at which an access control system is in place
Restricted Area Identification Card (RAIC)	a document or other piece of identification approved or issued by or under the authority of the Chief Executive Officer authorizing its holder to have access to a restricted area

Term	Definition
roadway	that portion of a highway or street improved, designed, or ordinarily used for vehicular travel
Safety and Security Officer (SSO)	GTAA safety and security response and enforcement officers who patrol the Toronto Pearson site from the access roads and parking garages (Guest and Terminal Services Safety and Security Officer—GTS-SSO), to the secure apron areas around the aircraft (Aviation Services Safety and Security Officer—AVS-SSO)
screening	the measures established, maintained and carried out for the control, identification, observation inspection or search of persons, personal belongings, baggage and cargo to prevent the unauthorized possession and carriage of weapons, explosives and incendiaries on the Airport or on-board aircraft
security barrier	any physical structure or natural feature designed or used to prevent or deter access by unauthorized persons to a restricted area of the Airport
security measures	measures aimed at preventing unlawful interference with civil aviation or actions that are contrary to this Handbook
security personnel	persons employed at the Airport to provide services aimed at preventing unlawful interference with civil aviation and ensuring that appropriate action is taken where that interference occurs or is likely to occur
service animal	any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability
taxi cab	a commercial passenger vehicle, other than a bus or limousine, fitted with a meter that is used to determine the fee to be paid pursuant to Rule 4
taxi cab station	an area at the Airport described or delineated pursuant to Rule 4 for the parking or standing of any taxi cab
tenant	a leaseholder, licensee or other occupant of land or premises within the boundaries of the Airport, and his or her subleases or duly authorized agents

Term	Definition
Tenant/Airline Representatives (TARs)	GTAA service representatives dedicated to Toronto Pearson's airline customers, tenants and government agencies
terminal building	all buildings and structures located within the Airport and open to the public for the purpose of flight ticket purchase, public lobby waiting, baggage check-in and other services related to public air travel, including Terminals 1 and 3
vehicle	any automobile, truck, bus, or any self propelled vehicle or device in which any person or property can be transported, carried, or conveyed on land, but does not include an aircraft
vehicle operator	in respect of commercial passenger vehicles or courtesy vehicles, the person who is in charge of the vehicle, whether or not the person is actually the driver
weapon	anything used or intended for use in causing death or injury to persons, whether designed for such purpose or not, or anything used or intended for use for the purpose of threatening or intimidating any person, and, without restricting the generality of the foregoing, includes any firearm

This is Exhibit “D” referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)
Shimon Sherrington

Introducing The Pearson Standard: Rules & Regulations



ZZG-thepearsonstandard

To ○ ZZG-thepearsonstandard

Bcc



Mon 6/5/2023 11:19 AM

Rob Hoffart;

Internal to GTAA

Hello,

We are pleased to share with you our new Pearson Standard: Rules & Regulations. The purpose of this document is to provide a shared path toward achieving a new standard of responsibility, performance and quality that benefits us all. It is effective today, June 5, 2023, and replaces the Pearson Handbook for Business Partners, which you may be familiar with.

You can find the Rules & Regulations in a new dedicated section of the website: www.torontopearson.com/thepearsonstandard

The Pearson Standard: Rules & Regulations document is a comprehensive, easy-to-access resource where your obligations and rights are clearly described. Refer to it when you need clarity on what we expect from you, or what you should expect from us. This document can also provide guidance on addressing challenges when they arise. It's designed to help us all create successful customer and business relationships.

The Rules & Regulations are incorporated into many of our contractual agreements, so please familiarize yourself with them and promptly take any steps necessary to ensure you adhere to them. Please fill out this form to confirm receipt of the new Rules & Regulations: <https://forms.office.com/r/CJdJiNU879>

To complement the Rules & Regulations, we have also published the GTAA Commitment to The Pearson Standard. This outlines the standards we aim to achieve for areas within our control.

It's you, our partners, that make Toronto Pearson an airport we can all be proud of. The expectations outlined in Rules & Regulations are essential to building a world-class international airport with safety, security, and quality of service as priorities. When everyone succeeds, Pearson succeeds.

We look forward to achieving world-class performance, together. For questions, please contact thepearsonstandard@gtaa.com.



Rules & Regulations

The Pearson Standard

Our shared path toward achieving new standards of responsibility, performance and quality that benefit us all.

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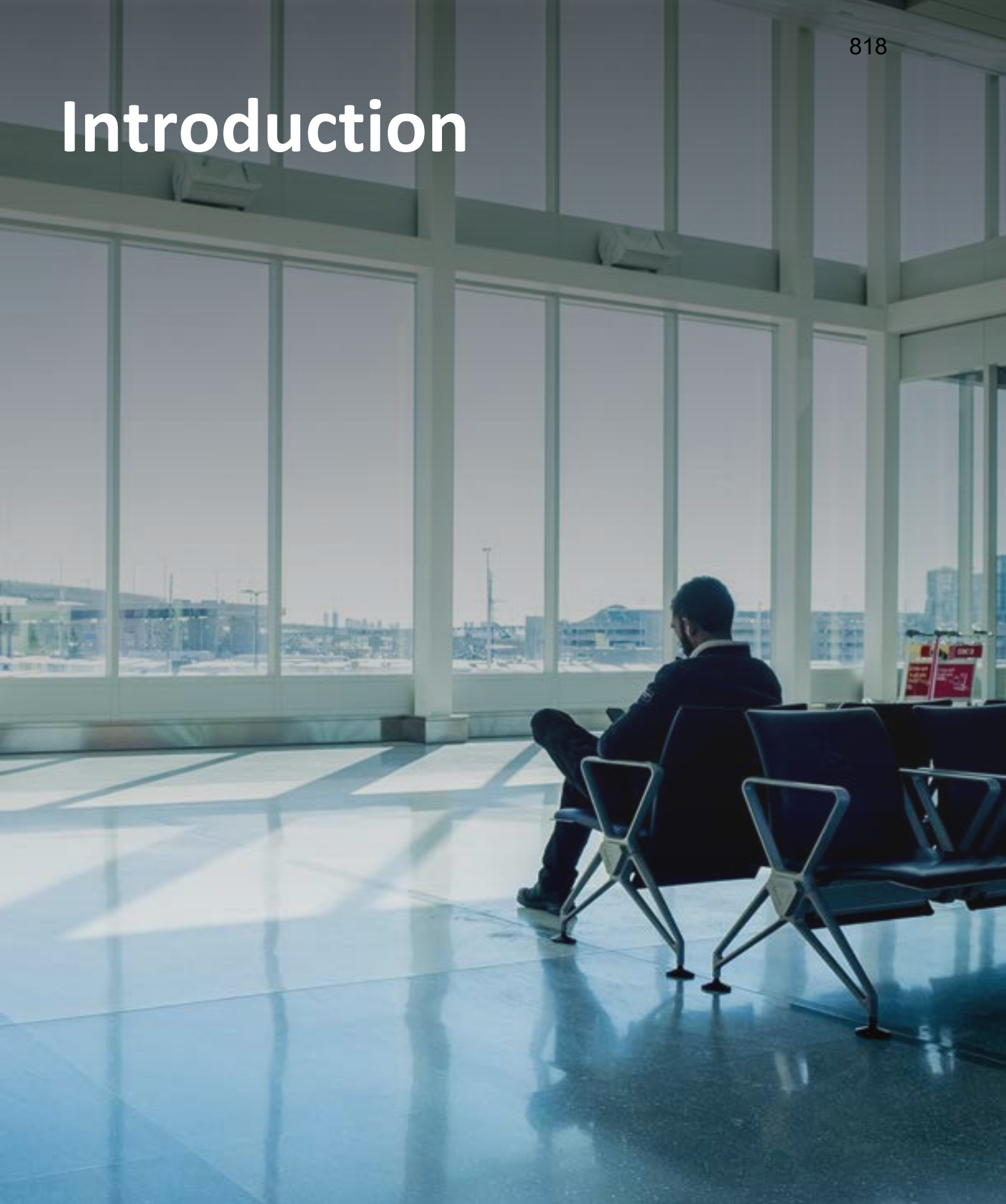
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Revisions log

Summary of new and revised pages

Date (DD/MM/YY)	Type (New, Revision)	Section(s)	Description
05/06/23	New	All	First publication of the GTAA Rules and Regulations

Introduction



1. Authority, objectives and binding obligations ⁸¹⁹

Authority

- 1.1 The Greater Toronto Airports Authority (“GTAA”), as the operator of Toronto – Lester B. Pearson International Airport (“Airport”), derives its authority to operate the Airport and establishes its rules and directives through federal laws and the Ground Lease.

Objectives

- 1.2 The objectives of the GTAA Rules and Regulations (“GTAA Rules”) are to:
 - 1.2.1 Ensure that Airport operations are carried out in a safe, secure, efficient, and sustainable manner by Airport Users.
 - 1.2.2 Promote accountability among Airport Users to deliver high standards of operational efficiency and innovation, safety, customer service, stakeholder collaboration, and employee well-being.
 - 1.2.3 Ensure the lawful and orderly use of Airport infrastructure, facilities, and services at all times by Airport Users.
 - 1.2.4 Foster compliance with GTAA internal guidance, plans, programs, policies, procedures, directives, advisories, notices, manuals, codes, standards, protocols, recommended practices, and according to the provisions of contracts, agreements, licences, permits, and leases.
 - 1.2.5 Ensure that Airport operations are conducted in compliance with applicable national and international laws, regulations, and recommended practices, particularly in the areas of safety, security, environmental protection, health protection, accessibility, privacy, and confidentiality.

Binding obligations

- 1.3 Airport Users agree to be bound by the obligations set out in the GTAA Rules and commit to ensuring that all their agents, licensees, and sub-contractors are familiar and fully comply with the sections that apply to them.
- 1.4 Airport Users are expected to comply with all government laws and regulations that apply to their activities.
- 1.5 The GTAA commits to administering the GTAA Rules consistently, fairly, and transparently, and conducting any monitoring and auditing activities objectively and rigorously.
- 1.6 The GTAA is committed to achieving world class performance and has documented the GTAA Commitment to the Pearson Standard to outline standards for operational excellence in the areas of its direct control.

Effective date

- 1.7 The GTAA Rules take effect as of the date inserted in the first line of the Revisions Log and supersedes the Toronto Pearson Handbook for Business Partners published on November 15, 2011, and last amended on April 22, 2013.

Amendments

- 1.8 The GTAA reserves the right to make amendments to the GTAA Rules from time to time and at its sole discretion in order to:
 - 1.8.1 Address safety, security, health, and environmental obligations, incorporate sustainability practices, and close gaps related to operational performance, customer service and passenger experience.
 - 1.8.2 Comply with government laws and regulations, new international legal frameworks and standards, and global recommended best practices.
 - 1.8.3 Maintain the financial viability, competitiveness, and reputation of the Airport.
- 1.9 The GTAA will provide reasonable written notice to Airport Users in relation to any future amendments to the GTAA Rules via accessible means of communication and, where change is necessary, reasonable time to adjust their operations to comply with the amendment.

Conflicts with government laws and regulations

- 1.10 In the event of a conflict or inconsistency between the GTAA Rules and government laws or regulations, the applicable government law or regulation shall prevail to the extent of the inconsistency or conflict.

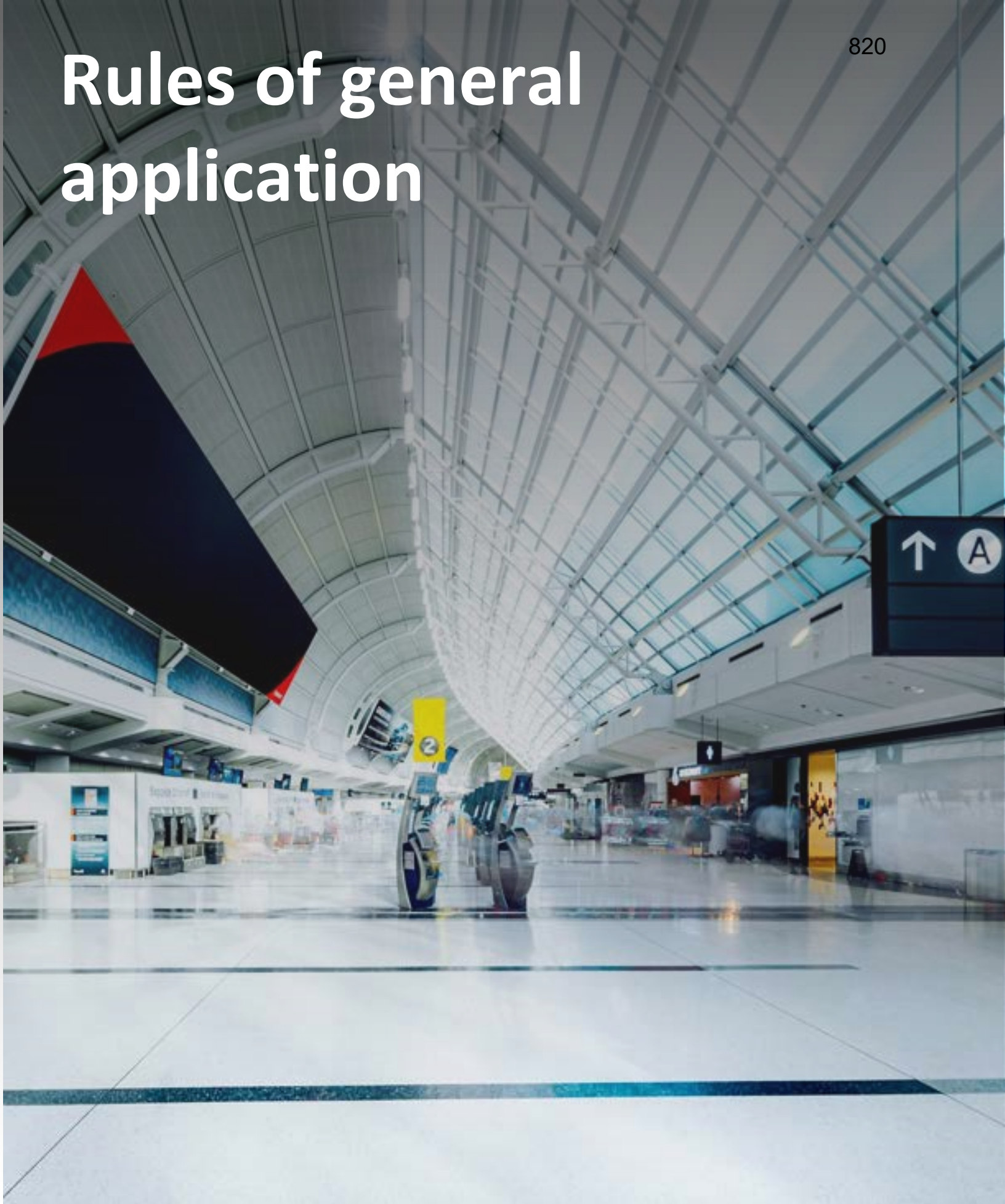
Incorporation

- 1.11 The GTAA Rules will be incorporated by reference into all GTAA contracts, agreements, licences, permits, and leases.

Compliance and accountability

- 1.12 Non-compliance with the GTAA Rules may result in:
 - 1.12.1 The exercise of available remedies as deemed appropriate by the GTAA, up to the termination of existing contracts, agreements, licences, permits, and leases, in accordance with their terms and conditions.
 - 1.12.2 The pursuit of corrective and remedial actions, as set out in Section 13 (User Accountability and Dispute Settlement) of the GTAA Rules.
 - 1.12.3 The reporting of non-compliance to governmental authorities and any independent agency with appropriate jurisdiction, including but not limited to Transport Canada, the Canadian Transportation Agency, and the Transportation Safety Board of Canada.

Rules of general application



Standard of conduct

- 2.1 Airport Users must carry out all their activities at the Airport:
 - 2.1.1 With safety and security as their highest priority.
 - 2.1.2 In compliance with relevant and applicable laws, regulations, and directives.
 - 2.1.3 With consideration to any guidance or circulars issued by government authorities in Canada and the International Civil Aviation Organization (ICAO).
 - 2.1.4 In compliance with existing contracts, agreements, licences, permits, and leases between the GTAA and Airport Users.
 - 2.1.5 In conformity with the GTAA Rules and any other document issued by the GTAA in relation to the use of Airport infrastructure, services, or facilities.
- 2.2 Airport Users must ensure that they achieve, within their area of activity, a standard of Airport customer service consistent with a first-class facility and major international airport, and in accordance with recognized industry standards and best practices.
- 2.3 Airport Users must provide all required training to their employees, sub-contractors, agents, and licensees on their responsibilities and obligations under the GTAA Rules.

Airport safety and security

- 2.4 Safety and security are at the core of every decision at the GTAA and must remain the highest priority for Airport Users in all areas of activity at the Airport.
- 2.5 Airport Users must carry out their safety and security obligations in compliance with all policies, procedures, programs, directives, and regulations set forth by the GTAA and all applicable local, provincial, and federal laws and regulations.
- 2.6 Airport Users must ensure that their employees, agents, licensees, and sub-contractors, are aware of [GTAA's safety and security policies](#) and fully trained on their specific safety and security responsibilities while on Airport premises.
- 2.7 Airport Users must report any safety concerns proactively and in a timely manner, with the view to prevent or mitigate injury to persons and damage to property.
- 2.8 Airport Users must immediately report any imminent risk or danger that could jeopardize the safety and security of Airport operations.
- 2.9 For emergencies, including potential injury, suspicious persons, vandalism, and life-threatening situations when on Airport property, call 416-776-3033. Do not call 911.
- 2.10 For urgent but non-emergency situations, call 416-776-3055.
- 2.11 For any security concerns such as unattended items, gates, or doors not closing/securing, piggy-backing, and suspicious activity, call 416-776-7381.

Operational performance requirements and Service Level Standards

- 2.12 Airport Users must comply with GTAA's operational performance requirements and Service Level Standards contained in the GTAA Rules, the [GTAA Service Levels and Standards](#) and any applicable service levels contained in the [Ground Operations Manual](#) and individual contracts, agreements, licenses, permits and leases.
- 2.13 Airport Users must immediately notify the Airport Duty Manager (ADM) and the Integrated Operations Control Center (IOCC) when circumstances may prevent them from meeting any operational performance requirement or Service Level Standard.
- 2.14 The GTAA will communicate additional Service Level Standards from time to time as required to maintain operational performance outcomes consistent with a first-class facility and world class airport. Common industry indicators that will be considered in setting additional Service Level Standards include, but are not limited to:
 - 2.14.1 Check-in queue time for domestic, transborder and international flights.
 - 2.14.2 Baggage collection time for domestic, transborder and international flights.
 - 2.14.3 Waiting time for first Passenger deplanement (inbound flights).
 - 2.14.4 Waiting time for mobility assistance services (inbound and outbound flights).
 - 2.14.5 Security control processing times for outbound Passengers.
 - 2.14.6 Processing times for U.S. bound preclearance Passengers.
- 2.15 The GTAA reserves the right to update its operational performance requirements and Service Level Standards from time to time in order to ensure efficient operations at the Airport, delivery of adequate and equitable levels of customer service, and compliance with government laws and regulations. Notice of updates will be communicated to Airport Users with a reasonable time to make necessary adjustments to comply.
- 2.16 The GTAA may require Airport Users to enter into specific service level agreements (SLA) as may be necessary to adequately address individual requirements such as minimum staffing levels, cleanliness, wait times or other performance standards.
- 2.17 The GTAA will take all means necessary to monitor compliance with operational performance requirements and Service Level Standards fairly and using methods to ensure accuracy and transparency. This may include issuing performance report cards, quality assurance checks and formal audits.

- 2.18 Airport Users who fail to meet operational performance requirements and Service Level Standards, in addition to any other requirements contained in contracts, agreements, licenses, permits and leases with the GTAA, must take immediate steps to remedy such failures and meet any additional requirements of the GTAA.

Employment standards

- 2.19 The GTAA is committed to adopting policies and practices that support Airport Users in their commitment to diversity, equity, and inclusion in the hiring and promotion of employees.
- 2.20 Airport Users are expected to:
- 2.20.1 Comply with employment and accessibility laws.
 - 2.20.2 Ensure that their employees have access to a safe working environment and earn a fair wage that allows them to afford adequate shelter, food, and other necessities.
 - 2.20.3 Support their employees through continuous investments in health and safety training as well as wellness and mental health programs and initiatives.
 - 2.20.4 Demonstrate their commitment to diversity, equity, and inclusion in their hiring and promotion practices.
 - 2.20.5 Adopt policies and practices that support worker retention, optimal resource allocation, and work-life balance.
 - 2.20.6 Provide customer service training to all Passenger-facing employees, including frontline staff, supervisors, and management. Such training should be completed within 60 days of hiring and occur at least once per year, as a minimum requirement, to ensure a consistent customer experience.

Facilities alterations

- 2.21 All construction and contractor activity at the Airport requires a Facility Alteration Permit (“FAP”) issued in accordance with the [Airport Construction Code](#).
- 2.22 Requests for FAPs shall be addressed to the Construction Compliance and Permits Office (“CCPO”) at constructioncompliance@gtaa.com.
- 2.23 The CCPO has been designated as the Authority Having Jurisdiction pursuant to the [Airport Construction Code](#) for all construction at the Airport with a mandate to ensure compliance with applicable codes and construction safety laws.
- 2.24 Further information about the regulatory framework and compliance requirements for any construction or contractor activity at the Airport, including any updates or guidance, can be found at the CCPO’s [webpage](#).

Liability, insurance, and risk management

- 2.25 To the extent permitted by law, neither the GTAA nor its agents or employees shall have any liability or be obliged to indemnify Airport Users in respect of indirect losses, consequential losses, loss of profits, loss of revenue, loss of goodwill, loss of opportunity, loss of business, increased costs or expenses, wasted expenditure, crime, bodily injury, or any other injury, loss, damage, claim, cost, or expense caused by any act, omission, neglect, or fault of the GTAA or any of its employees or agents.
- 2.26 Airport Users must always hold current and adequate insurance, as determined, and approved by the GTAA, when using infrastructure, facilities, and services or conducting activities at the Airport.
- 2.27 His Majesty the King in Right of Canada and the GTAA and its members and their directors, officers, employees, agents, and those for whom in law they are responsible are to be named as additional insureds on any policies with respect to the liability arising out of the activities of the named insured.
- 2.28 The GTAA may refuse entry to the Airport to any Airport User who fails to hold the required insurance.
- 2.29 Air Operators must hold passenger, baggage, cargo, and third-party liability insurance in respect of any Aircraft used or operated at the Airport, in compliance with Canadian laws, regulatory requirements, and related jurisprudence. The liability limits must meet the current Aircraft fleet configuration and make-up and must:
- 2.29.1 Apply separately to each insured against whom a claim could be made.
 - 2.29.2 Be primary such that no other insurance or self-insured retention carried or held by the GTAA shall be called upon to contribute to a loss.
 - 2.29.3 Provide 30 days written notice in the event of cancellation or any limit reduction or material change.
- 2.30 Certificates of Insurance must be provided annually to: insurance.services@gtaa.com.
- 2.31 Airport Users must put in place risk management programs and policies to minimize any risks which may cause injury to persons or damage to property in the course of their activities at the Airport.
- 2.32 The GTAA reserves the right to conduct quality assurance inspections on Airport Users programs and policies from time to time or when the GTAA suspects there may be weaknesses that need to be addressed.
- 2.33 The GTAA has the right to charge the Airport User the cost of such quality assurance inspections or corrective action planning if it is determined that the programs and/or policies are not sufficient to address the reasonable risks.

Aeronautical fees and charges

- 2.34 Air Operators must pay Aeronautical Fees and Charges, as set out in the [fee schedules](#).
- 2.35 Certain Air Carriers who have entered into an agreement with the GTAA will be billed in accordance with the charges and fees set out in that agreement.
- 2.36 The GTAA reserves the right to adjust Aeronautical Fees and Charges from time to time.
- 2.37 Air Carriers must enter into an Airport Improvement Fee (AIF) agreement with the GTAA and adjustments to AIF shall be governed by the terms of that agreement.
- 2.38 Air Carriers must submit a security deposit in a form and amount determined by the GTAA's Finance Controller and detailed in the GTAA's Air Carrier – Application for Entry prior to commencing operations. The GTAA may apply the security deposit towards overdue amounts of Aeronautical Fees and Charges or to cover costs associated with violations of the GTAA Rules or under any other agreements.
- 2.39 The GTAA will notify the Air Carrier of any overdue and unpaid amounts and give an opportunity to pay prior to applying the security deposit. The GTAA is not required to give notice to apply the security deposit if the Air Carrier has declared bankruptcy or commenced insolvency proceedings in any jurisdiction.

Continuity plans

- 2.40 Airport Users must put into place continuity plans to address disruptions resulting from system outages, weather-related events, labour shortages, and any other incidents outside their control.
- 2.41 The GTAA reserves the right to request a copy of any continuity plan to support its own plans and to review from a quality assurance perspective to ensure its adequacy to address disruptions.
- 2.42 The GTAA has the right to charge the Airport User the cost associated with a quality assurance review and corrective action planning if it is determined that the plan is not sufficient.

General requirements

- 3.1 The GTAA reserves the right to issue data requests from time to time in order to:
 - 3.1.1 Plan Airport operations effectively and safely.
 - 3.1.2 Invoice rates, charges, and fees accurately.
 - 3.1.3 Measure and improve Airport operational performance.
- 3.2 Airport Users must comply with data requests issued by the GTAA in a timely manner, and fulfill any additional requirements related to IT systems and infrastructure, messaging formats, communication standards, and data verification, as applicable.
- 3.3 Airport Users are solely responsible for the accuracy and completeness of data transmitted to the GTAA.
- 3.4 Airport Users must take all reasonable measures to resolve data discrepancies, and these shall be timely reported to the GTAA.
- 3.5 Airport Users must ensure the data transmitted does not contain any personal or identifying information of any Passengers, including but not limited to names, addresses, phone numbers, personal identification numbers, information identifying personally owned property, employment information, medical information, education information, financial information, place of birth, race, and religion.
- 3.6 Airport Users where applicable and unless directed otherwise by the GTAA, must use the International Air Transport Association (IATA) messaging and communications standards when submitting data.

Estimated passenger loads

- 3.7 The GTAA requires accurate inbound and outbound estimated passenger loads to support the assignment of check-in counters and the management of day-to-day operations based on actual operational requirements and resources made available by customs, immigration, and airport security agencies, including baggage and lateral capacity, post security gate flows, arrival flows, arrivals baggage hall and cleaning staff.
- 3.8 Air Carriers are required to report estimated passenger loads and estimated baggage/cargo loads for each flight that is scheduled to operate at least 4 weeks before the scheduled flight. Updates to the estimates are required at least weekly and in the week prior to operation of the flight, daily. All flight load information provided by an Air Carrier will be held in confidence by the GTAA for internal planning purposes and will not be disclosed to other Airport Users.

Inbound and outbound real-time flight data

- 3.9 The GTAA requires Air Operators to submit the following data as soon as an Aircraft is airborne from its originating outstation, on a flight-by-flight basis, for both inbound and outbound flights:
 - 3.9.1 The total number of Passengers, specifying the number of children and airline crew (flight and cabin), that terminate their journey or connect at the Airport.
 - 3.9.2 For connecting Passengers, the flight number and airline on which they are scheduled to connect at the Airport.
 - 3.9.3 The total number of Passengers with restricted mobility and requiring assistance upon arrival at the Airport.
 - 3.9.4 The number of registered baggage and the total weight of air cargo to be embarked and disembarked at the Airport.
 - 3.9.5 Estimated landing time at the Airport for inbound flights and estimated departure time for outbound flights, and reason of delay.
 - 3.9.6 For air cargo, both belly and full freighter, the weight and declared values of all items being carried at departure and arrival.
- 3.10 Real-time flight data must be transmitted to the GTAA using SITATEX or another messaging or communication standard, as mutually agreed between the GTAA and the Air Operator.

Baggage-related data

- 3.11 Air Carriers must provide baggage source message (BSM) information and missed bags counts for the purposes of monitoring baggage transfers and delivery at the Airport.
- 3.12 Air Carriers are required to report to the GTAA on late and missed bags on a daily basis, during normal or irregular operations. In addition to the report, Air Carriers are required to provide a storage plan and mitigating measures that may be required to minimize disruption within the terminal.
- 3.13 When an Air Carrier elects not to use the Airport's Baggage Reconciliation System (BRS), they must provide a real-time baggage processing message for all inbound and outbound baggage movements:
 - 3.13.1 When an outbound bag is moved off the make-up position.
 - 3.13.2 When an outbound bag or Unit Load Device (ULD) is placed into the aircraft.
 - 3.13.3 When an inbound bag or Unit Load Device (ULD) is taken off the aircraft.
 - 3.13.4 When an inbound bag is placed onto the baggage claim/transfer conveyor.

General obligations

- 4.1 The Airport is committed to providing a barrier-free, safe, and enjoyable passenger experience, including a wide variety of accessible services and facilities designed to enable more choice, comfort, and autonomy for persons with disabilities throughout the travel journey.
- 4.2 Airport Users must comply with the statutory obligations, technical requirements, and training program responsibilities set out in the [Accessible Transportation for Persons with Disabilities Regulations](#) ("Accessibility Regulations") and all other legislation relating to accessibility applicable to them.
- 4.3 Airport Users subject to the Accessibility Regulations and any other accessibility legislation must not impair the Airport's own compliance with the Accessibility Regulations or such legislation and must act with diligence in carrying out their activities in compliance with applicable accessibility legislation, including advising the Airport of any potential shortfalls and providing corrective measures as soon as practicable.
- 4.4 Airport Users who have been sub-contracted to provide services on behalf of the Airport and who interact with Passengers while carrying out their activities must comply with the obligations and training requirements in the Accessibility Regulations.
- 4.5 If Airport Users or any of their sub-contractors fail to comply with the provisions of the Accessibility Regulations or other accessibility legislation, such Airport Users or any of their sub-contractors shall indemnify the GTAA for any costs incurred as a result of such failure to comply.
- 4.6 Air Operators self-handling the provision of mobility assistance services for their Passengers must meet the minimum specified Service Level Standards set forth in the Air Carrier Mobility Assistance Services Agreement.

Services in English and French

- 4.7 The GTAA is committed to providing services in both of Canada's official languages. As such, Airport Users and Air Carriers are expected to comply with the [Official Languages Act](#) ("OLA") and therefore must:
 - 4.7.1 Communicate with Passengers in both English and French.
 - 4.7.2 Ensure that Passengers receive services in both English and French.
 - 4.7.3 Ensure that all signage is presented in equal size and prominence in both official languages.
- 4.8 Airport Users and Air Carriers must collaborate with the GTAA to achieve the above objectives, and as otherwise determined by the GTAA in support of its OLA obligations at the Airport.
- 4.9 If Airport Users or Air Carriers fail to comply with the provisions of the OLA, they shall indemnify the GTAA for any costs incurred as a result of such failure to comply.

General obligations

- 5.1 The GTAA is committed to maintaining a strong safety culture across the Airport, and to applying best industry practices in health and safety protection, aligned with international aviation standards and regulatory requirements.
- 5.2 Airport Users must protect the health and safety of every person at the Airport, including workers, visitors, and members of the public, in compliance with the [Canada Labour Code](#) or the [Ontario Occupational Health and Safety Act](#), as applicable.
- 5.3 Airport Users are responsible for providing their employees with training, safety materials, equipment, devices, and clothing as required by the [Canada Labour Code](#), the [Ontario Occupational Health and Safety Act](#), or any other health and safety laws, as applicable.
- 5.4 The GTAA reserves the right to issue guidance, plans, programs, policies, procedures, directives, advisories, notices, standards, protocols, and recommended practices related to the achievement of a healthy and safe Airport environment and workplace for Passengers and employees.
- 5.5 Airport Users must align their policies, procedures, and practices with the GTAA's health and safety standards, and safety reporting requirements, and provide the required level of awareness and training to their employees, agents, and sub-contractors.

Airside requirements

- 5.6 Airport Users must provide and enforce the use of Personal Protective Equipment (PPE) to all their employees, regardless of their employment status (i.e., active, full-time, part-time, or on probation) as long as they are working Airside. Prescribed safety PPE must include a safety vest, safety shoes, and hearing protection.
- 5.7 Airport Users must also provide the necessary training to ensure that all employees are aware of potential hazards while working Airside, in line with GTAA codes, standards, manuals, and recommended practices.
- 5.8 Airport Users must comply with and enforce the PPE requirements. Violations will result in corrective actions required by the employee and employer and could result in the confiscation of the offending employee's Restricted Area Identity Card ("RAIC") or any other measure the GTAA deems fit. The GTAA may conduct an audit of any Airport User's compliance and enforcement of the PPE requirements, and Airport Users must comply with any mandatory actions resulting from such audit.

Training and awareness

- 5.9 The GTAA requires new, existing, returning, or RAIC-holder Airport transfer employees to complete the Health & Safety Awareness mandatory course, which can be accessed through the [GTAA's Airport Security and Safety Awareness webpage](#).
- 5.10 The GTAA organizes safety forums such as the Toronto Pearson Leadership Safety Forum and the Toronto Pearson Workers Safety Forum where Airport Users can discuss safety issues with an aim to continuously improve safety for all Airport Users. While not required, participation is strongly recommended as the GTAA values the feedback received from these safety forums and considers all recommendations and improvements put forward with respect to GTAA's health and safety practices.

General principles and obligations

- 6.1 The GTAA is committed to ensuring that activities at the Airport are carried out in an environmentally responsible manner, in compliance with relevant environmental laws and regulations, sound environmental management practices driving continual improvement, and with a sense of responsibility to the community.
- 6.2 The [GTAA's Environmental Policy](#) guides every aspect of Airport operations, including targets to achieve net zero greenhouse gas (GHG) emissions and net zero waste from Airport terminals by the year 2050. The policy focuses on seven areas:
- climate change resiliency
 - carbon neutrality and emissions
 - energy use, (iv) water management
 - natural environment
 - waste management, and
 - noise management
- 6.3 The GTAA's Environmental Emergency Contingency Program outlines the best practices to be implemented by Airport Users in the event of an environmental incident at the Airport and plays a key role in achieving and maintaining a state of readiness that will allow a prompt and orderly response.
- 6.4 Airport Users must take all reasonable steps to operate in an environmentally responsible manner by preventing pollution, conserving resources, recycling, and composting materials, reducing emissions from equipment, vehicles, and stationary sources to the maximum extent practicable, and exercising care in relation to the storage, transportation, and disposal of Hazardous Materials.

Noise management

- 6.5 Air Operators must abide by Transport Canada's noise abatement procedures and the [GTAA's Night Flight Restriction Program](#), which limits the number of movements and requires Air Operators to receive approval during restricted hours.
- 6.6 The GTAA will investigate any potential violations of noise abatement procedures and the Night Flight Restrictions Program. Air Operators are required to cooperate if they become subject to an investigation.
- 6.7 Any suspected non-compliance with the noise abatement procedures or the Night Flight Restriction Program will be reported to Transport Canada for review and potential enforcement action.
- 6.8 Any questions related to the GTAA's Noise Management Program and/or Aircraft noise shall be directed to the Noise Management Office (NMO) at community.engagement@gtaa.com.

Waste management (non-hazardous)

- 6.9 Airport Users must not place, discharge, or deposit in any manner, papers, trash, rubbish, waste materials, or other refuse anywhere at the Airport, except in acceptable receptacles and in pre-approved designated locations.
- 6.10 Airport Users must exercise care when handling waste materials within the Airport. Any spillage must be cleaned up immediately using effective methods to minimize environmental and property damage.
- 6.11 All trash, rubbish, and waste materials must be covered and secured when transported and all receptacles for said materials must have covers.
- 6.12 Any deposit of garbage, debris, or refuse in unauthorized locations must be collected and removed from the Airport by the responsible Airport User.
- 6.13 Burning of refuse, waste, or other materials without the prior consent of the GTAA Environmental Services Department is strictly prohibited.
- 6.14 The GTAA may arrange for collection and removal of waste and refuse at its own discretion and charge the Airport User for all costs incurred in doing so.
- 6.15 No Airport User shall access any waste room, chute room, or other associated waste storage location or leave items inside without the prior consent of the GTAA.

Water quality

- 6.16 Airport operations involve the use of a variety of chemicals which, if not properly contained or collected when used, can have detrimental effects to the surrounding environment, including but not limited to groundwater, and nearby surface waters.
- 6.17 Airport Users must abide by the relevant GTAA guidelines, federal regulations, municipal guidelines and by-laws, and bilateral discharge agreements that provide maximum acceptable limits for Effluent compounds.
- 6.18 All sewer Effluent leaving a building space or land parcel, depending on its destination, must meet the applicable current Effluent limits for the Region of Peel or City of Toronto sewer use bylaws, and the Canadian Water Quality Guidelines.
- 6.19 Sewer Effluent leaving the Airport must comply with the [Fisheries Act](#), and may require such Effluent to be treated by physical or chemical means. No physical or chemical treatment may be implemented without prior written approval from GTAA Environmental Services.
- 6.20 Oil/water separators must be installed in such a manner that they can be easily inspected and maintained on a regular basis. Once operational, records of maintenance must be made available by the Airport User to the GTAA upon request.

Air quality

- 6.21 The GTAA encourages all Airport Users to use low emission vehicles, construction equipment and machinery, and low emission products to reduce air emissions and contaminants associated with their activities.
- 6.22 Airport Users must comply with laws and regulations regarding air quality protection such as the [Canadian Environmental Protection Act](#) and the Ontario Environmental Protection Act and must exercise caution in the handling of pollutants and other Hazardous Materials that can become airborne, both indoor and outdoor.
- 6.23 Airport Users must comply with all federal and provincial laws respecting ozone-depleting substances (ODS), including the most current [Federal Halocarbon Regulations](#) under the [Canadian Environmental Protection Act](#) that control the import, manufacture, and export of ODS, and controls the end use of halocarbons.

Food service sewage

- 6.24 Fixtures in food and beverage locations at the Airport that discharge sewage that includes fats, oils, or grease must be discharged through a fully automatic grease interceptor also known as a grease recovery device. If directed by the GTAA through FAP review or other written means, dishwasher discharge must also be connected to a grease recovery device.
- 6.25 The installation, testing, maintenance, and performance of the grease interceptor must comply with the Standards Council of Canada's Grease Interceptor Standard CAN/CSA B481 and manufacturer requirements.

Hazardous materials

- 6.26 Airport Users acknowledge that improper storage, use, and handling of Hazardous Materials can pose threats to human health and safety, introduce contaminants into previously uncontaminated soils, vegetated areas, emissions into the atmosphere, surface waters, and/or groundwater, cause changes to ecosystems, and pose threats to ecological receptors.
- 6.27 Airport Users are responsible for the disposal of their waste and Hazardous Materials, in accordance with applicable laws, regulations, codes, standards, the [Transportation of Dangerous Goods Act](#), the [Hazardous Products Act](#), and the [Ontario Regulation 347 General Waste Management](#) of the [Environmental Protection Act](#).
- 6.28 Airport Users must immediately report any release or threatened release of a Hazardous Material at the Airport by calling the Airport Emergency Line at 416-776-3033.

Environmental emergency contingency plan

- 6.29 Airport Users must develop and maintain environmental emergency contingency plans and procedures, as detailed in the [Ground Operations Manual](#), lease or licence agreements, or by other applicable requirement by law or otherwise.
- 6.30 Plans and procedures must cover the potential hazards and risks associated with the Airport Users' operations and activities at the Airport and must be consistent with the GTAA's environmental emergency contingency plan.
- 6.31 Airport Users' environmental emergency contingency plans and procedures are reviewed and verified by GTAA Environmental Services during onboarding and environmental audits. Failure to provide or comply with an environmental emergency contingency plan will result in corrective actions, including but not limited to escalation via the relevant lease or licence agreement, the [Ground Operations Manual](#), or any other remedy at the sole discretion of the GTAA.

Data collection

- 7.1 Subject to privacy and data protection laws, including the [Personal Information Protection and Electronic Documents Act](#) and the common law governing the transmission of confidential information in Canada, the GTAA reserves the right to collect, use, and disclose personal data and confidential information from the public and Airport Users, directly or via a third party, including but not limited to when the GTAA considers that such data and information are necessary for the following purposes:
- 7.1.1 Ensuring the safety and security of Airport operations.
 - 7.1.2 Planning, operational, and other Airport performance management initiatives.
 - 7.1.3 Improving the Passenger experience and customer service at the Airport.
 - 7.1.4 Complying with national and international laws and regulations related but not limited to Airport safety and security, environmental protection, money laundering, sanctions, and export controls.
- 7.2 The GTAA is committed to taking all reasonable legal safeguards and deploying the necessary technical resources to protect and keep confidential any non-public data or information received from the public or Airport Users, unless expressly required by law or requested by a government authority, court, or law enforcement agency.
- 7.3 The [GTAA Privacy Policy](#) governs how personal data and confidential information is collected, processed, stored, used, managed, disclosed, transferred, and destroyed.
- 7.5.3 Ensure that access credentials remain secure and are only used by those individuals to whom the credentials have been provided.
- 7.5.4 Monitor unauthorized access to technology systems, respond to access validation and audits of access accounts in a timely manner, and take responsibility for the removal of user accounts for employees who are terminated or change job functions, including temporary sub-contractors.
- 7.5.5 Comply with industry best practices, applicable terms of use, and contractual provisions related to cybersecurity.
- 7.5.6 Protect and retain system audit records to the extent needed to enable adequate monitoring, analysis, and investigation.
- 7.5.7 Report any unlawful, unauthorized, or inappropriate system activity or malicious codes such as viruses, worms, and Trojan horses.
- 7.5.8 Monitor for and patch security vulnerabilities on a regular basis by competent and fully trained personnel.
- 7.5.9 Plan for contingencies and inform the GTAA regarding their cybersecurity policies and protection initiatives.
- 7.5.10 Establish incident handling capabilities for technology systems that must include preparation, detection, analysis, containment, recovery, and user response activities.
- 7.5.11 Notify the GTAA of any critical vulnerabilities present in any technology systems used to support Airport operations or store Airport data and provide assurances that remediation will be performed against the identified critical vulnerabilities in a timely manner.
- 7.5.12 Notify the GTAA about any potential or actual cybersecurity breaches or unauthorized access to GTAA information or Airport data and take all reasonable measures to minimize damages to the GTAA.
- 7.5.13 Report privacy breaches of data protection safeguards intended to protect privacy to Canada's Privacy Commissioner and affected individuals in accordance with applicable laws including the [Personal Information Protection and Electronic Documents Act](#).

Data privacy protection and cybersecurity

- 7.4 Airport Users must comply with applicable laws relating to data and privacy protection and must immediately notify the GTAA of any data breach, system breach or unauthorized access to data relating to the Airport upon detection, provide additional details about any such incident upon request by the GTAA, and, upon request, deliver an independent forensics report in a timely manner.
- 7.5 Airport Users who have been granted access to Airport systems and data must:
- 7.5.1 Implement and maintain information privacy protection and security programs and practices to safeguard information from unauthorized access, including technical, administrative, operational, organizational, and physical safeguards.
 - 7.5.2 Comply and abide by the rules, protocols, and requirements of access and use of the Airport systems and data as established, and amended from time to time, by the GTAA.
- 7.6 Airport Users who through their acts or omissions or who otherwise cause any cybersecurity incident, breach of applicable data protection safeguards, unauthorized access to GTAA information, or non-compliance with provisions of cybersecurity and data protection laws shall indemnify the GTAA for any costs incurred as a result of such failures.

General framework

- 8.1 [Toronto Pearson Fire & Emergency Services](#) (“TPFES”) is authorized to routinely inspect buildings, structures, and facilities at the Airport for compliance with the [National Fire Code of Canada](#) (“NFCC”), relevant National Fire Protection Association (“NFPA”) codes and standards, the GTAA Rules, and any other relevant GTAA-issued document.

Airport Fire Chief

- 8.2 The Airport Fire Chief is the authority having jurisdiction over fire-related incidents and accidents and is responsible for the enforcement of all applicable sections in the GTAA Rules which pertain to fire protection and prevention at the Airport.

Fire safety compliance

- 8.3 Airport Users must comply with applicable laws, rules, regulations, and by-laws, including the NFCC, the [NFPA codes and standards](#), and GTAA-issued directives, standards, and procedures relating to fire protection and prevention at the Airport.
- 8.4 Upon inspection by the TPFES, Airport Users will be notified in writing of any NFCC, NFPA and/or GTAA Rules violations and provided with a compliance timeline in which all violations must be rectified to the satisfaction of the Airport Fire Chief. Violations may be subject to immediate fines.
- 8.5 In the event an Airport User fails to rectify a noted violation within the allotted timeframe, a fine may be levied. In addition, the GTAA and its authorized agents or designees may rectify the noted violation at the Airport User’s expense.

Nuisance and false fire alarm activations

- 8.6 It is the obligation of the TPFES to respond to a fire alarm at the Airport.
- 8.7 If, upon conducting an investigation, the TPFES determines that an alarm is a nuisance or false alarm, the offending Airport User will be charged the fee stipulated in Schedule A of the Standard Operating Guidelines (SOG) #10 "Cost Recoveries for Responding to Nuisance/False Alarms" (“SOG #10”).
- 8.8 A copy of Schedule A of the SOG #10 can be obtained by emailing a request to: fireprevent@gtaa.com.

Fire protection systems

- 8.9 Airport Users must not impede or impair the operation of any life safety system without explicit prior consent and permits from the GTAA.
- 8.10 Whenever a portion of a fire protection system is temporarily shut down, or otherwise impaired, Airport Users must ensure alternative measures are implemented in accordance with the building’s approved Fire Safety Plan.

Fire extinguishers and related equipment

- 8.11 Airport Users must ensure they are trained in the use of portable fire extinguishers.
- 8.12 Any Airport User who discovers defective or missing life safety equipment must report the matter immediately to the Integrated Operations Control Centre (IOCC) at 416-776-3055.

Commercial cooking equipment

- 8.13 Maintenance and cleaning procedures for commercial cooking exhaust systems and related equipment must comply with the GTAA Fire & Emergency Services Kitchen Exhaust System Protocol (“FP-02”). A copy of FP-02 can be obtained by emailing a request to: fireprevent@gtaa.com.

Hot work

- 8.14 No Airport User shall conduct any Hot Work at the Airport without engaging the appropriate Hot Work process. The process for obtaining authorization to conduct Hot Work varies depending on the nature of the project (FAP/non-FAP).
- 8.15 Hot Work conducted as part of a Facility Alteration Permit (“FAP”) must be conducted in accordance with the [Airport Construction Code](#).
- 8.16 Hot Work permits for non-FAP work must be obtained by contacting the AOC at 416-776-3055. AOC will dispatch the appropriate resource to issue a fire safety work permit.
- 8.17 Projects requiring Hot Work are subject to random audits by TPFES to ensure proper fire safety measures are in place.
- 8.18 In the event TPFES determines unsafe conditions, all Hot Work will be ordered to stop immediately, and an investigation will ensue. Questions on this process can be directed to 416-776-4515 or fireprevent@gtaa.com.

General provisions and compliance

- 9.1 The GTAA has the overall responsibility for the management, coordination, integration and implementation of the Airport’s security program and related initiatives, as provided in the [GTAA Security Policy](#).
- 9.2 The provisions in this section aim to:
- i. prevent unlawful acts or attempted acts that could interfere with or cause to interfere with the operations of the Airport or of an Aircraft, and
 - ii. provide guidance to Airport Users on the GTAA’s security programs and controls.
- 9.3 Unlawful acts referred to in this section may include but are not limited to:
- i. unlawful seizure of Aircraft during flight
 - ii. unlawful seizure of Aircraft on the ground
 - iii. hostage-taking on-board an Aircraft or at the Airport
 - iv. forcible intrusion on-board an Aircraft or at the Airport
 - v. introduction on-board an Aircraft or at the Airport of a weapon or hazardous device or material likely intended for criminal purposes
 - vi. the communication of false information that could jeopardize the safety of an Aircraft during flight, on the ground, or at the Airport, including Passengers, crew, ground and terminal personnel, and the general public, and
 - vii. unlawful access or disruption at or on the Airport or Aircraft.
- 9.4 Airport Users must comply with the provisions of this section at all times in accordance with the Airport security policies, programs, and terms and conditions of access, federal laws and regulations, and in line with international laws and standards and recommended practices and local requirements.
- 9.5 Airport Users who violate any of the provisions in this section:
- i. compromise the Airport’s overall level of security
 - ii. are deemed to participate in or facilitate an unsafe, unsecure, hazardous environment, and
 - iii. may have all operational and commercial privileges, including entitlement to a RAIC, immediately revoked by the GTAA on a temporary or permanent basis.
- 9.6 Airport Users found responsible, in whole or in part, for any violation to the provisions under this section of the GTAA Rules will be fined and prosecuted according to relevant laws and regulations and shall indemnify the GTAA for any costs from property damage caused, personal injury suffered, or other damages incurred as a result of the violation.

Security barriers

- 9.7 All buildings, obstacles, and fences that form a part of the Security Barrier (also referred to as the Primary Security Line) must comply with the GTAA standards and requirements and the [Canadian Aviation Security Regulations](#).
- 9.8 Security Barriers must remain secure while not in use and be kept clear of any obstacles.
- 9.9 Airport Users must not undertake any modifications or construction activities that could impact the Security Barrier or security posture without the GTAA’s prior written consent. Any questions shall be directed in writing to the GTAA’s Manager, Security Operational Support.
- 9.10 Any vehicles, material, or equipment that encroach on the clearance limits of the Security Barrier may be removed at the sole discretion of the GTAA and at the Airport User’s expense.

Restricted areas

- 9.11 Airport Users authorized to access or control access through the Security Barrier must prevent access by unauthorized persons or notify the GTAA of any trespassing by calling GTAA Security Operations Control (SOC) at 416-776-7381.

Primary security line plan

- 9.12 Airport Users, whose facilities form part of the Primary Security Line, must provide a completed Primary Security Line Plan (“PSLP”) based on the GTAA’s template. They must also submit the PSLP to Transport Canada for approval and provide a copy of the PSLP as provided in the Canadian Aviation Security Regulations.
- 9.13 In accordance with the terms and conditions of the PSLP and RAICs, whenever an Airport User is found non-compliant, access privileges will be suspended, and temporary or permanent corrective measures may be imposed at the sole discretion of the GTAA and at the Airport User’s expense.

Prohibited items

- 9.14 Airport Users must comply with the [GTAA Logistics Program](#), which manages the flow of goods and materials within the Airport terminal buildings to ensure the security of the Airport and identifies the means and methods of moving items that are permitted within the secure area of the Airport.
- 9.15 Weapons, ammunition, and explosives are not permitted at the Airport unless they are in the care and control of officials of a government agency with legal authority or are otherwise authorized by the GTAA and in the care and control of a party who is fully licensed and trained.

GTAA Pass Permit Control Office

- 9.16 The GTAA Pass Permit Control Office administers security clearances and issues RAICs to applicants who have demonstrated a right of entry and a frequent need to enter Airport restricted areas while in the performance of their duties.
- 9.17 Airport Users must designate a management representative with signing authority to coordinate requirements with the GTAA Pass Permit Control Office for the issuance of security items relevant to the duties assigned to their employees, subcontractors or agents and that are performed in restricted areas.
- 9.18 The designated management representative shall be the point of contact and assist, whenever needed or required, the GTAA Pass Permit Control Office in the administration and control of any security item issued to their employees, subcontractors, or agents.
- 9.19 Airport Operators must ensure that the employees or agents they have sponsored to hold a RAIC, only use that RAIC for the sponsored activity and otherwise in accordance with the terms and conditions. The wrongful use of RAICs for personal commercial activities or for another employer who has not sponsored the RAIC issuance will not be tolerated and will result in the cancellation of such RAIC.
- 9.20 The GTAA provides a [mandatory safety and security awareness program](#) for all RAIC holders, which can be accessed at: [Airport Security and Safety Awareness Training](#).

Emergency preparedness

- 9.21 Airport Users must complete the Facility Control Measures and Evacuation Plan training course to ensure awareness of the established procedures and expectations to assist during an evacuation if safety is threatened.
- 9.22 This course has an annual recertification requirement and GTAA Employees are to access the training via the GTAA's Learning Management System (LMS), while Airport Users can either obtain a Shareable Content Object Reference Model (SCORM) file from the GTAA's Operational Continuity and Emergency Management Programs (OCEMP) Department (which allows them to upload the training into their LMS platform) or access the training course from the [Toronto Pearson.com/courses website](https://www.pearson.com/courses).
- 9.23 Airport Users are expected to support and participate, as needed, in emergency preparedness exercises organized by the GTAA. The emergency exercise program is a component of the GTAA's emergency training program. Emergency exercises are designed to increase the capability and competency of the GTAA and all external partner agencies to maintain the flow of critical functions during and following a disruptive event by testing and confirming the functionality and effectiveness of emergency plans, procedures, and protocols.

Minimum standards of operation



Permits and authorizations

- 10.1 Air Operators must not operate services to or from the Airport without the operational permits and commercial licences required by law or regulation as applicable and issued by the Canadian Transportation Agency.
- 10.2 In addition, Air Carriers must submit the information required in the GTAA's Air Carrier – Application for Entry.
- 10.3 Air Operators must conduct their operations in compliance with the GTAA Rules and any applicable agreements concluded with the GTAA.
- 10.4 Except for diplomatic, emergencies, diversion, and humanitarian flights, Business and General Aviation Aircraft can enter or use the gates at terminal buildings only with prior consent from the GTAA, via the [Airport Reservation Office](#).

Permits and authorizations for airside vehicle operators

- 10.5 Airside Vehicle Operators' Permits ("AVOP") are issued by the GTAA to certify those that demonstrate a regular and ongoing operational need to drive in movement and maneuvering areas, subject to certain conditions.
- 10.6 AVOP holders must comply with the [Airport Traffic Directives](#), which includes important training requirements and enforcement through a demerit point system that can include suspension or termination of Airside driving privileges in certain cases.
- 10.7 The GTAA takes Airside safety seriously and Airside driving is a critical element. There is zero tolerance for infractions or lack of training. The GTAA reserves the right to apply corrective actions and pursue any remedies as may be applicable.
- 10.8 The application process, criteria and requirements to obtain and maintain an AVOP can be accessed via the [GTAA's AVOP webpage](#).

Operation of aircraft

- 10.9 Airport Users who navigate, land, service, maintain, or repair Aircraft at the Airport must comply with all applicable laws, orders, rules, and regulations issued by Transport Canada, NAV Canada, and any applicable government sources including but not limited to the Aeronautical Information Publication and the GTAA's Airport Operations Manual and [Ground Operations Manual](#).
- 10.10 Adhering to the published Airport Collaborative Decision-Making ("A-CDM") procedures is mandatory. Further information on the management of A-CDM at the Airport can be found in the [A-CDM Operations Manual – Toronto Pearson Edition](#).
- 10.11 Airport Users who have care and control of an Aircraft must take all reasonable steps to ensure that no person enters the Aircraft without the consent of the owner or its delegated representative, no person starts the engine of the Aircraft without the consent of the owner or operator, and no person interferes or tampers with the Aircraft.

Reports of aircraft accident and incidents

- 10.12 Any Air Operator involved in an aircraft accident that results in personal injury or property damage, and regardless of ownership or severity, must immediately call the GTAA's Airport Emergency Line at 416-776-3033. Do not call 911. Additionally, the accident scene must be frozen until released by emergency or responding federal or provincial agencies or the GTAA's Aviation Safety Officers.
- 10.13 All aircraft accident or incident reports required by federal or provincial agencies, pursuant to any federal or provincial statute or regulation, must also be submitted to the GTAA Director Aviation Safety, Regulations and Performance or their designate.

Disabled aircraft

- 10.14 Any Airport User who owns, leases, operates, or has control over or right to control a Disabled Aircraft is responsible for its prompt removal and disposal, including all its parts as well as any associated clean-up, unless required to delay such actions by the Transportation Safety Board of Canada or any other government authority due to an ongoing or pending investigation.
- 10.15 Failure to remove the Disabled Aircraft expeditiously may create safety hazards within and around the Airport. Consequently, the GTAA reserves the right to recover or remove the Disabled Aircraft and all its parts at the expense of the applicable Airport User, in accordance with the measures for removal of Disabled Aircraft set out in the GTAA's Airport Operations Manual.
- 10.16 Airport Users shall indemnify the GTAA for any costs to recover, remove or dispose of the Disabled Aircraft, and such costs shall be paid in full and without delay.

Taxiing or moving of aircraft

- 10.17 Aircraft must not be taxied, towed, or otherwise moved on any part of the Movement Areas until specifically cleared to do so by the GTAA Apron Management Unit (Apron) and NAV Canada (Taxiway and Runway).
- 10.18 Except for the repositioning of Aircraft, whenever an Aircraft is being taxied, towed, or otherwise moved on any part of the Movement Areas, contact must be established with the GTAA Apron Management Unit prior to moving the Aircraft. Contact with the Apron Management Unit shall be established by established air to ground radio frequencies.
- 10.19 Aircraft must not be towed or otherwise moved except by a vehicle of a type previously approved by the Air Operator for such purpose.
- 10.20 Aircraft must not be taxied, towed, or otherwise moved in a careless or negligent manner or in disregard to the safety of others or in a manner which endangers persons or property, or at a speed that cannot always ensure full control.

Parking of aircraft

- 10.21 Aircraft must be parked in areas designated by the GTAA only and must be chocked at all times to prevent inadvertent movement. The use of wooden chocks is prohibited.
- 10.22 When instructed by the GTAA, the Air Operator must remove the parked Aircraft. The GTAA reserves the right to order removal of the parked Aircraft at the expense of the Air Operator and shall not be liable for any damage sustained to the Aircraft during removal.
- 10.23 Aircraft must not be parked for more than 24 hours without the prior written consent of the GTAA. Consent to be obtained through manageroperationsairportflow@gtaa.com.
- 10.24 The GTAA reserves the right to increase Aircraft parking charges in the Aeronautical Fees and Charges at any time to address those who may be exceeding parking limit allowances, and, in the case where the Aircraft parking causes property damage or other impacts to Airport operations, the Air Operator shall indemnify the GTAA for any costs related to such damage or impacts.

Parking of vehicles and ground service equipment (GSE)

- 10.25 Vehicles, including GSE, must be parked within Apron safety lines or in designated parking areas, which are denoted by paint markings on the ground, as provided in the [Air Traffic Directives AVOP DA 2023](#) and any other applicable directives issued by the GTAA.
- 10.26 Operational GSE must be staged in GSE staging areas and always behind equipment restraint lines. Non-operational GSE that is not required imminently must be stored in designated GSE Parking Storage Areas.
- 10.27 Only vehicles and GSE needed to service the next Aircraft on a stand may be parked on the adjacent staging areas.
- 10.28 Vehicles involved in construction or maintenance projects must only be parked in the designated parking areas identified in the applicable FAP.
- 10.29 The GTAA reserves the right to implement enhanced enforcement measures where vehicles and GSE are improperly parked or staged, including the removal, or impounding of vehicles and GSE that have been abandoned or otherwise are presenting a safety hazard, all at the expense of the Airport User.

Unit load devices (ULD)

- 10.30 Air Carriers that operate widebody Aircraft or otherwise have ULDs present at the Airport, including the ground handlers acting on their behalf, are required to submit within 5 business days of the end of each quarter, a summary report of their station allocation and actual physical counts of ULDs using the format prescribed in GTAA Directive 2022-D-003. The summary report shall be sent via email at: groundhandlingprogram@gtaa.com.

- 10.31 Air Carriers and ground handlers must proactively manage their inventory of operational ULDs at the Airport and ensure that ULDs are properly parked or staged, in accordance with the [Ground Operations Manual](#). They must arrange for the removal from the Airport or the disposal of excess or unserviceable ULDs.
- 10.32 Improperly parked ULDs or ULDs that otherwise present a risk to the safe and efficient Airside operation will be subject to enforcement actions, in accordance with the provisions of the [Ground Operations Manual](#) and any applicable directives issued by the GTAA.

Aircraft de-icing

- 10.33 Airport Users must not engage in aircraft De-icing or Anti-icing activities without a Glycol Mitigation Plan previously approved by GTAA Environmental Services.
- 10.34 Failure to submit a Glycol Mitigation Plan to the GTAA is considered a safety and operational risk and could result in refusal to gate.
- 10.35 The GTAA permits De-icing/Anti-icing only in a defined area and only in areas where glycol recovery is possible and under conditions specified in the approved Glycol Mitigation Plan.
- 10.36 GTAA Environmental Services reserves the right to inspect Aircraft De-icing operations to ensure compliance with an approved Glycol Mitigation Plan. In the event that the approved Glycol Mitigation Plan does not ensure environmental and operational compliance, additional mitigation efforts will be required by Airport Users before engaging in De-icing and Anti-icing activities.
- 10.37 De-icing and Anti-icing must occur only at the Airport Central De-icing Facility or in specified locations designated and approved by the GTAA.
- 10.38 De-icing and Anti-icing products must be approved by GTAA Environmental Services prior to use.

Fueling aircraft

- 10.39 Air Operators conducting Aircraft fueling operations – with or without Passengers onboard – must comply with all relevant codes and standards, including but not limited to the National Fire Protection Association 407 (Standard for Aircraft Fuel Servicing).
- 10.40 All Aircraft fueling operations must be conducted by GTAA-licensed providers and trained personnel, and no fuelling is permitted while engines are running unless authorized in writing by the GTAA.
- 10.41 If the Aircraft being fueled is operating as a medevac and contains a Passenger, GTAA Fire and Emergency Services must be present during fueling operations.

Fuel and other spills

- 10.42 In the event of a spill, the Air Operator or fuel provider must immediately call the Airport Emergency Line at 416-776-3033 and ensure that all necessary precautions are taken to contain and control the spill, and that directives by GTAA Fire and Emergency Services are followed. Notification of the GTAA is imperative to ensure alignment with regulatory reporting requirements, such as notification to government agencies regarding a spill.
- 10.43 If there is an apparent risk to human health steps must be taken to immediately address this risk, which includes moving the fuel delivery units, however, if there is no apparent risk to human health, fuel delivery units must not be moved until the spillage is cleaned up or remediated to the satisfaction of the GTAA.
- 10.44 Spilled materials must be cleaned up immediately and the area secured without delay. Every effort shall be made to contain the spill and keep it from entering the storm drains, contaminating the soil, or otherwise entering the natural environment.
- 10.45 If the party responsible for the spill is unknown and/or the cleanup needs to occur immediately, the GTAA reserves the right to conduct the cleanup and charge the responsible party for the cleanup and the ensuing investigation, including any other remedies as applicable. The GTAA shall not be liable for any damage sustained to property during the cleanup.
- 10.46 Any spill deemed by the GTAA to have an environmental impact must be followed by an environmental investigation that evaluates how the Incident has affected or may potentially impact the environment (air, water, soil, or other ecological receptors). The investigation must be conducted according to the directions provided by GTAA Environmental Services.

Clean-up and containment of spills

- 10.47 Airport Users must not allow oil, hydraulic fluid, or any other contaminants of any kind, including Aqueous Film Forming Foams, diesel, glycol, pavement de-icers, or lavatory waste, to leak or spill at the Airport.
- 10.48 No oil, hydraulic fluid, or any other contaminants of any kind, including detergents used to wash Aircraft or other surfaces, and lavatory waste shall be allowed to flow into or be placed in any sewer system or open water areas.
- 10.49 All spills must be reported immediately to the Airport Emergency Line at 416-776-3033.
- 10.50 Whenever a hazardous spill or leak occurs, the owner, agent in control, or the generator of the hazardous material must immediately take all steps necessary to discover, notify appropriate parties, contain, clean-up, dispose of, and follow-up on the spill or leak.
- 10.51 The GTAA reserves the right to charge for the spill cleanup and any ensuing investigation, including the exercise of any other remedies as applicable. The GTAA shall not be liable for any damage sustained to property during the cleanup.

Hazardous materials

- 10.52 Airport Users must strictly adhere to all applicable laws, directives, and regulations governing the transportation of Hazardous Materials.
- 10.53 Hazardous Materials must be stored, kept, handled, used, dispensed, and transported in compliance with all applicable regulations and standards.
- 10.54 Airport Users must collect, maintain, characterize, manage, label, store, and dispose of any Hazardous Materials generated and maintain chain of custody documentation and disposal manifests.
- 10.55 Buildings, rooms, and spaces containing Hazardous Materials must be identified by hazard warning signs. The GTAA reserves the right to conduct inspections from time to time to ensure adherence to the provisions related to Hazardous Materials and request corrective actions or exercise any remedies as may be applicable.

Foreign object debris

- 10.56 The GTAA is committed to preventing Foreign Object Debris (“FOD”)-related damage to Aircraft and injury to persons. Accordingly, Airport Users must comply with the [GTAA's FOD Prevention and Control Policy](#).
- 10.57 Holders of a RAIC must not create or spread FOD. While this requirement applies throughout the Airport, particular care must be taken in areas adjacent to the Movement Area, including but not limited to baggage rooms, hold rooms, ready rooms, service areas, garages, and terminal service roads.
- 10.58 FOD must be removed immediately and deposited in an appropriate container or storage area. When FOD cannot be removed safely, the Integrated Operations Control Centre must be contacted immediately at 416-776-3055.
- 10.59 The GTAA may order removal of FOD at the expense of the responsible Airport User and shall not be liable for any damage sustained during removal. The GTAA reserves the right to be indemnified for any losses or damages incurred.

Runway surface conditions

- 10.60 Air Carriers must provide the GTAA with their level of service expectations for Runway surface conditions at least 30 days before the beginning of each IATA winter season.

Slot coordination and reservations

- 10.61 The Airport is designated as an IATA Level 3 Slot Coordinated Airport. As such, the GTAA adheres to [IATA's Worldwide Airport Slot Guidelines](#), as may be adapted by the GTAA from time to time to address local concerns.
- 10.62 Air Carriers must submit a slot clearance request to be allocated an arrival and departure slot for every operation. All clearance requests must be submitted in local time and according to the format established in the document GTAA Air Carrier – Application for Entry. Slot requests must be sent to slots@gtaa.com.
- 10.63 Air Carriers must request slots in good faith on the basis of what they will actually use within one IATA season. Air Carriers must not engage or attempt to participate in anti-competitive behaviour such as holding or misusing slots.
- 10.64 Misuse of slots will not be tolerated by the GTAA and may result in corrective and/or remedial actions consistent with the requirements of the WASG, including reporting to relevant government agencies if applicable, and, in extreme cases, removal of slot privileges for misuse.
- 10.65 The Airport Reservation Office processes reservation requests for Business/General Aviation and allocates reservations on a first-come, first-served basis. Operators of Business/General Aviation must use the On-line Coordination Tool to make all reservations by going to vzaro.com/ocs.
- 10.66 The slot coordinator will track slot usage against approved requests, undertake pre-operation and post-operation analyses when required, and report on performance to Air Carriers, according to the relevant provisions set out in the IATA's Worldwide Airport Slot Guidelines or any guidelines or metrics issued by the GTAA.
- 10.67 The GTAA will track Business/General Aviation operations against approved reservations within the Airport Reservation Office (ARO), undertake pre-operation and post-operation analyses, and report on performance to Business/General Aviation operators according to the relevant guidelines or metrics issued by the GTAA.

Night flight restriction program

- 10.68 Aircraft operations at the Airport are restricted between the hours of 00:30 and 06:29 local time. Air Operators planning to arrive or depart within the restricted hours must first obtain the consent of the GTAA, either by a pre-planned/scheduled exemption, an operating extension on the day of operation, or a General Aviation night flight approval slot.

- 10.69 Compliance with the GTAA's Night Flight Restriction Program is mandatory for all Air Operators and is strictly enforced by the GTAA. Aircraft arriving or departing during the restricted hours without prior approval of the GTAA will be investigated and reported to Transport Canada for further review and possible enforcement action, including monetary penalties.

Aircraft noise certificates

- 10.70 Air Operators must provide the GTAA with valid Aircraft noise certificates for their entire fleet prior to operating at the Airport. For existing Air Operators, they must provide updates and communicate any changes to the GTAA at least 15 days before the start of every IATA season.
- 10.71 Air Operations must comply with noise operating restrictions and noise abatement procedures, which are published by NAV Canada in the [Canada Air Pilot](#) and the [Canada Flight Supplement](#). The GTAA reserves the right to refer cases of non-compliance to NAV Canada.

Ground handling

- 10.72 Airport Users engaged in any activities, as defined in the most current version of Annex A of [IATA's Standard Ground Handling Agreement](#) must operate in accordance with the latest updates to the [Ground Operations Manual](#) and the GTAA Ground Handling Policy.
- 10.73 Air Carriers who perform self-handling will be held accountable to the Service Level Standards contained in the [Ground Operations Manual](#), as it may be revised from time to time, and will receive reports on performance and be subject to consequences contained in the [Ground Operations Manual](#).

Remotely piloted aircraft systems

- 10.74 Airport Users, Air Operators or any other person operating Remotely Piloted Aircraft Systems (RPAS) must comply with all applicable laws, including restrictions on operating in the vicinity of the Airport, and obtain, in advance, applicable approvals from regulatory authorities. All RPAS flights operating within the boundaries of the Airport must be approved, in writing and in advance by Nav Canada and the GTAA.
- 10.75 Airport Users, Air Operators or other persons conducting unauthorized use of RPAS at or around the Airport may be subject to fines or imprisonment pursuant to the [Aeronautics Act](#) or the [Criminal Code](#). In addition, unauthorized RPAS flights that disrupt, interfere with, or hinder the Airport or its operation in any way, or of any Aircraft, or that jeopardize the safety of persons or property may result in legal action.
- 10.76 For enquiries regarding the use of RPAS at or around the Airport, information may be obtained at rpas@gtaa.com.

Commercial activities

- 11.1 Airport Users conducting commercial activities at the Airport must receive either a permit or authorization from the GTAA or enter into a lease, licence, contract, or commercial arrangement with the GTAA in respect to the operation of their business at the Airport.
- 11.2 The GTAA will take all necessary measures to preserve the safety and security of operations at the Airport's terminal buildings and Airside/landside areas. Any unauthorized commercial activity may be subject to the [Ontario Trespass to Property Act](#), the [Ontario Occupiers' Liability Act](#), and the [Traffic on the Land Side of Airport Regulations](#).
- 11.3 All retail, food and beverage tenants must comply with the Tenant Manual, which can be accessed on the GTAA Tenant Portal, which includes important information about operating at the Airport and expected Service Level Standards.
- 11.4 All requests for licences to operate, authorizations, and permits for commercial activity shall be sent to: business.interest@gtaa.com.

Sales data and billing

- 11.5 All retail, food and beverage tenants must charge their customers using an electronic point of sale (POS) system or cash register. Manual billing of customers is strictly prohibited.
- 11.6 The GTAA reserves the right to install its own POS system, at which point in time all retail, food and beverage tenants must allow sales data and information at each POS terminal to be transmitted to GTAA host systems.

Safety requirements

- 11.7 Airport Users conducting commercial activities at the Airport must abide by the safety requirements and obligations set out in the Tenant Safety Evaluation Program, which can be accessed on the GTAA Tenant Portal, and includes giving GTAA the right to measure conformity with such measures.
- 11.8 Airport Users who are not meeting expected obligations in the Tenant Safety Evaluation Program will be required to prepare and implement a corrective action plan to be approved by the GTAA.

Movement of goods and materials

- 11.9 To maintain the safety and security of the Airport, goods and materials transported through the Airport must first be verified and authorized by the GTAA by the issuance of a Material Movement Permit via the [Material Movements Form](#). For planning purposes, Airport Users must commence this process before starting transportation activities.
- 11.10 Once issued by the GTAA, the Material Movement Permit must be carried by an authorized person at all times. The Material Movement Permit cannot be used for the movement of liquid, gels and/or any goods meant for purchase or consumption by a passenger.
- 11.11 Airport Users must adhere to the GTAA Logistics Program, including the safety and security measures associated with it. A copy of the GTAA Logistics Program can be obtained from your business partner contact at the GTAA.

Common areas and equipment

- 11.12 Airport Users must keep all Common Areas orderly and without damage, and common use equipment such as counters must be returned in a clean, tidy, and proper working condition for the next user.
- 11.13 Common Areas must be kept free of litter, waste, and debris, including bag tags, boarding cards, and paper waste resulting from Passenger processing/check-in/boarding activities. All waste must be disposed in the appropriate waste receptacles.
- 11.14 Airport Users must inspect their assigned Common Area and/or equipment at the beginning and at the end of the assigned period. Any functionality issues or damage must be reported immediately to their internal supervisor. Any damage in Common Areas must be reported to the Integrated Operations Control Centre (IOCC) at 416-776-3055.
- 11.15 Air Operators must not use check-in/ticket counters or boarding gates for permanent storage. All drawers and cabinets must be emptied and left unlocked at the end of the assigned period.
- 11.16 Air Operators must store all owned equipment such as baggage sizers and signs in designated storage areas, in a clean and orderly fashion, and must also dispose of any broken equipment.
- 11.17 All common use equipment must remain in a state and configuration that will allow any future Airport User to perform the required check-in and boarding processes without having to remove signs, displays, and Airport User-specific stocks.
- 11.18 All common use stanchions used in the boarding lounges must be returned to their original location when boarding is completed.
- 11.19 The GTAA has the right to charge the Airport User the cost of cleaning or repairing Common Areas, as applicable.

Signage and advertisements

- 11.20 In addition to the requirement that signage be in both English and French, Airport Users and Air Operators must not post, distribute, or display signs, advertisements or circulars exposed to public view without the prior written consent of the GTAA.
- 11.21 Requests for affixing, installing, posting, distributing, or displaying any type of public signage at the Airport shall be directed to the Airport User's assigned commercial account manager, with copy to business.interest@gtaa.com.
- 11.22 Before affixing, installing, or placing anything at the Airport, Airport Users must obtain authorization from the GTAA, in accordance with the [Airport Construction Code](#). Airport Users must also submit drawings detailing all work to be produced according to the requirements in the [CADD Standard Guide](#).
- 11.23 The GTAA will request the immediate removal of any signage, advertisement or circular that are not previously approved, or which were not presented in a professional manner. Paper and hand-written signs are not acceptable.

On-site filming and photography

- 11.24 Any commercial filming or photography conducted at the Airport must be approved by the GTAA in advance and may be subject to certain conditions such as location, insurance, and timing.
- 11.25 All commercial filming and photography conducted at the Airport, including a tenant facility, must have a valid Filming/Photography Permit issued by the GTAA and all applicable fees must be paid in full. Failure to hold a valid permit may provide grounds for enforcement actions.
- 11.26 Authorization to access any tenant facility must be obtained directly from the tenant at least 48 hours before the day of filming/photography.
- 11.27 Requests for a permit shall be submitted through the GTAA's [Commercial Filming permits webpage](#).
- 11.28 On-site filming by media requires a permit which can be obtained at the [Media Permit webpage](#), subject to certain conditions.

Demonstrations and picketing

- 11.29 Demonstrations, picketing and any other protest activity must be conducted in a safe and lawful manner and requires prior coordination with the GTAA's security team in order to establish protocols for the orderly and safe conduct of such activity, including maintaining the safe flow of Passengers and vehicle traffic (including access by emergency responder vehicles) at the Airport.
- 11.30 Under no circumstances will demonstrations, picketing or protests be permitted within restricted areas of the Airport, inside passenger terminals or parking facilities, side roadways, or on the Terminal Link train.
- 11.31 Airport Users, Air Operators and unions must immediately notify the GTAA of any possible labour disruption or related activity, including picketing, and confirm that such actions are conducted in connection with a legal lockout or strike.
- 11.32 Airport Users, Air Operators, and labour unions, as applicable, must establish in coordination with the GTAA a labour/picket protocol which covers safety and security considerations before engaging in any labour demonstration, picketing or protest activity.
- 11.33 The GTAA will work with local enforcement authorities to address any potential or imminent threats to the safety and security of the Airport, and will pursue other remedies available to it, including seeking injunctions, as the GTAA determines appropriate.

Special events and activities

- 11.34 Airport Users may organize special events and activities that deviate from normal Airport operations, subject to issuance by the GTAA of an Activity Permit.
- 11.35 An application to obtain an Activity Permit must be submitted to the Customer and Terminal Services department at least 15 business days prior to the date of the activity.
- 11.36 Requests for an Activity Permit shall be submitted through the GTAA's [Activity Permits webpage](#).
- 11.37 A condition of the permit is to carry a minimum of \$2 million commercial general liability insurance and otherwise comply with insurance requirements contained in Section 2 of the GTAA Rules.
- 11.38 Any events or activities undertaken without an Activity Permit are subject to immediate cancellation. In addition, the GTAA may take any other actions that it deems appropriate, and the Airport User shall indemnify the GTAA for any costs incurred as a result of such failure to comply.

General requirements

- 12.1 All Commercial Ground Transportation Operators, whether an individual or business entity of any type, must obtain the necessary permits and/or licences from the GTAA before promoting, offering, or providing commercial ground transportation services at the Airport.
- 12.2 Commercial Ground Transportation Operators must hold valid provincial/municipal licences where applicable. In addition, Commercial Ground Transportation Operators must successfully complete all training modules made available through the [Canadian Transportation Agency \(CTA\) website](#), and taxicabs, limousines, as well as peak period and irregular operation operators must successfully pass the GTAA's driver examination prior to receiving an Airport Drivers Certificate.
- 12.3 Ground transportation permits and/or licences issued by the GTAA are a privilege not a right and are issued at the discretion of the GTAA.
- 12.4 All requests for licences, authorizations, and permits for Commercial Ground Transportation Operators shall be sent to: business.interest@gtaa.com.
- 12.5 All Commercial Ground Transportation Operators and their respective drivers will be held accountable where they are in non-compliance with the terms of the GTAA Rules, individual permits or licences, or the Taxicab and Limousine Demerit Point System where applicable, which may include suspension and/or termination of a permit/licence, fines or penalties under the [Highway Traffic Act](#), parking or speeding tickets under the [Traffic on the Land Side of Airport Regulations](#), or contacting the applicable authorities to evict under the [Trespass to Property Act](#).
- 12.6 A copy of the Taxicab and Limousine Demerit Point System can be obtained by request at business.interest@gtaa.com and will be provided to taxicabs and limousines permit/licence holders and drivers who currently hold a permit or license.
- 12.7 The GTAA reserves the right to install signage inside and outside the terminal buildings, parking garages or any other public areas that will direct passengers to authorized pick-up and drop-off locations for services provided by Commercial Ground Transportation Operators or any other transportation services the GTAA authorizes to operate on the curbs at the Airport. Signage installed including type, size and location will be at the sole discretion of the GTAA and may include logos or symbols.

Taxicab and limousine licences

- 12.8 New taxicab and limousine licences are issued through an open and competitive process. Seniority is not considered as a factor for licence issuance. Requests for taxicab and limousine licences shall be sent to: business.interest@gtaa.com.
- 12.9 Individuals who wish to drive a GTAA licensed or permitted taxicab or limousine must be sponsored by a holder of a valid Airport Taxicab or Limousine Permit or Licence, as applicable, for such vehicle.
- 12.10 Airport Users, contractors, or subcontractors who notice unauthorized persons soliciting Passengers for taxicabs or limousines at the Airport must immediately call the Integrated Operations Control Centre (IOCC) at 416-776-3055.

Peak period and irregular operations

- 12.11 Peak period and irregular operations are the second and third tier of taxicab and limousine services that support the GTAA in providing Passengers with transportation during peak hours or irregular operations, i.e., when the main fleet of taxicab and/or limousine services are insufficient to meet Passenger demand.
- 12.12 These services are issued through an open and competitive process in which seniority is not considered as a factor.

Pre-arranged services

- 12.13 The GTAA permits municipally licensed taxicabs, limousines, or charter buses to pick up Passengers at the Airport on a pre-arranged basis, provided that they hold a valid Day Service Permit issued by the GTAA and abide by the GTAA's protocols and pricing specified in the Day Service Permit. Day Service Permits can be obtained through torontop Pearson.com/en/operators-at-pearson/drivers-prearranged.
- 12.14 Operators of pre-arranged services will be notified by the Airport Pre-Arranged Dispatcher when the Passenger has arrived and is ready for pick-up. The Airport Pre-Arranged Dispatcher will notify the operator of pre-arranged services via phone or SMS to proceed to the designated pick-up area upon arrival.

Other commercial ground transportation services

- 12.15 Hotel shuttles, out-of-town shuttles, off-Airport parking shuttles, and Transportation Network Company (TNC) services are permitted to pick-up and drop-off Passengers at a designated location at the Airport, provided they hold a valid licence issued by the GTAA and comply with all applicable municipal/provincial requirements and conditions, including in the case of off-Airport parking shuttles a Zone Permit issued by the applicable municipality allowing the operator to provide off-Airport parking services.
- 12.16 Hotel shuttles, out-of-town shuttles, off-Airport parking shuttles and crew shuttles are required to register their vehicle at the Commercial Vehicle Holding Area and obtain an On-Board Diagnostic 2nd Generation device and install the device in the diagnostics port of the vehicle. If the OBDII Device is removed from the diagnostic port, an alert will be sent to the GTAA.

Crew shuttle service

- 12.17 In addition to the requirements outlined above for other shuttle services, an endorsement letter is required from the Air Operator who has requested contracted service from the shuttle provider.

Non-compliance and dispute resolution



Notice of non-compliance

- 13.1 Potential non-compliance with the GTAA Rules will be assessed and investigated by the GTAA before a Notice of Non-Compliance is issued to the Airport User.
- 13.2 A Notice of Non-Compliance will be delivered by the relevant Issuing Department through electronic communication to the Airport User or such person designated by the Airport User's organization to receive such notices.
- 13.3 The GTAA is under no obligation to issue a formal Notice of Non-Compliance for offences where in the GTAA's sole discretion require immediate action, such as, but not limited to those related to safety and security, operational efficiency or customer experience.
- 13.4 Airport Users shall note that non-compliance with the GTAA Rules may also cause non-compliance with or default of an existing contract, agreement, licence, permit, or lease between the Airport User and the GTAA.

Failure to address non-compliance notice

- 13.5 Failure by the Airport User to address a Notice of Non-Compliance may result in:
 - 13.5.1 Corrective and/or enforcement actions by the GTAA, including but not limited to exercising liquidated damages, taking remedial actions, recouping the costs for such actions, terminating contracts, agreements, and leases, revoking permits, licences, and authorizations, and holding security as provided in the contract, agreement, licence, permit or lease.
 - 13.5.2 Reporting non-compliance to governmental authorities for further legal or regulatory action, as applicable.
 - 13.5.3 Applying existing systems of compliance or performance at the Airport, including but not limited to demerit points, suspension of RAIC privileges, or suspension/cancellation of applicable licenses, permits, or certificates.
 - 13.5.4 Any other actions that are appropriate and necessary in the circumstances and at the sole discretion of the GTAA.

Dispute settlement process

- 13.6 If the Airport Users object to the assessment provided in a Notice of Non-Compliance, they may submit additional written information to the Issuing Department within 30 calendar days of receipt of such assessment.
- 13.7 In the absence of a pre-existing appeal mechanism applicable to the disagreement, Airport Users are encouraged to contact the Issuing Department to schedule an informal meeting within 30 days of receipt of an assessment if they wish to provide additional information by way of cooperative discussion.
- 13.8 The GTAA will consider all such additional information and make good-faith efforts to resolve disagreements regarding the Notice of Non-Compliance.
- 13.9 If the disagreement remains unresolved, Airport Users have the right to a formal appeal of the assessment and resulting remedies no later than 30 calendar days after the date of the meeting with the Issuing Department, the submission of additional written evidence, or the receipt of the assessment, whichever is latest. The notice of appeal must be sent in writing to the Issuing Department and GTAA's Legal Department and must include any supportive evidence or information that is deemed relevant to the resolution of the disagreement.
- 13.10 The appeal will be reviewed by a Director within the Issuing Department in light of the provisions set out in the GTAA Rules and based on the standard of strict liability.
- 13.11 The decision reached by the Director is final and without further appeal.
- 13.12 The GTAA reserves the right to take immediate action to remedy dangerous, harmful, disruptive, or otherwise non-compliant situations without waiting for the outcome of the dispute resolution process.

Accessibility Regulations	Refer to the <i>Accessible Transportation for Persons with Disabilities Regulations</i> (SOR/2019-244), which cover all modes of transport under the Canadian Transportation Agency's jurisdiction (i.e., air and interprovincial and international passenger rail, bus, and ferry), including security and border screening. The Accessibility Regulations are enforceable by administrative monetary penalties.
Aeronautical Fees and Charges	These include but are not limited to the following categories: (i) general terminal charges, (ii) landing fees, (iii) Aircraft fees for commercial, business, and General Aviation, (iv) Apron fees, (v) De-icing facility fees, (vi) Airport improvement fees, (vii) Aircraft parking charges, and (viii) slot administration fees.
Air Carrier	An Air Operator that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of Passengers, freight, or mail. Excludes General Aviation and Business Aviation. Source: ICAO, Manual on the Regulation of International Air Transport (Doc. 9626). ICAO, Annex 6, Operation of Aircraft.
Air Operator	Refers to any person or entity which engages in the provision of air transportation services for remuneration or hire, sells those services to the general public or private individuals, based on a lease or any other arrangement. Includes General Aviation and Business Aviation services. Source: ICAO, Annex 6, Operation of Aircraft.
Aircraft	Any machine that can derive support in the atmosphere from the reactions of the air against the earth's surface. Source: ICAO, Annex 6, Operation of Aircraft.
Airport	Refers to Toronto-Lester B. Pearson International Airport.
Airport Drivers Certificate	Refers to a certificate issued by the GTAA regarding permits and licences for commercial ground service operators.
Airport Operations Manual	The manual referred to in section 302.08 of the Canadian Aeronautic Regulations.
Airport User	Refers to the GTAA's commercial partners and tenants, including their agents, licensees and sub-contractors and any other person that uses infrastructure, facilities or services or conducts activities at the Airport, whether temporarily or on a permanent basis.
Airside	Refers to areas within the Airport where Aircraft movements take place (i.e., Taxiway, Runway) and where Aircraft used for air operations are serviced (i.e., gating, loading/unloading, maintenance, fueling, etc.). These areas are not accessible to the general public.
Anti-Icing	The proactive application of ice-control products to Aircraft prior to snow and ice accumulation.
Apron	A defined area, on a land aerodrome, intended to accommodate Aircraft for purposes of loading or unloading Passengers, mail or cargo, fuelling, parking or maintenance. Source: ICAO, Annex 14, Aerodromes.

Business Aviation	That sector of aviation which concerns the operation or use of aircraft by companies for the carriage of passengers or goods as an aid to the conduct of their business, flown for purposes generally considered not for public hire and piloted by individuals having, at the minimum, a valid commercial pilot license with an instrument rating.
Commercial Ground Transportation Operators	Refers to companies or individuals operating any of the following ground transportation services at the Airport: taxicab, limousine, bus, shuttle, TNC or car rental.
Commercial Vehicle Permit Demerit Point System	A document which outlines how points are assessed against Commercial Ground Transportation Operators for infractions of the GTAA Rules or their own licenses and permits.
Common Areas	Those areas of the Airport designated by the GTAA for use in common by the GTAA and Airport Users, whether or not those areas are open to the general public or to all Airport Users.
De-Icing	The reactive application of ice-control products to melt existing snow and ice.
Disabled Aircraft	An Aircraft that requires assistance to move from any position on a Runway, Taxiway, or Apron areas area of the Airport.
Effluent	Wastewater that is deposited from a wastewater system, as defined in the Wastewater Systems Effluent Regulations.
Facility Alteration Permit (FAP)	A permit required for any construction, demolition or alteration carried out at the Airport.
Foreign Object Debris (FOD)	Includes any object found in a location that can result in damage to equipment or Aircraft or injure persons.
General Aviation	That portion of civil aviation that encompasses all facets of aviation except air carriers holding a certificate of convenience and necessity and large aircraft commercial operators.
Ground Lease	The lease between His Majesty the King in Right of Canada, as landlord, as represented by the Minister of Transport, and the GTAA, as tenant, made as of the 2nd day of December 1996, as may be amended, restated, or supplemented from time to time.
Ground Operations Manual (GOM)	A manual that defines the objectives, policies, rules, and procedures governing ground handling at the Airport.
GTAA	Greater Toronto Airports Authority
GTAA Rules	Refers to the GTAA Rules and Regulations, as may be updated and amended from time to time.

Hazardous Materials	Any product, mixture, material, or substance that is classified in accordance with the regulations made under subsection 15(1) in a category or subcategory of a hazard class listed in Schedule 2 of the Hazardous Products Act.
Hot Work	Work that could produce a source of ignition, such as heat, sparks, or open flame. Examples of hot work include welding, brazing, cutting, grinding, soldering, torch-applied roofing or the use of an open flame of any type within the limits of the Airport lands.
Issuing Department	The department within the GTAA that issues a Notice of Non-Compliance to an Airport User.
Movement Areas	Apron, Taxiway, and Runways.
Notice of Non-Compliance	A document issued by the GTAA that explains the nature and scope of non-compliance with the GTAA Rules, including any required steps to address or remedy the non-compliance, as well as the timeframe for those steps and remedies to be undertaken.
Passenger	Any person, excluding on-duty members of the flight and cabin crews, who makes a travel journey by air. Source: ICAO, Manual on the Regulation of International Air Transport (Doc. 9626). Eurostat, Reference Manual on Air Transport Statistics (2015). Term commonly used in Canadian law and international air transportation law (U.S. and Europe).
Remotely Piloted Aircraft Systems (RPAS)	A remotely piloted Aircraft, its associated remote pilot station(s), the required command and control links and any other components as specified in the type design. Source: ICAO, RPAS Concept of Operations for International IFR Operations (Handbook).
RAIC	A Restricted Area Identity Card issued by the GTAA's Pass Permit Control Office.
Runway	A defined rectangular area on a land aerodrome prepared for the landing and taking off of Aircraft along its length. Source: ICAO, Annex 14, Aerodromes.
Security Barrier	A physical structure or natural feature used to prevent or deter access by unauthorized persons to a restricted area.
Service Level Standards	Refers to the standards developed by the GTAA for tow-off, gate arrivals and baggage handling, with the objective to help ensure efficient and effective levels of service for operators at the Airport, Air Carrier clients and the Passengers who travel through the Airport.
Taxiway	A defined path on a land aerodrome established for the taxiing of Aircraft and intended to provide a link between one part of the aerodrome and another, for example between the aircraft stand taxi lane, the apron taxiway, and the rapid exit taxiway. Source: ICAO, Annex 14, Aerodromes.
Transportation Network Company (TNC)	A company that offers prearranged rides or car rentals for a fee, utilizing an online application (app) via a mobile device to connect Passengers or automobile renters with drivers and car owners. Well-known examples of ride-share applications include Uber, Lyft, and Zipcar.

This is Exhibit "E" referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)
Shimon Sherrington



GREATER TORONTO AIRPORTS AUTHORITY AIRPORT IMPROVEMENT FEE AGREEMENT

Toronto-Pearson International Airport
P.O. Box 6031, Toronto AMP, Ontario, L5P 1B2

DATE: January 1, 2023 (the "Effective Date")

NAME OF CARRIER: 1263343 Alberta Inc. (dba Lynx Air)

As of the Effective Date, each of the Greater Toronto Airports Authority ("GTAA") and 1263343 Alberta Inc. (dba Lynx Air) ("Air Carrier") hereby agree as follows with respect to the imposition by GTAA of an Airport Improvement Fee, the collection of Deposits by Air Carrier from certain passengers and the remittance of Deposits by Air Carrier to GTAA as hereinafter set forth.

Greater Toronto Airports Authority

Per: 

Name: John Peellegoda

Title: Acting Chief Financial Officer

1263343 Alberta Inc. (dba Lynx Air)

Per: 

Name: Michael S. Holditch
Title: Chief Financial Officer

RECITALS

- A. GTAA manages, operates and maintains Toronto-Lester B. Pearson International Airport pursuant to a ground lease dated December 2, 1996 from Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport, having a term of 60 years.
- B. As part of its obligation under the aforementioned ground lease, GTAA undertakes on an ongoing basis the capital development and improvement of the Airport.
- C. GTAA has the authority to levy an Airport Improvement Fee upon the passengers using the Airport.
- D. The Parties wish to minimize any inconvenience to the passenger in the collection and remittance of Deposits by Air Carrier.
- E. The Parties wish to enter into this Agreement to set forth their agreement pertaining to the collection and remittance of Deposits and use of AIF and a consultation process between the Parties (through the ACC, who will be acting on Air Carrier's behalf).

NOW THEREFORE in consideration of the covenants and agreements hereafter reserved and contained, and other good and valuable consideration, the Parties agree as follows:

1. INTERPRETATION**1.1. Definitions**

When used in this Agreement or in any Schedule attached to this Agreement, the following words or expressions will have the meanings hereinafter set forth, unless the context expressly or by necessary implication otherwise requires:

"**ACC**" means the Airline Consultative Committee, being a committee comprised of representatives of the air carriers operating at the Airport from time to time which acts as a body with which GTAA consults and confers on issues affecting the operation, management and development of the Airport, and includes any sub-committees and ad hoc working groups of the Airline Consultative Committee;

"**ACC Endorsement**" means an endorsement rendered by the ACC in accordance with Section 2.2 of this Agreement confirming that the ACC has, through a voting process, obtained the endorsement of a minimum of 5 Participating Air Carriers operating at the Airport whose Enplaned Passengers represent at least 2/3 of the yearly Enplaned Passengers from all Participating Air Carriers at the Airport as determined as of December 31 of the previous year, with respect to a Reviewable Capital Program which has been submitted to it for endorsement in accordance with the terms of this Agreement;

"**Administration Cost**" has the meaning set forth in Section 2.5.1;

"Affiliate" means in respect of any person, a person who, directly or indirectly (including through one or more intermediaries) controls, or is controlled by, or is under common control with, such person. For the purposes of this definition, a person is considered to take "control" of or be "controlled" by another person if, in the case of a corporation, such other person owns more than 50% of the voting stock of such corporation and, in the case of a partnership, such person holds more than 50% of the interests in such partnership.

"Agreement" means this Airport Improvement Fee Agreement, including all Schedules attached hereto;

"AIF" or **"Airport Improvement Fee"** means the charge or fee levied by GTAA upon Enplaned Passengers, established in accordance with Section 2.1., collected from prospective Enplaned Passengers by Air Carrier, and remitted to GTAA by Air Carrier in accordance with this Agreement;

"AIF Certification Period" has the meaning set forth in Section 2.6.2(a);

"AIF Certification Period Audit" has the meaning set forth in Section 2.6.2(a);

"AIF Legislative Initiative" has the meaning set forth in Section 2.1.7;

"Air Carrier" means the air carrier who has signed this Agreement as identified on the cover page of this Agreement;

"Airport" means Toronto-Lester B. Pearson International Airport (as same may from time to time be altered, diminished, reconstructed or expanded);

"Airport Master Plan" means the Airport Master Plan as published by GTAA and amended by GTAA from time to time, which provides the overall framework for the development of the Airport;

"Amended Schedule "A" has the meaning set forth in Section 2.4.7(d);

"Annual Statement" means the statement provided by Air Carrier in accordance with Section 2.5 hereof;

"Business Day" means any day other than a Saturday, Sunday, statutory holiday in the province of Ontario or other day recognized as a holiday by federal or provincial government offices in the province of Ontario;

"Business Travel" means air travel by an on-duty employee of Air Carrier or any of its Affiliates which is:

- (a) authorized as business travel by Air Carrier or any of its Affiliates that employs said employee; and
- (b) required as part of that Air Carrier or any of its Affiliates employee's work duties for the express purpose of conducting business on behalf of either Air Carrier or its Affiliates.

For clarity, Business Travel also includes travel by Deadheading and Duty Travel Crews, including those employees of an air carrier other than Air Carrier. However, it does not include travel by an employee of Air Carrier or any of its Affiliates who travels to or commutes to or from the Airport and another airport to report for duty or returns to the community where such Air Carrier employee resides;

“Capital Expenditure” means both “capital expenditures” as defined in accordance with IFRS and Software as a Service (“SaaS”) solutions that under IFRS may otherwise be recorded as an operating expense;

“Capital Plan” has the meaning set forth in Section 2.2.1;

“Capital Program” means a defined series of interrelated Capital Projects or Capital Expenditures to be made by GTAA on a single capital facility or infrastructure located at the Airport as determined by GTAA and as further identified as such in the Capital Plan, provided that Land Acquisitions will not in any event constitute a Capital Program;

“Capital Project” means an individual separate Capital Expenditure project identified in a Capital Program, provided that any Capital Expenditure project with an aggregate estimated capital cost (calculated on the basis of the capital costs estimated to be expended as of the anticipated date of execution of the Capital Project, including inflation at a rate as estimated by GTAA) of \$50,000,000 or greater will be deemed to be a Capital Program, and further provided that Land Acquisitions will not constitute a Capital Project;

“Confidential Information” means (whether or not in tangible form) any information of whatever kind disclosed or revealed by either Party under or in relation to this Agreement that: (A) is by its nature confidential or proprietary, (B) is designated by the disclosing Party as confidential or proprietary, or (C) the receiving Party knows or ought reasonably to know is confidential or proprietary information and also includes this Agreement (including any amendments), all documentation and information issued by GTAA in relation to any Capital Program or Capital Project, the disclosing Party’s financial information, business opportunities, designs, compilations of information and copies thereof. Confidential Information will not include information that the receiving Party can demonstrate:

- (a) is currently in or subsequently enters the public domain without a breach of this Agreement;
- (b) is lawfully obtained from an independent third party who does not have an obligation of confidentiality to the disclosing Party;
- (c) is independently developed or obtained by the receiving Party without reliance on the information disclosed under this Agreement and without breach of this Agreement;
- (d) was already lawfully in the receiving Party’s possession prior to receipt of such information from the disclosing Party and was not under a previous obligation of confidentiality;

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- (c) is required to be disclosed by the receiving Party pursuant to an order by a court of competent jurisdiction, a taxing authority, or other requirement under any applicable laws; and/or
- (f) is released from the confidentiality provisions of this Agreement by the written authorization of the disclosing Party;

“Connecting Passenger” means an Enplaned Passenger carried by Air Carrier who has arrived at the Airport and who is: (i) continuing a journey on a different scheduled flight less than 4 hours after the arrival at the Airport for domestic Canada or transborder itineraries; or (ii) continuing a journey on a different scheduled flight less than 24 hours after arrival at the Airport for international itineraries; provided that, for the purposes of this Agreement, including both subparagraphs (i) and (ii) above, flights to and from the United States, (including Alaska but not Hawaii) will constitute flights within “transborder itineraries” and not “international itineraries”. For certainty, a “Connecting Passenger” includes a passenger who arrives on one air carrier and departs on another air carrier within the time periods described in the foregoing;

For clarity, where a specific passenger would have qualified as a Connecting Passenger, said passenger will remain a Connecting Passenger despite the occurrence of an irregular operation, which includes circumstances where a passenger who was scheduled to travel or did travel on an Air Carrier flight, and as a result of: a flight cancellation; an extended connection time; an additional flight as a result of an earlier aborted flight or diversion; and/or another reason beyond the control of Air Carrier (each an “IROP”) and as a result of such IROP, such passenger is transferred and carried by Air Carrier, or another air carrier, on another flight, or continues on an original itinerary with a delayed connection time that would otherwise no longer qualify them as a Connecting Passenger.

“Consultation Process” has the meaning set forth in Section 2.2.4;

“Credit Card AIF Cost Recovery” has the meaning set forth in Section 2.5.4;

“Credit Card Cost Recovery Date” has the meaning set forth in Section 2.5.4.

“CP Notice” has the meaning set forth in Section 2.2.4;

“Deadheading and Duty Travel Crews” means an Air Carrier employee who is: (i) repositioned by Air Carrier to depart from the Airport in order to work on a flight departing from another airport that is not the Air Carrier employee’s base or at which his or her last flight ended; or (ii) returning to the airport at which he or she is based having operated a flight. For certainty, this does not include an Air Carrier employee who travels or commutes between the Airport and another airport to report for duty or return to the community where such Air Carrier employee resides;

“Deposit” means an amount collected by Air Carrier on behalf of GTAA as a deposit from a prospective Enplaned Passenger equal to the amounts set out in Schedule “B”, payable by such prospective Enplaned Passenger should they become an Enplaned Passenger. GTAA will promptly notify Participating Air Carriers of any changes to the amounts set out in an Amended Schedule “B” issued by GTAA in accordance with Section 2.1.4. The Parties acknowledge and agree that if, at any time, GTAA provides any such notice to Participating Air Carriers, then such

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Amended Schedule "B" will replace the then-current Schedule "B" of this Agreement without need for the execution of a formal amendment to this Agreement;

"Effective Date" means the first calendar day on which Air Carrier is required by the terms of this Agreement and the previous AIF agreement between the Parties to collect and remit Deposits to GTAA and as further set out in Section 5.1;

"Enplaned Passenger" means a departing passenger, including for certainty, a Connecting Passenger, carried by Air Carrier or by a Family Carrier Member from the Airport, including those departing passengers traveling on frequent flyer mileage redemption programs, but which will not include:

- (a) airline employees travelling on Business Travel (for certainty, this includes Deadheading and Duty Travel Crews of one air carrier on another air carrier);
- (b) infants under 2 years of age for whom no Ticket was issued (even though a no-cost Ticket may have been issued in the name of the infant for the purpose of accessing passenger screening or customs);
- (c) a passenger who has arrived at the Airport on an Air Carrier flight and whose scheduled flight continues on a domestic, transborder or international itinerary on the same aircraft (or, in the event of a mechanical or other delay, another aircraft) with the same flight number;
- (d) a passenger which is required by federal or provincial legislation to be carried by Air Carrier for travel and which may include peace officers, air marshals or any other person as identified by such legislation; or
- (e) a passenger who is a personal attendant to and who is accompanying a passenger with disabilities for travel within Canada as defined in Part V of the *Canadian Transportation Act* (Canada) or any other applicable legislation,

(collectively (a) to (e) are "**Exempt Passengers**").

For clarity, any Enplaned Passenger: (i) on a flight that is operated by Air Carrier or a Family Carrier Member that may have a combination of passengers and cargo, also known as a "combi" flight, or (ii) on an aircraft operated by an air carrier flying under its own livery where all seats are being sold in the name of Air Carrier, will be considered an Enplaned Passenger if not otherwise an Exempt Passenger.

"Event Date" has the meaning set forth in Section 2.1.7;

"Event of Default" has the meaning set forth in Section 3.1.1;

"Exempt Passengers" has the meaning set forth in the definition of "Enplaned Passenger";

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“Exempt Services” means flights operated by Air Carrier or a Family Carrier Member that do not carry any Enplaned Passengers and includes cargo-only services, charity flights, medical and emergency services flights;

“Family Carrier Member” means an air carrier that is set out in Schedule “A”, and that is:

- (a) an air carrier that is an Affiliate of Air Carrier; or
- (b) a third party air carrier with whom Air Carrier has a capacity purchase agreement or other contractual agreement for the operation of Air Carrier’s flights, operating under the same trade name of Air Carrier or any of its Affiliates, or operating under the designator code of Air Carrier, provided that the foregoing is limited to aircraft movements of that third party air carrier for which Air Carrier has purchased 100% of the seats of that aircraft movement. For clarity, a Family Carrier Member can be a Non-Participating Air Carrier.

“Force Majeure” means a fire, flood, explosion, tornado, epidemic, earthquake, quarantine, embargo, or other act of God, explosion, damage or destruction to equipment or facilities, or other riots or civil disputes, war (whether declared or undeclared), acts of terrorism or armed conflict, any municipal ordinance or provincial or federal law, governmental order or regulation or order of any court or regulatory body, fraud, breaches of system security or any event beyond the reasonable control and not attributable to the negligence of the invoking party which renders continued performance under this Agreement by such party impossible, impracticable or illegal, provided that under no circumstances will a Party’s lack of funds or financing constitute an event of Force Majeure for the purposes of this Agreement or relieve a Party of its obligation to perform its responsibilities hereunder.

“Gross Annual AIF Revenues” has the meaning set forth in Section 2.5.1(a);

“GTAA Rates and Charges” means the aeronautical fees levied by GTAA upon air carriers using the Airport for the use of Airport facilities;

“HST” means any goods and services tax and any harmonized sales tax payable under the *Excise Tax Act* (Canada), including any sales tax or value-added tax enacted during the Term in replacement thereof;

“IFRS” means accounting standards published from time to time by the International Accounting Standards Board and adopted for use in Canada by the Canadian Accounting Standards Board;

“IROP” has the meaning set forth in the definition of “Connecting Passenger”;

“Land Acquisition” means any transaction pursuant to which GTAA will obtain an ownership or leasehold interest in real property;

“Moratorium Period” has the meaning set forth in Section 2.2.4;

“Notice” has the meaning set forth in Section 7.4.1;

“Non-Operation Period” has the meaning set forth in Section 5.2(a)(ii);

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“Non-Participating Air Carrier” means an air carrier which: (i) has not executed and delivered an agreement with GTAA on substantially the same terms as this Agreement; or (ii) has committed an Event of Default under an agreement with GTAA on substantially the same terms as this Agreement which Event of Default has not been cured, and in respect of which GTAA has exercised its remedies in accordance with Article 3 of the applicable agreement;

“Participating Air Carrier” means any air carrier operating at the Airport and involved in commercial air passenger services which has executed and delivered an agreement with GTAA on substantially the same terms as this Agreement (including Air Carrier);

“Parties” means GTAA and Air Carrier, collectively, and **“Party”** means either one of them as the context so requires;

“Permitted Transit Funding Amount” has the meaning set out in Section 2.3.1(a)(i);

“Purpose” has the meaning set forth in Section 7.19.1;

“Remittance Form(s)” has the meaning set forth in Section 2.4.3;

“Reviewable Capital Program” means a planned Capital Program or Capital Project in respect of buildings, airfields, roads, navigational aids and other assets required for the operation of the Airport with an estimated capital cost of \$50,000,000 or greater (calculated on the basis of the capital costs estimated to be expended as of the anticipated date of execution of the Capital Project or Capital Program, including inflation at a rate as estimated by GTAA, and net of any contributions to be received by GTAA from any governmental authority), but which for clarity does not in any event include: (a) Capital Programs or Capital Projects for operating, maintenance and capital restoration related to the Airport, as identified by GTAA, or (b) Capital Programs or Capital Projects undertaken by GTAA in respect of the satisfaction of regulatory requirements or Airport safety or security purposes. For clarity, only Capital Programs, including Capital Projects, funded by AIF in part or in whole are considered a Reviewable Capital Program (i.e., those funded through other sources are exempt from the Consultation Process);

“SaaS” has the meaning set out in the definition of “Capital Expenditure”;

“Security Amount” has the meaning set forth in Section 2.8.1;

“Systemic Adjustment” has the meaning set forth in Section 2.6.2(a)(ii);

“Term” has the meaning set forth in Section 5.1;

“Ticket” means the document that entitles an Enplaned Passenger to embark on Air Carrier’s flight and which will include electronic Tickets where the equivalent of paper Tickets with a travel itinerary for a passenger is kept in electronic form with a specific reference (commonly referred to as ticketless travel) and which will include Tickets comprised of a coupon or a number of coupons;

“TSC” means the ACC Technical Sub-Committee further described in Section 2.2.3, which is a working group of Participating Air Carriers with delegated authority from the ACC to work with

GTAA to evaluate, consult on and ultimately provide a recommendation to the ACC on the technical suitability of all Reviewable Capital Programs; and

“Vice President and Chief Financial Officer” means the GTAA employee holding the position of Vice-President and Chief Financial Officer from time to time and will include any acting Vice-President and Chief Financial Officer and, if the title of the position is changed, the employee who is able to exercise the authority of the Vice President and Chief Financial Officer for the purposes of this Agreement.

- 1.2. Words importing the singular number include the plural and vice versa and words importing gender include the masculine, feminine and neuter genders.
- 1.3. The division of this Agreement into Articles, Sections, Subsections, paragraphs and subparagraphs and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.
- 1.4. The words “hereof”, “herein”, “hereunder” and similar expressions used in any Article or Section of this Agreement relate to the whole of this Agreement and not to that Article or Section only, unless otherwise expressly provided.
- 1.5. Wherever in this Agreement the terms “include”, “includes”, “including” or any derivations thereof are used, such term will be interpreted to mean “including, without in any way limiting the generality of the foregoing,” such that any list following such term will not be construed so as to constitute an exhaustive list of the items so listed.
- 1.6. Except as otherwise indicated herein, at all times during the Term of this Agreement, the Parties will act reasonably in exercising their rights or discretions, making requests, making determinations and performing their duties and obligations under and in connection with this Agreement.

2. AIRPORT IMPROVEMENT FEE

2.1. Imposition and Usage of AIF and Remittance/Collection of Deposits

- 2.1.1 (a) The Parties agree that in general, AIF (specifically excluding amounts to be retained by Air Carrier in respect of the Administration Cost and amounts collected and remitted in respect of HST and other applicable taxes which will be remitted to the relevant authorities) will be used by GTAA for the purpose of Capital Programs and Capital Projects designed in furtherance of the:
 - (i) creation of operational efficiencies that reduce operating cost;
 - (ii) development of operating capacity;
 - (iii) generation of positive cash flow from non-aeronautical revenue sources; and
 - (iv) other purposes set forth in Section 2.3 hereof,

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and for debt service on any Capital Projects or Programs (which, for clarity, include debt service on any capital projects or programs which have been incurred by GTAA prior to the Effective Date of this Agreement).

- (b) During the Term, GTAA intends to impose an AIF in respect of the Enplaned Passengers carried by air carriers (including Air Carrier) operating from the Airport. In consideration of the retention by Air Carrier of the Administration Cost referred in Section 2.5 of this Agreement, Air Carrier will make every commercially reasonable effort to collect, or cause to be collected, the Deposit for and on behalf of GTAA at the time of the sale of a Ticket to each prospective Enplaned Passenger which will be held as a Deposit by Air Carrier and remitted to GTAA as provided in this Agreement.
 - (c) Subject to the terms of Section 2.4.2. of this Agreement, each of the Parties acknowledge and agree that: (i) the Deposits collected on behalf of GTAA by Air Carrier from the prospective Enplaned Passengers are funds properly belonging to GTAA and not Air Carrier; and (ii) the Deposits collected by Air Carrier will be held by Air Carrier in trust for the benefit of GTAA. Notwithstanding and without prejudice to the fact that the Deposits will be collected and held by Air Carrier in trust for GTAA, but subject to the terms of Section 2.4.2. of this Agreement, the Parties each acknowledge that such Deposits collected will be commingled in the accounts of Air Carrier with other funds collected during the normal course of business with no obligation to segregate the Deposits from these other funds, and GTAA will be under no obligation at any time to segregate AIF from any other funds it may have.
 - (d) Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that, as of January 1, 2023, Air Carrier and all of the other Participating Air Carriers shall be permitted to: continue using the same IATA "ticket tax" code (IATA Code: SQ); reflect on their Tickets the current AIF description; and collect and remit the AIF in the manner currently being used by all of the Participating Air Carriers, and same will not constitute a breach of any obligation of this Agreement. The Participating Air Carriers will work with IATA and the other Canadian airports diligently to develop and publish, through the IATA Ticket Tax Box Service, a new IATA "ticket tax" code and description reflecting the collection of Deposits in the manner otherwise provided herein. After the publication of the new IATA "ticket tax" code, and as set-out therein, Air Carrier will: reflect the new IATA-approved description on their Tickets; and collect and remit the Deposits on the Remittance Forms to accordingly reflect the Deposit mechanism provided herein.
- 2.1.2. The obligation to collect and remit Deposits will not apply to Exempt Services provided by Air Carrier. In addition, air carriers who carry less than two thousand (2,000) Enplaned Passengers per calendar year will not be required to collect, hold and remit any Deposits, unless GTAA so elects such air carriers to require such collection, holding and remittance.
- 2.1.3. Any AIF or fee charged by GTAA on Non-Participating Air Carriers in lieu of the AIF imposed by GTAA will be set at a Canadian whole dollar amount per Enplaned Passenger

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for Participating Air Carriers or Non-Participating Air Carriers (as the case may be) plus HST and other applicable taxes. In addition, GTAA will also set an AIF in respect of Connecting Passengers for Participating Air Carriers or Non-Participating Air Carriers (as the case may be) which will be set at a Canadian whole dollar amount per Connecting Passenger.

- 2.1.4. GTAA has the right at any time during the Term to increase or decrease the amount of the AIF payable by Enplaned Passengers as set out herein. GTAA has the right at any time during the Term to increase or decrease the amount of the Deposit to be collected, held in accordance with Section 2.1.1.(b) and remitted by Air Carrier, provided that GTAA will provide at least 90 calendar days prior written Notice to the ACC and to the Participating Air Carriers.
- 2.1.5. Regardless of which air carrier sells a Ticket to a prospective Enplaned Passenger or which air carrier designator code is on the Enplaned Passenger's Ticket, the Parties acknowledge and agree that the Participating Air Carrier on whom the Enplaned Passenger actually travels will be the party responsible for the remittance of the Deposit for that prospective Enplaned Passenger in accordance with the other provisions of this Agreement, and, if Air Carrier also sold the Ticket to the prospective Enplaned Passenger, Air Carrier will be responsible for the collection of the Deposit for such Enplaned Passenger.
- 2.1.6. Except as permitted under Section 2.1.2, GTAA will not levy GTAA Rates and Charges, including landing fees and general terminal charges, on any less favourable terms and conditions to Participating Air Carriers and their passengers, having regard to the AIF imposed by GTAA, than are levied on Non-Participating Air Carriers and their passengers, provided that nothing herein will be interpreted or construed so as to limit the unfettered right of GTAA to set GTAA Rates and Charges at such levels as it deems appropriate in its sole discretion or to offer incentive programs from time to time or to set different fees in lieu of AIF rates for Non-Participating Air Carriers than AIF rates for Participating Air Carriers. Air Carrier acknowledges and agrees that the current arrangement (which Air Carrier agrees is compliant with the foregoing) for Non-Participating Air Carriers is that they pay a fee in lieu of the AIF, which is not, and will not be, less than the dollar amount of the AIF, and which is on the basis of the number of seats instead of the number of Enplaned Passengers, and that GTAA may revise such charging and collection methodology in its sole discretion at any time, subject to the limitations stated in this Section 2.1.6.
- 2.1.7. If, as a result of any of the following events (an "AIF Legislative Initiative"):
- (a) any order, directive, legislative initiative, regulatory change and/or binding policy statement issued by a government authority having jurisdiction over the imposition or collection of an AIF by GTAA; or
 - (b) any order or judgment of any court or administrative body of competent jurisdiction,

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GTAA is unable to impose an AIF or Participating Air Carriers are unable to collect the Deposits, the obligations of each Party contained in this Agreement will cease, save and except:

- (a) the obligation of Air Carrier to collect Deposits in accordance with Section 2.1.1.(b), up to and including the date upon which the government authority having jurisdiction or the court or administrative body, has issued, promulgated or enacted the AIF Legislative Event (the "Event Date"); and
- (b) the obligations of the Parties described in Section 2.5 to the extent of the Deposits collected, held in accordance with Section 2.1.1.(b) and remitted by Air Carrier for the period up to and including the Event Date.

2.2. Capital Review Process

2.2.1. Airport Master Plan and Capital Plan

Upon the execution of this Agreement, GTAA will provide to the TSC the most current version of the Airport Master Plan along with its five-year capital plan for the Airport (the "Capital Plan") which will outline and detail (using written descriptions and illustrations) GTAA's capital budget over the number of years covered by the Capital Plan, and its planned Capital Programs, including Reviewable Capital Programs. For clarity and certainty, and as applicable, the Capital Plan will include the terms related to any Permitted Transit Funding Amount. The Parties acknowledge that the Capital Plan is and will continue to be an evolving document as GTAA's strategy and capital plans evolve, and accordingly GTAA will provide the TSC on an annual basis with an updated version of its Capital Plan. GTAA and the TSC may review and discuss the Airport Master Plan and the Capital Plan, provided that nothing herein will be construed so as to give the TSC or any Participating Air Carrier the right of consultation (including the Consultation Process) with GTAA with respect thereto.

2.2.2. Reporting

(a) Reporting on Airport Master Plan and Capital Plan

GTAA will, on a semi-annual basis (or more frequently if GTAA determines that more frequent reports are warranted to achieve the purposes of this Agreement) provide to the ACC updated information pertaining to:

- (i) Capital Plan impact on debt and debt service levels;
- (ii) Capital Plan impact on operating budget;
- (iii) Amendments to the Capital Plan; and
- (iv) Amendments to the Airport Master Plan.

(b) **Reporting on AIF**

GTAA will provide to the ACC on a semi-annual basis (or more frequently if GTAA determines that more frequent reports are warranted to achieve the purposes of this Agreement) a report of Gross Annual AIF Revenues to date.

2.2.3. ACC Technical Sub-committee (TSC)

- (a) In order to facilitate effective and transparent consultation for the mutual benefit of GTAA and the Participating Air Carriers, the TSC will be established by the ACC and maintained throughout the Term. The ACC will give prompt written notice to GTAA of the identification of the members of the TSC, including any changes to such membership.
- (b) The TSC will act as the direct interface of the ACC in the review of Reviewable Capital Programs, the evaluation of Reviewable Capital Programs for their technical merit and the issuance of recommendations to the ACC in respect thereof. GTAA and the TSC will consult in good faith giving full consideration to air carrier requirements and the overall strategic needs of the Airport and GTAA. The frequency of the GTAA-TSC meetings is expected to be a minimum of 2 meetings per year as determined by GTAA and the TSC, subject to any mutually agreed change in frequency in relationship to the size and scope of the Capital Plan.

2.2.4. Consultation on Reviewable Capital Programs

(a) **Proposed Reviewable Capital Programs and the Consultation Process**

GTAA will undertake prior consultation through meetings with the ACC and TSC concerning the proposed Capital Plan. Such consultation will entail a review of financial, technical and operational aspects of any and all Reviewable Capital Programs. GTAA and the TSC will, as part of the Capital Plan review, establish and undertake a schedule for the review of Reviewable Capital Programs as identified in the Capital Plan, the basis of which will be to review Reviewable Capital Programs as soon as practicable (taking into account the size, complexity and value of the Reviewable Capital Program). Where a Reviewable Capital Program contains multiple Capital Projects and any of said Capital Projects has an individual estimated capital cost of greater than \$50,000,000, such Capital Project will not be subject to a separate review or ACC Endorsement process as a separate Reviewable Capital Program, but rather will remain included within the larger Reviewable Capital Program and that review and ACC Endorsement process pursuant hereto. In the course of such consultation, the TSC will be entitled to request information pertaining to Reviewable Capital Programs and GTAA will use reasonable efforts to provide such information, subject to confidentiality restrictions and other factors which GTAA deems to be appropriate. All members of the TSC from time to time will execute confidentiality agreements in favour of GTAA in form and substance acceptable to GTAA (acting reasonably) governing all information disclosed during the Consultation Processes provided for in this Agreement, provided that such confidentiality agreements will permit the members

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of the TSC to disclose information to other employees within their company on a strict "need to know" basis and to disclose information to members of the ACC for purposes of making the recommendations contemplated in this Agreement (provided that such disclosures will be limited to the amount reasonably necessary to make the recommendation). The TSC will then be permitted to provide feedback and technical alternatives to the extent that the TSC deems appropriate. GTAA will receive such feedback and alternatives, provided that GTAA will be under no obligation to implement any TSC-suggested revisions to a Reviewable Capital Program or the Capital Plan (provided further that GTAA will give reasonable consideration to any such suggested revisions). Feedback from the TSC will include areas of agreement, objection and suggested amendments or alternatives. GTAA may seek further clarification from the TSC from time to time as appropriate. GTAA will be responsible for the maintenance and regular distribution to the ACC and GTAA of all minutes and other records setting out the proceedings of the Consultation Process.

(b) **CP Notices for Reviewable Capital Programs**

- (i) At any point during the Consultation Process established in Subsection (a) above (the "**Consultation Process**") and in any event prior to the anticipated date of execution of the Capital Project or Reviewable Capital Program, GTAA must submit in writing to the ACC a Notice that GTAA intends to seek ACC Endorsement of a Reviewable Capital Program (a "**CP Notice**"). Such CP Notice will include a general conceptual description of the Reviewable Capital Program, any existing cost estimates (including expected benefits), the planned calendar quarters within which the work is anticipated to commence and be completed, a high-level business case containing any traffic or other assumptions and other information as GTAA may have available at the time and a site plan.
- (ii) Subject to the execution and completion of the ACC Endorsement process described below, GTAA and the TSC will continue to engage in the Consultation Process, and GTAA will provide such additional information as may be available from time to time regarding the Reviewable Capital Program which was the subject of the CP Notice. The TSC will prepare and issue to the ACC and all Participating Air Carriers a written report setting out its recommendation (with reasons) as to whether the ACC Endorsement should or should not be provided.
- (iii) Within 90 calendar days of delivery of the CP Notice to the ACC, the ACC will hold a vote on whether or not to endorse the Reviewable Capital Program in question and then deliver written notice to GTAA that the ACC has either provided or withheld an ACC Endorsement of the Reviewable Capital Program. If the ACC does not deliver within the aforesaid 90 calendar day time period a written Notice that the ACC Endorsement has been withheld, then the ACC will be deemed to have delivered the ACC Endorsement for the Reviewable Capital Program in question except where

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GTAA and the TSC have mutually agreed to extend such period (which either Party may in its sole discretion decline to agree to extend).

- (iv) In the exercise of its ACC vote, Air Carrier will consider the overall benefit of any Reviewable Capital Program to the Airport air carrier community and the Airport as a whole.

(c) **ACC-Endorsed Reviewable Capital Programs**

Where the ACC has delivered or deemed to have delivered an ACC Endorsement for a Reviewable Capital Program, GTAA will be free to proceed with the ACC-endorsed Reviewable Capital Program in its sole discretion, provided that the delivery or deemed delivery of an ACC Endorsement will not compel GTAA to implement the Reviewable Capital Program. In addition, GTAA may amend the ACC-endorsed Reviewable Capital Program in such manner and to such an extent as it may deem advisable, provided that it will advise the ACC, as outlined below, where the scope of such ACC-endorsed Reviewable Capital Program has been revised to such an extent that the scope of such ACC-endorsed Reviewable Capital Program is of a materially different character than when the Consultation Process was undertaken in respect thereof. For clarity, an ACC-endorsed Reviewable Capital Program will be deemed not to have been revised so as to be of a materially different character if the cost thereof has changed without a corresponding material revision of scope. Where GTAA has advised the ACC of such a material revision, GTAA will provide in writing a summary of the extent of and reasons for such material revision, and GTAA will reasonably consider (but will not be required to implement) any suggestions of the ACC with respect to such revised ACC-endorsed Reviewable Capital Program. GTAA will not under any circumstances be required to resubmit a Reviewable Capital Program which has already received or been deemed to receive an ACC Endorsement to a Consultation Process, and the ACC Endorsement or deemed ACC Endorsement will be irrevocable.

(d) **Non-Endorsed Reviewable Capital Programs**

- (i) Where the ACC has delivered to GTAA written Notice that it has elected to withhold an ACC Endorsement of a Reviewable Capital Program, GTAA will be prevented from proceeding with the bidding process, awarding of contracts and/or use of AIF for the Reviewable Capital Program in question for a period of 365 calendar days from the date of delivery of the ACC's written Notice as aforesaid (the "**Moratorium Period**"), provided that nothing herein will restrict GTAA from engaging design and engineering consultants for the performance of design and engineering services necessary or desirable to further define the scope of the Reviewable Capital Program so as to provide the ACC with further details of such Reviewable Capital Program and further refine the proposed project budget and/or to revise the parameters or details of the Reviewable Capital Program in question for the purpose of re-submitting same to the ACC for further consideration.

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- (ii) During the Moratorium Period, the Parties may enter into the escalation process for disputes as set forth in Section 4 of this Agreement upon the written request of either Party, with the intent to seek resolution of any differences between GTAA and the ACC with respect to the proposed Reviewable Capital Program. In the absence of, or in tandem with, such formal escalation process, GTAA and the TSC may also consult informally with each other with respect to any aspect of a Reviewable Capital Program.
- (iii) Should GTAA and the ACC agree that a modification to the proposed Reviewable Capital Program may receive an ACC Endorsement prior to the Moratorium Period expiry, GTAA will submit a revised Reviewable Capital Program proposal to the TSC and ACC for voting by the members of the ACC. If the ACC subsequently issues an ACC Endorsement for the revised Reviewable Capital Program, the Moratorium Period will immediately terminate for such Reviewable Capital Program (as revised) and the provisions of Section 2.2.4.(c) will thereafter apply. Notwithstanding the foregoing, the Parties acknowledge and agree that the Moratorium Period will continue to run during any period where GTAA and the TSC and ACC are revising the Reviewable Capital Program for resubmission to the ACC and will not be suspended or restart the Moratorium Period as a result of such revision or re-submission process. Where a revised Reviewable Capital Program has been re-submitted but again fails to receive an ACC Endorsement, the Moratorium Period will continue to run from the date that the original Reviewable Capital Program failed to receive an ACC Endorsement.

2.2.5. Limitation on Rights of Recourse

Notwithstanding any other provision of this Agreement, under no circumstances will Air Carrier be permitted to terminate this Agreement or cease or suspend the collection and remittance of Deposits to GTAA as a result of any failure by GTAA to comply with the Consultation Process or any of the other provisions of this Section 2.2. The Parties acknowledge and agree that Air Carrier's remedies (either itself or through the ACC or any other group of which it is a member) in respect of any failure by GTAA to perform its obligations under this Section 2.2 will be the referral of the matter to the escalation process for disputes as described in Article 4 hereof and/or its remedies to enforce its rights under this Agreement as specified in Section 3.2.2 hereof. For clarity, under no circumstances will any failure by GTAA to comply with the provisions of this Section 2.2 affect or limit the obligations of Air Carrier to collect, hold and remit Deposits to GTAA and to be accountable in respect thereof in accordance with the other provisions of this Agreement.

2.2.6. Notification of Variances on ACC-Endorsed Reviewable Capital Programs

Where a Reviewable Capital Program has received an ACC Endorsement and, in the course of execution, the capital cost of such Reviewable Capital Program increases such that its expected cost of completion is estimated to exceed the original estimated amount thereof as set forth in the associated CP Notice by ten (10%) percent or greater, GTAA will so notify the TSC in writing. GTAA will provide its written opinion of the reasons as to why

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the estimated cost of completion of the Reviewable Capital Program has exceeded the original estimated amount as noted above. For clarity, such notification will not require that GTAA and the TSC engage in any further consultation with respect to such Reviewable Capital Program, nor will it require any additional ACC Endorsement or invalidate the previously issued ACC Endorsement. It is understood that the normal dialogue associated with the furtherance of an Endorsed Reviewable Capital Program will continue.

2.3. Use of AIF

2.3.1. Subject to the terms of this Agreement, AIF (except for amounts collected in respect of Administration Cost payments and any HST and other applicable taxes, which will be remitted by GTAA to the appropriate authorities) will solely be used by GTAA in accordance with the provisions of Sections 2.1.1 and 2.3, as further described below:

- (a) for the capital development of the Airport, including associated off-Airport assets and projects that are functionally related to air operations, air navigation, the processing of passengers and their baggage, cargo and mail associated with the Airport, including navigation aids, noise monitoring equipment, the acquisition and development of lands for Airport purposes adjacent to the Airport, access roads and terminals servicing the Airport not located on the Airport lands but will not include costs associated with or related to the construction, development, maintenance or operation of any mass transit system beyond the boundary of the Airport (except as provided in subsection (i));
 - (i) GTAA will be entitled to use up to \$50 million in AIF during the Term for costs associated with or related to the construction, development, of any mass transit system (or portion of any mass transit system) located within 5 kilometers of the boundary of the Airport (the "**Permitted Transit Funding Amount**"), provided that up to \$5 million of the Permitted Transit Funding Amount will be available to be spent by GTAA in the first year of the Term, with additional \$5 million amounts to become available to be spent in each year after the first year and any unused portions of the Permitted Transit Funding Amount to be carried forward to subsequent years, such that the total amount of AIF to be spent under the Permitted Transit Funding Amount will not exceed \$50 million and, for clarity, may be only be spent during the Term.
- (b) the debt service, debt retirement, debt service reserve obligations, debt coverage requirements, capitalized interest and the cost of the issuance of such debt associated with the foregoing;
- (c) for the acquisition, development and operation of the Toronto City Centre Airport, Pickering Airport and, following consultation with the ACC, such other airports in the South Central Ontario Region as GTAA may determine. To the extent that AIF (exclusive of amounts collected and remitted on account of HST and other applicable taxes) is used by GTAA for the foregoing purposes, GTAA will ensure that the use of such AIF is separately recorded and that, when and if it is practical

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and commercially reasonable to do so (which will be in GTAA's sole discretion), GTAA will ensure that the other airport project receiving AIF repays GTAA for the undertaking for which such AIF was received. Any funds received as a result of such repayment will continue to be treated as AIF for the purpose of this Agreement; and

- (d) expenditures associated with the furtherance of the objects of GTAA as described in GTAA's letters patent (a copy of which will be provided to Air Carrier upon request).

2.3.2. AIF collected by GTAA in accordance with the terms of this Agreement need not be applied in accordance with the terms of this Section 2.3 in the year in which such AIF is remitted. AIF remitted to GTAA in any given calendar year may be held by GTAA in a reserve fund and expended in subsequent years. Such reserve fund will be managed by GTAA in accordance with prudent management practices. Interest earned on unexpended funds will be treated as AIF.

2.3.3. Notwithstanding Section 2.3.2 and the other provisions of this Agreement, the Parties acknowledge and agree that GTAA does not at this time and will not during the Term be required to segregate amounts received as AIF from its other revenue, and the Parties further acknowledge and agree that all amounts received as AIF will be commingled with the other funds of GTAA. As such, the Parties acknowledge and agree that AIF will not be specifically designated to be applied for any particular purposes or accounted for accordingly, but will instead be collected and expended on GTAA's operations and business activities, subject to Section 2.3.1.

2.4. Remittance

2.4.1. Regardless of whether Deposits are actually collected from Enplaned Passengers, but subject to Section 2.4.2, Air Carrier will remit to GTAA an amount equal to the Deposit collected or which should have been collected pursuant to Section 2.1 of this Agreement for each Enplaned Passenger at the Airport for which the Ticket sales occurred on or after the Effective Date, (less the Administration Cost, and related applicable HIST and other applicable taxes on such Administration Cost) on a monthly basis on the first Business Day of the month following the month of the enplanement by the Enplaned Passenger at the Airport, with such monthly remittances to be made on the basis of the estimated amount owing to GTAA for the previous month, and with final adjustments made on a monthly basis on the first Business Day of the second month following the month of the enplanement of the Enplaned Passenger at the Airport. The estimated amounts referred to in this Section 2.4.1. will be based on reasonable, good faith estimates made by GTAA of Enplaned Passengers using historical data and/or reasonable forward projections.

2.4.2. The obligation to remit Deposits to GTAA and the liability for such Deposits arises upon the enplanement of the Enplaned Passenger at the Airport regardless of the date of the Ticket sale and regardless of the date of the collection by Air Carrier of the Deposits, provided that the Enplaned Passenger purchased the Ticket on or after the Effective Date. For certainty, if a prospective Enplaned Passenger does not become an actual Enplaned Passenger (i.e. there is no enplanement of the prospective Enplaned Passenger at the

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Airport), GTAA is not entitled to the Deposit collected by Air Carrier with respect to that prospective Enplaned Passenger.

2.4.3. Air Carrier will provide to GTAA with each remittance a statement in a form and substance mutually acceptable to the GTAA and the ACC (including the two largest Canadian Participating Air Carriers) identifying:

- (a) the aggregate number of Enplaned Passengers associated with the remittance;
- (b) the total number of passengers carried by Air Carrier for the same period; and
- (c) the amount of the Administration Cost retained by Air Carrier.

This "**Remittance Form(s)**" will be required to contain all requisite information in order for such form to be considered as a tax invoice issued by Air Carrier to GTAA with respect to the Administration Cost.

2.4.4. With respect to Enplaned Passengers, provided that:

- (a) Air Carrier is legally able to institute a method of Deposit collection which could reasonably be expected to assess all Enplaned Passengers in accordance with this Agreement; and
- (b) Air Carrier is able to make reasonable efforts to assess the Enplaned Passengers in accordance with this Agreement and remits Deposits pursuant to the method instituted pursuant to this Agreement; and
- (c) Air Carrier remits all Deposits actually collected from Enplaned Passengers in accordance with this Agreement during this period;

Air Carrier's liability for making the Deposit remittances will be limited to the greater of: (i) the total amount of Deposits collected from Enplaned Passengers; and (ii) 96% of the amount of total Deposits that should have been collected from Enplaned Passengers.

2.4.5. Interest will be charged to Air Carrier on a monthly basis, commencing after the due date, on all overdue amounts at the prime rate established by the Canadian Imperial Bank of Commerce from time to time plus 3% per cent per annum.

2.4.6 Where Air Carrier has collected or received a Deposit in respect of a prospective Enplaned Passenger where the prospective Enplaned Passenger did not become an actual Enplaned Passenger, Air Carrier will defend and indemnify GTAA in respect of any claims with respect to such AIF made against GTAA by non-enplaned passengers, for the amounts paid by such non-enplaned passengers.

2.4.7 Family Carrier Members

- (a) For clarity, where the appropriate Deposits have been remitted by Air Carrier in respect of flights operated by a Family Carrier Member, AIF (or any equivalent

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charges levied on Non-Participating Air Carriers) will not be charged again by GTAA to such Family Carrier Member in respect of such flights (i.e., the applicable AIF or the applicable equivalent charge, will only be collected once).

- (b) A list of Air Carrier's Family Carrier Members is attached hereto as Schedule "A".
- (c) Where Air Carrier has Family Carrier Members, Air Carrier will guarantee and be obligated to perform all obligations hereunder in respect of all of the Enplaned Passengers as defined in this Agreement, including those of Family Carrier Members not yet listed on Amended Schedule "A", as set out in subparagraph (d) below.
- (d) Air Carrier will promptly notify GTAA in writing of any changes to its list of Family Carrier Members in an amended Schedule "A" ("**Amended Schedule "A"**"). The Parties acknowledge and agree that if, at any time, Air Carrier provides any such notice to GTAA, then such Amended Schedule "A" will replace the Schedule "A" of this Agreement.
- (e) For further clarity, where Air Carrier remits Deposits to GTAA in respect of Enplaned Passengers travelling on flights operated by a Family Carrier Member, these Enplaned Passengers will be considered in the totals of Air Carrier's yearly Enplaned Passengers for the purposes of determining any ACC Endorsement.

2.5. Administration Cost

2.5.1. Air Carrier will be entitled to invoice and collect from GTAA a specified percentage amount (plus HST and other applicable taxes) on account of the costs incurred by Air Carrier in collecting, holding and remitting Deposits to GTAA. The Parties agree that the specified percentage amount will be equal to the percentages set out in subsections (a), (b) and (c) hereof as applied to the amount of the AIF (exclusive of any HST or other applicable taxes) remitted to GTAA (the "**Administration Cost**"). Air Carrier acknowledges that such amount represents its full cost of performing its obligations under this Agreement and agrees that it will under no circumstances be permitted to receive any amount in excess of the percentages specified herein. The percentages used for purposes of calculating the Administration Cost will be calculated as follows:

- (a) The Administration Cost percentage will be [REDACTED] commencing on the first calendar day of each year during the Term until the first day of the month after the month in which GTAA has recorded gross AIF revenues of [REDACTED] [REDACTED] (excluding HST) during that calendar year of AIF for all Participating Air Carriers, as determined by GTAA in accordance with IFRS (calculated collectively) ("**Gross Annual AIF Revenues**").
- (b) Once Gross Annual AIF Revenues are recorded to be in excess of [REDACTED] [REDACTED], in that same calendar year, GTAA will notify all of the Participating Air Carriers of same and the Administration Cost percentage will be reduced from [REDACTED] [REDACTED] of incremental AIF for all Participating Air Carriers on or after the first calendar day of the month after the month in which GTAA is determined to have recorded

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(in accordance with IFRS) Gross Annual AIF Revenues of [REDACTED] or more (excluding HST) during that calendar year.

- (c) Once Gross Annual AIF Revenues are recorded to be in excess of [REDACTED], in that same calendar year, GTAA will notify all of the Participating Air Carriers of same and the Administration Cost percentage will be reduced from [REDACTED] of incremental AIF for all Participating Air Carriers on or after the first calendar day of the month after the month in which GTAA has recorded (in accordance with IFRS) Gross Annual AIF Revenues of [REDACTED] (excluding HST) during that calendar year.
- (d) For clarity and certainty, the monetary thresholds herein will be re-set at the beginning of each calendar year during the Term.

2.5.2 Although the Administration Cost (and HST and other applicable taxes on such Administration Cost) can be off-set from the Deposits and pursuant to Section 2.4.1, Air Carrier will issue an invoice to GTAA for its Administration Cost (plus HST and other applicable taxes on such Administration Cost), containing all information required by law. This invoice will be deemed issued if Air Carrier provides a fully completed Remittance Form pursuant to the terms of Section 2.4.3.

2.5.3 For clarity, nothing herein will require GTAA to pay the Administration Cost with respect to any amounts received by GTAA for amounts charged by GTAA to Non-Participating Carriers in lieu of the AIF, except where such Non-Participating Carrier is a Carrier Family Member.

2.5.4 If, at any point during the Term, Air Carrier charges and recovers some or all of its credit card processing expenses (charged to Air Carrier by credit card companies or networks) related to the payment of the AIF from those Enplaned Passengers using certain credit cards for payment (the "**Credit Card AIF Cost Recovery**"), Air Carrier shall inform GTAA of its decision to do so in advance of Air Carrier's date of commencement of the Credit Card AIF Cost Recovery (the "**Credit Card Cost Recovery Date**"). Air Carrier's Administration Cost shall then be reduced by [REDACTED] Air Carrier's implementation of the Credit Card AIF Cost Recovery in respect of those Enplaned Passengers for which the Ticket was purchased after the Credit Card Cost Recovery Date.

2.5.5 If, at any point during the Term, Air Carrier elects to discontinue the Credit Card AIF Cost Recovery, Air Carrier shall inform GTAA of its decision to do so in advance. Air Carrier's Administration Cost shall be increased by [REDACTED] Air Carrier's discontinuance.

2.6. Certification and Audit by GTAA

2.6.1. On or before January 15th in each year of the Term of this Agreement, Air Carrier will deliver to GTAA an Annual Statement signed by an authorized signing officer of Air Carrier, which Annual Statement will:

- (a) state the amount of Deposits remitted to GTAA during the period commencing November 1 and ending on October 31 of the preceding year;

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- (b) state the aggregate number of (i) passengers; (ii) Enplaned Passengers; and (iii) Connecting Passengers carried by Air Carrier for the same period;
 - (c) state the aggregate amount of the Administration Cost retained by Air Carrier and the applicable HST and other applicable taxes on such Administration Cost;
 - (d) contain a certification that the Annual Statement is true and correct in all respects to the best of the authorized signing officer's knowledge and belief after due inquiry; and
 - (e) be in such detail, form and scope as GTAA determines, acting reasonably.
 - (f) During the period of 2 years following the Annual Statement issuance, Air Carrier will have the right to request an adjustment from GTAA to disclose new information that could result in a refund amount or additional remittance.
- 2.6.2. (a) GTAA may contract with an independent external auditor to conduct an audit of Air Carrier's records in respect of a particular 12-month period (assessed on a November 1 - October 31 basis) (each an "**AIF Certification Period**") by delivering Notice to that effect solely as it pertains to the calculation of Deposits remitted under this Agreement during that AIF Certification Period (each a "**AIF Certification Period Audit**"), provided that:
- (i) such AIF Certification Period Audit is requested within 4 years of GTAA's receipt of the Annual Statement for the AIF Certification Period to be audited (provided that such audit need not be completed within that 4-year period); and
 - (ii) GTAA may perform an AIF Certification Period Audit only once for any AIF Certification Period, except where a GTAA audit identifies a deficiency which is systemic in nature and has resulted in a need for adjustment to the amount of AIF payable (up or down) in multiple AIF Certification Periods, (each a "**Systemic Adjustment**") provided further that such Systemic Adjustments may only be made once in respect of the 4 AIF Certification Periods prior to the Notice date for the audit which resulted in identification of the systemic deficiency.
- (b) Where GTAA has identified a Systemic Adjustment for an AIF Certification Period that has been previously audited, the Parties will make the necessary adjustments without the requirement for an additional Notice in respect of the AIF Certification Periods affected by the Systemic Adjustment.
 - (c) The identification of a Systemic Adjustment in respect of an AIF Certification Period will not affect GTAA's right to perform an AIF Certification Period Audit in respect of that AIF Certification Period, except as otherwise set out in Section 2.6.2(a)(ii).

- (d) GTAA will be entitled to bill and collect the costs of such audit from Air Carrier only in the event that such audit shows that remittances by Air Carrier are understated by 3% percent or more of the amount due and payable to GTAA under this Agreement in the year preceding the date of the audit. In other cases, the cost of such audit will be paid by GTAA.
- 2.6.3.** GTAA or Air Carrier, as appropriate, will pay any refunds owing or remittances required, without interest, within 30 calendar days of the receipt of such audit. Any refunds owing or remittances required as a result of the audit but not paid within 30 calendar days of the receipt of such certificate will be subject to interest as provided for in Section 2.4.5.
- 2.6.4.** For the purpose of Section 2.6.2, Air Carrier will retain auditable records for a period of 7 years that support the aggregate amount of passengers, Enplaned Passengers and Connecting Passengers carried by Air Carrier for each reporting period during the Term.
- 2.7. Audit by ACC**
- 2.7.1.** Annually during the Term, within 180 calendar days of its fiscal year end, GTAA must provide to Air Carrier a certificate signed by the Vice President and Chief Financial Officer of GTAA (and which certificate will be addressed to all Participating Air Carriers), reporting the use of the AIF by GTAA in accordance with Section 2.2 and stating that the amount of AIF remitted to GTAA have been expended only in accordance with the terms of this Agreement.
- 2.7.2.** Air Carrier acknowledges that, during the Term, the ACC, as mandated by Participating Air Carriers whose Enplaned Passengers represent at least 2/3 of Enplaned Passengers for all of its Participating Air Carriers, may contract with an independent external auditor to conduct an audit of GTAA's records (conducted during regular office hours) solely as it pertains to the collection of Deposits and use of AIF under this Agreement within 4 years of the Participating Air Carriers' receipt of a GTAA certification as referenced in Section 2.7.1. in respect of a particular calendar year to be audited (provided that such audit need not be completed within that 4-year period). Such audit will in no event be at GTAA's expense. Such audits will be limited to 1 audit in respect of each calendar year, conducted collectively under the auspices of the ACC. Once an audit has been performed, no further audit will be permitted until 2 years has elapsed since the last such audit.
- 2.7.3.** Air Carrier will have no further right of audit except through the ACC and in the manner and subject to the limitations proscribed in this Section 2.7.
- 2.7.4.** For the purposes of Section 2.7.2, GTAA will retain auditable records for a period of 7 years pertaining to the use of AIF under this Agreement for all Participating Air Carriers for each reporting period during the Term.
- 2.8 Security Amount**
- 2.8.1** Notwithstanding the fact that Air Carrier is collecting Deposits from Enplaned Passengers on account of the AIF, Air Carrier will deliver to GTAA a security payment (the "**Security Amount**") which will act as a guarantee of Air Carrier's obligation to collect and remit

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Deposits. The Security Amount must be delivered prior to the Effective Date (except where Air Carrier is already operating at the Airport and has already provided the Security Amount as of the Effective Date hereof, in which case the Parties acknowledge that the Security Amount has been paid).

- 2.8.2. The Security Amount can take the form of a letter of credit or delivery of cash into the custody of GTAA. The amount of the Security Amount will be an amount equal to a minimum of 30 calendar days of activity (as estimated by GTAA and communicated to Air Carrier in writing). GTAA reserves the right to increase this requirement where GTAA reasonably determines that Air Carrier's credit risk is at a level which is higher than normally expected for air carriers operating at the Airport. The quantum of the Security Amount will be reassessed at the start of each operating season based on slot filings provided by Air Carrier. Where GTAA reasonably determines that the Security Amount provided by Air Carrier must be increased or decreased (whether on a permanent or temporary basis), the Parties will adjust the letter of credit or cash amount (as applicable) promptly after Air Carrier has been so advised in writing by GTAA.
- 2.8.3. Where the Security Amount has been satisfied by the delivery of cash, Air Carrier will receive an interest payment semi-annually using an interest rate prescribed by GTAA.
- 2.8.4. GTAA may elect to call upon and collect against the Security Amount in whole or in part where Air Carrier has failed to comply with any obligations hereunder with respect to the collection or remittance of Deposits or where, in GTAA's sole opinion (acting reasonably) an Event of Default may reasonably be anticipated to be committed by Air Carrier. Where GTAA has claimed some or all of the Security Amount, Air Carrier will promptly (and in no event later than 15 calendar days) replenish the Security Amount by a sum equal to the amount claimed by GTAA in accordance with the terms hereof

3. DEFAULTS

3.1. Default And Remedies

- 3.1.1. It is expressly agreed that an "Event of Default" means the occurrence of any one or more of the following:
- (a) Air Carrier fails to remit any portion of Deposits within 5 calendar days after such Deposits have become due and payable in accordance with Section 2.4.1 and such failure continues for a period of 10 calendar days following written demand thereof being made by GTAA; or
 - (b) Except to the extent due to a Force Majeure event, a Party fails to observe or perform any other covenant or agreement hereunder (other than the terms, covenants or conditions set out below in Subsections (e) to (g), inclusive, for which no notice is required) and such default continues for a period of 30 calendar days after written notice by the non-defaulting Party specifying with reasonable particularity the nature of such default and requiring the same to be remedied; or

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- (c) Air Carrier commits a breach of a material nature of this Agreement that is not capable of being remedied and receives written Notice from GTAA specifying particulars of the breach; or
- (d) Air Carrier becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for insolvent or bankrupt debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise; or
- (e) a receiver, interim receiver, receiver manager, monitor, custodian or like person is appointed for all or a substantial part of the property or business of Air Carrier, unless the appointment is dismissed, discharged or stayed within 30 calendar days; or
- (f) any steps are taken or proceedings are instituted by Air Carrier or any other person, court or government agency for the dissolution, winding-up or liquidation of Air Carrier or its assets, unless where the steps or proceedings are initiated by someone other than Air Carrier and such steps or proceedings are dismissed, discharged or stayed within 30 calendar days of commencement; or
- (g) any of Air Carrier's assets located at the Airport used in connection with providing service to the Airport are taken or seized under a writ of execution, a chattel mortgage, charge, debenture or other security instrument with the effect that Air Carrier's ability to operate at the Airport is or will be materially constrained.

3.2. Rights Upon Default

3.2.1. If and whenever Air Carrier commits an Event of Default, then under no circumstances will Air Carrier be permitted to terminate this Agreement or cease or suspend the collection of and remittance of AIF to GTAA, GTAA will have the following rights and remedies, which are cumulative and not alternative:

- (a) to terminate this Agreement by notice to Air Carrier and thereby deem that Air Carrier is a Non-Participating Air Carrier; or
- (b) to demand payment of the Deposits in arrears, plus interest as provided in this Agreement.

3.2.2. If GTAA commits an Event of Default, then in addition to any other rights that Air Carrier has under this Agreement or at law (including those described in Article 4 hereof), Air Carrier will be entitled to enforce its rights under this Agreement by application to the applicable court of the province of Ontario. GTAA acknowledges and agrees that Air Carrier will be irreparably harmed by the breach of the terms of this Agreement and will not have an adequate remedy in damages at law and will, therefore, be entitled to enforce any such provision by injunction or an order of specific performance without prejudicing or diminishing any other rights or remedies which may be available at law or in equity. Air Carrier will be entitled to seek an injunction or specific performance for any threatened or actual breach of the provisions of this Agreement by GTAA.

3.2.3. If Air Carrier commits an Event of Default, then in addition to any other rights that GTAA has under this Agreement or at law (including those described in Sections 2.8 and 3.2), GTAA will be entitled to enforce its rights under this Agreement by application to the applicable court of the province of Ontario. Air Carrier acknowledges and agrees that GTAA will be irreparably harmed by the breach of the terms of this Agreement and will not have an adequate remedy in damages at law and will, therefore, be entitled to enforce any such provision by injunction or an order of specific performance without prejudicing or diminishing any other rights or remedies which may be available at law or in equity. GTAA will be entitled to seek an injunction or specific performance for any threatened or actual breach of the provisions of this Agreement by Air Carrier.

3.3. Expenses

3.3.1. If legal action is brought by GTAA for the recovery of AIF, or because of the breach of any other terms, covenants or conditions herein contained on the part of Air Carrier to be kept or performed, and a breach is established by a court of competent jurisdiction, Air Carrier will pay to GTAA all expenses incurred therefor, including solicitors' fees, if awarded by a court of competent jurisdiction.

4. ESCALATION PROCESS FOR DISPUTES

4.1. In the event that a dispute or difference arises with respect to this Agreement (except with respect to any dispute arising from a termination or purported termination of this Agreement by GTAA), the Parties will undertake good faith discussions in an attempt to resolve the dispute or difference during a minimum 30 calendar day period commencing upon delivery of Notice by one Party to the other.

4.2. Where a dispute or difference arises which is of common application between GTAA and multiple Participating Air Carriers (including Air Carrier), the ACC may act, pursuant to the ACC's Terms of Reference, on behalf of all such Participating Air Carriers (including Air Carrier) provided that all such Participating Air Carriers agree to same, pursuant to the ACC's Terms of Reference, and upon delivery of Notice to GTAA appointing the ACC as their representative for such dispute or difference. In this instance, the ACC and GTAA will undertake good faith discussions in an attempt to resolve the dispute or difference, during a minimum 30 calendar day period commencing upon the delivery of such Notice. Where a Participating Air Carrier involved in the dispute or difference does not agree to be represented by the ACC as provided above, such Participating Air Carrier shall be added to the process and shall participate on its own account.

4.3. Upon expiration of the 30 calendar day period outlined in Sections 4.1 or 4.2, and in the event of failure to resolve the dispute or difference, the matter at issue will be referred to further consultation with senior representatives of the Parties (or of the ACC, as outlined below, if Notice appointing the ACC has been made under Section 4.2). Where the ACC has been appointed as set out under Section 4.2., the ACC will designate at least 2 but not more than 3 senior representatives from the Participating Air Carriers pursuant to the ACC's Terms of Reference. This latter phase of consultation, whether it be between the Parties or the ACC and GTAA, will have a term not exceeding 60 calendar days.

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- 4.4. For clarity, nothing in this Article 4 is intended by the Parties to or will be construed so as to mean that either Party will be prevented or delayed from exercising any of its remedies under this Agreement or at law in respect of an Event of Default.
- 4.5. All consultations between the Parties in fulfilling the obligations of the Parties under this Article 4 will be performed without prejudice to the Parties' respective rights.

5. TERM AND TERMINATION

5.1. Length of Term

This Agreement will commence as of the date set forth on the cover page of this Agreement (the "Effective Date") and will terminate as of December 31, 2032, subject to automatic extension as provided in Section 5.2, earlier termination by GTAA for an Event of Default by Air Carrier as provided hereunder or earlier termination as provided under Sections 5.2(a) or (b) or Section 5.3 (the "Term").

5.2. Automatic Extension of Term and Amendment Requests

- (a) The Term will automatically be extended for successive 1-year terms (with no limit) unless:
- (i) The ACC or GTAA provides written Notice to the other not less than 180 calendar days prior to the then-current end date of the Term advising that the aforesaid automatic extension of the Term will not occur and that the Term will be ending as of the then-scheduled end date of the Term; or
 - (ii) Air Carrier ceases to conduct passenger operations at the Airport and continues to not conduct passenger operations for a period of not less than 180 consecutive calendar days (the "Non-Operation Period") (provided that Air Carrier's obligations to remit all Deposits will continue until the end of the Non-Operation Period and any obligations which survive the termination of this Agreement will continue as well), provided further that if Air Carrier subsequently elects to resume passenger operations at the Airport after such termination after the end of the Non-Operation Period, Air Carrier will be required to execute a new Agreement (in such form as it may exist at the time) in order to resume its status as a Participating Air Carrier.
- (b) Either GTAA or the ACC, through the ACC Endorsement process, may request in writing that the form of this Agreement be reviewed for potential amendment at any time during the Term. If such review is requested, the ACC and GTAA will together appoint a working group to review the form of this Agreement for any amendment(s) as may be proposed by either GTAA or the ACC. Such working group will meet to discuss any proposed amendments for such period of time as the ACC and GTAA may agree, provided that either the ACC or GTAA may terminate such discussions in writing at any time and neither the ACC nor GTAA will be obliged to agree to any proposed amendments as may be requested by the other.

- (c) In the event that GTAA or the ACC provides Notice to the other as set out in Section (a) above, that the automatic extension will not occur and that the Term will be ending, GTAA and the ACC will in good faith consider mutually acceptable alternate mechanisms that will replace the Capital Plan disclosure and review processes encompassed by the Consultation Process through the use of the ACC and its subcommittees, provided that, if GTAA and the ACC cannot agree upon any alternative mechanisms, GTAA will not be compelled to implement any such alternative mechanism, but will continue its disclosure to, and discussion with, the ACC, on an ongoing basis, of its capital project plans.

5.3 Right of Early Termination by GTAA

In addition to its right to terminate this Agreement set forth elsewhere in this Agreement, GTAA may in its sole discretion terminate this Agreement and all of the agreements of the Participating Air Carriers, prior to the end of the Term by delivering not less than 180 calendar days prior Notice to the Participating Air Carriers advising of such termination. If notice is provided by GTAA, GTAA will endeavour to provide information to the Participating Air Carriers through the ACC as soon as reasonably practicable advising as to its future plans with respect to any aeronautical or other fees which will be implemented in replacement of the AIF mechanism or any resultant adjustments to GTAA's aeronautical or other fees. For clarity, such termination will not reduce or otherwise affect in any way Air Carrier's obligations to collect Deposits from Enplaned Passengers up to the date of termination hereunder or to remit Deposits to GTAA, as set out herein. The ACC and GTAA will in good faith consider mutually acceptable alternate mechanisms that will replace the Capital Plan disclosure and review processes encompassed by the Consultation Process through the use of the ACC and its subcommittees, provided that, if GTAA and the Participating Air Carriers cannot agree upon any alternative mechanisms, GTAA will not be compelled to implement any such alternative mechanism, but will continue its disclosure to, and discussion with, the ACC, on an ongoing basis, of its capital project plans.

5.4 Transition of Obligations under Previous AIF Agreement

If Air Carrier was a signatory under the previous form of AIF agreement that was in place immediately prior to the Commencement Date, all obligations with respect to the collection and remittance of AIF and associated HST and other sales taxes under such previous agreement will continue to be in full force and effect and will constitute obligations under this Agreement with respect to the collection and remittance of AIF and associated HST and other sales taxes collected prior to the Commencement Date. For clarity, once the remittance of the AIF and associated HST and other sales taxes held under the previous AIF agreement, as set out herein, are exhausted, (including the Air Carrier's collection of the Administration Cost under the previous AIF agreement) and the audit rights of the Parties thereunder have expired, all of the other obligations under said agreement, with the exception of those that survive termination, will cease as well.

6. TRANSFERS

- 6.1.** Air Carrier will not permit any assignment or other transfer of this Agreement, or any rights arising under or pursuant to this Agreement, in whole or in part without Air Carrier obtaining the prior written consent of GTAA in each instance, which consent may be unreasonably withheld, despite any provision of this Agreement or any statutory provision or other law to the contrary.
- 6.2.** This prohibition against a transfer is construed so as to include a prohibition against any transfer by operation of law.
- 6.3.** No transfer will take place by reason of failure by GTAA to reply to a request by Air Carrier for a consent to a transfer.
- 6.4.** Any transfer not expressly permitted under this Agreement will be null and void and of no force and effect.
- 6.5.** Notwithstanding the foregoing, in the event that Air Carrier desires to effect a sale or transfer of its assets to another air carrier, or is subject to a corporate reorganization, amalgamation or other change that would result in a transfer of this Agreement by operation of law, GTAA will, on the request of Air Carrier, forthwith issue to the proposed transferee an agreement substantially in the form of this Agreement and will afford to the proposed transferee all the rights, duties and obligations accorded Air Carrier hereunder upon the execution by the proposed transferee of a copy of this Agreement.

7. GENERAL

7.1. Good Faith

The Parties agree to act in good faith in the performance of their obligations under this Agreement.

7.2. Successors

This Agreement and everything herein contained will enure to the benefit of and be binding upon the permitted successors and assigns, as the case may be, of each of the Parties.

7.3. Provisions Separately Valid

If any covenant, obligation, agreement, term or condition of this Agreement or the application thereof to any Person or circumstances will, to any extent, be invalid, unenforceable or illegal, the remainder of this Agreement or the application of such covenant, obligation, agreement, term or condition to persons or circumstances other than those in respect of which it is held invalid, unenforceable or illegal, will not be affected thereby and each covenant, obligation, agreement, term or condition of this Agreement will be separately valid and enforceable to the fullest extent permitted by law.

7.4. Entire Agreement

This Agreement will be deemed to constitute the entire agreement between the Parties with respect to the subject matter hereof and will supersede all previous negotiations, representations, communications and documents in relation hereto made by any Party to this Agreement (including any prior agreements regarding AIF between the Parties). No amendment to this Agreement will be effective unless in writing and signed by the Parties. No representation or warranty, express, implied or otherwise is made by GTAA to Air Carrier or by Air Carrier to GTAA except as expressly set out in this Agreement.

7.5. Notices

- 7.5.1. Whenever in this Agreement it is required or permitted that a Notice, demand or request (a "Notice") be given or served by either Party to or on the other, such Notice will be in writing and will be validly given or sufficiently communicated if forwarded by registered mail, postage prepaid (except during a postal disruption or threatened postal disruption), personal delivery, email or other similar means of electronic communication as follows:

To GTAA:

Greater Toronto Airports Authority
 3111 Convair Drive, 2nd Floor
 Mississauga, Ontario
 L5P 1B2
 Attention: President and Chief Executive Officer
 EMAIL: Legal.notice@gtaa.com
 PHONE: (416) 776-3344

with a copy to the General Counsel

To Air Carrier:

1263343 Alberta Inc., (dba Lynx Air)
 3215 12th Street NE
 Calgary, AB T2E 7S9
 Attention: Shelly Lorce, Senior Revenue Accountant

- 7.5.2. Any Notice delivered personally will be deemed to have been validly and effectively given on the calendar day of such delivery if delivered before 4:00 p.m. on a Business Day or on the next Business Day if delivered on a non-Business Day or after 4:00 p.m. on the previous Business Day. Any Notice sent by registered mail (except during a postal disruption or threatened postal disruption) will be deemed to have been validly and effectively given on the third Business Day following the date of mailing. Any Notice sent by means of electronic communication will be deemed to have been validly and effectively given on the calendar day it was sent if sent before 4:00 p.m. on a Business Day or on the next Business Day if sent on a non-Business Day or after 4:00 p.m. on the previous Business Day.

7.5.3. Such addresses may be changed from time to time by either Party giving Notice as above provided.

7.6. No Partnership or Joint Venture

The Parties expressly disclaim any intention to create a partnership, joint venture or joint enterprise. Nothing contained in this Agreement, nor any acts of any Party taken in conjunction hereunder, will constitute or be deemed to constitute a partnership, joint venture or principal/agency relationship in any way or for any purpose except where Air Carrier is acting as an agent for GTAA under this Agreement solely with respect to the collection of Deposits from each Enplaned Passenger (except for any Exempt Passengers and any other applicable exceptions set out herein), and the related disclosure obligations herein. Except as expressly set forth herein, neither Party will have the authority to act for, or assume any obligations or responsibility on behalf of, the other Party.

7.7. Competition Act

No provision of this Agreement is intended to apply or to be enforceable to the extent that it would give rise to any offence under the *Competition Act* of Canada or any statute that may be substituted therefor.

7.8. Surviving Obligations

Notwithstanding the expiration or termination of this Agreement, certain provisions contain inherently continuing obligations or rights and will therefore survive the expiration or termination of this Agreement. This will include Section 2.2.5, Section 2.4 (and all other provisions relating to the remittance of all Deposits (but only as they pertain to Deposits collected but not yet remitted pursuant to the terms of this Agreement and prior to the expiration or termination of this Agreement), Section 2.5. (but only as it pertains to the application of the Administration Cost in respect of Deposits collected but not yet remitted to GTAA as at the expiration or termination of this Agreement), Section 2.6 (subject to the terms of that Section), Article 3 (but only for Events of Default that occurred prior to expiration or termination of this Agreement), Article 4, Article 5, and this Article 7 and all definitions and rules of interpretation set out in Article 1 applicable to the foregoing.

7.9. No Waiver

Save as otherwise expressly set out in this Agreement, no waiver of any provision of this Agreement will be binding unless in writing and signed by the Party which will be bound by such waiver. No indulgence by a Party or other failure by a Party to exercise its rights will constitute a waiver of such Party's rights to insist on performance in full and in a timely manner of all covenants in this Agreement. Waiver of any provision will not be deemed to waive the same provision thereafter or any other provision of this Agreement at any time.

7.10. Language

The Parties hereto have required that the present agreement and all deeds, documents and Notices relating thereto be drafted in the English language. Les Parties aux présentes ont

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exigé que le présent contrat et tout autre contrat, document et avis afférant ou ancillaire aux présentes soient rédigés en langue anglaise.

7.11. No Implied Obligations

No implied terms or obligations of any kind by or on behalf of either of the Parties will arise from anything in this Agreement. The express covenants and agreements herein contained and made by the Parties are the only covenants and agreements upon which any rights against the Parties may be founded.

7.12. Construed As Covenants

All of the provisions, terms, conditions and stipulations of this Agreement will be construed as covenants. Each of the Parties hereby covenant in favour of the other to observe and perform in accordance with the provisions, terms, conditions and stipulations set out in this Agreement.

7.13. Time of the Essence

Time is of the essence of this Agreement and every part thereof.

7.14. Preparation of Agreement

Notwithstanding the fact that this Agreement has been drafted by GTAA, any doubt or ambiguity in the meaning, application or enforceability of any provision of this Agreement will not be construed or interpreted against GTAA or in favour of Air Carrier when interpreting such provision by virtue of such fact.

7.15. Electronic Execution

Delivery of an executed signature page to this Agreement by any Party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such Party.

7.16. Other Documents

Each Party will execute such further and other documents and instruments and do such further and other things as may be reasonably necessary or desirable to implement, carry out and give full effect to the provisions and intent of this Agreement and carry out its provisions.

7.17. Counterparts

This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered will be an original, and all of which counterparts will together constitute one and the same instrument.

7.18. Third Party Beneficiaries

This Agreement is entered into solely between, and may be enforced only by, the Parties. This Agreement will not be deemed to create any obligations of GTAA or Air Carrier to any third party or create any rights in third parties, including any Enplaned Passengers.

7.19 Confidentiality

- 7.19.1.** Either Party may disclose Confidential Information to the receiving Party in connection with the performance of its obligations under this Agreement. The receiving Party will use Confidential Information only for the purposes of performing its obligations under this Agreement (the "Purpose"). Except with the prior written authorization of the disclosing Party, the receiving Party will not directly or indirectly provide any other person with access to or use of Confidential Information or make use of Confidential Information other than for the Purpose. Providing access includes disclosure, sale, copying, dissemination, publishing, broadcasting or reproduction by any means whatsoever. Notwithstanding the foregoing, Air Carrier may disclose Confidential Information to those of its representatives or to the ACC pursuant to Section 2.2.4 to whom disclosure is required for the Purpose, but only after any such representative or ACC member has agreed to confidentiality obligations identical in principle with those in this Agreement. Air Carrier will be liable for any disclosure by its ACC representatives of any Confidential Information contrary to this Section 7.19.1.
- 7.19.2.** The Parties acknowledge that Confidential Information is highly sensitive and strictly confidential and a valuable asset of the disclosing Party and is and at all times will remain the exclusive property of the disclosing Party and the confidentiality of the same will be protected by the receiving Party. The Parties acknowledge that disclosure of Confidential Information other than as provided in this Agreement will cause damage to the disclosing Party. The provisions of this Section 7.19 will be enforceable by injunctive relief without further need for the disclosing Party to show irreparable harm from any breach.
- 7.19.3.** Upon written request from the disclosing Party or upon termination of this Agreement, the receiving Party will immediately return to the disclosing Party all Confidential Information in its possession or subject to its control and will cease any further use thereof upon the first to occur of: (i) written request of the disclosing Party regarding its Confidential Information; or (ii) termination or expiry of the Term of this Agreement. With the prior written consent of the disclosing Party, the receiving Party will, in lieu of the foregoing, destroy all Confidential Information, and any copies thereof, in its possession and certify to the disclosing Party in writing that it has done so.
- 7.19.4.** If the receiving Party is required to disclose Confidential Information of the disclosing Party pursuant to a court order, subpoena, search warrant, summons or other operation of applicable law, prior to disclosing Confidential Information the receiving Party will, if permitted by applicable law and if it is reasonable and practical in the circumstances, give reasonable notice to the disclosing Party of such order so as to allow the disclosing Party an opportunity to object to or limit such production.
- 7.19.5.** This Section 7.19 will survive the termination or expiry of this Agreement for a period of 10 years after termination of this Agreement for any reason.

7.20. Applicable Laws

This Agreement will be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties will be governed by, the laws applicable in

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the Province of Ontario. The Parties agree to be bound by the non-exclusive jurisdiction of the courts of the Province of Ontario.

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Schedule "A"

List of Air Carrier's Family Carrier Members

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Schedule "B"
Amount of Deposits

Departing Passengers: \$39.55*

Connecting Passengers: \$7.91*

* See Section 2.1.1(d).

This is Exhibit "F" referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)
Shimon Sherrington

Greater Toronto Airports Authority
Aeronautical Fees
Effective January 1, 2023

General Terminal Charges

Domestic Arrivals (per seat)	\$7.79
Non-Domestic Arrivals (per seat)	\$9.72

Landing Fees

(per 1,000 kg) of maximum permissible takeoff weight, as stated in the aircraft's registration documents (MTOW)

Commercial Aircraft ¹	\$18.97
For all aircraft weights (based on arriving MTOW)	

Business/General Aviation¹

Aircraft in excess of 19,000 kg (flat rate per arriving movement)	\$884.00
Fixed Wing Aircraft 19,000 kg or less (flat rate per arriving movement)	\$884.00
Helicopter (all times)	\$52.00

Apron Fees (Active and Inactive Apron Fee)

Based on aircraft code, see attached Schedule A

Deicing Facility Fee²

Aircraft in excess of 19,000 kg (based on arriving MTOW) (per 1,000 kg)	\$2.41
Aircraft 19,000 kg or less (based on arriving MTOW)	\$60.00

Airport Improvement Fees (AIF)³

Non-Connecting Passenger	\$35.00
Connecting Passenger	\$7.00

Slot Administration Fee (per slot) ⁴	\$1.15
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Reservation Fee for Business/General Aviation (flat rate for a full flight itinerary)	\$6.00
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Other Aeronautical Charges:**Curb Transfer Fee for Assistance of Persons with Disabilities ("PWD")**

Carriers operating at Toronto Pearson either (i) assist PWD using their own staff or ground handlers between the terminal curbside area and check-in counter area, and between the general public arrivals area and the curbside area, or (ii) have the GTAA perform PWD assistance for a fee payable by the carriers to the GTAA. Such fees are established from time to time based on the number of carriers requesting such services and the volume of PWDs.

All amounts are in Canadian dollars.

All above fees do not include applicable taxes (including HST).

October 4, 2022

All weights refer to Maximum Takeoff Weight (MTOW), in kilograms (rounded up to the nearest 1,000 kilograms). Conversion rate 1 kilogram = 2.2046 pounds.

Notes:

1. All flights that operate without approval between 0030 and 0630 will be charged 16 times the applicable landing fee for arrivals and departures. Aircraft which are ICAO Annex 16, Volume 1, Chapter 2 equivalent will not be granted approval.
2. Deicing fees do not include charges for deicing fluid, which is payable to a third-party provider arranged by the air carrier community.
3. The AIF is (i) collected by air carriers on behalf of the GTAA from passengers (with certain exceptions) at the rates posted and (ii) remitted to the GTAA pursuant to a standardized form of AIF agreement between each air carrier and the GTAA. Where an air carrier does not sign its agreement, it must pay an aeronautical fee in lieu of the AIF that would otherwise be collected. The aeronautical fee in lieu of AIF will be at a rate equal to the non-connecting AIF multiplied by the number of seats on each departing aircraft of the air carrier.
4. Applicable to all carriers, based on end state slot holding and invoiced twice annually in April and November; exemption granted to carriers with less than 10 slots per season.

Schedule A

Active Apron Fees – Time Used up to the Maximum Active Time

Aircraft Code	Type of Movement	Rates per 1 minute	Maximum Time to be Charged per Movement (minutes)		
			Arrival (Terminator)	Departure (Originator)	Turn
B or less	<i>Bridged</i>	\$2.59	45	45	90
	<i>Walkout</i>	\$1.33	45	45	90
	<i>Hardstand</i>	\$1.77	45	45	90
C	<i>Bridged</i>	\$3.03	45	60	105
	<i>Walkout</i>	\$1.54	45	60	105
	<i>Hardstand</i>	\$2.05	45	60	105
D	<i>Bridged</i>	\$6.34	90	115	205
	<i>Walkout</i>	\$3.20	90	115	205
	<i>Hardstand</i>	\$4.25	90	115	205
E	<i>Bridged</i>	\$8.16	120	150	270
	<i>Walkout</i>	\$4.08	120	150	270
	<i>Hardstand</i>	\$5.46	120	150	270
F	<i>Bridged</i>	\$10.65	120	150	270
	<i>Walkout</i>	\$5.29	120	150	270
	<i>Hardstand</i>	\$7.06	120	150	270

Inactive Apron Fee – Time in Excess of the Maximum Active Time

Aircraft Code	Rate Per Minute (In excess of active maximum time rate per minute.)
B or less	\$0.28
C	\$0.38
D	\$0.49
E	\$0.67
F	\$0.77

This is Exhibit “G” referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)

Shimon Sherrington

Greater Toronto Airports Authority
Aeronautical Fees
Effective January 1, 2024

General Terminal Charges

Domestic Arrivals (per seat)	\$ 8.18
Non-Domestic Arrivals (per seat)	\$10.21

Landing Fees

(per 1,000 kg) of maximum permissible takeoff weight, as stated in the aircraft's registration documents (MTOW)

Commercial Aircraft ¹	\$18.97
For all aircraft weights (based on arriving MTOW)	

Business/General Aviation¹

Aircraft in excess of 19,000 kg (flat rate per arriving movement)	\$919.36
Fixed Wing Aircraft 19,000 kg or less (flat rate per arriving movement)	\$919.36
Helicopter (all times)	\$54.00

Apron Fees (Active and Night/Turn Apron Fee)

Based on aircraft code, see attached Schedule A

Deicing Facility Fee²

Aircraft in excess of 19,000 kg (based on arriving MTOW) (per 1,000 kg)	\$2.41
Aircraft 19,000 kg or less (based on arriving MTOW)	\$60.00

Airport Improvement Fees (AIF)³

Non-Connecting Passenger	\$35.00
Connecting Passenger	\$7.00

Slot Administration Fee (per slot)⁴

	\$1.15
--	--------

*Effective March 27, 2024 Rate will increase to \$1.22

Reservation Fee for Business/General Aviation (flat rate for a full flight itinerary)	\$6.00
--	--------

Other Aeronautical Charges:**Curb Transfer Fee for Assistance of Persons with Disabilities ("PWD")**

Carriers operating at Toronto Pearson either (i) assist PWD using their own staff or ground handlers between the terminal curbside area and check-in counter area, and between the general public arrivals area and the curbside area, or (ii) have the GTAA perform PWD assistance for a fee payable by the carriers to the GTAA. Such fees are established from time to time based on the number of carriers requesting such services and the volume of PWDs.

All amounts are in Canadian dollars.

All above fees do not include applicable taxes (including HST).

All weights refer to Maximum Takeoff Weight (MTOW), in kilograms (rounded up to the nearest 1,000 kilograms). Conversion rate 1 kilogram = 2.2046 pounds. 890

Notes:

1. All flights that operate without approval between 0030 and 0630 will be charged 16 times the applicable landing fee for arrivals and departures. Aircraft which are ICAO Annex 16, Volume 1, Chapter 2 equivalent will not be granted approval.
2. Deicing fees do not include charges for deicing fluid, which is payable to a third-party provider arranged by the air carrier community.
3. The AIF is (i) collected by air carriers on behalf of the GTAA from passengers (with certain exceptions) at the rates posted and (ii) remitted to the GTAA pursuant to a standardized form of AIF agreement between each air carrier and the GTAA. Where an air carrier does not sign its agreement, it must pay an aeronautical fee in lieu of the AIF that would otherwise be collected. The aeronautical fee in lieu of AIF will be at a rate equal to the non-connecting AIF multiplied by the number of seats on each departing aircraft of the air carrier.
4. Applicable to all carriers, based on end state slot holding and invoiced twice annually in April and November; exemption granted to carriers with less than 10 slots per season.

Schedule A

Apron Day Fees – (Time Between 6:30am - 00:30am)

Aircraft Code	Type of Movement	Rates per 1 minute
B or Less	<i>Bridged</i>	\$2.33
	<i>Walkout</i>	\$1.20
	<i>Hardstand</i>	\$1.59
C	<i>Bridged</i>	\$2.73
	<i>Walkout</i>	\$1.39
	<i>Hardstand</i>	\$1.85
D	<i>Bridged</i>	\$5.71
	<i>Walkout</i>	\$2.88
	<i>Hardstand</i>	\$3.83
E	<i>Bridged</i>	\$7.34
	<i>Walkout</i>	\$3.67
	<i>Hardstand</i>	\$4.91
F	<i>Bridged</i>	\$9.59
	<i>Walkout</i>	\$4.76
	<i>Hardstand</i>	\$6.35

Apron Night Fees - (Time Between 00:30am - 6:30am)

Aircraft Code	Rate Per Minute (Night/Turn Time Rate Per Minute)
B or less	\$0.58
C	\$0.68
D	\$1.43
E	\$1.84
F	\$2.40

This is Exhibit “H” referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)

Shimon Sherrington

2023 Airline Information						Aeronautical Charges				General Terminal Charges (CTC) & Apron & Check-In Fees						Airport Improvement Fee		TOTAL Aeronautical & General Terminal Per Month
Month	Sector	Aircraft	Seats	MTOW	Arrival Mvmnts	Total Landing Fee	De-icing Surcharge	Total Aeronautical Per Mvmnt	TOTAL Aeronautical Per Month	General Terminal Charges	APRON FEE	CHECK-IN Counter fee Boarding Pass @1.31 / PRT Per Seat	CHECK-IN Counter fee Baggage Tag @1.31 / PRT Per Seat	Total General Terminal, Apron & Check-In Fees per Mvmnt	TOTAL General Terminal, Apron & Check-In Fees per month	Total per AIF Mvmnt @ \$35.00 per Seat	Total AIF per month	TOTAL Aeronautical & General Terminal Per Month
MAR	Domestic	7M8	189	82	21	\$1,555.54	\$197.62	\$1,753.16	\$36,816.36	\$1,472.31	\$318.15	\$247.59	\$247.59	\$2,285.64	\$47,998.44	\$5,622.75	\$118,077.75	\$84,814.80
MAR	Transborder	7M8	189	82	4	\$1,555.54	\$197.62	\$1,753.16	\$7,012.64	\$1,837.08	\$318.15	\$247.59	\$247.59	\$2,650.41	\$10,601.64	\$5,622.75	\$22,491.00	\$17,614.28
APR	Domestic	7M8	189	82	136	\$1,555.54	\$197.62	\$1,753.16	\$238,429.76	\$1,472.31	\$318.15	\$247.59	\$247.59	\$2,285.64	\$310,847.04	\$5,622.75	\$764,694.00	\$549,276.80
APR	Transborder	7M8	189	82	17	\$1,555.54	\$197.62	\$1,753.16	\$29,803.72	\$1,837.08	\$318.15	\$247.59	\$247.59	\$2,650.41	\$45,056.97	\$5,622.75	\$95,586.75	\$74,860.69
MAY	Domestic	7M8	189	82	219	\$1,555.54	\$197.62	\$1,753.16	\$383,942.04	\$1,472.31	\$318.15	\$247.59	\$247.59	\$2,285.64	\$500,555.16	\$5,622.75	\$1,231,382.25	\$884,497.20
MAY	Transborder	7M8	189	82	14	\$1,555.54	\$197.62	\$1,753.16	\$24,544.24	\$1,837.08	\$318.15	\$247.59	\$247.59	\$2,650.41	\$37,105.74	\$5,622.75	\$78,718.50	\$61,649.98
JUN	Domestic	7M8	189	82	203	\$1,555.54	\$197.62	\$1,753.16	\$355,891.48	\$1,472.31	\$318.15	\$247.59	\$247.59	\$2,285.64	\$463,984.92	\$5,622.75	\$1,141,418.25	\$819,876.40
JUN	Transborder	7M8	189	82	13	\$1,555.54	\$197.62	\$1,753.16	\$22,791.08	\$1,837.08	\$318.15	\$247.59	\$247.59	\$2,650.41	\$34,455.33	\$5,622.75	\$73,095.75	\$57,246.41
JUL	Domestic	7M8	189	82	273	\$1,555.54	\$197.62	\$1,753.16	\$478,612.68	\$1,472.31	\$318.15	\$247.59	\$247.59	\$2,285.64	\$623,979.72	\$5,622.75	\$1,535,010.75	\$1,102,592.40
JUL	Transborder	7M8	189	82	13	\$1,555.54	\$197.62	\$1,753.16	\$22,791.08	\$1,837.08	\$318.15	\$247.59	\$247.59	\$2,650.41	\$34,455.33	\$5,622.75	\$73,095.75	\$57,246.41
AUG	Domestic	7M8	189	82	323	\$1,555.54	\$197.62	\$1,753.16	\$566,270.68	\$1,472.31	\$318.15	\$247.59	\$247.59	\$2,285.64	\$738,261.72	\$5,622.75	\$1,816,148.25	\$1,304,532.40
AUG	Transborder	7M8	189	82	13	\$1,555.54	\$197.62	\$1,753.16	\$22,791.08	\$1,837.08	\$318.15	\$247.59	\$247.59	\$2,650.41	\$34,455.33	\$5,622.75	\$73,095.75	\$57,246.41
SEP	Domestic	7M8	189	82	302	\$1,555.54	\$197.62	\$1,753.16	\$529,454.32	\$1,472.31	\$318.15	\$247.59	\$247.59	\$2,285.64	\$690,263.28	\$5,622.75	\$1,698,070.50	\$1,219,717.60
SEP	Transborder	7M8	189	82	51	\$1,555.54	\$197.62	\$1,753.16	\$89,411.16	\$1,837.08	\$318.15	\$247.59	\$247.59	\$2,650.41	\$135,170.91	\$5,622.75	\$286,760.25	\$224,582.07
OCT	Domestic	7M8	189	82	228	\$1,555.54	\$197.62	\$1,753.16	\$399,720.48	\$1,472.31	\$318.15	\$247.59	\$247.59	\$2,285.64	\$521,125.92	\$5,622.75	\$1,281,987.00	\$920,846.40
OCT	Transborder	7M8	189	82	60	\$1,555.54	\$197.62	\$1,753.16	\$105,189.60	\$1,837.08	\$318.15	\$247.59	\$247.59	\$2,650.41	\$159,024.60	\$5,622.75	\$337,365.00	\$264,214.20
																\$10,626,997.50	\$7,700,814.45	

Start Date:	End Date:	Days
26-Mar-23	28-Oct-23	217

Requirement Per Day: **\$48,972.34** **\$35,487.62**

GTAA Aeronautical Fees	
Effective January 1, 2023	
Total Landing Fee:	\$18.97
Deicing Fee:	\$2.41
General Terminal Charges:	
Domestic Arrivals	\$7.79
Non-Domestic arrivals	\$9.72
Aircraft Code C:	\$3.03

Aeronautical Related Security Deposit Requirement @45Days:	\$	1,596,943
AIF Security Deposit Requirement @30 Days:	\$	1,469,170
TOTAL SECURITY DEPOSIT REQUIREMENT:	\$	3,066,113

LOC 500000

MTOW

	S2023
De-icing Surcharge	2.41
AIF	35
Landing Fee	18.97
International Terminal Fee	9.72
Transborder Terminal Fee	9.72
Domestic Terminal Fee	7.79

This is Exhibit "I" referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)

Shimon Sherrington



FEBRUARY 16, 2024

Mike Woodward
 Chief Financial Officer
 1263343 Alberta Inc. dba Lynx Airlines

Greater Toronto
 Airports Authority
 P.O. Box 6031
 3111 Conover Drive
 Toronto ONT, Ontario
 Canada L5P 1B2

P 416.776.3000
 F 416.776.7746

GTAA.com

Dear Mr. Woodward,

Re: Notice of Default - Overdue Aeronautical Fees and Charges and Airport Improvement Fees Owing by 1263343 Alberta Inc. dba Lynx Airlines (“Lynx”) relating to Use of Toronto – Lester B. Pearson International Airport (“Toronto Pearson”)

The Greater Toronto Airports Authority (“GTAA”) provides notice that Lynx is in default of its obligations to pay Aeronautical Fees and Charges and Airport Improvement Fees (“AIF”) in respect of its aeronautical activity at Toronto Pearson, in particular:

- a) Failure to pay Aeronautical Fees and Charges (as defined in the [GTAA Rules and Regulations](#)) under Sections 2.34 – 2.37 of The Pearson Standard: Rules and Regulations (the “GTAA Rules”). You received notice and an opportunity to review the GTAA Rules located on Toronto Pearson’s website at <https://www.torontopearson.com/en/operators-at-pearson/the-pearson-standard/rules-and-regulations>.

This Notice of Default constitutes a Notice of Non-Compliance under Section 13 of the GTAA Rules.

- b) Failure to pay the Airport Improvement Fees (“AIF”) as set out below which amounts are overdue and remain unpaid despite the GTAA’s repeated demands for payment. This constitutes an Event of Default under Section 3.1.1 of the AIF Agreement between the GTAA and Lynx, dated January 1, 2023, and
- c) Lynx’s failure to pay the Aeronautical Fees and Charges and AIF which amounts are overdue and remain unpaid despite the GTAA’s repeated demands for payment constitutes an Eligibility Default (as that term is defined in the Airline Partnership Agreement (“APA”) signed by Lynx under paragraph (a) of that definition.

Despite numerous written requests from GTAA to Lynx, starting December 2023, requiring payment of the overdue amounts, Lynx has failed to pay such amounts promptly.



torontopearson.com

Mr. Mike Woodward

Lynx

Page 2 of 3

Overdue and Outstanding Aeronautical Fees and Charges and AIF (CAD\$)

The total amount of the Aeronautical Fees and Charges and AIF owing by Lynx as of the date of this letter is \$2,441,284.71 and is itemized in the table set out below:

As at February 16, 2024

Transaction Number	Transaction Type	Invoice Date	Outstanding Amount
23022956	CHECKIN	12/4/2023	42,708.14
23023011	AL-AERO	12/4/2023	370,461.13
23023113	APRON FEE	12/4/2023	37,141.94
23023472	AL-AERO	12/18/2023	396,587.47
23023582	APRON FEE	12/19/2023	39,781.51
23023818	IT SERVICE	12/22/2023	117.52
24001001	CHECKIN	1/3/2024	57,893.05
24001056	AL-AERO	1/3/2024	457,328.46
24001146	APRON FEE	1/3/2024	44,077.24
24001268	APRON FEE	1/8/2024	3,919.70
			1,450,016.16

AIF

Transaction Number	Transaction Type	Invoice Date	Outstanding Amount
24003311	AIF	2/6/2024	455.62
24003312	AIF	2/6/2024	990,812.93
			991,268.55

**Total
Overdue \$2,441,284.71**

The GTAA hereby demands payment of the total Overdue and Outstanding Aeronautical Fees and Charges and AIF as set out above by **5:00 pm Toronto time on February 21, 2024**.

If the GTAA has not received from Lynx the total overdue and outstanding amount of \$2,441,284.71 CAD by the deadline set out in the immediately preceding paragraph, the GTAA may, without limiting any other remedies available to the GTAA, immediately draw against the Letter of Credit ("LC") security held by the GTAA for the amount overdue and outstanding without further notice to Lynx.

If the GTAA applies all or any part of the LC security deposit as set out above, this does not alter Lynx's obligation to maintain and/or replenish a security deposit in accordance with the GTAA's credit policy in respect of Lynx's aeronautical activity at Toronto Pearson.

Mr. Mike Woodward
Lynx
Page 3 of 3

The GTAA reserves all rights and remedies available to it including, without limitation, under Section 13.5 of the GTAA Rules, at law, in equity, and under statute to collect any amounts owing by Lynx up to and including seizing and detaining aircraft, all without further notice to you.

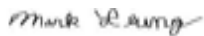
Airline Partnership Agreement

On January 9, 2024, the GTAA issued Lynx a Notice of Non-Compliance under the GTAA Rules. Furthermore, Lynx's failure to pay the overdue Aeronautical Fees and Charges and AIF constitutes an Eligibility Default (as described above) under the APA. In addition, this Notice of Default constitutes a further Notice of Non-Compliance under the GTAA Rules.

We remind Lynx that to be eligible to receive Rebates under the APA, Lynx must comply with the terms and conditions of the APA including, without limitation, Section 2 Program Conditions (sections 2.1, 2.2., 2.3 and 2.4), failing which Lynx will not be eligible for Rebates and the GTAA may avail itself of the remedies set out in the APA.

Please direct all communication regarding this Notice of Default to the undersigned.

Yours truly,



Mark Leung

Associate Director, Accounting Services

Cc: Peter Humele, Legal Counsel (GTAA)

This is Exhibit “J” referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)
Shimon Sherrington

GTAA AR Aging Report


Parameters	
Business Unit	All
Customer Name	All
Customer Account Number	00032718
As on Date	2024-02-22

Business Unit	Customer	Customer Account Number	Transaction Number	Transaction Type	Invoice Date	Outstanding Amount	LOC Application	Remaining Invoice Balance
GTAA	Lynx Air	00032718	23022956	CHECKIN	2023-12-04	42,708.14	-42,708.14	0.00
GTAA	Lynx Air	00032718	23023011	AL-AERO	2023-12-04	370,461.13	-370,461.13	0.00
GTAA	Lynx Air	00032718	23023113	APRON FEE	2023-12-04	37,141.94	-37,141.94	0.00
GTAA	Lynx Air	00032718	23023472	AL-AERO	2023-12-18	396,587.47	-396,587.47	0.00
GTAA	Lynx Air	00032718	23023582	APRON FEE	2023-12-19	39,781.51	-39,781.51	0.00
GTAA	Lynx Air	00032718	23023818	IT SERVICE	2023-12-22	117.52	-117.52	0.00
GTAA	Lynx Air	00032718	24001001	CHECKIN	2024-01-03	57,893.05	-57,893.05	0.00
GTAA	Lynx Air	00032718	24001056	AL-AERO	2024-01-03	457,328.46	-457,328.46	0.00
GTAA	Lynx Air	00032718	24001146	APRON FEE	2024-01-03	44,077.24	-44,077.24	0.00
GTAA	Lynx Air	00032718	24001268	APRON FEE	2024-01-08	3,919.70	-3,919.70	0.00
GTAA	Lynx Air	00032718	24001553	AL-AERO	2024-01-18	412,479.91	-412,479.91	0.00
GTAA	Lynx Air	00032718	24001675	APRON FEE	2024-01-19	44,852.28	-44,852.28	0.00
GTAA	Lynx Air	00032718	24001836	IT SERVICE	2024-01-24	117.52	-117.52	0.00
GTAA	Lynx Air	00032718	24003175	AL-AERO	2024-02-05	317,690.57	-317,690.57	0.00
GTAA	Lynx Air	00032718	24003271	APRON FEE	2024-02-05	54,321.95	-54,321.95	0.00
GTAA	Lynx Air	00032718	24003311	AIF	2024-02-06	455.62	-455.62	0.00
GTAA	Lynx Air	00032718	24003312	AIF	2024-02-06	990,812.93	-122,387.55	868,425.38
GTAA	Lynx Air	00032718	24003352	CHECKIN	2024-02-06	46,345.37	-46,345.37	0.00
GTAA	Lynx Air	00032718	24003626	AL-AERO	2024-02-19	341,926.81	-341,926.81	0.00
GTAA	Lynx Air	00032718	24003726	APRON FEE	2024-02-20	70,781.51	-70,781.51	0.00
GTAA	1263343 Alberta Inc	00032804	24002285	RENT	02/01/2024	4,369.71	-4,369.71	0.00
GTAA	Lynx Air	00032718	24004642	AL-AERO	2024-02-29	164,041.79	-164,041.79	0.00
GTAA	Lynx Air	00032718	24004647	APRON FEE	2024-02-29	34,002.20	-34,002.20	0.00
GTAA	Lynx Air	00032718	24005102	CHECKIN	2024-03-04	34,005.84	-34,005.84	0.00
GTAA	Lynx Air	00032718	24004649	SLOT FEE	2024-02-29	2,106.49	-2,106.49	0.00
GTAA	Lynx Air	00032718	24004645	IT SERVICE	2024-03-25	98.72	-98.72	0.00
GTAA	Lynx Air	00032718	24004659	AIF	2024-03-04	130.18	0.00	130.18
GTAA	Lynx Air	00032718	24004660	AIF	2024-03-04	791,025.31	0.00	791,025.31
					Total	4,759,580.87	-3,100,000.00	1,659,580.87

Total LOC Application

-3,100,000.00

This is Exhibit “K” referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)

Shimon Sherrington

GTAA AR Aging Report

Parameters	
Business Unit	All
Customer Name	All
Customer Account Number	00032718
As on Date	2024-02-22

Business Unit	Customer	Customer Account Number	Transaction Number	Transaction Type	Invoice Date	Outstanding Amount	Payment Application	Remaining Invoice Balnce
GTAA	Lynx Air	00032718	24004643	AL-AERO	2024-02-29	75,310.00	-75,310.00	0.00
GTAA	Lynx Air	00032718	24004646	IT SERVICE	2024-02-29	18.80	-18.80	0.00
GTAA	Lynx Air	00032718	24004648	APRON FEE	2024-02-29	25,595.74	-25,595.74	0.00
GTAA	Lynx Air	00032718	24004650	SLOT FEE	2024-02-29	87.07	-87.07	0.00
GTAA	Lynx Air	00032718	24004661	AIF	2024-03-04	260.35	-260.35	0.00
GTAA	Lynx Air	00032718	24004662	AIF	2024-03-04	131,559.12	-80,991.76	50,567.36
GTAA	Lynx Air	00032718	24005103	CHECKIN	2024-03-04	5,520.28	-5,520.28	0.00
GTAA	Lynx Air	00032718	24005865	IT SERVICE	2024-03-25	117.52	0.00	117.52
GTAA	1263343 Alberta Inc	00032804	24005784	RENT	2024-03-25	4,369.71	0.00	4,369.71
GTAA	1263343 Alberta Inc	00032804	24005785	RENT	2024-04-01	4,369.71	0.00	4,369.71
					Total	247,208.30	-187,784.00	59,424.30

Total Prepayment Application	-187,784.00
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This is Exhibit "L" referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)

Shimon Sherrington



February 23, 2024

Sent Via Courier

ATB Financial
Calgary Campus
3699 63 Ave NE
Calgary, Alberta, T3J 0G7

**Greater Toronto
Airports Authority**

P.O. Box 6031
3111 Convent Drive
Toronto, ON M9W 6Z9
Canada L5P 1B2

P 416.776.3000
F 416.776.7246

GTA.com

Attention: Trade Finance Banking Operations

Reference: Irrevocable Standby Letter of Credit No. 3546141
Full Drawing Amount: CAD\$3,100,000
Original Date of Issue: April 12, 2022
Date of last Amendment: June 5, 2023
Applicant: 1263343 Alberta Inc.

The undersigned, an authorized officer of the Greater Toronto Airports Authority, the Beneficiary of the above referenced Irrevocable Standby Letter of Credit No. 3546141 issued April 12, 2022, as amended from time to time, advises that the Beneficiary is entitled to receive payment under the Irrevocable Standby Letter of Credit No. 3546141 issued April 12, 2022 as amended from time to time, in the full amount of CAD\$3,100,000 and hereby instructs you to transfer immediately to the Beneficiary the sum of CAD\$3,100,000 only to the Beneficiary's account with CIBC, Main Branch, Commerce Court Toronto, Ontario. The wire details to be used is as follows:

Bank: Canadian Imperial Bank of Commerce, Main Branch, Toronto, ON, M5L 1G9
Account Name: Greater Toronto Airports Authority - General Revenue
Transit Number: 00002
Account Number: 36-57817
Swift Code: CIBCCATT
Bank Code: 010
Routing Code: 001000002

Page 2 of 2
ATB Financial



Please advise upon receipt of this written demand.

Yours truly,

A handwritten signature in blue ink, appearing to read "John Peellegoda".

John Peellegoda
Treasurer

GREATER TORONTO AIRPORTS AUTHORITY

Encl/

IRREVOCABLE STANDBY LETTER OF CREDIT**ISSUED BY**

Name: ATB Financial

Address: Calgary Campus
3699 63 Ave NE, Calgary,
AB T3J 0G7**BENEFICIARY**Name: Greater Toronto Airports Authority
Address: Toronto Pearson International Airport
P.O. Box 6031
Toronto, AMF, Ontario, L5P 1B2

LETTER OF CREDIT NO. 3546141

DATE OF ISSUE: April 12, 2022

EXPIRY DATE: April 12, 2023

APPLICANTName: 1263343 Alberta Inc.
Address: 119 - 1440 Aviation Park NE
Calgary, AB T2E 7E2**AMOUNT** Aggregate amount not to exceed \$500,000.00 CAD

1. We, the undersigned ATB Financial, ("the Financial Institution") hereby establish and issue an Irrevocable Letter of Credit No. 3546141 ("Irrevocable Letter of Credit") in favour of the Beneficiary for the account of our client, Lynx Air (the "Applicant") in the amount of: CAD Five Hundred Thousand Dollars (\$500,000.00) which may be drawn upon by the Beneficiary by presentation to the Financial Institution of a written demand addressed to us at our office located at 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Experience Operations; specifically stating the number of the Letter of Credit, the amount to be drawn and the date of issue of the Credit, for payment signed by an authorized officer of the beneficiary indicating that the Beneficiary is entitled to receive payment under this letter of credit. The original Letter of Credit and any amendments attached thereto.

2. Upon presentation of the written demand for payment, the Financial Institution shall pay in five (5) business days the amount demanded of this Irrevocable Letter of Credit to the Beneficiary without:

- Inquiring about the validity or sufficiency of the demand or right of the Beneficiary to make the demand;
- Recognizing a claim by any person; AND
- Making any reference to the state of accounts as between the Financial Institution and the Applicant.

3. This Irrevocable Letter of Credit expires on the 12th day of April 2023, subject to the following:

This Irrevocable Letter of Credit shall be deemed to be automatically extended without any formal amendment for one year from the above stated expiration date or any future expiry date unless, not less than ninety (90) days prior to any such expiration date, the Financial Institution notifies the Beneficiary in writing that the Financial Institution elects not to extend this Irrevocable Letter of Credit for any further period. In which event, the beneficiary may demand for payment before the expiry date, the Financial Institution shall pay the Beneficiary, a Bill of Exchange in the amount of this Irrevocable Letter of Credit less the amount of any previous drawings by the Beneficiary on such Irrevocable Letter of Credit

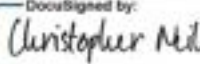
4. Partial drawings are permitted under this Irrevocable Letter of Credit where a written demand for payment is presented by the Beneficiary, signed by its authorized official, indicating entitlement to receive partial payment under this Irrevocable Letter of Credit. The provision of Section 2 above shall apply similarly to any demand for any partial drawings. The amount so drawn under this clause shall be subtracted from the face amount of this Irrevocable Letter of Credit and shall be endorsed on the reverse side of this Irrevocable Letter of Credit. The aggregate amount available under this Credit at any time shall be the Credit Amount, less the aggregate amount of all partial drawings previously paid to the Beneficiary at such time.

This irrevocable Letter of Credit or Irrevocable Letter of Guarantee bears the following reference number of the Financial Institution: 3546141

Unless otherwise stated this credit is subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, I.C.C. Publication Number 600 For matters not covered by this publication, the laws of the Province of Ontario and the laws of Canada shall govern, and any dispute or claim shall be settled in the Canadian court system.

ATB Financial

Christopher Neil

DocuSigned by:

1F229AF4B1154A1
Authorized signature

Cheyenne Monnier

DocuSigned by:

A31A3188C2184AB
Authorized signature

Please direct all correspondence or inquiries regarding this Letter of Credit to ATB Financial, Calgary Campus, 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Experience Operations quoting the letter of credit reference number quoted above. Phone inquiries regarding this credit should be directed to our Trade Finance Experience Operations Team : 1 877- 651-0844. Hours of Operation: 8:00 a.m. MST to 4:00 p.m. MST

ATB Financial

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

Amendment Number: 0001

ISSUED BY

Name: ATB Financial
Address: Calgary Campus
3699 63 Ave NE, Calgary,
AB T3J 0G7

LETTER OF CREDIT NO. 3546141

DATE OF ISSUE: Apr 12, 2022

AMENDMENT DATE: Mar 17, 2023

BENEFICIARY

Name: Greater Toronto Airports Authority
Address: Toronto Pearson International Airport
P.O. Box 6031
Toronto, AMF, ON L5P 1B2

APPLICANT

Name: 1263343 Alberta Inc.
Address: 119 - 1440 Aviation Park NE
Calgary, AB T2E 7E2

At the request of the Applicant, we, ATB Financial, hereby amend the irrevocable standby Letter of Credit issued in your favour as follows:

- The amount of the Letter of Credit has been increased from \$500,000.00 CAD to \$950,000.00 CAD

All other terms and conditions on the credit remain unchanged.

This amendment forms part of the irrevocable standby Letter of Credit and must be attached thereto.

ATB Financial

Name: Jessica Olthuis

Signature: 
7A7CB4EC42CMB2..

Name: Cheyenne Monnier

Signature: 
A31A11B8C2184AB..

Please direct all correspondence or inquiries regarding this Letter of Credit to ATB Financial, Calgary Campus, 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Banking Operations quoting the Letter of Credit reference number quoted above

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

90753

Amendment Number: 0002

ISSUED BY

Name: ATB Financial
 Address: Calgary Campus
 3699 63 Ave NE, Calgary,
 AB T3J 0G7

LETTER OF CREDIT NO. 3546141**DATE OF ISSUE:** Apr 12, 2022**AMENDMENT DATE:** Mar 28, 2023**BENEFICIARY**

Name: Greater Toronto Airports Authority
 Address: Toronto Pearson International Airport
 PO BOX 6031
 Toronto, AMF, ON L5P 1B2

APPLICANT

Name: 1263343 Alberta Inc.
 Address: 119 - 1440 Aviation Park NE
 Calgary, AB T2E 7E2

At the request of the Applicant, we, ATB Financial, hereby amend the irrevocable standby Letter of Credit issued in your favour as follows:

- The Amount of the Letter of Credit has been increased from \$950,000.00 CAD to \$1,200,000.00 CAD.

All other terms and conditions on the credit remain unchanged.

This amendment forms part of the irrevocable standby Letter of Credit and must be attached thereto.

ATB Financial

Name: Cheyenne Monnier

Name: Joanna Liesemer

Signature:  A31A11B8C216A8...

Signature:  8543B850A5B441E...

Please direct all correspondence or inquiries regarding this Letter of Credit to ATB Financial, Calgary Campus, 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Banking Operations quoting the Letter of Credit reference number quoted above

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

Amendment Number: 0003

ISSUED BY

Name: ATB Financial
 Address: Calgary Campus
 3699 63 Ave NE, Calgary,
 AB T3J 0G7

LETTER OF CREDIT NO. 3546141

DATE OF ISSUE: Apr 12, 2022

AMENDMENT DATE: Apr 5, 2023

BENEFICIARY

Name: Greater Toronto Airports Authority
 Address: Toronto Pearson International Airport
 P.O. Box 6031
 Toronto, AMF, ON L5P 1B2

APPLICANT

Name: 1263343 Alberta Inc.
 Address: 119 - 1440 Aviation Park NE
 Calgary, AB T2E 7E2

At the request of the Applicant, we, ATB Financial, hereby amend the irrevocable standby Letter of Credit issued in your favour as follows:

- The amount of the Letter of Credit has been increased from \$1,200,000.00 CAD to \$1,450,000.00 CAD

All other terms and conditions on the credit remain unchanged.

This amendment forms part of the irrevocable standby Letter of Credit and must be attached thereto.

ATB Financial

Name: Joanna Liesemer

Signature: 
 8643B850A5BA418

Name: Cheyenne Monnier

Signature: 
 A31A11B8C218AAB

Please direct all correspondence or inquiries regarding this Letter of Credit to ATB Financial, Calgary Campus, 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Banking Operations quoting the Letter of Credit reference number quoted above

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

909

Amendment Number: 0004

ISSUED BY

Name: ATB Financial
 Address: Calgary Campus
 3699 63 Ave NE, Calgary,
 AB T3J 0G7

LETTER OF CREDIT NO. 3546141

DATE OF ISSUE: Apr 12, 2022

AMENDMENT DATE: Apr 12, 2023

BENEFICIARY

Name: Greater Toronto Airports Authority
 Address: Toronto Pearson International Airport
 P.O. Box 6031
 Toronto, AMF, ON L5P 1B2

APPLICANT

Name: 1263343 Alberta Inc.
 Address: 119 - 1440 Aviation Park NE
 Calgary, AB T2E 7E2

At the request of the Applicant, we, ATB Financial, hereby amend the irrevocable standby Letter of Credit issued in your favour as follows:

- The amount of the Letter of Credit has been increased from \$1,450,000.00 CAD to \$1,700,000.00 CAD

All other terms and conditions on the credit remain unchanged.

This amendment forms part of the irrevocable standby Letter of Credit and must be attached thereto.

ATB Financial

Name: Joanna Liesemer

Signature:  00430850A50A410...

Name: Cheyenne Monnier

Signature:  A31A1108C2104AB...

Please direct all correspondence or inquiries regarding this Letter of Credit to ATB Financial, Calgary Campus, 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Banking Operations quoting the Letter of Credit reference number quoted above

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

Amendment Number: 0005

ISSUED BY

Name: ATB Financial
 Address: Calgary Campus
 3699 63 Ave NE, Calgary,
 AB T3J 0G7

LETTER OF CREDIT NO. 3546141**DATE OF ISSUE:** Apr 12, 2022**AMENDMENT DATE:** Apr 21, 2023**BENEFICIARY**

Name: Greater Toronto Airports Authority
 Address: Toronto Pearson International Airport
 P.O. Box 6031
 Toronto, AMF, ON L5P 1B2

APPLICANT

Name: 1263343 Alberta Inc.
 Address: 119 - 1440 Aviation Park NE
 Calgary, AB T2E 7E2

At the request of the Applicant, we, ATB Financial, hereby amend the irrevocable standby Letter of Credit issued in your favour as follows:

- The amount of the Letter of Credit has been increased from \$1,700,000.00 CAD to \$1,950,000.00 CAD

All other terms and conditions on the credit remain unchanged.

This amendment forms part of the irrevocable standby Letter of Credit and must be attached thereto.

ATB Financial

Name: Cheyenne Monnier

Name: Joanna Liesemer

Signature:

DocuSigned by:
Cheyenne Monnier
 A31A11B0C2184B...

Signature:

DocuSigned by:
Joanna Liesemer
 B643D950A5DA418...

Please direct all correspondence or inquiries regarding this Letter of Credit to ATB Financial, Calgary Campus, 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Banking Operations quoting the Letter of Credit reference number quoted above

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

911

Amendment Number: 0006

ISSUED BY

Name: ATB Financial
Address: Calgary Campus
3699 63 Ave NE, Calgary,
AB T3J 0G7

LETTER OF CREDIT NO. 3546141

DATE OF ISSUE: Apr 12, 2022

AMENDMENT DATE: Apr 28, 2023

BENEFICIARY

Name: Greater Toronto Airports Authority
Address: Toronto Pearson International Airport
P.O. Box 6031
Toronto, AMF, ON L5P 1B2

APPLICANT

Name: 1263343 Alberta Inc.
Address: 119 - 1440 Aviation Park NE
Calgary, AB T2E 7E2

At the request of the Applicant, we, ATB Financial, hereby amend the irrevocable standby Letter of Credit issued in your favour as follows:

- The amount of the Letter of Credit has been increased from \$1,950,000.00 CAD to \$2,200,000.00 CAD

All other terms and conditions on the credit remain unchanged.

This amendment forms part of the irrevocable standby Letter of Credit and must be attached thereto.

ATB Financial

Name: Winona Pidperyhora

Name: Bonnie Olthuis

Signature:  8AF4DEBC4D1541D...

Signature:  56A6A0D9644D45A...

Please direct all correspondence or inquiries regarding this Letter of Credit to ATB Financial, Calgary Campus, 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Banking Operations quoting the Letter of Credit reference number quoted above

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

Amendment Number: 0007

ISSUED BY

Name: ATB Financial
 Address: Calgary Campus
 3699 63 Ave NE, Calgary,
 AB T3J 0G7

LETTER OF CREDIT NO. 3546141**DATE OF ISSUE:** Apr 12, 2022**AMENDMENT DATE:** May 8, 2023**BENEFICIARY**

Name: Greater Toronto Airports Authority
 Address: Toronto Pearson International Airport
 P.O. Box 6031
 Toronto, AMF, ON L5P 1B2

APPLICANT

Name: 1263343 Alberta Inc.
 Address: 119 - 1440 Aviation Park NE
 Calgary, AB T2E 7E2

At the request of the Applicant, we, ATB Financial, hereby amend the irrevocable standby Letter of Credit issued in your favour as follows:

- The amount of the Letter of Credit has been increased from \$2,200,000.00 CAD to \$2,450,000.00 CAD

All other terms and conditions on the credit remain unchanged.

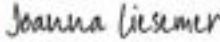
This amendment forms part of the irrevocable standby Letter of Credit and must be attached thereto.

ATB Financial

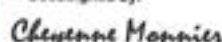
Name: Joanna Liesemer

Name: Cheyenne Monnier

Signature:

DocuSigned by:

 8643B955A58A418...

Signature:

DocuSigned by:

 A31A11B8C2184A8...

Please direct all correspondence or inquiries regarding this Letter of Credit to ATB Financial, Calgary Campus, 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Banking Operations quoting the Letter of Credit reference number quoted above

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

Amendment Number: 0008

ISSUED BY

Name: ATB Financial
 Address: Calgary Campus
 3699 63 Ave NE, Calgary,
 AB T3J 0G7

LETTER OF CREDIT NO. 3546141

DATE OF ISSUE: Apr 12, 2022

AMENDMENT DATE: May 16, 2023

BENEFICIARY

Name: Greater Toronto Airports Authority
 Address: Toronto Pearson International Airport
 P.O. Box 6031
 Toronto, AMF, ON L5P 1B2

APPLICANT

Name: 1263343 Alberta Inc.
 Address: 119 - 1440 Aviation Park NE
 Calgary, AB T2E 7E2

At the request of the Applicant, we, ATB Financial, hereby amend the irrevocable standby Letter of Credit issued in your favour as follows:

- The amount of the Letter of Credit has been increased from \$2,450,000.00 CAD to \$2,700,000.00 CAD

All other terms and conditions on the credit remain unchanged.

This amendment forms part of the irrevocable standby Letter of Credit and must be attached thereto.

ATB Financial

Name: Cheyenne Monnier

Name: Joanna Liesemer

Signature:

DocuSigned by:
Cheyenne Monnier
 A31A11B8C218A8...

Signature:

DocuSigned by:
Joanna Liesemer
 88438850A5BA418...

Please direct all correspondence or inquiries regarding this Letter of Credit to ATB Financial, Calgary Campus, 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Banking Operations quoting the Letter of Credit reference number quoted above

853

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

Amendment Number: 0009

ISSUED BY

Name: ATB Financial
Address: Calgary Campus
3699 63 Ave NE, Calgary,
AB T3J 0G7

LETTER OF CREDIT NO. 3546141

DATE OF ISSUE: Apr 12, 2022

AMENDMENT DATE: May 24, 2023

BENEFICIARY

Name: Greater Toronto Airports Authority
Address: Toronto Pearson International Airport
P.O. BOX 6031
Toronto, AMF, ON L5P 1B2

APPLICANT

Name: 1263343 Alberta Inc.
Address: 119 - 1440 Aviation Park NE
Calgary, AB T2E 7E2

At the request of the Applicant, we, ATB Financial, hereby amend the irrevocable standby Letter of Credit issued in your favour as follows:

- The Amount of the Letter of Credit has been increased from \$2,700,000.00 CAD to \$2,950,000.00 CAD.

All other terms and conditions on the credit remain unchanged.

This amendment forms part of the irrevocable standby Letter of Credit and must be attached thereto.

ATB Financial

Name: Cheyenne Monnier

Name: Joanna Liesemer

Signature: 
A31A11B8C2184AB...

Signature: 
8843D850A5B4418...

Please direct all correspondence or inquiries regarding this Letter of Credit to ATB Financial, Calgary Campus, 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Banking Operations quoting the Letter of Credit reference number quoted above

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT 915

Amendment Number: 0010

ISSUED BY

Name: ATB Financial
Address: Calgary Campus
3699 63 Ave NE, Calgary,
AB T3J 0G7

LETTER OF CREDIT NO. 3546141

DATE OF ISSUE: Apr 11, 2022

AMENDMENT DATE: Jun 5, 2023

BENEFICIARY

Name: Greater Toronto Airports Authority
Address: Toronto Pearson International Airport
P.O. BOX 6031
Toronto, AMF, ON L5P 1B2

APPLICANT

Name: 1263343 Alberta Inc.
Address: 119 - 1440 Aviation Park NE
Calgary, AB T2E 7E2

At the request of the Applicant, we, ATB Financial, hereby amend the irrevocable standby Letter of Credit issued in your favour as follows:

- The Amount of the Letter of Credit has been increased from \$2,950,000.00 CAD to \$3,100,000.00 CAD.

All other terms and conditions on the credit remain unchanged.

This amendment forms part of the irrevocable standby Letter of Credit and must be attached thereto.

ATB Financial

Name: Cheyenne Monnier

Name: winona Pidperyhora

Signature:  A31A11E8C216A4B

Signature:  8AF4DEBC4D1541D

Please direct all correspondence or inquiries regarding this Letter of Credit to ATB Financial, Calgary Campus, 3699 63 Ave NE, Calgary, AB T3J 0G7 ATTN: Trade Finance Banking Operations quoting the Letter of Credit reference number quoted above

This is Exhibit "M" referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)
Shimon Sherrington

Osler, Hoskin & Harcourt LLP
 Box 50, 1 First Canadian Place
 Toronto, Ontario, Canada M5X 1B8
 416.362.2111 MAIN
 416.862.6666 FACSIMILE

OSLER

Toronto

March 5, 2024

Shawn Irving
 Direct Dial: 416.862.4733
 sirving@osler.com

Montréal

Sent by Electronic Mail (rvandemosselaer@osler.com)

Calgary

Osler, Hoskin & Harcourt LLP
 Suite 2700, Brookfield Place
 225 – 6th Avenue S.W.
 Calgary, Alberta T2P 1N2

Ottawa

Vancouver

New York

Dear Mr. Van de Mosselaer:

In the Matter of a Plan of Compromise or Arrangement of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air – Airport Improvement Fee Trust

We act for the Greater Toronto Airports Authority (the “GTAA”). We are aware that on February 22, 2024, Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (collectively “Lynx Air”) sought and obtained an initial order (as subsequently amended and restated, the “ARIO”) under the *Companies’ Creditors Arrangement Act* (“CCA”).

As you may know, 1263343 Alberta Inc. (dba Lynx Air) and the GTAA are parties to the Greater Toronto Airports Authority Airport Improvement Fee Agreement (the “AIF Agreement”), dated January 1, 2023. The AIF Agreement sets out, among other things, the requirement that the Airport Improvement Fee (“AIF”) charged by the GTAA to Enplaned Passengers (as defined in the AIF Agreement) be collected and held by Lynx Air on behalf of GTAA and remitted back to the GTAA.

Paragraph 2.1.1(c) expressly provides that the AIF collected on behalf of the GTAA by Lynx Air are funds or revenues belonging to the GTAA and not Lynx Air. Moreover, Lynx Air is expressly required to hold the AIF in trust for the benefit of the GTAA. As such, the AIF collected by Lynx Air from Enplaned Passengers represent trust funds that do not form part of the debtor’s Property (as that term is defined in the ARIO) and cannot be distributed to Lynx’s creditors or otherwise used as part of the CCA proceeding. An excerpt of the applicable provisions in the AIF Agreement is attached as Schedule “A”. A full copy of the AIF Agreement, which is confidential, is available upon request.

As of February 21, 2024, Lynx Air is holding CAD \$1,710,148.23 million in AIF (the “AIF Monies”) in trust on behalf of the GTAA. GTAA demands that Lynx Air immediately remit the AIF Monies that remain owing to the GTAA, failing which the GTAA intends to bring a payment motion in the CCA proceeding. In the meantime, we expect that Lynx Air will refrain from taking any steps to deplete or use the AIF Monies in any way.

OSLER

Page 2

We look forward to hearing from you.

Sincerely,



Shawn Irving
Partner

cc. FTI Consulting Canada Inc. *in its capacity as Monitor of Lynx Air*
McCarthy Tétrault LLP, *Counsel for the Monitor*
Julie Treleaven, *Osler, Hoskin & Harcourt LLP (Calgary)*
Andrea Campbell, *Greater Toronto Airports Authorities*
Peter Humele, *Greater Toronto Airports Authorities*
Emma Smith, *Osler, Hoskin & Harcourt LLP (Toronto)*

SCHEDULE "A"



GREATER TORONTO AIRPORTS AUTHORITY AIRPORT IMPROVEMENT FEE AGREEMENT

Toronto-Pearson International Airport
P.O. Box 6031, Toronto AMF, Ontario, L5P 1B2

DATE: January 1, 2023 (the "Effective Date")

NAME OF CARRIER: 1263343 Alberta Inc. (dba Lynx Air)

As of the Effective Date, each of the Greater Toronto Airports Authority ("GTAA") and 1263343 Alberta Inc. (dba Lynx Air) ("Air Carrier") hereby agree as follows with respect to the imposition by GTAA of an Airport Improvement Fee, the collection of Deposits by Air Carrier from certain passengers and the remittance of Deposits by Air Carrier to GTAA as hereinafter set forth.

Greater Toronto Airports Authority

Per: 
 Name: John Peellegoda
 Title: Acting Chief Financial Officer

12633343 Alberta Inc. (dba Lynx Air)

Per: 
 Name: Michael S. Holditch
 Title: Chief Financial Officer

GTAA to evaluate, consult on and ultimately provide a recommendation to the ACC on the technical suitability of all Reviewable Capital Programs; and

“Vice President and Chief Financial Officer” means the GTAA employee holding the position of Vice-President and Chief Financial Officer from time to time and will include any acting Vice-President and Chief Financial Officer and, if the title of the position is changed, the employee who is able to exercise the authority of the Vice President and Chief Financial Officer for the purposes of this Agreement.

- 1.2. Words importing the singular number include the plural and vice versa and words importing gender include the masculine, feminine and neuter genders.
- 1.3. The division of this Agreement into Articles, Sections, Subsections, paragraphs and subparagraphs and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.
- 1.4. The words “hereof”, “herein”, “hereunder” and similar expressions used in any Article or Section of this Agreement relate to the whole of this Agreement and not to that Article or Section only, unless otherwise expressly provided.
- 1.5. Wherever in this Agreement the terms “include”, “includes”, “including” or any derivations thereof are used, such term will be interpreted to mean “including, without in any way limiting the generality of the foregoing,” such that any list following such term will not be construed so as to constitute an exhaustive list of the items so listed.
- 1.6. Except as otherwise indicated herein, at all times during the Term of this Agreement, the Parties will act reasonably in exercising their rights or discretions, making requests, making determinations and performing their duties and obligations under and in connection with this Agreement.

2. AIRPORT IMPROVEMENT FEE

2.1. Imposition and Usage of AIF and Remittance/Collection of Deposits

- 2.1.1 (a) The Parties agree that in general, AIF (specifically excluding amounts to be retained by Air Carrier in respect of the Administration Cost and amounts collected and remitted in respect of HST and other applicable taxes which will be remitted to the relevant authorities) will be used by GTAA for the purpose of Capital Programs and Capital Projects designed in furtherance of the:
 - (i) creation of operational efficiencies that reduce operating cost;
 - (ii) development of operating capacity;
 - (iii) generation of positive cash flow from non-aeronautical revenue sources; and
 - (iv) other purposes set forth in Section 2.3 hereof,

- 10 -

and for debt service on any Capital Projects or Programs (which, for clarity, include debt service on any capital projects or programs which have been incurred by GTAA prior to the Effective Date of this Agreement).

- (b) During the Term, GTAA intends to impose an AIF in respect of the Enplaned Passengers carried by air carriers (including Air Carrier) operating from the Airport. In consideration of the retention by Air Carrier of the Administration Cost referred in Section 2.5 of this Agreement, Air Carrier will make every commercially reasonable effort to collect, or cause to be collected, the Deposit for and on behalf of GTAA at the time of the sale of a Ticket to each prospective Enplaned Passenger which will be held as a Deposit by Air Carrier and remitted to GTAA as provided in this Agreement.
- (c) Subject to the terms of Section 2.4.2. of this Agreement, each of the Parties acknowledge and agree that: (i) the Deposits collected on behalf of GTAA by Air Carrier from the prospective Enplaned Passengers are funds properly belonging to GTAA and not Air Carrier; and (ii) the Deposits collected by Air Carrier will be held by Air Carrier in trust for the benefit of GTAA. Notwithstanding and without prejudice to the fact that the Deposits will be collected and held by Air Carrier in trust for GTAA, but subject to the terms of Section 2.4.2. of this Agreement, the Parties each acknowledge that such Deposits collected will be commingled in the accounts of Air Carrier with other funds collected during the normal course of business with no obligation to segregate the Deposits from these other funds, and GTAA will be under no obligation at any time to segregate AIF from any other funds it may have.
- (d) Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that, as of January 1, 2023, Air Carrier and all of the other Participating Air Carriers shall be permitted to: continue using the same IATA "ticket tax" code (IATA Code: SQ); reflect on their Tickets the current AIF description; and collect and remit the AIF in the manner currently being used by all of the Participating Air Carriers, and same will not constitute a breach of any obligation of this Agreement. The Participating Air Carriers will work with IATA and the other Canadian airports diligently to develop and publish, through the IATA Ticket Tax Box Service, a new IATA "ticket tax" code and description reflecting the collection of Deposits in the manner otherwise provided herein. After the publication of the new IATA "ticket tax" code, and as set-out therein, Air Carrier will: reflect the new IATA-approved description on their Tickets; and collect and remit the Deposits on the Remittance Forms to accordingly reflect the Deposit mechanism provided herein.

2.1.2. The obligation to collect and remit Deposits will not apply to Exempt Services provided by Air Carrier. In addition, air carriers who carry less than two thousand (2,000) Enplaned Passengers per calendar year will not be required to collect, hold and remit any Deposits, unless GTAA so elects such air carriers to require such collection, holding and remittance.

2.1.3. Any AIF or fee charged by GTAA on Non-Participating Air Carriers in lieu of the AIF imposed by GTAA will be set at a Canadian whole dollar amount per Enplaned Passenger

- 11 -

for Participating Air Carriers or Non-Participating Air Carriers (as the case may be) plus IIST and other applicable taxes. In addition, GTAA will also set an AIF in respect of Connecting Passengers for Participating Air Carriers or Non-Participating Air Carriers (as the case may be) which will be set at a Canadian whole dollar amount per Connecting Passenger.

- 2.1.4.** GTAA has the right at any time during the Term to increase or decrease the amount of the AIF payable by Enplaned Passengers as set out herein. GTAA has the right at any time during the Term to increase or decrease the amount of the Deposit to be collected, held in accordance with Section 2.1.1.(b) and remitted by Air Carrier, provided that GTAA will provide at least 90 calendar days prior written Notice to the ACC and to the Participating Air Carriers.
- 2.1.5.** Regardless of which air carrier sells a Ticket to a prospective Enplaned Passenger or which air carrier designator code is on the Enplaned Passenger's Ticket, the Parties acknowledge and agree that the Participating Air Carrier on whom the Enplaned Passenger actually travels will be the party responsible for the remittance of the Deposit for that prospective Enplaned Passenger in accordance with the other provisions of this Agreement, and, if Air Carrier also sold the Ticket to the prospective Enplaned Passenger, Air Carrier will be responsible for the collection of the Deposit for such Enplaned Passenger.
- 2.1.6.** Except as permitted under Section 2.1.2, GTAA will not levy GTAA Rates and Charges, including landing fees and general terminal charges, on any less favourable terms and conditions to Participating Air Carriers and their passengers, having regard to the AIF imposed by GTAA, than are levied on Non-Participating Air Carriers and their passengers, provided that nothing herein will be interpreted or construed so as to limit the unfettered right of GTAA to set GTAA Rates and Charges at such levels as it deems appropriate in its sole discretion or to offer incentive programs from time to time or to set different fees in lieu of AIF rates for Non-Participating Air Carriers than AIF rates for Participating Air Carriers. Air Carrier acknowledges and agrees that the current arrangement (which Air Carrier agrees is compliant with the foregoing) for Non-Participating Air Carriers is that they pay a fee in lieu of the AIF, which is not, and will not be, less than the dollar amount of the AIF, and which is on the basis of the number of seats instead of the number of Enplaned Passengers, and that GTAA may revise such charging and collection methodology in its sole discretion at any time, subject to the limitations stated in this Section 2.1.6.
- 2.1.7.** If, as a result of any of the following events (an "**AIF Legislative Initiative**"):
- (a) any order, directive, legislative initiative, regulatory change and/or binding policy statement issued by a government authority having jurisdiction over the imposition or collection of an AIF by GTAA; or
 - (b) any order or judgment of any court or administrative body of competent jurisdiction,

GTAA is unable to impose an AIF or Participating Air Carriers are unable to collect the Deposits, the obligations of each Party contained in this Agreement will cease, save and except:

- (a) the obligation of Air Carrier to collect Deposits in accordance with Section 2.1.1.(b), up to and including the date upon which the government authority having jurisdiction or the court or administrative body, has issued, promulgated or enacted the AIF Legislative Event (the “**Event Date**”); and
- (b) the obligations of the Parties described in Section 2.5 to the extent of the Deposits collected, held in accordance with Section 2.1.1.(b) and remitted by Air Carrier for the period up to and including the Event Date.

2.2. Capital Review Process

2.2.1. Airport Master Plan and Capital Plan

Upon the execution of this Agreement, GTAA will provide to the TSC the most current version of the Airport Master Plan along with its five-year capital plan for the Airport (the “**Capital Plan**”) which will outline and detail (using written descriptions and illustrations) GTAA’s capital budget over the number of years covered by the Capital Plan, and its planned Capital Programs, including Reviewable Capital Programs. For clarity and certainty, and as applicable, the Capital Plan will include the terms related to any Permitted Transit Funding Amount. The Parties acknowledge that the Capital Plan is and will continue to be an evolving document as GTAA’s strategy and capital plans evolve, and accordingly GTAA will provide the TSC on an annual basis with an updated version of its Capital Plan. GTAA and the TSC may review and discuss the Airport Master Plan and the Capital Plan, provided that nothing herein will be construed so as to give the TSC or any Participating Air Carrier the right of consultation (including the Consultation Process) with GTAA with respect thereto.

2.2.2. Reporting

(a) Reporting on Airport Master Plan and Capital Plan

GTAA will, on a semi-annual basis (or more frequently if GTAA determines that more frequent reports are warranted to achieve the purposes of this Agreement) provide to the ACC updated information pertaining to:

- (i) Capital Plan impact on debt and debt service levels;
- (ii) Capital Plan impact on operating budget;
- (iii) Amendments to the Capital Plan; and
- (iv) Amendments to the Airport Master Plan.

This is Exhibit "N" referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)

Shimon Sherrington

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March 28, 2024

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 (rvandemosselaer@osler.com)

McCarthy Tétrault LLP
 421 7 Avenue SW
 Calgary, AB
 T2P 4K9
 Attn: Sean Collins
 (scollins@mccarthy.ca)

Vancouver

New York

Dear Sirs:

In the Matter of a Plan of Compromise or Arrangement of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air – Airport Improvement Fee Trust

As you know, we act for the Greater Toronto Airports Authority (the “GTAA”) in connection with the Lynx Air CCAA proceeding. On March 5, 2024, we wrote to Mr. Van de Mosselaer, counsel to the Applicants, copying FTI Consulting Canada, in its capacity as Monitor of the Applicants, asserting that Lynx Air is holding at least CAD \$1,710,148.23 million (the “AIF Monies”) in trust on behalf of the GTAA and demanding that Lynx Air immediately remit those funds to the GTAA, as they do not form part of the Property of the Applicants. We also asked that the Applicants confirm that the AIF Monies were not being depleted as part of the CCAA proceedings.

To date, we have not received a response to our March 5th letter. We reiterate our demand herein.

In addition, earlier this week, the Applicants served materials in connection with an application to be heard on April 2, 2024 seeking, among other things, an Order approving an Agreement entered into between Lynx Air and The Boeing Company (“Boeing”) dated March 21, 2024 (the “Termination Agreement”). As we understand it, the Termination Agreement purports to terminate an agreement that had previously been entered into between Lynx Air and Boeing in 2015 giving Lynx the right to purchase certain aircraft and lease additional aircraft from Boeing. In exchange for entering into the Termination Agreement, and if approved by the CCAA Court, Boeing has agreed to pay the Applicants an agreed amount of compensation.

It does not appear, based on our review of the materials, that the Applicants will be seeking any form of distribution order in connection with the April 2nd Application. If our understanding is incorrect, please advise forthwith. It is not our intention to interfere with

the April 2nd Application, or the SISP more generally, so long as our clients' rights and claim to the AIF Monies are not in any way prejudiced.

Finally, we understand that Ms Karen Fellowes, KC of Stikeman Elliott LLP has recently been retained on behalf of the Vancouver Airport Authority and certain other airport authorities in Canada who, like the GTAA, assert that Lynx Air is holding unremitted AIF funds in trust on their behalf. We have had some preliminary discussions with Ms Fellowes in relation to these proceedings and our clients' respective claims to funds held in trust by the Applicants. We agree that it would be beneficial to have a meeting with counsel to the Applicants, the Monitor and its counsel to discuss these issues, and to discuss a reasonable timetable for an application before the CCAA Court, if necessary.

In the meantime, we continue to expect that Lynx Air will refrain from taking any steps to deplete or use the AIF Monies in any way.

We look forward to hearing from you.

Sincerely,



Shawn Irving
Partner

cc. Deryck Helkaa, Brett Wilson and Dustin Olver, FTI Consulting Canada Inc. *in its capacity as Monitor of Lynx Air*
Walker MacLeod, Pantelis Kyriaskakis and Nathan Stewart, McCarthy Tétrault
Julie Treleaven, *Osler, Hoskin & Harcourt LLP (Calgary)*
Karen Fellowes, KC, *Stikeman Elliott LLP*
Emma Smith, *Osler (Toronto)*

This is Exhibit "O" referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)

Shimon Sherrington



Calgary

April 2, 2024

Tommy Gelbman
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Our Matter Number: 1246361

Toronto

Montréal

Sent By Email

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Box 50, 1 First Canadian Place
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Vancouver

New York

Stikeman Elliot LLP
888 3rd Street S.W., 4200 Bankers Hall West
Calgary, AB T2P 5C5

Attention: Shawn Irving and Karen Fellows, K.C.

Dear Mr. Irving and Ms. Fellows:

**Re: In the matter of the *Companies' Creditors Arrangement Act* proceedings of
1263343 Alberta Inc. dba Lynx Air and Lynx Air Holdings Corporation**

We are in receipt of each of your March 28, 2024 letters requesting payment of Airport Improvement Fees (the “**AIF Monies**”) on behalf of several Canadian airport authorities, and asserting certain amounts to be held in trust by Lynx Air for the benefit of your respective clients.

Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Affidavit of Michael Woodward, dated February 22, 2024.

We respectfully disagree that Lynx Air must remit any AIF Monies to the airport authorities at this time. Our initial review of the asserted trust claims suggests that not all amounts claimed to be AIF Monies held in trust can accurately be characterized as such, especially in light of the substantial amounts paid to several airport authorities in priority to other stakeholders by virtue of the airport authorities having drawn on their irrevocable letters of credit.¹

Lynx Air’s relationship with each airport authority is different, and as such their respective circumstances are different. This letter will set out Lynx Air’s position with respect to AIF Monies generally, and a separate accounting for each airport authority will be provided in

¹ Lynx Air provided security deposits in the form of irrevocable letters of credit to: (i) Greater Toronto Airport Authority, (ii) Vancouver Airport Authority, (iii) Winnipeg Airport Authority Inc., and (iv) Halifax International Airport Authority. These agreements indicate that some or all of the security is for the purpose of paying any outstanding AIF Monies.

due course, based on, *inter alia*, the respective agreements in place, draws on letters of credit, characterization of the outstanding amounts claimed, and the relevant law.

If AIF Monies claimed by the airport authorities are, as a matter of law, held in trust, then the CCAA and the common law governing such trusts will necessarily govern their distribution. As noted by Ms. Fellows, under paragraph 67(1)(a) of the BIA, trust funds do not form part of a debtor's property. We acknowledge this principle applies under the CCAA.² However, when trust property is commingled with a debtors' property, the process of remittance is complex. Moreover, if some of the asserted pre-filing claims have been paid by virtue of the fact that a claimant has drawn on a letter of credit, then two assessments must be made: (i) against which claims does the letter of credit apply and, in turn, (ii) how to characterize the outstanding amounts claimed – i.e., are the amounts in fact held in trust or do they constitute unsecured debt?³ If such outstanding amounts are held in trust as a matter of law and have not, as a matter of fact, been expended (*i.e.*, the trust funds remain identifiable), then the law contemplates three potential distribution methods: (i) the rule in *Clayton's Case*; (ii) the lowest intermediate balance rule; or (iii) the *pro rata* approach.⁴

These issues must be carefully assessed for each airport authority and resolved in due course, by agreement or, if necessary, by way of application. In any event, nothing in today's application affects this analysis.

Once you have had an opportunity to consider the foregoing, and our forthcoming individual assessments, we would be pleased to discuss a potential meeting, to include the Monitor.

Yours truly,



Tommy Gelbman

cc: Randal Van de Mosselaer and Julie Treleaven, *Osler, Hoskin & Harcourt LLP*
Sean Collins and Walker MacLeod, *McCarthy Tetrault LLP*
Deryck Helkaa and Dustin Olver, *FTI Consulting Canada Inc.*

² *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at paras [23-24](#).

³ *BMP Global Distribution Inc v Bank of Nova Scotia*, 2009 SCC 15 at para [75](#).

⁴ *Easy Loan Corp v Wiseman*, 2017 ABCA 58 at para [28](#).

This is Exhibit "P" referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)
Shimon Sherrington

Calgary

April 12, 2024

Tommy Gelbman
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Our Matter Number: 1246361

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New York

Attention: Shawn Irving

**Re: In the matter of the *Companies' Creditors Arrangement Act* proceedings of
1263343 Alberta Inc. dba Lynx Air and Lynx Air Holdings Corporation**

Further to our April 2 and 9, 2024 correspondence, we write to set out the Applicant's position in respect of the GTAA's trust claim over pre-filing Airport Improvement Fees (the "**AIF Monies**") collected by Lynx Air on behalf of the GTAA.

Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the February 22, 2024 affidavit of Michael Woodward.

The Trust Relationship

Lynx Air and the GTAA are parties to a January 1, 2023 Greater Toronto Airports Authority Airport Improvement Fee Agreement (the "**AIF Agreement**"), which Lynx Air accepts created a trust relationship in respect of AIF Monies:

2.1.1(c) the AIF collected on behalf of the GTAA by the Air Carrier from the Enplaned Passengers (excluding the amounts collected by the Air Carrier for itself in respect of the Administration Cost) are funds or revenues properly belonging to the GTAA and not the Air Carrier; and (ii) the AIF collected by the Air Carrier (excluding the amounts collected by the Air Carrier for itself in respect of the Administration Cost) shall be held by the Air Carrier in trust for the benefit of the GTAA. Notwithstanding and without prejudice to the fact that the AIF shall be collected and held by the Air Carrier in trust for the GTAA, the Parties each acknowledge that such AIF collected may be commingled in the accounts of the Air Carrier with other funds collected during the normal course of business.

As such, the AIF Monies collected on behalf of the GTAA did not form part of Lynx Air's property.

Quantum of AIF Monies

Section 5 of the GTAA’s Air Carrier – Application for Entry provides that the Letter of Credit constituted a security deposit “in an amount calculated by the GTAA Finance Controller for Landing Fees, General Terminal Fees, Apron Fees, Check-In Fees and Airport Improvement Fees”. We understand from the revised Schedule A-1 for summer 2023¹ that the Letter of Credit was allocated as follows:

Aeronautical Related Security Deposit Requirement	\$1,596,943	52.08%
AIF Security Deposit Requirement	\$1,469,170	47.92%
Total Security Deposit Requirement	\$3,066,113	

The security deposit was increased to \$3,100,000 in June 2023. On or around March 1, 2024, the GTAA drew on the Irrevocable Standby Letter of Credit (No. 356141) issued in favour of the GTAA on April 12, 2022, in the amount of \$3,100,000, as amended, for the account of Lynx Air (the “**Letter of Credit**”).²

Lynx Air has reviewed its accounting records to calculate pre-filing and post-filing AIF Monies that had been collected and held in trust by Lynx Air as follows:

Pre-Filing	Post-Filing	Letter of Credit Drawn	Total Outstanding AIF Monies
\$1,782,424	\$5,959	(\$3,100,000)	\$0

Lynx Air has made the post-filing AIF remittances to the GTAA to satisfy the latter, and the Letter of Credit was applied against pre-filing AIF Monies in priority over secured and unsecured debt claims. As such, all AIF Monies have been remitted to the GTAA. The remainder of the Letter of Credit – \$1,311,617 – satisfied a portion of the pre-filing debt owed by Lynx Air to the GTAA. Accordingly, any residual amounts claimed by the GTAA constitutes unsecured pre-filing debt.

¹ Email and attachments from Nadia Roopchand to Mike Woodward dated March 24, 2023.

² Letter from MLT Aikins LLP dated February 28, 2024, regarding ATB Financial’s release of the Letter of Credit funds to the GTAA.

Based on the foregoing, we respectfully disagree that Lynx Air currently holds any AIF Monies in trust for the GTAA. Indeed, the Letter of Credit has served to put the GTAA in an advantageous position vis-à-vis other Lynx Air creditors because all AIF Monies have been remitted, and a significant portion of unsecured debt was paid. To allocate the Letter of Credit differently would put the GTAA in a far more advantageous position vis-à-vis other creditors, which result would have no support under the CCAA or the common law.

We remain open to meeting with you should the GTAA continue to take a different position having considered the foregoing.

Yours truly,



Tommy Gelbman

cc: Randal Van de Mosselaer and Julie Treleaven, *Osler, Hoskin & Harcourt LLP*
Sean Collins and Walker MacLeod, *McCarthy Tetrault LLP*
Deryck Helkaa and Dustin Olver, *FTI Consulting Canada Inc.*

This is Exhibit “Q” referred to in the affidavit of Jason Boyd sworn before me over videoconference in accordance with the *Administering Oath or Declaration Remotely Regulation*, O. Reg 431/20, on May 24, 2024, while I was located in the City of Toronto, in the Province of Ontario, and the affiant was located in the City of Toronto in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)
Shimon Sherrington

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April 25, 2024

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 T2P 4K9
 Attn: Sean Collins
 (scollins@mccarthy.ca)

Vancouver

New York

Dear Sirs:

In the Matter of a Plan of Compromise or Arrangement of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air – Airport Improvement Fee Trust

We write in response to Mr. Gelbman's letter dated April 12, 2024.

In the April 12 letter, Lynx Air advised that while it accepted that the AIF Agreement created a trust relationship in respect of monies collected by Lynx Air from Enplaned Passengers at Pearson on behalf of the GTAA (“**AIF amounts**”), it was Lynx Air's position that all AIF amounts have been remitted to the GTAA and that no further AIF amounts are owing. To support this assertion, Lynx Air asserts that the letter of credit issued by ATB Financial to secure various obligations owing to the GTAA, including Aeronautical Fees and Charges and AIF monies to be collected, which was drawn upon by the GTAA (as amended, the “**Letter of Credit**”), was applied by the GTAA against the pre-filing AIF amounts such that no such amounts remain outstanding and subject to a trust in favour of the GTAA.

The GTAA respectfully disagrees. The GTAA, not Lynx Air, is entitled to determine how to apply the Letter of Credit to outstanding amounts secured by that instrument, in its sole discretion. Section 5 of the GTAA's Air Carrier – Application for Entry (the “**Air Carrier Agreement**”) required Lynx Air to post a letter of credit as a security deposit “in an amount calculated by the GTAA Finance Controller for Landing Fees, General Terminal Fees, Apron Fees, Check-In Fees and Airport Improvement Fees”. The Air Carrier Agreement does not specify how the letter of credit is to be allocated to amounts that are owing by Lynx Air to the GTAA and that are secured by the letter of credit. Additionally, the revised Schedule A-1 for summer 2023 (“**Schedule A-1**”) sets out the minimum letter of credit security deposit requirements for Lynx Air in respect of Aeronautical Fees and Charges

and AIF, but does not stipulate how any letter of credits or security deposits must be allocated.

That GTAA has full discretion with respect to how to apply the Letter of Credit in the event of a default by Lynx Air is expressly confirmed under section 2.38 of The Pearson Standard: Rules and Regulations¹ (the “**GTAA Rules**”), to which Lynx Air is required to comply. The GTAA Rules, which bind all Air Carriers pursuant to the Air Carrier Agreement, expressly permits the GTAA to apply any security deposit submitted, in this case through the Letter of Credit, towards overdue amounts of Aeronautical Fees and Charges *or* under any other agreements. Section 2.38 states:

Air Carriers must submit a security deposit in a form and amount determined by the GTAA’s Finance Controller and detailed in the GTAA’s Air Carrier – Application for Entry prior to commencing operations. The GTAA may apply the security deposit towards overdue amounts of Aeronautical Fees and Charges or to cover costs associated with violations of the GTAA Rules or under any other agreements. [emphasis added]

Moreover, section 13.5.4 of the GTAA Rules provides that failure by the Airport User (in this case, Lynx Air) to address a “Notice of Non-Compliance” may result in “any other actions that are appropriate and necessary in the circumstances and at the sole discretion of the GTAA.” A Notice of Non-Compliance is defined within the GTAA Rules Glossary as “[a] document issued by the GTAA that explains the nature and scope of non-compliance with the GTAA Rules, including any required steps to address or remedy the non-compliance, as well as the timeframe for those steps and remedies to be undertaken.”

On February 16, 2024, the GTAA issued Lynx Air a default notice (the “**Notice of Default**”) regarding, among other things, Lynx Air’s failure to pay the GTAA Aeronautical Fees and Charges as set out under sections 2.34 – 2.37 of the GTAA Rules. The Notice of Default demanded payment of the total overdue and outstanding Aeronautical Fees and Charges and AIF by February 21, 2024. The Notice of Default constitutes a Notice of Non-Compliance which empowers the GTAA to take any actions that are appropriate and necessary in the circumstances and at the sole discretion of the GTAA in order to address a Notice of Non-Compliance.²

¹ Under section 3(3) of the Air Carrier Agreement, Lynx Air agreed to observe and be bound by the terms of the GTAA Rules and the directives issued by the GTAA.

² GTAA Rules, section 13.5.4.

Given Lynx Air failed to cure the default by February 21, 2024, on or around March 1, 2024, the GTAA drew on the Letter of Credit in the amount of CAD \$3,100,000. As it was entitled to do, the GTAA applied the Letter of Credit first to outstanding Aeronautical Fees and Charges, which totaled CAD \$2,977,156.83 as of that date. A detailed breakdown of how the Letter of Credit was applied to Aeronautical Fees and Charges is attached as Schedule “A”. The GTAA then applied the remaining CAD \$122,843.17 of the Letter of Credit to outstanding AIF amounts. However, significant AIF amounts remain owing.

Lynx’s position that the GTAA was required to apply the Letter of Credit in a manner that it deems reasonable does not reflect the bargain between the parties and deprives the GTAA of the protection that it bargained for.

More specifically, although the AIF amounts were also potentially secured by the Letter of Credit, the GTAA expressly bargained for additional protection for the AIF in the AIF Agreement, through a trust mechanism. This reflects the fact that AIF amounts were collected from Passengers and do not belong to the Lynx Air. The AIF amounts are not a debt of Lynx Air; they are monies collected by Lynx Air on behalf of the GTAA for administrative convenience and are required to be remitted in full to the GTAA, regardless of whether the Letter of Credit also secured this obligation. To date, the balance of the AIF amounts remains unremitted.

It is not up to Lynx Air to determine how to apply the Letter of Credit or to require the GTAA to use the Letter of Credit to cancel Lynx’s trust obligations, leaving the unpaid Aeronautical Fees and Charges unsecured. In fact, the Letter of Credit creates an independent relationship between the issuer and the GTAA, which is consistent with the GTAA’s position that it is fully within its discretion to determine how to apply it. Nor is there any unfairness in this position, as asserted in the April 12 letter. To the contrary, it is Lynx Air’s position that is unfair, as it leaves the GTAA unsecured in a material amount, contrary to the parties’ bargain and the terms on which Lynx Air was granted access to Toronto Pearson Airport.

Based on the above, the GTAA continues to assert a trust claim over all AIF amounts that were collected by Lynx Air on behalf of the GTAA and which remain unpaid and demands that these trust funds be remitted to the GTAA immediately.

We are amenable to attending a meeting between the Applicants, the Monitor, and their respective counsel to address this issue, and to discuss a reasonable timetable for GTAA’s application before the CCAA Court, if necessary.

OSLER

Page 4

We look forward to hearing from you.

Sincerely,



Shawn Irving
Partner

- cc. Deryck Helkaa, Brett Wilson and Dustin Olver, FTI Consulting Canada Inc. *in its capacity as Monitor of Lynx Air*
Walker MacLeod, Pantelis Kyriaskakis and Nathan Stewart, McCarthy Tétrault
Julie Treleaven, *Osler, Hoskin & Harcourt LLP (Calgary)*
Karen Fellowes, KC, *Stikeman Elliott LLP*
Emma Smith, *Osler (Toronto)*



Toronto
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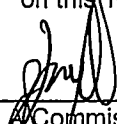
SCHEDULE “A”

Transaction Number	Transaction Type	Invoice Date	Outstanding Amount (CAD Dollars)
23022956	CHECKIN	2023-12-04	42,708.14
23023011	AL-AERO	2023-12-04	370,461.13
23023113	APRON FEE	2023-12-04	37,141.94
23023472	AL-AERO	2023-12-18	396,587.47
23023582	APRON FEE	2023-12-19	39,781.51
23023818	IT SERVICE	2023-12-22	117.52
24001001	CHECKIN	2024-01-03	57,893.05
24001056	AL-AERO	2024-01-03	457,328.46
24001146	APRON FEE	2024-01-03	44,077.24
24001268	APRON FEE	2024-01-08	3,919.70
24001553	AL-AERO	2024-01-18	412,479.91
24001675	APRON FEE	2024-01-19	44,852.28
24001836	IT SERVICE	2024-01-24	117.52
24003175	AL-AERO	2024-02-05	317,690.57
24003271	APRON FEE	2024-02-05	54,321.95
24003352	CHECKIN	2024-02-06	46,345.37
24003626	AL-AERO	2024-02-19	341,926.81
24003726	APRON FEE	2024-02-20	70,781.51
24004642	AL-AERO	2024-02-29	164,041.79
24004647	APRON FEE	2024-02-29	34,002.20
24005102	CHECKIN	2024-03-04	34,005.84
24004649	SLOT FEE	2024-02-29	2,106.49
24004645	IT SERVICE	2024-03-25	98.72
24002285	RENT	02/01/2024	4,369.71

OSLER

Transaction Number	Transaction Type	Invoice Date	Outstanding Amount (CAD Dollars)
		Total LOC Applied to Aeronautical Fees and Charges	2,977,156.83

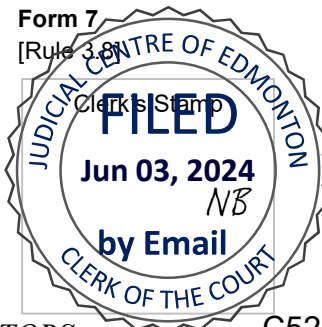
This is **Exhibit "M"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
In and for Alberta
My Commission Expires September 11, 2026

COM June 24, 2024



COURT FILE NUMBER 2401-02664
 COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS
 ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

C52174

AND IN THE MATTER OF THE COMPROMISE OR
 ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION
 and 1263343 ALBERTA INC. dba LYNX AIR

APPLICANTS CALGARY AIRPORT AUTHORITY, EDMONTON REGIONAL
 AIRPORT AUTHORITY, HALIFAX INTERNATIONAL
 AIRPORT AUTHORITY, VANCOUVER AIRPORT
 AUTHORITY, WINNIPEG AIRPORT AUTHORITY INC. and
 GREATER TORONTO AIRPORTS AUTHORITY

RESPONDENT LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA
 INC. dba LYNX AIR

DOCUMENT **AFFIDAVIT IN RESPONSE TO APPLICATIONS RELATING
 TO TRUST CLAIMS**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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 File Number: 1246361

AFFIDAVIT OF MICHAEL WOODWARD

SWORN MAY 31, 2024

I, Michael Woodward, of Calgary, Alberta, **MAKE OATH AND SAY THAT:**

1. I am the Chief Executive Officer and Director of my personal corporation, which has been contracted to provide the services of Interim Chief Financial Officer to Lynx Air (as that term is defined below), a role I commenced in March 2023. I have since been responsible for all financial-related aspects of Lynx Air's business. Prior to this role, I served as Chief Financial Officer of Campus Energy Partners, an energy infrastructure and supply company, and as a Vice President of BMO Capital Markets. I hold a Bachelor of Commerce in Accounting from the University of British Columbia and have obtained Chartered Accountant and Chartered Financial Analyst designations.

2. As such, I have personal knowledge of the matters to which I depose in this affidavit, except where stated to be based on information and belief, in which case I have stated the source of my information and, in all such cases, I believe such information to be true. In preparing this affidavit, I consulted with Lynx Air's accounting team and advisors, and reviewed relevant documents and information concerning Lynx Air's operations and business and financial affairs.

3. I swear this affidavit in response to applications:

(a) by the Calgary Airport Authority, the Edmonton Regional Airport Authority, the Halifax International Airport Authority, the Vancouver Airport Authority and the Winnipeg Airport Authority Inc. (collectively, the "**Airport Authorities**") for an order seeking, among other things, a declaration stating that the unremitted Airport Improvement Fees ("**AIF**") owed to the Airport Authorities is subject to an express, implied, or constructive trust; and

(b) by the Greater Toronto Airport Authority (the "**GTAA**", and together with the Airport Authorities, the "**Applicants**") for an order seeking, among other things, a

direction for Lynx Air to release \$1,659,580.87 to the GTAA to satisfy trust claims relating to AIF.

A. Lynx Air

4. Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (collectively, “**Lynx Air**”) are corporations duly incorporated pursuant to the laws of Alberta. Prior to the issuance of the Initial Order (as defined below), Lynx Air operated a Canadian ultra-low-cost carrier (“**ULCC**”) and offered flights to 18 destinations between April 2022 and February 2024.

B. The Relevant Agreements

5. To conduct the ULCC business, Lynx Air entered into certain agreements with each of the Applicants that govern, among other things, the fees payable by Lynx Air for use of each airport. I will describe these agreements below.

(a) The Greater Toronto Airports Authority

6. On January 1, 2023, Lynx Air entered into The Greater Toronto Airports Authority Airport Improvement Fee Agreement (the “**GTAA AIF Agreement**”) with the GTAA in respect of the use of Toronto-Lester B. Pearson International Airport (“**Pearson**”).

7. Among other things, the GTAA AIF Agreement governs the collection, remittance and use of AIF in respect of Pearson. Section 2.1.1(c) of the GTAA AIF Agreement provides:

[...] the AIF collected on behalf of the GTAA by the Air Carrier from the Enplaned Passengers (excluding the amounts collected by the Air Carrier for itself in respect of the Administration Cost) are funds or revenues properly belonging to the GTAA and not the Air Carrier; and (ii) **the AIF collected by the Air Carrier (excluding the amounts collected by the Air Carrier for itself in respect of the Administration Cost) shall be held by**

the Air Carrier in trust for the benefit of the GTAA. Notwithstanding and without prejudice to the fact that the AIF shall be collected and held by the Air Carrier in trust for the GTAA, the Parties each acknowledge that such AIF collected may be commingled in the accounts of the Air Carrier with other funds collected during the normal course of business. [Emphasis added]

8. Section 5 of the GTAA’s Air Carrier – Application for Entry (the “**GTAA Air Carrier Application**”) requires Lynx Air to post an irrevocable letter of credit (“**GTAA Letter of Credit**”) as a security deposit “in an amount calculated by the GTAA Finance Controller for Landing Fees, General Terminal Fees, Apron Fees, Check-In Fees and Airport Improvement Fees.”

9. The amount of the GTAA Letter of Credit was calculated twice annually based on two separate calculations. The first is a 45 day estimate of anticipated aeronautical related fees, and the second is a 30 day estimate of anticipated AIF. The GTAA last calculated the amount to be posted in March 2023 and provided an updated estimate in October 2023. Attached as **Exhibit A** is the calculation prepared by the GTAA, which shows, among other things, the following allocations:

	March		October	
Aeronautical Related Security Deposit Requirement	\$1,596,943	52.08%	\$1,523,397	48.79%
AIF Security Deposit Requirement	\$1,469,170	47.92%	\$1,599,198	51.21%
Total Security Deposit Requirement	\$3,066,113		\$3,122,594	

10. Based on this calculation, Lynx Air posted a \$3,100,000 Irrevocable Standby Letter of Credit (No. 356141), which was backed by a cash deposit held by ATB (also, the “**GTAA Letter of Credit**”).

11. Copies of the GTAA Air Carrier Application and the GTAA AIF Agreement are attached as Exhibits A and E to the Affidavit of Jason Boyd, sworn May 24, 2024.

(b) The MOA

12. As of April 6, 2022, Lynx Air became a signatory to a Memorandum of Agreement, dated May 31, 1999, as amended (the “**MOA**”). The parties to the MOA include (i) the Airport Transport Association of Canada, (ii) Signatory Air Carriers (as defined in the MOA, which includes Lynx Air), and (iii) Airports (as defined in the MOA, which includes the Airport Authorities).

13. The GTAA is the only Applicant that is not a signatory to the MOA.

14. The initial term of the MOA was 20 years, commencing on May 31, 1999 and expiring in 2019. The term was extended by agreements effective January 20, 2004, February 12, 2019, November 28, 2019, April 1, 2020, December 1, 2020, December 1, 2021, December 1, 2022, and December 21, 2023 (the “**2023 Amendment**”). Pursuant to the 2023 Amendment, the MOA will expire on June 30, 2024.

15. A copy of the MOA is attached to each of the affidavits filed by the Airport Authorities. A copy of the 2023 Amendment is attached hereto as **Exhibit B**.

16. Among other things, the MOA contains terms regarding Lynx Air’s collection of AIF from air carrier passengers on behalf of the Airport Authorities. Section 20.1 of the MOA provides:

The Parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise. Nothing contained in this MOA nor any acts of any Party taken in conjunction hereunder, shall constitute or be deemed to constitute a partnership, joint venture, or principal/agency relationship in any way or for any purpose except as the Signatory Air Carriers acting

as agents for the Airports in collecting and remitting the AIF funds. Except as expressly set forth herein, no Party, shall have any authority to act for, or to assume any obligations or responsibility on behalf of, any other Party. [Emphasis added]

(c) The Calgary Airport Authority

17. In addition to the MOA, Lynx Air entered into an Agreement dated April 7, 2022, as amended July 1, 2023, with the Calgary Airport Authority (the “**Agreement**”). The Agreement contains terms under which Lynx would pay certain fees and charges to the Calgary Airport Authority. The Agreement does not make reference to AIF.

18. The Agreement contains confidential and commercially sensitive business information, the public disclosure of which I understand would adversely affect and be prejudicial to the legitimate business interests the Calgary Airport Authority. For this reason, the Agreement contains non-disclosure obligations, prohibiting its public disclosure. As a result, a copy of the Agreement is attached to my Confidential Affidavit at **Exhibit C**, which I have made concurrently with this Affidavit.

19. Lynx Air did not post security in respect of any amounts to be remitted to the Calgary Airport Authority.

(d) Edmonton Regional Airports Authority

20. Lynx Air did not enter into a separate governing agreement with the Edmonton Regional Airports Authority. To my knowledge, the MOA is the only agreement that governs AIF between Lynx Air and the Edmonton Regional Airports Authority.

21. Lynx Air did not post security in respect of any amounts to be remitted to the Edmonton Airport Authority.

(e) Halifax International Airport Authority

22. In addition to the MOA, Lynx Air entered into an Air Carrier Operating Agreement effective June 29, 2022 (the “ACOA”) with the Halifax International Airport Authority, which provides:

The Air Carrier shall collect or cause to be collected from each enplaned passenger the fee then in effect as an airport improvement fee, or any such similar fee, and shall remit, on a monthly basis no later than the end of the month following the month of enplanement by the departing passengers at the Airport plus any applicable taxes, to HIAA.

23. Pursuant to the section titled “Security Deposit”, Lynx Air was required to “deposit with HIAA on or before the day on which it commences operations at the Airport, a security deposit in the amount of \$100,000.00 in the form of a letter of credit”. A copy of the ACOA is attached as Exhibit B to the Affidavit of Paul Brigley, sworn May 23, 2024.

24. On July 29, 2022, Lynx Air provided a cash deposit to the Halifax International Airport Authority for the account of Lynx Air in the amount of \$100,000 (the “**Halifax Security Deposit**”).

(f) Winnipeg Airports Authority

25. Lynx Air did not enter into a separate governing agreement with Winnipeg Airports Authority Inc. However, pursuant to Winnipeg Airports Authority Inc.’s Tariff of Aviation Fees effective April 1, 2021:

- (a) AIF in the amount of \$38 was charged to each originating departing enplaned passenger and was payable by all air carriers operating a commercial air carrier passenger service at the Winnipeg James Armstrong Richardson International Airport; and
- (b) Winnipeg Airports Authority Inc. was entitled to a cash deposit or irrevocable letter of credit to secure payment of any monies due under the Tariff.

26. On April 12, 2022, Lynx Air provided a cash deposit to Winnipeg Airports Authority Inc. for the account of Lynx Air in the amount of \$83,333.00 (the “**Winnipeg Security Deposit**”).

27. A copy of the Tariff is attached as Exhibit B to the Affidavit of Nicole Stefaniuk, sworn May 23, 2024.

(g) *Vancouver Airport Authority*

28. In addition to the MOA, Lynx Air entered into an Airport Use Licence effective November 16, 2021 with the Vancouver Airport Authority (“**Licence**”). The Licence granted a licence to Lynx Air to operate at the Vancouver Airport on the terms and conditions set forth in the Licence. A copy of the License is attached as Exhibit D to the Affidavit of Diana Vuong, affirmed May 23, 2024.

29. With respect to AIF, section 6.23 of the Licence provides:

Subject to the terms and conditions of any existing or future written agreements between the Licensor and the Licensee other than this Licence regarding the Airport Improvement Fee (“AIF”), the Licensee covenants and agrees to co-operate with the Licensor in the Licensor’s administration of the AIF for capital improvements at the Airport, and use reasonable efforts to inform its customers of the AIF, including responding to questions its customers may have about the AIF.

30. Article 10 of the License required Lynx Air to post security for payment of Fees in an amount equal to three months of Fees under the Licence. The License defines Fees to mean “any monies or amounts payable under this License.”

31. On April 6, 2022, Lynx Air posted an Irrevocable Standby Letter of Credit (No. 3539860) to the Vancouver Airport Authority for the account of Lynx Air in the amount of \$279,645.96 (the “**Vancouver Letter of Credit**”).

C. Lynx Air’s CCAA Proceedings

32. On February 22, 2024, Lynx Air obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), pursuant to an initial order granted by the Honourable Justice Gill (the “**Initial Order**”).

33. The Initial Order, among other things: (i) declared that Lynx Air are companies to which the CCAA applies; (ii) appointed FTI Consulting Canada Inc. as Monitor of Lynx Air in these proceedings; and (iii) granted a stay of proceedings in favour of Lynx Air up to and including March 4, 2024 (the “**Initial Stay**”).

34. On March 1, 2024, the Honourable Justice Whitting granted Lynx Air an amended and restated initial order (the “**ARIO**”) that, amongst other things, extended the Initial Stay to April 15, 2024 (the “**Stay Period**”).

35. The Stay Period was extended by further orders of this Court, most recently to June 28, 2024.

36. Copies of the Initial Order, the ARIO, and the body of my Affidavit sworn in support of the Initial Order which described, among other things, the events leading to Lynx Air’s insolvency, their urgent need for relief under the CCAA, and their intended liquidation and orderly wind down within these CCAA proceedings are attached hereto respectively as **Exhibits D, E, and F**.

D. Correspondence Among Lynx Air and the Applicants

(a) The Applicants’ Demand Letters

37. By letter dated March 5, 2024, the GTAA demanded payment from Lynx Air in the amount of \$1,710,148.23 for pre-filing AIF (the “**First GTAA Letter**”). The GTAA explained that pursuant to paragraph 2.1.1(c) of the GTAA AIF Agreement, AIF were held in trust on behalf of the GTAA.

38. The GTAA reiterated its demand for payment of pre-filing AIF by letter dated March 28, 2024 (the “**Second GTAA Letter**”).

39. By separate letter dated March 28, 2024, the Airport Authorities demanded remittance of approximately \$4,100,000 in pre-filing AIF claimed to be held in trust by Lynx Air on behalf of the Airport Authorities (the “**First Airport Authorities Letter**”).

40. A copy of each of the First GTAA Letter, the Second GTAA Letter, and the First Airport Authorities Letter is attached hereto as **Exhibits G, H, and I**.

41. On April 2, 2024, Lynx Air replied to the Applicants' two March 28, 2024 letters (the "**First Lynx Air Letter**"), disagreeing that any amounts were held in trust by Lynx Air.

42. By letter dated April 12, 2024 (the "**Second Lynx Air Letter**"), Lynx Air advised the GTAA that it accepted the existence of a trust relationship, citing section 2.1.1(c) of the GTAA AIF Agreement. Notwithstanding the existence of a trust relationship, Lynx Air took the position that all trust remittances had been made upon the GTAA drawing on the GTAA Letter of Credit, and any residual amounts claimed by the GTAA constituted unsecured pre-filing debt.

43. By letter dated April 15, 2024 (the "**Third Lynx Air Letter**"), Lynx Air provided the Airport Authorities an accounting of pre-filing AIF owed to each Airport Authority and stated its position that there was no evidence of a trust relationship between Lynx Air and any of the Airport Authorities.

44. A copy of each of the First Lynx Air Letter, the Second Lynx Air Letter and the Third Lynx Air Letter is attached hereto as **Exhibits J, K, and L**.

E. Lynx Air's Accounting

(a) The Airport Authorities

45. According to Lynx Air's accounting records, the following AIF were collected by Lynx prior to the Initial Order, on behalf of the Airport Authorities by virtue of a debtor and creditor relationship:

Airport Authority	Pre-filing AIF	Pre-filing Other Debt
Calgary	\$2,031,140.16	\$1,431,308.26
Edmonton	\$355,640.78	\$114,237.51
Halifax	\$365,788.78	\$53,647.02
Vancouver	\$1,185,768.45	\$204,109.05
Winnipeg	\$282,895.00	\$131,568.94

46. Lynx Air collected these AIF from passengers, and they were held in its general bank account, comingled with other funds.

47. Counsel to ATB Financial ("**ATB**") advised Lynx Air that ATB had received a request from the Vancouver Airport Authority to draw on their Irrevocable Standby Letter of Credit (the "**Vancouver ATB Letter**"). A copy of this correspondence is attached hereto as **Exhibit M**. I understand from the Vancouver ATB Letter that ATB paid the Vancouver Airport Authority \$279,645.96 on or around April 3, 2024.

48. Following the foregoing payment by ATB, the Halifax Security Deposit and the Winnipeg Security Deposit, according to Lynx Air's accounting records, the amounts owed to each of the Airport Authorities for AIF is as follows:

Airport Authority	Pre-Filing AIF	Other Pre-Filing Debt	Letter of Credit Drawn or Deposit Applied	Total Net Outstanding
Calgary	\$2,031,140.16	\$1,431,308.26	N/A	\$3,462,448.42
Edmonton	\$355,640.78	\$114,237.51	N/A	\$469,878.29
Halifax	\$365,788.78	\$53,647.02	(\$100,000.00)	\$319,435.80
Vancouver	\$1,185,768.45	\$204,109.05	(\$279,645.96)	\$1,110,231.54
Winnipeg	\$282,895.00	\$131,568.94	(\$83,300.00)	\$331,163.94

49. In calculating the foregoing, Lynx Air treated AIF and other pre-filing debt as unsecured debt, and did not treat AIF as trust funds for accounting purposes. Upon receiving the Airport Authorities affidavits filed in this proceeding, Lynx Air reconciled its accounts against those of the Airport Authorities, and the amounts match (aside from a \$0.01 delta for Edmonton).

50. For the purposes of this proceeding, Lynx Air undertook an accounting which applied the security deposit against other debt in priority to AIF (as appears to have been done by those Airport Authorities that held security), which resulted in the following:

Airport Authority	Pre-Filing AIF	Pre-Filing Other Debt	Letter of Credit Drawn	Total Outstanding AIF	Total Outstanding Other Debt
Halifax	\$365,788.78	\$53,647.02	(\$100,000.00)	\$319,435.80	\$0
Vancouver	\$1,185,768.45	\$206,845	(\$279,645.96)	\$1,110,231.54	\$0
Winnipeg	\$282,895.00	\$131,568.94	(\$83,300.00)	\$282,895.00	\$48,268.94

51. As Calgary Airport Authority and Edmonton Airport Authority had no security, there is no change to total outstanding AIF or other debt. A copy of a detailed accounting for each of the Airport Authorities is attached hereto as **Exhibit N**.

52. For the purposes of this proceeding, Lynx Air undertook an accounting which applied the security deposit against AIF in priority to other debt, which resulted in the following:

Airport Authority	Pre-Filing AIF	Pre-Filing Other Debt	Letter of Credit Drawn / Deposit Applied	Total Outstanding AIF	Total Outstanding Other Debt
Halifax	\$365,788.78	\$53,647.02	(\$100,000.00)	\$265,788.78	\$53,647.02
Vancouver	\$1,185,768.45	\$204,109.05	(\$279,645.96)	\$906,122.49	\$204,109.05
Winnipeg	\$282,895.00	\$131,568.94	(\$83,300.00)	\$199,595.00	\$131,568.94

(b) Airport Authorities' Post-Filing AIF

53. According to Lynx Air's accounting records, Lynx Air paid all post-filing AIF and aeronautical charges owed to the Airport Authorities as follows:

Airport Authority	Post-Filing AIF Owed	Post-Filing Aeronautical Charges Owed	Post-Filing Payment #1	Post-Filing Payment #2	Total Outstanding Post-Filing AIF
Calgary	\$66,749.76	\$51,729.91	\$93,440.00 paid Feb 23, 2024	\$25,039.67 paid March 19, 2024	\$0
Edmonton	\$17,030.69	\$6,862.42	\$27,061.00 paid Feb 23, 2024	N/A	(\$3,167.90) overpaid
Halifax	\$5,486.08	\$435.57	\$7,435.00 paid Feb 23, 2024	\$601.65 paid March 25, 2024	\$0
Vancouver	\$42,361.20	\$7,175.33	\$58,236.00 paid Feb 23, 2024	N/A	(\$8,699.47) overpaid
Winnipeg	\$0	\$0	N/A	N/A	N/A

54. Attached as **Exhibit O** hereto are copies of the correspondence Lynx Air sent to each of Edmonton Regional Airports Authority and Vancouver Airport Authority, documenting a planned pre-payment. Attached as **Exhibit P** hereto are schedules for each of Edmonton Regional Airports Authority and Vancouver Airport Authority evidencing the exact payment made as illustrated above.

55. The "Terminal" and "Total" columns within Exhibit O and P have been redacted to maintain the Edmonton Regional Airports Authority and the Vancouver Airport Authority's rights.

(c) The GTAA AIF

56. According to Lynx Air's accounting records, it collected \$1,782,424 in AIF prior to the Initial Order, which was held in trust for the GTAA.

57. The GTAA AIF was comingled in Lynx Air's general bank account.

58. By letter dated February 28, 2024, counsel to ATB advised Lynx Air that ATB had received a request from the GTAA to draw upon the GTAA Letter of Credit (the "GTAA ATB Letter"). Based on the foregoing, I understand that ATB paid the GTAA \$3,100,000 on or around March 1, 2024 for the account of Lynx Air.

59. Lynx Air's accounting records apply the GTAA Letter of Credit against pre-filing AIF in priority over other debt claims to ensure the remittance of the trust amounts, as follows:

Airport Authority	Pre-Filing AIF	Pre-Filing Other Debt	Letter of Credit	Total Outstanding AIF	Total Outstanding Other Debt
Toronto	\$1,782,424.04	\$2,977,156.83	(\$3,100,000.00)	\$0	\$1,659,580.87

60. If the GTAA Letter of Credit is to be applied against AIF in accordance with the calculations the GTAA prepared in determining the quantum of the GTAA Letter of Credit in October (\$1,599,198 allocated to AIF per Exhibit A), then the accounting would be as follows:

Airport Authority	Pre-Filing AIF	Pre-Filing Other Debt	Letter of Credit	Total Outstanding AIF	Total Outstanding Other Debt
Toronto	\$1,782,424.04	\$2,977,156.83	(\$3,100,000.00)	\$183,226.31	\$1,476,354.56

61. With respect to post-filing AIF, on April 10, 2024, Lynx Air paid \$5,959 to the GTAA, satisfying all post-filing AIF owed since February 22, 2024. Also on April 10, 2024, Lynx Air paid to the GTAA \$48,977.60 for post-filing aeronautical changes for a total \$54,937.07.

62. As such, according to Lynx Air's accounting records, all AIF have been remitted to the GTAA following the calculations in paragraph 57. The remainder of the Letter of Credit – \$1,317,575.96 – satisfied a portion of other pre-filing debt owed by Lynx Air to the GTAA. Any residual amounts claimed by the GTAA constitutes unsecured pre-filing debt.

63. A copy of the GTAA ATB Letter and a detailed accounting of the GTAA's AIF are attached hereto as **Exhibits Q** and **N**.

F. Conclusion

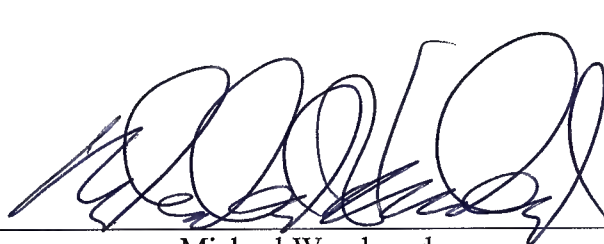
64. I make this affidavit in response to the Applications and for no other improper purpose.

SWORN BEFORE ME at Calgary, Alberta,
this 31st day of May, 2024.



Notary Public and Commissioner for Oaths in
and for the Province of Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law



Michael Woodward

This is **Exhibit "A"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.

A handwritten signature in black ink, appearing to read 'Ashley Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law

2023 Airline Information						Aeronautical Charges				General Terminal Charges (CTC) & Apron & Check-In Fees					Airport Improvement Fee		TOTAL Aeronautical & General Terminal Per Month	
Month	Sector	Aircraft	Seats	MTOW	Arrival Mvmnts	Total Landing Fee	De-icing Surcharge	Total Aeronautical Per Mvmnt	TOTAL Aeronautical Per Month	General Terminal Charges	APRON FEE	CHECK-IN Counter fee Boarding Pass @1.31 / PRT Per Seat	CHECK-IN Counter fee Baggage Tag @1.31 / PRT Per Seat	Total General Terminal, Apron & Check-In Fees per Mvmnt	TOTAL General Terminal, Apron & Check-In Fees per month	Total per AIF Mvmnt @\$35.00 per Seat	Total AIF per month	
MAR	Domestic	7M8	189	82	21												\$118,077.75	\$84,814.80
MAR	Transborder	7M8	189	82	4												\$22,491.00	\$17,614.28
APR	Domestic	7M8	189	82	136												\$764,694.00	\$549,276.80
APR	Transborder	7M8	189	82	17												\$95,586.75	\$74,860.69
MAY	Domestic	7M8	189	82	219												\$1,231,382.25	\$884,497.20
MAY	Transborder	7M8	189	82	14												\$78,718.50	\$61,649.98
JUN	Domestic	7M8	189	82	203												\$1,141,418.25	\$819,876.40
JUN	Transborder	7M8	189	82	13												\$73,095.75	\$57,246.41
JUL	Domestic	7M8	189	82	273												\$1,535,010.75	\$1,102,592.40
JUL	Transborder	7M8	189	82	13												\$73,095.75	\$57,246.41
AUG	Domestic	7M8	189	82	323												\$1,816,148.25	\$1,304,532.40
AUG	Transborder	7M8	189	82	13												\$73,095.75	\$57,246.41
SEP	Domestic	7M8	189	82	302												\$1,698,070.50	\$1,219,717.60
SEP	Transborder	7M8	189	82	51												\$286,760.25	\$224,582.07
OCT	Domestic	7M8	189	82	228												\$1,281,987.00	\$920,846.40
OCT	Transborder	7M8	189	82	60												\$337,365.00	\$264,214.20
																	\$10,626,997.50	\$7,700,814.45

Start Date:	End Date:	Days
26-Mar-23	28-Oct-23	217

Requirement Per Day: **\$48,972.34** **\$35,487.62**

GTAA Aeronautical Fees	
Effective January 1, 2023	
Total Landing Fee:	\$18.97
Deicing Fee:	\$2.41
General Terminal Charges:	
Domestic Arrivals	\$7.79
Non-Domestic arrivals	\$9.72
Aircraft Code C:	\$3.03

Aeronautical Related Security Deposit Requirement @45Days:	\$	1,596,943
AIF Security Deposit Requirement @30 Days:	\$	1,469,170
TOTAL SECURITY DEPOSIT REQUIREMENT:	\$	3,066,113

LOC 500000

2023 Airline Information						Aeronautical Charges				General Terminal Charges (CTC) & Apron & Check-In Fees					Airport Improvement Fee				
Month	Sector	Aircraft	Seats	MTOW	Arrival Mvmnts	Total Landing Fee	De-icing Surcharge	Total Aeronautical Per Mvmnt	TOTAL Aeronautical Per Month	General Terminal Charges	APRON FEE	CHECK-IN Counter fee Boarding Pass @1.31 / PRT Per Seat	CHECK-IN Counter fee Baggage Tag @1.31 / PRT Per Seat	Total General Terminal, Apron & Check-In Fees per Mvmnt	TOTAL General Terminal, Apron & Check-In Fees per month	Total per AIF Mvmnt @\$35.00 per Seat	Total AIF month	per	TOTAL Aeronautical & General Terminal Per Month
OCT	Domestic	7M8	189	82	15											\$6,615.00	\$99,225.00		\$60,582.00
OCT	Transborder	7M8	189	82	3											\$6,615.00	\$19,845.00		\$13,210.71
NOV	Domestic	7M8	189	82	143											\$6,615.00	\$945,945.00		\$577,548.40
NOV	Transborder	7M8	189	82	74											\$6,615.00	\$489,510.00		\$325,864.18
DEC	Domestic	7M8	189	82	157											\$6,615.00	\$1,038,555.00		\$634,091.60
DEC	Transborder	7M8	189	82	99											\$6,615.00	\$654,885.00		\$435,953.43
JAN	Domestic	7M8	189	82	152											\$6,615.00	\$1,005,480.00		\$613,897.60
JAN	International	7M8	189	82	3											\$6,615.00	\$19,845.00		\$13,210.71
JAN	Transborder	7M8	189	82	98											\$6,615.00	\$648,270.00		\$431,549.86
FEB	Domestic	7M8	189	82	125											\$6,615.00	\$826,875.00		\$504,850.00
FEB	International	7M8	189	82	31											\$6,615.00	\$205,065.00		\$139,381.58
FEB	Transborder	7M8	189	82	90											\$6,615.00	\$595,350.00		\$404,656.20
MAR	Domestic	7M8	189	82	128											\$6,615.00	\$846,720.00		\$516,966.40
MAR	International	7M8	189	82	34											\$6,615.00	\$224,910.00		\$149,721.38
MAR	Transborder	7M8	189	82	89											\$6,615.00	\$588,735.00		\$391,917.73

\$8,209,215.00 \$5,213,401.78

Start Date:	End Date:	Days
29-Oct-23	30-Mar-24	154

Requirement Per Day: \$53,306.59 \$33,853.26

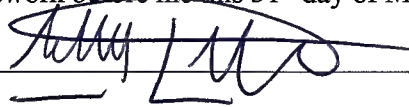
GTAA Aeronautical Fees	
Effective January 1, 2023	
Total Landing Fee:	\$18.97
Deicing Fee:	\$2.41
General Terminal Charges:	
Domestic Arrivals	\$7.79
Non-Domestic arrivals	\$9.72
Aircraft Code C:	\$3.03

Aeronautical Related Security Deposit Requirement @45Days:	\$ 1,523,397	0.487862
AIF Security Deposit Requirement @30 Days:	\$ 1,599,198	0.512138
TOTAL SECURITY DEPOSIT REQUIREMENT:	\$ 3,122,594	

LOC \$3,100,000

This is **Exhibit "B"** to the Affidavit of Michael Woodward

sworn before me this 31st day of May 2024.

A handwritten signature in black ink, appearing to read 'Ashley Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law

From: Danielle Lavoie <dlavoie@atac.ca>
Sent: Thursday, December 21, 2023 12:40 PM
Cc: Wayne Gouveia <wgouveia@atac.ca>; Danielle Lavoie <dlavoie@atac.ca>
Subject: MOA on AIF extension approved until June 30, 2024
Importance: High

You don't often get email from dlavoie@atac.ca. [Learn why this is important](#)

Important

To all Airline and Airport Signatories of the MOA on the AIF (bcc):

ATAC has executed the process to extend the MOA on AIF as requested by the MOA negotiating parties representing Airlines and Airports.

Please note that the required majority of consents from the Signatories were attained in order for the current Memorandum of Agreement on Airport Improvement Fees (MOA on AIF) to be extended.

The amendment now extends the original 20-year term plus 5 years 1 month extension, until **June 30, 2024**.

ATAC supports the extension of the term of the MOA and continues to support all signatory parties throughout the negotiation of the new agreement that will replace the current MOA.

Best regards,

Wayne Gouveia
MOA on AIF Administrator

Danielle Lavoie

Executive Assistant to Vice Presidents
Adjointe exécutive des vice-présidents

T. 613-233-7727 #304 C. 613-314-8435 F. 613-230-8648
dlavoie@atac.ca www.atac.ca
222 Queen Street, Suite 1505, Ottawa, ON K1P 5V9



This is **Confidential Exhibit "C"** to the Affidavit of Michael
Woodward sworn before me this 31st day of May 2024.

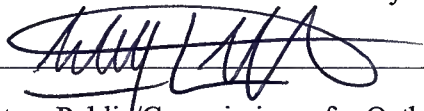
A handwritten signature in black ink, appearing to read 'Ashley Elizabeth Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law

Confidential Exhibit "C"

This is **Exhibit "D"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.

A handwritten signature in black ink, appearing to read 'Ashley Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law

COURT FILE NUMBER 2401- 02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **CCAA INITIAL ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

OSLER, HOSKIN & HARCOURT LLP

Barristers & Solicitors
Brookfield Place, Suite 2700
225 6 Ave SW
Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Julie Treleaven

Telephone: (403) 260-7000

Facsimile: (403) 260-7024

Email: RVandemosselaer@osler.com / JTreleaven@osler.com

File Number: 1246361

DATE ON WHICH ORDER WAS PRONOUNCED:

February 22, 2024

JUSTICE WHO MADE THIS ORDER:

The Honourable Justice Gill

LOCATION WHERE ORDER WAS PRONOUNCED:

Edmonton, Alberta

UPON THE APPLICATION of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (the “**Applicants**”); **AND UPON** having read the Originating Application, the Affidavit of Michael Woodward sworn February 22, 2024 (the “**Woodward Affidavit**”), the Confidential Affidavit of Michael Woodward sworn February 22, 2024, and the Affidavit of Service of Elena Pratt, to be filed; **AND UPON** reading the consent of FTI Consulting Canada Inc. (“**FTI**”) to act as Monitor; **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application and either do not oppose or alternatively consent to the within; **AND UPON** hearing counsel for Indigo Northern Ventures LP (the “**Interim Lender**”), counsel for FTI, and counsel for any other party present at the application; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPLICATION

2. The Applicants are companies to which the *Companies’ Creditors Arrangement Act* of Canada (the “**CCAA**”) applies.

PLAN OF ARRANGEMENT

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. The Applicants shall:
 - (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”);

- (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) or their Property;
 - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order; and
 - (d) be entitled to continue to utilize the central cash management system currently in place as described in the Affidavit of Michael Woodward sworn February 22, 2024 or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.
5. To the extent permitted by law, the Applicants shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:
- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case

incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order.
6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
 - (b) payment for goods or services actually supplied to the Applicants following the date of this Order.
7. The Applicants shall remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
 - (i) employment insurance,
 - (ii) Canada Pension Plan,
 - (iii) Quebec Pension Plan, and
 - (iv) income taxes,
- but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
 - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicants.
- 8. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of this Order (“**Rent**”), but shall not pay any rent in arrears.
- 9. Except as specifically permitted in this Order, the Applicants are hereby directed, until further order of this Court:
 - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of this Order;
 - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and
 - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. The Applicants shall, subject to such requirements as are imposed by the CCAA, and such covenants as may be contained in the Definitive Documents (as hereinafter defined in paragraph 34), have the right to:
- (a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
 - (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
 - (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA, excepting any aircraft purchase agreement between the Applicants and any airplane manufacturer, as any such agreement may be amended and supplemented from time to time, which shall not be disclaimed, resiliated or amended without the prior consent of the Interim Lender and the Monitor, or upon further order of the Court.; and
 - (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

11. Pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), SC 2005, c 47, s 1 ("WEPPA"), the Applicants and their collective former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 and are individuals to whom the WEPPA applies as of the date of this Order.
12. The Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.
13. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and
 - (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to

notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. Until and including March 4, 2024, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (including any airport, airport authority, Nav Canada or other air navigation service providers, travel agents, tour operators, general sales agents, ground handling services, ground handling equipment, aircraft and equipment maintenance suppliers and personnel (including Delta TechOps and Delta Air Lines, Inc.), fuel suppliers, catering, and all persons involved in the collection and distribution of monies in connection with passenger and air cargo operations) (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
 - (a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;

- (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
 - (c) prevent the filing of any registration to preserve or perfect a security interest;
 - (d) prevent the registration of a claim for lien; or
 - (e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment.
16. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

17. During the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. During the Stay Period, all Persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
 - (b) oral or written agreements or arrangements with either of the Applicants, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services (including aircraft and equipment maintenance services), utility or other services to the Business or the Applicants

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be

required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. Nothing in this Order has the effect of prohibiting a Person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person, other than the Interim Lender (as hereinafter defined) where applicable, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 16 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. The Applicants shall indemnify their directors and officers against obligations and

liabilities that they may incur as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct. Without limiting the generality of the foregoing, for purposes of this Order "officer" shall include the Applicants' contractor providing the services of a Chief Financial Officer.

22. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.
23. Notwithstanding any language in any applicable insurance policy to the contrary:
 - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
 - (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

24. FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein. The Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the

assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;
 - (c) assist the Applicants, to the extent required by the Applicants, in its dissemination to the Interim Lender and its counsel on a periodic basis as required by the Definitive Documents of financial and other information as agreed to between the Applicants and the Interim Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lender;
 - (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the Interim Lender;
 - (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
 - (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
 - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Property,

Business, and financial affairs of the Applicants or to perform their duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
 - (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and
 - (j) perform such other duties as are required by this Order or by this Court from time to time.
26. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.
27. The Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the

Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
29. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a semi-monthly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the respective amounts of \$100,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
30. The Monitor and its legal counsel shall pass their accounts from time to time.
31. The Monitor, counsel to the Monitor, if any, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

INTERIM FINANCING

32. The Applicants are hereby authorized and empowered to obtain and borrow under a credit

facility from the Interim Lender in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed USD\$750,000 unless permitted by further order of this Court.

33. Such credit facility shall be on the terms and subject to the conditions set forth in the interim financing term sheet between the Applicants and the Interim Lender made as of February 21, 2024 (the "**Commitment Letter**").
34. The Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (together with the Commitment Letter, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
35. The Interim Lender shall be entitled to the benefits of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property to secure all obligations under the Definitive Documents incurred on or after the date of this Order which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Definitive Documents. The Interim Lender's Charge shall not secure any obligation existing before this the date this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 38 and 40 hereof.
36. Notwithstanding any other provision of this Order:
 - (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under the Definitive Documents or the

Interim Lender's Charge, the Interim Lender, upon three (3) days' notice (or such other period as set out in the Definitive Documents) to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents, and the Interim Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Interim Lender to the Applicants against the obligations of the Applicants to the Interim Lender under the Commitment Letter, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

- 37. The Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the Bankruptcy and Insolvency Act of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES

- 38. The priorities of the Administration Charge and the Interim Lender's Charge, as between them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – Interim Lender's Charge;

Third – Directors' Charge (to the maximum amount of \$500,000).

39. The filing, registration or perfection of the the Administration Charge, the Interim Lender's Charge, and the Directors' Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
40. Each of the Administration Charge, the Interim Lender's Charge, and Directors' Charge (each as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA the Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person. Without limiting the generality of the foregoing, and subject to further Order of this Court, the Charges shall not rank in priority to the interests of any aircraft lessor or financier as described in paragraphs 70 and 71 of the Woodward Affidavit.
41. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, the Administration Charge, the Interim Lender's Charge, or the Directors' Charge unless the Applicants also obtain the prior written consent of the Monitor, the Interim Lender, and the beneficiaries of the Administration Charge and the Directors' Charge, or further order of this Court.
42. The Administration Charge, the Commitment Letter, the Definitive Documents, and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender thereunder shall not otherwise be limited or impaired in any way by:
- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
 - (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;

- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Commitment Letter or the Definitive Documents, shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which they are a party;
 - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Commitment Letter, or the execution, delivery or performance of the Definitive Documents; and
 - (iii) the payments made by the Applicants pursuant to this Order, including the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

43. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Charges amongst the various assets comprising the Property.

SERVICE AND NOTICE

44. The Monitor shall (i) without delay, publish in the Calgary Herald and the Globe and Mail a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.
45. The Monitor shall establish a case website in respect of the within proceedings at <http://cfcanada.fticonsulting.com/lynxair>.

GENERAL

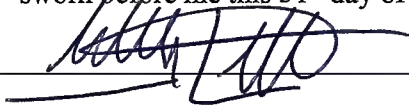
46. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
47. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
48. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicant, the Business or the Property.
49. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such

assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

50. Each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
51. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
52. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.


Justice of the Court of King's Bench of Alberta

This is **Exhibit "E"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.

A handwritten signature in black ink, appearing to read 'Ashley Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law

COURT FILE NUMBER 2401-02664
 COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **AMENDED AND RESTATED INITIAL ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **OSLER, HOSKIN & HARCOURT LLP**
 Barristers & Solicitors
 Brookfield Place, Suite 2700
 225 6 Ave SW
 Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Julie Treleaven
 Telephone: (403) 260-7000 / 7048
 Email: RVandemosselaer@osler.com / JTreleaven@osler.com
 File Number: 1246361

DATE ON WHICH ORDER WAS PRONOUNCED: March 1, 2024
JUSTICE WHO MADE THIS ORDER: The Honourable Justice Whitting
LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

UPON THE APPLICATION of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (the "**Applicants**"); **AND UPON** having read the Application, the Affidavit of Michael Woodward sworn February 22, 2024 (the "**First Woodward Affidavit**"), the Confidential Affidavit of Michael Woodward sworn February 22, 2024, the Affidavit of Micheal Woodward sworn February 28, 2024 (the "**Second Woodward Affidavit**"), and the Confidential Affidavit of Michael Woodward sworn February 28, 2024 (the "**Second Confidential Woodward Affidavit**"); **AND UPON** reading the First Report of FTI Consulting Canada Inc. ("**FTI**") in its capacity as monitor of the Applicants (the "**Monitor**"), filed February 28, 2024; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for Indigo Northern Ventures LP (the "**Interim Lender**"), counsel for the Monitor, and counsel for any other party present at the application; **AND**

UPON reviewing the initial order granted in the within proceedings pursuant to the *Companies' Creditors Arrangement Act (Canada)* (the "CCAA") by the Honourable Justice Gill on February 22, 2024 (the "**Initial Order**");

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

DEFINED TERMS

2. Capitalized terms used but not otherwise defined shall have the meaning given to such terms in the Initial Order.

APPLICATION

3. The Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

4. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

5. The Applicants shall:
 - (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**");
 - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") or their Property;
 - (c) be authorized and empowered to continue to retain and employ the employees,

consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order; and

- (d) be entitled to continue to utilize the central cash management system currently in place as described in the Affidavit of Michael Woodward sworn February 22, 2024 or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.
6. To the extent permitted by law, the Applicants shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:
- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order.

7. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
 - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
 - (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. The Applicants shall remit, in accordance with legal requirements, or pay:
 - (a) all amounts which could be subject to a demand under subsection 224(1.2) of the *Income Tax Act* (Canada) or any similar provision of the *Canada Pension Plan*, the *Employment Insurance Act*, or any provision of any provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act* or that refers to subsection 224(1.2) of the *Income Tax Act* in respect of any amounts that arise and are payable on or after February 22, 2024;
 - (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes accrued or were collected on or after February 22, 2024, or, where such Sales Taxes accrued or were collected prior to February 22, 2024 but were not required to be remitted until after February 22, 2024; and
 - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured

creditors and that are attributable to or in respect of the carrying on of the Business by the Applicants.

9. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of this Order (“**Rent**”), but shall not pay any rent in arrears.
10. Except as specifically permitted in this Order, the Applicants are hereby directed, until further order of this Court:
 - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of this Order;
 - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and
 - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. The Applicants shall, subject to such requirements as are imposed by the CCAA, and such covenants as may be contained in the Definitive Documents (as hereinafter defined in paragraph 35), have the right to:
 - (a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the

CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA, excepting any aircraft purchase agreement between the Applicants and any airplane manufacturer, as any such agreement may be amended and supplemented from time to time, which shall not be disclaimed, resiliated or amended without the prior consent of the Interim Lender and the Monitor, or upon further order of the Court.; and
- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

- 12. Pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), SC 2005, c 47, s 1 (“WEPPA”), the Applicants and their collective former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 and are individuals to whom the WEPPA applies as of the date of the Initial Order.
- 13. The Applicants shall provide each of the relevant landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the

lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

14. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and
 - (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

15. Until and including April 15, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the

Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (including any airport, airport authority, Nav Canada or other air navigation service providers, travel agents, tour operators, general sales agents, ground handling services, ground handling equipment, aircraft and equipment maintenance suppliers and personnel (including Delta TechOps and Delta Air Lines, Inc.), fuel suppliers, catering, and all persons involved in the collection and distribution of monies in connection with passenger and air cargo operations) (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
- (a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;
 - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
 - (c) prevent the filing of any registration to preserve or perfect a security interest;
 - (d) prevent the registration of a claim for lien; or
 - (e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment.
17. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such

party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

18. During the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. During the Stay Period, all Persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
 - (b) oral or written agreements or arrangements with either of the Applicants, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services (including aircraft and equipment maintenance services), utility or other services to the Business or the Applicants

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. Nothing in this Order has the effect of prohibiting a Person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person, other than the Interim Lender where applicable, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 17 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date of the Initial Order and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. The Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct. Without limiting the generality of the foregoing, for purposes of this Order "officer" shall include the Applicants' contractor providing the services of a Chief Financial Officer.
23. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 43 and 45

herein.

24. Notwithstanding any language in any applicable insurance policy to the contrary:
- (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
 - (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein. The Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
26. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;

- (c) assist the Applicants, to the extent required by the Applicants, in its dissemination to the Interim Lender and its counsel on a periodic basis as required by the Definitive Documents of financial and other information as agreed to between the Applicants and the Interim Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lender;
 - (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the Interim Lender;
 - (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
 - (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
 - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicants or to perform their duties arising under this Order;
 - (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
 - (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and
 - (j) perform such other duties as are required by this Order or by this Court from time to time.
27. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by

- fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.
28. The Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.
29. In addition to the rights and protections afforded to the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
30. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized

and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a semi-monthly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the respective amounts of \$100,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. The Monitor and its legal counsel shall pass their accounts from time to time.
32. The Monitor, counsel to the Monitor, if any, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of the Initial Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 43 and 45 hereof.

INTERIM FINANCING

33. The Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from the Interim Lender in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed CAD\$5,013,000 (denominated in USD) unless permitted by further order of this Court.
34. Such credit facility shall be on the terms and subject to the conditions set forth in the interim financing term sheet between the Applicants and the Interim Lender made as of February 21, 2024 (the "**Commitment Letter**").
35. The Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (together with the Commitment Letter, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Applicants are hereby authorized and

directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. The Interim Lender shall be entitled to the benefits of and is hereby granted a charge (the “**Interim Lender’s Charge**”) on the Property to secure all obligations under the Definitive Documents incurred on or after the date of the Initial Order which charge shall not exceed the aggregate amount advanced on or after the date of the Initial Order under the Definitive Documents. The Interim Lender’s Charge shall not secure any obligation existing before the date the Initial Order was made. The Interim Lender’s Charge shall have the priority set out in paragraphs 43 and 45 hereof.
37. Notwithstanding any other provision of this Order:
- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender’s Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under the Definitive Documents or the Interim Lender’s Charge, the Interim Lender, upon three (3) days’ notice (or such other period as set out in the Definitive Documents) to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents, and the Interim Lender’s Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Interim Lender to the Applicants against the obligations of the Applicants to the Interim Lender under the Commitment Letter, the Definitive Documents or the Interim Lender’s Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

38. The Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the Bankruptcy and Insolvency Act of Canada (the “**BIA**”), with respect to any advances made under the Definitive Documents.

KEY EMPLOYEE RETENTION PLAN AND CHARGE

39. The terms and conditions of the key employee retention plan (“**KERP**”) as attached as Exhibit “A” to the Confidential Woodward Affidavit are hereby approved. The Applicants are hereby authorized to perform their obligations under the KERP, including making all payments to the key employees identified in the KERP in accordance with the terms and conditions thereof.

40. The employees covered by the KERP shall be entitled to the benefit of and are granted a charge on the Property (the “**KERP Charge**”) which shall not exceed the maximum amount of CAD\$1,179,094 as security for the obligations of the Applicants under the KERP.

41. The KERP Charge shall have the respective priority as set out in paragraphs 43 and 45 of this Order.

42. The filing, registration or perfection of the KERP Charge shall not be required, and the KERP Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered recorded or perfected subsequent to the KERP Charge coming into existence, notwithstanding any such failure to file, register record or perfect.

VALIDITY AND PRIORITY OF CHARGES

43. The priorities of the Administration Charge, the Interim Lender’s Charge, the KERP Charge, and the Director’s Charge as between them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – Interim Lender’s Charge;

Third – Directors’ Charge (to the maximum amount of \$500,000);

Fourth – KERP Charge.

44. The filing, registration or perfection of the Administration Charge, the Interim Lender’s Charge, the Directors’ Charge, and the KERP Charge (collectively, the “**Charges**”) shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
45. Each of the Administration Charge, the Interim Lender's Charge, the Directors' Charge, and the KERP Charge (each as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA the Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person. Without limiting the generality of the foregoing, the Charges shall not (i) attach to any aircraft or engine that is leased to any of the Applicants or any lease agreements and other records pertaining to the leased aircraft and engines, or (ii) rank in priority to the interests of any aircraft lessor or financier as described in paragraphs 70 and 71 of the First Woodward Affidavit.
46. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, the Administration Charge, the Interim Lender’s Charge, the Directors’ Charge or the KERP Charge unless the Applicants also obtain the prior written consent of the Monitor, the Interim Lender, and the beneficiaries of the Administration Charge, KERP Charge, and the Directors’ Charge, or further order of this Court.
47. The Administration Charge, the Commitment Letter, the Definitive Documents, and the Interim Lender’s Charge shall not be rendered invalid or unenforceable and the rights and

remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the Interim Lender thereunder shall not otherwise be limited or impaired in any way by:

- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
- (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including the Commitment Letter or the Definitive Documents, shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which they are a party;
 - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Commitment Letter, or the execution, delivery or performance of the Definitive Documents; and
 - (iii) the payments made by the Applicants pursuant to this Order, including the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances,

transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

48. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Charges amongst the various assets comprising the Property.

SERVICE AND NOTICE

49. The Monitor shall (i) without delay, publish in the Calgary Herald and the Globe and Mail a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.
50. The Monitor shall establish a case website in respect of the within proceedings at <http://cfcanada.fticonsulting.com/lynxair>.

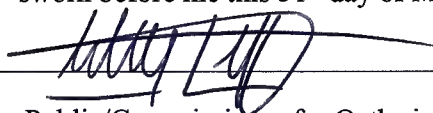
GENERAL

51. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
52. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

53. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicant, the Business or the Property.
54. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.
55. Each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
56. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
57. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.


Justice of the Court of King's Bench of Alberta

This is **Exhibit "F"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.

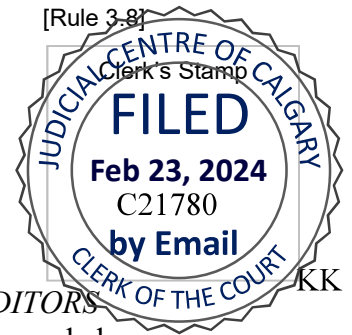
A handwritten signature in black ink, appearing to read 'Ashley Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law

COURT FILE NUMBER 2401-02664
 COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

Form 7
 [Rule 3-8]



IN THE MATTER OF THE *COMPANIES' CREDITORS
 ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR
 ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION
 and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **AFFIDAVIT OF MICHAEL WOODWARD**

ADDRESS FOR
 SERVICE AND
 CONTACT
 INFORMATION OF
 PARTY FILING THIS
 DOCUMENT

OSLER, HOSKIN & HARCOURT LLP
 Barristers & Solicitors
 Brookfield Place, Suite 2700
 225 6 Ave SW
 Calgary, AB T2P 1N2

Solicitors: Randal Van de Mosselaer / Julie Treleaven
 Telephone: (403) 260-7000
 Facsimile: (403) 260-7024
 Email: RVandemosselaer@osler.com / JTreleaven@osler.com
 File Number: 1246361

AFFIDAVIT OF MICHAEL WOODWARD
SWORN FEBRUARY 22, 2024

I, Michael Woodward, of the City of Calgary, in the Province of Alberta, **MAKE OATH
 AND SAY THAT:**

1. I am the Chief Executive Officer and Director of my personal company that has been contracted to provide the services of Interim Chief Financial Officer (“**Interim Contractor CFO**”) to Lynx Air (as that term is defined below). I have been the Interim Contractor CFO of Lynx Air since March of 2023, and since that time I have been responsible for all financial-related

aspects of Lynx Air's business. Prior to this role, I served as Chief Financial Officer of Campus Energy Partners, an energy infrastructure and supply company, and as a Vice President of BMO Capital Markets. I hold a Bachelor of Commerce in Accounting from the University of British Columbia and have obtained Chartered Accountant and Chartered Financial Analyst designations.

2. As such, I have personal knowledge of the matters to which I depose in this Affidavit, except where stated to be based on information and belief, in which case I have stated the source of my information and, in all such cases, I believe such information to be true. In preparing this Affidavit, I consulted with the Applicants' (as that term is defined below) management teams and advisors and reviewed relevant documents and information concerning the Applicants' operations and business and financial affairs.

3. I swear this Affidavit in support of an application by the Applicants for an Order (the "**Initial Order**"):

- (a) declaring that the Applicants are companies to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") applies;
- (b) authorizing the Applicants to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") and continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property;
- (c) entitling the Applicants to make payment of all obligations owing in respect of employee wages and benefits;

- (d) entitling the Applicants to pay reasonable expenses incurred by them in operating the Business in the ordinary course, including making payment of obligations owing in respect of goods and services supplied to the Applicants prior to the date of the Initial Order, subject to the consent of the Monitor (as defined herein);
- (e) staying, for an initial period of not more than ten (10) days (the “**Stay Period**”), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Business, or the Property, except as otherwise set forth in the Initial Order or otherwise permitted by law;
- (f) preventing any Person (as defined in the Initial Order) from accelerating performance of any rights in respect of the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Honourable Court;
- (g) restraining any Person from interfering with the supply of goods or services to the Applicants;
- (h) staying all proceedings and remedies taken or that might be taken in respect of claims against the directors or officers of the Applicants that relate to liability of such Persons in their capacity as directors or officers of the Applicants, except as otherwise set forth in the Initial Order or otherwise permitted by law;
- (i) appointing FTI Consulting Canada Inc. (“**FTI**”) as Monitor of the Applicants in these proceedings;
- (j) authorizing the Applicants to pay all reasonable fees and disbursements of its counsel, the Monitor and the Monitor’s counsel;

- (k) granting a first ranking Administration Charge (as defined below) in the amount of CAD\$500,000;
- (l) authorizing and empowering the Applicants to obtain and borrow under a credit facility (the “**Interim Lending Facility**”) from Indigo Northern Ventures LP (the “**Interim Lender**” or “**Indigo**”) in order to finance the Applicants’ working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under the Interim Lending Facility:
 - (i) shall not exceed CAD\$1,000,000 during the initial Stay Period unless permitted by further order of this Court; and
 - (ii) shall not exceed an amount to be negotiated and approved by the Court during any subsequent stay period as may be ordered by the Court unless permitted by further order of this Court;
- (m) directing that such Interim Lending Facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the Interim Lender dated as of February 21, 2024 (the “**Interim Lending Term Sheet**”) and any definitive documents subsequently negotiated between the Applicants and the Interim Lender;
- (n) granting to the Interim Lender a second ranking charge (the “**Interim Lender’s Charge**”) on the Property to secure all obligations under the Interim Lending Term Sheet incurred on or after the date of this Initial Order which charge shall not exceed the aggregate amount advanced on or after the date of this Initial Order under the Interim Lending Term Sheet;

- (o) granting a third ranking charge to the Applicants' directors and officers as security for any obligations and liabilities they may incur as directors and officers of the Applicants after February 22, 2024, up to the maximum amount of CAD\$500,000 (the "**D&O Charge**");
- (p) declaring that the Administration Charge is a priority charge that ranks ahead of any and all charges, security interests, liens, trusts, deemed trusts and encumbrances against the Property, including liens and trusts created by federal and provincial legislation, and that the Administration Charge, Interim Lender's Charge and D&O Charge rank, as between themselves, in the following order of priority:
 - (i) First, the Administration Charge;
 - (ii) Second, the Interim Lender's Charge; and
 - (iii) Third, the D&O Charge;
- (q) scheduling a comeback application for hearing at 10:00 a.m. on February 28, 2024; and
- (r) such further and other relief as counsel may request and this Honourable Court may grant.

PART I - OVERVIEW

4. The Applicants operate a Canadian ultra-low-cost carrier ("**ULCC**") under the trade name "Lynx Air", having operated its business out of Calgary, Alberta and offered flights since April 2022. Lynx Air operates a uniform fleet of nine Boeing Model 737-8 aircraft ("**Boeing 737 MAX 8 aircraft**") at high utilization rates, in order to provide fares at significant discounts to prevailing market fares. The Applicants also use low operating costs and an unbundled service to further

lower their base fares below those being offered by legacy carriers. This in turn stimulates more demand and increases growth in a virtuous circle of benefits for Lynx Air.

5. However, as a true ULCC, the Applicants' revenue performance is highly sensitive to market fluctuations in jet fuel pricing and passenger demand, as well as evolving factors within Canada's competitive aviation landscape.

6. As has been well publicized, the price of jet fuel has significantly increased since 2019 and continues to increase in a sustained and upward spiral, and is projected to continue to increase through the first quarter of 2024. According to Statistics Canada, jet fuel costs increased by 62% in December 2022 as compared with December 2019.¹ At the same time, passenger demand fell below 2019 averages (largely due to COVID-19 travel restrictions and the lingering effects thereof): the number of passenger-kilometres flown by major Canadian airlines in December 2022 remained 12% below the December 2019 level.² For a ULCC like Lynx Air, these fuel price increases and reduced passenger demand, combined with a competitive aviation landscape have proved disastrous to the Applicants' ability to generate sufficient revenue to sustain a business in what is effectively a duopoly market in Canada.

7. In large part due to COVID-19 related travel restrictions imposed in March of 2020 and the grounding of the Boeing 737 MAX 8 aircraft in March of 2019, Lynx Air's first inaugural flight was delayed from the first quarter of 2019 until April of 2022. As such, the Applicants had to sustain administrative and operating costs without any significant revenue for three years beyond what had originally been planned.

¹ Statistics Canada, Jet fuel production and prices have taken off in tandem with air travel (June 2023), online: Statistics Canada <<https://www.statcan.gc.ca/o1/en/plus/3944-jet-fuel-production-and-prices-have-taken-tandem-air-travel>>.

² *Ibid.*

8. For these reasons, while the Applicants have a valuable and viable business, Lynx Air has been met with significant unforeseeable challenges to its business since its inception. As a result, Lynx Air is currently insolvent and has insufficient cash reserves to allow it to continue to fund its current ongoing operations. In addition, certain critical service suppliers have recently elected to take enforcement actions, which, if pursued, would jeopardize the Applicants' ongoing operations, and would likely result in the Applicants' operations being shut down in a chaotic and haphazard manner.

9. For these reasons, Lynx Air has decided that the only option available to it to preserve value in its assets is to urgently obtain protection under the CCAA to give it reasonable time to wind down its business operations in an orderly fashion, and to provide time for the Applicants to apply for and conduct a sales and investment solicitation process (if necessary), identify and assess potential transactions, and review other strategic alternatives that may be available to maximize the value of the Applicants' business for all their stakeholders.

PART II – THE APPLICANTS' BUSINESS

A. Corporate Structure

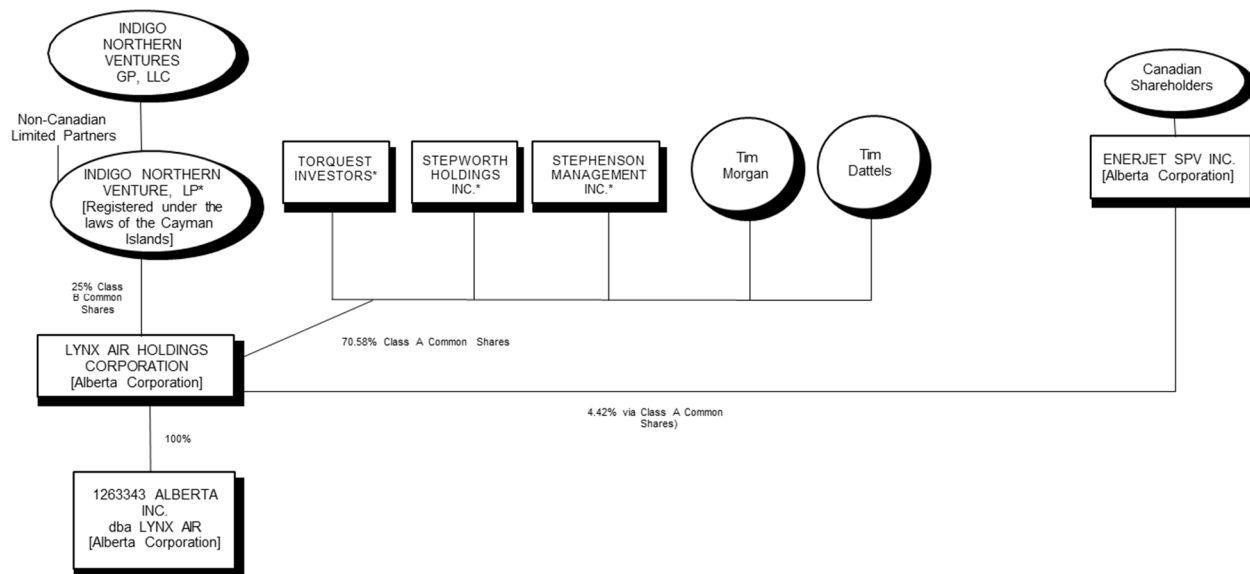
10. The Applicant Lynx Air Holdings Corporation (formerly named "Enerjet Holdco Inc.") ("**Lynx Holdco**") is a corporation incorporated under the laws of the Province of Alberta. Lynx Holdco was incorporated under the Alberta *Business Corporations Act* on December 17, 2018, and changed its name to Lynx Air Holdings Corporation on November 16, 2021.

11. Lynx Holdco is the 100% parent of the Applicant 1263343 Alberta Inc. ("**Lynx Opco**" and together with Lynx Holdco, the "**Applicants**" or "**Lynx Air**"), a corporation incorporated under the laws of the Province of Alberta. Both Lynx Holdco and Lynx Opco have registered offices at

1400, 350 – 7 Avenue SW, Calgary, Alberta, as well as the same two directors: Greg Melchin and Thomas Morgan. Additionally, the Applicants have the same three officers (or persons operating in the role of officers): myself, Vijay Bathija, acting as Chief Commercial Officer, and James Sullivan, acting as Chief Operating Officer and Interim Chief Executive Officer. Lynx Opco is the operating entity of Lynx Air, and is the Declarant of and operates under the registered trade name “Lynx Air”.

12. Lynx Holdco is in turn owned by seven entities, none of which are applicants in these CCAA proceedings: (a) Indigo, by its general partner Indigo Northern Ventures GP, LLC, (b) Torquest Investors, Stepworth Holdings Inc., Stephenson Management Inc., Tim Morgan, and Tim Dattels (collectively, the “Canadian Investors”); and (c) Enerjet SPV Inc. (“EnerJet”). The Canadian Investors hold 25,140,621 (70.58%) of the Class A Common Shares of Lynx Air, EnerJet holds 1,575,190 (4.42%) Class A Common Shares of Lynx Air, and Indigo holds 8,905,252 (25%) Class B Common Shares of Lynx Air.

13. A corporate chart detailing the structure of the Applicants as of February 2024 is reproduced below:



14. Copies of Alberta corporate searches for each of the Applicants are attached hereto as **Exhibit “1”**. A copy of the Alberta trade name search for “Lynx Air” is attached hereto as **Exhibit “2”**.

B. Financial Position

15. The Applicants’ financial reporting is completed on a consolidated basis in accordance with IFRS Accounting Standards. A copy of the Applicants’ unaudited consolidated financial statement for the years ended 2021 and 2022, and a draft, unaudited consolidated financial statement for the twelve months ended December 31, 2023 (the “**2023 Financial Statement**”), are attached hereto as **Exhibits “3”** and “**4**”, respectively. The 2023 Financial Statement is summarized below.

(a) Assets

16. As at December 31, 2023, the Applicants had total assets having a book value of approximately CAD\$429,091,000, broken down as follows:

Current Assets: \$53,331,000	
<i>(\$CAD 000’s)</i>	
Cash and Cash Equivalents	\$2,519
Restricted Cash	\$7,945
Accounts Receivables	\$37,655
Prepaid Expenses	\$4,092
Inventory	\$1,120
Non-Current Assets: \$375,760,000	
<i>(\$CAD 000’s)</i>	
Pre-delivery Payments and Lease Deposits	\$19,469
Property and equipment (net)	\$345,145
Deferred Purchase Incentive Credit	(\$22,711)
Intangible Assets	\$2,807
Goodwill	\$4,114
Long-term Receivables	\$9,427
Maintenance Reserves	\$17,462
Due from Enerjet SPV Inc.	\$47

(b) Liabilities

17. As at December 31, 2023, the Applicants had total liabilities of approximately CAD\$599,857,000, broken down as follows:

Current Liabilities: \$126,921,000	
<i>(\$CAD 000's)</i>	
Accounts Payable and Accrued Liabilities	\$62,383
Deferred Revenue	\$20,635
Convertible Notes Payable	\$22,819
Current Portion Lease Liability	\$21,084
Non-Current Liabilities: \$472,936,000	
<i>(\$CAD 000's)</i>	
Convertible Notes	\$93,521
Deferred Tax Liability	\$24,491
Long-Term Lease Liability	\$354,924

(c) Shareholder Equity

18. As at December 31, 2023, the shareholders' equity in the Applicants was recorded at negative CAD\$170,766,000.

C. Employees/Consultants**(a) Employees**

19. As at December 31, 2023, Lynx Air employed approximately 500 employees. The geographic distribution of Lynx Air's employees is as follows:

Province	Number of Employees
Alberta	390
Ontario	110
Total (Canada)	500

20. Some of the Applicants' employees have recently elected to unionize: the pilots under the Air Line Pilots Association, International ("ALPA"), and the cabin crew employees under the Canadian Union of Public Employees ("CUPE"). On June 3, 2023, the Canada Industrial Relations Board ("CIRB") certified ALPA as the bargaining representative for all pilots of Lynx Air. Lynx Air and ALPA are currently in the process of negotiating their first collective bargaining agreement. On February 7, 2024, the CIRB certified CUPE as the bargaining representative for all cabin crew of Lynx Air. As this certification just occurred, neither party has served a notice to commence collective bargaining. As such, no collective bargaining agreements for the Applicants' employees currently exist.

21. Lynx Air maintains benefit plans for their employees providing medical, dental, prescription, and vision benefits, and life insurance policies. Lynx Air also sponsors a pension plan for all employees, and a stock option plan covering various Directors, Officers, and former Officers. As at the date of this Affidavit, Lynx Air has no outstanding payroll deductions, Canadian Pension Plan payments or Employment Insurance premiums owing to the Crown.

22. The Applicants also maintain Directors' and Officers' liability insurance coverage which is provided as part of the executive liability coverage programme maintained by Zurich Insurance Company Ltd. (the "**D&O Insurance Policy**"). The D&O Insurance Policy provides for Loss (as that term is defined in the D&O Insurance Policy) of up to USD\$10,000,000 and expires on October 14, 2024. The Applicants also maintain Excess Private Company Directors and Officers Liability with Markel Canada Limited in an aggregate amount of USD\$5,000,000, and with Arthur J. Gallagher Canada Limited in an aggregate amount of USD\$5,000,000 (collectively, the "**Excess Insurance Policies**"). The Excess Insurance Policies expire on October 14, 2024. Attached hereto as **Exhibit "5"** and **"6"** are copies of the D&O Insurance Policy and the Excess Insurance Policies.

23. In addition, on September 20, 2023, Lynx Holdco established a CAD\$2,000,000 irrevocable trust (the “**Lynx Air D&O Trust**”) with TSX Trust Company as trustee, and Lynx Air’s Directors and Officers as beneficiaries. A copy of the Trust Indenture (the “**D&O Trust Indenture**”) for the Lynx Air D&O Trust is attached hereto as **Exhibit “7”**. The Lynx Air D&O Trust was established to provide financial support for the defence of Lynx Air’s Directors and Officers against Liability Claims (as that term is defined in the D&O Trust Indenture) and for the payment of Liability Claims, to the extent that the D&O Insurance Policy, for any reason, does not do so and to maintain Directors’ and Officers’ insurance through the payment of premiums or other payments, if Lynx Air fails to do so.

(b) Consultants

24. As at February 1, 2024, Lynx Air has 19 independent contractors, retained through a number of holding corporations or agencies:

- (a) Amy Wheatley, Program and Policy Specialist;
- (b) Bob Alder, SIM Instructor;
- (c) Bradely Thomann, Consultant, Operations Advisor;
- (d) C. Ben Atkins, SIM Instructor;
- (e) George Acs, SIM Instructor;
- (f) Gerald Murphy, SIM Instructor;
- (g) Greg Mardon, IT Contractor;
- (h) Heather McKinnon, Interim Controller;

- (i) Jay Simacio, Senior Accountant;
- (j) Juan Carlos Flores Cortez, Technical Operations Specialist;
- (k) Kerwin Calder, Accounts Payable Analyst;
- (l) Larissa Ha, Payroll Analyst;
- (m) Michael Ritchie, SIM Instructor;
- (n) Myself;
- (o) Oluwatosin Harrison, Revenue Analyst;
- (p) Paul Lung Ip, SIM Instructor;
- (q) Rajarshi Ray, Director of Revenue Management;
- (r) Roger McIntosh, Technical Operations Consultant; and
- (s) Zeeshan Joseph, Financial Analyst.

D. Operations

25. As noted above, Lynx Air operates on a ULCC model, pursuant to which the Applicants maintain low operating costs to deliver fares at a significant discount to prevailing market fares. This in turn creates new demand from the price sensitive consumer segment and stimulates market growth.

26. As a ULCC, the Applicants follow significant operational and strategic diligence. Specifically, the Applicants: (i) focus on efficient use of their assets (aircraft, facilities, gates and employees); (ii) schedule aircraft to operate at least 25% more than legacy airlines, (iii) utilize

rapid turnarounds and minimize facilities overhead to create a structural cost advantage; (iv) selectively outsource services that can be most efficiently performed by third parties; and (v) maximize direct distribution channels and avoid third-party distribution agreements.

27. Due to multi-year delays caused by the COVID-19 pandemic and the Boeing 737 MAX 8 aircraft grounding (discussed more fully below), Lynx Air did not have its inaugural flight until April 7, 2022 (roughly 3 years after the originally planned inaugural flight date). However, Lynx Air now flies nine Boeing 737 MAX 8 aircraft to 18 destinations, namely:

- (a) 11 destinations in Canada:
 - (i) Calgary, Alberta;
 - (ii) Edmonton, Alberta;
 - (iii) Fredericton, New Brunswick;
 - (iv) Halifax, Nova Scotia;
 - (v) Hamilton, Ontario;
 - (vi) Montreal, Quebec;
 - (vii) St. Johns, Newfoundland and Labrador;
 - (viii) Toronto, Ontario;
 - (ix) Vancouver, British Columbia;
 - (x) Victoria, British Columbia; and
 - (xi) Winnipeg, Manitoba;

(b) 6 destinations in the United States of America:

(i) Las Vegas, Nevada;

(ii) Fort Myers, Florida;

(iii) Los Angeles, California;

(iv) Orlando, Florida;

(v) Phoenix, Arizona; and

(vi) Tampa, Florida;

(c) 1 destination in Mexico:

(i) Cancun, Mexico.

28. The Applicants' operations are primarily concentrated in Toronto and Calgary. However, the Applicants have airline partnership agreements with each respective destination's airport. These agreements contractually stipulate the obligations of both parties and require Lynx Air to make certain payments to each airport, such as aeronautical fees and charges, airport improvement fees, and other terms and conditions integral to the aeronautical activity at each airport. Lynx Air also has a variety of agreements for services in each location to which it flies, including for ground handling, de-icing, and other on-ground services. Two such agreements include: (i) a Comprehensive Fleet Support Agreement with Delta Airlines, Inc. ("**Delta**") dated September 20, 2022 (the "**CFS Agreement**") pursuant to which Delta provides all of Lynx Air's technical engineering and airworthiness support, line maintenance services, consumables and expendables supply, logistics and management services, warehousing and warranty management services, and

component maintenance, repair, pooling, modification and logistics services; and (ii) an agreement with the Calgary Glycol Facilities Corporation (“CGFC” and the “CGFC Agreement”) providing for de-icing services at the Calgary International Airport.

29. On February 2, 2024, Lynx Air received a notice of default from the Aeroports de Montreal (“ADM”) in the amount of CAD\$1,634,479.86 relating to outstanding airport improvement fees. However, on February 8, 2024, a payment schedule was agreed to between Lynx Air and ADM, such that the outstanding amounts are now payable by Lynx Air in four installments ending on April 1, 2024 (the “ADM Payment Agreement”). Attached as **Exhibit “8”** is a copy of ADM Payment Agreement.

30. On February 16, 2024, Lynx Air received a notice of default from the Greater Toronto Airports Authority (“GTAA”) in the amount of CAD\$2,441,284.71 relating to outstanding aeronautical fees and charges and airport improvement fees in respect of its aeronautical activity at Toronto Pearson (the “GTAA Notice of Default”). Pursuant to the GTAA Notice of Default, Lynx Air must cure the outstanding amount by February 21, 2024. Attached as **Exhibit “9”** is a copy of the GTAA Notice of Default.

31. On February 17, 2024, Lynx Air received a notice of default from Delta in the amount of USD\$3,331,730.57 (of which USD\$2,195,478.52 is overdue) with respect to payments due under the CFS Agreement (the “Delta Notice of Default”). Pursuant to the Delta Notice of Default, Lynx Air must cure the outstanding payment within 5 business days of issuance of the Delta Notice of Default, failing which Delta would have the right to suspend services under the CFS Agreement. Attached as **Exhibit “10”** is a copy of the Delta Notice of Default.

32. On February 1, 2024, Lynx Air received a notice of default from the CGFC in the amount of CAD\$351,688.44, relating to outstanding amounts under the CGFC Agreement (the “CGFC

Notice of Default”). Pursuant to the CGFC Notice of Default, Lynx Air had to cure the outstanding payment by February 12, 2024. As at the date of this Affidavit, Lynx Air has paid CAD\$175,844.20 to CGFC.

33. Lynx Air does not have sufficient cash to allow it to cure the defaults under the CFS Agreement, the GTAA airline partnership agreement or the CGFC Agreement. In lieu of payment, the cure counterparties to these agreements will have the ability stop providing services under the agreements. Specifically, Delta will stop performing under the CFS Agreement, with the result that Lynx Air’s aircraft will be stranded due to outstanding maintenance issues, including maintenance which is necessary for the daily operation of aircraft. Similarly, the GTAA will obtain the ability to seize Lynx Air’s aircraft to enforce its security, and to prevent the airline from operating out of Toronto, which is the hub for approximately 30% of Lynx Air’s business. The withdrawal of services under these two agreements alone would effectively shut down Lynx Air’s business.

(a) Cash Management System

34. The Applicants maintain accounts at Canadian financial institutions, as follows:

- (a) *Depository Accounts*: The Applicants maintain two (2) US and three (3) Canadian depository accounts at ATB Financial (“**ATB**”), which is the central account for the Applicants and operates as the primary receipt and disbursement point for funds in connection with all of the Applicants’ operations.
- (b) *Cash Collateral – Letter of Credit Accounts*: As of December 31, 2023, Lynx Air has 13 letters of credit totalling CAD\$5,876,000 issued by ATB for the benefit of various creditors and vendors. These letters of credit are fully secured by cash

deposits held as cash collateral in eight (8) USD and seven (7) CAD Guaranteed Investment Certificates at ATB.

- (c) *Cash Collateral – E-Transfer Account*: The Applicants maintain one (1) bank account at the Bank of Nova Scotia (“**Scotiabank**”) used to send electronic transfers for passenger compensation when such compensation is required to be paid pursuant to the *Air Passenger Protection Regulations* (SOR/2019-150).
- (d) *Cash Collateral – Mexican Account*: The Applicants maintain one (1) Mexican peso depository account at Scotiabank. This is used to pay Mexican tax.

(b) Canadian Foreign Ownership Restrictions on Airlines

35. Canadian foreign ownership restrictions on airlines are governed by the *Canada Transportation Act*, S.C. 1996, c. 10 (the “CTA”), and overseen by the Canadian Transportation Agency. The CTA limits foreign ownership and control of Canadian air services to ensure that the industry remains predominantly Canadian and to protect national security interests.

36. To obtain and maintain a license to operate a Canadian domestic air service, the air license holder must meet the definition of “Canadian” as set out in section 55(1) of the CTA:

(a) be a Canadian citizen or a permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act,

(b) be a government in Canada or an agent or mandatary of such a government, or

(c) be a corporation or entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact (within the meaning of the CTA) by Canadians and of which at least 51% of the voting interests are owned and controlled by Canadians and where

(i) no more than 25% of the voting interests are owned directly or indirectly by any single non-Canadian, either individually or in affiliation with another person, and

(ii) no more than 25% of the voting interests are owned directly or indirectly by one or more non-Canadians authorized to provide an air service in any

jurisdiction, either individually or in affiliation with another person;
(Canadien).

37. As such, Lynx Air must: (i) be incorporated under the laws of Canada, (ii) have 51% of its voting interest owned and controlled by Canadians; and (iii) be controlled in fact by Canadians.

PART III – CAPITAL STRUCTURE AND INDEBTEDNESS

A. Assets

38. As at December 31, 2023, the Applicants had total assets with a book value of approximately CAD\$429,091,000, including:

- (a) property and equipment of CAD\$345,145,000 comprised primarily of capitalized leases of which there are nine leases of Boeing 737 MAX 8 aircraft and three leases of CFM Leap 1-B25 spare engines (collectively, the “**Aircraft Leases**”);
- (b) security deposits of CAD\$14,019,000 consisting of two- or three-months’ rent owed to each of the engine and aircraft lessors (reflected on the balance sheet as Pre-Delivery Payments and Lease Deposits and Property and Equipment); and
- (c) long-term deposits of CAD\$2,732,000 consisting of amounts held as cash security by vendors, lessors (reflected on the balance sheet as Pre-Delivery Payments and Lease Deposits).

39. Each of these categories of assets will be discussed more fully below.

Property and Equipment

40. On October 18, 2015, Lynx Opco entered into a purchase agreement with an aircraft manufacturer (the “**Aircraft Purchase Agreement**”). Although the Aircraft Purchase Agreement

is not reflected in the 2023 Financial Statement, the Aircraft Purchase Agreement has considerable value in the global aviation market.

41. Pursuant to the Boeing Purchase Agreement, Lynx Opco had the right to purchase forty aircraft and lease six aircraft, to be delivered and paid for over six years (in addition to certain advance payments), such advance payments to be delivered at: (a) signing of the Aircraft Purchase Agreement, (b) 24 months prior to delivery, and (c) 18, 12, and 10 months prior to delivery.

42. Nine supplemental agreements relating to the Aircraft Purchase Agreement were subsequently entered into between the aircraft manufacturer and Lynx Opco, dated February 6, 2017, August 31, 2018, April 22, 2021, August 31, 2021, November 10, 2021, December 8, 2021, February 11, 2022, March 2, 2022, and August 17, 2023 (collectively, the “**Aircraft Supplemental Agreements**”).

43. Due to regulatory grounding of the Boeing 737 MAX 8 aircraft by Transport Canada Civil Aviation (“**TCCA**”) beginning on March 13, 2019 (discussed more fully below at paragraph 90), Lynx Opco was unable to take delivery of any aircraft which Lynx Air intended to purchase under the Aircraft Purchase Agreement. As such, the Aircraft Purchase Agreement’s delivery and payment schedule was revised to accommodate the Applicants’ re-entry into airspace, once the TCCA order released the Boeing 737 MAX 8 aircraft.

44. As of the date of this Affidavit, the Applicants have leased nine Boeing 737 MAX 8 aircraft; thirty-one Boeing 737 MAX 8 aircraft remain to be delivered under the Aircraft Purchase Agreement. The Applicants’ property and equipment is therefore comprised primarily of the Aircraft Leases.

45. The Aircraft Purchase Agreement and the Aircraft Supplemental Agreements contain confidential and commercially sensitive business information, the public disclosure of which would adversely affect and be prejudicial to the legitimate business interests of the Applicants and the counterparty to those agreements. For this reason, the Applicants are subject to non-disclosure obligations found within the Aircraft Purchase Agreement, prohibiting public disclosure of these agreements. As a result, copies of those agreements, along with a detailed discussion of the delivery schedule and purchase order dynamics, are attached to my Confidential Supplemental Affidavit which is sworn concurrent with this Affidavit, and the Applicants will be seeking a Restricted Court Access Order with respect to my Confidential Supplemental Affidavit.

Security Deposits

46. The security deposits are composed of pre-payments of rent to Lynx Air's lessors (as discussed in further detail below).

Long-Term Deposits

47. The long-term deposits consist of amounts provided to counterparties to reduce or eliminate credit while concurrently doing business with Lynx Air. This includes amounts provided to fuel providers, airports, real estate lessors, and others.

B. Liabilities

48. As at December 31, 2023, the Applicants had total liabilities of approximately CAD\$599,857,000, including:

- (a) secured obligations in an aggregate principal amount of CAD\$93,521,000 represented by promissory notes issued to Indigo pursuant to:

- (i) a Note Purchase Agreement dated December 20, 2018, as amended by Amending Agreement No. 1 dated June 30, 2023, between Lynx Holdco, as issuer, Lynx Opco as guarantor, and Indigo, as noteholder (the “**Note Purchase Agreement**”), a copy of which is attached hereto as **Exhibit “11”**;
- (ii) a Bridge Note Purchase Agreement dated February 24, 2023 as amended by Amending Agreement No. 1 dated January 12, 2024, between Lynx Holdco, as issuer, Lynx Opco as guarantor, and Indigo, as noteholder (the “**Bridge Note Purchase Agreement**”), a copy of which is attached hereto as **Exhibit “12”**;
- (iii) a Second Bridge Note Purchase Agreement dated October 26, 2023 as amended by Amending Agreement No. 1 dated January 12, 2024, between Lynx Holdco, as issuer, Lynx Opco as guarantor, and Indigo, as noteholder (the “**Second Bridge Note Purchase Agreement**”), a copy of which attached hereto as **Exhibit “13”**;
- (iv) a Third Bridge Note Purchase Agreement dated January 12, 2024 between Lynx Holdco, as issuer, Lynx Opco as guarantor, and Indigo, as noteholder (the “**Third Bridge Note Purchase Agreement**”), a copy of which attached hereto as **Exhibit “14”**;
- (v) a Fourth Bridge Note Purchase Agreement dated February 2, 2024 between Lynx Holdco, as issuer, Lynx Opco as guarantor, and Indigo, as noteholder (the “**Fourth Bridge Note Purchase Agreement**”), a copy of which attached hereto as **Exhibit “15”**;

- (vi) a Fifth Bridge Note Purchase Agreement dated February 7, 2024 between Lynx Holdco, as issuer, Lynx Opco as guarantor, and Indigo, as noteholder (the “**Fifth Bridge Note Purchase Agreement**”), a copy of which attached hereto as **Exhibit “16”**;

- (b) secured obligations of approximately CAD\$344,828,000 comprised of the Aircraft Leases;

- (c) secured obligations of CAD\$5,995,000 pursuant to a series of Assignment of Deposit Certificates (the “**Assignment Certificates**”) between ATB and Lynx Opco dated between May 2020 and November 2023 to stand as security for Letters of Credit and the credit card issued by ATB, copies of which Assignment Certificates are attached hereto as **Exhibit “17”**;

- (d) unsecured obligations in an aggregate amount of CAD\$72,375,279.00, comprised of:
 - (i) a tax payment arrangement with the Canada Revenue Agency (“**CRA**”) regarding account arrears (the “**CRA Arrears**”); and
 - (ii) obligations to trade creditors.

Indigo Promissory Notes

49. On start-up of Lynx Air, Indigo provided debt financing (represented by the Initial Notes, as that term is defined below) issued by Lynx Air to Indigo in the amount of CAD\$71,242,031. As discussed further below, the Applicants’ encountered various unforeseen events which resulted in a shortfall in projected revenue, such that revenues being generated from operations were

insufficient to sustain operations. Consequently, in 2023 and 2024 Indigo provided additional debt financing to the Applicants, in the amounts of CAD\$22,279,375 (provided in February, March, and October 2023) and CAD\$20,147,000 (provided in January and February 2024). These advances were also documented through convertible promissory notes issued by the Applicants to Indigo pursuant to the Note Purchase Agreement, the Bridge Note Purchase Agreement, the Second Bridge Note Purchase Agreement, the Third Bridge Note Purchase Agreement, the Fourth Bridge Note Purchase Agreement, and the Fifth Bridge Note Purchase Agreement.

(i) *The Note Purchase Agreement*

50. Pursuant to the Note Purchase Agreement, Indigo purchased convertible promissory notes (the “**Initial Notes**”) in the amount of USD\$54,100,000 (which, converted to CAD, is the \$71,242.031 referenced in the preceding paragraph). The Initial Notes bear non-convertible interest at an annual rate of 10%, payable annually in arrears in each year. The Initial Notes have a conversion price of \$1.00.

51. A \$1,000,000 fee related to the issuance of the Initial Notes was capitalized at inception and deducted from the purchase price prior to the transfer of the net proceeds to Lynx Holdco.

52. On June 30, 2023, Indigo accepted the Applicants request to defer the Initial Notes’ interest, as stipulated in the Note Purchase Agreement (the “**Deferral Agreement**”), pursuant to which Indigo granted the Applicants a deferral of all interest payments under the Initial Notes until the Fifth Anniversary (as that term is defined in the Note Purchase Agreement). A copy of the Deferral Agreement is attached hereto as **Exhibit “18”**.

53. Pursuant to the Note Purchase Agreement, the Applicants issued the Initial Notes on: (i) December 20, 2018 in the amount of CAD\$12,179,529; (ii) May 24, 2019 in the amount of

CAD\$7,295,806; (iii) January 27, 2022 in the amount of CAD\$10,149,603; (iv) April 14, 2022 in the amount of CAD\$13,532,804; (v) August 8, 2022 in the amount of CAD\$6,766,402; (vi) October 14, 2022 in the amount of CAD\$3,383,200; (vii) November 15, 2022 in the amount of CAD\$8,119,682; and (viii) December 13, 2022 in the amount of CAD\$9,815,005. Copies of the Initial Notes are attached hereto as **Exhibit “19”**.

54. All obligations of Lynx Holdco under the Note Purchase Agreement are guaranteed by Lynx Opco, pursuant to a Guarantee between Indigo and Lynx Opco dated October 28, 2021 (the “**Note Guarantee**”) and are also secured against all present and after-acquired personal property of the Applicants pursuant to a General Security Agreement dated October 28, 2021 (the “**Note General Security Agreement**”). Copies of the Note Guarantee and the Note General Security Agreement are attached hereto as **Exhibit “20”** and “**21”**.

55. As at December 31, 2023, the Initial Notes have a principal and accrued and outstanding interest amount of CAD\$91,489,000. The Initial Notes matured on December 20, 2023. The Applicants do not have sufficient resources to redeem the Initial Notes.

(ii) The Bridge Note Purchase Agreement

56. Pursuant to the Bridge Note Purchase Agreement, Indigo purchased convertible promissory notes (the “**Bridge Notes**”) up to an equivalent amount in Canadian Dollars of USD\$5,250,000 and was granted the ability to purchase subsequent promissory notes up to an equivalent amount of USD\$9,000,000. The Bridge Notes bear interest at an annual rate of 20%, convertible and payable semi-annually in arrears on August 23 and February 23 in each year. The Bridge Notes have a conversion price of \$0.25.

57. The Applicants issued two Bridge Notes pursuant to the Bridge Note Purchase Agreement: one on February 24, 2023, and the second on March 10, 2023, in the principal amounts of CAD\$7,110,000 CAD and CAD\$5,169,375, respectively. Interest accrued on these notes at 20%, and each of these notes mature on the earlier of the consummation of a transaction that Lynx Air is in the process of negotiating and June 30, 2024. As at December 31, 2023, the total amount outstanding under the Bridge Notes are (respectively) approximately CAD\$8,415,000 and CAD\$6,072,000. Copies of the Bridge Notes are attached hereto as **Exhibit “22”**.

58. All obligations of Lynx Holdco under the Bridge Note Purchase Agreement are guaranteed by Lynx Opco pursuant to a Guarantee between Indigo and Lynx Opco dated February 24, 2023 (the “**First Bridge Note Guarantee**”) and are also secured against all present and after-acquired personal property of the Applicants pursuant to a General Security Agreement dated February 24, 2023 (the “**First Bridge Note General Security Agreement**”). Copies of the First Bridge Note Guarantee and the First Bridge Note General Security Agreement are attached hereto as **Exhibit “23”** and **“24”**.

(iii) The Second Bridge Note Purchase Agreement

59. Pursuant to the Second Bridge Note Purchase Agreement, Indigo purchased a convertible promissory note (the “**Second Bridge Note**”) in the amount of CAD\$10,000,000. The Second Bridge Note was issued on October 26, 2023, and bears interest at a rate of 20% per annum, convertible and payable semi-annually in arrears. As at December 31, 2023, the total amount outstanding under the Second Bridge Note is approximately CAD\$10,365,000. The Second Bridge Note matures on the earlier of the consummation of a transaction that Lynx Air is in the process of negotiating and June 30, 2024. A copy of the Second Bridge Note is attached hereto as **Exhibit “25”**.

60. All obligations of Lynx Holdco under the Second Bridge Note Purchase Agreement are guaranteed by Lynx Opco, pursuant to a Guarantee between Indigo and Lynx Opco dated October 26, 2023 (the “**Second Bridge Note Guarantee**”) and are also secured against all present and after-acquired personal property of the Applicants pursuant to a General Security Agreement dated October 26, 2023 (the “**Second Bridge Note General Security Agreement**”). Copies of the Second Bridge Note Guarantee and the Second Bridge Note General Security Agreement are attached hereto as **Exhibit “26”** and “**27**”.

(iii) The Third Bridge Note Purchase Agreement

61. Pursuant to the Third Bridge Note Purchase Agreement, Indigo purchased a convertible promissory note (the “**Third Bridge Note**”) up to an equivalent amount in Canadian Dollars of USD\$5,000,000. The Third Bridge Note was issued on January 12, 2024 in the amount of CAD\$6,695,500, and bears interest at a rate of 20% per annum, payable semi-annually in arrears. The Third Bridge Note matures on the earlier of the consummation of a transaction that Lynx Air is in the process of negotiating and June 30, 2024. A copy of the Third Bridge Note is attached hereto as **Exhibit “28”**.

62. All obligations of Lynx Holdco under the Third Bridge Note Purchase Agreement are guaranteed by Lynx Opco, pursuant to a Guarantee between Indigo and Lynx Opco dated January 12, 2024 (the “**Third Bridge Note Guarantee**”) and are also secured against all present and after-acquired personal property of the Applicants pursuant to a General Security Agreement dated January 12, 2024 (the “**Third Bridge Note General Security Agreement**”). Copies of the Third Bridge Note Guarantee and the Third Bridge Note General Security Agreement are attached hereto as **Exhibit “29”** and “**30**”.

(iii) The Fourth Bridge Note Purchase Agreement

63. Pursuant to the Fourth Bridge Note Purchase Agreement, Indigo purchased a convertible promissory note (the “**Fourth Bridge Note**”) up to an equivalent amount in Canadian Dollars of USD\$5,000,000. The Fourth Bridge Note was issued on February 2, 2024 in the amount of CAD\$6,698,500, and bears interest at a rate of 20% per annum, convertible and payable semi-annually in arrears. The Fourth Bridge Note matures on the earlier of the consummation of a transaction that Lynx Air is in the process of negotiating and June 30, 2024. A copy of the Fourth Bridge Note is attached hereto as **Exhibit “31”**.

64. All obligations of Lynx Holdco under the Fourth Bridge Note Purchase Agreement are guaranteed by Lynx Opco, pursuant to a Guarantee between Indigo and Lynx Opco dated February 2, 2024 (the “**Fourth Bridge Note Guarantee**”) and are also secured against all present and after-acquired personal property of the Applicants pursuant to a General Security Agreement dated February 2, 2024 (the “**Fourth Bridge Note General Security Agreement**”). Copies of the Fourth Bridge Note Guarantee and the Fourth Bridge Note General Security Agreement are attached hereto as **Exhibit “32”** and “**33**”.

(iii) The Fifth Bridge Note Purchase Agreement

65. Pursuant to the Fifth Bridge Note Purchase Agreement, Indigo purchased a convertible promissory note (the “**Fifth Bridge Note**”) up to an equivalent amount in Canadian Dollars of USD\$6,753,000. The Fifth Bridge Note was issued on February 7, 2024, and bears interest at a rate of 20% per annum, payable semi-annually in arrears. The Fifth Bridge Note matures on the earlier of the consummation of a transaction that Lynx Air is in the process of negotiating and June 30, 2024. A copy of the Fifth Bridge Note is attached hereto as **Exhibit “34”**.

66. All obligations of Lynx Holdco under the Fifth Bridge Note Purchase Agreement are guaranteed by Lynx Opco, pursuant to a Guarantee between Indigo and Lynx Opco dated February

7, 2024 (the “**Fifth Bridge Note Guarantee**”) and are also secured against all present and after-acquired personal property of the Applicants pursuant to a General Security Agreement dated February 7, 2024 (the “**Fifth Bridge Note General Security Agreement**”). Copies of the Fifth Bridge Note Guarantee and the Fifth Bridge Note General Security Agreement are attached hereto as **Exhibit “35”** and “**36**”.

67. As at January 31, 2024, the total amount owing under all of the aforementioned promissory notes issued to Indigo is: CAD\$100,216,906 in principal, and CAD\$24,084,241 in interest.

(iv) The Noteholders’ and Shareholders’ Agreement

68. In connection with the Note Purchase Agreement, Lynx Holdco, Lynx Opco, the Canadian Investors and Indigo entered into a Noteholders’ and Shareholders’ Agreement dated December 20, 2018, as amended by amendment no. 1 to the Noteholders’ and Shareholders’ Agreement effective as of June 7, 2021, as further amended by amendment no. 2 to the Noteholders’ and Shareholders’ Agreement dated as of December 5, 2022, as further amended by amendment no. 3 to the Noteholders’ and Shareholders’ Agreement dated as of February 24, 2023, as further amended by amendment no. 4 of the Noteholders’ and Shareholders’ Agreement dated October 26, 2023, as further amended by amendment no. 5 to the Noteholders’ and Shareholders’ Agreement dated as of January 12, 2024, as further amended by amendment no. 6 to the Noteholders’ and Shareholders’ Agreement dated as of February 2, 2024, and as further amended by amendment no. 7 to the Noteholders’ and Shareholders’ Agreement dated as of February 7, 2024 (collectively, the “**Noteholders’ and Shareholders’ Agreement**”).

69. A copy of the Noteholders’ and Shareholders’ Agreement is attached hereto as **Exhibit “37”**.

The Aircraft Leases

70. The Applicants are party to nine 12-year leases for nine aircraft:
- (a) an aircraft lease novation and amendment agreement between Lynx Opco as lessee, Wellington Leasing No. 40 Limited as existing lessor, and Bank of Utah, not in its individual capacity but solely as owner trustee (“**Bank of Utah**”), as new lessor, dated June 24, 2023 (the “**Utah Lease Novation and Amendment Agreement**”) and effective March 16, 2022;³
 - (b) an aircraft lease novation and amendment agreement between Lynx Opco as lessee, Wellington Leasing No. 39 Limited as existing lessor, and High Ridge Aviation Trading 2 Limited (“**High Ridge**”) as new lessor, dated June 26, 2023 (the “**High Ridge Lease Novation and Amendment Agreement**”) and effective February 14, 2022;⁴
 - (c) an aircraft lease novation and amendment agreement between Lynx Opco as lessee, Wellington Leasing No. 41 Limited as existing lessor, AERDragon MSN44306 Leasing Limited (“**AERDragon**”) as new lessor, and Société Générale as security trustee dated June 27, 2023 (the “**AERDragon Lease Novation and Amendment Agreement**”) and effective April 5, 2022;⁵

³ The original lease agreement between Lynx Opco and Wellington Leasing No. 40 Limited (“**Wellington 40**”) is dated April 23, 2021, and was amended on November 4, 2021. A Certificate of Acceptance and Estoppel dated March 16, 2022 was given by Lynx Opco and delivered to Wellington 40, as well as a Short Form Lease Agreement 44314 dated March 16, 2022 between Wellington 40 and Lynx Opco.

⁴ The original lease agreement between Lynx Opco and Wellington Leasing No. 39 (“**Wellington 39**”) is dated April 23, 2021, and was amended on November 4, 2021 and February 11, 2022. A Certificate of Acceptance and Estoppel dated February 14, 2022 was given by Lynx Opco and delivered to Wellington 39, as well as a Short Form Lease Agreement 44312 dated February 14, 2022 between Wellington 39 and Lynx Opco.

⁵ The original lease agreement between Lynx Opco and Wellington Leasing No. 41 Limited (“**Wellington 41**”) is dated April 23, 2021, and was amended on November 4, 2021 and March 29, 2022. A Certificate of Acceptance and

- (d) three aircraft lease agreements with BOC Aviation Limited (“**BOCA**”), each dated February 23, 2022 (collectively, the “**BOCA Lease Agreements**”) and effective May 1, 2023, July 31, 2023, and August 18, 2023; and
- (e) three aircraft lease agreements with Wilmington Trust SP Services (Dublin) Limited (“**Wilmington Trust**”) each dated November 4, 2021 (collectively, the “**Wilmington Trust Lease Agreements**”), effective July 13, 2022, July 27, 2022, and August 26, 2022, respectively.

71. Additionally, the Applicants are party to three 12-year leases for three engines with Engine Lease Finance Corporation, each dated April 26, 2023 (collectively, the “**Engine Lease Agreements**”), effective April 27, 2023, May 11, 2023, and August 23, 2023.

72. Each of the above leases is associated with obligations to pay monthly lease rentals and monthly amounts in anticipation of an eventual maintenance spend; the aggregate payment under the twelve 12-year leases is CAD\$4,600,000. Additionally, all obligations of the Applicants under the Aircraft Leases are (i) guaranteed by the terms of various guarantees and (ii) secured by the corresponding security interests and international interests being registered pursuant to the *Alberta Personal Property Security Registry* and the International Registry (as such term is defined in *An Act to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*, S.C. 2005, c. 3).

ATB Cash Collateral

Estoppel dated April 5, 2022 was given by Lynx Opco and delivered to Wellington 41, as well as a Short Form Lease Agreement 44306 dated April 5, 2022 between Wellington 41 and Lynx Opco.

73. Lynx Air has 13 letters of credit totalling CAD\$5,876,000 issued by ATB for the benefit of Western Surety Company, Greater Toronto Airports Authority, Vancouver Airport Authority, City of Kelowna – City Hall, Aeroports de Montreal, City of Los Angeles, Department of Airports, City of Phoenix Aviation Department, Greater Orlando Aviation Authority, Clark County Department of Aviation Harry Reid International Airport, Tom Bradley International Terminal Equipment Company, Hillsborough County Aviation Authority, Lee County Port Authority, and His Majesty the King in right of the Province of British Columbia. As discussed above in paragraph 34(b), these letters of credit are fully secured by cash deposits which are held by ATB as security for the letters of credit which have been issued.

74. On November 6, 2023, ATB registered a security interest in the cash deposits in the amount of CAD\$1,027,613.62, and on February 14, 2024, ATB registered an additional security interest in the amount of CAD\$4,469,645.96.

Tax Payment Arrangement

75. Lynx Opco is in arrears with the CRA in the amount of CAD\$25,578,279 (the “**Outstanding Balance**”) for debt owing to the Canada Border Services Agency in respect of GST incurred on importation of aircraft into Canada. As such, the CRA and Lynx Opco have entered into a payment arrangement dated November 17, 2023 (the “**CRA Arrangement Agreement**”). Pursuant to the CRA Arrangement Agreement, as of October 2023, Lynx Opco is required pay a total of CAD\$500,000 towards the Outstanding Balance according to the following schedule: CAD\$100,000 on December 1, 2023, CAD\$100,000 on January 2, 2024, CAD\$100,000 on February 1, 2024, and CAD\$200,000 on March 1, 2024. Commencing April 1, 2024, Lynx Opco must make monthly payments on the first of each month, in a minimum amount of CAD\$700,000 towards the Outstanding Balance, until the arrears are retired.

76. A copy of the CRA Arrangement Agreement is attached hereto as **Exhibit “38”**.

Trade Creditors

77. The Applicants have ongoing supply and/or service arrangements with numerous vendors and services providers, including for operation and maintenance of the aircraft.

78. As at December 31, 2023, the Applicants owed accrued and outstanding amounts to trade creditors in the aggregate amount of CAD\$46,797,000, before taking into account any disputed amounts or claims to set-off which the Applicants may have or assert.

Office Lease Obligations

79. Lynx Opco is party to a lease agreement with Deerfoot Junction Holdings Inc., as landlord, dated December 30, 2021, as amended on May 1, 2023, pursuant to which it leases head office space in Calgary, Alberta, at 3215 – 12th Street N.E. (the “**Commercial Lease**”). All obligations of Lynx Holdco under the Commercial Lease are current.

Litigation Claims

80. The Applicants are involved in certain claims and litigation arising in the course of its business, including two ongoing claims in the Alberta Court of King’s Bench by one former Officer and one former employee against Lynx Air, each related to wrongful dismissal.

PPR Registrations

81. I am advised by Julie Treleaven of Osler, Hoskin & Harcourt LLP, counsel to the Applicants, that as of February 16, 2024, there are 16 registrations against the Applicants in the Alberta *Personal Property Security Registry*, being:

- (a) Two registrations against Lynx Holdco and Lynx Opco by Indigo of its security interest in all present and after-acquired personal property of the Applicants secured by the Note General Security Agreement, the First Bridge Note General Security Agreement, the Second Bridge Note General Security Agreement, the Third Bridge Note General Security Agreement, the Fourth Bridge Note General Security Agreement, and the Fifth Bridge Note General Security Agreement;
- (b) One registration against Lynx Opco by ATB of a security interest in the amount of USD\$1,027,613.62 and CAD\$4,469,645.96 for amounts on deposit with ATB;
- (c) One registration against Lynx Opco by High Ridge of security interests on certain Boeing airframes and engines supplied to the Applicants pursuant to the High Ridge Lease Novation and Amendment Agreement;
- (d) One registration against Lynx Opco by Bank of Utah of security interests on certain Boeing airframes and engines supplied to the Applicants pursuant to Bank of Utah Lease Novation and Amendment Agreement;
- (e) One registration against Lynx Opco by AERDragon of security interests on certain Boeing 737 MAX 8 aircraft and engines supplied to the Applicants pursuant to the AERDragon Lease Novation and Amendment Agreement;
- (f) One registration against Lynx Opco by Société Générale of security interests on certain Boeing 737 MAX 8 aircraft and engines supplied to the Applicants pursuant to the AERDragon Lease Novation and Amendment Agreement;

- (g) Three registrations against Lynx Opco by Wilmington Trust of security interests on certain Boeing 737 MAX 8 aircraft and engines supplied to the Applicants pursuant to the Wilmington Trust Lease Agreements;
- (h) Three registrations against Lynx Opco by BOCA of security interests on certain Boeing 737 MAX 8 aircraft and engines supplied to the Applicants pursuant to the BOCA Lease Agreements; and
- (i) Three registrations against Lynx Opco by Engine Lease Finance Corporation of security interests on certain engines supplied to the Applicants pursuant to the Engine Lease Agreements.

82. A copy of the Alberta *Personal Property Security Registry* search for Lynx Holdco and Lynx Opco is attached hereto as **Exhibit “39”** and **“40”**.

C. Equity

83. The Applicants’ authorized share capital consists of an unlimited number of Common Voting Shares, an unlimited number of Variable Voting Shares, an unlimited number of Non-Voting Shares, and an unlimited number of Preferred Shares. As at February 6, 2024, there were 35,621,063 Common Shares and 421,829,531 Convertible Shares issued and outstanding.

84. The Applicants also have a stock option plan pursuant to which options are granted to directors, officers, employees, consultants or other service providers as a form of compensation. As at February 6, 2024, there were approximately 2,183,829 outstanding stock options, all of which are out-of-the-money.

PART IV – RECENT EVENTS LEADING TO CCAA FILING

85. The Applicants' need to restructure is primarily driven by drastically reduced revenues over the past two years because of significant and sustained external factors, and a capital structure that can no longer be sustained in the face of these challenges. After Lynx Air started business (but before it flew its inaugural flight) it was met with a number of serious unforeseeable challenges to its business, as described below.

Competitive Landscape

86. The Canadian airline industry can be characterized as a duopoly dominated by two major airlines: Air Canada and WestJet. These airlines, in part through their well-established operations and market affluence, can decrease their base fares to prices comparable to ULCCs such as Lynx Air. This in turn saturates the market for ULCCs by reducing its consumer base, resulting in a reduction in passenger demand that ultimately correlates to decreases in revenue. This reduced passenger demand is further amplified by Lynx Air's direct ULCC competitors, Flair Airlines and Canada Jetlines, who operate on similar strategic and operational structures. As such, Lynx Air's entry into the Canadian market was a difficult and competitive venture.

87. However, the already competitive and constrained passenger market in Canada was significantly impacted by the COVID-19 pandemic. Government-imposed travel restrictions, health concerns, and the economic disruptions caused by the pandemic led to a substantial decrease in passenger demand which continues to be observed in the airline market today. As a result of this decreased demand, Lynx Air's competition among Canada's airlines intensified as they vied for a limited number of passengers. These market conditions ultimately resulted in unanticipated consequences to Lynx Air's capital structure.

Drastic Increase in Jet Fuel Prices

88. As outlined in paragraph 6 above, the dramatic and sustained increase in jet fuel prices since 2019 has had a direct and major impact on the Applicants' business. In 2023 alone, fuel was between 50-100% higher than projected in the Applicants' original business plan. This resulted in fuel expenses approximately CAD\$30,000,000 over the original business plan.

89. Unlike legacy airlines, these unprecedented price increases more dramatically affect ULCC airlines like Lynx Air. While legacy airlines or a low-cost-carriers can recoup increased fuel prices by increasing base fares, an ULCC cannot deviate from the established base fare without abandoning the ULCC model altogether.

The Boeing 737 MAX 8 Groundings

90. On October 29, 2018, and again on March 10, 2019, the Boeing 737 MAX 8 aircraft (which was the only model that Lynx Air was planning on using in its fleet) was involved in two mass-fatality incidents. Consequently, in March of 2019 most civil aviation authorities, including the TCCA, grounded the Boeing 737 MAX 8 aircraft over safety concerns. This grounding lasted until December of 2020, and coincided exactly with Lynx Air's intended first flight (the first quarter of 2019).

91. As the Boeing 737 MAX 8 aircraft was the only type of aircraft purchased for Lynx Air's fleet, the Applicants were unable to (a) begin operations, and (b) take delivery of additional aircraft purchased under the Boeing Purchase Agreement. This resulted in administrative and operating costs being incurred without any significant return of revenue until Lynx Air's inaugural flight in April of 2022 – 3 years after the intended inaugural flight in the first quarter of 2019.

PART V – THE APPLICANTS' URGENT NEED FOR PROTECTION

92. The Applicants are in urgent need of protection under the CCAA to preserve value for all stakeholders. The financial strains placed on the Applicants' business as a result of the foregoing events has been disastrous to the Applicants' business.

93. Accordingly, while the Applicants have significant business operations and assets, the reduced revenues required to conduct its ongoing operations, together with a combination of factors outside of its control, have placed the Applicants in a liquidity crisis.

94. While the Applicants have in the past received debt financing from Indigo to fund its operating costs, it has never been able to achieve profitability in order to become self-sustaining. More recently, the Applicants have been unsuccessful in efforts to secure additional capital in order to try to achieve profitability. As a result, the Applicants find themselves in a situation where not only can they not repay the Initial Notes, but they are unable to fund day to day operations without additional debt financing from Indigo.

95. In response to the liquidity crisis caused by the multiple outside factors described above, the Applicants have attempted to implement further cost mitigation measures to protect the minimum capital required to continue basic care and maintenance operations of its aircraft. Since September of 2023, the Applicants have, among other things, taken the following steps:

- (a) limited itself to essential hiring only;
- (b) implemented revenue-management technology;
- (c) optimized costs by re-routing flights to have "out and back flying" versus overnight stays; and
- (d) modified its flight network to avoid overlap in Canada's aviation market.

96. Notwithstanding these cost mitigation efforts, the Applicants' current revenue amounts have resulted in a significant amount of ageing trade payables and declining liquidity to support operations, and the Applicants are currently over-leveraged and unable to sustain operations at current revenue levels and at current expense levels – even with cost-cutting measures implemented. Accordingly, the Applicants currently find themselves in a situation where expenses are outstripping revenue, putting a strain on the Applicants' cash reserves which are being quickly depleted. As noted in the Applicants' cash flow forecast, the Applicants will soon have its cash reserves entirely exhausted and will be unable to pay its suppliers or staff.

97. Additionally, as discussed above in paragraphs 29 to 33, Lynx Air has received notices of default from various parties, such as the GTAA and Delta with cure periods expiring on February 21, 2024 and February 26, 2024, respectively. If unpaid, the GTAA and Delta may commence enforcement proceedings which could include measures which would significantly and negatively affect the Applicants' operations, including withdrawing services and seizure of aircraft.

98. As a result, for the past several months the Applicants have been exploring options both to raise additional capital which would permit the Applicants to continue to carry on business, or to enter into a transaction which would permit the Applicants to wind down operations in an orderly fashion to maximize value for the Applicants' affected stakeholders. As of February 21, 2024, the Applicants have entered into a Letter of Intent for a transaction that will allow an orderly wind down of operations while simultaneously maximizing the value of the Applicants' remaining assets. The Applicants therefore urgently require the protection of the CCAA in order to conclude this transaction for the benefit of all stakeholders. In absence of a CCAA filing, the Applicants will be in imminent danger of a disorderly operational shut-down that will result in aircraft and

passengers being haphazardly stranded across Lynx Air's network, and a myriad of individual creditors and service providers exercising enforcement measures against Lynx Air's assets.

PART VI – STATUTORY REQUIREMENTS UNDER THE CCAA

A. The Applicability of the CCAA

99. The Applicants are companies to which the CCAA applies. The Board of Directors of the Applicants have resolved to authorize the within CCAA proceedings.

100. The Applicants have claims against it in excess of CAD\$5,000,000. As at January 31, 2024, the Applicants are indebted to Indigo in the amount of CAD\$100,216,906 in principal, and CAD\$24,084,241 in interest. All obligations of the Applicants to Indigo are secured by security interests in all of the Applicants' present and after acquired property. As at December 31, 2023, the Applicants also owe outstanding amounts to certain trade creditors in the aggregate amount of CAD\$46,797,000. The Applicants are unable to pay these amounts.

101. The Applicants are insolvent and are, or soon will be, unable to meet their obligations generally as they become due by virtue of revenues falling below operating costs, as a result of the matters described above.

B. Cash-Flow Projections

102. The Applicants, with the assistance of FTI, have prepared cash flow statements, on a go forward basis up to and including March 2, 2024 (the "**Cash-Flow Projections**"). The Cash-Flow Projections are attached as **Exhibit "41"** hereto.

103. As set out in the Cash-Flow Projections, from the date hereof until March 2, 2024, the Applicants' principal use of cash will consist of funding operations. The Cash-Flow Projections

evidence that, subject to obtaining the limited relief sought as part of the Originating Application, the Applicants will have sufficient liquidity to fund its ongoing operations without the need for additional funding during the initial ten (10) day stay period.

C. Consent to Act by FTI

104. The Applicants seek appointment of FTI as Monitor in these proceedings (in such capacity, the “**Monitor**”). FTI has consented to act as Monitor of the Applicants, subject to Court approval. Attached as **Exhibit “42”** is FTI’s Consent to Act as Monitor.

D. Administration Charge

105. As noted above, FTI has consented to act as Monitor in these proceedings to provide supervision, monitoring and to generally assist the Applicants with its restructuring efforts, including the potential preparation of a CCAA plan to be put to the Applicants’ creditors pursuant to the terms of the proposed Initial Order and the statutory provisions of the CCAA.

106. The Monitor, counsel for the Monitor, and the Applicants’ counsel (being the Applicants’ restructuring counsel Osler, Hoskin & Harcourt LLP and the Applicants’ corporate counsel Linmac LLP) will be essential to the Applicants’ restructuring efforts. They are prepared to provide or continue to provide professional services to the Applicants, and require the protection of a first-ranking priority charge (the “**Administration Charge**”) over the Applicants’ assets. However, the Administration Charge shall not rank in priority to the interests of any aircraft lessor or financier as described in paragraphs 70 and 71 above.

107. The Applicants believe that an Administration Charge in the amount of CAD\$500,000 is fair and reasonable given the size and complexity of the Applicants’ business and will provide the level of appropriate protection for the payment of the Applicants’ essential professional services

during the initial ten (10) day stay period. The Applicants intend to apply for an increase of the Administration Charge to CAD\$750,000 at the comeback application.

E. Interim Lending and the Interim Lender's Charge

108. As demonstrated in the Cash-flow Projections, the Applicants require interim financing to pursue their restructuring efforts in the context of these CCAA proceedings and to allow payment of future financial obligations, including obligations to trade creditors, as well as to allow the Applicants to properly retain both the proposed monitor and legal counsel to assist and advise the Applicants in relation to restructuring options.

109. As at the date of this Affidavit, the Applicants and the Interim Lender have agreed upon interim financing in an amount of CAD\$1,000,000 during the initial Stay Period, pursuant to the terms of the Interim Lending Term Sheet that is subject to final approval by Indigo. It is the Applicants' intention, subject to receiving the necessary approval of this Honourable Court, to draw down on the Interim Financing to fulfil mandatory statutory payments and immediately make the necessary arrangements with its employees, contractors, vendors, and other stakeholders to wind-down its business operations in an orderly fashion. A copy of the draft Interim Lending Term Sheet (which I believe to be either final or near final) is attached hereto as **Exhibit "43"**.

110. The Interim financing is proposed to be secured by a second ranking Interim Lender's Charge on all of the Property of the Applicants. However, the Interim Lenders' Charge shall not rank in priority to the interests of any aircraft lessor or financier as described in paragraphs 70 and 71 above.

F. D&O Charge

111. The requested relief also contains a third ranking charge against the Applicants' Property as security for any obligations and liabilities the Applicants' directors and officers may incur in their roles as directors and officers after February 22, 2024, up to the maximum amount of CAD\$500,000. However, the D&O Charge shall not rank in priority to the interests of any aircraft lessor or financier as described in paragraphs 70 and 71 above.

112. The Applicants require the services of their directors and officers to develop a viable proposal. The Applicants' directors and officers have the technical and institutional knowledge, experience, and relationships necessary to preserve the value of Lynx Air's operations and business for the benefit of all stakeholders. The Applicants' chances to implement a successful restructuring are maximized by the continued involvement of their directors and officers.

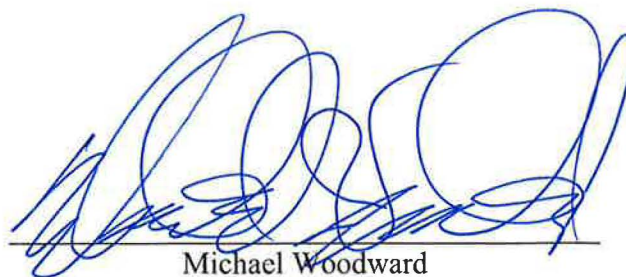
PART VII – RELIEF SOUGHT

113. I make this Affidavit in support of the Initial Order pursuant to the CCAA, including a stay of proceedings, for the purposes of allowing Lynx Air an opportunity to restructure its affairs and develop a plan of arrangement for the benefit of its creditors.

SWORN BEFORE ME at Calgary, Alberta,
this 22nd day of February, 2024.



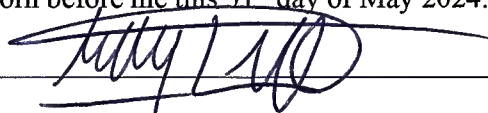
Notary Public and Commissioner for Oaths in
and for the Province of Alberta



Michael Woodward

Julie Laura Treleaven
Barrister & Solicitor

This is **Exhibit "G"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.

A handwritten signature in black ink, appearing to read 'Ashley Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law

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March 5, 2024

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Ottawa

Osler, Hoskin & Harcourt LLP
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Calgary, Alberta T2P 1N2

Vancouver

New York

Dear Mr. Van de Mosselaer:

In the Matter of a Plan of Compromise or Arrangement of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air – Airport Improvement Fee Trust

We act for the Greater Toronto Airports Authority (the “GTAA”). We are aware that on February 22, 2024, Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (collectively “Lynx Air”) sought and obtained an initial order (as subsequently amended and restated, the “ARIO”) under the *Companies’ Creditors Arrangement Act* (“CCA”).

As you may know, 1263343 Alberta Inc. (dba Lynx Air) and the GTAA are parties to the Greater Toronto Airports Authority Airport Improvement Fee Agreement (the “AIF Agreement”), dated January 1, 2023. The AIF Agreement sets out, among other things, the requirement that the Airport Improvement Fee (“AIF”) charged by the GTAA to Enplaned Passengers (as defined in the AIF Agreement) be collected and held by Lynx Air on behalf of GTAA and remitted back to the GTAA.

Paragraph 2.1.1(c) expressly provides that the AIF collected on behalf of the GTAA by Lynx Air are funds or revenues belonging to the GTAA and not Lynx Air. Moreover, Lynx Air is expressly required to hold the AIF in trust for the benefit of the GTAA. As such, the AIF collected by Lynx Air from Enplaned Passengers represent trust funds that do not form part of the debtor’s Property (as that term is defined in the ARIO) and cannot be distributed to Lynx’s creditors or otherwise used as part of the CCA proceeding. An excerpt of the applicable provisions in the AIF Agreement is attached as Schedule “A”. A full copy of the AIF Agreement, which is confidential, is available upon request.

As of February 21, 2024, Lynx Air is holding CAD \$1,710,148.23 million in AIF (the “AIF Monies”) in trust on behalf of the GTAA. GTAA demands that Lynx Air immediately remit the AIF Monies that remain owing to the GTAA, failing which the GTAA intends to bring a payment motion in the CCA proceeding. In the meantime, we expect that Lynx Air will refrain from taking any steps to deplete or use the AIF Monies in any way.

OSLER

Page 2

We look forward to hearing from you.

Sincerely,



Shawn Irving
Partner

cc. FTI Consulting Canada Inc. *in its capacity as Monitor of Lynx Air*
McCarthy Tétrault LLP, *Counsel for the Monitor*
Julie Treleaven, *Osler, Hoskin & Harcourt LLP (Calgary)*
Andrea Campbell, *Greater Toronto Airports Authorities*
Peter Humele, *Greater Toronto Airports Authorities*
Emma Smith, *Osler, Hoskin & Harcourt LLP (Toronto)*

SCHEDULE "A"



GREATER TORONTO AIRPORTS AUTHORITY AIRPORT IMPROVEMENT FEE AGREEMENT

Toronto-Pearson International Airport
P.O. Box 6031, Toronto AMF, Ontario, L5P 1B2

DATE: January 1, 2023 (the "Effective Date")

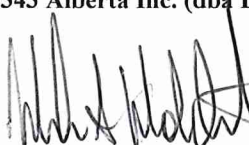
NAME OF CARRIER: 1263343 Alberta Inc. (dba Lynx Air)

As of the Effective Date, each of the Greater Toronto Airports Authority ("GTAA") and 1263343 Alberta Inc. (dba Lynx Air) ("Air Carrier") hereby agree as follows with respect to the imposition by GTAA of an Airport Improvement Fee, the collection of Deposits by Air Carrier from certain passengers and the remittance of Deposits by Air Carrier to GTAA as hereinafter set forth.

Greater Toronto Airports Authority

Per: 
Name: John Peellegoda
Title: Acting Chief Financial Officer

12633343 Alberta Inc. (dba Lynx Air)

Per: 
Name: Michael S. Holditch
Title: Chief Financial Officer

GTAA to evaluate, consult on and ultimately provide a recommendation to the ACC on the technical suitability of all Reviewable Capital Programs; and

“Vice President and Chief Financial Officer” means the GTAA employee holding the position of Vice-President and Chief Financial Officer from time to time and will include any acting Vice-President and Chief Financial Officer and, if the title of the position is changed, the employee who is able to exercise the authority of the Vice President and Chief Financial Officer for the purposes of this Agreement.

- 1.2. Words importing the singular number include the plural and vice versa and words importing gender include the masculine, feminine and neuter genders.
- 1.3. The division of this Agreement into Articles, Sections, Subsections, paragraphs and subparagraphs and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.
- 1.4. The words “hereof”, “herein”, “hereunder” and similar expressions used in any Article or Section of this Agreement relate to the whole of this Agreement and not to that Article or Section only, unless otherwise expressly provided.
- 1.5. Wherever in this Agreement the terms “include”, “includes”, “including” or any derivations thereof are used, such term will be interpreted to mean “including, without in any way limiting the generality of the foregoing,” such that any list following such term will not be construed so as to constitute an exhaustive list of the items so listed.
- 1.6. Except as otherwise indicated herein, at all times during the Term of this Agreement, the Parties will act reasonably in exercising their rights or discretions, making requests, making determinations and performing their duties and obligations under and in connection with this Agreement.

2. AIRPORT IMPROVEMENT FEE

2.1. Imposition and Usage of AIF and Remittance/Collection of Deposits

- 2.1.1 (a) The Parties agree that in general, AIF (specifically excluding amounts to be retained by Air Carrier in respect of the Administration Cost and amounts collected and remitted in respect of HST and other applicable taxes which will be remitted to the relevant authorities) will be used by GTAA for the purpose of Capital Programs and Capital Projects designed in furtherance of the:
 - (i) creation of operational efficiencies that reduce operating cost;
 - (ii) development of operating capacity;
 - (iii) generation of positive cash flow from non-aeronautical revenue sources;
and
 - (iv) other purposes set forth in Section 2.3 hereof,

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and for debt service on any Capital Projects or Programs (which, for clarity, include debt service on any capital projects or programs which have been incurred by GTAA prior to the Effective Date of this Agreement).

- (b) During the Term, GTAA intends to impose an AIF in respect of the Enplaned Passengers carried by air carriers (including Air Carrier) operating from the Airport. In consideration of the retention by Air Carrier of the Administration Cost referred in Section 2.5 of this Agreement, Air Carrier will make every commercially reasonable effort to collect, or cause to be collected, the Deposit for and on behalf of GTAA at the time of the sale of a Ticket to each prospective Enplaned Passenger which will be held as a Deposit by Air Carrier and remitted to GTAA as provided in this Agreement.
- (c) Subject to the terms of Section 2.4.2. of this Agreement, each of the Parties acknowledge and agree that: (i) the Deposits collected on behalf of GTAA by Air Carrier from the prospective Enplaned Passengers are funds properly belonging to GTAA and not Air Carrier; and (ii) the Deposits collected by Air Carrier will be held by Air Carrier in trust for the benefit of GTAA. Notwithstanding and without prejudice to the fact that the Deposits will be collected and held by Air Carrier in trust for GTAA, but subject to the terms of Section 2.4.2. of this Agreement, the Parties each acknowledge that such Deposits collected will be commingled in the accounts of Air Carrier with other funds collected during the normal course of business with no obligation to segregate the Deposits from these other funds, and GTAA will be under no obligation at any time to segregate AIF from any other funds it may have.
- (d) Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that, as of January 1, 2023, Air Carrier and all of the other Participating Air Carriers shall be permitted to: continue using the same IATA "ticket tax" code (IATA Code: SQ); reflect on their Tickets the current AIF description; and collect and remit the AIF in the manner currently being used by all of the Participating Air Carriers, and same will not constitute a breach of any obligation of this Agreement. The Participating Air Carriers will work with IATA and the other Canadian airports diligently to develop and publish, through the IATA Ticket Tax Box Service, a new IATA "ticket tax" code and description reflecting the collection of Deposits in the manner otherwise provided herein. After the publication of the new IATA "ticket tax" code, and as set-out therein, Air Carrier will: reflect the new IATA-approved description on their Tickets; and collect and remit the Deposits on the Remittance Forms to accordingly reflect the Deposit mechanism provided herein.

2.1.2. The obligation to collect and remit Deposits will not apply to Exempt Services provided by Air Carrier. In addition, air carriers who carry less than two thousand (2,000) Enplaned Passengers per calendar year will not be required to collect, hold and remit any Deposits, unless GTAA so elects such air carriers to require such collection, holding and remittance.

2.1.3. Any AIF or fee charged by GTAA on Non-Participating Air Carriers in lieu of the AIF imposed by GTAA will be set at a Canadian whole dollar amount per Enplaned Passenger

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for Participating Air Carriers or Non-Participating Air Carriers (as the case may be) plus HST and other applicable taxes. In addition, GTAA will also set an AIF in respect of Connecting Passengers for Participating Air Carriers or Non-Participating Air Carriers (as the case may be) which will be set at a Canadian whole dollar amount per Connecting Passenger.

- 2.1.4.** GTAA has the right at any time during the Term to increase or decrease the amount of the AIF payable by Enplaned Passengers as set out herein. GTAA has the right at any time during the Term to increase or decrease the amount of the Deposit to be collected, held in accordance with Section 2.1.1.(b) and remitted by Air Carrier, provided that GTAA will provide at least 90 calendar days prior written Notice to the ACC and to the Participating Air Carriers.
- 2.1.5.** Regardless of which air carrier sells a Ticket to a prospective Enplaned Passenger or which air carrier designator code is on the Enplaned Passenger's Ticket, the Parties acknowledge and agree that the Participating Air Carrier on whom the Enplaned Passenger actually travels will be the party responsible for the remittance of the Deposit for that prospective Enplaned Passenger in accordance with the other provisions of this Agreement, and, if Air Carrier also sold the Ticket to the prospective Enplaned Passenger, Air Carrier will be responsible for the collection of the Deposit for such Enplaned Passenger.
- 2.1.6.** Except as permitted under Section 2.1.2, GTAA will not levy GTAA Rates and Charges, including landing fees and general terminal charges, on any less favourable terms and conditions to Participating Air Carriers and their passengers, having regard to the AIF imposed by GTAA, than are levied on Non-Participating Air Carriers and their passengers, provided that nothing herein will be interpreted or construed so as to limit the unfettered right of GTAA to set GTAA Rates and Charges at such levels as it deems appropriate in its sole discretion or to offer incentive programs from time to time or to set different fees in lieu of AIF rates for Non-Participating Air Carriers than AIF rates for Participating Air Carriers. Air Carrier acknowledges and agrees that the current arrangement (which Air Carrier agrees is compliant with the foregoing) for Non-Participating Air Carriers is that they pay a fee in lieu of the AIF, which is not, and will not be, less than the dollar amount of the AIF, and which is on the basis of the number of seats instead of the number of Enplaned Passengers, and that GTAA may revise such charging and collection methodology in its sole discretion at any time, subject to the limitations stated in this Section 2.1.6.
- 2.1.7.** If, as a result of any of the following events (an "**AIF Legislative Initiative**"):
- (a) any order, directive, legislative initiative, regulatory change and/or binding policy statement issued by a government authority having jurisdiction over the imposition or collection of an AIF by GTAA; or
 - (b) any order or judgment of any court or administrative body of competent jurisdiction,

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GTAA is unable to impose an AIF or Participating Air Carriers are unable to collect the Deposits, the obligations of each Party contained in this Agreement will cease, save and except:

- (a) the obligation of Air Carrier to collect Deposits in accordance with Section 2.1.1.(b), up to and including the date upon which the government authority having jurisdiction or the court or administrative body, has issued, promulgated or enacted the AIF Legislative Event (the “**Event Date**”); and
- (b) the obligations of the Parties described in Section 2.5 to the extent of the Deposits collected, held in accordance with Section 2.1.1.(b) and remitted by Air Carrier for the period up to and including the Event Date.

2.2. Capital Review Process

2.2.1. Airport Master Plan and Capital Plan

Upon the execution of this Agreement, GTAA will provide to the TSC the most current version of the Airport Master Plan along with its five-year capital plan for the Airport (the “**Capital Plan**”) which will outline and detail (using written descriptions and illustrations) GTAA’s capital budget over the number of years covered by the Capital Plan, and its planned Capital Programs, including Reviewable Capital Programs. For clarity and certainty, and as applicable, the Capital Plan will include the terms related to any Permitted Transit Funding Amount. The Parties acknowledge that the Capital Plan is and will continue to be an evolving document as GTAA’s strategy and capital plans evolve, and accordingly GTAA will provide the TSC on an annual basis with an updated version of its Capital Plan. GTAA and the TSC may review and discuss the Airport Master Plan and the Capital Plan, provided that nothing herein will be construed so as to give the TSC or any Participating Air Carrier the right of consultation (including the Consultation Process) with GTAA with respect thereto.

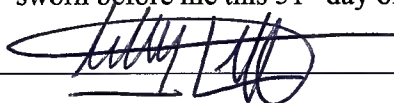
2.2.2. Reporting

(a) Reporting on Airport Master Plan and Capital Plan

GTAA will, on a semi-annual basis (or more frequently if GTAA determines that more frequent reports are warranted to achieve the purposes of this Agreement) provide to the ACC updated information pertaining to:

- (i) Capital Plan impact on debt and debt service levels;
- (ii) Capital Plan impact on operating budget;
- (iii) Amendments to the Capital Plan; and
- (iv) Amendments to the Airport Master Plan.

This is **Exhibit "H"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.

A handwritten signature in black ink, appearing to read 'Ashley Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law

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OSLER

Toronto

March 28, 2024

Shawn Irving

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Montréal

Calgary

Sent by Electronic Mail

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 Attn: Randal Van de Mosselaer
 (rvandemosselaer@osler.com)

McCarthy Tétrault LLP
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 Calgary, AB
 T2P 4K9
 Attn: Sean Collins
 (scollins@mccarthy.ca)

Vancouver

New York

Dear Sirs:

In the Matter of a Plan of Compromise or Arrangement of Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air – Airport Improvement Fee Trust

As you know, we act for the Greater Toronto Airports Authority (the “GTAA”) in connection with the Lynx Air CCAA proceeding. On March 5, 2024, we wrote to Mr. Van de Mosselaer, counsel to the Applicants, copying FTI Consulting Canada, in its capacity as Monitor of the Applicants, asserting that Lynx Air is holding at least CAD \$1,710,148.23 million (the “AIF Monies”) in trust on behalf of the GTAA and demanding that Lynx Air immediately remit those funds to the GTAA, as they do not form part of the Property of the Applicants. We also asked that the Applicants confirm that the AIF Monies were not being depleted as part of the CCAA proceedings.

To date, we have not received a response to our March 5th letter. We reiterate our demand herein.

In addition, earlier this week, the Applicants served materials in connection with an application to be heard on April 2, 2024 seeking, among other things, an Order approving an Agreement entered into between Lynx Air and The Boeing Company (“Boeing”) dated March 21, 2024 (the “Termination Agreement”). As we understand it, the Termination Agreement purports to terminate an agreement that had previously been entered into between Lynx Air and Boeing in 2015 giving Lynx the right to purchase certain aircraft and lease additional aircraft from Boeing. In exchange for entering into the Termination Agreement, and if approved by the CCAA Court, Boeing has agreed to pay the Applicants an agreed amount of compensation.

It does not appear, based on our review of the materials, that the Applicants will be seeking any form of distribution order in connection with the April 2nd Application. If our understanding is incorrect, please advise forthwith. It is not our intention to interfere with

the April 2nd Application, or the SISP more generally, so long as our clients' rights and claim to the AIF Monies are not in any way prejudiced.

Finally, we understand that Ms Karen Fellowes, KC of Stikeman Elliott LLP has recently been retained on behalf of the Vancouver Airport Authority and certain other airport authorities in Canada who, like the GTAA, assert that Lynx Air is holding unremitted AIF funds in trust on their behalf. We have had some preliminary discussions with Ms Fellowes in relation to these proceedings and our clients' respective claims to funds held in trust by the Applicants. We agree that it would be beneficial to have a meeting with counsel to the Applicants, the Monitor and its counsel to discuss these issues, and to discuss a reasonable timetable for an application before the CCAA Court, if necessary.

In the meantime, we continue to expect that Lynx Air will refrain from taking any steps to deplete or use the AIF Monies in any way.

We look forward to hearing from you.

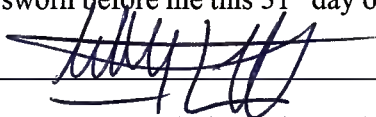
Sincerely,



Shawn Irving
Partner

cc. Deryck Helkaa, Brett Wilson and Dustin Olver, FTI Consulting Canada Inc. *in its capacity as Monitor of Lynx Air*
Walker MacLeod, Pantelis Kyriaskakis and Nathan Stewart, McCarthy Tétrault
Julie Treleaven, *Osler, Hoskin & Harcourt LLP (Calgary)*
Karen Fellowes, KC, *Stikeman Elliott LLP*
Emma Smith, *Osler (Toronto)*

This is **Exhibit "I"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.

A handwritten signature in black ink, appearing to read 'Ashley Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law

Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
4200 Bankers Hall West
888 - 3rd Street S.W.
Calgary, AB Canada T2P 5C5

Main: 403 266 9000
Fax: 403 266 9034
www.stikeman.com

Karen Fellowes K.C.
Direct: +1 403 724 9469
Mobile: +1 403 831 9488
KFellowes@stikeman.com

March 28, 2024

File No.: 156416.1001

By Email

Osler, Hoskin & Harcourt LLP
Suite 2700, Brookfield Place
225 - 6 Avenue SW
Calgary AB
T2P 1N2

Attention : Randal Van de Mosselaer

Dear Mr. Van de Mosselaer:

Re: In the matter of Lynx Air Holdings Corporation - Airport Improvement Fee arrears

Please be advised that our office has been retained by the following Canadian airport authorities:

1. Vancouver Airport Authority;
2. Calgary Airport Authority;
3. Edmonton Regional Airport Authority;
4. Winnipeg Airport Authority Inc. and
5. Halifax International Airport Authority

Collectively, the "Airport Authorities".

Each of the Airport Authorities are owed money by 1263343 Alberta Ltd ("Lynx Air") pursuant to various agreements, including a Memorandum of Agreement between the Air Transport Association of Canada, Signatory Air Carriers (including Lynx Air) and the Airport Authorities and others ("the MOA").

Pursuant to the MOA, Lynx Air had an obligation to collect all Airport Improvement Fees ("AIF") charged by the Airport Authorities to Enplaned Passengers, and to remit such AIF collected on behalf of the Airport Authorities. The AIF collected by Lynx Air constitutes monies held in trust for the benefit of the Airport Authorities, by express, implied or constructive trust.

We are still collecting details of the amounts owing, but we are advised that the amount in issue is approximately \$4.1 million. On behalf of the Airport Authorities, we hereby demand return of these trust monies, subject to final confirmation of the exact amounts owing. As you know, pursuant to section 67(1)(a)

of the BIA, trust funds (property held by the bankrupt in trust for any other person) do not form part of the property of the debtor.

We understand that Mr. Shawn Irving of Oslers Toronto office has been engaged by the Greater Toronto Airports Authority ("GTAA") to make a similar claim on behalf of the Toronto Airport. I understand that Mr. Irving wrote to your office on March 5, 2024 but has not yet received a response.

We are copying this letter to the Monitor, and we understand the SISP is ongoing with respect to the exigible assets of Lynx Air. Please be assured that we do not wish to interfere in the SISP process in any way. However, it will be important that no distribution of sale proceeds is made until such time as it becomes clear that there will be sufficient funds to satisfy the trust claims. Given the expedited timelines proposed in the ARIO, we request a meeting with your office and counsel for the Monitor to discuss this issue, including scheduling a Court application (if necessary) and the resulting evidentiary matters.

I look forward to hearing from you at your earliest convenience.

Yours truly,

Stikeman Elliott LLP



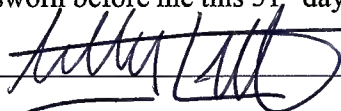
Karen Fellowes K.C.
Senior Counsel

KF/jw

cc: *Sean Irving of Osler, Hoskin & Harcourt LLP, counsel to the Greater Toronto Airports Authority ("GTAA")*
Sean Collins, Walker W. MacLeod, Pantelis Kyriakakis and Nathan Stewart of McCarthy Tétrault, counsel to the Monitor
Deryck Helkaa, Brett Wilson and Dustin Olver, of FTI Consulting, the Monitor

This is **Exhibit "J"** to the Affidavit of Michael Woodward

sworn before me this 31st day of May 2024.

A handwritten signature in black ink, appearing to read 'Ashley Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law



Calgary

April 2, 2024

Tommy Gelbman
Direct Dial: 403.260.7073
TGelbman@osler.com
Our Matter Number: 1246361

Toronto

Montréal

Sent By Email

Ottawa

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Vancouver

New York

Stikeman Elliot LLP
888 3rd Street S.W., 4200 Bankers Hall West
Calgary, AB T2P 5C5

Attention: Shawn Irving and Karen Fellows, K.C.

Dear Mr. Irving and Ms. Fellows:

**Re: In the matter of the *Companies' Creditors Arrangement Act* proceedings of
1263343 Alberta Inc. dba Lynx Air and Lynx Air Holdings Corporation**

We are in receipt of each of your March 28, 2024 letters requesting payment of Airport Improvement Fees (the “**AIF Monies**”) on behalf of several Canadian airport authorities, and asserting certain amounts to be held in trust by Lynx Air for the benefit of your respective clients.

Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Affidavit of Michael Woodward, dated February 22, 2024.

We respectfully disagree that Lynx Air must remit any AIF Monies to the airport authorities at this time. Our initial review of the asserted trust claims suggests that not all amounts claimed to be AIF Monies held in trust can accurately be characterized as such, especially in light of the substantial amounts paid to several airport authorities in priority to other stakeholders by virtue of the airport authorities having drawn on their irrevocable letters of credit.¹

Lynx Air’s relationship with each airport authority is different, and as such their respective circumstances are different. This letter will set out Lynx Air’s position with respect to AIF Monies generally, and a separate accounting for each airport authority will be provided in

¹ Lynx Air provided security deposits in the form of irrevocable letters of credit to: (i) Greater Toronto Airport Authority, (ii) Vancouver Airport Authority, (iii) Winnipeg Airport Authority Inc., and (iv) Halifax International Airport Authority. These agreements indicate that some or all of the security is for the purpose of paying any outstanding AIF Monies.

due course, based on, *inter alia*, the respective agreements in place, draws on letters of credit, characterization of the outstanding amounts claimed, and the relevant law.

If AIF Monies claimed by the airport authorities are, as a matter of law, held in trust, then the CCAA and the common law governing such trusts will necessarily govern their distribution. As noted by Ms. Fellows, under paragraph 67(1)(a) of the BIA, trust funds do not form part of a debtor's property. We acknowledge this principle applies under the CCAA.² However, when trust property is commingled with a debtors' property, the process of remittance is complex. Moreover, if some of the asserted pre-filing claims have been paid by virtue of the fact that a claimant has drawn on a letter of credit, then two assessments must be made: (i) against which claims does the letter of credit apply and, in turn, (ii) how to characterize the outstanding amounts claimed – i.e., are the amounts in fact held in trust or do they constitute unsecured debt?³ If such outstanding amounts are held in trust as a matter of law and have not, as a matter of fact, been expended (*i.e.*, the trust funds remain identifiable), then the law contemplates three potential distribution methods: (i) the rule in *Clayton's Case*; (ii) the lowest intermediate balance rule; or (iii) the *pro rata* approach.⁴

These issues must be carefully assessed for each airport authority and resolved in due course, by agreement or, if necessary, by way of application. In any event, nothing in today's application affects this analysis.

Once you have had an opportunity to consider the foregoing, and our forthcoming individual assessments, we would be pleased to discuss a potential meeting, to include the Monitor.

Yours truly,



Tommy Gelbman

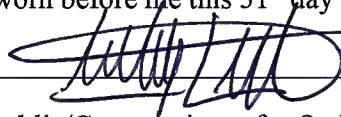
cc: Randal Van de Mosselaer and Julie Treleaven, *Osler, Hoskin & Harcourt LLP*
Sean Collins and Walker MacLeod, *McCarthy Tetrault LLP*
Deryck Helkaa and Dustin Olver, *FTI Consulting Canada Inc.*

² *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at paras [23-24](#).

³ *BMP Global Distribution Inc v Bank of Nova Scotia*, 2009 SCC 15 at para [75](#).

⁴ *Easy Loan Corp v Wiseman*, 2017 ABCA 58 at para [28](#).

This is **Exhibit "K"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.

A handwritten signature in black ink, appearing to read 'Ashley Elizabeth Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law



Calgary

April 12, 2024

Tommy Gelbman
Direct Dial: 403.260.7073
TGelbman@osler.com
Our Matter Number: 1246361

Toronto

Montréal

Sent By Email

Ottawa

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Vancouver

New York

Attention: Shawn Irving

**Re: In the matter of the *Companies' Creditors Arrangement Act* proceedings of
1263343 Alberta Inc. dba Lynx Air and Lynx Air Holdings Corporation**

Further to our April 2 and 9, 2024 correspondence, we write to set out the Applicant's position in respect of the GTAA's trust claim over pre-filing Airport Improvement Fees (the "**AIF Monies**") collected by Lynx Air on behalf of the GTAA.

Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the February 22, 2024 affidavit of Michael Woodward.

The Trust Relationship

Lynx Air and the GTAA are parties to a January 1, 2023 Greater Toronto Airports Authority Airport Improvement Fee Agreement (the "**AIF Agreement**"), which Lynx Air accepts created a trust relationship in respect of AIF Monies:

2.1.1(c) the AIF collected on behalf of the GTAA by the Air Carrier from the Enplaned Passengers (excluding the amounts collected by the Air Carrier for itself in respect of the Administration Cost) are funds or revenues properly belonging to the GTAA and not the Air Carrier; and (ii) the AIF collected by the Air Carrier (excluding the amounts collected by the Air Carrier for itself in respect of the Administration Cost) shall be held by the Air Carrier in trust for the benefit of the GTAA. Notwithstanding and without prejudice to the fact that the AIF shall be collected and held by the Air Carrier in trust for the GTAA, the Parties each acknowledge that such AIF collected may be commingled in the accounts of the Air Carrier with other funds collected during the normal course of business.

As such, the AIF Monies collected on behalf of the GTAA did not form part of Lynx Air's property.

Quantum of AIF Monies

Section 5 of the GTAA’s Air Carrier – Application for Entry provides that the Letter of Credit constituted a security deposit “in an amount calculated by the GTAA Finance Controller for Landing Fees, General Terminal Fees, Apron Fees, Check-In Fees and Airport Improvement Fees”. We understand from the revised Schedule A-1 for summer 2023¹ that the Letter of Credit was allocated as follows:

Aeronautical Related Security Deposit Requirement	\$1,596,943	52.08%
AIF Security Deposit Requirement	\$1,469,170	47.92%
Total Security Deposit Requirement	\$3,066,113	

The security deposit was increased to \$3,100,000 in June 2023. On or around March 1, 2024, the GTAA drew on the Irrevocable Standby Letter of Credit (No. 356141) issued in favour of the GTAA on April 12, 2022, in the amount of \$3,100,000, as amended, for the account of Lynx Air (the “**Letter of Credit**”).²

Lynx Air has reviewed its accounting records to calculate pre-filing and post-filing AIF Monies that had been collected and held in trust by Lynx Air as follows:

Pre-Filing	Post-Filing	Letter of Credit Drawn	Total Outstanding AIF Monies
\$1,782,424	\$5,959	(\$3,100,000)	\$0

Lynx Air has made the post-filing AIF remittances to the GTAA to satisfy the latter, and the Letter of Credit was applied against pre-filing AIF Monies in priority over secured and unsecured debt claims. As such, all AIF Monies have been remitted to the GTAA. The remainder of the Letter of Credit – \$1,311,617 – satisfied a portion of the pre-filing debt owed by Lynx Air to the GTAA. Accordingly, any residual amounts claimed by the GTAA constitutes unsecured pre-filing debt.

¹ Email and attachments from Nadia Roopchand to Mike Woodward dated March 24, 2023.

² Letter from MLT Aikins LLP dated February 28, 2024, regarding ATB Financial’s release of the Letter of Credit funds to the GTAA.

OSLER

Page 3

Based on the foregoing, we respectfully disagree that Lynx Air currently holds any AIF Monies in trust for the GTAA. Indeed, the Letter of Credit has served to put the GTAA in an advantageous position vis-à-vis other Lynx Air creditors because all AIF Monies have been remitted, and a significant portion of unsecured debt was paid. To allocate the Letter of Credit differently would put the GTAA in a far more advantageous position vis-à-vis other creditors, which result would have no support under the CCAA or the common law.

We remain open to meeting with you should the GTAA continue to take a different position having considered the foregoing.

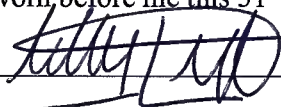
Yours truly,



Tommy Gelbman

cc: Randal Van de Mosselaer and Julie Treleaven, *Osler, Hoskin & Harcourt LLP*
Sean Collins and Walker MacLeod, *McCarthy Tetrault LLP*
Deryck Helkaa and Dustin Olver, *FTI Consulting Canada Inc.*

This is **Exhibit "L"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.

A handwritten signature in black ink, appearing to read 'Ashley Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law



Calgary

April 15, 2024

Tommy Gelbman
Direct Dial: 403.260.7073
TGelbman@osler.com
Our Matter Number: 1246361

Toronto

Montréal

Sent By Email

Ottawa

Stikeman Elliot
888 3rd Street S.W.
4200 Bankers Hall West
Calgary, AB T2P 5C5

Vancouver

New York

Attention: Karen Fellowes, K.C.

**Re: In the matter of the *Companies' Creditors Arrangement Act* proceedings of
1263343 Alberta Inc. dba Lynx Air and Lynx Air Holdings Corporation**

Further to our April 2 and 9, 2024 correspondence, we write to set out the Applicants' position regarding the Airport Authorities' (as defined below) asserted trust claims over pre-filing Airport Improvement Fees (the "**AIF Monies**") collected by 1263343 Alberta Inc. ("**126**") on behalf of the Airport Authorities.

Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the February 22, 2024 affidavit of Michael Woodward.

We understand that Calgary Airport Authority, Edmonton Regional Airport Authority, Halifax International Airport Authority, Vancouver Airport Authority, and Winnipeg Airport Authority Inc. (collectively, the "**Airport Authorities**"), among others, are parties to a May 31, 1999 Memorandum of Agreement (the "**MOA**"), as amended January 20, 2004.¹ The MOA is the only agreement we are aware of that governs the collection and remittance of AIF Monies.² 126 is a party to the MOA.

We could find nothing in the MOA to support the Airport Authorities' assertion that the MOA creates a trust relationship. There is also no authority to support the assertion that 126's collection of AIF Monies on its own creates a trust in favour of the Airport Authorities.

The only provision in the MOA that speaks to the nature of the relationship between 126 and each respective Airport Authority is section 20.1, which contemplates an agency agreement and expressly disclaims a trust relationship:

¹ Pursuant to an executed Accession to Memorandum of Agreement dated April 6, 2022, Lynx Air agreed to be bound to the terms of the MOA on April 6, 2022.

² MOA, sections 1.1.

The Parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise. Nothing contained in this MOA nor any acts of any Party taken in conjunction hereunder, shall constitute or be deemed to constitute a partnership, joint venture, or principal/agency relationship in any way or for any purpose except as the Signatory Air Carriers acting as agents for the Airports in collecting and remitting the AIF funds. Except as expressly set forth herein, no Party, shall have any authority to act for, or to assume any obligations or responsibility on behalf of, any other Party.

As such, the Applicants have determined that none of the AIF Monies collected by 126 is held in trust for the Airport Authorities, and all such claims are unsecured debt.

According to the Applicants' records, the following AIF Monies were collected pre-filing on behalf of the Airport Authorities:

Airport	Pre-filing AIF Monies	Deposit /LC
Calgary Airport	\$2,031,140	–
Vancouver Airport	\$1,185,768	(\$279,900)
Winnipeg Airport	\$267,943	(\$83,300)
Edmonton Airport	\$355,641	–
Halifax Airport	\$365,789	(\$100,000)

We understand that Halifax, Vancouver, and Winnipeg have drawn on their respective letters of credit or security deposits, thereby reducing the debt owed and putting them in an advantageous position vis-à-vis other creditors. All post-filing AIF Monies owed to the Airport Authorities have been paid.

We remain open to meeting with you should the Airport Authorities take a different position or have relevant information that may affect the foregoing analysis.

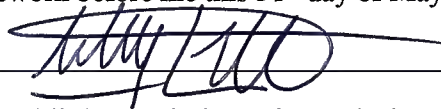
Yours truly,



Tommy Gelbman

cc: Randal Van de Mosselaer and Julie Treleaven, *Osler, Hoskin & Harcourt LLP*
 Sean Collins and Walker MacLeod, *McCarthy Tetrault LLP*
 Deryck Helkaa and Dustin Olver, *FTI Consulting Canada Inc.*

This is **Exhibit "M"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.

A handwritten signature in black ink, appearing to read 'Ashley Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law



MLT Aikins LLP
 2100 - 222 3rd Avenue SW
 Calgary, AB T2P 0B4
 T: (403) 693-4300
 F: (403) 508-4349

April 1, 2024

VIA EMAIL (rvandemosselaer@osler.com)

Osler, Hoskin & Harcourt LLP
 Suite 2700, Brookfield Place
 225 – 6th Avenue SW
 Calgary, AB T2P 1N2

Ryan Zahara
 Direct Line: (403) 693-5420
 E-mail: rzahara@mltaikins.com

Regie Agcaoili
 Legal Assistant
 Direct Line: (403) 693-5402
 E-mail: ragcaoili@mltaikins.com

Attention: Randal Van de Mosselaer

Re: Lynx Air Holdings Corporation and 1263343 Alberta Inc., dba Lynx Air (collectively “Lynx Air”) Companies’ Creditors Arrangement Act (“CCAA”) Proceedings and ATB Financial’s Release of Letter of Credit Funds to Greater Toronto Airport Authority

We are counsel to ATB Financial (“**ATB**”).

We write to advise that ATB has received a request from the Vancouver Airport Authority (the “**VAA**”) dated March 25, 2024 advising that it is entitled to receive payment under an Irrevocable Standby Letter of Credit No. 3539860 in the full sum of \$279,645.96 for the account of Lynx Air (the “**Letter of Credit**”). A copy of the demand on the Letter of Credit is enclosed to this correspondence.

VAA has instructed ATB to immediately transfer the sum of \$279,645.96 to VAA via wire transfer payment. We write to confirm that ATB will transfer the full amount of \$279,645.96 to VAA by 4:00 p.m. April 3, 2024.

ATB has a draw fee of 0.25% with a minimum charge of \$400 and a maximum charge of \$1,500 (the “**Draw Fee**”). The Draw Fee to fund VAA’s demand on the Letter of Credit will be \$699.11. ATB will be debiting the \$699.11 Draw Fee for this transaction from the funds in Lynx Air’s ATB operating account.

The Letter of Credit simply requires a demand from VAA for ATB to be obligated to make payments under such Letter of Credit. VAA has made that demand and ATB is now obligated to make such payment to VAA. ATB will then proceed to set-off against the cash collateral of Lynx Air that it currently holds to satisfy the obligations paid under the Letter of Credit.

After funding the VAA Letter of Credit, ATB will be holding cash collateral from Lynx Air to secure a number of Irrevocable Letters of Credit in the total amount of \$50,000.00 CAD and \$1,027,613.62 USD (the “**Cash Collateral**”).

Please advise by no later than 12:00 p.m. on Tuesday, April 2, 2024 if your client has any issues with ATB’s release of funds to VAA under the Letter of Credit and the set-off against the cash

MLT AIKINS

WESTERN CANADA'S LAW FIRM

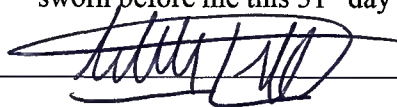
collateral as set out above to enable ATB sufficient time to cash the applicable GIC and process the necessary wire payment.

Yours truly,

**MLT AIKINS LLP**

For: Ryan Zahara

This is **Exhibit "N"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.

A handwritten signature in black ink, appearing to read 'Ashley Light', written over a horizontal line.

Notary Public/Commissioner for Oaths in and for Alberta

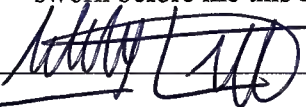
ASHLEY ELIZABETH LIGHT
Student-at-Law

Lynx Air
 Pre-Filing Payment Summary
 As At May 29, 2024

	<u>Airport Code</u>	<u>Pre-Filing AIF</u>	<u>Aeronautical Charges</u>	<u>Letter of Credit</u>	<u>Total Net Outstanding - Pre-Filing</u>	<u>Post-Filing Overpayment</u>	<u>Total Net Outstanding</u>	<u>AIF Less LC</u>	<u>Other Debt</u>
Edmonton Regional Airports Authority	ERAA	YEG	\$355,640.78	\$114,237.51	-	\$466,710.40	\$355,640.78	\$114,237.51	
Halifax International Airports Authority	HIAA	YHZ	\$365,788.78	\$53,647.02	(\$100,000.00)	\$319,435.80	\$265,788.78	\$53,647.02	
Vancouver Airport Authority	VAA	YVR	\$1,185,768.45	\$204,109.05	(\$279,645.96)	\$1,110,231.54	\$906,122.49	\$204,109.05	
Winnipeg Airports Authority Inc.	WAA	YWG	\$282,895.00	\$131,568.94	(\$83,300.00)	\$331,163.94	\$199,595.00	\$131,568.94	
Calgary Airport Authority	CAA	YYC	\$2,031,140.16	\$1,431,308.26	-	\$3,462,448.42	\$2,031,140.16	\$1,431,308.26	
Greater Toronto Airport Authority	GTAA	YYZ	\$1,782,424.04	\$2,977,156.83	(\$3,100,000.00)	\$1,659,580.87	(\$1,317,575.96)	\$1,659,580.87	
Total			\$6,003,657.21	\$4,912,027.61	(\$3,562,945.96)	\$7,352,738.86	(\$11,867.37)	\$7,340,871.50	\$2,440,711.25

	<u>Airport Code</u>	<u>Claimed Amount</u>	<u>Total Net Outstanding</u>	<u>Delta to min Outstanding or AIF</u>	<u>Reconciliation</u>
Edmonton Regional Airports Authority	ERAA	YEG	\$355,640.79	\$466,710.40	\$0.01 Matches to AIF
Halifax International Airports Authority	HIAA	YHZ	\$319,435.80	\$319,435.80	- Matches to Net Outstanding
Vancouver Airport Authority	VAA	YVR	\$1,110,231.54	\$1,101,532.07	\$8,699.47 Post-Filing Overpayment
Winnipeg Airports Authority Inc.	WAA	YWG	\$282,895.00	\$331,163.94	- Matches to AIF
Calgary Airport Authority	CAA	YYC	\$2,031,140.16	\$3,462,448.42	- Matches to AIF
Greater Toronto Airport Authority	GTAA	YYZ	\$1,659,580.87	\$1,659,580.87	- Matches to Net Outstanding
Total		\$5,758,924.16	\$7,340,871.50	\$8,699.48	

This is **Exhibit "O"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.



Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law

February 22, 2024

Edmonton Regional Airports Authority
1, 1000 Airport Road
Edmonton International Airport, AB, T9E 0V3

Re: Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba as Lynx Air (collectively, "Lynx Air" or the "Applicants")

Dear Edmonton Regional Airports Authority

”

On February 22, 2024 (the "**Filing Date**"), the Applicants sought and obtained an initial order (the "**Initial Order**") under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCA**") from the Court of King's Bench of Alberta (the "**Court**"). The Initial Order provides, among other things, a stay of proceedings until and including March 4, 2024 (the "**Stay Period**") which may be extended by the Court from time to time. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as monitor (the "**Monitor**") of the Applicants. A copy of the Initial Order and other publicly available materials filed in connection with the CCA proceedings may be obtained on the Monitor's website at <http://cfcanada.fticonsulting.com/lynxair> or on request from the Monitor by calling 1-833-738-7742 or emailing lynxair@fticonsulting.com. The Applicants will continue operations pursuant to the terms of the Initial Order until midnight Mountain Time on February 25, 2024.

We set out in this letter the terms on which Lynx Air agrees to provide Edmonton Regional Airports Authority ("Edmonton Regional Airports Authority." or the "**Supplier**") with advance payments in the amount of CAD\$3,786 (the "**Advance Payments**") in respect of goods and/or services provided to Lynx Air from and after the Filing Date, and to obtain your agreement to those terms.

The Advance Payments that you are entitled to relate to our planned and flown schedule from Thursday February 22, 2024, to Sunday February 25, 2024. That schedule's impact on you as the Supplier includes the flights and dollar amounts as set out in Schedule "**A**". To the extent there are any over or under-payments related to the below schedule as a result of service, price, or FX rate, the Company is authorized to either collect back from you or pay the balance on Monday February 26.

Advance Payments will be made on the express condition that you agree (i) not to allocate, set-off or otherwise apply the Advance Payments paid by Lynx Air to you after the Filing Date to any debts owing to you by Lynx Air for goods and/or services provided to Lynx Air prior to the Filing Date, and (ii) you agree to immediately ship or supply the goods or services to which the Advance Payments correspond without the requirement of any other payment or condition, and on the same terms and conditions as those goods or services were previously provided.



In the event that Lynx Air no longer requires services from the Supplier, Lynx Air will advise the Supplier, and the Supplier irrevocably agrees to return any unapplied balance of Advance Payments to Lynx Air.

If you agree to these terms relating to the treatment of the Advance Payments, please sign and return a copy of this letter to indicate your agreement.

Thank you for your consideration of this matter.

Yours truly,

Mike Woodward
Chief Financial Officer

cc: FTI Consulting Canada Inc., in its capacity as Monitor of the Applicants, and not in its personal or corporate capacity

Terms set out in this letter agreed to on February [.] ____, 2024

Edmonton Regional Airports Authority

By:

Authorized Signatory

Name:
Position:

Schedule A



Date	Flight Number - Sector	Departure Time	Flight Path	Terminal (C\$)	Terminal Vendor
February 22, 2024	136 - YYZYEG	09:20 PM	YYZYEG		Edmonton Regional Airports Authority
February 23, 2024	520 - YHZYYZYEG	09:20 PM	YYZYEG		Edmonton Regional Airports Authority
February 25, 2024	136 - YYZYEG	09:20 PM	YYZYEG		Edmonton Regional Airports Authority
Total (C\$)				\$3,786	
Foreign Exchange Rate				1.3500	
Total (US\$)				\$2,804	

February 22, 2024

Vancouver Airport Authority
PO Box 44638
YVR Domestic Terminal RPO
Richmond, BC, V7B 1W2

Re: Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba as Lynx Air (collectively, "Lynx Air" or the "Applicants")

Dear Vancouver Airport Authority.,

On February 22, 2024 (the "**Filing Date**"), the Applicants sought and obtained an initial order (the "**Initial Order**") under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCA**") from the Court of King's Bench of Alberta (the "**Court**"). The Initial Order provides, among other things, a stay of proceedings until and including March 4, 2024 (the "**Stay Period**") which may be extended by the Court from time to time. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as monitor (the "**Monitor**") of the Applicants. A copy of the Initial Order and other publicly available materials filed in connection with the CCA proceedings may be obtained on the Monitor's website at <http://cfcanada.fticonsulting.com/lynxair> or on request from the Monitor by calling 1-833-738-7742 or emailing lynxair@fticonsulting.com. The Applicants will continue operations pursuant to the terms of the Initial Order until midnight Mountain Time on February 25, 2024.

We set out in this letter the terms on which Lynx Air agrees to provide Vancouver Airport Authority ("Vancouver Airport Authority." or the "**Supplier**") with advance payments in the amount of CAD\$7,063.42 (the "**Advance Payments**") in respect of goods and/or services provided to Lynx Air from and after the Filing Date, and to obtain your agreement to those terms.

The Advance Payments that you are entitled to relate to our planned and flown schedule from Thursday February 22, 2024, to Sunday February 25, 2024. That schedule's impact on you as the Supplier includes the flights and dollar amounts as set out in Schedule "**A**". To the extent there are any over or under-payments related to the below schedule as a result of service, price, or FX rate, the Company is authorized to either collect back from you or pay the balance on Monday February 26.

Advance Payments will be made on the express condition that you agree (i) not to allocate, set-off or otherwise apply the Advance Payments paid by Lynx Air to you after the Filing Date to any debts owing to you by Lynx Air for goods and/or services provided to Lynx Air prior to the Filing Date, and (ii) you agree to immediately ship or supply the goods or services to which the Advance Payments correspond without the requirement of any other payment or condition, and on the same terms and conditions as those goods or services were previously provided.



In the event that Lynx Air no longer requires services from the Supplier, Lynx Air will advise the Supplier, and the Supplier irrevocably agrees to return any unapplied balance of Advance Payments to Lynx Air.

If you agree to these terms relating to the treatment of the Advance Payments, please sign and return a copy of this letter to indicate your agreement.

Thank you for your consideration of this matter.

Yours truly,

Mike Woodward
Chief Financial Officer

cc: FTI Consulting Canada Inc., in its capacity as Monitor of the Applicants, and not in its personal or corporate capacity

Terms set out in this letter agreed to on February [.] ____, 2024

Vancouver Airport Authority

By:

Authorized Signatory

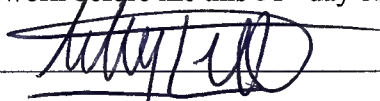
Name:
Position:

Schedule A



Date	Flight Number - Sector	Departure Time	Flight Path	Terminal (C\$)	Terminal Vendor
February 22, 2024	112 - YYZYVR	09:00 AM	YYZYVR		Vancouver Airport Authority
February 22, 2024	104 - YYCYVR	12:00 PM	YYCYVR		Vancouver Airport Authority
February 22, 2024	166 - YULYVR	05:45 PM	YULYVR		Vancouver Airport Authority
February 22, 2024	106 - YYCYVR	06:55 PM	YYCYVR		Vancouver Airport Authority
February 22, 2024	114 - YYZYVR	08:00 PM	YYZYVR		Vancouver Airport Authority
February 23, 2024	166 - YULYVR	05:45 PM	YULYVR		Vancouver Airport Authority
February 23, 2024	106 - YYCYVR	07:10 PM	YYCYVR		Vancouver Airport Authority
February 23, 2024	104 - YYCYVR	05:00 PM	YYCYVR		Vancouver Airport Authority
February 23, 2024	114 - YYZYVR	08:00 PM	YYZYVR		Vancouver Airport Authority
February 24, 2024	746 - MCOYVR	06:20 PM	MCOYVR		Vancouver Airport Authority
February 24, 2024	100 - YYCYVR	09:00 AM	YYCYVR		Vancouver Airport Authority
February 24, 2024	114 - YYZYVR	08:00 PM	YYZYVR		Vancouver Airport Authority
February 25, 2024	114 - YYZYVR	08:00 PM	YYZYVR		Vancouver Airport Authority
February 25, 2024	112 - YYZYVR	07:55 AM	YYZYVR		Vancouver Airport Authority
Total (C\$)				\$7,063	
Foreign Exchange Rate				1.3500	
Total (US\$)				\$5,232	

This is **Exhibit "P"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.



Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law

Schedule A



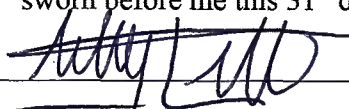
Date	Flight Number - Sector	Departure Time	Flight Path	Total (C\$)	Vendor	AIF
February 22, 2024	112 - YYZYVR	09:00 AM	YYZYVR		Vancouver Airport Authority	
February 22, 2024	104 - YYCYVR	12:00 PM	YYCYVR		Vancouver Airport Authority	
February 22, 2024	106 - YULYVR	05:45 PM	YULYVR		Vancouver Airport Authority	
February 22, 2024	108 - YYCYVR	08:55 PM	YYCYVR		Vancouver Airport Authority	
February 22, 2024	114 - YYZYVR	08:00 PM	YYZYVR		Vancouver Airport Authority	
February 23, 2024	108 - YYCYVR	07:10 PM	YYCYVR		Vancouver Airport Authority	
February 23, 2024	104 - YYCYVR	05:00 PM	YYCYVR		Vancouver Airport Authority	
February 23, 2024	114 - YYZYVR	08:00 PM	YYZYVR		Vancouver Airport Authority	
February 24, 2024	100 - YYCYVR	09:00 AM	YYCYVR		Vancouver Airport Authority	
February 24, 2024	114 - YYZYVR	08:00 PM	YYZYVR		Vancouver Airport Authority	
February 25, 2024	114 - YYZYVR	08:00 PM	YYZYVR		Vancouver Airport Authority	
February 25, 2024	112 - YYZYVR	07:55 AM	YYZYVR		Vancouver Airport Authority	
February 22, 2024	185 - YVRYUL	08:55 AM	YVRYUL		Vancouver Airport Authority	25
February 22, 2024	113 - YVRYYZ	12:25 PM	YVRYYZ		Vancouver Airport Authority	25
February 22, 2024	105 - YVRYYC	01:30 PM	YVRYYC		Vancouver Airport Authority	25
February 22, 2024	107 - YVRYYC	08:30 PM	YVRYYC		Vancouver Airport Authority	25
February 22, 2024	115 - YVRYYZ	11:30 PM	YVRYYZ		Vancouver Airport Authority	25
February 23, 2024	105 - YVRYYC	06:30 PM	YVRYYC		Vancouver Airport Authority	25
February 23, 2024	107 - YVRYYC	08:45 PM	YVRYYC		Vancouver Airport Authority	25
February 23, 2024	115 - YVRYYZ	11:30 PM	YVRYYZ		Vancouver Airport Authority	25
February 24, 2024	101 - YVRYYC	10:35 AM	YVRYYC		Vancouver Airport Authority	25
February 24, 2024	115 - YVRYYZ	11:30 PM	YVRYYZ		Vancouver Airport Authority	25
February 25, 2024	107 - YVRYYC	08:30 PM	YVRYYC		Vancouver Airport Authority	25
February 25, 2024	2040 - YVRYYC	11:30 PM	YVRYYC		Vancouver Airport Authority	25
February 25, 2024	2042 - YVRYYC	11:30 AM	YVRYYC		Vancouver Airport Authority	25
Total (C\$)				\$58,236		
Foreign Exchange Rate				1.3500		
Total (US\$)				\$43,138		

Schedule A



Date	Flight Number - Sector	Departure Time	Flight Path	Total (C\$)	Vendor
February 22, 2024	136 - YYZ YEG	09:20 PM	YYZ YEG		Edmonton Regional Airports Authority
February 23, 2024	520 - YHZ YYZ YEG	09:20 PM	YYZ YEG		Edmonton Regional Airports Authority
February 25, 2024	136 - YYZ YEG	09:20 PM	YYZ YEG		Edmonton Regional Airports Authority
February 22, 2024	145 - YEG YYZ	12:50 AM	YEG YYZ		Edmonton Regional Airports Authority
February 23, 2024	145 - YEG YYZ	12:50 AM	YEG YYZ		Edmonton Regional Airports Authority
February 24, 2024	145 - YEG YYZ	12:50 AM	YEG YYZ		Edmonton Regional Airports Authority
February 28, 2024	2044 - YEG YYC	1:00 AM	YEG YYC		Edmonton Regional Airports Authority
Total (C\$)				\$27,061	
Foreign Exchange Rate				1.3500	
Total (US\$)				\$20,045	

This is **Exhibit "Q"** to the Affidavit of Michael Woodward
sworn before me this 31st day of May 2024.



Notary Public/Commissioner for Oaths in and for Alberta

ASHLEY ELIZABETH LIGHT
Student-at-Law



WESTERN CANADA'S LAW FIRM

MLT Aikins LLP
 2100 - 222 3rd Avenue SW
 Calgary, AB T2P 0B4
 T: (403) 693-4300
 F: (403) 508-4349

February 28, 2024

VIA EMAIL (rvandemosselaer@osler.com)

Osler, Hoskin & Harcourt LLP
 Suite 2700, Brookfield Place
 225 – 6th Avenue SW
 Calgary, AB T2P 1N2

Ryan Zahara

Direct Line: (403) 693-5420
 E-mail: rzahara@mltaikins.com

Regie Agcaoili
Legal Assistant

Direct Line: (403) 693-5402
 E-mail: ragcaoili@mltaikins.com

Attention: Randal Van de Mosselaer

Re: Lynx Air Holdings Corporation and 1263343 Alberta Inc., dba Lynx Air (collectively "Lynx Air") Companies' Creditors Arrangement Act ("CAA") Proceedings and ATB Financial's Release of Letter of Credit Funds to Greater Toronto Airport Authority

We are counsel to ATB Financial ("**ATB**").

We write to advise that ATB has received a request from the Greater Toronto Airport Authority (the "**GTAA**") dated February 23, 2024 advising that it is entitled to receive payment under an Irrevocable Standby Letter of Credit No. 356141, issued April 12, 2022 in the full sum of \$3,100,000, as amended, for the account of Lynx Air (the "**Letter of Credit**").

Copies of this correspondence and the Letter of Credit, as amended, are enclosed to this correspondence.

The GTAA has instructed ATB to immediately transfer the sum of \$3,100,000 to the GTAA via wire transfer payment. We write to confirm that ATB will transfer the full amount of \$3,100,000 to the GTAA by March 1, 2024 at 12:00 p.m.

The Letter of Credit simply requires a demand for ATB to be obligated to make payments under such Letter of Credit. The GTAA has made that demand and ATB is now obligated to make such payment to GTAA. ATB will then proceed to set-off against the cash collateral of Lynx Air that it currently holds to satisfy the obligations paid under the Letter of Credit.

ATB is currently holding cash collateral from Lynx Air to secure a number of Irrevocable Letters of Credit in the total amount of \$4,354,925.61 (the "**Cash Collateral**").

MLT AIKINS

WESTERN CANADA'S LAW FIRM

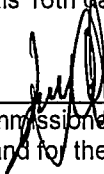
Please advise by no later than 12:00 p.m. on Thursday, February 29, 2024 if your client has any concerns with ATB's release of funds to GTAA under the Letter of Credit and the set-off against the Cash Collateral as set out above to enable ATB sufficient time to cash the applicable GIC and process the necessary wire payment.

Yours truly,

**MLT AIKINS LLP**

For: Ryan Zahara

This is **Exhibit "N"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
In and for Alberta
My Commission Expires September 11, 2026



COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c C-36, as amended
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION AND 1263343 ALBERTA INC. dba LYNX AIR

APPLICANTS EDMONTON REGIONAL AIRPORTS AUTHORITY, HALIFAX INTERNATIONAL AIRPORT AUTHORITY, THE CALGARY AIRPORT AUTHORITY, VANCOUVER AIRPORT AUTHORITY, and WINNIPEG AIRPORTS AUTHORITY INC.

RESPONDENTS LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **BRIEF OF LAW**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
4200 Bankers Hall West
888-3rd Street SW
Calgary, AB T2P 5C5

Karen Fellowes, K.C. / Archer Bell
Tel: (403) 724-9469 / (403) 724-9485
Fax: (403) 266-9034
Email: kfellowes@stikeman.com / abell@stikeman.com
Lawyers for the Applicants,
Edmonton Regional Airports Authority, Halifax International Airport Authority, The Calgary Airport Authority, Vancouver Airport Authority, and Winnipeg Airports Authority Inc.

File No.: 156416.1001

**Hearing via Webex before the Honourable Justice Romaine
presiding on the Calgary Commercial List, on June 24, 2024,
commencing at 2:00 p.m.**

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I. INTRODUCTION

1. The Calgary Airport Authority (“**CAA**”), Edmonton Regional Airports Authority (“**ERAA**”), Vancouver Airport Authority (“**VAA**”), Winnipeg Airport Authority (“**WAA**”), and Halifax International Airport Authority (“**HIAA**” and collectively, the “**Airport Authorities**”) submit this Brief in support of their Application for the following relief: (i) a declaration stating that the unremitted Airport Improvement Fees (“**AIF**”) owed to the Airport Authorities by 1263343 Alberta Inc. dba Lynx Air (“**Lynx**”) is subject to either an express, implied, or constructive trust, and (ii) instructing Lynx to release to the Airport Authorities \$4,099,343.29 from the amount held in reserve by Lynx to satisfy claims relating to AIF.
2. Lynx was obligated to collect AIF from air passengers on behalf of the Airport Authorities and remit that AIF to the Airport Authorities on a monthly basis pursuant to a Memorandum of Agreement (the “**MOA**”) between the Air Transport Association of Canada, the Airport Authorities and certain other airport authorities, and Lynx and certain other air carriers.¹ AIF is critical to the capital expenditure projects that the Airport Authorities undertake to ensure the safety, security, and efficiency of their respective airports.² Lynx, like other air carriers party to the MOA, was obligated to collect AIF on behalf of the Airport Authorities for the purpose of administrative practicality and efficiency.
3. The MOA expressly states that Lynx is to act as agent for the Airport Authorities in collecting and remitting AIF³ and it is implied that AIF is to be held in trust by Lynx until it is remitted. This implied trust relationship and the intention to create a trust is evident from the nature of AIF and how it is collected under the MOA, as well as supporting documents from both Lynx and the Airport Authorities describing the nature of AIF.
4. When Lynx obtained an initial order pursuant to the *Companies’ Creditors Arrangement Act*⁴ (the “**CCAA**”) on February 22, 2024 (the “**Initial Order**”), it owed a total of \$4,099,343.29 to the Airport Authorities in unremitted AIF which had been collected from Lynx’s passengers.⁵ It is clear that the unremitted AIF satisfies the three certainties and is subject to an express or

¹ Affidavit of Diana Vuong, affirmed May 23, 2024 [Vuong Affidavit], Exhibit A, s 4, 6.1, 9.2.

² The federal government owns the airports which are leased to the Airport Authorities. The federal government expects the Airport Authorities to maintain and operate their respective airports while simultaneously remaining financially independent. See “Airport Authorities”, online: *Transport Canada* <<https://tc.canada.ca/en/corporate-services/transparency/briefing-documents-transport-canada/2023-dm/transport-canada-structure-portfolio/shared-governance-organizations/airport-authorities>>. [TAB 1]

³ Vuong Affidavit, *supra* note 1, Exhibit A, s 20.

⁴ RSC 1985, c C-36. [TAB 2]

⁵ Vuong Affidavit, *supra* note 3 at para 14; Affidavit of Leslie Kwasny, affirmed on May 23, 2024 at para 11 [Kwasny Affidavit]; Affidavit of Nicole Stefaniuk, affirmed on May 23, 2024 at para 12 [Stefaniuk Affidavit]; Affidavit of Paul Brigley, sworn on May 23, 2024 at para 13 [Brigley Affidavit]; Affidavit of Jennifer Pon, affirmed on May 23, 2024 at para 11 [Pon Affidavit].

implied trust. It does not form part of Lynx's property, is not available to satisfy the claims of creditors, and should be handed over to the Airport Authorities.

5. Alternatively, the Airport Authorities submit that equity and good conscience require that the unremitted AIF be made subject to a constructive trust in order to avoid unjustly enriching Lynx and its creditors to the detriment of the Airport Authorities and, ultimately, the Canadian public who have paid the AIF and would otherwise benefit from the public infrastructure investments that AIF is intended to facilitate.

II. STATEMENT OF FACTS

6. In the late 1980s, the federal government decided to transfer authority over airports in Canada to certain designated airport authorities. This transfer officially began in 1992 with the introduction of the *Airport Transfer (Miscellaneous Matters) Act*⁶ which allowed the federal government to retain ownership of 26 so-called National Airport System airports while leasing these airports to locally-controlled, not-for-profit, non-share, private sector airport authorities, including the Airport Authorities. The Airport Authorities were leased their respective airports by the federal government on the following dates:

- (a) VAA, CAA and ERAA in 1992;⁷
- (b) WAA in 1996; and⁸
- (c) HIAA in 2000.⁹

7. The result of these transfers is that the federal government retains ownership of the airports, collects lease payments from the Airport Authorities which are not invested back into the airports, and avoids the financial burden of maintaining, improving and expanding airports by transferring all financial liability to the Airport Authorities. Despite this transfer of responsibility, the Airport Authorities are all not-for-profit entities¹⁰ and are expected to provide a public service. As such, the Airport Authorities are responsible for managing and operating their respective airports for the benefit of the general public. In order to do so, the Airport

⁶ SC 1992, c 5. [TAB 3]

⁷ Vuong Affidavit, *supra* note 3 at para 5; Pon Affidavit, *supra* note 5 at para 4; Kwasny Affidavit, *supra* note 5 at para 4.

⁸ Stefaniuk Affidavit, *supra* note 5 at para 4.

⁹ Brigley Affidavit, *supra* note 5 at para 4.

¹⁰ VAA, WAA and HIAA are incorporated under the *Canada Not-for Profit Corporations Act*, SC 2009, c 23 while CAA and ERAA are incorporated under the *Regional Airports Authorities Act*, RSA 2000, c R-9 which states at section 22(2) that "(a)n authority shall not operate for profit and shall apply all its surpluses toward promoting its purposes."

Authorities must regularly undertake capital expenditure projects to maintain, improve, and/or expand their respective airports.¹¹

8. In order to fund these necessary capital expenditure projects, the Airport Authorities each established that all departing passengers must pay AIF to the Airport Authorities. Furthermore, to facilitate the practical and efficient collection of AIF, the Airport Authorities became signatories to the MOA. Lynx became a signatory to the MOA on April 6, 2022.¹²
9. The MOA recognizes that airport authorities have the responsibility to manage, operate and develop the airports for which they are responsible. As noted in the MOA, in order to meet the air traffic demands on their respective airports and ensure that the public has access to quality air transport, the Airport Authorities from time to time must undertake capital expenditure projects. As stated in the preamble to the MOA, the MOA is a mechanism that allows the Airport Authorities to obtain the funds to undertake such capital expenditure projects by imposing fees or charges upon all departing airport passengers in the form of AIF. AIF is critical to the health and financial viability of Canadian airports. As non-profits under a user-pay model, it would be incredibly challenging for the Airport Authorities to fund the required capital expenditure projects to maintain the safety, security, and efficiency of their respective airports without the ability to charge AIF.¹³
10. Pursuant to section 6.1 of the MOA, the decision to charge AIF and at what rate to charge it at are made by each of the Airport Authorities.¹⁴ Further pursuant to the MOA, signatory air carriers such as Lynx agree to collect and remit AIF on behalf of the Airport Authorities.¹⁵
11. During the time that Lynx was a signatory air carrier to the MOA, the Airport Authorities mandated the following rates for AIF to be charged to passengers and collected by Lynx:
 - (a) ERAA: \$35.00 per passenger;¹⁶
 - (b) HIAA: \$22.00 per intraprovincial passenger and \$35.00 per interprovincial and international passenger;¹⁷
 - (c) WAA: \$38.00 per passenger;¹⁸

¹¹ Vuong Affidavit, *supra* note 3 at paras 5-6; Kwasny Affidavit, *supra* note 5 at para 5; Stefaniuk Affidavit, *supra* note 5 at paras 5-6; Brigley Affidavit, *supra* note 5 at paras 5-6; Pon Affidavit, *supra* note 5 at para 5.

¹² Vuong Affidavit, *supra* note 3 at paras 2-3; Kwasny Affidavit, *supra* note 5 at paras 2-3, 6; Stefaniuk Affidavit, *supra* note 5 at paras 2-3; Brigley Affidavit, *supra* note 5 at paras 2-3; Pon Affidavit, *supra* note 5 at paras 2-3, 6.

¹³ Vuong Affidavit, *supra* note 3 at para 6; Kwasny Affidavit, *supra* note 5 at para 6; Stefaniuk Affidavit, *supra* note 5 at para 6; Brigley Affidavit, *supra* note 5 at para 6; Pon Affidavit, *supra* note 5 at para 6.

¹⁴ Vuong Affidavit, *supra* note 3, Exhibit A, s 6.1.

¹⁵ Vuong Affidavit, *supra* note 3, Exhibit A, s 4.

¹⁶ Kwasny Affidavit, *supra* note 5 at para 8.

¹⁷ Brigley Affidavit, *supra* note 5 at para 8.

- (d) CAA: \$35.00 per passenger;¹⁹ and
 - (e) VAA: \$5.00 per passenger flying within British Columbia or the Yukon and \$25.00 per passenger flying to all other destinations.²⁰
12. In its reservation terms and conditions for passengers (the “**T&Cs**”), Lynx represented to its passengers that “Airport Improvement Fees (AIF) ... are generally collected by Lynx at the time of booking. Lynx collects these fees from passengers and remits them directly to the airports.”²¹
13. After collecting the AIF from its passengers on behalf of the Airport Authorities, Lynx was to remit the AIF to the Airport Authorities on a monthly basis. However, at the time that Lynx was granted the Initial Order, it was in arrears on its remittance of AIF to the Airport Authorities. The Airport Authorities are currently owed the following amounts by Lynx for unremitted AIF (following application of any deposits or letters of credit, as further detailed below):
- (a) ERAA: \$355,640.79;²²
 - (b) HIAA: \$319,435.80;²³
 - (c) WAA: \$282,895.00;²⁴
 - (d) CAA: \$2,031,140.16;²⁵ and
 - (e) VAA: \$1,110,231.54.²⁶
14. When Lynx began operating out of the Airport Authorities’ respective airports, certain of the Airport Authorities required Lynx to provide either cash deposits or letters of credit. As further detailed below, these cash deposits and letters of credit were intended to secure fees other than AIF, primarily aeronautical fees, and were ultimately applied firstly, if not entirely, to aeronautical fees. Neither the ERAA nor the CAA had cash deposits or letters of credit from

¹⁸ Stefaniuk Affidavit, *supra* note 5 at para 8.

¹⁹ Pon Affidavit, *supra* note 5 at para 8.

²⁰ Vuong Affidavit, *supra* note 3 at para 8.

²¹ *Ibid*, Exhibit C.

²² Kwasny Affidavit, *supra* note 5 at para 11.

²³ Brigley Affidavit, *supra* note 5 at para 13.

²⁴ Stefaniuk Affidavit, *supra* note 5 at para 12.

²⁵ Pon Affidavit, *supra* note 5 at para 11.

²⁶ Vuong Affidavit, *supra* note 3 at para 14.

Lynx and neither has received any of the unremitted AIF owed at the time that the Initial Order was granted.²⁷

15. Pursuant to the WAA's Tariff of Aviation Fees (the "**Tariff**"), the WAA was entitled to require either a cash deposit or an irrevocable letter of credit from Lynx in order to secure the payment of any monies due under the Tariff.²⁸ At the outset of their relationship, the WAA obtained a deposit of \$83,333.00 (the "**WAA Deposit**") from Lynx that was intended to primarily secure aeronautical fees.²⁹ Following the Initial Order, the WAA applied the entirety of the WAA Deposit to unpaid aeronautical fees; no portion of the WAA Deposit was used to satisfy outstanding AIF.³⁰
16. When Lynx began flying out of Vancouver International Airport, the VAA required Lynx to sign the VAA's Airport Use Licence (the "**Licence**").³¹ Pursuant to Article 10 of the Licence, the VAA was entitled to require Lynx to provide the VAA with an irrevocable letter of credit. As such, the VAA required, and Lynx provided, a letter of credit to the VAA in the amount of \$279,645.96 (the "**VAA LOC**"). The purpose of the VAA LOC was primarily to secure aeronautical fees.³² On March 27, 2024, following the Initial Order, the VAA drew on the VAA LOC. The VAA applied the funds received therefrom to outstanding aeronautical fees owed by Lynx to the VAA. After satisfying the outstanding aeronautical fees, the remaining \$75,536.91 was applied to the outstanding AIF amount owing to the VAA.³³
17. Lastly, when Lynx began flying out of Halifax Stanfield International Airport, the HIAA required Lynx to sign an Airport Carrier Operating Agreement (the "**ACOA**").³⁴ Pursuant to the ACOA, Lynx was required to provide the HIAA with a deposit of \$100,000.00 (the "**HIAA Deposit**"). The HIAA Deposit was intended to secure aeronautical fees and the amount of the HIAA Deposit was based on a pre-estimate of three months of aeronautical fees.³⁵ Following the Initial Order, HIAA applied the Deposit to outstanding aeronautical fees owed by Lynx to HIAA. Due to a payment made by Lynx on January 19, 2024 of \$89,752.77 that Lynx instructed be partially applied to aeronautical fees, the amount owed by Lynx in outstanding aeronautical fees at the time of the Initial Order was only \$69,547.64. As such, after the HIAA Deposit was

²⁷ Kwasny Affidavit, *supra* note 5 at para 12; Pon Affidavit, *supra* note 5 at para 12.

²⁸ Stefaniuk Affidavit, *supra* note 5 at para 13, Exhibit B.

²⁹ *Ibid* at para 13.

³⁰ *Ibid*.

³¹ Vuong Affidavit, *supra* note 3 at para 12, Exhibit D.

³² *Ibid* at para 14.

³³ *Ibid*.

³⁴ Brigley Affidavit, *supra* note 5 at para 8, Exhibit B.

³⁵ *Ibid* at para 13.

applied to aeronautical fees, \$30,452.36 was leftover; this residual amount was applied to outstanding AIF.³⁶

III. LAW AND ARGUMENT

A. Trust assets are excluded from a debtor's property in a CCAA proceeding

18. Trust assets are expressly excluded from the definition of "property" in s 67(1)(a) of the *Bankruptcy and Insolvency Act*³⁷ (the "BIA"). There is no such express exclusion in the CCAA, but the Supreme Court of Canada has advocated an approach that seeks to avoid inconsistencies between the two regimes. In *Century Services Inc v Canada (Attorney General)*,³⁸ the Supreme Court specifically noted the desirability of harmonizing the approach of the two statutes with respect to priorities in order to promote restructuring, where possible, and to avoid statute shopping.³⁹ Consistent with this approach, Courts have found that trust assets should be excluded from CCAA proceedings as well. As Justice Zarnett held in *Urbancorp Cumberland 2 GP Inc (Re)*:⁴⁰

The BIA and CCAA are both part of Parliament's scheme for the regulation of insolvency, and to the extent possible, they should be interpreted to afford analogous entitlements to creditors: *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 23. Analogous entitlements would mean, at a minimum, that creditors of the insolvent would have no greater right to assets held by the insolvent in trust than they would in bankruptcy.⁴¹ (emphasis added)

19. Ultimately, section 67(1)(a) of the BIA is merely confirming the reality that trust funds are not the property of the trustee, though they may hold the funds. Though the CCAA does not contain a similar provision confirming this reality, the fact remains that trust funds are not the property of the trustee and therefore are not available for distribution to the trustee's creditors in the event that the trustee becomes insolvent.
20. Accordingly, should this Court agree that the unremitted AIF is subject to an express, implied, or constructive trust, then that unremitted AIF does not form part of Lynx's property. It cannot be distributed amongst Lynx's creditors and must be handed over to its rightful owner, the Airport Authorities.

B. The unremitted AIF is subject to an express or implied trust for the benefit of the Airport Authorities

³⁶ *Ibid.*

³⁷ RSC 1985, c B-3. Section 67(1)(a) of the BIA provides: "The property of a bankrupt divisible among his creditors shall not comprise (a) property held by the bankrupt in trust for any other person [...]". [TAB 4]

³⁸ 2010 SCC 60. [TAB 5]

³⁹ *Ibid* at paras 24, 47.

⁴⁰ 2020 ONCA 197. [TAB 6]

⁴¹ *Ibid* at para 37.

21. The Airport Authorities submit that an express or implied trust exists with respect to unremitted AIF. The establishment of an express or implied trust requires proof of the “three certainties”:
- (a) the certainty of intent to create a trust;
 - (b) the certainty of the subject matter of the trust; and
 - (c) the certainty of the object of the trust.⁴²
22. As further detailed below, the three certainties are all present in this case.

i. Certainty of intent

23. Courts have held that satisfying certainty of intent does not require express use of the word “trust” or other “stilted lawyer’s language”;⁴³ “(t)he use of the word ‘trust’ does not, in and of itself, create a trust, nor does its absence prohibit the finding that a trust has been established”.⁴⁴
24. Instead, it is sufficient that the three certainties are satisfied in substance by the terms of the relevant documents and the conduct of the parties. As held in *Byers v Foley*,⁴⁵ the absence of express trust documentation is not at all fatal to a trust claim:

In the absence of formal trust documentation, the court must look at the surrounding circumstances and the evidence as to what the parties intended, as to what was actually agreed and as to how the parties conducted themselves to determine whether there was “certainty of intention”.⁴⁶

25. In *Rubner v Bistricher*,⁴⁷ the Ontario Court of Appeal held that “(c)ertainty of intention can be express or implied, can arise from words or acts, and does not require that the settlor use the technical language of trust – there is no ‘magic’ in the word ‘trust’.”⁴⁸
26. In order to establish that there was an intention to create a trust, a court need merely be satisfied that the person in possession of the property is obliged to hold it for another’s benefit: “(a) trust will only exist where the trustee is obliged to deal with the property on the

⁴² *Air Canada v M & L Travel Ltd*, [1993] 3 SCR 787 at 803. [TAB 7]

⁴³ *Rubner v Bistricher*, 2019 ONCA 733 at para 54 [*Rubner*]. [TAB 8]

⁴⁴ *Friends of Nellie Lunn et al v Township of Wollaston*, 2023 ONSC 1327 at para 28 [*Nellie Lunn*]. [TAB 9]

⁴⁵ (1993), 109 DLR (4th) 761, 1993 CarswellOnt 558 (WL Can) (Ct J (Gen Div)). [TAB 10]

⁴⁶ *Ibid* at para 15, cited in *Nellie Lunn*, *supra* note 44 at paras 28-29; *Allison v Bent*, 2022 ONSC 6723 at para 56.

TAB 11]

⁴⁷ 2019 ONCA 733.

⁴⁸ *Ibid* at para 53.

beneficiary's behalf. If the purported trustee is permitted, but not required, to deal with the property for the benefit of the beneficiary, then a trust relationship does not exist".⁴⁹

27. In *Firepower Debt GP Inc v TheRedPin, Inc*,⁵⁰ the Court held that certainty of intent must be determined based on substance, noting that the intention to create a trust "may be express or implied and may be determined from words or acts"; it does not require the use of formal documentation, specific language, or even the word "trust":

Certainty of intent requires that it be clear that the donor or settlor intended to create a trust; i.e., that the settlor intended for the property in question to be held for the benefit of another. No formal document evidencing the creation of a trust is required. Nor is it necessary that the settlor use any specific language – even the use of the word "trust" is not necessarily dispositive one way or the other. The question is one of substance – did the settlor evidence an intention that the property be held by one person for another person's benefit? This intention may be express or implied and may be determined from words or acts.⁵¹

28. Though the MOA does not expressly state that Lynx is to act as trustee for the Airport Authorities with respect to AIF, it is clear from the surrounding circumstances and the actions of the parties that the intention was for the AIF funds to be held in trust.
29. Section 20.1 of the MOA sets forth the expected relationship between the parties:

20.0 Nature of Relationships

20.1 The Parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise. Nothing contained in this MOA nor any acts of any Party taken in conjunction hereunder, shall constitute or be deemed to constitute a partnership, joint venture, or principal/agency relationship in any way or for any purpose *except as the Signatory Air Carriers acting as agents for the Airports in collecting and remitting the AIF funds*. Except as expressly set forth herein, no Party, shall have any authority to act for, or to assume any obligations or responsibility on behalf of, any other Party. (emphasis added)⁵²

30. Section 20.1 expressly disclaims an intention to create a trust or agency relationship *except* with relation to Lynx acting as agent for the Airport Authorities in collecting and remitting the AIF funds. This wording implies that Lynx is to act as agent for the Airport Authorities in collecting and remitting the AIF funds and that the AIF funds are intended to be held in trust for the Airport Authorities. It is clear that, pursuant to the MOA, Lynx was required, and not merely permitted, to collect and hold AIF for the benefit of the Airport Authorities. This is further evidenced by the preamble to the MOA which sets forth the agreement's purpose:

⁴⁹ *Ibid* at para 52; Albert H Oosterhoff, Robert Chambers & Mitchel McInnes, *Oosterhoff on Trusts*, 9th ed (Carswell, 2019) at 179 [TAB 12].

⁵⁰ 2018 ONSC 7182. [TAB 13]

⁵¹ *Ibid* at para 15.

⁵² Vuong Affidavit, *supra* note 3, Exhibit A, s 20.1.

WHEREAS Airports have the responsibility to manage, operate and develop the airports for which they are responsible;

AND WHEREAS member air carriers of ATAC are major users of the airport facilities provided by the Airports;

AND WHEREAS Airports may have the requirement to expand their airport facilities to meet traffic demands and in that event will require additional revenues to pay for those expanded facilities;

AND WHEREAS Airports may decide to obtain such additional revenues, in whole or in part, by imposing fees or charges upon passengers using such Airports;

AND WHEREAS Airports may wish to obtain the assistance of air carriers in collecting such fees or charges from passengers;

(...)

AND WHEREAS the Parties jointly wish to establish a regime whereby, in recognition of the establishment of a formal consultation process, Signatory Air Carriers agree to collect on behalf of Airports and remit a fee which an Airport might decide to impose on passengers, all upon and subject to the terms and conditions contained herein;

(...)⁵³

31. This purpose is also set forth in section 1 of the MOA, which states the following:

1.0 Purpose of Memorandum of Agreement

1.1 The Parties agree that this Memorandum of Agreement (“MOA”) establishes the terms in respect of:

- (a) a consultation process regarding the expansion of Airport facilities; and
- (b) the collection of fees by Signatory Air Carriers for Airports from air carrier passengers if an Airport decides to impose such fees to pay for the future expansion of certain Airport facilities.⁵⁴

32. This understanding was further reflected in various documents from both Lynx and the Airport Authorities including, *inter alia*, the following:

- (a) The VAA’s Schedule of Fees and Charges that was signed by Lynx states that “(e)ach Signatory Air Carrier *must* collect the AIF from passengers, *on behalf* of the Airport

⁵³ *Ibid*, Exhibit A.

⁵⁴ *Ibid*, Exhibit A, s 1.1.

Authority, at the rates set out in the Schedule, *and remit the AIF to the Airport Authority in accordance with the MOA*" (emphasis added).⁵⁵

- (b) The HIAA's Air Carrier Operating Agreement that was signed by Lynx states that Lynx "shall collect or cause to be collected from each enplaned passenger the fee then in effect as an airport improvement fee, (...), and shall remit, on a monthly basis no later than the end of the month following the month of enplanement by the departing passengers at the Airport plus any applicable taxes, to HIAA".⁵⁶
- (c) In its Terms and Conditions, Lynx represented to its passengers that "Airport Improvement Fees (AIF) ... are generally collected at the time of booking. Lynx collects these fees from passengers and *remits them directly to the airports*."⁵⁷

33. At all times, the rate that AIF was to be charged at was dictated by the Airport Authorities. The AIF collected by Lynx from its passengers on behalf of the Airport Authorities was tracked by the Airport Authorities and was remitted on a monthly basis.

34. Considering the Agreement and all of the surrounding circumstances, it is clear that the parties intended that AIF collected from passengers by Lynx on behalf of the Airport Authorities be held in trust for the Airport Authorities.

ii. Certainty of subject matter

35. Certainty of subject matter requires that there be identifiable property that is subject to the trust.⁵⁸ This also requires certainty with respect to the quantum of the trust property that the beneficiary is entitled to receive.⁵⁹

36. In this case, the subject of the trust is clear; all moneys collected as AIF from passengers and held by Lynx on behalf of the Airport Authorities. The amounts charged per passenger are stipulated by the Airport Authorities and the Airport Authorities have records accounting for the specific amounts of AIF collected by Lynx but not yet remitted to the Airport Authorities.⁶⁰ Lynx has not disputed any of these amounts and the amounts owing in unremitted AIF are

⁵⁵ *Ibid*, Exhibit B.

⁵⁶ Brigley Affidavit, *supra* note 5 Exhibit B.

⁵⁷ Vuong Affidavit, *supra* note 3, Exhibit C.

⁵⁸ *Rubner*, *supra* note 43 at para 57.

⁵⁹ *Ibid*.

⁶⁰ Vuong Affidavit, *supra* note 3 at para 14; Kwasny Affidavit, *supra* note 5 at para 11; Stefaniuk Affidavit, *supra* note 5 at para 12; Brigley Affidavit, *supra* note 5 at para 13; Pon Affidavit, *supra* note 5 at para 11.

confirmed in the Affidavit of Michael Woodward.⁶¹ In total, the amount owed by Lynx in respect of unremitted AIF, and therefore the subject matter of the trust, is \$4,099,343.29.

37. The fact that the unremitted AIF was held in Lynx's general bank account and commingled with other funds does not detract from certainty of subject matter. This issue was considered in *Guarantee Company of North America v Royal Bank of Canada*,⁶² where the Ontario Court of Appeal held that trust property that was commingled with non-trust monies in the same bank account was not deprived of certainty of subject matter:

[86] The evidence clearly establishes that the funds paid for each paving project were readily ascertainable and identifiable. They were commingled only to the extent they had all been paid into the same account, but they had not been converted to other uses and they did not cease to be traceable to the specific project for which they had been paid.

[87] Commingling of this kind does not deprive trust property of the required element of certainty of subject matter. Commingling of trust money with other money can destroy the element of certainty of subject matter, but only where commingling makes it impossible to identify or trace the trust property.⁶³

38. Regional Senior Justice Morawetz (as he then was) similarly concluded in *Re Redstone Investment Corp*⁶⁴ ("**Redstone**") that the commingling of trust monies in a general account did not defeat a trust claim. In that case, the debtor collected monies on behalf of a lender pursuant to an agency agreement. The absence of an agreement to hold funds collected in a separate account is not determinative of whether a trust relationship exists.⁶⁵

iii. Certainty of object

39. Certainty of object simply requires that the beneficiaries of the trust be clearly identified.⁶⁶ In this case, there is no uncertainty: per the MOA, the beneficiary of the trust is clearly the Airport Authorities.
40. As a result of the foregoing, it is clear that the parties intended AIF to be subject to either an express or implied trust.

C. A constructive trust exists with respect to unremitted AIF

⁶¹ Affidavit of Michael Woodward, sworn on May 31, 2024 at para 49.

⁶² 2019 ONCA 9. [TAB 14]

⁶³ *Ibid* at paras 86-87.

⁶⁴ 2015 ONSC 533 [*Redstone*]. [TAB 15]

⁶⁵ *Ibid* at paras 62-66.

⁶⁶ *Rubner*, *supra* note 43 at para 59.

41. In the alternative, the Airport Authorities submit that equity and good conscience require a constructive trust be imposed over the unremitted AIF held by Lynx on behalf of the Airport Authorities.
42. The creation of a constructive trust is an equitable remedy and is highly discretionary. Courts have held that the remedy must be exercised flexibly and with common sense.⁶⁷ In *Soulos v Korkontzilas*,⁶⁸ the Supreme Court of Canada held that “a constructive trust may be imposed where good conscience so requires” and that equitable remedies such as constructive trusts are a flexible remedy that must be “based on what is just in all the circumstances of the case.”⁶⁹
43. Constructive trusts are typically established in three situations:
- (a) Unjust Enrichment: A constructive trust can be established when one party is enriched at the expense of another party and there is no juristic reason to justify the enrichment.
 - (b) Wrongful Conduct: A constructive trust can be established when one party has committed a wrong and the disgorgement of the resulting benefit is the appropriate remedy.
 - (c) Perfecting Intentions: A constructive trust can be established where equity requires that the stated intentions of the parties be perfected or performed.⁷⁰
44. As further detailed below, the Airport Authorities submit that a constructive trust exists with respect to unremitted AIF on the basis of both unjust enrichment and wrongful conduct.

i. Unjust Enrichment

45. Where the following three elements of unjust enrichment are proven, the Court may find a constructive trust:
- (a) the defendant was enriched;
 - (b) the plaintiff suffered a corresponding deprivation; and
 - (c) there is an absence of any juristic reason for the transfer.⁷¹

⁶⁷ *Peter v Beblow*, [1993] 1 SCR 980, 1993 CarswellBC 44 (WL Can) at para 30. [TAB 16]

⁶⁸ [1997] 2 SCR 217 [*Soulos*]. [TAB 17]

⁶⁹ *Ibid* at 236.

⁷⁰ Oosterhoff, *supra* note 49 at 673.

46. All three of these requirements are made out in this case. Lynx was required to collect AIF from its passengers and remit it to the Airport Authorities. Lynx failed to remit the AIF it collected and therefore was enriched in the amount of \$4,099,343.29. The Airport Authorities suffered a corresponding deprivation of \$4,099,343.29, funds that otherwise would have been used to maintain and improve their respective airports for the benefit of the general public.
47. Furthermore, there is no juristic reason that exists that would justify Lynx's retention of the unremitted AIF. The Agreement expressly states that Lynx, acting as agent for the Airport Authorities, is to collect the AIF from passengers and remit then remit the AIF to the Airport Authorities on a monthly basis. Lynx has no legal or beneficial claim to these funds. As further detailed below, Lynx acted in breach of its equitable obligations by retaining the unremitted AIF and should not be permitted to profit from this breach at the expense of the Airport Authorities and, ultimately, the public.

ii. Wrongful Conduct

48. In order to determine if wrongful conduct should result in a constructive trust, courts will look for the following requirements:
- (a) The defendant must have been under an equitable obligation in relation to the activities that caused it to obtain the relevant assets;
 - (b) The assets must be shown to have resulted from deemed or actual agency activities of the defendant in breach of its equitable obligation to the plaintiff;
 - (c) The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties; and
 - (d) There must be no factors which would render the imposition of a constructive trust unjust in all of the circumstances of the case (e.g., the interests of intervening creditors must be protected).⁷²
49. Courts have held that the wrongful conduct test must be applied liberally as "(a) constructive trust is the formula through which the conscience of equity finds expression."⁷³
50. In previous cases, Courts have applied the wrongful conduct test in scenarios very similar to the case at hand and held that a constructive trust existed, most notably in *Redstone*. In this

⁷¹ *Garland v Consumers' Gas Co*, 2004 SCC 25 at para 30. [TAB 18]

⁷² *Soulous*, *supra* note 68 at para 45.

⁷³ *Ibid* at para 29.

case, Redstone Investment Corporation (“**RIC**”) had been appointed as agent by Maplebrook Capital Corp (“**Maplebrook**”) to collect and enforce loans between Maplebrook and certain third parties. RIC was responsible for collecting and remitting payments from the borrowers to Maplebrook. RIC eventually commenced proceedings under the CCAA. RIC continued to collect fees, interest and principal on Maplebrook’s behalf during the CCAA proceedings. Eventually, a receiver was appointed over RIC’s property. At the time, RIC was holding unremitted funds that had been collected on behalf of Maplebrook but not yet remitted. Maplebrook asserted that unremitted funds were the subject of a constructive trust as the four-part wrongful conduct test was met, specifically asserting the following:

- (a) Since RIC was acting as agent for Maplebrook, it owed equitable obligations to Maplebrook to remit all sums paid.
- (b) The unremitted funds came to be in RIC’s possession by virtue of this agency relationship.
- (c) There is nothing illegitimate about Maplebrook’s claim for a proprietary remedy and failing to grant the remedy would result in an unjust enrichment of RIC’s creditors as these are funds that they were never entitled to; and
- (d) There is nothing that would render the imposition of a constructive trust unjust in these circumstances and it would instead be unjust if RIC’s creditors were to receive a windfall by virtue of Maplebrook being unable to retake its property.⁷⁴

51. Regional Senior Justice Morawetz agreed that the wrongful conduct test had been met and that a constructive trust existed over the unremitted funds, noting that RIC “had no beneficial entitlement to these funds, and neither the Receiver nor RIC’s creditors can have any higher claim”.⁷⁵

52. Similar to *Redstone*, the wrongful conduct test is clearly met in this case and a constructive trust must be imposed.

- (a) **Lynx has an equitable obligation to the Airport Authorities:** The MOA clearly establishes that Lynx was acting as the Airport Authorities’ agent (if not trustee) in collecting and remitting AIF. This is set forth at section 20.1 of the MOA.⁷⁶ The clear intent of the parties was for Lynx to hold the AIF on the Airport Authorities’ behalf and

⁷⁴ *Redstone*, *supra* note 64 at para 69.

⁷⁵ *Ibid* at paras 72-73.

⁷⁶ *Vuong Affidavit*, *supra* note 3, Exhibit A, s 20.1.

then remit it on a monthly basis. Similar to RIC in *Redstone*, as agent, Lynx has an equitable obligation in relation to the activities that caused it to obtain the AIF.

- (b) **Lynx only retains possession of the AIF due to breaching its agency obligations:** Lynx only came into possession of the AIF as a result of acting as the Airport Authorities' agent under the MOA. Lynx's failure to remit the AIF is a clear breach of its equitable obligations as agent.
 - (c) **A proprietary remedy is necessary:** There is nothing illegitimate about the Airport Authorities' claim for a proprietary remedy and failing to grant such a remedy would result in an unjust enrichment of Lynx's creditors as neither Lynx nor its creditors were ever entitled to the AIF funds.
 - (d) **A constructive trust is not unjust:** There is nothing that would render the imposition of a constructive trust unjust. Similar to *Redstone*, it would instead be unjust if Lynx's secured creditors receive the funds that would otherwise form the AIF trust – this would amount to Lynx's secured creditors receiving an unjust windfall at the expense of the Airport Authorities and, ultimately, the Canadian public (Lynx's unsecured creditors are out-of-the-money regardless of whether the unremitted AIF funds are distributed). The reason this would constitute a windfall is because the unremitted AIF funds never belonged to Lynx; they are held in trust for the benefit of the Airport Authorities.
53. As already noted above, a constructive trust is an equitable remedy and should be relied on when required by "good conscience" and when it is "just in all the circumstances" to do so. The Airport Authorities submit that in all the circumstances of this case, equity and good conscience require the imposition of a constructive trust. The Airport Authorities, all of which are non-profits, rely on AIF to provide critical infrastructure to the Canadian public. Without AIF, it would be exceptionally challenging for the Airport Authorities to undertake the capital expenditure projects necessary to maintain the safety, security and efficiency of the airports they operate. The AIF collected by Lynx was collected from passengers with the express commitment from Lynx that all such funds would be remitted to the Airport Authorities and be used for capital expenditure projects that would ultimately benefit the public.⁷⁷ If a constructive trust is not imposed, these AIF funds that were collected from passengers on behalf of the Airport Authorities will instead benefit Lynx's secured creditors. This is neither just nor equitable.

⁷⁷ Vuong Affidavit, *supra* note 1, Exhibit C.

54. As a result of the foregoing, the unremitted AIF must be impressed with a constructive trust and excluded from Lynx's property that is available to its creditors for distribution in order to maintain equity, avoid the unjust enrichment of Lynx and its creditors, and to uphold the Airport Authorities' reasonable expectation that all AIF would be held in trust by Lynx until it was remitted to the Airport Authorities.

D. Deposits and Letters of Credit held by the Airport Authorities were not used to secure AIF and do not defeat the Airport Authorities' trust claim

55. The existence of letters of credit or cash deposits is not relevant to whether a trust exists over the unremitted AIF funds nor the quantum of such trust funds for several reasons.

56. First, neither the CAA nor the ERAA had any letter of credit or cash deposit from Lynx and therefore there can be no claim that the amounts held in trust for the CAA and the ERAA by Lynx are in any way affected.⁷⁸

57. Second, pursuant to the principle of autonomy, the VAA LOC was not an obligation between Lynx and the VAA, but instead between the issuing bank and the VAA.⁷⁹ In *Cineplex Odeon Corp v 100 Bloor West General Partner Inc.*,⁸⁰ the Court described the nature of letters of credit as follows:

[Letters of credit] are a unique and specialized form of commercial credit, designed by their very nature to be free and clear of the equities between the parties to the underlying transaction which they are issued to secure. They constitute an independent contract between the issuer (usually a bank, as in this case) and the beneficiary (one of the parties to the underlying transaction which they are issued to secure).⁸¹

58. As the VAA LOC was an independent obligation between the issuing bank and the VAA, VAA was free to call on the VAA LOC and apply it as it saw fit. Doing so in no way grants the VAA an advantage over Lynx's creditors as the VAA LOC never formed part of Lynx's insolvency estate. Furthermore, the VAA LOC was intended to primarily secure aeronautical fees.⁸² After the VAA called on the VAA LOC, it applied the funds to outstanding aeronautical fees and then only once such fees were satisfied in full did the VAA apply the remainder to AIF.⁸³ The Licence signed by Lynx that authorizes the VAA LOC specifies at section 10.03 that in the event that Lynx is in default of payment to the VAA "of any Fees or any other sum payable by [Lynx] to the [VAA]", the VAA may draw on the VAA LOC "to pay the arrears".⁸⁴ Lynx defaulted

⁷⁸ Kwasny Affidavit, *supra* note 5 at para 12; Pon Affidavit, *supra* note 5 at para 12.

⁷⁹ *Eurobank Ergasias SA v Bombardier Inc.*, 2024 SCC 11 at para 73. [TAB 19]

⁸⁰ [1993] OJ No 112, 1993 CarswellOnt 2358 (WL Can) (Ct J (Gen Div)). [TAB 20]

⁸¹ *Ibid* at para 21.

⁸² Vuong Affidavit, *supra* note 3 at para 14.

⁸³ *Ibid*.

⁸⁴ *Ibid*, Exhibit D.

on its payment of aeronautical fees and the VAA subsequently drew on the VAA LOC and applied it primarily to aeronautical fees, as it was entitled to do. Given the wording in the Licence and the fact that the VAA LOC constitutes an independent obligation between the VAA and the issuing bank, not Lynx, Lynx has no right to assert that the VAA LOC should instead be applied to AIF.

59. Third, the WAA Deposit was intended to secure aeronautical fees, not AIF.⁸⁵ Pursuant to the WAA's Tariff, upon Lynx's default on payments due under the Tariff, the WAA may apply the WAA Deposit on outstanding debts as it sees fit:

If [Lynx] defaults in timely payment of any monies due hereunder, WAA may, without limitation, realize on the [WAA Deposit] referring to herein (...).⁸⁶ (emphasis added)

60. Lynx defaulted on payment of aeronautical fees and was in significant arrears at the time it received the Initial Order. As such, the WAA applied the WAA Deposit entirely to outstanding aeronautical fees that were owing under the Tariff, as it was entitled to do; no portion of the WAA Deposit was applied to AIF.⁸⁷ Lynx has no right to dictate which outstanding amounts the WAA applies the WAA Deposit to.

61. Lastly, and similar to above, the HIAA Deposit was also intended to secure aeronautical fees.⁸⁸ Under the ACOA, the HIAA has the right to determine how it applies the HIAA Deposit in the event that Lynx defaults on its payments:

If (a) [Lynx] fails to pay any fees and/or charges to HIAA pursuant to this Agreement or any other agreement between the Air Carrier and HIAA (...), then HIAA may, in addition to any other right or remedy available to it, and whether or not a judgment against [Lynx] and/or any affiliate or performing carrier has been obtained, use, apply or retain the whole or any part of the security deposit, to the extent required for the payment of the fees and charges owing to HIAA (...).⁸⁹

62. As such, when Lynx defaulted on payment of aeronautical fees, the HIAA was entitled to apply the HIAA Deposit to outstanding aeronautical fees. Due to a payment of \$89,752.77 from Lynx made on January 19, 2024, of which Lynx instructed the HIAA to apply the amount of \$63,037.30 to aeronautical fees, the amount in outstanding aeronautical fees at the time of the Initial Order was \$69,547.64. As such, the HIAA Deposit satisfied all outstanding aeronautical fees, and the residual amount was applied to AIF.⁹⁰

⁸⁵ Stefaniuk Affidavit, *supra* note 5 at para 13.

⁸⁶ *Ibid*, Exhibit B at 12.

⁸⁷ Stefaniuk Affidavit, *supra* note 5 at para 13.

⁸⁸ Brigley Affidavit, *supra* note 5 at para 13.

⁸⁹ *Ibid*, Exhibit B.

⁹⁰ *Ibid* at para 13.

63. Neither the WAA Deposit nor the HIAA Deposit gave the WAA and the HIAA any advantage over Lynx's creditors. The WAA and the HIAA were entitled to apply their respective deposits to outstanding fees owed by Lynx pursuant to the Tariff and the ACOA. Furthermore, pursuant to section 21 of the CCAA, the WAA and the HIAA are entitled to set off amounts owed to them by Lynx with their respective deposits.⁹¹ In *Montreal (Ville) c Restructuration Deloitte Inc*,⁹² the Supreme Court of Canada stated the following:

[Section 21] was added to the CCAA to prevent the unfair situation that would result from a creditor being required to pay its debt to the debtor company in full but receiving almost nothing from the debtor in payment of its claim under an arrangement or compromise. The effect of s. 21 is that the creditor receives payment of its claim up to the value of the debt it owes to the debtor.⁹³ (citations omitted)

IV. CONCLUSION

64. For the foregoing reasons, the Airport Authorities respectfully requests that this Court grant an Order for the following relief:

- (a) a declaration stating that the unremitted AIF owed to the Airport Authorities by Lynx is subject to either an express, implied or constructive trust;
- (b) instructing Lynx to release to the Airport Authorities the following amounts from the amount held in reserve by Lynx to satisfy claims relating to AIF:
 - (I) \$355,640.79 to the ERAA;
 - (II) \$319,435.80 to the HIAA;
 - (III) \$282,895.00 to the WAA;
 - (IV) \$2,031,140.16 to the CAA;
 - (V) \$1,110,231.54 to the VAA; and
- (c) such further and other relief as counsel for the Airport Authorities may advise.

⁹¹ CCAA, *supra* note 4, s 21.

⁹² 2021 SCC 53. [TAB 21]

⁹³ *Ibid* at para 70.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10th DAY OF JUNE 2024.

STIKEMAN ELLIOTT LLP




By: _____

Karen Fellowes, K.C.
Lawyer for the Applicants,
Edmonton Regional Airports Authority, Halifax
International Airport Authority, The Calgary
Airport Authority, Vancouver Airport Authority,
and Winnipeg Airports Authority Inc.

TABLE OF AUTHORITIES

TAB	DOCUMENT
1	"Airport Authorities", online: <i>Transport Canada</i> < https://tc.canada.ca/en/corporate-services/transparency/briefing-documents-transport-canada/2023-dm/transport-canada-structure-portfolio/shared-governance-organizations/airport-authorities >.
2	<i>Companies' Creditors Arrangement Act</i> , RSC 1985, c C-36.
3	<i>Airport Transfer (Miscellaneous Matters) Act</i> , SC 1992, c 5.
4	<i>Bankruptcy and Insolvency Act</i> , RSC 1985, c B-3.
5	<i>Century Services Inc v Canada (Attorney General)</i> , 2010 SCC 60.
6	<i>Urbancorp Cumberland 2 GP Inc (Re)</i> , 2020 ONCA 197.
7	<i>Air Canada v M&L Travel Ltd</i> , [1993] 3 SCR 787.
8	<i>Rubner v Bistricher</i> , 2019 ONCA 733.
9	<i>Friends of Nellie Lunn et al v Township of Wollaston</i> , 2023 ONSC 1327.
10	<i>Byers v Foley</i> (1993), 109 DLR (4th) 761, 1993 CarswellOnt 558 (WL Can) (Ct J (Gen Div)).
11	<i>Allison v Bent</i> , 2022 ONSC 6723.
12	Albert H Oosterhoff, Robert Chambers & Mitchel McInnes, <i>Oosterhoff on Trusts</i> , 9th ed (Carswell, 2019).
13	<i>Firepower Debt GP Inc v TheRedPin, Inc</i> , 2018 ONSC 7182.
14	<i>Guarantee Company of North America v Royal Bank of Canada</i> , 2019 ONCA 9.
15	<i>Redstone Investment Corp, Re</i> , 2015 ONSC 533.
16	<i>Peter v Beblow</i> , [1993] 1 SCR 980, 1993 CarswellBC 44 (WL Can).
17	<i>Soulos v Korkontzilas</i> , [1997] 2 SCR 217.
18	<i>Garland v Consumers' Gas Co</i> , 2004 SCC 25.
19	<i>Eurobank Ergasias SA v Bombardier Inc</i> , 2024 SCC 11.
20	<i>Cineplex Odeon Corp v 100 Bloor West General Partner Inc</i> , [1993] OJ No 112, 1993 CarswellOnt 2358 (WL Can) (Ct J (Gen Div)).
21	<i>Montreal (Ville) c Restructuration Deloitte Inc</i> , 2021 SCC 53.

This is **Exhibit "O"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSE
A Commissioner for Oaths
in and for Alberta
My Commission Expires September 11, 2026

COURT FILE NUMBER 2401-02664 Clerk's stamp

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c C-36, as amended
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION AND 1263343 ALBERTA INC. dba LYNX AIR

APPLICANT GREATER TORONTO AIRPORTS AUTHORITY

RESPONDENTS LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **BENCH BRIEF OF THE GREATER TORONTO AIRPORTS AUTHORITY**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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**APPLICATION BEFORE THE HONOURABLE JUSTICE ROMAINE ON JUNE 24,
2024 AT 2:00 PM MT ON THE COMMERCIAL LIST**

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PART I - INTRODUCTION

1. This Bench Brief is filed in support of an application (“**Application**”) by the Greater Toronto Airports Authority (the “**GTAA**” or the “**Applicant**”), in respect of Lynx Air Holdings Corporation (“**Lynx Holdco**”) and 1263343 Alberta Inc. (“**Lynx Opco**” and, together with Lynx Holdco, “**Lynx Air**”), for the following relief:
 - a. a declaration that the unremitted Airport Improvement Fees (the “**AIF**”) collected and held by Lynx Opco on behalf of the GTAA pursuant to the AIF Agreement (as defined below) (the “**Unremitted AIF**”) are subject to a trust in favour of the GTAA;
 - b. an order requiring Lynx Air to release the Unremitted AIF in the amount of \$1,659,580.87¹ to the GTAA from the amount currently held in reserve by Lynx Air to satisfy claims relating to AIF (the “**AIF Reserve**”); and
 - c. an order requiring Lynx Air to pay the GTAA’s expenses incurred in recovering the Unremitted AIF, including legal fees on a full indemnity basis.
2. The dispute between the GTAA and Lynx Air is narrow: Can Lynx Air dictate how the GTAA applies the proceeds of a letter of credit (the “**LOC**”) to minimize the amounts that are to be paid and remitted to the GTAA following Lynx Air’s failure. The answer to that question is “no” – as discussed below, the governing agreements (i) do not remove the GTAA’s discretion to apply the LOC however it determines; and (ii) do not require that the GTAA use or apply the LOC proceeds in any particular way.

¹ All references to monetary amounts in this Bench Brief are in Canadian dollars unless noted otherwise.

3. The GTAA was permitted to, and would have been expected to, rely on both the LOC and its trust rights with respect to the AIF (which trust Lynx Air acknowledges) to maximize its recoveries in the event of Lynx Air's failure. Lynx Air's position, on the other hand, seeks to nullify and wipe out the trust that protects the AIF, and thereby secure for itself (or its senior secured lender) an unjust windfall.
4. In order to be allowed to operate at the Toronto Lester B. Pearson Airport ("**Pearson Airport**"), Lynx Air was required to enter into a series of agreements with the GTAA. Pursuant to the Application for Entry (defined below), the GTAA required Lynx Air to post security in the form of the LOC in an amount determined by the GTAA (ultimately such amount being \$3,100,000), that the GTAA could call upon to recover: (i) unpaid Aeronautical Fees (i.e., Landing Fees, General Terminal Fees, Apron Fees, and Check-In Fees); and (ii) unremitted AIF that Lynx Air had agreed to collect from its passengers departing from or connecting through Pearson Airport on behalf of the GTAA pursuant to the Airport Improvement Fee Agreement (the "**AIF Agreement**"). Under the AIF Agreement, Lynx Air agreed to hold the AIF in trust for the benefit of the GTAA, and it received a fee for doing so. Lynx Air has conceded in this Application that the Unremitted AIF collected on behalf of GTAA is subject to an express trust.
5. The parties agree that, as of the Filing Date (defined below), Lynx Air was required to pay or remit to the GTAA a total of \$4,759,580.87. They further agree that this amount was comprised of the following two amounts: (i) \$2,977,156.83 on account of unpaid Aeronautical Fees; and (ii) \$1,782,424.04 on account of unremitted AIF. Following the commencement of these CCAA proceedings, the GTAA drew down on the LOC and applied the LOC proceeds first to the repayment of the unpaid Aeronautical Fees (in the

total amount of \$2,977,156) and the remainder to unremitted AIF (in the amount of \$122,843.17). The GTAA then demanded that Lynx Air remit the balance of the Unremitted AIF (in the amount of \$1,659,580.87), which as mentioned above are held by Lynx Air in trust for the benefit of the GTAA.

6. Lynx Air refused to pay this amount and seeks to be excused from complying with its trust obligations to remit the Unremitted AIF on the theory that it can force the GTAA to first apply the LOC proceeds to the Unremitted AIF, thus leaving the remaining unpaid Aeronautical Fees as an unsecured claim which is essentially uncollectible. Alternatively, Lynx Air argues that it can require the GTAA to apply the LOC proceeds in accordance with the estimates of Aeronautical Fees and AIF that the GTAA used to calculate the amount of the LOC, despite that such calculations were estimates only, and were a matter of the GTAA's discretion.
7. Based on the wording of the relevant agreements and commercial common sense, the GTAA submits that both positions are without merit. There is nothing in the Application for Entry, the AIF Agreement or any other related agreement that restricts the GTAA in how it applies the proceeds of the LOC, nor did these agreements create any obligation or expectation that the LOC proceeds would first be applied to cover the Unremitted AIF so as to exhaust the GTAA's trust rights.
8. Lynx Air, in effect, is taking a position that, if accepted, would nullify or wipe out the trust and its trust obligations, which Lynx Air has admitted exist.
9. Lynx Air has obtained CCAA protection from this Court and it should not be allowed to keep trust funds that do not form part of its Property. There would be no excuse for Lynx Air to refuse to remit the Unremitted AIF to the GTAA if the LOC did not exist – the

existence of the LOC does not give Lynx Air the ability or right to require that the LOC be first applied to relieve Lynx Air of its obligation to remit the trust funds it is holding on behalf of the GTAA.

10. In the event of an Air Carrier default, the GTAA has the sole discretion to determine how to realize on its security and avail itself of its other protections – Lynx Air has no right to dictate how the GTAA exercises its various rights, and it certainly cannot require the GTAA to exercise its rights in a way that minimizes GTAA’s own recovery, and maximizes Lynx Air’s benefit. The express trust protecting the AIF applies by the terms of the AIF Agreement and does not cease to exist because the LOC was issued or has been exhausted.
11. As a result, this Court should direct Lynx Air to pay the Unremitted AIF in full to the GTAA from the AIF Reserve that it is currently holding for this purpose, and order that Lynx Air pays the GTAA’s costs incurred in enforcing the remittance of the Unremitted AIF.

PART II - FACTS

A. Business Relationship Between Lynx Air and the GTAA

12. The GTAA is the operator of Pearson Airport. Lynx Air carried on the business of a discount air carrier, flying to and from numerous Canadian airports, including Pearson Airport. Lynx Air commenced operations from Pearson Airport around April 11, 2022. At all relevant times, Lynx Air was an Airport User, Air Operator and Air Carrier (as those terms are used and defined in the relevant agreements).

Affidavit of Jason Boyd, sworn May 24, 2024 (the “**Boyd Affidavit**”) at paras 4 – 8.

13. In order to operate at Pearson Airport, Air Carriers are required to enter into (or otherwise agree to be governed by) a series of agreements governing the relationship between the parties, including but not limited to: (i) Air Carrier – Application for Entry (the “**Application for Entry**”); (ii) Pearson Standard: Rules and Regulations (the “**GTAA Rules**”); (iii) the GTAA’s fee schedule (the “**Fee Schedule**”); and (iv) the AIF Agreement. Lynx Air agreed to comply with and be bound by each of these agreements.

Boyd Affidavit at para 10.

(i) **Application for Entry and GTAA Rules**

14. By signing the Application for Entry, Lynx Air confirmed, among other things, that: (a) Lynx Air intended to become a Participating Air Carrier under the AIF Agreement; and (b) Lynx Air was required to deliver a security deposit consisting of an irrevocable letter of credit in an amount calculated by the GTAA Finance Controller that could be called upon to cover any outstanding Landing Fees, General Terminal Fees, Apron Fees, Check-In Fees (together, the “**Aeronautical Fees**”) and unremitted AIF (together with the Aeronautical Fees, the “**Aeronautical Fees and Charges**”).

Boyd Affidavit at para 12.
Application for Entry, s. 2.7, 3.3 and 5.0.

15. The Application for Entry also required Lynx Air, as an Air Carrier and Air Operator, to comply with the GTAA Rules. The GTAA Rules expressly states that Air Operators are required to pay the Aeronautical Fees and Charges and reiterates the requirement for Air Carriers to submit a security deposit in a form and amount determined by the GTAA’s Finance Controller prior to commencing operations. Finally, the GTAA Rules expressly provide that the GTAA may apply the security deposit towards overdue amounts of

Aeronautical Fees and Charges or to cover costs associated with violations of the GTAA Rules or under any other agreements. Neither the Application for Entry nor the GTAA Rules require the GTAA to apply the security deposit in any particular manner, nor does either agreement give any power or discretion to Lynx Air to control the manner in which the GTAA applies the security deposit.

Boyd Affidavit at para 19.
GTAA Rules, Rule 2.34 – 2.39.

16. The GTAA establishes the Aeronautical Fees related to the use of the facilities and services supplied by the GTAA at Pearson Airport. The GTAA provides to all Air Carriers a copy of its current Fee Schedule at the start of every calendar year.

Boyd Affidavit at para 29.

17. The GTAA Rules also address non-compliance by Airport Users. Potential non-compliance with the GTAA Rules will be assessed and investigated by the GTAA before a Notice of Non-Compliance is issued to the Airport User. If a Notice of Non-Compliance is issued, failure by the Airport User to address a Notice of Non-Compliance allows the GTAA to take any actions that are appropriate and necessary in the circumstances and at the sole discretion of the GTAA.

Boyd Affidavit at para 21.
GTAA Rules, Rule 13.1 and 13.5.4.

(ii) The AIF Agreement

18. By entering into the AIF Agreement, as contemplated in the Application for Entry, Lynx Air agreed to collect AIF from each Enplaned Passenger (i.e., departing passengers, including connecting passengers) at the time of the sale of a ticket to such passengers. The

AIF collected by Lynx Air was to be remitted to the GTAA and used by the GTAA for capital programs and capital projects at Pearson Airport.

Boyd Affidavit at paras 22 and 24.
AIF Agreement, s. 2.1.1(a)-(b).

19. Pursuant to section 2.1.1(c) of the AIF Agreement, Lynx Air acknowledged and agreed that: (i) the AIF collected on behalf of the GTAA are funds or revenues properly belonging to the GTAA and not Lynx Air; and (ii) the AIF shall be held in trust for the benefit of the GTAA.

Boyd Affidavit at para 24.
AIF Agreement, s. 2.1.1(c).

20. Like the Application for Entry and GTAA Rules, the AIF Agreement requires the Air Carrier to deliver to the GTAA a security payment (defined therein as the “**Security Amount**”) which will act as a guarantee of the Air Carrier’s obligation to collect and remit AIF. The Security Amount can take the form of a letter of credit or delivery of cash, in an amount equal to a minimum of 30 calendar days of activity or such other amount as the GTAA may determine.

Boyd Affidavit at para 26.
AIF Agreement, s. 2.8.

21. As consideration for performing its obligations under the AIF Agreement, the Air Carrier is entitled to retain an administration fee, which is calculated as a specified percentage amount (plus HST and other applicable taxes) of the amount of the AIF (exclusive of any HST or other applicable taxes) remitted to the GTAA (the “**Administration Fee**”). Lynx

Air received Administration Fees totaling \$629,216.60 plus HST and other applicable taxes during the time in which it operated out of Pearson Airport.

Boyd Affidavit at para 27.
AIF Agreement, s. 2.5.1.

(iii) **Letter of Credit**

22. On April 12, 2022, Lynx Air initially provided the GTAA with a security deposit in the form of the LOC, in the amount of \$500,000. After a series of amendments, the GTAA re-assessed the quantum of the LOC in early June 2023 based on Lynx Air's projected activity for the summer of 2023 and determined the amount required was \$3,066,113. The GTAA provided Lynx Air with a breakdown demonstrating how the quantum of the security deposit was calculated ("**Schedule A-1**"). On June 5, 2023, the LOC was increased to \$3,100,000 to reflect the updated security deposit requirement.

Boyd Affidavit at para 31-34.

B. Lynx Air Defaults

23. As early as October 2023, Lynx Air began falling into arrears with respect to the Aeronautical Fees and Charges, including its remittance of AIF. After several emails demanding that Lynx Air comply with its obligations, on February 16, 2024, the GTAA sent a letter to Lynx Air providing notice that Lynx Air was in default of its obligations with respect to the Aeronautical Fees and Charges (the "**Notice of Default**").
24. The Notice of Default specified that Lynx Air was in default for both failure to pay and remit Aeronautical Fees and Charges, in breach of the GTAA Rules, and for failure to remit AIF, an Event of Default under the section 3.1.1 of the AIF Agreement. The Notice of Default also notified Lynx Air that the Notice of Default constituted a Notice of Non-

Compliance under section 13 of the GTAA Rules, which, as above, permits the GTAA to take any actions that are appropriate and necessary in the circumstances and at its sole discretion.

Boyd Affidavit at paras 35-38.

25. Lynx Air did not respond to the Notice of Default and failed to cure the defaults by February 21, 2024, the deadline provided in the Notice of Default.

Boyd Affidavit at para 40.

26. At the time the Initial Order was granted on February 22, 2024 (the “**Filing Date**”), Lynx Air was required to pay or remit a total of \$4,759,580.87 to the GTAA on account of Aeronautical Fees and Charges, consisting of the following: (a) AIF: \$1,782,424.04; and (b) Aeronautical Fees: \$2,977,156.83.

Boyd Affidavit at para 42.

27. Given Lynx Air’s failure to cure the Defaults, on February 23, 2024, the GTAA drew on the LOC for the full amount of \$3,100,000. As it was entitled to do in its sole discretion, the GTAA applied the funds from the LOC as follows:
 - a. First, to the Aeronautical Fees outstanding, in the total amount of \$2,977,156; and
 - b. Second, the remaining LOC balance in the amount of \$122,843.17 was applied to the AIF amounts collected by Lynx Air in the Pre-Filing Period that were not remitted to the GTAA.

Boyd Affidavit at para 45 – 47.

28. After application of the proceeds of the LOC, AIF in the amount of \$1,659,580.87 remains unremitted (as above, the “**Unremitted AIF**”), which amounts were collected by Lynx Air on behalf of the GTAA (and for which it earned the Application Fee) and are subject to an express trust in favour of the GTAA.

C. Lynx Air Fails to Remit Remaining AIF Monies

29. On March 5, 2024, the GTAA wrote to Lynx Air, copying the Monitor, noting that the Unremitted AIF was subject to a trust in favour of the GTAA. On April 12, 2024, Lynx Air acknowledged and agreed that the AIF Agreement created a trust relationship in respect of the Unremitted AIF, a concession that is reiterated in Lynx Air’s responding materials on this Application. However, Lynx Air took the position that all AIF collected by Lynx Air on behalf of the GTAA was satisfied by the application of the LOC.

Boyd Affidavit at paras 50 and 53.

Affidavit of Michael Woodward, sworn May 31, 2024 (“**Lynx Air Responding Materials**”) at para 42.

30. The sole dispute in this Application relates to Lynx Air’s attempt to avoid its obligation to remit the Unremitted AIF to the GTAA based on its position that it can require the GTAA to apply LOC proceeds first to the unremitted AIF with the remainder to be applied to Aeronautical Fees, or in some other manner that Lynx Air dictates. However, as previously explained herein, it was entirely within the GTAA’s discretion to apply the proceeds of the LOC first to the unpaid Aeronautical Fees with the remainder to be applied to unremitted AIF: there are no contractual provisions that limit how the GTAA must apply the LOC. The Unremitted AIF is a trust obligation of Lynx Air that must be honoured by Lynx Air in these CCAA proceedings.

PART III - ISSUES

31. This Bench Brief addresses the following issue:
- (a) Is Lynx Air entitled to dictate the manner in which the GTAA applied the LOC to outstanding Aeronautical Fees and Charges such that it can reduce the total amount that it must pay or remit to the GTAA in these CCAA proceedings?

PART IV - LAW AND ARGUMENT**A. The GTAA Has the Discretion to Apply the LOC to Aeronautical Fees**

32. This dispute can be resolved by reference to the express terms that the parties agreed to when Lynx Air agreed to the Application for Entry, the AIF Agreement and the GTAA Rules.

(a) *The Parties Bargained for Two Different Types of Security for the AIF*

33. As a threshold matter, Lynx Air has conceded that the AIF is subject to a trust. This is a proper concession, given that the AIF Agreement expressly provides both that the AIF collected by Lynx Air is to be held in trust and that it is not the property of Lynx Air.

Letter from Lynx Air to the GTAA dated April 12, 2024.
Boyd Affidavit at para 53.
Lynx Air Responding Materials at para 42.
AIF Agreement, s. 2.1.1(c).

34. In other words, the AIF satisfies the three certainties required for funds to constitute a trust:
- (a) certainty of intention (the words of the AIF Agreement clearly indicate the requisite intent); (b) certainty of subject matter (the amounts collected as AIF – i.e., the AIF per departing and connecting passenger established by the GTAA, multiplied by the number of Enplaned Passengers, as defined in the AIF Agreement, less the Administration Cost –

constitute the trust property); and (c) certainty of object or beneficiary (namely, the GTAA).

See, for example, *The Guarantee Company of North America v. Royal Bank of Canada*, [2019 ONCA 9](#) at [para. 21](#), citing Eileen E. Gillese, *The Law of Trusts*, 3rd ed. (Toronto: Irwin Law, 2014) at pp. 41-47.

35. In its responding materials, Lynx Air notes that the “AIF was commingled” in the accounts of Lynx Air. However, this factor has no significance in this Application, as section 2.1.1(c) of the AIF Agreement expressly permitted Lynx Air to commingle AIF with its operating funds during the time period between collecting those funds and remitting them to the GTAA, net of the Administration Cost.

Lynx Air Responding Materials at paras 7 and 57.
AIF Agreement, s. 2.1.1(c).

36. As a matter of trust law, the mere fact that trust funds can be commingled with non-trust funds is not fatal to the existence of the trust. Lynx Air has not adduced (and has confirmed that it will not adduce) any financial evidence to suggest that the Unremitted AIF is not traceable, nor has the Monitor provided evidence that the Unremitted AIF is not traceable. The full amount of the Unremitted AIF is currently held in the AIF Reserve, by order of this Court dated April 15, 2024.

The Guarantee Company of North America v. Royal Bank of Canada, [2019 ONCA 9](#) at [paras. 87 – 89, 97](#) and [99](#).
Order of Justice Sidnell dated April 15, 2024.

37. The relevant agreements further provide that Lynx Air was required to post the LOC to secure all unpaid and unremitted Aeronautical Fees and Charges. This includes both the Aeronautical Fees, which are not required to be held on trust, and the AIF, which is to be

held in trust. The proper interpretation of the relevant agreements is that (i) the trust in relation to the AIF, and (ii) the security deposit (being the LOC, which is immune from a stay of proceedings) are two separate and distinct means of protecting the GTAA in the event of an Air Carrier default in remitting the AIF. This double layer of protection is entirely consistent with and appropriate in light of the fact that the AIF is not the property of Lynx Air but rather is the property of the GTAA and that the obligation to remit the AIF is not a debt claim.

Application for Entry, s. 5.0.
GTAA Rules, Rule 2.38 and 2.39.

38. There is no language in any of the relevant agreements that provides that the LOC is the only mechanism for satisfying the trust claim in relation to the AIF, or that the trust claim only applies after the GTAA first applies the LOC on account of the unremitted AIF. To the contrary, the AIF Agreement provides both that the AIF is subject to a trust, and that the security deposit is available to satisfy claims for unremitted AIF. There is no language that provides that the security deposit exhausts the trust claim, or that GTAA must first resort to the security deposit on account of unremitted AIF before making its trust claim or before using the LOC to cover unpaid Aeronautical Fees. If that was the intention of the parties, it would have been set out expressly in the agreements.
39. In other words, while the relevant agreements provide that the GTAA is entitled to apply the LOC towards unsatisfied AIF, it is not required to do so. Nor is there any language in any agreement suggesting that, if the GTAA draws on the LOC and applies it to a portion of unremitted AIF, the trust claim must fall away in relation to other unremitted AIF.

40. The trust created by the AIF Agreement would be nullified or made redundant if the LOC is treated as the principal or first means by which the GTAA or to recover unremitted AIF. Lynx Air's interpretation is contrary to the basic rules of contractual interpretation that provides that any interpretation that nullifies provisions of a contract or renders them redundant must be disregarded in favour of an interpretation that gives effect to each provision of the agreement when read as a whole.

Tercon Contractors Ltd. v. British Columbia (Transportation and Highways), [2010 SCC 4](#) at para. [64](#); *369413 Alberta Ltd. v. Pocklington*, [2000 ABCA 307](#) at para. [19](#).

(b) *The GTAA Has Full Remedial Discretion to Address Defaults*

41. Not only is there no language in any relevant agreement requiring the GTAA to allocate the proceeds of the LOC in any particular manner, the GTAA Rules confer sole and absolute discretion on the GTAA in realizing on the security or seeking any other remedy in the event of an Air Carrier default. Specifically, rule 2.38 of the GTAA Rules states “the GTAA may apply the security deposit towards overdue amounts of Aeronautical Fees and Charges or to cover costs associated with violations of the GTAA Rules or under any other agreements.” This rule entitled the GTAA to apply the security deposit to Aeronautical Fees and Charges, which includes either Aeronautical Fees and AIF or both. This rule does not state or specify which specific Aeronautical Fees and Charges the security deposit must be applied to or impose any order of priority when multiple categories of Aeronautical Fees and Charges are outstanding or unremitted.

GTAA Rules, Rule 2.38.

42. By February 21, 2024, Lynx Air had failed to cure the Defaults set out in the Notice of Default, which also constituted a Notice of Non-Compliance. The GTAA Rules expressly

provide that, in such a scenario, the GTAA is empowered under Rule 13.5 to take “any other actions that [were] appropriate and necessary in the circumstances and at the sole discretion of the GTAA”.

Boyd Affidavit at para 40.
GTAA Rules, Rule 13.5.

43. The AIF Agreement similarly provides the GTAA with full discretion with respect to whether and how to apply the security deposit. Section 2.8.4 of the AIF Agreement states the “GTAA may elect to call upon and collect against the Security Amount in whole or in part where Air Carrier has failed to comply with any obligations hereunder with respect to the collection or remittance of Deposits or where, in GTAA's sole opinion (acting reasonably) an Event of Default may reasonably be anticipated to be committed by Air Carrier” [emphasis added]. There is no dispute that the failure to remit the unremitted AIF was an Event of Default under the AIF, as specified in the Notice of Default.

Boyd Affidavit at para 26.
AIF Agreement, s. 2.8.4.

44. In the exercise of its contractual discretion, the GTAA elected to apply the LOC first to the outstanding Aeronautical Fees, which totaled \$2,977,156.83 and that were not protected by any other security or a trust. This left only \$122,843.17 to apply to the unremitted AIF. Finally, the GTAA called upon Lynx Air to honour its trust obligation to remit the remaining \$1,659,580.87 of AIF (i.e., the Unremitted AIF), which amounts continue to be held in trust for the GTAA.
45. The fact that the GTAA applied the LOC in the manner that it did makes commercial sense and was foreseeable from the outset of the parties’ relationship. It is reasonable commercial

practice that a party such as the GTAA would exercise its remedies in a manner that would maximize its recoveries, as opposed to exercising them in a way that would preclude its recovery for the benefit of third parties such as Lynx Air's other creditors.

B. Lynx Air's Position Is Unsupported and Generates Results That Were Not Bargained For

46. Both of Lynx Air's theories amount to Lynx Air, the defaulting party, attempting to dictate how the GTAA should allocate the LOC to the outstanding and unremitted Aeronautical Fees and Charges, in the absence of any contractual basis entitling it to do so and in the face of the provisions giving the GTAA sole discretion as to how it will enforce these rights. It is not the role of a debtor, let alone a trustee, to dictate how a party such as the GTAA will enforce its rights.

Lynx Air Responding Materials, paras. 59 and 60.

47. Furthermore, both approaches contended for by Lynx Air are inconsistent with the nature of an LOC, as a stand-alone instrument that creates an autonomous relationship between the issuer and the beneficiary. As long as the draw conditions were satisfied (about which there is no dispute here), the GTAA was entitled to draw the full amount of the LOC and apply it without any further input from Lynx Air. There is no basis on the face of the LOC, or in any of the relevant agreements, to suggest otherwise. It would be inconsistent with the fundamental principle that the letter of credit conferred on the GTAA a stand-alone benefit if Lynx Air was allowed to dictate how the LOC is to be applied in the absence of express contractual provisions allowing it to do so.

Pacific Atlantic Pipeline Construction Ltd v. Coastal Gaslink Pipeline Ltd, [2023 ABKB 736](#) paras [38-40](#) citing Sarna, *Letters of Credit: The Law and Current Practice*, at p. 5-1.

48. Lynx Air's alternate position that the internal calculations that the GTAA used to set the amount of the security deposit should govern how the LOC must be allocated is also without merit. Similar to its primary argument, this argument is without any basis in any contract and contrary to the rights provided to the GTAA. For instance, both the Application for Entry and GTAA Rules simply state that Lynx Air has to make a deposit in a form and amount determined by the GTAA Finance Controller – there is nothing in the agreements that states that the manner by which that determination is made limits the GTAA's rights in relation to use and application of the LOC.

Application for Entry, s. 5.0.

GTAA Rules, Rule 2.38.

AIF Agreement, s. 2.8.

Lynx Air Responding Materials at paras 9 – 10 and 60.

49. Moreover, nothing on the face of the LOC or in the relevant agreements imposes such a requirement or such limitations. When the LOC was amended in June 2023, the GTAA provided Lynx Air with Schedule A-1 to demonstrate how the security deposit amount was calculated, as determined by the GTAA Finance Controller. On its face, Schedule A-1 has no bearing on how the LOC can be applied by the GTAA. While the sharing of that information shows that the GTAA was setting the amount of the required security deposit in good faith and not capriciously, it did not have the impact of amending the express provisions of the Application for Entry, the GTAA Rules or the AIF Agreement.

Boyd Affidavit at para 33.

50. The provisions requiring the LOC to be calculated to cover all outstanding and unremitted Aeronautical Fees and Charges, together with the creation of the express trust under the

AIF Agreement, demonstrate a clear intention of the parties that the GTAA was to be protected in relation to the full amount that might be outstanding and unremitted as Aeronautical Fees and AIF at any given time. Thus, even where the LOC was insufficient to secure all amounts of Aeronautical Fees and Charges owing, the trust would continue to protect the AIF, which was always the property of the GTAA and not the Air Carrier. Lynx Air, by trying to unilaterally dictate the manner in which the GTAA can apply the LOC, seeks to defeat this intention.

51. Lynx Air's position also has the effect of punishing the GTAA in circumstances – as occurred here – in which Lynx Air was allowed, as an accommodation given its financial struggles, to incur unpaid and unremitted Aeronautical Fees and Charges in the period leading up to its insolvency in an amount that exceeded the face amount of the LOC. The fact that the GTAA allowed Lynx Air to incur additional Aeronautical Fees and Charges instead of terminating its right to use Pearson Airport should not now be a basis for depriving the GTAA of the security and trust protection that it bargained for.

AIF Agreement, s. 7.9.

52. The proper reading of the agreements, as contended for by the GTAA, is not unfair to Lynx Air's other stakeholders because the outcome is the nature and foreseeable consequence of the wording of the agreements and makes commercial sense. Although Lynx Air is the named party to the Application, Lynx Air no longer has any economic interest in the outcome of this dispute. Based on materials filed in these proceedings, the assets of Lynx Air are fully encumbered in favour of the secured creditor, Indigo Northern Ventures LP ("**Indigo**"). Indigo is the only party that stands to benefit from Lynx Air's position.

53. Thus, even though Lynx Air is attempting to dictate the manner in which the GTAA applied the LOC to the defaulted Aeronautical Fees and Charges, the real beneficiary of Lynx Air's position is Indigo. In substance, this Application is not a dispute between the GTAA and Lynx Air, it is an inter-creditor dispute regarding priority as between the GTAA and Indigo. The GTAA bargained for the protection of an express trust in relation to amounts owing to it for unremitted AIF, and Lynx Air has admitted to existence of that trust and it was paid \$629,216.60 plus HST and other applicable taxes as consideration for maintaining that trust. There is nothing unfair about giving effect to the bargain between Lynx Air and the GTAA in these circumstances. To do otherwise would be to provide Lynx Air (and by extension, Indigo) with an unjust windfall that is contrary to the relevant agreements and bargain.

PART V - CONCLUSION

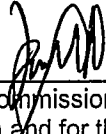
54. For the reasons set out above, the GTAA request that this Honourable Court direct Lynx Air to remit the Unremitted AIF from the AIF Reserve in the amount of \$1,659,580.87 to the GTAA forthwith and to pay the GTAA's expenses incurred in recovering the Unremitted AIF, including legal fees.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10th DAY OF JUNE, 2024



Jason Wadden
TYR LLP
Counsel for the Applicant

This is **Exhibit "P"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
In and for Alberta
My Commission Expires September 11, 2026

Form 7
[Rule 3.8]

Clerk's Stamp

COURT FILE NUMBER 2401-02664

COURT
JUDICIAL CENTRE

COURT OF KING'S BENCH OF ALBERTA
CALGARY

IN THE MATTER OF THE *COMPANIES' CREDIT
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION
and 1263343 ALBERTA INC. dba LYNX AIR

APPLICANTS

GREATER TORONTO AIRPORTS AUTHORITY, EDMONTON
REGIONAL AIRPORTS AUTHORITY, HALIFAX
INTERNATIONAL AIRPORTS AUTHORITY, THE CALGARY
AIRPORT AUTHORITY, VANCOUVER AIRPORT
AUTHORITY, and WINNIPEG AIRPORTS AUTHORITY INC.

RESPONDENTS

LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA
INC. dba LYNX AIR

DOCUMENT

BENCH BRIEF OF THE RESPONDENTS

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CONTACT
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**APPLICATION BEFORE THE HONOURABLE JUSTICE ROMAINE
ON JUNE 24, 2024 AT 2:00 PM ON THE COMMERCIAL LIST**

This is **Exhibit "P"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024

A Commissioner for Oaths and Notary
in and for the Province of Alberta

Form 7
[Rule 3.8]

Clerk's Stamp

COURT FILE NUMBER 2401-02664

COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

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REGIONAL AIRPORTS AUTHORITY, HALIFAX
INTERNATIONAL AIRPORTS AUTHORITY, THE CALGARY
AIRPORT AUTHORITY, VANCOUVER AIRPORT
AUTHORITY, and WINNIPEG AIRPORTS AUTHORITY INC.

RESPONDENTS LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA
INC. dba LYNX AIR

DOCUMENT **BENCH BRIEF OF THE RESPONDENTS**

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**APPLICATION BEFORE THE HONOURABLE JUSTICE ROMAINE
ON JUNE 24, 2024 AT 2:00 PM ON THE COMMERCIAL LIST**

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PART I - INTRODUCTION

1. Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air (collectively, “**Lynx Air**”), seek an Order under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).¹
 - (a) declaring that Lynx Air has remitted all pre-filing airport improvement fees (“**AIF**”) owed to the Greater Toronto Airport Authorities (the “**GTAA**”); and
 - (b) declaring that the Vancouver Airport Authority (“**VAA**”), the Calgary Airport Authority (“**CAA**”), the Edmonton Regional Airport Authority (“**ERAA**”), the Winnipeg Airport Authority Inc. (“**WAA**”), and the Halifax International Airport Authority (“**HIAA**”) (collectively, the “**Airport Authorities**”) do not have a trust claim over pre-filing AIF in priority to all other security interests, trusts, liens, charges, encumbrances, and claims of secured creditors, statutory or otherwise.
2. The GTAA asserts that Lynx Air held AIF collected on behalf of the GTAA in trust and has yet to remit \$1,659,580.87. It the release of the unremitted AIF to the GTAA.
3. A trust relationship exists between Lynx Air and the GTAA with respect to the pre-filing AIF. Pursuant to the AIF Agreement, the GTAA Letter of Credit (as those terms are defined below) was issued to secure both debt and trust obligations, including AIF. Taking into account principles of contractual interpretation and insolvency law, it is clear that the AIF claim was satisfied upon the GTAA drawing on the GTAA Letter of Credit. As such, Lynx Air owes no further amounts to the GTAA in respect of AIF.
4. In contrast with the GTAA, the Airport Authorities do not have a valid trust over their pre-filing AIF. Despite the Airport Authorities’ contentions, the requirements for an express, implied or constructive trust simply cannot be made out in the circumstances.
5. The MOA governing the relationship between Lynx Air and each of the respective Airport Authorities *expressly disclaims* the creation of a trust relationship. The express language

¹ R.S.C. 1985, c. C-36, as amended.

of the MOA is fatal to their trust claims. Further, the judicial requirements to impose a constructive trust are very specific, and not satisfied in the current circumstances.

PART II - FACTS

A. Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air

6. Prior to the issuance of the Initial Order (as defined below), Lynx Air operated as a Canadian ultra-low-cost carrier, offering flights to 18 destinations between April 2022 and February 2024.

Affidavit of Micheal Woodward, sworn May 31, 2024 (the “**Woodward Affidavit**”) at para 4.

B. The Relevant Agreements

7. To conduct its business, Lynx Air entered into various agreements with each of the Applicants that govern, among other things, the various fees payable by Lynx Air for use of each airport, and for some of the Applicants, the security that Lynx Air was required to post. These agreements are described below.

Woodward Affidavit at para 5.

8. On of the fees, and the category at issue in these applications, are Airport Improvement Fees (“**AIF**”), which are collected by Lynx Air from passengers on behalf of the Applicants. AIF are fees charged to passengers by the Airport Authorities that are used to fund the capital development and improvement of the respective airports.

Affidavit of Jason Boyd, sworn May 24, 2024 (the “**Boyd Affidavit**”) at para 22

Agreements with the Greater Toronto Airports Authority

9. On January 1, 2023, Lynx Air signed The Greater Toronto Airports Authority Airport Improvement Fee Agreement (the “**GTAA AIF Agreement**”) with the GTAA in respect of the use of Toronto-Lester B. Pearson International Airport (“**Pearson**”).

Woodward Affidavit at para 6.

10. Among other things, the GTAA AIF Agreement governs the collection, remittance and use of AIF in respect of flights in and out of Pearson.

Woodward Affidavit at para 7.

11. Section 5 of the GTAA's Air Carrier – Application for Entry (the “**GTAA Air Carrier Application**”) required Lynx Air to post an irrevocable letter of credit as a security deposit “in an amount calculated by the GTAA Finance Controller for Landing Fees, General Terminal Fees, Apron Fees, Check-In Fees and Airport Improvement Fees.”

Woodward Affidavit at para 8.

12. Based on GTAA's calculations, Lynx Air posted a \$3,100,000 Irrevocable Standby Letter of Credit, backed by a cash deposit held by ATB (the “**GTAA Letter of Credit**”).

Woodward Affidavit at para 10.

13. Section 3 of the GTAA Air Carrier Application required Lynx Air to be bound by the terms of the Toronto Pearson Handbook for Business Partners (the “**Pearson Handbook**”) and the directives issued by the GTAA. The Pearson Handbook was superseded by the Pearson Standard: Rules and Regulations, dated June 5, 2023 (the “**GTAA Rules**”).

Boyd Affidavit at para 17.

The Airport Authorities' MOA

14. As of April 6, 2022, Lynx Air became a signatory to a Memorandum of Agreement, dated May 31, 1999, as amended (the “**MOA**”). The parties to the MOA include (i) the Airport Transport Association of Canada, (ii) Signatory Air Carriers (as defined in the MOA, which includes Lynx Air), and (iii) Airports (as defined in the MOA, which includes the Airport Authorities). Lynx Air did not negotiate the MOA with the Airport Authorities; it was required to sign it in order to use the Airport Authorities' airports.

Woodward Affidavit at paras 12-13.

15. The GTAA is the only Applicant that is *not* a signatory to the MOA.

16. Among other things, the MOA contains terms regarding Lynx Air's collection of AIF from air carrier passengers on behalf of the Airport Authorities. Section 20.1 provides:

The Parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise. Nothing contained in this MOA nor any acts of any Party taken in conjunction hereunder, shall constitute or be deemed to constitute a partnership, joint venture, or principal/agency relationship in any way or for any purpose except as the Signatory Air Carriers acting as agents for the Airports in collecting and remitting the AIF funds. Except as expressly set forth herein, no Party, shall have any authority to act for, or to assume any obligations or responsibility on behalf of, any other Party. [Emphasis added]

Woodward Affidavit at para 16.

The Calgary Airport Authority

17. The MOA is the only agreement governing the collection and remittance of AIF as between CAA and Lynx Air. Lynx Air did not post security in respect of any amounts to be remitted to the CAA.

Woodward Affidavit at paras 17, 19.

The Edmonton Regional Airports Authority

18. The MOA is the only agreement governing the collection and remittance of AIF as between the ERAA and Lynx Air. Lynx Air did not post security in respect of amounts to be remitted to the ERAA.

Woodward Affidavit at paras 20-21.

The Halifax International Airport Authority

19. In addition to the MOA, Lynx Air was required to enter into an Air Carrier Operating Agreement (the "ACOA") effective June 29, 2022 with the HIAA, which also governs the collection and remittance of AIF. The ACOA is a standard form agreement that is updated with respect to term, the air carrier's licence information and plan of operations; the

security deposit also depends on the carrier and their planned activity. There were no other negotiated changes in respect of the ACOA.

Woodward Affidavit at para 22.
HIAA Response to Undertaking, dated June 7, 2024.

20. Pursuant to the section titled “Security Deposit”, Lynx Air was required to “deposit with HIAA [...] a security deposit in the amount of \$100,000.00 in the form of a letter of credit”.

Woodward Affidavit at para 23.

21. On July 29, 2022, Lynx Air provided a cash deposit to the HIAA for the account of Lynx Air in the amount of \$100,000.00 (the “**Halifax Security Deposit**”).

Woodward Affidavit at para 24.

Winnipeg Airports Authority Inc.

22. Lynx Air did not enter into a separate agreement with WAA governing AIF. However, pursuant to WAA’s Tariff of Aviation Fees effective April 1, 2021, AIF was to be charged and payable by all air carriers operating out of the Winnipeg James Armstrong Richardson International Airport. Further, Lynx Air was required to post a cash deposit or irrevocable letter of credit to secure payment of any monies due under the Tariff.

Woodward Affidavit at para 25.

23. On April 12, 2022, Lynx Air posted a cash deposit to WAA for the account of Lynx Air in the amount of \$83,333.00 (the “**Winnipeg Security Deposit**”).

Woodward Affidavit at para 26.

The Vancouver Airport Authority

24. In addition to the MOA, Lynx Air agreed to be bound by an Airport Use Licence effective November 16, 2021 (the “**Licence**”) with the VAA, which granted a licence to Lynx Air

to operate at the Vancouver Airport. The License required Lynx Air to co-operate with the VAA in its administration of the AIF.

Woodward Affidavit at paras 28-29.

25. Article 10 of the License required Lynx Air to post security for payment of Fees in an amount equal to three months of Fees under the Licence. The License defines Fees to mean “any monies or amounts payable under this License,” which therefore includes AIF.

Woodward Affidavit at para 30.

26. On April 6, 2022, Lynx Air posted an Irrevocable Standby Letter of Credit to the VAA in the amount of \$279,645.96 (the “**Vancouver Letter of Credit**”).

Woodward Affidavit at para 31.

C. Lynx Air’s CCAA Proceedings

27. On February 22, 2024, Lynx Air obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), pursuant to an initial order granted by the Honourable Justice Gill (the “**Initial Order**”).

Woodward Affidavit at para 32.

28. Among other things, the Initial Order: (i) declared that Lynx Air are companies to which the CCAA applies; (ii) appointed FTI Consulting Canada Inc. as Monitor; and (iii) granted a stay of proceedings in favour of Lynx Air up to March 4, 2024 (the “**Initial Stay**”).

Woodward Affidavit at para 33.

29. On March 1, 2024, the Honourable Justice Whitling granted an amended and restated initial order that, *inter alia*, extended the Initial Stay to April 15, 2024 (the “**Stay Period**”). The Stay Period was extended by further orders of this Court, most recently to June 28, 2024.

Woodward Affidavit at paras 34-35.

D. Correspondence Between Lynx Air and the Applicants

30. By letter dated March 5, 2024, the GTAA demanded payment from Lynx Air in the amount of \$1,710,148.23 for pre-filing AIF. The GTAA explained that pursuant to paragraph 2.1.1(c) of the GTAA AIF Agreement, AIF were held in trust on behalf of the GTAA. The GTAA reiterated its demand for payment of pre-filing AIF by letter dated March 28, 2024.

Woodward Affidavit at paras 37-38.

31. Separately, by letter dated March 28, 2024, the Airport Authorities demanded remittance of approximately \$4,100,000 in pre-filing AIF claimed to be held in trust by Lynx Air on behalf of the Airport Authorities.

Woodward Affidavit at para 39.

32. On April 2, 2024, Lynx Air replied to the Applicants' two March 28, 2024 letters, disagreeing that any amounts were held in trust by Lynx Air.

Woodward Affidavit at para 41.

33. By letter dated April 12, 2024, Lynx Air advised the GTAA that it accepted the existence of a trust relationship, citing section 2.1.1(c) of the GTAA AIF Agreement. Notwithstanding the existence of a trust relationship, Lynx Air took the position that all trust remittances had been made upon the GTAA drawing on the GTAA Letter of Credit. The payment was applied against the AIF in priority to debt, and any residual amounts claimed by the GTAA constituted unsecured pre-filing debt.

Woodward Affidavit at para 42.

34. By letter dated April 15, 2024, Lynx Air provided the Airport Authorities an accounting of pre-filing AIF owed to each Airport Authority and stated its position that there was no evidence of a trust relationship between Lynx Air and any of the Airport Authorities.

Woodward Affidavit at para. 43.

E. Lynx Air's Accounting*The Airport Authorities*

35. According to Lynx Air's accounting records, the following AIF were collected by Lynx prior to the Initial Order, on behalf of the Airport Authorities by virtue of a debtor and creditor relationship:

Airport Authority	Pre-filing AIF	Other Pre-filing Debt
Calgary	\$2,031,140.16	\$1,431,308.26
Edmonton	\$355,640.78	\$114,237.51
Halifax	\$365,788.78	\$53,647.02
Vancouver	\$1,185,768.45	\$204,109.05
Winnipeg	\$282,895.00	\$131,568.94

Woodward Affidavit at para 45.

36. Lynx Air collected AIF from passengers, and the AIF had been held in its general bank account, comingled with other funds.

Woodward Affidavit at para 46.

37. On or around April 3, 2024, ATB Financial paid the VAA \$279,645.96²³ as a draw on the Vancouver Letter of Credit.

Woodward Affidavit at para 47.

38. The HIAA and WAA also applied the Halifax Security Deposit and Winnipeg Security Deposit (respectively) to amounts owing from Lynx Air.

Affidavit of Paul Brigley, sworn May 23, 2024 at para 13.

Affidavit of Nicole Stefaniuk, affirmed May 23, 2024 at para 13.

39. Following the foregoing payments according to Lynx Air's accounting records, the amounts owed to each of the Airport Authorities for AIF is as follows:

Airport Authority	Pre-Filing AIF	Other Pre-Filing Debt	Security Drawn	Total Net Outstanding
Calgary	\$2,031,140.16	\$1,431,308.26	N/A	\$3,462,448.42
Edmonton	\$355,640.78	\$114,237.51	N/A	\$469,878.29
Halifax	\$365,788.78	\$53,647.02	(\$100,000.00)	\$319,435.80
Vancouver	\$1,185,768.45	\$204,109.05	(\$279,645.96)	\$1,110,231.54
Winnipeg	\$282,895.00	\$131,568.94	(\$83,300.00)	\$331,163.94

Woodward Affidavit at para 48.

40. In calculating the foregoing, Lynx Air treated AIF and other pre-filing debt as unsecured debt, and did not treat AIF as trust funds for accounting purposes.

Woodward Affidavit at para 49.

41. As CAA and ERAA held no security, there is no change to total outstanding AIF or other debt.

Woodward Affidavit at para 51.

The GTAA

42. According to Lynx Air's accounting records, it collected \$1,782,424 in AIF prior to the Initial Order, which was held in trust for the GTAA.

Woodward Affidavit at paras 56-57.

43. On or around March 1, 2024, ATB Financial paid the GTAA \$3,100,000 as a draw on the GTAA Letter of Credit.

Woodward Affidavit at para 58.

44. Lynx Air's accounting records applied the GTAA Letter of Credit against pre-filing AIF in priority over debt claims to ensure the remittance of the trust amounts, as follows:

Airport Authority	Pre-Filing AIF	Pre-Filing Other Debt	Letter of Credit	Total Outstanding AIF	Total Outstanding Other Debt
Toronto	\$1,782,424.04	\$2,977,156.83	(\$3,100,000.00)	\$0	\$1,659,580.87

Woodward Affidavit at para 59.

45. Lynx Air has paid all post-filing AIF to the GTAA, and it is not at issue in this Application.

Woodward Affidavit at para 61.

46. Any residual amounts claimed by the GTAA constitutes unsecured pre-filing debt.

Woodward Affidavit at para 62.

PART III - ISSUES

47. The issues on these Applications are:

(a) In respect of the GTAA:

(i) Does the GTAA have a valid trust over its claimed AIF?

(ii) If so, should the proceeds of the GTAA Letter of Credit be applied first to its trust claim in priority over unsecured debt?

(b) In respect of the Airport Authorities:

(i) Do the Airport Authorities have a valid trust over the unremitted AIF?

- (ii) If so, should the various security deposits be applied first to its trust claim in priority over unsecured debt?

PART IV - LAW AND ARGUMENT

A. GTAA's AIF

48. In its Application, the GTAA alleges that Lynx Air held AIF collected on behalf of the GTAA in trust, and has yet to remit an amount of \$1,659,580.87. It therefore seeks direction that Lynx Air release unremitted AIF in that amount to the GTAA.
49. While it is correct that the AIF collected by Lynx Air on behalf of the GTAA was subject to a trust, the funds were remitted when the GTAA drew on the GTAA Letter of Credit.
50. In other words, when the relevant agreements are correctly interpreted, in a method consistent with principles of contractual interpretation and insolvency law, it becomes clear that Lynx Air owes no further amounts to the GTAA in respect of AIF.

Existence of Trust in respect of GTAA's AIF

51. It is trite law that the existence of a trust depends on the satisfaction of the three certainties: certainty of intention, certainty of subject-matter and certainty of objects.

Donovan W.M. Waters, *Waters' Law of Trusts in Canada*, 5th Ed. (Toronto: Thompson Reuters Canada, 2021) [*Waters*] at 5.I [**Tab 21**].

52. In these circumstances, the three certainties are satisfied, creating a trust relationship between Lynx Air and the GTAA:
- (a) Certainty of intention is satisfied, as the express trust language in section 2.1.1(c) of the GTAA AIF Agreement demonstrates a clear intention to create the trust: “*the AIF collected by the Air Carrier [...] shall be held by the Air Carrier in trust for the benefit of the GTAA*”.
- (b) Certainty of subject-matter is satisfied, because the language in section 2.1.1(c) of the GTAA AIF Agreement is clear that the trust property is “*the AIF collected by*

the Air Carrier (excluding the amounts collected by the Air Carrier for itself in respect of the Administration Cost)”.

(c) Certainty of objects is satisfied because GTAA is the sole beneficiary of the trust.

53. Section 2.1.1(c) permits commingling.² There is ample authority holding that a provision of an agreement explicitly permitting commingling does not negate a trust relationship.

Alberta Treasury Branches v. Exall Energy Corporation, 2017 ABQB 602 at para 62 (“An agreement to commingle funds is a factor that must be considered in determining the legal relationship between parties. The agreement of the parties to commingle trust funds with other funds is not fatal to the trust concept. When the commingling clause is viewed in the context of the entire 1990 Operating Procedure, it does not negate the trust relationship”).

Bank of Nova Scotia v. Société générale (Canada), 1988 CarswellAlta 288 (C.A.) at para 10 (“The appellant's principal argument against inferring a trust relationship was based on s. 507, which expressly allows the commingling of the non-operator's funds with other funds in Sorrel's account. It must be noted that counsel for the appellant was unable to produce any authority for the proposition that the mere agreement of the parties to commingle the trust funds with other funds is fatal to the trust concept. Certainly such an agreement to commingle is one feature which a court must consider in determining the true relationship created by the agreement between the parties. In the case at bar, the commingling clause is, in our view, an administrative aid to the smooth implementation of the agreement. When it is viewed in the context of the entire agreement, it does not negate a trust relationship.”)

Air Canada v. M & L Travel Ltd., [1993] 3 S.C.R. 787 at para 25 (“While the presence or absence of a prohibition on the commingling of funds is a factor to be considered in favour of a debt relationship, it is not necessarily determinative”).

Alberta Treasury Branches v Exall Energy Corporation, 2017 ABQB 602 at para 62 [**Tab 2**].

Bank of Nova Scotia v Société générale (Canada), 1988 CarswellAlta 288 (CA) at para 10 [**Tab 4**].

Air Canada v M & L Travel Ltd., [1993] 3 SCR 787 at para 25 [**Tab 1**].

² Section 2.1.1(c): “... such AIF collected may be commingled in the accounts of the Air Carrier with other funds collected during the normal course of business.”

54. In light of the foregoing, Lynx Air does not dispute that the AIF collected by Lynx Air on behalf of the GTAA was subject to a trust. However, as discussed below, these trust funds were remitted when GTAA drew on the GTAA Letter of Credit.

Allocation of Security Deposit

55. The issue of how to allocate the proceeds of the GTAA Letter of Credit is the key issue in the GTAA's application. It is largely one of first impression, as there is no case law directly on point. However, when the relevant agreements are reviewed, taking into account foundational principles of contractual interpretation and insolvency law, it becomes clear that the GTAA Letter of Credit should be first allocated to unremitted AIF, with the result that there are no further amounts owing from Lynx Air to the GTAA in respect of AIF.
56. Specifically, section 5 of the GTAA Air Carrier Application provides that the GTAA Letter of Credit serves as a security deposit "for Landing Fees, General Terminal Fees, Apron Fees, Check-In Fees and Airport Improvement Fees", but does not govern how it is to be apportioned as among the various fees.
57. The GTAA points to section 2.38 of the GTAA Rules to assert it has full discretion as to how to apply the Letter of Credit in the circumstances. However, when read carefully, it is clear this is not the intent of the provision:

Air Carriers must submit a security deposit in a form and amount determined by the GTAA's Finance Controller and detailed in the GTAA's Air Carrier – Application for Entry prior to commencing operations. The GTAA may apply the security deposit towards overdue amounts of Aeronautical Fees and Charges or to cover costs associated with violations of the GTAA Rules or under any other agreements.

58. The purpose of section 2.38 of the GTAA Rules is to allow the GTAA to apply the security deposit to any amounts owed by Lynx Air to the GTAA; it also includes costs associated with violations of the GTAA Rules or other agreements between the parties. It does not set out how the security deposit is to be allocated as among multiple sets of charges that are concurrently owing by the Air Carrier (as here). In essence, it is a set-off provision governing the debt against which the security deposit may be applied.

59. The GTAA also points to Section 2.8.4 of the GTAA AIF Agreement as giving it discretion with respect to how it applies the security deposit in the circumstances, but as before, this is not the intent of the provision:

GTAA may elect to call upon and collect against the Security Amount in whole or in part where Air Carrier has failed to comply with any obligations hereunder with respect to the collection or remittance of Deposits or where, in GTAA's sole opinion (acting reasonably) an Event of Default may reasonably be anticipated to be committed by Air Carrier. Where GTAA has claimed some or all of the Security Amount, Air Carrier will promptly (and in no event later than 15 calendar days) replenish the Security Amount by a sum equal to the amount claimed by GTAA in accordance with the terms hereof.

60. While Section 2.8.4 gives the GTAA discretion to “elect to call upon and collect” against the security deposit where the Air Carrier has breached its obligations relating to the collection and remittance of AIF, it does not confer on the GTAA the discretion to allocate the security deposit among multiple sets of charges that are concurrently owing by the Air Carrier. The relevant agreements remain entirely silent on how the security deposit is to be allocated in such circumstances.
61. Within each of the GTAA Air Carrier Application, the GTAA AIF Agreement and the GTAA rules, the GTAA has given itself both discretion and various forms of protection, as it is entitled to do. However, those agreements are silent on the GTAA Letter of Credit is to be allocated in circumstances such as these.
62. In the face of this silence, the effect of the *pari passu* principle, the foremost principle in the law of insolvency, must govern. The *pari passu* principle states that the insolvent debtor's assets are to be distributed among classes of unsecured creditors rateably and equally in payment of the debts as they existed at the date of insolvency. Two purposes underpin the *pari passu* principle: fairness to creditors and orderly administration of an insolvent debtor's estate.

Re Nortel Networks Corp., 2015 ONCA 681 at paras 23-24 [**Tab 15**].

63. A court has broad powers make orders in accordance with the *pari passu* principle. For example, courts have invoked the *pari passu* principle to invalidate contractual provisions

that, if enforced during bankruptcy proceedings, would alter the bankruptcy scheme of distribution.

Capital Steel Inc v Chandos Construction Ltd., 2019 ABCA 32 [*Capital Steel*] at para 20 [**Tab 6**].

64. In these instances, allocating the proceeds from the GTAA Letter of Credit first against the unsecured debt violates the *pari passu* principle. All unsecured creditors should rank equally in right of repayment in an insolvency, and allocating the proceeds in this way would significantly advantage the GTAA against all other unsecured creditors.
65. The agreements at issue are silent on how the security deposit is to be allocated as between AIF and other fees. Therefore, where the CCAA governs, it falls to this Court to determine how to allocate the proceeds of the GTAA Letter of Credit; it is not for the GTAA to unilaterally determine.
66. As explained by the Supreme Court of Canada in *Century Services Inc. v Canada (Attorney General)*, the fact that the CCAA is skeletal in nature gives a CCAA court broad discretion to make any order it sees fit, in accordance with section 11 of the CCAA.

Century Services Inc. v Canada (Attorney General), 2010 SCC 60 at paras 57-68 [**Tab 7**].

67. To that end, the court should exercise its discretion in a way that is most fair to Lynx Air's other creditors – that is, to applying the proceeds of the GTAA Letter of Credit first against the unremitted AIF before the other amounts owing by Lynx Air.
68. Further, the GTAA's claim that such an interpretation would nullify or make redundant the trust is simply incorrect. As the GTAA itself points out, the parties have bargained for two different types of security for the AIF. Even though the security deposit should be applied against the AIF claims first, consistent with the *pari passu* principle, the trust still serves an important purpose in the event that the security deposit is insufficient to cover the full amount of the AIF claims.

69. This is consistent with section 2.8.1 of the GTAA AIF Agreement, which provides:

Notwithstanding the fact that Air Carrier is collecting Deposits from Enplaned Passengers on account of the AIF, Air Carrier will deliver to GTAA a security payment (the “**Security Amount**”) which will act as a guarantee of Air Carrier’s obligation to collect and remit Deposits.³ The Security Amount must be delivered prior to the Effective Date (except where Air Carrier is already operating at the Airport and has already provided the Security Amount as of the Effective Date hereof, in which case the Parties acknowledge that the Security Amount has been paid).

70. In fact, section 2.8.1 serves as evidence that (i) the GTAA Letter of Credit was intended to act as security over funds held in trust, and (ii) the GTAA drafter turned their minds to the fact that funds held in trust would not typically require security given that trust funds would be paid to a beneficiary in priority in the event of an insolvency event.
71. Using the GTAA Letter of Credit to satisfy unremitted AIF does not make the trust redundant. It is precisely what GTAA intended when it drafted the GTAA AIF Agreement: multiple mechanisms to ensure recovery in an event of default.
72. In other words, the existence of both the trust and the security deposit as two different types of security for the AIF is not disputed. What is disputed is the GTAA’s assertion that it may allocate the proceeds of the GTAA Letter of Credit in a way that disadvantages Lynx Air’s other unsecured creditors in violation of the *pari passu* principle.
73. Even if the agreements were interpreted as giving the GTAA a degree of discretion in pursuing its various remedies against Lynx Air, which is denied as a matter of contractual interpretation, this Court cannot allow that discretion to be exercised unilaterally in a way that violates the *pari passu* principle and deprives other unsecured creditors of their rights to recovery. In these circumstances, the GTAA is looking to do just that.

³ Note that “Deposit” is defined at s. 1.1 of the GTAA AIF Agreement as only constituting amounts collected by Air Carrier in respect of AIF: “ ‘Deposit’ means an amount collected by Air Carrier on behalf of GTAA as a deposit from a prospective Enplaned Passenger equal to the amounts set out in Schedule ‘B’, payable by such prospective Enplaned Passenger should they become an Enplaned Passenger.”

74. In the alternative, if this Court does not accept Lynx Air's interpretation of the relevant agreements, then Lynx Air submits that they are ambiguous on the question of how to allocate the GTAA Letter of Credit.
75. The *contra proferentem* rule of contractual interpretation states that “[i]n the event that the court is unable to resolve a contradiction or ambiguity in the terms of a contract, the language of the contract will be construed against its author in accordance with the *contra proferentem* rule”.

Scanlon v Castlepoint Development Corp., [1992] OJ No 2692, 11 OR (3d) 744 at para 90 (Ont CA), leave to appeal refused [1993] SCCA No 62 (SCC) [Tab 17], citing *Consolidated-Bathurst Export Ltd. v Mutual Boiler and Machinery Insurance Co.*, [1979] SCJ No 133, [1980] 1 SCR 888 at 901 [Tab 8].

76. This rule is one of general application, applying whenever “there is ambiguity in the meaning of a contract which one of the parties as the author of the document offers to the other, with no opportunity to modify its wording”.

Hillis Oil and Sales Ltd. v Wynn's Canada Ltd., [1986] 1 SCR 57 at para 17 [Tab 9].

77. In other words, *contra proferentem* “applies to contracts and other documents on the simple theory that any ambiguity in a term of a contract must be resolved against the author if the choice is between it and the counterparty who did not participate in its drafting”.

McClelland & Stewart Ltd. v Mutual Life Assurance Co. of Canada, [1981] SCJ No 60, [1981] 2 SCR 6 at 15 [Tab 13].

78. As explained by the Nova Scotia Court of Appeal “where the meaning of a contract is ambiguous, that is, that its meaning is obscure, the application of the *contra proferentem* rule requires that the meaning least favourable to the author of the contract ought to prevail.

Arnoldin Construction & Forms Ltd. v Alta Surety Co., [1995] NSJ No 43, 137 NSR (2d) 281 at paras 38-39 (NSCA), leave to appeal refused [1995] SCCA No 143 (SCC) [Tab 3].

79. As described above, each of the GTAA AIF Agreement, GTAA Air Carrier Application and GTAA Rules is silent on how the security deposit is to be allocated between two sets of charges where both are owing by the Air Carrier. It is similarly ambiguous as to how the GTAA intended that it is to be allocated. Therefore, the meaning of these agreements is obscure, and they are ambiguous for the purposes of the *contra proferentem* rule.
80. In short, the relevant agreements – all drafted by the GTAA – are silent as to how to allocate the GTAA Letter of Credit. The effect of the GTAA’s argument is that, notwithstanding the terms of the Rules, it alone should determine how to allocate the GTAA letter of credit, notwithstanding that the CCAA governs, and the rights of other stakeholders are engaged. The GTAA complains that applying the GTAA Letter of Credit against the AIF first “generates results that were not bargained for.” There was no bargain. The GTAA dictated the terms of its relationship with Lynx Air, including forms of unilateral collection. If it had intended the result it now seeks from the Court, it could have expressly done so in its contracts of adhesion.
81. In light of the foregoing, the relevant agreements must be interpreted to apply the security deposit against the AIF claims first, for consistency both with the *contra proferentem* rule of contractual interpretation, and the *pari passu* principle in insolvency law.
82. In the further alternative, if this Court determines that, as a matter of contractual interpretation, the relevant agreements give the GTAA the full discretion to allocate the proceeds of the GTAA Letter of Credit, this Court should nonetheless exercise its broad powers under the CCAA to override those contracts in accordance with the *pari passu* principle.
83. As referenced above, section 11 of the CCAA gives the Court broad powers to make “any order that it considers appropriate in the circumstances.” And, courts have previously invoked the *pari passu* principle to invalidate contractual provisions that could potentially alter the bankruptcy scheme of distribution.

Capital Steel Inc v Chandos Construction Ltd., 2019 ABCA 32 [*Capital Steel*] at para 20 [**Tab 6**].

84. Allowing GTAA the full discretion to allocate the proceeds of the GTAA Letter of Credit as it sees fit would effectively allow it to contract out of the *pari passu* principle, resulting in prejudice to Lynx Air's other creditors, an outcome this Court should not sanction.
85. Therefore, it would be appropriate for this Court to override the relevant contracts and use its own discretion to allocate the proceeds of the GTAA Letter of Credit in a way that is consistent with the *pari passu* principle of insolvency.

B. Airport Authorities' AIF

86. By contrast with the GTAA, the Airport Authorities do not have a valid trust over their unremitted AIF. As discussed in further detail below, the requirements for an express, implied or constructive trust simply cannot be made out in the circumstances.

Existence of Trust in respect of Airport Authorities' AIF

No Express Trust

87. As discussed above, the existence of a trust depends on the satisfaction of the three certainties: certainty of intention, certainty of subject-matter and certainty of objects.

Waters at 5.1 [Tab 21].

88. It is conceded that the two last-mentioned certainties have been established by the terms of the MOA as both the trust property (the AIF collected by a Signatory Air Carrier) and the beneficiaries (the Airports) are clearly identified therein.
89. However, in order to satisfy the requirement for certainty of intention, the relevant words must demonstrate a clear intention to create a trust.

Willis (Litigation Guardian of) v Willis Estate, 2006 CarswellOnt 1757 (SCJ) at para 32, affirmed 2007 ONCA 552 [Tab 20].

90. In contrast with the clear language contained in section 2.1.1(c) of the GTAA AIF Agreement, the language of MOA does not demonstrate a clear intention to create a trust. In fact, it explicitly and completely disclaims the creation of any such trust:

The Parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise. Nothing contained in this MOA nor any acts of any Party taken in conjunction hereunder, shall constitute or be deemed to constitute a partnership, joint venture, or principal/agency relationship in any way or for any purpose except as the Signatory Air Carriers acting as agents for the Airports in collecting and remitting the AIF funds. Except as expressly set forth herein, no Party, shall have any authority to act for, or to assume any obligations or responsibility on behalf of, any other Party.

91. This language could not be any clearer in establishing that the parties did not intend to create a trust. It is impossible to establish certainty of intention in the face of such clear, unambiguous wording.
92. Although the Airport Authorities contend that the language in the second sentence of Section 20.1 implies that the collected AIF is intended to be held in trust, this is simply and obviously incorrect. The first sentence of Section 20.1, by its plain language, disclaims any intention to create a trust relationship, full stop.
93. The second sentence of Section 20.1 goes on to prevent the formation of a principal/agency relationship, “except as the Signatory Air Carriers acting as agents for the Airports in collecting and remitting the AIF funds.” This exception is limited to the formation of a principal/agency relationship; there is absolutely no indication that this exception extends to the creation of a trust, which has been explicitly disclaimed by the first sentence.
94. The Airport Authorities cite much authority for the principle that there is no need for any technical words or expressions for the creation of a trust. This is generally correct – as long as the intention to create a trust can be established from the words used and the surrounding circumstances, certainty of intention can be satisfied.

Waters at 5.II [**Tab 21**].

95. However, the clearest indication of intention is achieved by looking at the words used in the relevant agreement. Here, the words of the agreement (specifically Section 20.1 of the MOA) expressly and conclusively disclaim the creation of a trust.
96. This is not a situation where the relationship bears all the hallmarks of a trust, but the relevant document simply omitted to use specific trust language. Again, by the express language of Section 20.1 of MOA, the clear intention was not to create a trust.
97. The interpretation of a contract always begins with the words used. All of the various aspects of contractual interpretation are rooted in the actual language used by the parties.

Leggett & Platt Canada Co. v Brink Forest Products Ltd., 2010 BCCA 14 at para 20 [Tab 12].

98. As explained by the Ontario Court of Appeal:

The cardinal interpretive rule of contracts ... is that the court should give effect to the intention of the parties as expressed in their written agreement. Where that intention is plainly expressed in the language of the agreement, the court should not stray beyond the four corners of the agreement.

KPMG Inc. v Canadian Imperial Bank of Commerce, [1998] OJ No 4746 at para 3 [Tab 10].

99. The same principle was explained by the Supreme Court of Canada in the following terms:

Were I convinced that a different interpretation would advance the true intent of the parties, I would gladly subscribe to it. However, when the wording of a contract is unambiguous, as in my view it is in this case, courts should not give it a meaning different from that which is expressed by its clear terms, unless the contract is unreasonable or has an effect contrary to the intention of the parties.

Scott v Wawanesa Mutual Insurance Co., [1989] 1 SCR 1445 at para 51 [Tab 18].

100. In the alternative, as noted in the undertaking responses of HIAA, the MOA is a contract of adhesion, which was not negotiated by Lynx Air. If this Court determines there is an ambiguity, which is denied, then it must be resolved in favour of the Air Carrier.

HIAA Response to Undertaking, dated June 7, 2024.

101. The Airport Authorities cannot point to any case law supporting the satisfaction of certainty of intention and creation of an express trust in the face of such clear and unambiguous language, for good reason. This would be a completely illogical result, flipping the entire concept of certainty of intention on its head. The only certainty here is that the parties did not intend to create a trust, by their own express wording.

No Implied Trust

102. As described by *Waters*, in the common usage of today, the terms “express” and “implied” refer to the intention of the alleged settlor. If the settlor clearly and specifically says that certain property is to be held in trust, then he or she has created an express trust. Similarly, if the settlor’s language has to be construed in order for its legal meaning to be discovered, and it is found that the maker of the statement intended a trust, then he or she has created a trust arising by implied intent. In other words, both express trusts and implied trusts are varieties of intentional trusts, it is just a question of whether that intent is clearly expressed, or discovered from more indirect and ambiguous language.

Waters at 2.I [Tab 21].

103. Given that an implied trust also requires an intention to create the trust, the clear language of section 20.1 of the MOA evidencing the parties’ *intention to disclaim* a trust is sufficient to prevent an implied trust from being formed in the same way as discussed above in respect of an express trust.

No Constructive Trust

104. A constructive trust comes into existence when the law imposes upon a party an obligation to hold specific property for the benefit of another. The person obligated becomes by force of law a constructive trustee towards the person to whom he or she owes performance of the obligation.

Waters at 11.I [Tab 21].

105. Constructive trusts have been imposed both to prevent an unjust enrichment and to avoid a wrongful gain. These two categories of constructive trusts are discussed separately below.

106. However, note that in both cases, the requirements to impose a constructive trust are very specific, and not satisfied in the current circumstances, particularly in light of the explicit disclaimer of any trust.

Unjust Enrichment

107. In *Lac Minerals Ltd. v. International Corona Resources Ltd.*, the Supreme Court of Canada set out the two-step approach for analyzing whether a constructive trust should be granted as a remedy for unjust enrichment. First the Court determines whether a claim for unjust enrichment is established, and then, secondly, examines whether in the circumstances a constructive trust is the appropriate remedy to redress that unjust enrichment.

Lac Minerals Ltd. v International Corona Resources Ltd., [1989] 2 SCR 574 [*Lac Minerals*] at para 71 [**Tab 11**].

108. In other words, even if a restitutionary claim for unjust enrichment has been made out, this does not guarantee the creation of a constructive trust.
109. In the current circumstances neither step is satisfied, as no unjust enrichment can be established, and even if it could be, a constructive trust would not be an appropriate remedy.
110. It is well established that there are three requirements to be satisfied before an unjust enrichment can be said to exist: (1) an enrichment, (2) a corresponding deprivation and (3) the absence of any juristic reason for the enrichment.

Becker v Pettkus, [1980] 2 SCR 834 [*Becker*] at para 38 [**Tab 5**].

111. In this case, Lynx Air is not benefiting from any kind of enrichment, as all of its assets will be distributed to creditors.
112. Further, and most importantly, even if there were an enrichment and a corresponding deprivation to point to, it could not be said to in the absence of any juristic reason. Lynx Air has collected the AIF on behalf pursuant to the terms of the MOA (which explicitly

disclaims the creation of a trust relationship). It is well established that a contract constitutes a juristic reason for the purposes of this analysis.

Becker at para 25 [Tab 5].

113. The MOA, in combination with the fact that Lynx Air is insolvent, would constitute the juristic reason for the enrichment and corresponding deprivation. Insolvency proceedings, by their very nature, will result in certain creditors suffering “deprivations” by the simple fact that the debtor does not have the assets to satisfy all claims against it. And since the MOA explicitly disclaims the creation of a trust relationship, the Airport Authorities are unsecured creditors in respect of the AIF, subject to suffering losses in an insolvency of the debtor.
114. Even if an unjust enrichment could be established, La Forest J., for himself and Lamer J., thought that a constructive trust would be inappropriate in “the vast majority of cases”. He went on to say that “a constructive trust should only be awarded if there is reason to grant to the plaintiff the additional rights that flow from recognition of a right of property”. Among the most important of these rights, he said, is priority for the plaintiff in the defendant’s bankruptcy.

Lac Minerals at para 78 [Tab 11].

115. Under the framework set out in *Lac Minerals*, it would be inappropriate to grant a constructive trust here. There is no need to grant the Airport Authorities the additional rights that flow from recognition of a right of property, because they have already disclaimed the existence of a trust by the clear wording of the MOA.
116. Further, the Airport Authorities had the opportunity to protect their priority in a bankruptcy by requiring a security deposit, an opportunity that most Airport Authorities took advantage of, thereby putting themselves into a better position than most of Lynx Air’s other creditors.
117. The Airport Authorities do not require the protection of a constructive trust, and granting them one at this late stage would violate the *pari passu* principle, as discussed above in the context of the GTAA’s claims.

118. All unsecured creditors should rank equally in right of repayment in an insolvency, and creating a constructive trust on behalf of the Airport Authorities would significantly advantage them against all other unsecured creditors beyond their contractually agreed security deposits.

Wrongful Gains

119. The Supreme Court of Canada established a four-part test for a constructive trust in the case of a supposed wrongful gain:
- (a) The defendant must have been under an equitable obligation, that is, an obligation of the type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;
 - (b) The assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff;
 - (c) The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties and;
 - (d) There must be no factors which would render imposition of a constructive trust unjust in all the circumstances of the case; e.g., the interests of intervening creditors must be protected.

Soulos v Korkontzilas, [1997] 2 SCR 217 at para 45 [**Tab 19**].

120. These requirements are not met in these circumstances. Specifically, in respect of requirements (i) and (ii), Lynx Air owed contractual obligations to the Airport Authorities, not equitable ones. Therefore, any alleged breaches would be contractual, not equitable.
121. Although Lynx Air was nominally acting as agent for the Airport Authorities in collecting the AIF, the clear disclaimer of a trust meant that Lynx Air and the Airport Authorities were in a debtor-creditor relationship. To that end, principals and their agents can and do

operate on a debtor-creditor basis in relation to the accounts between them. Certainly, the fact of a agency relationship does not in and of itself create a trust.

Ontario (Egg Producers' Marketing Board) v Clarkson Co., 1981 CarswellOnt 658 [Tab 14].

122. Further, note that this is not an instance of profiteering on the part of the agent. Lynx Air has done nothing inappropriate in the circumstances – it has collected AIF as the MOA required it to, and is now merely seeking to distribute its remaining assets in a way that is fair and equitable to all of its creditors.
123. For requirement (iii), the Airport Authorities do not have a legitimate reason for a proprietary remedy for many of the same reasons discussed above in the context of unjust enrichment.
124. Specifically, there is no need to grant the Airport Authorities the additional rights that flow from recognition of a right of property, because they have already disclaimed the existence of a trust by the clear wording of the MOA.
125. Further, the Airport Authorities had an opportunity to protect their priority in a bankruptcy by requiring a security deposit.
126. In respect of requirement (iv), granting a constructive trust at this late stage would be unjust to the other creditors of Lynx Air, violating the *pari passu* principle.
127. All unsecured creditors should rank equally in right of repayment in an insolvency, and creating a constructive trust on behalf of the Airport Authorities would significantly advantage them against all other unsecured creditors beyond their contractually agreed security deposits.
128. The Airport Authorities heavily rely on the decision of *Redstone Investment Corp.* in arguing that a constructive trust should be granted in the current circumstances. However, *Redstone* can be distinguished: although the agreements in *Redstone* did not explicitly

require the funds be held in trust, they also did not expressly disclaim the creation of such a trust (as here).

Re Redstone Investment Corp., 2015 ONSC 533 at paras 18 and 72 [Tab 16].

129. In short, it would be inequitable to impose a constructive trust in circumstances where the parties have explicitly disclaimed the existence of such a trust, where other creditors would be prejudiced by the creation of such a trust (in violation of the *pari passu* principle), and where the Airport Authorities had the opportunity to protect themselves by asking for security deposits from Lynx Air.

Allocation of Security Deposits

130. In the alternative, if this Court finds that the Airport Authorities have a trust over their unremitted AIF, then the Halifax Security Deposit, Winnipeg Security Deposit and Vancouver Letter of Credit (collectively, the “**Security Deposits**”) should be put towards the unremitted AIF, reducing the amount of the trust claim.
131. Although the Airport Authorities claim that these Security Deposits were intended to secure aeronautical fees and not AIF, there is nothing in the relevant agreements to that effect. Further, the actions of the VAA and HIAA to enforce against the full amount of their Security Deposits despite the quantum of those Security Deposits exceeding the amount of aeronautical fees owing demonstrates that they were clearly intended to secure AIF (and the relevant Airport Authorities understood this fact).
132. Given that the Security Deposits secured both aeronautical fees and AIF and the relevant agreements are silent on how these Security Deposits are to be allocated, then, for much of the same reasons as in respect of the GTAA Letter of Credit (namely, the *pari passu* principle and the *contra proferentem* rule) the Security Deposits should be first allocated

to the unremitted AIF, with the result that there the trust claims from the VAA, HIAA and WIAA are reduced by the amount of the corresponding Security Deposit, as follows:

Airport Authority	Pre-Filing AIF	Pre-Filing Other Debt	Letter of Credit Drawn / Deposit Applied	Total Outstanding AIF	Total Outstanding Other Debt
Halifax	\$365,788.78	\$53,647.02	(\$100,000.00)	\$265,788.78	\$53,647.02
Vancouver	\$1,185,768.45	\$204,109.05	(\$279,645.96)	\$906,122.49	\$204,109.05
Winnipeg	\$282,895.00	\$131,568.94	(\$83,300.00)	\$199,595.00	\$131,568.94

Woodward Affidavit at para 61.

PART V - CONCLUSION

133. Lynx Air requests that this Honourable Court grant the relief requested by it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17 DAY OF JUNE, 2024



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TABLE OF AUTHORITIES

TAB	AUTHORITY
<i>Jurisprudence</i>	
1.	<i>Air Canada v M & L Travel Ltd.</i> , [1993] 3 SCR 787
2.	<i>Alberta Treasury Branches v Exall Energy Corporation</i> , 2017 ABQB 602
3.	<i>Arnoldin Construction & Forms Ltd. v Alta Surety Co.</i> , [1995] NSJ No 43, 137 NSR (2d) 281
4.	<i>Bank of Nova Scotia v Société générale (Canada)</i> , 1988 CarswellAlta 288 (CA)
5.	<i>Becker v Pettkus</i> , [1980] 2 SCR 834
6.	<i>Capital Steel Inc v Chandos Construction Ltd.</i> , 2019 ABCA 32
7.	<i>Century Services Inc. v Canada (Attorney General)</i> , 2010 SCC 60
8.	<i>Consolidated-Bathurst Export Ltd. v Mutual Boiler and Machinery Insurance Co.</i> , [1979] SCJ No 133, [1980] 1 SCR 888
9.	<i>Hillis Oil and Sales Ltd. v Wynn's Canada Ltd.</i> , [1986] 1 SCR 57
10.	<i>KPMG Inc. v Canadian Imperial Bank of Commerce</i> , [1998] OJ No 4746
11.	<i>Lac Minerals Ltd. v International Corona Resources Ltd.</i> , [1989] 2 SCR 574
12.	<i>Leggett & Platt Canada Co. v Brink Forest Products Ltd.</i> , 2010 BCCA 14
13.	<i>McClelland & Stewart Ltd. v Mutual Life Assurance Co. of Canada</i> , [1981] SCJ No 60, [1981] 2 SCR 6
14.	<i>Ontario (Egg Producers' Marketing Board) v Clarkson Co.</i> , 1981 CarswellOnt 658
15.	<i>Re Nortel Networks Corp.</i> , 2015 ONCA 681
16.	<i>Re Redstone Investment Corp.</i> , 2015 ONSC 533
17.	<i>Scanlon v Castlepoint Development Corp.</i> , [1992] OJ No 2692, 11 OR (3d) 744
18.	<i>Scott v Wawanesa Mutual Insurance Co.</i> , [1989] 1 SCR 1445
19.	<i>Soulos v Korkontzilas</i> , [1997] 2 SCR 217
20.	<i>Willis (Litigation Guardian of) v Willis Estate</i> , 2006 CarswellOnt 1757 (SCJ)

TAB	AUTHORITY
<i>Secondary Sources</i>	
21.	Donovan W.M. Waters, <i>Waters' Law of Trusts in Canada</i> , 5th Ed. (Toronto: Thompson Reuters Canada, 2021)

This is Exhibit "Q" referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



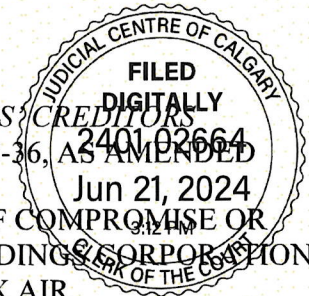
A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
in and for Alberta
My Commission Expires September 11, 2026

COURT FILE NUMBER 2401-02664
 COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS
 ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION
 and 1263343 ALBERTA INC. dba LYNX AIR



DOCUMENT **FIFTH REPORT OF FTI CONSULTING CANADA INC., IN
 ITS CAPACITY AS MONITOR OF LYNX AIR HOLDINGS
 CORPORATION and 1263343 ALBERTA INC. dba LYNX
 AIR**

June 21, 2024

ADDRESS FOR SERVICE AND
 CONTACT INFORMATION OF
 PARTY FILING THIS
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This is **Exhibit “Q”** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024

A Commissioner for Oaths and Notary
in and for the Province of Alberta

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FIFTH REPORT OF THE MONITOR

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Appendix “A” – Cash Flow Statement for the period ending September 30, 2024

INTRODUCTION

1. On February 22, 2024 (“**Initial Filing Date**”), Lynx Air Holdings Corporation (“**Lynx Holdco**”) and 1263343 Alberta Inc. dba Lynx Air (“**Lynx Opco**”, together with Lynx Holdco, “**Lynx Air**” the “**Applicants**” or the “**Company**”), sought and obtained an initial order (“**Initial Order**”) by the Court of King’s Bench of Alberta (“**Court**”) to commence proceedings (“**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”).
2. The Initial Order, among other things, established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants until March 4, 2024, and appointed FTI Consulting Canada Inc. as monitor (the “**Monitor**”) of the Applicants in these CCAA Proceedings;
3. On March 1, 2024, this Honourable Court granted an Amended and Restated Initial Order (the “**ARIO**”) which, among other things, provided the following relief:
 - (a) declared that the Applicants are companies to which the CCAA applies;
 - (b) authorized the Applicants to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the “**Property**”) and continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) or their Property;
 - (c) extended the Stay of Proceedings, until and including April 15, 2024, (the “**Stay Period**”), all proceedings, and remedies against the Applicants or its business or Property, except as otherwise set forth in the Initial Order or otherwise permitted by law;

- (d) granted a charge in favour of the Monitor, its legal counsel, and the Applicants' legal counsel in respect of their fees and disbursements in the amount of \$500,000 under section 11.52 of the CCAA (the "**Administrative Charge**");
- (e) granted a \$500,000 charge in favour of the Applicants' directors and officers ("**Directors' Charge**") as protection against obligations and liabilities that they may incur as directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of these CCAA Proceedings;
- (f) increased the amount available to the Applicants under an interim financing term sheet ("**Term Sheet**") made as of February 21, 2024, with Indigo Northern Ventures LP (the "**Interim Lender**" or "**Indigo**") from approximately \$1.0 million (US\$750,000) to approximately \$5.0 million (as same is denominated in USD, the "**Interim Facility**") and a corresponding increase to the court-ordered priority charge on the Property of the Applicants to secure the Interim Facility (the "**Interim Lender's Charge**");
- (g) granted a charge against the Applicants' Property for a key employee retention plan ("**KERP**") in the maximum amount of \$1.2 million (the "**KERP Charge**");
- (h) sealed the Confidential Affidavit of Michael Woodward in accordance with the terms of a restricted court access order granted by the Court; and
- (i) declared pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), S.C. 2005, c. 47, s.1 ("**WEPPA**"), that the Applicants and their former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations SOR/2008-222 (the "**WEPP Regulations**") and are individuals to whom the WEPPA applies as of the date of the Initial Order.

4. Also on March 1, 2024, this Honourable Court approved a sale and investment solicitation process (“**SISP**”) and granted an Order (the “**SISP Order**”) authorizing and directing the Applicants and the Monitor to implement the SISP in accordance with the terms thereof (the “**SISP Procedures**”).
5. On April 2, 2024, this Honourable Court granted the following Orders:
 - (a) an Order (the “**Termination Approval Order**”) approving a termination agreement and mutual release (the “**Termination Agreement**”) between The Boeing Company (“**Boeing**”) and Lynx Opco in respect of Purchase Agreement No. PA-04427 (the “**Boeing Purchase Agreement**”);
 - (b) a restricted Court access Order sealing the confidential affidavit of Michael Woodward, sworn March 25, 2024, which contains an unredacted copy of the Termination Agreement; and
 - (c) a restricted Court access Order sealing the confidential supplement to the second Report of the Monitor dated March 27, 2024.
6. On April 15, 2024, this Honourable Court granted the following Orders:
 - (a) authorized the Applicants, with the approval of the Monitor, to repay the borrowings to the Interim Lender in an amount equal to the amounts owing to the Interim Lender under the Term Sheet;
 - (b) authorized the Applicants to make further distributions to Indigo up to an amount equal to the secured obligations and amounts owing by the Applicants under the terms of the note purchase agreement dated December 20, 2018 (the “**Initial Notes**”), and the five bridge note purchase agreements, as amended (the “**Bridge Notes**” and collectively with the Initial Notes, the “**Secured Obligations**”); and

- (c) extended the Stay Period up to and including June 28, 2024.
7. On May 21, 2024, this Honourable Court granted the following Orders:
- (a) authorized and approved (the “**BOCA AVO**”) the transaction (the “**BOCA Transaction**”) contemplated by the asset purchase and sale agreement between Lynx Opco and BOC Aviation (Cayman) Limited (“**BOCA**”) dated May 13, 2024 (the “**BOCA APA**”);
 - (b) authorized and approved (the “**AERO AVO**”) the transaction (the “**AERO Transaction**”) and together with the BOCA Transaction, the “**Transactions**”) contemplated by an asset purchase and sale agreement between Lynx Opco and AERO3 Inc. (“**AERO**”) dated May 10, 2024 (the “**AERO APA**”); and
 - (c) an order (the “**Restricted Court Access Order**”) sealing the Confidential Affidavit of Michael Woodward, sworn May 13, 2024 (the “**Confidential Woodward Affidavit**”).
8. On June 19, 2024, and June 21, 2024, the Applicants and the Monitor, filed and served notices of application returnable on June 28, 2024, seeking orders:
- (a) approving a procedure for the solicitation, determination and resolution of claims against the current and former directors and officers of the Applicants (the “**D&O Claims Process**”);
 - (b) enhancing the Monitor’s powers with respect to the Applicants;
 - (c) extending the Stay Period up to and including September 30, 2024; and
 - (d) approving the activities and conduct of the Monitor, along with the fees and disbursements of the Monitor and its counsel, for the period from February 22, 2024, to May 31, 2024, (the “**June 28 Application**”).

9. Electronic copies of all materials filed by the Applicants in connection with the June 28 Application and other statutory materials are available on the Monitor's website at: <http://cfcanada.fticonsulting.com/lynxair/>.

PURPOSE

10. The Monitor has reviewed the Court materials filed by the Applicants in support of the June 28 Application. The purpose of this report (this "**Report**") is to provide this Honourable Court and the Applicants' stakeholders with information and the Monitor's comments with respect to the following:
- (a) the activities of the Monitor since its Fourth report dated May 15, 2024 (the "**Fourth Report**");
 - (b) the status of the wind-down of the Applicants' business and operations;
 - (c) the status of the SISP;
 - (d) the Applicants' actual cash receipts and disbursements for the 5-week period ended June 15, 2024, as compared to the cash flow statement presented to this Honourable Court attached to the Fourth Report;
 - (e) the Applicants updated cash flow statement (the "**Fifth CFS**") for the period of June 16, 2024, to September 30, 2024 (the "**Forecast Period**") as well as the Monitor's view on the reasonableness of the Cash Flow Statement and assumptions therein;
 - (f) the proposed D&O Claims Process;
 - (g) approval of the activities of the Monitor and its counsel, including its fees and disbursements; and

(h) the Monitor's recommendations with respect to the above.

11. This Report should be read in conjunction with the affidavit of Mike Woodward sworn on June 19, 2024 (the "**Sixth Woodward Affidavit**").

TERMS OF REFERENCE

12. Capitalized terms used but not defined herein have the same meaning ascribed to them in the Sixth Woodward Affidavit and the ARIO, as the context may require.
13. In preparing this Report, the Monitor has relied upon unaudited financial information, other information available to the Monitor and, where appropriate, the Applicants' books and records and discussions with various parties (collectively, the "**Information**").
14. Except as described in this Report:
- (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*;
 - (b) the Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*; and
 - (c) future oriented financial information reported or relied on in preparing this Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
15. The Monitor has prepared this Report in connection with the June 28 Application. This Report should not be relied on for other purposes.

16. Information and advice described in this Report that has been provided to the Monitor by its legal counsel, McCarthy Tétrault LLP (the “**Monitor’s Counsel**”), was provided to assist the Monitor in considering its course of action, is subject to solicitor client privilege, not intended as legal or other advice to, and may not be relied upon by, any other person.
17. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

BACKGROUND INFORMATION

18. Detailed information with respect to the Applicants’ business, operations and causes of financial difficulty are described in Affidavit of Mike Woodward sworn on February 22, 2024.
19. Additional background information on the Applicants and the CCAA Proceedings is available on the Monitor’s Website, including the Sixth Woodward Affidavit.
20. The Applicants’ primary assets, included:
- (a) nine leased Boeing 737 MAX 8 aircraft (the “**Fleet**”) and three leased CFM LEAP-1B25 spare engines (the “**Engine Leases**” and together with the Fleet, the “**Aircraft Leases**”);
 - (b) the Boeing Purchase Agreement which included 29 aircraft remaining to be delivered;
 - (c) a sale and leaseback agreement between Lynx Opco and BOC Aviation Limited with respect to eight aircraft scheduled to be delivered in 2024 (the “**BOCA Aircraft**”);
 - (d) an agreement between Lynx Opco and CFM International, Inc. to purchase four LEAP-1B25 engines (the “**Engine Purchase Agreement**”);
 - (e) ancillary aircraft equipment, including wheels and brakes compatible with the Fleet (the “**Wheels and Brakes**”); and

- (f) other buyer furnished equipment installed or to be installed on the BOCA Aircraft (the “**BFE**”),

(collectively, the “**Assets**”).

- 21. Pursuant to the Aircraft Leases the Applicants were party to lease agreements with six counterparties (the “**Lessors**”).

ACTIVITIES OF THE MONITOR

- 22. The Monitor’s activities since the Fourth Report include the following:
 - (a) monitoring the Applicants’ finances (including cash flows) and operations;
 - (b) continuing to administer the WEPPA claims process in consultation with the Applicants;
 - (c) participating in numerous discussions with the Applicants and other counterparties to conduct and carry out the SISP;
 - (d) assisting the Applicants in preparing the Fifth CFS;
 - (e) responding to inquiries from suppliers and creditors who contacted the Monitor in connection with these CCAA Proceedings; and
 - (f) preparing this Report.

STATUS OF OPERATIONS AND BUSINESS

Operations

23. Upon granting of the Initial Order the Applicants commenced an expedited wind-down of flight operations which included operating scheduled flights for a period of four days, from the Initial Filing Date to the end of day on February 25, 2024.
24. The wind-down of the Applicants' business and operations is substantially complete with the exception of certain matters which are administrative in nature.

Employees

25. As of the date of this Report two employees and three contractors remain to assist with the the continued wind-down of the business and the administration of the CCAA Proceedings.
26. Upon their termination employees have been provided with directions on how to receive a copy of their record of employment from Service Canada and made aware of the WEPPA.
27. The following summarizes the status of WEPPA claims administered by the Monitor to date:
 - (a) sent an instruction letter ("**WEPPA Instruction Letter**") to 489 eligible employees;
 - (b) 453 eligible employees have submitted a proof of claim ("**WEPPA Proofs of Claim**") to the Monitor in accordance with the WEPPA Instruction Letter and in accordance with the requirements under WEPPA; and
 - (c) the Monitor has reviewed the WEPPA Proofs of Claim received to date and has submitted 453 WEPPA Proofs of Claim to Service Canada for processing. The Monitor continues to review and process claims as received from eligible employees.

28. The Applicants, in consultation with the Monitor, determined that a total of approximately \$1.5 million was owed to former employees for unpaid vacation and a total of \$1.5 million for severance and termination pay, which are considered eligible wages under the WEPP (the “**WEPP Claims**”).
29. Pursuant to section 81.4(4) of the *Bankruptcy and Insolvency Act*, the WEPP Claims are secured against the Applicants’ current assets to the extent of \$2,000 per employee for wages and compensation (including vacation pay, but excluding severance and termination pay).
30. On June 12, 2024, the Monitor received a statement from the Canada Revenue Agency outlining the amount of the subrogated super-priority claim (“**WEPP Priority Claim**”) to be \$727,012.10. The Monitor estimates the total WEPP Priority Claim to be approximately \$783,679.08 based on outstanding claims not yet received.
31. On April 19, 2024, the Monitor received a letter from Koskie Minsky LLP (“**Koskie Minsky**”), in its capacity as counsel to CUPE as the bargaining agent for and on behalf of former cabin crew employees, advising that it continued to disagree with the calculation of the termination and severance pay. The Monitor understands that Koskie Minsky intends to bring an application before this Honourable Court for determination of this matter.
32. The Monitor notes that the positions articulated by CUPE in the above-noted letter do not impact the quantum of the WEPP Priority Claim inasmuch as severance and termination pay are not included in the definition of ‘compensation’ under 81.4(4) of the *Bankruptcy and Insolvency Act*.

Trust Claims for Airport Improvement Fees

33. As outlined in the Fourth Report, the Applicants received notice from counsel to the Greater Toronto Airports Authority and to Vancouver Airport Authority, Calgary Airport Authority, Edmonton Regional Airport Authority, Winnipeg Airport Authority Inc. and Halifax International Airport Authority (collectively, the “**Airport Authorities**”) asserting trust claims for unpaid AIF pursuant to various agreements between the Lynx Opco and the Airport Authorities (the “**AIF Trust Claims**”).

34. The Applicants and the Airport Authorities have an application before this Honourable Court on June 24, 2024, for determination of this matter.
35. Paragraph 36 of the Bench Brief of the Greater Toronto Airports Authority indicates that the Monitor has not provided evidence that the Unremitted AIF (as defined therein) is not traceable. It should be noted that the Monitor engaged with the parties in pre-application procedural discussions and that the Monitor indicated to the parties that the Monitor would be favourably disposed, if asked, to consider providing a report to the court relative to the Applicants' accounts and tracing. A request was not made of the Monitor in this regard and, as such, the Monitor advised the parties on June 6, 2024, that it would not be filing a report or taking a position with respect to the AIF Trust Claims.
36. The Monitor notes that the Applicants continue to hold \$6.9 million which, based on the Applicants' books and records, are sufficient funds for the full amount of the asserted AIF Trust Claims. Such funds have been held by the Applicants on the basis that such withholding is without prejudice to the positions the Applicants may take with respect to any or all of the asserted AIF Trust Claims.

Delta Air Lines, Inc.

37. Delta Air Lines, Inc. ("**Delta**") filed liens in Alberta, Ontario, British Columbia, Manitoba and New Brunswick against the aircraft, which have been surrendered to the Lessors, relating to certain services provided under the terms of the Comprehensive Fleet Support Agreement dated September 20, 2023, between Lynx Opco and Delta.
38. Delta had set an application for 2:00pm on June 19, 2024, for determination of this matter. As this was an issue as between Delta and the Lessor, the Applicants did not intend to participate in that application. The Monitor understands that this matter has now be resolved as between Delta and the Lessors and accordingly the June 19, 2024 application did not proceed.

Trust Claims for US Immigration User Fees and Customs User Fees

39. On May 7, 2024, the Applicants and the Monitor received notice from counsel to the U.S. Transportation Security Administration, U.S. Customs and Border Protection, U.S. Department of Agriculture and US Department of Homeland Security, Customs and Boarder Protection asserting that they may have trust claims for unpaid Immigration User Fees and Customs User Fees (the “**US Trust Claims**”).
40. As of the date of this Report, the Applicants have not received further detail on the authority of the US Trust Claims and funds have not been reserved in respect of these potential claims. The Applicants estimate the total amount of the US Trust Claims to be approximately \$1.0 million which there is sufficient cash on hand if the US Trust Claim were to attach to the Applicants’ cash on hand.

Potential Lessor Post-Filing Claims

41. Previously the Applicants and the Monitor were aware that two Lessors indicated an intention to assert claims for post-filing rent owing under the Aircraft Leases (the “**Post Filing Rent Claims**”).
42. As of the date of this Report, neither the Applicants nor the Monitor have received further information beyond the assertion of the Post Filing Rent Claims and no application has been filed and no funds have been held back by the Applicants in respect of these potential claims.

Assignment of Elavon Agreement

43. As described previously Elavon Canada was the Applicants’ credit card processor and has maintained a hold back to limit its exposure for customer refunds and chargebacks from credit card providers. Due to the length of time required for Elavon to maintain the hold back the Applicants intend to seek approval to assign any residual funds owing to the Applicants to Indigo at a later date. The Monitor will report to this Honourable Court on this matter as applicable.

STATUS OF THE SISP

44. The SISP contemplated a relatively short timeline due the repossession rights afforded to the Lessors under the Cape Town Convention and its Aircraft Protocol (the “**CTC and Protocol**”). The CTC and Protocol is an international treaty intended to standardize transactions involving movable property including high-value aviation assets, namely airframes, aircraft engines and helicopters which, by their nature, have no fixed location. The Aircraft Leases fall within the CTC and Protocol.
45. The CTC and Protocol sets out a 60-day waiting period (“**Waiting Period**”) with respect to the Fleet and the Aircraft Leases whereby the Applicants would have 60 days to either:
- (a) cure all defaults and agree to perform future obligations under the Aircraft Leases; or
 - (b) come to a consensual agreement with the Aircraft Lessors.
46. The Applicants’ Waiting Period expired on April 22, 2024.
47. This Honourable Court granted the SISP Order on March 1, 2024. For ease of reference, a summary of the key dates pursuant to the SISP are as follows:

Event	Target Date
Approval of the SISP and Bidding Procedures by the Court	March 1, 2024
Monitor and Lynx Air to create list of Pre-Qualified Known Potential Bidders	March 1, 2024
Monitor to prepare and have available for Potential Bidders the Data Room	By no later than March 4, 2024
Monitor to distribute Teaser and NDAs to Pre-Qualified Known Potential Bidders	By no later than March 8, 2024
Binding Bid Deadline	By no later than April 1, 2024, at 5:00 p.m.

Auction (if required)	By no later than April 5, 2024, at 5:00 p.m.
Definitive documentation	By no later than April 7, 2024
Approval Application – Successful Bid(s), if required	By no later than April 10, 2024
Outside Date - Closing	April 12, 2024

The Boeing Termination Agreement

48. On March 21, 2024, the Applicants and Boeing executed the Termination Agreement in respect of the Boeing Purchase Agreement.
49. On April 2, 2024, this Honourable Court granted the Termination Approval Order approving the Termination Agreement and on April 3, 2024, the Applicants received the amount payable under the Termination Agreement from Boeing.

Aircraft Leases

50. As described in the Fourth Report, the Lessors advised the Applicants and the Monitor that they intended to recover their respective aircraft pursuant to the CTC and the Protocol.
51. The Applicants, with the assistance of the Monitor, and the respective Lessors entered into termination agreements with respect to the Aircraft Leases (the “**Lease Termination Agreements**”). The Lease Termination Agreements were finalized by May 8, 2024.

Engine Purchase Agreement

52. The Engine Purchase Agreement relates to the future purchase of four LEAP-1B25 engines. The Applicants, with assistance of the Monitor, and with the agreement of CFM, provided access to the Engine Purchase Agreement in the VDR and agreed upon a list of Pre-Qualified Known Potential Bidders.

53. The Applicants, with the assistance of the Monitor, engaged in discussions with several counterparties with respect to the Engine Purchase Agreement. A Successful Bid, as defined in the SISP, was selected and a draft sale agreement was prepared.
54. On May 9, 2024, counsel to CFM provided notice to the Applicants advising that they oppose any efforts to assign the Engine Purchase Agreement to an assignee given the Boeing Termination Agreement.
55. The Applicants, in consultation with the Monitor and Indigo, have determined that the matter will not be pursued further.

BOCA APA

56. The Applicants, with the assistance of the Monitor, engaged with BOCA with respect to the BFE that had been delivered in connection with the BOCA Aircraft.
57. On May 13, 2024, the Applicants and BOCA executed the BOCA APA. The BOCA APA was approved by this Honourable Court on May 21, 2024, and the transaction closed on June 7, 2024.

AERO APA

58. The Applicants, with the assistance of the Monitor, engaged with several parties with respect to certain ancillary equipment including the Wheels and Brakes.
59. On May 13, 2024, the Applicants and AERO executed the AERO APA. The AERO APA was approved by this Honourable Court on May 21, 2024, and the transaction closed on May 30, 2024.

BUDGET TO ACTUAL RESULTS

60. The Applicants, in consultation with the Monitor, prepared a cash flow statement (the “**Fourth CFS**”) which was appended to the Second Report.

61. Actual cash flow as compared to those contained in the Fourth CFS for the five-week period of May 12, 2024, to June 15, 2024, are summarized below.

(C\$ 000s)			
For the period of May 12, 2024 to June 15, 20	5-Week Period		
	Actual	Forecast	Variance
Receipts			
Revenue	-	-	\$ -
Other / Recovery of Deposits	3,801	3,735	66
Total - Receipts	3,801	3,735	66
Disbursements			
Payroll and employee related obligations	(142)	(170)	27
WEPP Priority Claim	-	-	-
SG&A expense	(70)	(53)	(17)
Operating costs	-	-	-
Professional fees	(547)	(1,070)	523
KERP	(21)	(645)	624
Maintenance reserves	-	-	-
Air Travellers Security Charge	-	(261)	261
Lease payments / deferrals	-	-	-
Total - Disbursements	(780)	(2,200)	1,420
Net change in cash	3,021	1,535	1,486
Opening cash	12,666	12,666	-
Ending Cash	\$ 15,688	\$ 14,202	\$ 1,486

62. The variances in actual receipts and disbursements are primarily due to the following:
- (a) Other receipts were higher than anticipated due to the timing of the return of prepayment amounts and letters of credit or deposits that exceeded the amount owed to such parties; and
 - (b) lower than anticipated disbursements of approximately \$1.4 million primarily related to the following:
 - lower than anticipated professional fees which is partially related to the timing of receipt and payment of invoices;

- timing of payment of the KERP and Air Travelers Security Charge (“ATSC”) which are expected to be paid in future periods.

CASH FLOW STATEMENT

63. The Applicants, with the assistance of the Monitor, have prepared the Fifth CFS to set out the liquidity requirements of the Applicants during the Forecast Period. The Fifth CFS and management’s report on the cash-flow statement as required by section 10(2)(b) of the CCAA are attached hereto as Appendix “A”. The Fifth CFS is summarized in the following table:

(C\$ 000s)	
For the period of June 16 to September 28, 2024	15 Week
	Total
Receipts	
Revenue	\$ -
Trust Receipt	2,000
QST Refund	440
Other / Recovery of Deposits	1,033
Total - Receipts	3,473
Disbursements	
Payroll and employee related obligations	(135)
WEPP Priority Claim	(1,000)
SG&A expense	(22)
Operating costs	(138)
Professional fees	(954)
KERP	(625)
Maintenance reserves	-
Air Travellers Security Charge	(261)
Lease payments / deferrals	-
Total - Disbursements	(3,135)
Net change in cash	338
Opening cash	15,688
Ending Cash	\$ 16,026

64. The Fifth CFS indicates that during the Forecast Period (period ending on September 30, 2024), the Applicants will have net cash flow of approximately \$0.3 million comprising cash receipts of approximately \$3.5 million less total disbursements of \$3.1 million.

65. The Fifth CFS is based on the following key assumptions:
- (a) No revenue receipts in the Forecast Period. Reconciliation efforts with Elavon with respect to the post-filing period are ongoing, but the quantum and the timing of collection of the remaining receipts is uncertain based on the timing of customer chargebacks;
 - (b) Trust receipts includes amounts held in respect of potential claims and the directors and officers;
 - (c) QST refund related to QST that was remitted primarily for flights after the filing date;
 - (d) Other receipts include recovery of certain prepayments and recovery of certain deposits on account and return of letters of credit;
 - (e) Payroll and employee related obligations includes estimated amounts for remaining employees required to assist in the CCAA Proceedings;
 - (f) WEPP Priority Claim based on the calculation of Service Canada's subrogated super-priority claim;
 - (g) SG&A expense includes information technology and ongoing software costs to maintain access to the Applicants systems, and other costs associated required during the CCAA Proceedings;
 - (h) Professional fees including the Monitor, the Monitor's Counsel and the Applicants' counsel;
 - (i) KERP includes payments to employees secured by the KERP Charge previously approved by this Honourable Court; and
 - (j) ATSC based on the final reconciliation of amounts owed.

Monitor's Comments on the Cash Flow Statement

66. Section 23(1)(b) of the CCAA states that the Monitor shall, “review the company’s cash-flow statement as to its reasonableness and file a report with the court on the Monitor’s findings”.
67. Pursuant to section 23(1)(b) of the CCAA, and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports as follows:
- (a) the Fifth CFS has been prepared by management of the Applicants for the purpose described in the notes to the Fifth CFS, using the probable assumptions and the hypothetical assumptions set out therein; and
 - (b) the Monitor’s review consisted of inquiries, analytical procedures and discussion related to information supplied by certain of the management and employees of the Applicants. Since hypothetical assumptions need not be supported, the Monitor’s procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the Fifth CFS. The Monitor has also reviewed the information provided by Management in support of the probable assumptions and the preparation and presentation of the Fifth CFS;
 - (c) Based on its review, and as at the date of this Report, nothing has come to the attention of the Monitor that causes it to believe that, in all material respects:
 - the hypothetical assumptions are not consistent with the purpose of the Fifth CFS;
 - the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Fifth CFS, given the hypothetical assumptions; or
 - the Fifth CFS does not reflect the probable and hypothetical assumptions.

68. Since the Fifth CFS is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Fifth CFS will be achieved. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information present in this Report, or relied upon by the Monitor in preparing this Report.
69. The Fifth CFS has been prepared solely for the purpose of estimating liquidity requirements of the Applicants during the Forecast Period. The Fifth CFS should not be relied upon for any other purpose.

DIRECTORS AND OFFICERS CLAIMS PROCESS

70. The D&O Claims Process provides for a mechanism to establish a claims procedure to identify and determine the quantum, validity and enforceability of claims against the Applicants' former and current officers and directors. Capitalized terms used below but not defined herein have the same meaning ascribed to them in the Claims Procedure Order.

Notice to Claimants

71. By no later than July 2, 2024, the Monitor will cause copies of the D&O Claims Procedure Order, the Notice to Claimants and the Proof of Claim to be served on the service list and posted on the Monitor's Website:
72. By no later than July 5, 2024, the Monitor will cause the Notice to Claimants to be published once in the Globe and Mail (National Edition).

Filing Proofs of Claims

73. Any person asserting a D&O Claim must deliver a Proof of Claim, together with all relevant supporting documentation, to the Monitor prior to 5:00 p.m. (Calgary time) on August 15, 2024 (the “**Claims Bar Date**”).

Adjudication of Claims

Notice of Revision or Disallowance

74. The Monitor will review each Proof of Claim submitted on or before the Claims Bar Date, in consultation with any applicable Directors and Officers. After consultation the Monitor will accept, revise or disallow the amount of each D&O Claim set out therein.
75. The Monitor and any applicable Directors and Officers, may attempt to consensually resolve the classification or amount of any D&O Claim with the Claimant prior to accepting, revising or disallowing such D&O Claim.

Notice of Dispute

76. Any Claimant who disputes the classification or amount of its D&O Claim as set forth in a Notice of Revision or Disallowance shall deliver a Notice of Dispute, outlining the reasons for the dispute, to the Monitor no later than 15 days after receipt of the Notice of Revision or Disallowance, or such other date as agreed to by the Monitor in writing.
77. If a Claimant does not deliver a Notice of Dispute within 15 days of receipt of the Notice of Revision or Disallowance it shall be deemed to have accepted the Notice of Revision or Disallowance and the D&O Claim shall be deemed to be as set out in the Notice of Revision or Disallowance.

78. The Monitor believes that the proposed Claims Process and proposed Claims Process Order are reasonable and appropriate in the circumstances and provides for a timely review of all potential D&O Claims. The Monitor believes the various timelines set out in the Claims Process Order provide sufficient notice for all potential Claimants to file D&O Claims.

RELIEF SOUGHT BY THE APPLICANTS AND MONITOR

D&O Claims Process

79. The D&O Claims Process sets out a process to be administered by the Monitor and is designed to create a process that will allow for a timely review of all possible D&O Claims in a fair and consistent manner.

Enhanced Monitor Powers

80. As described above the wind-down of the Applicants' business and realization of the Assets is substantially complete. There are a number of tasks remaining to be completed and it is anticipated that the Applicants may not have any remaining employees prior to the expiry of the requested extension of the Stay Period.
81. Therefore, in order to efficiently wind down the remaining operations and complete the administration of the CCAA Proceedings the Applicants are seeking enhanced powers for the Monitor.
82. The Monitor is qualified to undertake these expanded powers based on extensive prior experience as receiver and manager in prior insolvency proceedings. The Proposed Monitor has consented to undertake these additional powers, if authorized by this Honourable Court.

Extending the Stay Period

83. The Applicants are seeking an extension to the Stay Period up to and including September 30, 2024. The Monitor has considered the Applicants' application for the extension of the Stay of Period, and has the following comments:
- (a) based on the Fifth CFS the Applicants are projected to have sufficient available liquidity to fund its ongoing obligations and the costs of the CCAA Proceedings during the term of the proposed extension of the Stay Period;
 - (b) there will be no material prejudice to the Applicants' creditors and other stakeholders resulting from the extension of the Stay of Period;
 - (c) the Applicants are continuing to act in good faith and with due diligence; and
 - (d) the proposed extension of the Stay of Period will provide sufficient time for the Applicants to conclude the Claims Process and the administration of the CCAA Proceedings.

Approval of Monitor's Reports and Activities and Interim Fee Approval

84. The Monitor is seeking approval of the activities and conduction of the Monitor as set out in the following reports of the Monitor:
- (a) the First Report of the Monitor, dated February 28, 2024;
 - (b) the Second Report of the Monitor, dated March 27, 2024;
 - (c) the Confidential Supplement to the Second Report of the Monitor, dated March 27, 2024;
 - (d) the Third Report of the Monitor, dated April 11, 2024;

(e) the Fourth Report; and,

(f) this Report,

(collectively, the “**Monitor’s Reports**”).

85. The professional fees and disbursements of the Monitor and the Monitor’s Counsel for the period of February 22, 2023, to May 31, 2024, are set out in the table below.

Summary of Professional Fees for the Monitor and the Monitor's Counsel For the period of February 22, 2024 to May 31, 2024				
	Fees	Expenses	GST	Total
Monitor	\$ 827,419.00	\$ 13,709.05	\$ 42,056.41	\$ 883,184.46
Monitor's Counsel	215,539.00	651.23	10,782.09	226,972.32
Total	\$ 1,042,958.00	\$ 14,360.28	\$ 52,838.50	\$ 1,110,156.78

86. The Monitor considers that the fees and disbursements charged by the Monitor and Monitor’s Counsel have been necessarily incurred and that the hours and rates charged are fair and reasonable in light of the length of the CCAA Proceedings, including the assistance in the administering the SISP.

87. Copies of the invoices of FTI Consulting and the Monitor’s Counsel are available to this Honourable Court upon request.

88. The fees and disbursements to be incurred by the Monitor and the Monitor’s Counsel to complete the administration of these CCAA Proceedings will be paid from the Company’s cash flow.

RECOMMENDATIONS

89. The Monitor supports the relief being sought by the Applicants, and recommends this Honourable Court approve:
- (a) the Applicants' request to establish the D&O Claims Process;
 - (b) the enhanced powers for the Monitor in respect of the Applicants;
 - (c) the Applicants' request for an extension to the Stay of Period up to and including September 30, 2024; and
 - (d) approving the activities and conduct of the Monitor, along with the fees and disbursements of the Monitor and the Monitor's Counsel, for the period from February 22, 2024, to May 31, 2024.

All of which is respectfully submitted this 21st day of June 2024.

FTI Consulting Canada Inc.,
Licensed Insolvency Trustee in its capacity as
Monitor of Lynx Air and not in its personal or
corporate capacity.



Name: Deryck Helkaa, CPA, CA, CIRP, LIT
Title: Senior Managing Director
FTI Consulting Canada Inc.



Name: Dustin Olver, CPA, CA, CIRP, LIT
Title: Senior Managing Director
FTI Consulting Canada Inc.

Appendix “A” – Cash Flow Statement for the period ending September 30, 2024

Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air
Consolidated Cash Flow Statement
For the period of June 16 to September 28, 2024

(C\$ 000s)																
For the period of June 16 to September 28, 2024	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	15 Week
	22-Jun	29-Jun	6-Jul	13-Jul	20-Jul	27-Jul	3-Aug	10-Aug	17-Aug	24-Aug	31-Aug	7-Sep	14-Sep	21-Sep	28-Sep	Total
Receipts																
Revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Trust Receipt	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,000
QST Refund	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	440
Other / Recovery of Deposits	569	266	134	65	-	-	-	-	-	-	-	-	-	-	-	-
Total - Receipts	569	266	134	65	-	-	-	-	-	-	-	-	-	-	-	2,440
Disbursements																
Payroll and employee related obligations	-	(45)	-	-	(15)	-	(15)	-	(15)	-	(15)	-	(15)	-	(15)	(135)
WEPP Priority Claim	-	(1,000)	-	-	-	-	-	-	-	-	-	-	-	-	-	(1,000)
SG&A expense	(2)	(2)	(6)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(22)
Operating costs	(138)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(138)
Professional fees	-	-	(204)	-	-	-	(250)	-	-	-	(250)	-	-	-	(250)	(954)
KERP	-	-	(625)	-	-	-	-	-	-	-	-	-	-	-	-	(625)
Maintenance reserves	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Air Travellers Security Charge	(261)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(261)
Lease payments / deferrals	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total - Disbursements	(402)	(1,047)	(835)	(1)	(16)	(1)	(266)	(1)	(16)	(1)	(266)	(1)	(16)	(1)	(266)	(3,135)
Net change in cash	167	(781)	(701)	64	(16)	(1)	(266)	(1)	(16)	(1)	(266)	(1)	(16)	(1)	(1)	2,174
Opening cash	15,688	15,855	15,074	14,372	14,436	14,420	14,419	14,153	14,152	14,136	14,135	13,869	13,868	13,852	13,851	15,688
Ending Cash	\$ 15,855	\$ 15,074	\$ 14,372	\$ 14,436	\$ 14,420	\$ 14,419	\$ 14,153	\$ 14,152	\$ 14,136	\$ 14,135	\$ 13,869	\$ 13,868	\$ 13,852	\$ 13,851	\$ 16,026	\$ 16,026



Per: Mike Woodward, CFO
Lynx Air

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION and 1263343 ALBERTA INC. dba LYNX AIR

Notes and Assumptions to the Cash Flow Statement

For the period of June 16, 2024, to September 30, 2024 (the “**Forecast Period**”)

Disclaimer:

This cash flow statement (the “**Cash Flow Statement**”) has been prepared using unaudited financial information and the Monitor has not attempted to further verify the accuracy or completeness of such information.

The Cash Flow Statement is based on the probable and hypothetical assumption identified below.

Since the Cash Flow Statement is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Forecast Period will vary from the Cash Flow Statement, and such variation may be material. There is no representation, warranty or other assurance that any of the assumptions or estimates used in the Cash Flow Statement will be realized.

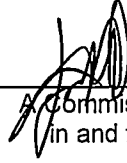
Overview:

The Cash Flow Statement includes estimated receipts and disbursements of Lynx Air during the Forecast Period. Lynx Air, with the assistance of FTI Consulting Canada Inc., in its capacity as Monitor, have prepared the Cash Flow Statement based primarily on estimated receipts and disbursements related to the CCAA proceedings. Receipts and disbursements are denominated in Canadian dollars (the foreign exchange conversion rate used to convert USD to CAD is 1.35).

1. **Revenue:** Lynx Air and Elavon are working diligently to reconcile the amounts owed during the Operating Period including initiating chargebacks to customers for cancelled flights. No amounts are anticipated to be collected during the Forecast Period;
2. **Trust receipts:** includes amounts held in respect of potential claims and the directors and officers;
3. **QST refund:** related to QST that was remitted primarily for flights after the filing date;
4. **Other / Recovery of Deposits:** include recovery of certain prepayments and recovery of certain deposits on account and return of letters of credit;
5. **Payroll and employee related obligations:** includes estimated amounts for remaining employees and contractors required to assist in the administration of the CCAA Proceedings;

6. **WEPP Priority Claim:** based on the estimated calculation of Service Canada's subrogated super-priority claim;
7. **SG&A expense:** includes, among other things, information technology and software licenses to maintain access to the Applicants' systems, bank fees and other miscellaneous costs;
8. **Operating costs:** remaining operating costs incurred and reconciliation with vendors for post-filing amounts;
9. **Professional fees:** represents the fees and costs of the Monitor, the Monitor's Counsel and the Applicants' counsel;
10. **KERP:** relates to a retention plan proposed to be paid to key employees and executives for their assistance during the CCAA Proceedings, previously approved by this Honourable Court; and
11. **Air Travellers Security Charge:** based on the final reconciliation of amounts owed.

This is **Exhibit "R"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSENG
A Commissioner for Oaths
in and for Alberta
My Commission Expires September 11, 2026



Court of King's Bench of Alberta

Citation: Greater Toronto Airports Authority v Lynx Air Holdings Corporation, 2024 ABKB 514

Date: 20210826
Docket: 2401 02664
Registry: Calgary

Between:

Greater Toronto Airports Authority, Edmonton Regional Airports Authority, Halifax International Airports Authority, The Calgary Airport Authority, Vancouver Airport Authority and Winnipeg Airports Authority Inc.

Applicants

- and -

Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air

Respondents

**Reasons for Decision
of the
Honourable Justice B.E. Romaine**

I. Introduction

[1] On February 22, 2024, Lynx Air Holdings Corporation and 1263343 Alberta Inc. (collectively "Lynx") were granted an initial order under the *Companies' Creditors Arrangements Act*, R.S.C. 1985, c. C-36. The stay granted by the order has been extended to September 30, 2024.

[2] In this application, Lynx sought an order extending the stay period to September 30, 2024, granting the Monitor enhanced powers and approving a procedure for the solicitation determination and resolution of claims against the current and former directors and officers of Lynx, all of which was granted.

[3] Lynx also seeks an order:

- (a) declaring that Lynx has remitted all pre-filing airport improvement fees (“**AIF**”) owed to the Greater Toronto Airport Authorities (the “**Toronto Airport**”); and
- (b) declaring that the Vancouver Airport Authority (the “**Vancouver Airport**”), the Calgary Airport Authority (the “**Calgary Airport**”), the Edmonton Regional Airport Authority (the “**Edmonton Airport**”), the Winnipeg Airport Authority Inc. (the “**Winnipeg Airport**”), and the Halifax International Airports Authority (the “**Halifax Airport**”), (collectively, the “**Airport Authorities**”) do not have a trust claim over pre-filing AIF in priority to all other security interests, trusts, liens, charges, encumbrances, and claims of secured creditors, statutory or otherwise.

[4] The Toronto Airport seeks the following relief:

- (a) a declaration that the unremitted AIF collected and held by Lynx on behalf of the Toronto Airport pursuant to an AIF Agreement are subject to a trust in favour of the Toronto Airport;
- (b) an order requiring Lynx to release the unremitted AIF in the amount of \$1,659,80.87 to the Toronto Airport from the amount currently held in reserve by Lynx to satisfy claims relating to AIF; and
- (c) an order requiring Lynx to pay the Toronto Airport’s expenses incurred in recovering the unremitted AIF, including legal fees on a full indemnity basis.

[5] The Airport Authorities seek the following relief:

- (a) a declaration stating that the unremitted AIF owed to the Airport Authorities by Lynx is subject to either an express, implied or constructive trust;
- (b) instructing Lynx to release to the Airport Authorities the following amounts from the amount held in reserve by Lynx to satisfy claims relating to AIF;
 - a) \$355,640.79 to the Edmonton Airport;
 - b) \$319,435.80 to the Halifax Airport;
 - c) \$282,895.00 to the Winnipeg Airport;
 - d) \$2,031,140.16 to the Calgary Airport; and
 - e) \$1,110,231.54 to the Vancouver Airport.

II. Facts

[6] The following uncontested facts are relevant to the AIF issues:

- (a) AIF are collected by Lynx from passengers on behalf of the Toronto Airport and the Airport Authorities. These fees are charged to passengers and are used to fund capital development and improvement of the respective airports.
- (b) A trust relationship exists between Lynx Air and the Toronto Airport with respect to pre-filing AIF. Pursuant to an AIF Agreement dated January 1, 2023, a Letter of Credit was issued to secure both debt and trust obligations, including AIF. The Letter of Credit required by Toronto Airport's application for entry was "in an amount calculated by the [Toronto Airport's] Finance Controller for Landing Fees, General Terminal Fees, Apron fees, Check-in Fees and AIF". Lynx posted a \$3,100,000 Irrevocable Standby Letter of Credit in accordance with this requirement.
- (c) As of April 6, 2022, Lynx became a signatory to a Memorandum of Agreement, dated May 31, 1999, as amended (the "MOA"). The parties to the MOA include (i) the Airport Transport Association of Canada, (ii) Signatory Air Carriers (as defined in the MOA, which includes Lynx), and (iii) Airports (as defined in the MOA, which includes the Airport Authorities). Lynx did not negotiate the MOA with the Airport Authorities: it was required to sign it in order to use the Airport Authorities' airports.
- (d) The Toronto Airport is not a signatory to the MOA.
- (e) Among other things, the MOA contains terms regarding Lynx's collection of AIF from air carrier passengers on behalf of the Airport Authorities. Section 20.1 provides:

The Parties expressly disclaim any intention to create a partnership, joint venture, trust relationship or joint enterprise. Nothing contained in this MOA nor any acts of any Party taken in conjunction hereunder, shall constitute or be deemed to constitute a partnership, joint venture, or principal/agency relationship in any way or for any purpose except as the Signatory Air Carriers acting as agents for the Airports in collecting and remitting the AIF funds. Except as expressly set forth herein, no Party, shall have any authority to act for, or to assume any obligations or responsibility on behalf of, any other Party.
[Emphasis added]
- (f) The MOA is the only agreement governing the collection and remittance of AIF as between Lynx and the Calgary and Edmonton Airports.
- (g) In addition to the MOA, Lynx was required to enter into an Air Carrier Operating Agreement effective June 29, 2022 with the Halifax Airport, which also governs the collection and remittance of AIF. This is a standard form agreement that is updated with respect to term, the air carrier's licence information and plan of operations.

A security deposit is required based on the carrier and its planned activity. Lynx was required to, and did, provide a cash deposit to the Halifax Airport in the amount of \$100,000 on July 29, 2022.

- (h) Lynx did not enter into a separate agreement with the Winnipeg Airport governing AIF. However, pursuant to Winnipeg's Tariff of Aviation Fees effective April 2, 2021, AIF were to be charged and payable by all air carriers operating out of the airport. Further, Lynx was required to post, and did post, a cash deposit to secure payment of any monies due under the Tariff, in the amount of an \$83,333 on April 12, 2022.
- (i) In addition to the MOA, Lynx agreed to be bound by an Airport User Licence effective November 16, 2021 with the Vancouver Airport, which granted a licence to Lynx to operate at the airport. Article 10 of the License required Lynx to post security to payment of Fees in an amount equal to three months of Fees under the licence. The License defines Fees to mean "any monies or amounts payable under this License," which therefore includes AIF. On April 6, 2022, Lynx posted an Irrevocable Standby Letter of Credit to the Vancouver Airport in the amount of \$279,645.96.

III. Analysis

A. Toronto Airport

[7] The Toronto Airport has demanded \$1,710,148.23 from Lynx for pre-filing AIF. Lynx accepts the existence of a trust relationship under the AIF Agreement with the Toronto Airport, but submits that all the trust remittances were made upon the Toronto Airport drawing on the Letter of Credit. Lynx submits that the draw-down should have been applied against AIF in priority to debt, and that any residual amounts claimed by the Toronto Airport constitute unsecured pre-filing debt.

[8] Lynx calculates the amount of pre-filing AIF it collected on behalf of the Toronto Airport prior to the Initial Order, as \$1,782,424. On or about March 1, 2024, the \$3,100,000 Letter of Credit was drawn by the Toronto Airport and applied first to debt other than the AIF. Lynx calculates non-AIF pre-filing debt owed to the Toronto Airport at \$2,977,156.83, leaving a balance of outstanding debt of \$1,659,580.87, which Lynx submits is unsecured debt and the Toronto Airport submits are AIF unremitted amounts.

[9] The issue with respect to the Toronto Airport's claim is whether the proceeds of the Letter of Credit should be applied first to its trust claim in priority to unsecured debt. Section 5 of the Toronto Airport Application for Entry provides that the Letter of Credit serves as a security deposit for Landing Fees, General Terminal Fees, Apron Fees, Check-In Fees and AIF. It does not stipulate how the Letter of Credit is to be apportioned among the various fees. The Toronto Airport submits that the governing agreements between it and Lynx do not remove its discretion to apply the Letter of Credit however it determines, and do not require that it use or apply the Letter of Credit proceeds in any particular way.

[10] The Toronto Airport Authority cites section 2.38 of its Rules in support of its submission that it has full discretion as to how to apply the Letter of Credit. This section reads as follows:

Air Carriers must submit a security deposit in a form and amount determined by the [Toronto Airport's] Finance Controller and detailed in the [Toronto Airport's] Air Carrier – Application for Entry prior to commencing operations. The [Toronto Airport] may apply the security deposit towards overdue amounts of Aeronautical Fees and Charges or to cover costs associated with violations of the [Toronto Airport] Rules or under any other agreements. (*emphasis added*)

[11] The Rules form part of the Application for Entry and the defined term “Aeronautical Fees and charges” includes AIF. The Toronto Airport submits that the agreements as a whole have secured Lynx’s general indebtedness and trust obligations through two separate methods: the AIF trust and the security deposit. It submits that the agreements demonstrate a clear intention that the Toronto Airport was to be protected in relation to the full amount of Lynx debt and trust obligations that may be outstanding or unremitted at any given time.

[12] Lynx Air submits that the agreements are silent on the issue of how the proceeds of the Letter of Credit are to be allocated between non-AIF indebtedness and AIF obligations, and this is correct. However, the agreements as a whole give the Toronto Airport discretion as to how to allocate the funds: e.g. Rule 2.38, Section 3.8.4 of the Toronto Airport’s Airport Improvement Fee Agreement.

[13] The Application for Entry, which is the umbrella governing document, refers to the Letter of Credit as security for a full host of airport fees, including AIF. Lynx agreed to the Airport Fee Agreement, which provided it with payment as agent to collect AIF. It agreed to observe the Rules, which describe the security deposit consisting of a Letter of Credit in an amount calculated to cover Landing Fees, General Terminal Fees, Apron Fees, Check-in Fees and AIF. There is no express provision that curtails the Toronto Airport’s ability to apply the Letter of Credit to any one of these types of fees.

[14] The Toronto Airport points out that the trust created by its agreements would be nullified or made redundant if the Letter of Credit is treated as the principal or first means by which it can cover unremitted AIF. Therefore, an interpretation of the contracts that nullifies their provisions or renders them redundant must be disregarded in favour of an interpretation that gives effect to each provision of the agreements read as a whole: *Tercon Contractort Ltd. v British Columbia (Transportation and Highways)*, 2010 SCC 4 at para. 64; *369413 Alberta Ltd. v Pocklington*, 2000 ABCA 307 at para. 19.

[15] As the Toronto Airport notes, the Letter of Credit is by its fundamental nature an agreement between the beneficiary of the Letter of Credit and the bank, to be paid on demand without restriction. It does not include any restriction or limitation with respect to how it is to be used. Section 13.5 of the Rules provides the Toronto Airport with sole discretion in undertaking appropriate and necessary action with respect to the failure of a carrier to address a non-compliance notice, such as the one issued in this case.

[16] Lynx submits that since the agreements are silent on allocation, the Court should invoke the principle of *pari passu*, citing *Capital Steel Inc. v Chandos Construction Ltd.*, 2019 ABCA 32. The facts of Capital Steel are distinguishable, as the case involves a contractual provision that imposed a monetary consequence in the event of Capitol Steel’s insolvency. At any rate, an analysis of the *pari passu* rule in this case does not aid Lynx.

[17] As Lynx itself admits, the rule applies with respect to the distribution of the insolvent estate among classes of unsecured creditors. It invalidates contractual provisions that, if enforced during bankruptcy proceedings, would alter the bankruptcy scheme of distribution: *Capital Steel* at para 20. That is not the case here. This case is essentially a dispute between secured creditors, and its outcome would not affect unsecured creditors. The AIF funds are trust funds that in any event are not part of the Lynx estate, and the other indebtedness was properly secured by the Letter of Credit.

[18] Invoking section 11 of the CCAA is not appropriate in this case, as there is no statutory gap to fill. Nor is the application of the principle of *contra proferentem*, as there is no ambiguity about the contractual terms at issue. Mere silence with respect to allocation is not ambiguity but complements the discretion as to application of funds granted to Toronto Airport.

[19] The Letter of Credit does not stand in place of the trust property, but as an additional guarantee of payment.

[20] Lynx also submits that if an agreement is silent on how security is to be applied with respect to certain categories of debt, a CCAA court should not allow a creditor to make a unilateral decision with respect to how it allocates debt, as that would allow the creditor to put itself in a position that none of the other creditors could possibly be in and allows the creditor to be significantly advantaged vis-à-vis other creditors. However, while the Toronto Airport agreements are silent of how the letter of credit is to be applied, they give the Toronto Airport the contractual right of discretion with respect to that issue. As the Toronto Airport notes, the Lynx submission would mean that, before insolvency, the letter of credit could be used at the Toronto Airport's discretion to pay down non-AIF debt, but because of the intervention of the CCAA the Toronto Airport would have to use the letter of credit to collect on the trust debt. As the Court noted in *Redstone*, the CCAA should not be used to prejudice contractual rights or to reorder priorities as they existed on the day that the CCAA stay is granted: para 57. The Toronto Airport did what it was able to within the confines of the agreements. It did nothing in breach of the agreements.

[21] Therefore, I dismiss Lynx's application for an order declaring that Lynx has remitted all pre-filing AIF owed to the Toronto Airport, and grant the relief sought by the Toronto Airport, other than with respect to costs, which are referenced later in this decision.

B. Airport Authorities

[22] The Airport Authorities submit that the second sentence of section 20.1 of the MOA implies that the collected AIF is intended to be held in trust.

[23] This is not a correct or reasonable interpretation of section 20.1. The first sentence clearly disclaims any intention to create a trust relationship. While there is authority for the proposition that there is no need for any technical words or expressions for the creation of a trust, the first sentence precludes any intention to create even an implied trust. The second sentence ensures that nothing in the MOA nor any acts of any party can "be deemed to constitute a partnership, joint venture or principal /agency relationship", except for the principal / agent relationship that exists with respect to the collection of AIF. While an agency relationship clearly exists, it does not follow that a trust is created.

[24] As noted in *KPMG Inc. v Canadian Imperial Bank of Commerce*, [1998] O.J. No 4746 at para 3:

“The cardinal interpretive rule of contracts ... is that the court should give effect to the intention of the parties as expressed in their written agreement. Where that intention is plainly expressed in the language of the agreement, the court should not stray beyond the four corners of the agreement.” (*emphasis added*)

[25] There is no ambiguity about the words of section 20.1, and even if there was, as a contract of adhesion, ambiguity would have to be resolved in favour of Lynx.

[26] The Airport Authorities submit that, because the contractual language of the MOA refers to the carriers’ duty to be to “collect and remit” AIF, this phrase implies more than just a debtor-creditor relationship, and should give rise to a trust. It is clear that the parties defined their relationship with respect to AIF as being a principal/agent relationship, but the express denial of an intention to create a trust over-rides any such implication.

[27] Alternatively, the Airport Authorities submit that the relationship between them and Lynx gives rise to a constructive trust, relying on *Redstone Investment Corporation (Re)*, 2015 ONSC 533, to support their submission.

[28] The facts of *Redstone* are similar, with one notable exception. At issue in *Redstone* were a series of loans between the applicant Maplebrook and certain borrowers, the funds for which were advanced to Maplebrook through the CCAA debtor, RIC.

[29] The general structure of the loans was such that RIC would obtain an assignable promissory note from the borrower which RIC would assign to Maplebrook. Maplebrook irrevocably appointed RIC as its agent to collect and enforce the loans and the related security. Maplebrook would advance the funds to RIC which would advance the loan proceeds to the borrowers. RIC would collect and remit payments of principal and interest with respect to the loans to Maplebrook: *Redstone* at para. 10.

[30] RIC had received payments of interest and principal on the loans but for some time had not remitted these funds to Maplebrook.

[31] The Receiver of RIC submitted that the funds collected by RIC in respect of the assigned loans were not trust funds. The agreements for the assigned loans did not explicitly state that the proceeds of the loans were to be held in “trust” for Maplebrook.

[32] Maplebrook took the position that RIC had no beneficial entitlement to the funds, and neither the Receiver nor RIC’s creditors had any higher claim. It submitted that a constructive trust in Maplebrook’s favour was necessary to prevent this unjust result.

[33] There was no formal written documentation in respect of the assigned loans.

[34] On the issue of a constructive trust, Morawetz, J., (as he then was), commented at paras 57-58:

The purpose of a CCAA stay order is to maintain the status quo amongst creditors and prevent their maneuvering for position. While the stay order prevents secured creditors and other parties from exercising and confirming their security for proprietary rights, it should not be used to prejudice those rights or to reorder the priorities as they existed on the date that the stay is granted (see: *Re Sharpe-Rite Technologies Ltd.*, 2000 BCSC 414 and *Re Winsdor Machine & Stamping Limited*, 2009 CanLII 39771 (ON. SC.)).

The stay order effectively prevented Maplebrook from terminating RIC's agency agreement so as to take over the administration of the loans and ensure that it receive the post-CCAA collections directly from the debtors... Counsel to Maplebrook submitted that RIC was not at liberty – during the status quo period – to negate these property rights by receiving the post-CCAA collections and depositing them in its general account. I agree.

[35] In response to the Receiver's submission that the absence of an agreement to hold funds in a separate account results in a legal conclusion that the debtors were in a debtor/creditor relationship, the Court reviewed recent authority with respect to the issue, including *Shenzhen City Luohu District Industrial Development Co. v Yao*, 2000 BCSC 677, in which the Court commented that:

[T]he presence of comingling, while a factor to be weighted in favour of a debtor-creditor relationship is not necessarily determinative. The nature of the relationship depends on whether the certainties which constitute a trust are present. Factors to consider include: whether there was an obligation to keep the funds separate; whether the terms of the agreement clearly set out an obligation to keep the funds separate; whether it was intended that, should the funds be comingled, the trustee could do as he pleased with the money; whether the trustee was required to fulfil a specific purpose; whether the recipient would use the funds for any other purpose before making payment for the specific purpose; and whether the settlor had any direct supervision or control over the financial dealings of the recipient. (See also *Air Canada v M+L Travel Ltd.*, [1993] 3 SCR 787 at para 25.

[36] Morawetz, J. also considered *R v Lowden*, 1981 ABCA 79, where the Alberta Court of Appeal held that a travel agent receiving funds from a customer for the specific purpose of purchasing travel services or hotel accommodations assumed a trust obligation to apply the funds as directed or return them to customers. Thus, the relationship was found to be more than a simple debtor and creditor relationship.

[37] He noted that there was no dispute with respect to the following principles:

...a constructive trust may be imposed in circumstances where:

- a) the alleged constructive trustee has engaged in the type of wrongful conduct that is capable of giving rise to a constructive trust; or
- b) the alleged constructive trustee has been unjustly enriched, and a constructive trust is the appropriate remedy...

[38] There is nothing in this case that would justify a finding of a constructive trust on the basis of wrongful conduct. The issue is whether the second kind of constructive trust should be imposed.

[39] As noted in *Redstone*, the following criteria is to be considered in determining the availability of the remedial constructive trust:

1. the defendant must have been under an equitable obligation, that is, an obligation of the type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;

2. the assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff;
3. the plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties; and
4. there must be no factors which would render imposition of a constructive trust unjust in all the circumstances of the case; e.g., the interests of intervening creditors must be protected.

[*Redstone* paras 67-68, citing *Soulos v Kovkontzilas*, [1997 2 SCR 217].

[40] Of particular relevance to the present application, the Court in *Redstone* referred to *Cummings v Peopledge HR Services*, 2013 ONSC 2781, a case involving a receivership of a payroll management company. When the company went into receivership, employees sought to recover funds that had been conveyed to Peopledge but that had not yet been distributed to employees. The Court in *Peopledge* found that the funds at issue had been received by Peopledge as agent for the employers, and that therefore they could not in good conscience be applied to discharge Peopledge's obligations to its own creditors:

“In these circumstances, it would appear to be inequitable to permit the general creditors of *Peopledge* other than the customers who provided the funds to now be paid their claims from those funds. It was never intended that *Peopledge* or its creditors would have any beneficial interest in these funds. ... Under the umbrella of good conscience, constructive trusts are recognized to remedy the unjust and corresponding deprivation (see McLaughlin, J. in *Soulos* at paras. 20 and 43). In this case, *Peopledge* and its general creditors would be enriched by having the ability to access the payroll funds advanced by customers to *Peopledge*. The customers and their employees, would be deprived by not having the funds paid to them and there would be no juristic reason for this to occur. It was never intended that Peopledge or its creditors, would have any beneficial interest in the payroll funds advanced by customers. (*emphasis added*)

[41] Conducting its analysis, the Court in *Peopledge* appeared to refer to the oft-cited case on constructive trusts: *Pettkus v Becker*, [1980] 2 SCR 834 at pg. 844, citing *Rothwell v Rothwell*, [1978] 2 S.C.R. 436 at 455:

The constructive trust, as so envisaged, comprehends the imposition of trust machinery by the court in order to achieve a result consonant with good conscience. As a matter of principle, the court will not allow any man unjustly to appropriate to himself the value earned by the labours of another. ...for the principle to succeed, the facts must display an enrichment, a corresponding deprivation, and the absence of any juristic reason – such as a contract or disposition of law – for the enrichment. (*emphasis added*)

[42] In *Redstone*, Morawetz, J. found that “it was ... understood between the parties that the funds at issue were the property of Maplebrook. With respect to a subset of the loans at issue, he found that “[t]he actions of both RIC and Maplebrook established that there was an intention to settle a trust and impose trust obligations.

[43] Here is where the facts of *Redstone* and the facts in this application differ in a material way. One of the essential requirements for a finding of unjust enrichment is an absence of a juristic reason for the enrichment. In this application, the MOA specifically disclaims the creation of a trust relationship. While such an intention is not always required to support a finding of constructive trust as it depends instead upon a breach of an equitable obligation, the clear language in a contract between sophisticated entities must be a factor in determining whether a constructive trust can be imposed.

[44] Lynx submits that the MOA provides a juristic reason why a constructive trust should not be imposed. This gives rise to the question of whether equity should intervene in a commercial transaction between sophisticated parties where the Airport Authorities could have protected themselves contractually.

[45] The Airport Authorities submit that, without the imposition of a constructive trust, allowing the outstanding AIF to remain in the Lynx estate would be unfair to the Canadian public, and that the imposition of such a trust is necessary, not only to do justice between the parties, but “to maintain the integrity of the system.” However, there were ways for the Airport Authorities to protect the system, as illustrated by the Toronto Airport agreements. While the mere fact that the MOA was a contract between sophisticated commercial parties does not preclude a finding of a constructive trust, the equities of the situation do not favour that outcome.

[46] There is no reason in this case to rewrite the MOA between the parties. There is no equitable reason to grant the Airport Authorities the additional rights that flow from recognition of a right of property. The creation of such a trust would in fact violate the *pari passu* principle, by giving an unsecured, or partially unsecured creditor an advantage over any other unsecured creditor.

[47] Given that I have found no trust relationship between Lynx and the Airport Authorities, there is no need to consider whether the application of cash, security deposits or letters of credit applied by the Halifax Airport, the Winnipeg Airport and the Vancouver Airport were improperly allocated.

C. Costs

[48] The Toronto Airport has been successful in its application. The AIF agreement provides that if legal action is brought by the Toronto Airport for the recovery of AIF, Lynx shall pay “all expenses incurred therefor, including solicitors’ fees, if awarded by a court of competent jurisdiction.”

[49] If this litigation had been brought outside of insolvency proceedings, it is likely that the Toronto Airport would be entitled to solicitors’ fees. However, as a general rule, no costs to either party are ordered in CCAA proceedings. The policy reason that underlies this general proposition is that the reality of a matter under CCAA proceedings is that “the amount of funds available for distribution is limited and parties ought not to expect to recover their litigation costs.”: *Re Indalex*, 2011 ONCA 578 at para. 4.

[50] In *Re Calpine*, 2008 ABQB 537 at para. 1, this Court described the type of application where the general rule with respect to costs in insolvency proceedings may not be followed:

Often in proceedings under the *Companies’ Creditors Arrangement Act*, costs are not awarded against unsuccessful parties. There are policy reasons for this convention: generally, stakeholders in CCAA proceedings are involuntary parties

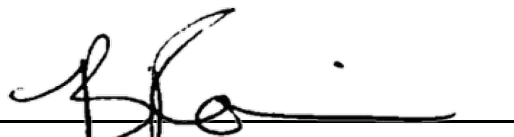
in the process, compelled to participate by reason of the CCAA debtor seeking the protection of the Act. Creditors and other stakeholders often bring applications in order to protect the priority of their positions or to seek a lifting of the stay provisions in circumstances they believe warrant such relief. The applications ... that are the subject of this decision on costs are different from the usual type of CCAA application in that [the parties] were disappointed bidders or potential bidders on the purchase and sale of an asset of one of the Calpine applicants. Catalyst sought re-consideration of an existing order and Khanjee sought an amendment to an existing order that would allow it to bid on the asset despite its contractual obligation not to do so. The parties are sophisticated commercial entities that entered the fray voluntarily in an attempt to better their positions... The policy reasons that underlie the no-costs convention are thus not operative in this case, and there is no reason to depart from the general rule awarding costs to the successful parties, not as a punishment but as a recognition of the usual risks of litigation.

[51] In this case, the Toronto Airport and Lynx brought their cross-applications with respect to an issue on which there was no clear authority. There is no reason to depart from the court's usual practice other than the clause of the AIF Agreement that provides for solicitors "fees" if awarded by a court of competent jurisdiction.

[52] There are other stakeholders in these proceedings, both secured and unsecured. The policy reason for the no-costs convention remains valid in this case. The Toronto Authority's application for costs is dismissed.

Heard on the 24th day of June, 2024.

Dated at the City of Calgary, Alberta this 26th day of August, 2024.



B.E.C. Romaine
J.C.K.B.A.

Appearances:

Tommy Gelbman, Julie Treleaven
for the CCAA Debtors

Jason Wadden
for the Toronto Airport

Karen Fellowes, K.C., Archer Bell
for the Airport Authorities

This is **Exhibit "S"** referred to in the Affidavit of Jessica Watts,
sworn before me in the City of Calgary, in the Province of Alberta,
on this 16th day of September 2024



A Commissioner for Oaths and Notary
in and for the Province of Alberta

KIRA BRYNN LYSE
A Commissioner for Oaths
In and for Alberta
My Commission Expires September 11, 2026

COURT FILE NUMBER 2401-02664
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF LYNX AIR HOLDINGS CORPORATION
and 1263343 ALBERTA INC. dba LYNX AIR

DOCUMENT **SIXTH REPORT OF FTI CONSULTING CANADA INC., IN
ITS CAPACITY AS MONITOR OF LYNX AIR HOLDINGS
CORPORATION and 1263343 ALBERTA INC. dba LYNX
AIR**

September 9, 2024

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SIXTH REPORT OF THE MONITOR

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Appendix “A” – Assignment of Rights Agreement between Lynx Air and Indigo Northern Ventures LP

Appendix “B” – Cash Flow Statement for the period ending January 31, 2025

INTRODUCTION

1. On February 22, 2024 (“**Initial Filing Date**”), Lynx Air Holdings Corporation (“**Lynx Holdco**”) and 1263343 Alberta Inc. dba Lynx Air (“**Lynx Opco**”, together with Lynx Holdco, “**Lynx Air**” the “**Applicants**” or the “**Company**”), sought and obtained an initial order (“**Initial Order**”) by the Court of King’s Bench of Alberta (“**Court**”) to commence proceedings (“**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”).
2. The Initial Order, among other things, established a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants until March 4, 2024, and appointed FTI Consulting Canada Inc. as monitor (the “**Monitor**”) of the Applicants in these CCAA Proceedings.
3. On March 1, 2024, this Honourable Court granted an Amended and Restated Initial Order (the “**ARIO**”) which, among other things, provided the following relief:
 - (a) declared that the Applicants are companies to which the CCAA applies;
 - (b) authorized the Applicants to remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the “**Property**”) and continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) or their Property;
 - (c) extended the Stay of Proceedings, until and including April 15, 2024, (the “**Stay Period**”), all proceedings, and remedies against the Applicants or its business or Property, except as otherwise set forth in the Initial Order or otherwise permitted by law;

- (d) granted a charge in favour of the Monitor, its legal counsel, and the Applicants' legal counsel in respect of their fees and disbursements in the amount of \$500,000 under section 11.52 of the CCAA (the "**Administrative Charge**");
- (e) granted a \$500,000 charge in favour of the Applicants' directors and officers ("**Directors' Charge**") as protection against obligations and liabilities that they may incur as directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of these CCAA Proceedings;
- (f) increased the amount available to the Applicants under an interim financing term sheet ("**Term Sheet**") made as of February 21, 2024, with Indigo Northern Ventures LP (the "**Interim Lender**" or "**Indigo**") from approximately \$1.0 million (US\$750,000) to approximately \$5.0 million (as same is denominated in USD, the "**Interim Facility**") and a corresponding increase to the court-ordered priority charge on the Property of the Applicants to secure the Interim Facility (the "**Interim Lender's Charge**");
- (g) granted a charge against the Applicants' Property for a key employee retention plan ("**KERP**") in the maximum amount of \$1.2 million (the "**KERP Charge**");
- (h) sealed the Confidential Affidavit of Michael Woodward in accordance with the terms of a restricted court access order granted by the Court; and
- (i) declared pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), S.C. 2005, c. 47, s.1 ("**WEPPA**"), that the Applicants and their former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations SOR/2008-222 (the "**WEPP Regulations**") and are individuals to whom the WEPPA applies as of the date of the Initial Order.

4. Also on March 1, 2024, this Honourable Court approved a sale and investment solicitation process (“**SISP**”) and granted an Order (the “**SISP Order**”) authorizing and directing the Applicants and the Monitor to implement the SISP in accordance with the terms thereof (the “**SISP Procedures**”).
5. On April 2, 2024, this Honourable Court granted the following Orders:
 - (a) an Order (the “**Termination Approval Order**”) approving a termination agreement and mutual release (the “**Termination Agreement**”) between The Boeing Company (“**Boeing**”) and Lynx Opco in respect of Purchase Agreement No. PA-04427 (the “**Boeing Purchase Agreement**”);
 - (b) a restricted Court access Order sealing the confidential affidavit of Michael Woodward, sworn March 25, 2024, which contains an unredacted copy of the Termination Agreement; and
 - (c) a restricted Court access Order sealing the confidential supplement to the second Report of the Monitor dated March 27, 2024.
6. On April 15, 2024, this Honourable Court granted the following Orders:
 - (a) authorizing the Applicants, with the approval of the Monitor, to repay the borrowings to the Interim Lender in an amount equal to the amounts owing to the Interim Lender under the Term Sheet;
 - (b) authorizing the Applicants to make further distributions to Indigo up to an amount equal to the secured obligations and amounts owing by the Applicants under the terms of the note purchase agreement dated December 20, 2018 (the “**Initial Notes**”), and the five bridge note purchase agreements, as amended (the “**Bridge Notes**” and collectively with the Initial Notes, the “**Secured Obligations**”); and

(c) extending the Stay Period up to and including June 28, 2024.

7. On May 21, 2024, this Honourable Court granted the following Orders:

(a) authorizing and approving (the “**BOCA AVO**”) the transaction (the “**BOCA Transaction**”) contemplated by the asset purchase and sale agreement between Lynx Opco and BOC Aviation (Cayman) Limited (“**BOCA**”) dated May 13, 2024 (the “**BOCA APA**”);

(b) authorizing and approving (the “**AERO AVO**”) the transaction (the “**AERO Transaction**”) and together with the BOCA Transaction, the “**Transactions**”) contemplated by an asset purchase and sale agreement between Lynx Opco and AERO3 Inc. (“**AERO**”) dated May 10, 2024 (the “**AERO APA**”); and

(c) an order (the “**Restricted Court Access Order**”) sealing the Confidential Affidavit of Michael Woodward, sworn May 13, 2024 (the “**Confidential Woodward Affidavit**”).

8. On June 28, 2024, this Honourable Court granted the following Orders:

(a) approving a procedure for the solicitation, determination and resolution of claims against the current and former directors and officers of the Applicants (the “**D&O Claims Process**”);

(b) enhancing the Monitor’s powers with respect to the Applicants;

(c) extending the Stay Period up to and including September 30, 2024; and

(d) approving the activities and conduct of the Monitor, along with the fees and disbursements of the Monitor and its counsel, for the period from February 22, 2024, to May 31, 2024.

9. On September 9, 2024, the Monitor, filed and served notices of application returnable on September 13, 2024, seeking orders:
- (a) authorizing and approving the Assignment of Rights Agreement (the “**Assignment of Rights Agreement**”) between Lynx Opco and Indigo;
 - (b) extending the Stay Period up to and including January 31, 2025; and
 - (c) an interim distribution to Indigo in the amount of up to \$6.0 million in partial repayment of the Secured Obligations and in accordance with previous Orders of this Honourable Court,
- (the “**September 13 Application**”).
10. Electronic copies of all materials filed by the Applicants in connection with the September 13 Application and other statutory materials are available on the Monitor’s website at: <http://cfcanda.fticonsulting.com/lynxair/>.

PURPOSE

11. The purpose of this report (this “**Report**”) is to provide this Honourable Court and the Applicants’ stakeholders with information and the Monitor’s comments with respect to the following:
- (a) the activities of the Monitor since its fifth report dated June 21, 2024 (the “**Fifth Report**”);
 - (b) the status of the wind-down of the Applicants’ business and operations including the assignment of any residual funds owing to the Applicants’ from Elavon to Indigo under the Assignment of Rights Agreement;

- (c) the Applicants' actual cash receipts and disbursements for the twelve-week period ended September 7, 2024, as compared to the cash flow statement presented to this Honourable Court attached to the Fifth Report;
- (d) the Applicants updated cash flow statement (the "**Sixth CFS**") for the period of September 8, 2024, to January 31, 2025 (the "**Forecast Period**") as well as the Monitor's view on the reasonableness of the Cash Flow Statement and assumptions therein;
- (e) an update on the status of the D&O Claim Process;
- (f) the Monitor's recommendations with respect to the above.

TERMS OF REFERENCE

- 12. Capitalized terms used but not defined herein have the same meaning ascribed to them in the ARIIO, as the context may require.
- 13. In preparing this Report, the Monitor has relied upon unaudited financial information, other information available to the Monitor and, where appropriate, the Applicants' books and records and discussions with various parties (collectively, the "**Information**").
- 14. Except as described in this Report:
 - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*;
 - (b) the Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*; and

- (c) future oriented financial information reported or relied on in preparing this Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
15. The Monitor has prepared this Report in connection with the September 13 Application. This Report should not be relied on for other purposes.
16. Information and advice described in this Report that has been provided to the Monitor by its legal counsel, McCarthy Tétrault LLP (the “**Monitor’s Counsel**”), was provided to assist the Monitor in considering its course of action, is subject to solicitor client privilege, not intended as legal or other advice to, and may not be relied upon by, any other person.
17. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

BACKGROUND INFORMATION

18. Detailed information with respect to the Applicants’ business, operations and causes of financial difficulty are described in Affidavit of Mike Woodward sworn on February 22, 2024.
19. Additional background information on the Applicants and the CCAA Proceedings is available on the Monitor’s Website.
20. The Applicants, with the assistance of the Monitor, completed the SISF and the realization of the Applicants’ Property is substantially complete and no further proceeds are anticipated to be realized upon, aside from any residual amount owing by Elavon pursuant to the Assignment of Rights Agreement.

ACTIVITIES OF THE MONITOR

21. The Monitor's activities since the Fifth Report include the following:
- (a) monitoring the Applicants' finances and cash flows;
 - (b) continuing to administer the WEPPA claims process;
 - (c) administering the D&O Claims Process;
 - (d) preparing this Report including the Sixth CFS; and
 - (e) responding to inquiries from suppliers and creditors who contacted the Monitor in connection with these CCAA Proceedings.

STATUS OF OPERATIONS AND BUSINESS

22. As of the date of this Report, the wind-down of the Applicants' operations is substantially complete with the exception of certain administrative matters including the return of security in the form of deposits and letters of credit, completing the D&O Claims Process and addressing certain outstanding claims (as discussed in further detail below).

Employees

23. As of the date of this Report the Applicants have no remaining employees and the Monitor has retained three consultants to assist with the administration of the CCAA Proceedings.
24. The Monitor provided eligible employees with an instruction letter ("**WEPPA Instruction Letter**") setting out the Applicants' calculation of eligible wages owed under WEPPA and instructions on how to submit claims with Service Canada.

25. The following summarizes the status of WEPPA claims administered by the Monitor to date:
- (a) sent 490 WEPPA Instruction Letters to eligible employees;
 - (b) 455 eligible employees have submitted a proof of claim (“**WEPPA Proofs of Claim**”) to the Monitor in accordance with the WEPPA Instruction Letter and in accordance with the requirements under WEPPA; and
 - (c) the Monitor has reviewed the WEPPA Proofs of Claim received to date and has submitted 455 WEPPA Proofs of Claim to Service Canada for processing. The Monitor continues to review and process claims as received from eligible employees.
26. The Applicants, in consultation with the Monitor, determined that a total of approximately \$1.5 million was owed to former employees for unpaid vacation and a total of \$1.5 million for severance and termination pay, which are considered eligible wages under the WEPP (the “**WEPP Claims**”).
27. Pursuant to section 81.4(4) of the *Bankruptcy and Insolvency Act*, the WEPP Claims are secured against the Applicants’ current assets to the extent of \$2,000 per employee for wages and compensation (including vacation pay, but excluding severance and termination pay).
28. On June 12, 2024, the Monitor received a statement from the Canada Revenue Agency outlining the amount of the subrogated super-priority claim (“**WEPP Priority Claim**”) to be \$727,012.10. The Monitor estimates the total WEPP Priority Claim to be approximately \$785,679.08 based on outstanding claims not yet received.
29. On April 19, 2024, the Monitor received a letter from Koskie Minsky LLP (“**Koskie Minsky**”), in its capacity as counsel to CUPE as the bargaining agent for and on behalf of former cabin crew employees, that it continued to disagree with the calculation of the termination and severance pay

30. The Monitor notes that the positions articulated by CUPE in the above-noted letter do not impact the quantum of the WEPP Priority Claim inasmuch as severance and termination pay are not included in the definition of ‘compensation’ under 81.4(4) of the *Bankruptcy and Insolvency Act*.
31. Koskie Minsky scheduled an application with this Honourable Court on October 3, 2024, for determination of the matter. The Monitor will report to this Honourable Court on the outcome of this application in due course.

Trust Claims for Airport Improvement Fees

32. The Applicants received notice from counsel to the Greater Toronto Airport Authority (“GTAA”) and to Vancouver Airport Authority, Calgary Airport Authority, Edmonton Regional Airport Authority, Winnipeg Airport Authority Inc. and Halifax International Airport Authority (collectively, the “**Airport Authorities**”) asserting trust claims for unpaid AIF pursuant to various agreements between the Lynx Opco and the Airport Authorities (the “**AIF Trust Claims**”).
33. This Honourable Court heard an application on June 24, 2024, for determination of this matter. On August 26, 2024, the Honourable Justice B.E. Romaine released reasons for decision that held in respect of:
 - (a) the GTAA, that it had a valid trust claim and was entitled to apply the proceeds from the letter of credit it held firstly on account of amounts owing to the GTAA for indebtedness other than AIF leaving approximately \$1.7 million owing to the GTAA on account of the AIF. The Monitor will be distributing amounts owed to the GTAA on account of the AIF given Lynx has advised it is not seeking leave to appeal Justice Romaine’s decision; and
 - (b) the Airport Authorities, that they do not have a valid trust claim in respect of their respective AIF Trust Claims.
34. The Monitor continues to hold \$5.8 million which, based the materials filed by the Airport Authorities, are sufficient funds for the full amount of the asserted AIF Trust Claims. Such funds

have been held by the Monitor on the basis that such withholding is without prejudice to the positions the Applicants may take with respect to any or all of the asserted AIF Trust Claims.

35. The Monitor proposes to distribute the amounts being held back for the for the Airport Authorities AIF Trust Claims to Indigo on account of the Secured Obligations following expiration of the appeal period on September 16, 2024.

Claims for US Immigration User Fees and Customs User Fees

36. On May 7, 2024, the Applicants and the Monitor received notice from counsel to the U.S. Transportation Security Administration, U.S. Customs and Border Protection, U.S. Department of Agriculture and US Department of Homeland Security, Customs and Boarder Protection (the “**US Government**”) asserting that the US Government has trust claims for unpaid Immigration User Fees and Customs User Fees (the “**US Claims**”).
37. The Monitor, the Monitor’s Counsel, and counsel to the US Government continue to evaluate the US Claims. The Applicants have estimated the total amount of the asserted US Claims to be approximately \$1.5 million. There is sufficient cash on hand if the US Claims are ultimately determined to be valid trust claims and enforceable as against the Applicants’ cash on hand.

ASSIGNMENT OF RIGHTS AGREEMENT

38. As described previously, Elavon was the Applicants’ credit card processor and has maintained a hold back to limit its exposure for customer refunds and chargebacks from credit card providers. Due to the length of time required for Elavon to maintain the hold back to allow for customer refunds and chargebacks. The Monitor is seeking approval to assign any residual funds owing to the Applicants from Elavon to Indigo pursuant to the Assignment of Rights Agreement. A copy of the Assignment of Rights Agreement is attached at Appendix “A”.

39. It is anticipated that any residual funds would be remitted in approximately October 2025 and thus the Monitor, determined it to be more practicable to assign Lynx Opco's right to any residual funds to Indigo rather than continuing these proceedings for the duration of that period.
40. The Monitor notes that the remaining funds anticipated to be received from Elavon are between nil and \$5.0 million (depending on the number of chargebacks and associated fees) and therefore it is still expected that any distribution received by Indigo would result in a shortfall on the Secured Obligations.
41. This Honourable Court previously approved the Applicants' ability, with approval of the Monitor, to make distributions to Indigo up to the amount of the Secured Obligations.

INDIGO SECURED OBLIGATIONS

42. As at April 15, 2024, the Secured Obligations owing to Indigo and secured against the Applicants' Property were approximately \$71.2 million plus accrued interest and fees of \$21.9 million owing under the terms of the Initial Notes and approximately \$42.4 million plus accrued interest and fees owing of approximately \$4.7 million under the terms of the Bridge Notes.
43. Pursuant to the terms of a previous Order of this Honourable Court the Applicants have distributed approximately \$81.7 million in partial satisfaction of the Secured Obligations resulting in approximately \$58.6 million outstanding.

Secured Obligations (C\$ 000s)	
Initial Notes	\$ 71,242
Initial Notes accrued interest	21,877
Bridge Notes	42,426
Bridge Notes accrued interest	4,744
Total - Secured Obligations	140,289
Interim Distribution	(81,722)
Total - Secured Obligations Outstanding	\$ 58,567

BUDGET TO ACTUAL RESULTS

44. The Monitor prepared a cash flow statement (the “**Fifth CFS**”) which was appended to the Fifth Report.
45. Actual cash flow as compared to those contained in the Fifth CFS for the 12-week period of June 16, 2024, to September 7, 2024, are summarized below.

(C\$ 000s)			
	For the period of June 16, 2024 to September 7, 2024		Variance
	12-Week Period		
	Actual	Forecast	
Receipts			
Revenue	-	-	\$ -
Other / Recovery of Deposits	905	1,033	(128)
Total - Receipts	905	1,033	(128)
Disbursements			
Payroll and employee related obligations	(47)	(105)	57
WEPP Priority Claim	-	(1,000)	1,000
SG&A expense	(19)	(19)	(0)
Operating costs	-	(138)	138
Professional fees	(253)	(704)	451
KERP	(636)	(625)	(11)
Maintenance reserves	-	-	-
Air Travellers Security Charge	-	(261)	261
Lease payments / deferrals	-	-	-
Total - Disbursements	(955)	(2,852)	1,898
Net change in cash	(49)	(1,819)	1,770
Opening cash	15,856	15,856	-
Ending Cash	\$ 15,806	\$ 14,036	\$ 1,770

46. The variances in actual receipts and disbursements are primarily due to the following:
- (a) receipts were slightly lower than anticipated due to the return of letters of credit or deposits that exceeded the amount owed to such parties. A portion of these amounts are still anticipated to be collected in future periods; and
 - (b) lower than anticipated disbursements of approximately \$1.8 million primarily related to the following:
 - timing of payment of the WEPP Priority Claim expected to be paid in future periods;
 - professional fees have been lower than forecast, a portion of this variance is timing related and expected to reverse in future periods; and
 - timing of payment of Air Travelers Security Charge (“ATSC”) expected to reverse in future periods.

CASH FLOW STATEMENT

47. The Monitor prepared the Sixth CFS to set out the liquidity requirements of the Applicants during the Forecast Period. The Sixth CFS is attached hereto as Appendix “B”. The Sixth CFS is summarized in the following table.

(C\$ 000s)	
For the period of September 8, 2024 to February 1, 2025	21 Week
	Total
Receipts	
Revenue	\$ -
Other / Recovery of Deposits	459
Total - Receipts	459
Disbursements	
Payroll and employee related obligations	(50)
WEPP Priority Claim	(1,000)
SG&A expense	(25)
Professional fees	(400)
Air Travellers Security Charge	(261)
Total - Disbursements	(1,736)
Net change in cash	(1,277)
Opening cash	15,806
Ending Cash	\$ 14,529

48. The Sixth CFS indicates that during the Forecast Period (period ending on February 1, 2025), the Applicants will have negative net cash flow of approximately \$1.3 million comprising cash receipts of approximately \$0.5 million less total disbursements of \$1.7 million.
49. The Sixth CFS is based on the following key assumptions:
- (a) No revenue receipts in the Forecast Period, any residual funds will be collected by Indigo pursuant to the Assignment of Rights Agreement, subject to approval of this Honourable Court;
 - (b) Other receipts include recovery of certain deposits on account and return of letters of credit;

- (c) Contractors includes estimate for the three contractors retained to assist to complete the administration of the CCAA Proceedings;
 - (d) WEPP Priority Claim based on the calculation of Service Canada’s subrogated super-priority claim;
 - (e) SG&A expense includes information technology and ongoing software costs to maintain access to the Applicants’ systems, and other costs required during the CCAA Proceedings;
 - (f) Professional fees for the Monitor and the Monitor’s Counsel; and
 - (g) Air Travelers Security Charge (“ATSC”) based on the final reconciliation of amounts owed.
50. The Monitor notes that the Applicants entered into a trust indenture dated September 20, 2023 (the “**Trust Indenture**”) establishing a trust for the benefit of the directors and officers to fund the payment of certain liabilities. The termination date in the Trust Indenture is September 30, 2024, however, we understand that the parties intend to amend the Trust Indenture to extend the termination date to March 31, 2025.
51. The amounts held pursuant to the Trust Indenture are not reflected in the Sixth CFS as they are held by the Trustee.

Monitor's Comments on the Cash Flow Statement

52. Section 23(1)(b) of the CCAA states that the Monitor shall, “review the company’s cash-flow statement as to its reasonableness and file a report with the court on the Monitor’s findings”.
53. Pursuant to section 23(1)(b) of the CCAA, and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports as follows:

- (a) the Sixth CFS has been prepared for the purpose described in the notes to the Sixth CFS, using the probable assumptions and the hypothetical assumptions set out therein; and
- (b) the Monitor's review consisted of inquiries, analytical procedures and discussion related to information supplied by certain consultants retained by the Monitor. Since hypothetical assumptions need not be supported, the Monitor's procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the Sixth CFS. The Monitor has also reviewed the information provided in support of the probable assumptions and the preparation and presentation of the Sixth CFS;
- (c) Based on its review, and as at the date of this Report, nothing has come to the attention of the Monitor that causes it to believe that, in all material respects:
 - the hypothetical assumptions are not consistent with the purpose of the Sixth CFS;
 - the probable assumptions developed are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Sixth CFS, given the hypothetical assumptions; or
 - the Sixth CFS does not reflect the probable and hypothetical assumptions.

54. Since the Sixth CFS is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Sixth CFS will be achieved. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information present in this Report, or relied upon by the Monitor in preparing this Report.

55. The Sixth CFS has been prepared solely for the purpose of estimating liquidity requirements of the Applicants during the Forecast Period. The Sixth CFS should not be relied upon for any other purpose.

DIRECTORS AND OFFICERS CLAIMS PROCESS

56. The D&O Claims Process provided for a mechanism to establish a claims procedure to identify and determine the quantum, validity and enforceability of all claims against the Applicants' officers and directors. Capitalized terms used below but not defined herein have the same meaning ascribed to them in the Claims Procedure Order.
57. In accordance with the Claims Procedure Order the Monitor:
- (a) served on the service list and posted on the Monitor's Website copies of the D&O Claims Procedure Order, the Notice to Claimants and the Proof of Claim; and
 - (b) on July 5, 2024, the Notice to Claimants was published in the Globe and Mail (National Edition).

Adjudication of Claims

58. The Monitor is in the process of reviewing the claims received by the Claims Bar Date in consultation with the applicable Directors and Officers. After consultation the Monitor will accept, revise or disallow the amount of each D&O Claim set out therein.
59. The Monitor will report to this Honourable Court further once the claims have been adjudicated.

RELIEF SOUGHT BY THE APPLICANTS

Extending the Stay Period

60. The Monitor is seeking an extension to the Stay Period up to and including January 31, 2025. The Monitor has the following comments with respect to the proposed extension to the Stay Period:
- (a) based on the Sixth CFS the Applicants are projected to have sufficient available liquidity to fund the costs of the CCAA Proceedings during the term of the proposed extension of the Stay Period;
 - (b) there will be no material prejudice to the Applicants' creditors and other stakeholders resulting from the extension of the Stay of Period;
 - (c) the Applicants are continuing to act in good faith and with due diligence; and
 - (d) the proposed extension of the Stay of Period will provide sufficient time for the Applicants to conclude the D&O Claims Process and the administration of the CCAA Proceedings.

Interim Distribution

61. Pursuant to an Order of this Honourable Court made on April 1, 2024, the Applicants were authorized to make further distributions to Indigo up to an amount equal to the Secured Obligations. Given the realization of the Property is substantially complete, the Monitor does not anticipate the recoveries will be sufficient to repay the Secured Obligations in full.
62. As detailed above the Applicants currently have approximately \$15.8 million of cash on hand.
63. The Monitor is proposing to reserve certain amounts for:
- (a) \$1.3 million to administer the CCAA Proceedings as set out in the Sixth CFS;

- (b) \$1.7 million to be paid to the GTAA;
- (c) \$5.8 million in respect of the Airport Authorities AIF Claims, pending expiry of the appeal period;
- (d) \$1.5 million pending resolution or determination of the US Claims; and
- (e) \$1.3 million for contingency and other miscellaneous expenses,

(the “Reserve”).

64. The table below sets out the proposed distribution to Indigo, subject to the Reserve. Any residual amounts from the Reserve, up to the amount of the Secured Obligations, are proposed to be distributed to Indigo. The table illustrates that Indigo is still anticipated to experience a shortfall on the Secured Obligations of approximately \$52.6 million.

Proposed Distribution (C\$ 000s)	
Opening cash as at September 8, 2024	\$ 15,806
Net change in cash during the Forecast Period	(1,277)
Airport Authorities AIF Trust Claims	(4,099)
GTAA AIF Trust Claim	(1,660)
US Claims	(1,465)
Contingency	(1,305)
Total - Proposed Distribution	6,000
Secured Obligations Outstanding	(58,567)
Shortfall	\$ (52,567)

65. The Monitor notes that even with the distribution of the \$6.0 million illustrated above and any residual amounts under the Assignment of Rights Agreement, Indigo will still suffer a significant shortfall under the Secured Obligations.

66. There are no other secured creditors or claimants with claims against the Applicants that rank in priority to, or potentially in priority, to the secured claim of Indigo (other than, potentially, the WEPP Priority Claim and US Claims which have been reserved).

RECOMMENDATIONS

67. The Monitor recommends this Honourable Court approve:
- (a) the Assignment of Rights Agreement between Lynx Opco and Indigo; and
 - (b) the Monitor's request for an extension to the Stay of Period up to and including January 31, 2025.

All of which is respectfully submitted this 9th day of September 2024.

FTI Consulting Canada Inc.,
Licensed Insolvency Trustee in its capacity as
Monitor of Lynx Air and not in its personal or
corporate capacity.

Name: ~~Deryck Helkaa, CPA, CA, CIRP, LIT~~
Title: Senior Managing Director
FTI Consulting Canada Inc.

Name: Dustin Olver, CPA, CA, CIRP, LIT
Title: Senior Managing Director
FTI Consulting Canada Inc.

Appendix “A” – Assignment of Rights Agreement between Lynx Air and Indigo Northern Ventures LP

ASSIGNMENT OF RIGHTS AGREEMENT

THIS ASSIGNMENT OF RIGHTS AGREEMENT is made as of the 29th day of August, 2024.

BETWEEN:

1263343 ALBERTA INC. (d/b/a LYNX AIR), a corporation existing under the laws of the Province of Alberta (the "**Assignor**")

- and -

INDIGO NORTHERN VENTURES LP, an exempted limited partnership registered under the laws of the Cayman Islands (the "**Assignee**")

(the Assignor, and the Assignee are collectively, the "**Parties**")

RECITALS:

- A. On February 22, 2024, the Assignor was granted protection under the *Companies' Creditors Arrangement Act* (Canada) pursuant to an initial order granted by the Court of King's Bench of Alberta (the "**Court**") in proceedings bearing Court File No. 2401-02664 (as amended and restated on March 1, 2024, the "**Insolvency Proceedings**"). FTI Consulting Canada Inc. was appointed by the Court as Monitor in the Insolvency Proceedings (the "**Monitor**").
- B. On June 29, 2024, the Court pronounced an order in the Insolvency Proceedings which enhanced the powers of the Monitor. Such enhanced powers of the Monitor include, *inter alia*, empowering the Monitor to manage, operate and carry on the business of the Assignor, including the power to enter into any agreements for and on behalf of the Assignor.
- C. The Assignor is party to a Master Services Agreement among the Assignor, Elavon Canada Company ("**Elavon**"), U.S. Bank National Association ("**U.S. Bank**") and U.S. Bank National Association, acting through its Canadian Branch (together with U.S. Bank and Elavon, the "**Providers**", and each a "**Provider**"), dated August 9, 2021 (the "**MSA**").
- D. The Assignor has agreed to assign to the Assignee all of the Assignor's right, title and interest to receive any residual amount of Deposits or other Reserve Funds held by the Providers pursuant to the MSA as security for the payment and performance of the Obligations (including any refunds under section 9.6 of the MSA), such residual amount to be determined by the Providers in accordance with the MSA after all Obligations are satisfied or paid in full and net of any Chargebacks (with Obligations, Chargebacks, Deposits and Reserved Fund each having the meaning ascribed thereto in the MSA)

(collectively, the "**Assigned Interest**") and the Assignee has agreed to accept such assignment, all pursuant to and subject to the provisions of this Agreement.

- E. The Assignor shall not assign any other rights, title or interests under the MSA other than the Assigned Interest.
- F. The Assignor requires an Approval Order (as defined herein) to be granted by the Court which authorizes, approves and confirms this Agreement and the assignment contemplated herein, with the terms and conditions contained herein.
- G. Terms not otherwise defined herein shall have the meaning ascribed to them in the MSA.

NOW THEREFORE, in consideration of the respective covenants, agreements, representations, warranties and indemnities of the Parties set out in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties agree as follows:

- 1. Assignment.** Within four days (exclusive of Saturdays, Sundays and statutory holidays in the Province of Alberta) after the Assignor obtains the Approval Order (the "**Effective Date**"), the Assignor shall absolutely assign, set over, transfer and convey unto the Assignee, effective as of the Effective Date, the Assigned Interest and all benefits and advantages derived or to be derived therefrom, to have and to hold the same for the Assignee's sole use and benefit absolutely.
- 2. Representations and Warranties of the Assignor.** The Assignor represents and warrants to the Assignee as follows and acknowledges that the Assignee is relying upon such representations and warranties in entering into this Agreement and in connection with the completion of the transactions contemplated herein:
 - (a) Subject to Assignor obtaining the Approval Order, the execution and delivery of and performance by the Assignor of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Assignor;
 - (b) Subject to Assignor obtaining the Approval Order, the execution and delivery of and performance by the Assignor of this Agreement:
 - (i) does not and will not have an impact on any of the rights, title or interests, of the Assignor under the MSA outside of the rights, title and interests relating to the Assigned Interest;
 - (ii) does 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) constitute or result in a violation or breach of, or conflict with, or allow any other person to exercise any rights under, any of the terms or provisions of its constating documents or by-laws, as applicable;

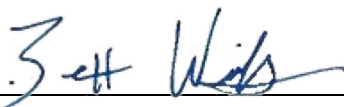
- (iii) does not and will not (or would not with the giving of notice, the lapse of time or the happening or any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other person to exercise any rights under, any of the terms or provisions of any agreement to which it is a party; and
 - (iii) does not and will not result in the violation of any law;
 - (c) Subject to Assignor obtaining the Approval Order, this Agreement has been duly executed and delivered by the Assignor and this Agreement constitutes a valid and binding obligation of the Assignor enforceable against the Assignor in accordance with its terms, subject, as to enforcement, to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law);
 - (d) No person has any right, privilege, option or agreement, contingent or otherwise, to acquire, directly or indirectly, the Assigned Interest;
 - (e) Other than any defaults arising as a result of the commencement of the Insolvency Proceedings by the Assignor, the MSA is in good standing and there are no obligations owing by the Assignor to the Provider under the MSA;
 - (f) Provider has consented to the assignment of the Assigned Interest; and
 - (g) Other than the Approval Order, there is no requirement to obtain any consent, approval or waiver from any third party or governmental authority in respect of the assignment, transfer and conveyance of the Assigned Interest from the Assignor to the Assignee pursuant to the terms hereof.
3. **Representations and Warranties of the Assignee.** The Assignee represents and warrants to the Assignor as follows and acknowledges that the Assignor is relying upon such representations and warranties in entering into this Agreement and in connection with the completion of the transactions contemplated herein:
- (a) The execution and delivery of and performance by the Assignee of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Assignee;
 - (b) The execution and delivery of and performance by the Assignee of this Agreement:
 - (i) does 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) constitute or result in a violation or breach of, or conflict with, or allow any other person to exercise any rights under, any of the terms or provisions of its constituting documents or by-laws;

- (ii) does not and will not (or would not with the giving of notice, the lapse of time or the happening or any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other person to exercise any rights under, any of the terms or provisions of any agreement to which it is a party; and
 - (iii) does not and will not result in the violation of any law;
 - (c) This Agreement has been duly executed and delivered by the Assignee and this Agreement constitutes a valid and binding obligation of the Assignee enforceable against the Assignee in accordance with its terms, subject, as to enforcement, to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law).
4. **Approval Order.** Each of the Parties agree that it is a condition precedent to the effectiveness of the assignment set forth in this Agreement that an order be granted by the Court in connection with the Insolvency Proceedings, in form and substance acceptable to the Parties, each acting reasonably. which authorizes, approves, and confirms this Assignment Agreement and the assignment contemplated hereby in accordance with the terms and conditions contained herein (the "**Approval Order**"). Each of the Parties agrees that it will take those actions reasonably necessary to carry out the matters contemplated by this Agreement or any of its provisions, including without limitation, anything reasonably necessary in order for the Assignor to obtain the Approval Order.
 5. **Further Assurances.** The Parties shall execute such further assurances and do all such further acts as may be reasonably required to give full effect to the provisions hereof.
 6. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, of the Parties, and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth or referred to herein.
 7. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein and the Parties irrevocably attorn to the jurisdiction of the Province of Alberta.
 8. **Enurement.** This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
 9. **Counterparts.** This Agreement may be executed by facsimile or other electronic transmission and in separate counterparts, and all of the executed counterparts together constitute one instrument and shall have the same force and effect as if all of the Parties executing such counterparts had executed the same agreement.

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

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first written above.

1263343 ALBERTA INC., by FTI Consulting Canada Inc. under and pursuant to the authority conferred upon it by order of the Court of King’s Bench of Alberta pronounced on June 28, 2024, and not in its personal or corporate capacity

By: 
Name: Brett Wilson
Title: Managing Director

INDIGO NORTHERN VENTURES LP, BY ITS GENERAL PARTNER INDIGO NORTHERN VENTURES GP, LLC


By: _____
Name:
Title:

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first written above.

1263343 ALBERTA INC., by FTI Consulting Canada Inc. under and pursuant to the authority conferred upon it by order of the Court of King's Bench of Alberta pronounced on June 28, 2024, and not in its personal or corporate capacity

By: _____
Name:
Title:

INDIGO NORTHERN VENTURES LP, BY ITS GENERAL PARTNER INDIGO NORTHERN VENTURES GP, LLC

By:  _____
Name: Brian Franke
Title: Vice President

Appendix “B” – Cash Flow Statement for the period ending February 1, 2024

Lynx Air Holdings Corporation and 1263343 Alberta Inc. dba Lynx Air
Consolidated Cash Flow Statement
For the period of September 8, 2024 to February 1, 2025

(C\$ 000s)																						
For the period of September 8, 2024 to February 1, 2025																						
	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16	Week 17	Week 18	Week 19	Week 20	Week 21	21 Week
	14-Sep	21-Sep	28-Sep	5-Oct	12-Oct	19-Oct	26-Oct	2-Nov	9-Nov	16-Nov	23-Nov	30-Nov	7-Dec	14-Dec	21-Dec	28-Dec	4-Jan	11-Jan	18-Jan	25-Jan	1-Feb	Total
Receipts																						
Revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other / Recovery of Deposits	-	-	19	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	440
Total - Receipts	-	-	19	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	440
Disbursements																						
Contractors	-	-	(10)	-	-	-	(10)	-	-	-	-	(10)	-	-	-	(10)	-	-	-	(10)	-	(50)
WEPP Priority Claim	-	-	(1,000)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(1,000)
SG&A expense	-	-	(5)	-	-	-	(5)	-	-	-	-	(5)	-	-	-	(5)	-	-	-	(5)	-	(25)
Professional fees	-	-	(150)	-	-	-	(75)	-	-	-	-	(75)	-	-	-	(50)	-	-	-	(50)	-	(400)
Air Travellers Security Charge	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(261)	(261)
Total - Disbursements	-	-	(1,165)	-	-	-	(90)	-	-	-	-	(90)	-	-	-	(65)	-	-	-	(65)	(261)	(1,736)
Net change in cash	-	-	(1,146)	-	-	-	(90)	-	-	-	-	(90)	-	-	-	(65)	-	-	-	(65)	179	(1,277)
Opening cash	15,806	15,806	15,806	14,660	14,660	14,660	14,660	14,570	14,570	14,570	14,570	14,570	14,480	14,480	14,480	14,480	14,415	14,415	14,415	14,415	14,350	15,806
Ending Cash	\$ 15,806	\$ 15,806	\$ 14,660	\$ 14,660	\$ 14,660	\$ 14,660	\$ 14,570	\$ 14,570	\$ 14,570	\$ 14,570	\$ 14,570	\$ 14,480	\$ 14,480	\$ 14,480	\$ 14,480	\$ 14,415	\$ 14,415	\$ 14,415	\$ 14,415	\$ 14,350	\$ 14,529	\$ 14,529

Notes:

The Cash Flow Statement includes estimated receipts and disbursements of Lynx Air during the Forecast Period. FTI Consulting Canada Inc., in its capacity as Monitor, prepared the Cash Flow Statement based primarily on estimated receipts and disbursements related to the CCAA proceedings. Receipts and disbursements are denominated in Canadian dollars (the foreign exchange conversion rate used to convert USD to CAD is 1.35).

1. No revenue receipts in the Forecast Period, any residual funds will be collected by Indigo pursuant to the Assignment of Rights Agreement, subject to approval of this Honourable Court.
2. Other receipts include recovery of certain deposits on account and return of letters of credit.
3. Contractors includes estimate for the three contractors retained to assist to complete the administration of the CCAA Proceedings.
4. WEPP Priority Claim based on the calculation of subrogated super-priority claim.
5. SG&A expense includes information technology and ongoing software costs to maintain access to the Applicants' systems, and other costs required during the CCAA Proceeding.
6. Professional fees for the Monitor and the Monitor's Counsel.
7. Air Travelers Security Charge ("ATSC") based on the final reconciliation of amounts owed.