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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

PHILIPPINE AIRLINES, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 21-11569 (SCC)

**DISCLOSURE STATEMENT FOR CHAPTER 11 PLAN OF REORGANIZATION  
OF PHILIPPINE AIRLINES, INC.**

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Dated: November 9, 2021

New York, New York

<sup>1</sup> The Debtor in this chapter 11 case, along with its registration number in the Philippines, is as follows: Philippine Airlines, Inc., Philippine Securities and Exchange Commission Registration No. PW 37. The Debtor’s corporate headquarters is located at PNB Financial Center, President Diosdado Macapagal Avenue, CCP Complex, Pasay City 1300, Metro Manila, Philippines.



**DISCLOSURE STATEMENT, DATED NOVEMBER 9, 2021**

**Solicitation of Votes on the  
Plan of Reorganization of**

**PHILIPPINE AIRLINES, INC.**

This solicitation of votes (the “Solicitation”) is being conducted to obtain sufficient votes for confirmation of the chapter 11 plan of Philippine Airlines, Inc. in the above-captioned chapter 11 case (the “Debtor” or “PAL”). The proposed chapter 11 plan (the “Plan”) is attached to this Disclosure Statement as Exhibit A.

**THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS 4:00 P.M., PREVAILING EASTERN TIME, ON DECEMBER 10, 2021, UNLESS EXTENDED BY THE DEBTOR. THE RECORD DATE FOR DETERMINING WHICH HOLDERS OF CLAIMS OR INTERESTS MAY VOTE ON THE PLAN IS NOVEMBER 12, 2021 (THE “VOTING RECORD DATE”).**

**RECOMMENDATION BY THE DEBTOR**

The board of directors of Philippine Airlines, Inc. (as of the date hereof) has unanimously approved the transactions contemplated by the Solicitation and the Plan and recommend that all creditors and interest holders whose votes are being solicited submit ballots to accept the Plan.

Further, over 90% of holders of Class 3 Claims have agreed to support the Plan in accordance with Restructuring Support Agreements (defined below).

**IMPORTANT NOTICES**

A hearing to consider confirmation of the Plan (the “Confirmation Hearing”) will be held before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004 on December 17, 2021 at 10:00 a.m. (prevailing Eastern Time), or as soon thereafter as counsel may be heard.

**HOLDERS OF CLAIMS OR INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE AND SHOULD CONSULT WITH THEIR OWN ADVISORS BEFORE VOTING ON THE PLAN.**

**THE ISSUANCE AND THE DISTRIBUTION UNDER THE PLAN OF THE NEW COMMON STOCK WILL BE EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) AND ANY OTHER APPLICABLE SECURITIES LAWS PURSUANT TO ONE OR MORE EXEMPTIONS, WHICH MAY INCLUDE SECTION 1145 OF THE BANKRUPTCY CODE, SECTION 4(A)(2) OF THE SECURITIES ACT OR SECTION 3(A)(9) OF THE SECURITIES ACT. THE AVAILABILITY OF THE EXEMPTION UNDER SECTION 1145 OF THE BANKRUPTCY CODE OR ANY OTHER APPLICABLE SECURITIES LAWS SHALL NOT BE A CONDITION TO THE OCCURRENCE OF THE EFFECTIVE DATE.**

**THE NEW COMMON STOCK TO BE ISSUED ON THE EFFECTIVE DATE HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) OR BY ANY STATE SECURITIES COMMISSION OR SIMILAR PUBLIC, GOVERNMENTAL, OR REGULATORY AUTHORITY, AND NEITHER THE SEC NOR ANY SUCH AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**CERTAIN STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING STATEMENTS INCORPORATED BY REFERENCE, PROJECTED FINANCIAL INFORMATION, AND OTHER FORWARD-LOOKING STATEMENTS, ARE BASED ON ESTIMATES AND ASSUMPTIONS. CERTAIN OF THESE FORWARD-LOOKING STATEMENTS CAN BE IDENTIFIED BY THE USE OF WORDS SUCH AS “BELIEVES,” “EXPECTS,” “PROJECTS,” “INTENDS,” “PLANS,” “ESTIMATES,” “ASSUMES,” “MAY,” “SHOULD,” “WILL,” “SEEKS,” “ANTICIPATES,” “OPPORTUNITY,” “PRO FORMA,” “PROJECTIONS,” OR OTHER SIMILAR EXPRESSIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. FORWARD-LOOKING STATEMENTS ARE PROVIDED IN THIS DISCLOSURE STATEMENT PURSUANT TO THE SAFE HARBOR ESTABLISHED UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 AND SHOULD BE EVALUATED IN THE CONTEXT OF THE ESTIMATES, ASSUMPTIONS, UNCERTAINTIES, AND RISKS DESCRIBED HEREIN.**

**READERS ARE CAUTIONED THAT ANY FORWARD-LOOKING STATEMENTS HEREIN ARE BASED ON ASSUMPTIONS THAT ARE BELIEVED TO BE REASONABLE, BUT ARE SUBJECT TO A WIDE RANGE OF RISKS IDENTIFIED**

**IN THIS DISCLOSURE STATEMENT. IMPORTANT ASSUMPTIONS AND OTHER IMPORTANT FACTORS THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THOSE EXPECTED INCLUDE, BUT ARE NOT LIMITED TO, THOSE FACTORS, RISKS, AND UNCERTAINTIES DESCRIBED IN MORE DETAIL UNDER THE HEADING “RISK FACTORS” AND ELSEWHERE IN THE AUDITED AND UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS AND THE RELATED NOTES THERETO INCLUDED ELSEWHERE HEREIN. DUE TO THESE UNCERTAINTIES, READERS CANNOT BE ASSURED THAT ANY FORWARD-LOOKING STATEMENTS WILL PROVE TO BE CORRECT. THE DEBTOR IS UNDER NO OBLIGATION TO (AND EXPRESSLY DISCLAIMS ANY OBLIGATION TO) UPDATE OR ALTER ANY FORWARD-LOOKING STATEMENTS WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE, UNLESS INSTRUCTED TO DO SO BY THE BANKRUPTCY COURT.**

**HOLDERS OF CERTAIN ALLOWED UNSECURED CLAIMS ARE NOT IMPAIRED BY THE PLAN AND, AS A RESULT, THEIR RIGHT TO RECEIVE PAYMENT IN FULL OR BE TREATED IN THE ORDINARY COURSE ON ACCOUNT OF VALID OBLIGATIONS IS NOT ALTERED BY THE PLAN. DURING THE CHAPTER 11 CASE, THE DEBTOR IS OPERATING ITS BUSINESS IN THE ORDINARY COURSE.**

**NO INDEPENDENT AUDITOR OR ACCOUNTANT HAS REVIEWED OR APPROVED THE FINANCIAL PROJECTIONS OR THE LIQUIDATION ANALYSIS HEREIN.**

**THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. THE TERMS OF THE PLAN GOVERN IN THE EVENT OF ANY INCONSISTENCY WITH THE SUMMARIES IN THIS DISCLOSURE STATEMENT.**

**THE INFORMATION IN THIS DISCLOSURE STATEMENT IS BEING PROVIDED SOLELY FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN OR IN CONNECTION WITH CONFIRMATION OF THE PLAN. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE USED BY ANY PARTY FOR ANY OTHER PURPOSE.**

**ALL EXHIBITS TO THE DISCLOSURE STATEMENT ARE INCORPORATED INTO AND ARE A PART OF THIS DISCLOSURE STATEMENT AS IF SET FORTH IN FULL HEREIN.**

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## ARTICLE I.

### INTRODUCTION

Philippine Airlines, Inc. (“**Philippine Airlines**” or “**PAL**”) (the “**Debtor**” and, together with its non-debtor affiliates, the “**Company**”) submits this Disclosure Statement in connection with the solicitation of votes on the *Chapter 11 Plan of Reorganization of Philippine Airlines, Inc.*, dated November 9, 2021 (the “**Plan**”)<sup>2</sup> attached hereto as **Exhibit A**.

The purpose of this Disclosure Statement, including the exhibits annexed hereto, is to provide information of a kind, and in sufficient detail, to enable creditors of the Debtor that are entitled to vote on the Plan to make an informed decision on whether to vote to accept or reject the Plan. This Disclosure Statement contains summaries of the Plan, certain statutory provisions, events contemplated in the Chapter 11 Case, and certain documents related to the Plan.

After extensive arms-length negotiations, prior to the Petition Date, the Debtor executed numerous restructuring support agreements (each, a “**Restructuring Support Agreement**”, and collectively the “**Restructuring Support Agreements**”) with the Supporting Creditors, which were approved by the Bankruptcy Court on October 1, 2021. The Restructuring Support Agreements form the backbone and framework for the Plan.

As described more fully below, the Plan generally provides for the following:

- The Tranche A DIP Facility will convert to unsecured debt maturing approximately 5 years after the anticipated Effective Date, and the Tranche B DIP Facility will convert into 79.5% of the New Common Stock of the Reorganized Debtor.<sup>3</sup>
- The Supporting Creditors and other holders of Allowed General Unsecured Claims will receive their respective Pro Rata shares of the Unsecured New Equity Allocation on account of their pre-petition General Unsecured Claims.

<sup>2</sup> Capitalized terms used in this Disclosure Statement, but not defined herein, have the meanings ascribed to them in the Plan. To the extent any inconsistencies exist between this Disclosure Statement and the Plan, the Plan shall govern.

<sup>3</sup> As described in more detail herein, the Debtor has the option, in its sole discretion, to elect to convert the DIP Claims into long-term equity and unsecured debt financing on the Effective Date. At this time, the Debtor has elected to exercise the Tranche A Conversion Election and the Tranche B Conversion Election in accordance with the DIP Credit Agreement. However, the Debtor expressly reserves the right to continue to consider all proposals and options with respect to the election and whether an alternative proposal is received prior to the Confirmation Date that is in the best interest of the Debtor’s estate.

- General Unsecured Trade Claims, Employee Claims and Customer Claims shall be paid, adjusted, disputed, or settled, in the ordinary course of business.
- The Debtor's Unsecured Notes will be cancelled and each holder of an Allowed General Unsecured Claim on account thereof will receive its Pro Rata share of the Unsecured New Equity Allocation.
- The recoveries provided to holders of General Unsecured Claims, as well as the payment of all Employee Claims, Customer Claims and General Unsecured Trade Claim in full, are being carved out of the value that would otherwise be used to satisfy the DIP Claims and would not otherwise be available to holders of such unsecured Claims without the consent of the DIP Lenders, which consent was obtained in connection with good-faith, arms'-length negotiations regarding the Restructuring Support Agreements.
- All Priority Non-Tax Claims, Other Secured Claims, General Unsecured Trade Claims, Employee Claims, Customer Claims, and Intercompany Claims are unimpaired by the Plan and will be satisfied in the ordinary course of business.
- All existing equity interests of the Debtor (including common stock, preferred stock and any options, warrants, profit interest units, or rights to acquire any equity interests) shall be reduced to 0.001% of its current amount and value by the New Common Stock. Philippine law generally prohibits the cancellation of such shares for no consideration, but the dilution of the existing equity interests is meant to approximate such treatment.
- The possibility of a commitment for a \$150 million Secured Exit Facility from new investors to ensure that PAL has adequate liquidity to operate post-emergence.

**THE DEBTOR AND THE SUPPORTING CREDITORS (COLLECTIVELY, THE "PLAN SUPPORT PARTIES") SUPPORT CONFIRMATION OF THE PLAN AND URGE ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT THE PLAN. THE PLAN SUPPORT PARTIES BELIEVE THAT THE PLAN PROVIDES THE HIGHEST AND BEST RECOVERY FOR ALL STAKEHOLDERS.**

#### **Summary of Plan Classification and Treatment of Claims and Interests**

Under the Bankruptcy Code, only holders of claims or interests in "impaired" Classes are entitled to vote on the Plan (unless, for reasons discussed in more detail below, such holders are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code). Under section 1124 of the Bankruptcy Code, a class of claims or interests is deemed to be "impaired" unless (i) the plan leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder thereof or (ii) notwithstanding any legal right to

an accelerated payment of such claim or interest, the plan, among other things, cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default.

**Only Holders of Class 3 General Unsecured Claims are being solicited under and entitled to vote on the Plan.**

The following table summarizes (i) the treatment of Claims and Interests under the Plan, (ii) which Classes are impaired by the Plan, (iii) which Classes are entitled to vote on the Plan, and (iv) the estimated recoveries for holders of Claims and Interests. The table is qualified in its entirety by reference to the full text of the Plan. For a more detailed summary of the terms and provisions of the Plan, see Article V—Summary of the Plan below. A detailed discussion of the analysis underlying the estimated recoveries, including the assumptions underlying such analysis, is set forth in the Valuation Analysis in Exhibit E.

<b>Class</b>	<b>Claim or Equity Interest</b>	<b>Treatment</b>	<b>Impaired or Unimpaired</b>	<b>Entitled to Vote on the Plan</b>	<b>Approx. Recovery<sup>4</sup></b>
1	Priority Non-Tax Claims	Except to the extent that a holder of an Allowed Priority Non-Tax Claim against the Debtor agrees to a less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Priority Non-Tax Claim, at the option of the Debtor or the Reorganized Debtor, as applicable, (i) each such holder shall receive payment in Cash in an amount equal to the Allowed amount of such Claim, payable on the later of the Effective Date and the date that is 10 Business Days after the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, or as soon thereafter as is reasonably practicable, (ii) such holder's Allowed Priority Non-Tax Claim shall be Reinstated, or (iii) such holder shall receive such other treatment consistent with section 1129(a)(9) of the Bankruptcy Code so as to render such holder's Allowed Priority Non-Tax Claim Unimpaired.	Unimpaired	No (Presumed to accept)	100%
2	Other Secured Claims	Except to the extent that a holder of an Allowed Other Secured Claim	Unimpaired	No (Presumed to	100%

<sup>4</sup> The amounts and/or percentages set forth under Approximate Recovery are based on the range of reorganized equity value of the Debtor as described in the Valuation Analysis described herein. They represent the midpoint within the Company's range of estimated recoveries.

<b>Class</b>	<b>Claim or Equity Interest</b>	<b>Treatment</b>	<b>Impaired or Unimpaired</b>	<b>Entitled to Vote on the Plan</b>	<b>Approx. Recovery<sup>4</sup></b>
		against the Debtor agrees to a less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Other Secured Claim, at the option of the Debtor or the Reorganized Debtor, as applicable, (i) each such holder shall receive payment in Cash in an amount equal to the Allowed Amount of such Claim, payable on the later of the Effective Date and the date that is 10 Business Days after the date such Other Secured Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable, (ii) Reinstatement of such holder's Allowed Other Secured Claim, or (iii) such other treatment sufficient to render such holder's Allowed Other Secured Claim Unimpaired. In the event that an Other Secured Claim against the Debtor is treated under clause (i) of Section 4.2(b) of the Plan, the Liens securing such Other Secured Claim shall be deemed released immediately upon payment.		accept)	
3	General Unsecured Claims	Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a less favorable treatment of such Claim or has been paid before the Effective Date, on and after the Effective Date, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Claim, such holder will receive its Pro Rata share of the Unsecured New Equity Allocation.	Impaired	Yes	~1%
4	General Unsecured Trade Claims	Except to the extent that a holder of a General Unsecured Trade Claim agrees to a less favorable treatment of such Claim or has been paid before the Effective Date, on and after the Effective Date, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Claim, (i) the Reorganized Debtor shall continue to pay or treat each General Unsecured Trade Claim in the ordinary course of business as if the Chapter 11 Case had never been	Unimpaired	No (Presumed to accept)	100%

<b>Class</b>	<b>Claim or Equity Interest</b>	<b>Treatment</b>	<b>Impaired or Unimpaired</b>	<b>Entitled to Vote on the Plan</b>	<b>Approx. Recovery<sup>4</sup></b>
		commenced, or (ii) such holder will receive such other treatment so as to render such holder's Allowed General Unsecured Trade Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code, in each case subject to all defenses or disputes the Debtor and the Reorganized Debtor may have with respect to such Claims, including as provided in Section 6.17 of the Plan; <i>provided</i> that, notwithstanding the foregoing, the Allowed amount of General Unsecured Trade Claims shall be subject to and shall not exceed the limitations or maximum amounts permitted by the Bankruptcy Code, including sections 502 or 503 of the Bankruptcy Code, to the extent applicable.			
5	Employee Claims	Except to the extent that a holder of an Employee Claim agrees to a less favorable treatment of such Claim or has been paid before the Effective Date, all Employee Claims shall be paid, adjusted, disputed, or settled, in the ordinary course of business after the Effective Date.	Unimpaired	No (Presumed to accept)	100%
6	Customer Claims	Except to the extent that a holder of a Customer Claim agrees to a less favorable treatment of such Claim or has been paid before the Effective Date, all Customer Claims shall be paid, adjusted, disputed, or settled, in the ordinary course of business after	Unimpaired	No (Presumed to accept)	100%

<b>Class</b>	<b>Claim or Equity Interest</b>	<b>Treatment</b>	<b>Impaired or Unimpaired</b>	<b>Entitled to Vote on the Plan</b>	<b>Approx. Recovery<sup>4</sup></b>
		the Effective Date in accordance with any settlements or orders issued by the applicable courts or regulatory authorities.			
7	Intercompany Claims	On the Effective Date, or as soon as practicable thereafter, all Intercompany Claims shall be paid, adjusted, continued, settled, Reinstated, discharged, contributed to capital, or eliminated, in each case to the extent determined by the Debtor or the Reorganized Debtor, as applicable, subject to the Restructuring Transactions.	Unimpaired	No (Presumed to accept)	100%
8	Existing Equity Interests	On the Effective Date, or as soon as practicable thereafter in accordance with applicable non-bankruptcy law, Holders of Existing Equity Interests shall have their Existing Equity Interests diluted to 0.001% of the number and value of such Interests as of the Petition Date.	Impaired	No (Deemed to reject)	Approximately 0.001%

## **ARTICLE II.**

### **OVERVIEW OF THE COMPANY'S OPERATIONS**

#### **A. Corporate History and Organizational Structure**

PAL was founded in February 1941, making it one of the oldest airlines in the Asia-Pacific region, and with over \$3 billion in annual gross revenue prior to the COVID-19 pandemic, is the largest airline group in the Philippines and the national flag carrier.<sup>5</sup> Its principal activity is providing air transportation for passengers and cargo within, and connecting to, the Philippines.

In 1946, PAL became the first Asian airline to cross the Pacific when it operated a chartered flight to ferry U.S. servicemen to California. Thereafter, PAL commenced regular

<sup>5</sup> PAL operates under the Presidential Decree No. 1590 (PD 1590) entitled, "An Act Granting a New Franchise to Philippine Airlines, Inc. to Establish, Operate, and Maintain Air-transport services in the Philippines and Other Countries" PD 1590, which designated PAL the national flag carrier of the Philippines.

services between the Philippines and the United States and today operates a global network that, pre-pandemic, included 117 destinations within the Philippines and around the world.

By virtue of the nature of its business, PAL provides essential air transport services and plays a central role in boosting the growth of the Philippine economy and the emergence of a national tourism industry.

In 1992, PAL was privatized under the leadership of its Chairman and CEO, Dr. Lucio C. Tan. Today, PAL is an international corporation duly organized and existing under the laws of the Republic of the Philippines. Its principal office is located in PNB Financial Center, Diosdado Macapagal Avenue, CCP Complex, Pasay City, Philippines.

As of June 2021, PAL employed a total of approximately 4,500 employees (collectively, the “**Employees**”). Approximately 52% of PAL’s employees are unionized – primarily by two Philippine labor unions: Philippine Airlines Employees’ Association (PALEA), for ground employees, and Flight Attendants’ and Stewards’ Association of the Philippines (FASAP) for the cabin crew. In the United States, certain of the Debtor’s employees are members of the International Association of Machinists and Aerospace Workers (IAMAW).

As of the Petition Date, approximately 96% of PAL’s employees are located in the Philippines and the remaining 4% of employees are spread across over 21 different countries, including the United States.

PAL also has an affiliate, Air Philippines Corporation (“**APC**”), which operates as PAL Express. PAL Express was incorporated in the Philippines on February 8, 1995<sup>6</sup> and is the third largest airline in the Philippines. PAL Express operates 36 aircraft, which it subleases from PAL with lease terms ranging from 36 to 144 months. PAL Express has a close operating relationship with PAL governed by a comprehensive Codeshare Agreement under which PAL is the marketing carrier of domestic flights operated by PAL Express. This Codeshare Agreement allows both airlines to merge timetables, ticket sales and various other operations. The partnership reduces operating costs for both airlines and at the same time, ensure seamless connecting flights between the two carriers for the convenience of their passengers. PAL Express and PAL’s other affiliates are not debtors in this Chapter 11 Case.

The Debtor also owns and operates a frequent flyer program called “Mabuhay Miles,” which is critical to preserving the Debtor’s loyal customer base worldwide. The Mabuhay Miles program is a loyalty program operated by PAL as part of the airline’s marketing function. As described in more detail in the First Day Pleadings, the Debtor intends to honor all obligations relating to its Mabuhay Miles program to ensure the continued confidence of its customers. Total revenues from the Mabuhay Miles program in 2019, the last full year prior to

<sup>6</sup> See Republic Act No. 8339 entitled “An Act Granting Air Philippines Corporation (Air Philippines) a Franchise to Establish, Operate and Maintain Domestic and International Air Transport Services.



the pandemic, amounted to approximately \$21.4 million, or approximately 1% of total revenues.

As of May 2021, there are approximately 4.9 million members in the Mabuhay Miles loyalty program. Through the Mabuhay Miles program, members have the opportunity to earn travel rewards through the accumulation of mileage credits earned on flights with the Debtor and partner airlines. Members can also earn miles through the purchase and use of services from mileage partners, including credit card providers, banks, telecommunications service providers, hotels and resorts, tour operators, cruise services, insurance providers, car rental businesses, and other merchandise and travel companies. Mabuhay Miles has a website, [www.mabuhaymiles.com](http://www.mabuhaymiles.com), which provides members access to their account information, and details on promotions and offers.

The Company's current organizational structure, including a depiction of the Debtor and its non-Debtor affiliates, as of the date hereof, is attached hereto as **Exhibit F**.

## **B. Company's Business**

Prior to the COVID-19 pandemic, PAL's fleet consisted of a total of ninety-eight aircraft, consisting of 48 narrow body aircraft, 31 wide body aircraft and 19 turboprop aircraft. The Debtor's fleet was comprised of 13 owned aircraft and 85 aircraft under finance leases and operating leases. Many of PAL's aircraft are owned by non-debtor special purpose entities that lease the aircraft to PAL. In those situations, the amount of rent paid by the Debtor under the applicable leases corresponds to the principal and interest due from the special purpose entity lessor to the relevant lender(s) or lessors under the applicable loan agreement(s) or leases, as applicable.<sup>7</sup> Under certain of the applicable lease documents, PAL has an option to purchase certain aircraft for a nominal amount, or title to the aircraft will pass to PAL on payment of the final rent installment. In connection with the Chapter 11 Case, PAL is optimizing its fleet size, composition and ownership costs to meet the expected demands of the post-COVID-19 market. The Debtor's pre-restructuring fleet consisted of the following aircraft:

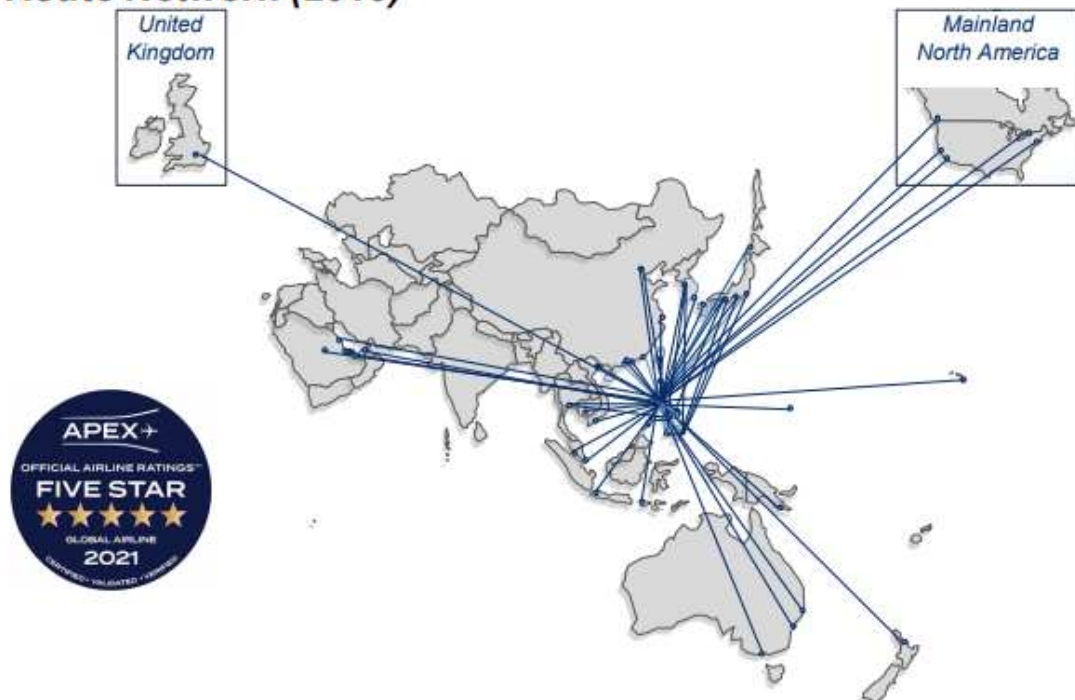
	<b>Leased</b>	<b>Owned</b>	<b>Total</b>
<b>Wide Body</b>	31		31
<b>Narrow Body</b>	42	6	48
<b>Turboprop</b>	12	7	19

<sup>7</sup> Such lease documents are governed by either New York, Philippine, or English law.

<b>Total</b>	<b>85</b>	<b>13</b>	<b>98</b>
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Prior to the onset of the COVID-19 pandemic PAL was providing airline services with a wide network spanning 35 domestic points and 40 foreign cities, including, New York, Los Angeles, San Francisco, Honolulu, Guam, Vancouver, Toronto, London, Sydney, Melbourne, Brisbane, Auckland, Dubai, Doha, Tokyo, Osaka, Nagoya, Hong Kong, Shanghai, Taipei, Bangkok, Jakarta, Bali, Saigon, Kuala Lumpur, Singapore, Phnom Penh, Incheon, and Pusan. Set forth below is a chart depicting PAL's routes prior to the COVID pandemic:

### **Route Network (2019)**

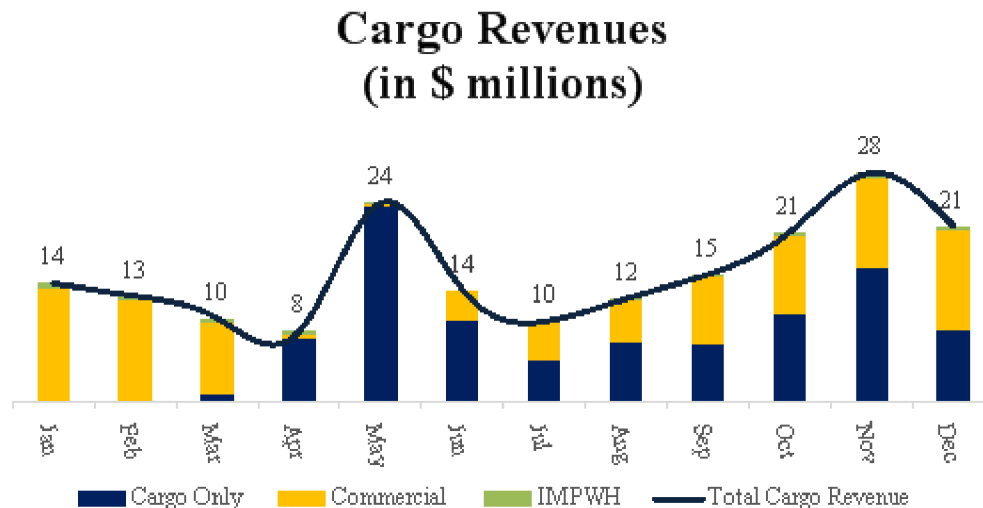


In order to ensure that it could serve all of its customers' needs, PAL is also a party to numerous codeshare agreements, including with Air Macau, All Nippon, Bangkok Airways, Cathay Pacific, China Airlines, Garuda Indonesia, Gulf Air, Hawaiian Airlines, Malaysian Airlines, Royal Brunei, Turkish Airlines, Vietnam Airlines, West Jet Airlines, and Xiamen Airlines. These codeshare agreements enable the Debtor to operate flights to additional destinations, while minimizing the additional expenses and burdens of providing flights to such destinations. Moreover, these agreements help the Debtor to build and maintain customer loyalty by seeking to become the customer's primary source for all of their travel needs.

PAL's excellent service has garnered significant market recognition in recent years. In 2018, PAL became the first, and to date the only, airline in the Philippines to earn a 4-Star rating from Skytrax, the international air transport rating organization. In 2019, Skytrax re-certified PAL as a 4-Star Global Airline based on comprehensive quality audits. In the same year, PAL won the "World's Most Improved Airline Award," as the carrier that achieved the largest leap in product and service quality among a survey of over 350 airlines worldwide. Skytrax also ranked PAL as the 30th best airline in the world in their "World's Top 100

Airlines in 2019” index, rising 19 spots from 2018. PAL also ranked high in other important categories, including ranking 10th in “World's Best Business Class Comfort Amenities,” 10th in “Best Airline Staff in Asia,” 11th in “World's Best Cabin Crew,” 11th in “World's Best Airport Services,” 11th in “World's Best Premium Economy Class,” and 14th in “World's Best Economy Class.” The Debtor believes that the proposed restructuring will enable PAL to continue its excellent service for years to come in accordance with its revised business plan and optimized fleet.

While the majority of the Debtor’s revenue has traditionally come from its passenger airline services, the Debtor also offers cargo-related services to a wide variety of destinations in 24 countries. In 2019, cargo related services accounted for approximately 6% of the Debtor’s annual revenue. During the current pandemic, the Debtor’s cargo related services have been a critical source of revenue while the Debtor’s passenger related operations have been severely restricted. From April 2020 to May 2021, cargo revenues accounted for nearly 31% of the Debtor’s total revenues.



PAL has seen significant and continued growth since its founding, despite recent challenges. Nevertheless, like many other airlines, PAL faces intense competition from existing and new participants in the market, including ultra-low-cost, low-cost and Middle Eastern carriers. The industry remains highly sensitive to aggressive price-discounting policies and jet fuel price increases. Others sources of disruption include lack of airport infrastructure in certain areas served by PAL and changes to PAL’s regulatory environment.

In the face of such challenges, commencing in 2019, the Debtor launched new programs designed to achieve sustainable profitability, lower debt, and a higher level of competitiveness. These new programs made substantive initial progress in the last two months of 2019 and helped increase total gross revenue for 2019 by 7.0% from the prior year to over \$3.0 billion,. Passenger numbers also grew as a result of such efforts to 16.8 million, 5.1% more than 2018.

### **C. Management**

The following table sets forth the names of the Debtor's current senior management:

<b>Name</b>	<b>Position(s)</b>
Lucio C. Tan	Chairman & Chief Executive Officer
Gilbert Gabriel F. Santa Maria	President & Chief Operating Officer
Nilo Thaddeus Rodriguez	Chief Financial Office & Compliance Officer
Alvin Kendrick O. Limqueco	Chief Admin Group & Data Privacy Officer
Wilson H. Go	Chief Information Officer
Stanley K. Ng	Senior Vice President of Airline Operations
Danreb M. Oira	Senior Vice President of Human Capital
Dexter C. Lee	Senior Vice President of Strategy & Planning
Atty. Marivic T. Moya	Corporate Secretary
Juanita Tan Lee	Treasurer
Leonardo B. Alejandrino	Member of Advisory Board
Rowena T. Chua	Member of Advisory Board
Mark M. Chen	Member of Advisory Board
Johnip G. Cua	Member of Advisory Board
Atty. Juan De Zuniga, Jr	Member of Advisory Board
Atty. Florentino M. Herrera III	Member of Advisory Board
Junichiro Miyagawa	Member of Advisory Board
Carmen K. Tan	Member of Advisory Board
Lucio C. Tan III	Member of Advisory Board
Samuel C. Uy	Member of Advisory Board

The composition of the board of directors of the Reorganized Debtor will be disclosed, to the extent known and determined, prior to the entry of the order confirming the Plan in accordance with section 1129(a)(5) of the Bankruptcy Code.

### **D. Prepetition Capital Structure**

To support its operations and obligations, the Debtor has a complex capital structure, which includes a series of aircraft specific financings, unsecured bank loans, receivables securitizations, and promissory notes.

As of July 31, 2021, the Debtor's overall assets and liabilities were approximately \$4.1 billion and \$6.07 billion respectively, with cash and cash equivalents of approximately \$31.9 million. An overview of the Debtor's indebtedness follows:

Finance and Operating Leases: PAL has 85 aircraft under finance leases and operating leases. With respect to the finance leases, the applicable special purpose vehicle lessors, which are all non-debtor affiliates, generally pledge their owned aircraft to secure the applicable financing arrangement. The amount of rent paid by the Debtor to the special purpose vehicle lessors under the applicable finance leases correspond to the principal and interest due from the

special purpose vehicle lessor to the relevant lender(s) under the loan agreement(s). In the aggregate, PAL pays approximately \$48 million monthly on account of its finance and operating leases, which range from 24 to 120 months remaining on the leases. PAL's expenses under such leases are a significant portion of PAL's liabilities.

Securitization Structures: PAL currently participates in two securitization structures. In particular, PAL sold to PAL Receivables Company Ltd., a special purpose entity incorporated under the laws of the Cayman Islands, via a receivables purchase agreement for a maximum consideration of \$685 million, an undivided interest in US dollar credit card sales. PAL obtained \$325 million asset back security for additional capital in August 2015 under Facility A, an additional \$260 million in October 2017 under Facility B and an additional \$100 million in November 2019 under Facility C. The US securitization facility is secured by future collections from passenger sales made in the United States through the following designated credit card companies: (1) MasterCard & Visa administered by Bank of America Merchant Services and (2) American Express administered by American Express Travel Related Services Company, Inc. The security is repaid through monthly installment for 75 months. As of June 30, 2021, there is \$387,083,333.15 outstanding under the US securitization facility.

In June 2015, PAL sold to Golden Investment TMK ("**Golden Investment**") an interest amounting to a total of \$240 million in PAL's rights, title, interest and benefit (present and future, actual and contingent) under certain receivables and claims owed to PAL from time to time by: the International Air Transport Association ("**IATA**") paid by its banks and arising out of certain agreements and IATA agents pursuant to certain IATA agency agreements and payable to PAL through its banks (collectively, the "**Japan Receivables**"). In March 2018, PAL sold additional Japan Receivables amounting to \$185 million to Golden Investment. In September 2019, PAL further sold additional Japan Receivables amounting to \$125 million (amount greater than the proceeds of \$100 million to include principal, interest, fees, and expenses). The Japan Receivables under this facility arise out of PAL's services for airline passenger transportation or cargo transportation which are sold in Japanese Yen cash indirectly through IATA agents within Japan. The security is repaid through monthly installment for 85 months. As of June 30, 2021, there is \$260,000,019 outstanding under the Japan securitization facility.

Secured Bridge Loans: In order to provide the Debtor with the necessary liquidity and runway to prepare for an organized bankruptcy filing and negotiate Restructuring Support Agreements with numerous lenders and lessors regarding the Debtor's go-forward aircraft leases, long-term loans, and optimized fleet leasing strategy in accordance with the Debtor's revised business plan, the Debtor obtained three Bridge Loans (the "**Bridge Loans**") from Buona Sorte Holdings, Inc. ("**Buona Sorte**"), a Philippine corporation that directly owns approximately 60% of the equity of Trustmark Holdings Corporation, a Philippine Corporation, which in turn directly owns approximately 76.9% of the equity of PAL Holdings, Inc. ("**PAL Holdings**"), a Philippine corporation, which in turn directly owns approximately 98.57% of the equity of the Debtor. The Bridge Loans were advanced pursuant to those certain Loan Agreements, dated as of February 10, 2021 (the "**First Bridge Loan Agreement**"), May 27, 2021 (the "**Second Bridge Loan Agreement**"), and August 19, 2021 (the "**Third Bridge Loan Agreement**"), respectively (each as amended, restated, or otherwise modified from time

to time between the Debtor and Buona Sorte (the “**Bridge Loan Agreements**”). Pursuant to the Bridge Loan Agreements, the Bridge Lender provided credit facilities to the Debtor in an aggregate principal amount of \$100 million, comprised of (a) \$60 million pursuant to the First Bridge Loan Agreement, (b) \$25 million pursuant to the Second Bridge Loan Agreement, and (c) \$15 million pursuant to the Third Bridge Loan Agreement. As of the Petition Date, the aggregate amount of Bridge Loan obligations outstanding to the Bridge Lender was \$102,429,666.67. The Bridge Loans are secured by the same aircraft-related collateral securing the DIP Facility. The liquidity afforded to the Debtor through the Bridge Loans was crucial in facilitating an orderly filing and the time needed to reach agreement with key stakeholders on the Plan. The Bridge Loans were contemplated to be short-term loans, and were refinanced as part of the DIP Facility upon entry of the Final DIP Order.

Unsecured Bank Loans: As of June 30, 2021, PAL maintained a \$75 million term loan from Asia United Bank, a \$77 million term loan from Philippine National Bank, a \$65 million term loan from China Banking Corporation, and a \$20 million term loan from Union Bank (collectively, the “**Bank Loans**”). An additional \$36.8 million of standby letters of credit (posted with operating lessors as maintenance reserves) issued by Philippine National Bank have been drawn by certain lessors over the past few months leading up to the Petition Date. These were converted by Philippine National Bank to promissory notes and are also considered as Bank Loans for the purpose of this Disclosure Statement and the Chapter 11 Case. The Bank Loans facility of Philippine National Bank is partially secured by a real property with an agreed value of PHP 1,360,963,000, which is equivalent to USD 27,194,241.30 based on the exchange rate one Business Day prior to the Petition Date. Thus, in accordance with the applicable Restructuring Support Agreement, Philippine National Bank’s unsecured claim (after reduction by the value of the real property) is USD 86,842,526.47.

The chart below sets for the different facilities for the Bank Loans:

<b>BANK</b>	<b>PRINCIPAL AMOUNT</b>
ASIA UNITED BANK	\$10,000,000.00
ASIA UNITED BANK	\$20,000,000.00
ASIA UNITED BANK	\$20,000,000.00
ASIA UNITED BANK	\$10,000,000.00
ASIA UNITED BANK	\$15,000,000.00
CHINA BANKING CORPORATION	\$25,000,000.00
CHINA BANKING CORPORATION	\$40,000,000.00
PHILIPPINE NATIONAL BANK	\$10,000,000.00
PHILIPPINE NATIONAL BANK	\$10,000,000.00
PHILIPPINE NATIONAL BANK	\$25,000,000.00
PHILIPPINE NATIONAL BANK	\$22,000,000.00
PHILIPPINE NATIONAL BANK	\$10,000,000.00
PHILIPPINE NATIONAL BANK	\$36,776,031.03
UNION BANK	\$20,000,000.00

In advance of filing the Chapter 11 Case, the Debtor engaged in extensive, good faith negotiations to reach a consensual resolution regarding the treatment of the Bank Loans and to secure the banks' support of the Plan. As of the Petition Date, Asia United Bank, Philippine National Bank and Union Bank have executed Restructuring Support Agreements and agreed to the treatment contemplated under the Plan for their Bank Loan that are unsecured claims. Upon information and belief, China Banking Corporation, although not executing a Restructuring Support Agreement in respect of its Bank Loan, supports PAL's restructuring.

Other Unsecured Loans: In late 2019, Buona Sorte infused \$225 million as part of PAL's turnaround plan and, due to the pandemic, Buona Sorte has provided another \$133 million of emergency advances to the Debtor between March and August 2020. Buona Sorte has agreed to waive any recovery with respect to its prepetition unsecured loans under, and subject to confirmation of, the Plan.

### **ARTICLE III.**

#### **KEY EVENTS LEADING TO COMMENCEMENT OF THE CHAPTER 11 CASE**

##### **A. Causes for Chapter 11 Filing**

At the beginning of 2020, PAL was poised to continue the work it began in 2019 to improve its operations and financial performance. However, the first quarter of the new year brought the COVID-19 pandemic, resulting in unprecedented disruptions to the global economy and the Debtor's business.

The COVID-19 crisis has had a particularly catastrophic impact on the aviation industry. The pandemic resulted in worldwide travel restrictions and a near total collapse in consumer demand during large portions of the pandemic. The International Air Transport Association (IATA) has recently estimated that the COVID-19 pandemic caused a \$371 billion loss in gross passenger operating revenues of airlines in 2020.<sup>8</sup> Other observers have characterized the pandemic as the most disruptive crisis ever to affect the aviation industry.<sup>9</sup>

<sup>8</sup> International Air Transport Association, *Effects of Novel Coronavirus (COVID-19) on Civil Aviation: Economic Impact Analysis* (July 13, 2021), [https://www.icao.int/sustainability/Documents/COVID-19/ICAO\\_Coronavirus\\_Econ\\_Impact.pdf](https://www.icao.int/sustainability/Documents/COVID-19/ICAO_Coronavirus_Econ_Impact.pdf). While the industry has begun to rebound, the global recovery has been uneven and hampered the emergence of new coronavirus variants. Michael Gebicki, *Airline Recovery Around the World During COVID-19: Which Countries are Bouncing Back?*, TRAVELLER (July 12, 2021), <https://www.traveller.com.au/airline-recovery-around-the-world-during-covid19-which-countries-are-bouncing-back-h1x1tq>. The International Air Transport Association has forecast that, compared to 2019, world passenger traffic for 2021 will be down 35% to 38% and airlines will continue to suffer a \$288 to \$314 billion loss of gross passenger operating revenues. International Air Transport Association, *supra*.

<sup>9</sup> United Airlines, "United Expects To Have Approximately \$17 Billion In Available Liquidity By September 2020," June 15, 2020, <https://hub.united.com/2020-06-15-united-expects-to-have-approximately-17-billion-in-available-liquidity-by-september-2020-2646173793.html>.

Numerous airlines have already filed in the U.S. for bankruptcy protection due to pandemic-related losses, including the LATAM Airlines, Aeromexico, Avianca, Compass Airlines, Ravn Air Group and Trans States Airlines.

News about the COVID-19 virus was first reported in December 2019 in China. By January 2020, other countries started to report confirmed cases of the virus, including Thailand, Japan, Singapore, Australia, Malaysia, Canada, France, and the United States. For the Philippines, the first confirmed case was announced on January 30, 2020. Shortly thereafter, the Philippine government issued its first border restrictions on foreign nationals with travel history to China and its Special Administrative Regions (SARs) on February 2, 2020. The travel restriction also prohibited all Filipinos from travelling to China and its SARs. Accordingly, PAL had to cancel all flights to and from China and its SARs. At the time, PAL was operating approximately 28 such flights per day.

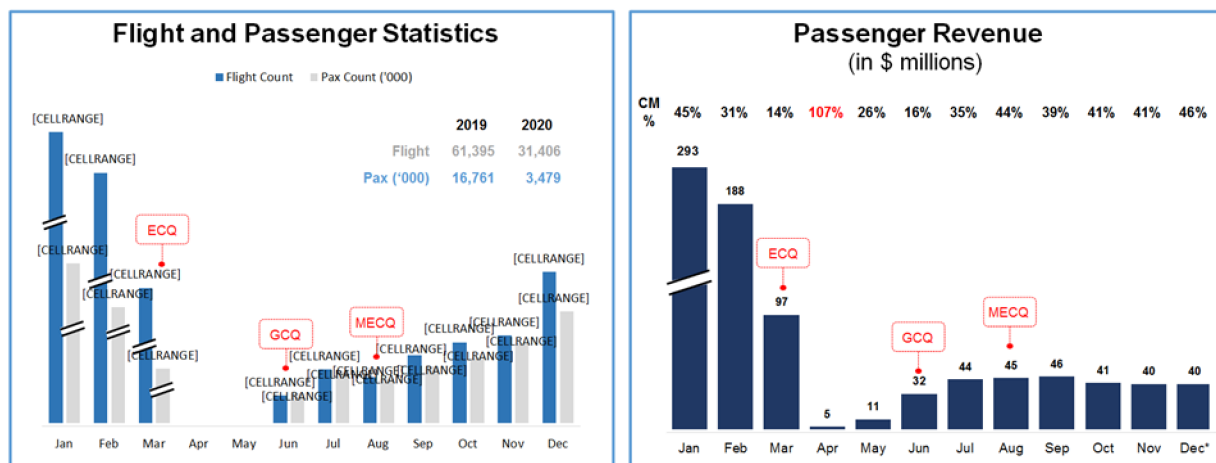
On March 6, 2020, the Philippines announced new confirmed cases of the virus including a possible case of local transmission. Following the growing number of cases in the country and the deadly global consequences of the virus, the government placed the entire Philippines under a state of public health emergency on March 8, 2020. Three days later, the World Health Organization declared the widespread outbreak of the novel COVID-19 virus a global pandemic.

Due to COVID-19, countries around the world announced severe travel restrictions, lockdowns and/or outright closure of their borders. On March 15, 2020, the Philippine government issued a resolution placing the entire island of Luzon under community quarantine, thereby suspending land, domestic air and domestic sea travel to and from the capital of the Philippines, Manila.

The impact of such restrictions, and COVID-19 generally, on the demand for services in the aviation industry was devastating and almost instantaneous. By April 1, 2020, IATA estimated that customers living in countries with severe travel restrictions accounted for 98% of global passenger revenue and that more than 8,500 passenger aircraft—two-thirds of the world's overall fleet—had been grounded as a result. Air travel generally declined 41% in March 2020 from 2019 levels, and April 2020 saw a 60% decline.

Because of the pandemic and the corresponding travel restrictions issued by the Filipino government and foreign governments worldwide, the Debtor was compelled to halt all commercial operations on March 17, 2020, resulting in the grounding of the Debtor's entire fleet, and the cancellation of approximately 19,000 scheduled domestic and international flights. PAL lost approximately \$2.0 billion in previously forecasted revenue for 2020 and refunds worth approximately \$370 million, with nearly zero forward bookings. Such developments have put tremendous pressure on the Debtor's liquidity position. But as the Filipino national carrier, PAL had to continue operating, albeit at a loss, a small number of cargo and repatriation charters to carry essential supplies and return stranded Filipinos and foreign nationals, including, stranded U.S. citizens, home. The chart below shows the impact of COVID-19 on flight and passenger traffic statistics over the course of 2020.





Immediately following the outbreak of COVID-19, PAL responded with cash-conservation measures to stabilize the business, including:

- PAL delayed its aircraft and engine capital expenditures and suspended all non-aircraft capital expenditures;
- PAL secured a deferral of lease payments, loan principal payments and navigational and other airport fees and charges in the Philippines while successfully arranging credit extension terms with critical vendors;
- PAL secured relief on fixed price or minimum guaranteed payments for aircraft maintenance services;
- PAL eliminated almost all marketing and discretionary expenses; and
- PAL implemented greater efficiency in scheduling aircraft, expanded productivity in airport and flight operations, facilitated purchasing savings, simplified its operating model and significantly reduced management and back office overhead.

PAL was also forced to reorganize its employee compensation and expense structure. PAL reduced staffing levels to 8% of normal operations, implemented a 15-day Leave Without Pay (“**LWOP**”) program for all employees every month since April 2020 and instituted executive pay cuts and salary negotiations. More than 40% of all employees have been or are currently on unpaid leave either through LWOP or furlough since the inception of the COVID-19 crisis. Unfortunately, due to the prolonged impact of COVID-19, despite efforts to retain as many of its furloughed employees as possible, PAL had no choice but to make the difficult decision of further reducing its workforce in January 2021. The January 2021 layoffs resulted in the Debtor reducing its total workforce by over 30%.

In parallel, PAL launched several cash-generation initiatives to further reduce the net cash burn. In the immediate aftermath of the pandemic, PAL was able to raise \$133 million in outside financing from the DIP Lender, and in the fall of 2020 raised a further \$74 million through a sale of noncore assets. Such efforts complemented the Debtor’s efforts to cash-conservation efforts and produced an aggregate liquidity improvement of approximately \$700 million.

## **B. Prepetition Restructuring Efforts**

Despite PAL's liquidity-preserving measures, the prolonged impact of the COVID-19 crisis has undermined PAL's ability to generate sufficient cash to fully meet its financial obligations, contributing to its inability to make scheduled payments of interest and principal under funded debt and rentals under aircraft leases. Accordingly, in the summer of 2020, the Debtor retained Seabury Securities LLC in order to help develop a comprehensive recovery plan and to negotiate its implementation with key stakeholders, and expanded the team to include Norton Rose Fulbright US LLP, Norton Rose Fulbright LLP, and Debevoise & Plimpton LLP as the process evolved. In connection with these retentions, the Debtor paid various retainers, including amounts held in escrow accounts and other bank accounts in the Borough of Manhattan, New York.

Among other matters, the recovery plan provides for meaningful contraction of the Debtor's existing network and fleet, consistent with the current and projected post-pandemic demand, and material reductions to PAL's aircraft ownership costs, in line with the evolved economic landscape. PAL and its advisors concluded that these fundamental changes, necessary for PAL to weather the pandemic and compete effectively for the benefit of employees, creditors and other key stakeholders, were best achieved in the context of the Chapter 11 Case. And the Debtor was determined to reach a consensual resolution with the Supporting Creditors prior to filing. Therefore, the PAL team spent many months presenting the plan to, and negotiating with, key stakeholders, and PAL secured the additional \$100 million of Bridge Loans from Buona Sorte, its ultimate shareholder and one of its DIP Lenders, to ensure that it had sufficient time with which to reach agreements with such parties. These Bridge Loans were necessary to provide the Debtor with additional liquidity to complete the comprehensive, multi-prong negotiations with the Debtor's primary stakeholders that culminated in the Restructuring Support Agreements.

With the Bridge Loans in place, the Debtor commenced the Chapter 11 Case and expects that the Plan will be the culmination of these restructuring efforts and enable the Debtor to emerge from bankruptcy a strengthened airline in a more favorable economic climate

## **C. Restructuring Support Agreements**

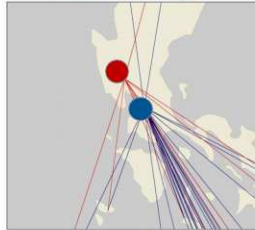
As noted earlier, the Debtor's extensive efforts to obtain creditor support for the Debtor's restructuring culminated in numerous Restructuring Support Agreements with the Supporting Creditors, which contemplate the continuation of the Debtor's business by streamlining ongoing operations and reorganizing prepetition obligations. The agreements under the Restructuring Support Agreements and the implementation of the Plan are aimed at ensuring PAL's long-term survival as a leaner and more efficient airline. As of the date of this Disclosure Statement, the Debtor has entered into Restructuring Support Agreements with creditors holding over 90% of the claims in the Voting Class.

PAL plans to take a number of measures to optimize its network in connection with the Restructuring Support Agreements and the Plan. In particular, PAL will exit unprofitable markets and continue to fly only those routes that are, or can be made, profitable, while

reintroducing capacity in line with evolving demands. PAL will also selectively increase regional capacity in targeted growth markets. In doing so, PAL will strengthen its Manila hub and strategically redeploy capacity to more profitable destinations as demand returns. PAL will consolidate domestic capacity from Clark International Airport (CRK) to Manila International Airport (MNL) due to market demands. In addition, PAL's revised business plan anticipates growing capacity in short haul regional routes (especially growth markets such as China), consolidating capacity in the West Coast gateways and cancelling certain ultra long haul flights, while maintain profitable opportunistic flying from Cebu as a source of continued growth.

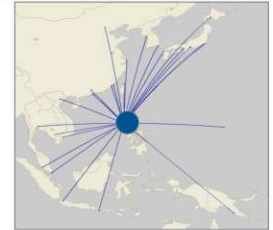
#### Consolidate MNL and CRK domestic capacity

- ❑ **Strategy:** In the short term, consolidate domestic capacity from CRK to MNL due to market demand
- ❑ Leverage MNL, which is the most profitable flying in the network
- ❑ Increase MNL capacity to pressure competition
- ❑ Protect MNL slots as international capacity is rationalized (possibly with turboprops)
- ❑ Monitor for future return to CRK if a positive business case justifies



#### North Manila to Regional Asia

- ❑ **Strategy:** Grow capacity in short haul regional routes – especially growth markets (China)
- ❑ Regional markets are typically high-growth and strong performers
- ❑ In short term, match capacity to demand, and in medium term, look for growth
- ❑ Continuously monitor for growth opportunities and new routes
- ❑ Utilize lower-risk NB to add capacity and launch new markets



#### North American West Coast Getaways

- ❑ **Strategy:** Consolidate capacity in West Coast gateways, cancel ultra long haul
- ❑ Ultra long haul routes (East Coast and LHR) have structural issues impacting profitability
- ❑ West Coast routes can also provide service to East Coast
- ❑ New codeshare (AA) and interline relationships would support strategy



#### Cebu – Opportunistic Markets

- ❑ **Strategy:** Maintain profitable opportunistic flying from Cebu as a source of continued growth
- ❑ Primary / core focus is MNL – Cebu growth is opportunistic
- ❑ If Cebu flying can utilize fleet in the short term and achieve positive contribution (with direct and indirect costs), then maintain



From a financial perspective, the key elements of the restructuring, the Restructuring Support Agreements, and the Plan include initiatives to substantially increase liquidity through additional shareholder equity infusion, asset sales, new financing, and critical creditor restructurings. The Restructuring Support Agreements and the Plan also contemplate restructuring of PAL's lease and loan obligations (including aircraft as well as non-aircraft obligations), and restructuring of PAL's OEM and MRO commitments.

Additionally, given the current economic climate, the Debtor currently has a surplus of aircraft in its fleet. In accordance with the Restructuring Support Agreements and the Plan, the Debtor plans to reduce fleet size and composition in line with the expected demands and new network. The Debtor will return 21 surplus aircraft to lessors and lenders and implement power-by-the-hour ("PBH") structures on retained aircraft that are under operating leases.<sup>10</sup> In the aggregate, the Plan allows the Debtor to reduce fleet capacity by approximately 23%.

<sup>10</sup> Power by the hour contracts are a form of operating lease wherein the lessor retains ownership of the aircraft and the Debtor can use the aircraft on a fixed-cost basis based on the amount of hours the aircraft used.

As stated previously, the Debtor has already achieved \$907 million in liquidity benefits since the onset of the pandemic through various strategic fundraisings and liquidity management measures.

Furthermore, because fleet obligations comprise a significant portion of PAL's obligations, the Debtor engaged in negotiations with all of its lessors to reject, renegotiate and/or assume as amended its aircraft leases in order to revitalize the size and makeup of its fleet. Such negotiations resulted in approximately \$2.1 billion in long-term savings from the Debtor's aircraft lenders and lessors pursuant to the Restructuring Support Agreements. In particular, the Debtor has negotiated a \$1.8 billion reduction in operating lease payments (of which \$1.2 billion is due to returned aircraft and approximately \$600 million due to retained aircraft at lower rates) and \$250 million due to a reduction in unsecured bank debt.

The fleet restructuring will additionally secure relief with respect to capacity, cost, and liquidity. The Debtor will reduce long-term ownership costs reflecting revenues and the evolving competitive landscape, defer principal amortization to enhance liquidity during the most critical period while providing lenders with current interest, address pre-restructuring arrearages, and implement PBH structures through an affordable retention of under-utilized assets during the extended recovery period.

The Restructuring Support Agreements and the Chapter 11 Case are also dependent upon the DIP Facility being provided by two of the Debtor's controlling parent companies, Buona Sorte and PAL Holdings, which was the result of an extensive prepetition marketing process to obtain the most favorable terms. In particular, the Debtor negotiated a \$505 million DIP loan (the "**DIP Facility**") from the DIP Lenders that, upon emergence and as a result of the Debtor's election to exercise the Tranche A Conversion Option and Tranche B Conversion Option, will convert into long-term equity and unsecured debt financing for the duration of its original term (i.e. 63 months after the Petition Date), at the election of, and on terms favorable to, PAL. The DIP Facility consists of a (i) \$250 million Tranche A facility that is secured by certain of the Debtor's unencumbered assets (primarily the Debtor's frequent flier program and certain aircraft) and (ii) \$255 million Tranche B facility that is secured by a junior interest in the Tranche A facility collateral. Each of the tranches of the DIP Facility benefits from super-priority administrative claim priority in the Chapter 11 Case. The DIP Facility provides the Debtor with sufficient working capital and liquidity during its Chapter 11 Case, and enables the Debtor to have a suitable and efficient capital structure upon emergence.

Lastly, the Debtor is soliciting offers for up to \$150 million of additional debt financing from new investors to ensure an adequate liquidity cushion post-emergence to facilitate post-restructuring operations. This exit facility will be secured by the same assets that will secure the DIP Facility during the Chapter 11 Case, plus the Mabuhay Miles program.

Overall, the Plan will bring PAL into sustained profitability. By the end of 2022, PAL expects to exit its recovery phase as operating activities generate more consistent positive monthly cash flow. PAL expects an operating income of \$220 million in 2022 and \$364 million in 2023. Based on the projections and available data, EBITDAR margins are expected to improve from 2% in 2020 to 7% in 2021 and by as much as 27% in 2025.

To consummate the restructuring transactions set forth in the Restructuring Support Agreements and the Plan and emerge from chapter 11 as expeditiously as possible, the Debtor and its stakeholders invested significant resources in achieving consensus prepetition, including negotiating and taking steps to implement the Restructuring Support Agreements prior to the Petition Date. Importantly, the Restructuring Support Agreements and Plan are designed to ensure that the restructuring will have minimal effects on the Debtor's business operations and to ensure there is a clear and efficient path to emergence.

#### **ARTICLE IV.**

#### **COMMENCEMENT OF THE CHAPTER 11 CASE**

In accordance with the Restructuring Support Agreements, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on the Petition Date. The filing of the petition commenced the Chapter 11 Case, at which time the Debtor was afforded the benefits, and became subject to the limitations, of the Bankruptcy Code.

The Debtor continues to operate its business in the ordinary course during the pendency of the Chapter 11 Case as it had prior to the Petition Date. To facilitate the efficient and expeditious implementation of the Plan through the Chapter 11 Case, and to minimize disruptions to the Debtor's operations on the Petition Date, the Debtor filed various motions seeking important relief from the Bankruptcy Court.

##### **A. Commencement of Chapter 11 Case and Motions**

To ensure a smooth transition to operations in chapter 11, the Debtor filed a number of motions with the Bankruptcy Court seeking relief designed to, among other things, prevent interruptions to the Debtor's business, ease the strain on the Debtor's relationships with certain essential constituents including employees, vendors, and customers, provide access to immediate financing, and allow the Debtor to retain certain advisors to assist it with the administration of the Chapter 11 Case. At a hearing held on September 9, 2021, the Bankruptcy Court granted the Debtor's initial requests for relief, as discussed below.

##### **1. Procedural Orders**

To facilitate a smooth and efficient administration of the Chapter 11 Case and minimize the impact to daily business operations, the Bankruptcy Court entered certain "procedural" orders by which the Bankruptcy Court (a) confirming the Debtor may operate its business and has the protections of the automatic stay under the Bankruptcy Code [Docket No. 48], (b) establishing procedures for notifying its creditors of the commencement of the chapter 11 case [Docket No. 47], and (c) extending the time to file schedules, statements of financial affairs, and Rule 2015.3 Financial Reports [Docket No. 64].

In addition to the aforementioned procedural orders entered during the Debtor's first day hearing on September 9, 2021, the Bankruptcy Court subsequently, at the Debtor's second day hearing on September 30, 2021, entered two additional procedural orders (a) implementing

certain notice and case management procedures [Docket No. 124] and (b) establishing procedures for interim compensation and reimbursement of expenses of professionals [Docket No. 125].

## **2. Operational Orders**

Recognizing that any interruption of the Debtor's business, even for a brief period of time, would negatively impact its operations, customer relations, revenue, and profits, while seeking to facilitate the stabilization of its business and effectuate a smooth transition as debtor in possession, the Debtor sought and obtained orders authorizing it, on an interim basis, to:

- Maintain its existing cash management systems [Docket No. 52];
- Continue prepetition insurance programs and pay all obligations in respect of those prepetition insurance programs [Docket No. 61];
- Maintain customer programs and honor its prepetition obligations arising under or relating to those customer programs [Docket No. 65]
- Pay prepetition claims of certain critical and foreign vendors [Docket No. 60];
- Pay for the postpetition delivery of goods and services ordered prepetition and pay undisputed postpetition obligations in the ordinary course of business [Docket No. 63];
- Enter into, continue performance and provide credit support under hedging and derivative contracts [Docket No. 59];
- Pay prepetition wages, salaries and other compensation, reimbursable employee expenses and employee medical and similar benefits [Docket No. 49];
- Appoint John F. Reid to act as foreign representative in a local Philippines foreign proceedings [Docket No. 50]; and
- Pay certain prepetition taxes and fees [Docket No. 62].

Following the Bankruptcy Court's interim approval of the operational orders during the hearing held on September 9, 2021, the Bankruptcy Court, at a hearing on September 30, 2021, entered Final Orders approving such motions (other than the cash management motion, for which a second interim order was entered). In addition, the Debtor sought and obtained at the hearing on September 30, 2021 a final order prohibiting the Debtor's utility providers from altering, refusing, or discontinuing utility services and establishing procedures for determining adequate assurance of payment [Docket No. 126].

## **3. DIP Financing**

In addition to the Debtor's initial procedural and operational relief, the Debtor filed a motion on the Petition Date seeking authority to ensure adequate access to liquidity during its

Chapter 11 Case. The Debtor's primary source of financing during its Chapter 11 Case is the DIP Facility.

The Debtor sought and obtained approval of debtor-in-possession financing (the "**DIP Facility**") provided by certain of its direct and indirect equity holders in the aggregate principal amount of \$505 million (the "**DIP Commitments**," and the loans made thereunder, the "**DIP Loans**"). The DIP Facility consists of (i) a Tranche A multi-draw term loan facility (the "**Tranche A DIP Facility**") in an aggregate principal amount of \$250 million ("**Tranche A DIP Commitment**," and collectively the loans made thereunder, the "**Tranche A DIP Loans**", and together with related obligations incurred under the Tranche A DIP Facility, the "**Tranche A DIP Obligations**"); and (ii) a Tranche B multi-draw term loan facility (the "**Tranche B DIP Facility**") in an aggregate principal amount of \$255 million ("**Tranche B DIP Commitment**," and collectively the loans made thereunder, the "**Tranche B DIP Loans**" and together with related obligations incurred under the Tranche B DIP Facility, the "**Tranche B DIP Obligations**").

On September 10, 2021, the Bankruptcy Court entered an interim order [Docket No. 58] approving the DIP Facility on an interim basis and authorizing the Debtor to incur \$20 million of the Tranche A DIP Facility in a single draw thereunder, and on September 30, 2021, the Bankruptcy Court entered a Final Order [Docket No. 123] approving the DIP Facility on a final basis in the full amount of the DIP Commitments. As of October 31, 2021, the DIP Commitments will be fully drawn.

Pursuant to the terms of the DIP Facility and the DIP Order, the Debtor had the option to convert (i) the Tranche A DIP Loans into unsecured exit financing, and (ii) the Tranche B DIP Loans into equity of the reorganized Debtor, in lieu of repaying the DIP Facility in full on the Effective Date (the "**Conversion Options**"). The Conversion Options were key components in reaching agreement among those stakeholders that signed on to the Restructuring Support Agreements and agreed to receive distributions of common equity in the reorganized Debtor in exchange for certain of their prepetition claims. Additionally, exercising the Conversion Options will preserve the Debtor's liquidity options and lower the barriers to exiting chapter 11.

Accordingly, the Debtor has determined to exercise the Conversion Options pursuant to the Plan. As set forth above, the Tranche A DIP Facility will convert to unsecured debt maturing approximately 5 years after the anticipated Effective Date, and the Tranche B DIP Facility will convert into 79.5% of the New Common Stock of the Reorganized Debtor, which, as demonstrated by the Valuation Analysis attached hereto as Exhibit E represents the amount of the Claims arising under the Tranche B DIP Loans.

#### **4. Approval of the Restructuring Support Agreements**

On September 30, 2021, the Bankruptcy Court held a hearing where it approved several motions related to the Restructuring Support Agreements. In particular, the Bankruptcy Court entered orders approving the following motions:

- **Motion to Assume and Perform Under the Restructuring Support Agreements:** Pursuant to this order, the Bankruptcy Court approved the Restructuring Support Agreements and authorized the Debtor to comply with its various obligations under the Restructuring Support Agreements [Docket No. 130].
- **Motion for Entry of an Order Authorizing the Debtor to Enter Into and Perform Under Usage Stipulations Between the Debtor and Counterparties Concerning Certain Aircraft and Engines:** Pursuant to this order, the Bankruptcy Court approved numerous Usage Stipulations with certain Supporting Creditors which govern the Debtor's use of certain aircraft equipment during the Chapter 11 Case and resolve any adequate protection claims of the applicable Supporting Creditor [Docket No. 128].
- **Motion for Entry of an Order Authorizing the Debtor to Enter Into and Perform Under Rejection Stipulations and Super-Soft Landing Stipulations Between the Debtor and Counterparties Concerning Certain Equipment Leases:** Pursuant to this order, the Bankruptcy Court approved [19] stipulations with certain Supporting Creditors that govern the consensual rejection of aircraft leases and the return of the related aircraft equipment that are not needed for the Debtor's long term business plan [Docket No. 129].
- **Motion to Seal Certain Portions of the Restructuring Support Agreements:** In light of the confidential and sensitive nature of certain provisions in the Restructuring Support Agreements, the Bankruptcy court entered an order allowing the Debtor to file certain portion under seal and file redacted versions of certain exhibits on the public docket [Docket No. 131].

## **5. Foreign Recognition Proceedings**

On September 24, 2021, John F. Reid, the Debtor's designated foreign representative, filed a petition with the Republic of the Philippines Regional Trial Court requesting that the court extend foreign recognition to the Chapter 11 Case in the United States. The petition was docketed as SP PROC. No. R-PSY-21-01799-SP and is presided over by Judge Wilhelmina B. Jorge-Wagan. The Philippine court held a summary hearing on October 4, 2021, where the Debtor presented certified orders from the Bankruptcy Court confirming the commencement of the Chapter 11 Case and its expert witness, Kyle Ortiz of Togut, Segal & Segal LLP, testified regarding the relevant provisions of the Bankruptcy Code and the application of the automatic stay outside of the United States.

On October 5, 2021, the Philippine court, finding that the Debtor demonstrated an urgent need to protect its assets, issued an order granting provisional relief to (i) stay the enforcement or collection of any and all claims by creditors against the Debtor and (ii) suspend any proceeding or action by creditors against the Debtor or its property. The provisional relief is effective until the Philippine court reaches a final decision on the petition for foreign recognition, for which a hearing was held on October 8, 2021. On October 25, 2021, the



Philippine court entered an order (1) granting the petition for recognition of the Chapter 11 Case and (2) giving force and effect to the Chapter 11 Case and any and all orders of the Bankruptcy Court.

#### **B. Debtor's Schedules and Statement of Financial Affairs**

On October 18, 2021, the Debtor filed its schedules of assets and liabilities (the “**Schedules**”) [Docket No. 202] and statements of financial affairs (the “**Statements**”) [Docket No. 203] detailing known claims against the Debtor and certain other disclosures required by the Bankruptcy Rules.

#### **C. Retention of Professionals**

During the course of its Chapter 11 Case, the Debtor obtained Bankruptcy Court approval to retain Professionals to assist in carrying out its duties as debtor in possession and to represent its interests in the Chapter 11 Case. Specifically, the Bankruptcy Court entered orders granting the Debtor's applications seeking to retain the following professionals:

- Debevoise & Plimpton LLP, as counsel [Docket No. 219]
- Norton Rose Fulbright US LLP and Norton Rose Fulbright LLP, as special aircraft counsel [Docket No. 218];
- Kurtzman Carson Consultants LLC, as claims and noticing agent [Docket No. 46] and administrative advisor [Docket No. 217]; and
- Seabury Securities LLC and Seabury International Corporate Finance LLC Group, as financial advisor and investment banker [Docket No. 220].

In addition to these professionals, the Debtor has also retained additional professionals as “ordinary course professionals” to advise them with respect to certain of the Debtor's daily business operations, including pending litigation matters and the Debtor's non-Debtor foreign affiliates and subsidiaries, pursuant to the Ordinary Course Professional Order [Docket No. 127].

#### **D. Solicitation Procedures**

Before soliciting acceptances of a proposed chapter 11 plan of reorganization, section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement that contains information of a kind, and in sufficient detail, to permit a hypothetical reasonable investor to make an informed judgment regarding acceptance of the plan of reorganization. The Bankruptcy Court entered an order approving this Disclosure Statement on [●], 2021; [Docket No. ●] (the “**Disclosure Statement Order**”), as well as approving, among other things, (i) the dates, procedures and forms applicable to the process of soliciting votes on and providing notice of the Plan and certain vote tabulation procedures, (ii) establishing the deadline for filing objections to the Plan and (iii) scheduling the Confirmation Hearing. The Disclosure Statement Order is attached hereto as Exhibit B.

## **ARTICLE V.**

### **SUMMARY OF PLAN**

This Section of the Disclosure Statement summarizes the Plan. This summary is qualified in its entirety by reference to the Plan.

#### **A. Administrative Expense Claims, DIP Claims, Professional Fee Claims, and Priority Tax Claims**

##### **1. Administrative Expense Claims**

The Plan provides that, except to the extent that a holder of an Allowed Administrative Expense Claim (other than a Professional Fee Claim or DIP Claim) agrees to less favorable treatment, each holder of an Allowed Administrative Expense Claim (other than a Professional Fee Claim or DIP Claim) shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Claim, Cash in an amount equal to such Allowed Administrative Expense Claim on, or as soon thereafter as is reasonably practicable, the later of (a) the Effective Date, and (b) the first Business Day after the date that is 30 calendar days after the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim; *provided* that any Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtor shall be paid by the Debtor or the Reorganized Debtor, as applicable, in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any course of dealing or agreements governing, instruments evidencing, or other documents relating to such transactions.

Except as otherwise provided in the Plan, requests for payment of Administrative Expense Claims (other than DIP Claims, Professional Fee Claims, and Administrative Claims based on liabilities incurred by the Debtor from and after the Petition Date in the ordinary course of its business) must be filed and served on the Reorganized Debtor on or before the date that is 45 days after the Effective Date. Holders of Administrative Expense Claims that are required to, but do not, file and serve a request for payment of such Administrative Expense Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Expense Claims against the Debtor or its property and such Administrative Expense Claims shall be deemed discharged as of the Effective Date. Objections to any Administrative Expense Claims must be filed and served on counsel for the Reorganized Debtor and the requesting party no later than 21 calendar days after the filing of the final request for payment of the Administrative Expense Claim (unless otherwise agreed by the party seeking such Administrative Expense Claim).

##### **2. Professional Fee Claims**

The Plan provides that all entities seeking an award by the Bankruptcy Court of Professional Fee Claims shall file and serve on counsel for the Reorganized Debtor, the U.S. Trustee, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation

Order, or other order of the Bankruptcy Court, on or before the date that is 45 days after the Effective Date, their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred from the Petition Date through the Effective Date. Objections to any Professional Fee Claims must be filed and served on counsel for the Reorganized Debtor and the requesting party no later than 21 calendar days after the filing of the final applications for compensation or reimbursement (unless otherwise agreed by the party requesting compensation of a Professional Fee Claim).

Under the Plan, all Allowed Professional Fee Claims shall be paid in full, in Cash, in such amounts as are Allowed by the Bankruptcy Court (a) upon the later of (i) the Effective Date, and (ii) the date upon which an order relating to any such Allowed Professional Fee Claim is entered, in each case, as soon as reasonably practicable, or (b) upon such other terms as may be mutually agreed upon between the holder of such an Allowed Professional Fee Claim and the Debtor or the Reorganized Debtor, as applicable. On or about the Effective Date, holders of Professional Fee Claims shall provide a reasonable estimate of their unpaid Professional Fee Claims incurred in rendering services to the Debtor or its Estate as of the Effective Date; *provided* that such estimate shall not be deemed to limit the amount of the fees and expenses that are the subject of the Professional's request for payment of Professional Fee Claims. The Debtor or the Reorganized Debtor shall either escrow or separately reserve for and segregate such estimated amounts for the benefit of the holders of the Professional Fee Claims until the fee applications related thereto are resolved by order of the Bankruptcy Court or agreement of the parties.

The Plan would authorize the Reorganized Debtor to pay compensation for services rendered or reimbursement of expenses incurred after the Effective Date in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code or any order of the Bankruptcy Court governing the retention of, or compensation for services rendered by, Professionals shall terminate, and the Debtor and the Reorganized Debtor may employ or pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

### **3. Priority Tax Claims**

The Plan provides that, except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed Priority Tax Claim, each holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code and, for the avoidance of doubt, holders of Allowed Priority Tax Claims will receive interest on such Allowed Priority Tax Claims after the Effective Date in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in accordance with the terms of any agreement between the Debtor and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law, or in the ordinary course of business.

#### **4. DIP Claims**

The Plan provides that all DIP Claims shall be Allowed in the full amount due and owing under the DIP Credit Facility Documents and the DIP Order and the DIP Claims shall not be subject to any avoidance, reduction, setoff, recoupment, recharacterization, subordination (equitable, contractual or otherwise), counterclaim, defense, disallowance, impairment, objection or any challenges under applicable law or regulation.

##### **(a) Treatment of DIP Tranche A Claims.**

In full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed DIP Tranche A Claim, on the Effective Date in connection with the Debtor's election to exercise the Tranche A Conversion Election pursuant to Section 5.3 of the Plan, each Allowed DIP Tranche A Claim shall be converted on a cashless basis to unsecured loans in an amount equal to such DIP Tranche A Claim, which unsecured loans shall be deemed outstanding as of the Effective Date under the Unsecured Exit Facility.

##### **(b) Treatment of DIP Tranche B Claims.**

In full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed DIP Tranche B Claim, on the Effective Date in connection with the Debtor's election to exercise the Tranche B Conversion Election pursuant to Section 5.3 of the Plan, each DIP Tranche B Lender who is a holder of an Allowed DIP Tranche B Claim shall receive its pro rata share of 79.5% of the New Common Stock issued under the Plan.

##### **(c) Treatment of DIP Reimbursement Claims.**

The Plan provides that, except to the extent that a holder of a DIP Reimbursement Claim agrees to less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of each DIP Reimbursement Claim and in exchange therefor, each Holder of a DIP Reimbursement Claim shall receive payment in full in Cash on the Effective Date or as soon as reasonably practicable thereafter.

#### **5. United States Trustee's Fees**

On or before the Effective Date, the Debtor shall pay all accrued and outstanding fees incurred pursuant to section 1930 of chapter 123 of title 28 of the United States Code to the Office of the United States Trustee, together with any interest, if any, pursuant to section 3717 of title 31.

#### **B. Classification of Claims and Interests**

##### **1. Classification in General**

Under the Plan, a Claim or Interest is placed in a particular Class for all purposes, including voting, confirmation, and Distribution under the Plan and under sections 1122 and 1123(a)(1) of the Bankruptcy Code; *provided* that a Claim or Interest is placed in a particular

Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Allowed Claim or Allowed Interest has not been satisfied, released, or otherwise settled.

## **2. Summary of Classification of Claims and Interests**

The following table designates the Classes of Claims against and Interests in the Debtor and specifies which of those Classes are (a) Impaired or Unimpaired by the Plan, (b) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, and (c) presumed to accept or deemed to reject the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims (including DIP Claims) and Priority Tax Claims have not been classified.

<b>Class</b>	<b>Designation</b>	<b>Treatment</b>	<b>Entitled to Vote</b>
1	Priority Non-Tax Claims	Unimpaired	No (Presumed to accept)
2	Other Secured Claims	Unimpaired	No (Presumed to accept)
3	General Unsecured Claims	Impaired	Yes
4	General Unsecured Trade Claims	Unimpaired	No (Presumed to accept)
5	Employee Claims	Unimpaired	No (Presumed to accept)
6	Customer Claims	Unimpaired	No (Presumed to accept)
7	Intercompany Claims	Unimpaired	No (Presumed to accept)
8	Existing Equity Interests	Impaired	No (Deemed to reject)

## **3. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Debtor or the Reorganized Debtor, as applicable, in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

## **4. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code**

The Plan contemplates that the Debtor shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtor reserves the right to modify the Plan in accordance with Section 12.5 of the Plan (subject to the Restructuring Support Agreements) to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by (a) modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules and (b) withdrawing the Plan as to the Debtor at any time before the Confirmation Date.

**C. Treatment of Claims and Interests**

**1. Priority Non-Tax Claims (Class 1)**

**(a) Classification:** Class 1 consists of Priority Non-Tax Claims.

**(b) Treatment:** Except to the extent that a holder of an Allowed Priority Non-Tax Claim against the Debtor agrees to a less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Priority Non-Tax Claim, at the option of the Debtor or the Reorganized Debtor, as applicable, (i) each such holder shall receive payment in Cash in an amount equal to the Allowed amount of such Claim, payable on the later of the Effective Date and the date that is 10 Business Days after the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, or as soon thereafter as is reasonably practicable, (ii) such holder's Allowed Priority Non-Tax Claim shall be Reinstated, or (iii) such holder shall receive such other treatment consistent with section 1129(a)(9) of the Bankruptcy Code so as to render such holder's Allowed Priority Non-Tax Claim Unimpaired.

**(c) Voting:** Class 1 is Unimpaired, and the holders of Priority Non-Tax Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Priority Non-Tax Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited.

**2. Other Secured Claims (Class 2)**

**(a) Classification:** Class 2 consists of Other Secured Claims. To the extent that Other Secured Claims are secured by different Collateral or different interests in the same Collateral, such Claims shall be treated as separate subclasses of Class 2 for purposes of voting to accept or reject the Plan and receiving Distributions under the Plan.

**(b) Treatment:** Except to the extent that a holder of an Allowed Other Secured Claim against the Debtor agrees to a less favorable treatment of such Claim, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Other Secured Claim, at the option of the Debtor or the Reorganized Debtor, as applicable, (i) each such holder shall receive payment in Cash in an amount equal to the Allowed Amount of such Claim, payable on the later of the Effective Date and the date that is 10 Business Days after the date such Other Secured Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable, (ii) Reinstatement of such holder's Allowed Other Secured Claim, or (iii) such other treatment sufficient to render such holder's Allowed Other Secured Claim Unimpaired. In the event that an Other Secured Claim against the Debtor is treated under clause (i) of Section 4.2(b) of the Plan, the Liens securing such Other Secured Claim shall be deemed released immediately upon payment.

**(c) Voting:** Class 2 is Unimpaired, and the holders of Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the

Bankruptcy Code. Therefore, holders of Other Secured Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited.

### **3. General Unsecured Claims (Class 3)**

**(a) Classification:** Class 3 consists of General Unsecured Claims.

**(b) Treatment:** Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a less favorable treatment of such Claim or has been paid before the Effective Date, on and after the Effective Date, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Claim, such holder will receive its Pro Rata share of the Unsecured New Equity Allocation. In connection with the Debtor's exercise of the Tranche A Conversion Option and the Tranche B Conversion Option pursuant to Section 5.3 of the Plan, the DIP Lenders have agreed to waive and, thereby, receive no recovery on account of their General Unsecured Claims against the Debtor.

**(c) Voting:** Class 3 is Impaired, and the holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

### **4. General Unsecured Trade Claims (Class 4)**

**(a) Classification:** Class 4 consists of General Unsecured Trade Claims.

**(b) Treatment:** Except to the extent that a holder of a General Unsecured Trade Claim agrees to a less favorable treatment of such Claim or has been paid before the Effective Date, on and after the Effective Date, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Claim, (i) the Reorganized Debtor shall continue to pay or treat each General Unsecured Trade Claim in the ordinary course of business as if the Chapter 11 Case had never been commenced, or (ii) such holder will receive such other treatment so as to render such holder's Allowed General Unsecured Trade Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code, in each case subject to all defenses or disputes the Debtor and the Reorganized Debtor may have with respect to such Claims, including as provided in Section 6.17 of the Plan; *provided* that, notwithstanding the foregoing, the Allowed amount of General Unsecured Trade Claims shall be subject to and shall not exceed the limitations or maximum amounts permitted by the Bankruptcy Code, including sections 502 or 503 of the Bankruptcy Code, to the extent applicable.

**(c) Voting:** Class 4 is Unimpaired, and the holders of Allowed General Unsecured Trade Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Allowed General Unsecured Trade Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited.

**5. Employee Claims (Class 5)**

**(a) Classification:** Class 5 consists of Employee Claims.

**(b) Treatment:** Except to the extent that a holder of an Employee Claim agrees to a less favorable treatment of such Claim or has been paid before the Effective Date, all Employee Claims shall be paid, adjusted, disputed, or settled, in the ordinary course of business after the Effective Date.

**(c) Voting:** Class 5 is Unimpaired, and the holders of Employee Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Employee Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited.

**6. Customer Claims (Class 6)**

**(a) Classification:** Class 6 consists of Customer Claims.

**(b) Treatment:** Except to the extent that a holder of a Customer Claim agrees to a less favorable treatment of such Claim or has been paid before the Effective Date, all Customer Claims shall be paid, adjusted, disputed, or settled, in the ordinary course of business after the Effective Date in accordance with any settlements or orders issued by the applicable courts or regulatory authorities.

**(c) Voting:** Class 6 is Unimpaired, and the holders of Customer Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Customer Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited.

**7. Intercompany Claims (Class 7)**

**(a) Classification:** Class 7 consists of Intercompany Claims.

**(b) Treatment:** On the Effective Date, or as soon as practicable thereafter, all Intercompany Claims shall be paid, adjusted, continued, settled, Reinstated, discharged, contributed to capital, or eliminated, in each case to the extent determined by the Debtor or the Reorganized Debtor, as applicable, subject to the Restructuring Transactions.

**(c) Voting:** Class 7 is Unimpaired, and the holders of Intercompany Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Intercompany Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited.



**8. Existing Equity Interests (Class 8)**

**(a) Classification: Class 8 consists of Existing Equity Interests.**

**(b) Treatment:** Holders of Existing Equity Interests shall not receive any property under the Plan on account of such Existing Equity Interests. On the Effective Date, or as soon as practicable thereafter in accordance with applicable non-bankruptcy law, Holders of Existing Equity Interests shall have their Existing Equity Interests diluted to 0.001% of the number and value of such Interests as of the Petition Date .

**(c) Voting:** Class 8 is Impaired, and the holders of Existing Equity Interests are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code on account of receiving a nominal distribution. Therefore, holders of Existing Equity Interests are not entitled to vote to accept or reject the Plan, and the votes of such holders of Existing Equity Interests will not be solicited.

**D. Means for Implementation**

**1. Compromise of Controversies**

Pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan constitute a good-faith compromise and settlement of all Claims and controversies resolved under the Plan, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are within the range of reasonableness, in the best interests of the Debtor, its estate, its creditors, and other parties-in-interest, and fair and equitable. Each provision of the Plan constitutes a part of this settlement that is non-severable from the remaining terms of the Plan.

**2. Sources of Cash for Plan Distribution**

Except as otherwise provided in the Plan or Confirmation Order, all Cash required for the payments to be made hereunder shall be obtained from the Debtor's and the Reorganized Debtor's operations and cash balances and the Secured Exit Facility.

**3. Exercise of the Equity Conversion Elections.**

Pursuant to the Plan, the Debtor elects, in its sole discretion, to exercise the Tranche A Conversion Election and the Tranche B Conversion Election. The Debtor's election shall take effect on the Effective Date of the Plan, and shall constitute notice to the DIP Lenders as required by sections 1.8 and 1.9 of the DIP Credit Agreement and no other or further notice shall be required.

#### **4. Restructuring Expenses**

To the extent not otherwise paid and notwithstanding any contrary limitations or conditions to such payment in an order of the Bankruptcy Court other than the Confirmation Order, the Debtor or the Reorganized Debtor, as applicable, shall promptly pay outstanding and invoiced Restructuring Expenses on the Effective Date; *provided* that such Restructuring Expenses shall be paid in accordance with the terms of the Restructuring Support Agreements without the requirement for the filing of retention applications, fee applications, or any other applications in the Chapter 11 Case, and without any requirement for further notice or Bankruptcy Court review or approval.

#### **5. Continued Corporate Existence; Corporate Action.**

(a) Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement (including the Restructuring Transactions), on the Effective Date, the Debtor shall continue to exist after the Effective Date as a separate corporation with all the powers of a corporation pursuant to the applicable law in the jurisdiction in which the Debtor is incorporated or formed and pursuant to the certificate of incorporation and by-laws (or other analogous formation documents) in effect before the Effective Date, except to the extent such certificate of incorporation or bylaws (or other analogous formation documents) is amended by the Plan or otherwise, and to the extent any such document is amended, such document is deemed to be amended pursuant to the Plan and will be effective without any further action or approval (other than any requisite filings required under applicable state, federal, or foreign law).

(b) On the Effective Date, the Reorganized Debtor and all the holders of the New Common Stock shall be deemed to be parties to the New Stockholders' Agreement, substantially in the form contained in the Plan Supplement, without the need for execution by any such holder. The New Stockholders' Agreement shall be binding on all parties receiving, and all holders of, New Common Stock.

(c) On the Effective Date, entry of the Confirmation Order shall establish conclusive corporate and other authority to demonstrate all actions contemplated by the Plan to be deemed authorized and approved by the Bankruptcy Court in all respects, including, as applicable: (i) the adoption and/or filing of the Amended Organizational Documents and the New Stockholders' Agreement (the material terms of which shall be satisfactory in form and substance to the DIP Tranche B Lenders); (ii) the selection of the directors, managers, and officers for the Reorganized Debtor, including the appointment of the New Board; (iii) the authorization, issuance, and distribution of New Common Stock and the shares of New Common Stock; (iv) the rejection, assumption, or assumption and assignment, as applicable, of executory contracts and unexpired leases; (v) the entry into the Exit Facilities and the execution, delivery, and filing of the Exit Facility Documents, as applicable; (vi) implementation of the Restructuring Transactions; and (vii) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date). Upon the Effective Date, all matters provided for in the Plan involving the corporate structure of Reorganized Debtor, and any corporate action required by the Debtor or the other Reorganized Debtor in

connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the security holders, directors, or officers of the Debtor or Reorganized Debtor. On or (as applicable) before the Effective Date, the appropriate officers of the Debtor, or the Reorganized Debtor shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated by the Plan (or necessary or desirable to effectuate the Restructuring Transactions) in the name of and on behalf of the Reorganized Debtor, including the Exit Facility Documents and any and all other agreements, documents, and instruments relating to the foregoing, to the extent not previously authorized by the Bankruptcy Court. The authorizations and approvals contemplated by the Plan shall be effective notwithstanding any requirements under non-bankruptcy law.

## **6. Exit Facilities**

(a) On or after the Effective Date, in accordance with, and subject to, the terms and conditions of the Secured Exit Facility Documents, the Reorganized Debtor will be authorized, but not directed, to enter into the Secured Exit Facility without the need for any further corporate action and without further action by the holders of Claims or Interests. The proceeds of the Secured Exit Facility if executed shall be used to (i) fund other Distributions, costs, and expenses contemplated by the Plan and (ii) fund general working capital and for general corporate purposes of the Reorganized Debtor, in each case subject to the terms of the Secured Exit Facility Documents.

(b) The Confirmation Order shall constitute approval of the Exit Facilities (including the transactions contemplated thereby and all payments contemplated thereunder, and all actions to be taken, undertakings to be made, and obligations to be incurred and fees paid by the Reorganized Debtor in connection therewith), and authorization for the Reorganized Debtor to enter into and perform under the Exit Facility Documents and such other documents and make such payment and any other payment in connection therewith as may be required or appropriate. Without limiting the foregoing, the Reorganized Debtor shall pay, as and when due, all fees, expenses, losses, damages, indemnities and other amounts, including any applicable refinancing premiums and applicable exit fees, provided under the DIP Credit Facility Documents related to the DIP Credit Facility and/or the Exit Facilities Documents relating to such Exit Facilities.

(c) If the Reorganized Debtor elects to proceed with the Secured Exit Facility Documents, which shall be substantially on the terms and conditions set forth in the Restructuring Term Sheet, all Liens and security interests granted pursuant to the Exit Facility Documents shall be (i) valid, binding, perfected, and enforceable Liens and security interests in the personal and real property described in and subject to such document, with the priorities established in respect thereof under applicable non-bankruptcy law, (ii) granted in good faith and deemed not to constitute a fraudulent conveyance or fraudulent transfer, and (iii) not otherwise subject to avoidance, recharacterization, or subordination under any applicable law. Each of the Debtor, the Reorganized Debtor, and the Entities granted such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish, attach, and perfect such Liens and security interests under any applicable law, and shall thereafter cooperate to make all other

filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

(d) The Reorganized Debtor shall be authorized to execute, deliver, and enter into and perform under the Exit Facility Documents without the need for any further corporate action and without further action by the holders of Claims or Interests.

## **7. Authorization and Issuance of New Common Stock**

(a) As of the Effective Date, all existing interests in the Debtor shall be diluted by reducing the par value of the Existing Equity Interests to approximately 1/1000th of the amounts as of the Petition Date. Subject to the Restructuring Transactions, on the Effective Date, the Debtor or the Reorganized Debtor, as applicable, are authorized to issue or cause to be issued and shall issue the New Common Stock in accordance with the terms of the Plan and the Amended Organizational Documents, without the need for any further corporate or shareholder action. Upon the issuance of the New Common Stock, the par value and amount of the Existing Equity Interests shall be then increased to align with the par value of the New Common Stock, resulting in such Existing Equity Interests having only nominal economic value.

(b) All of the New Common Stock issuable under the Plan, when so issued, shall be duly authorized, validly issued, fully paid, and non-assessable, and the holders of New Common Stock shall be deemed to have accepted the terms of the New Stockholders' Agreement (solely in their capacity as shareholders of Reorganized Debtor) and to be parties thereto without further action or signature. The New Stockholders' Agreement shall be effective as of the Effective Date and, as of such date, shall be deemed to be valid, binding, and enforceable in accordance with its terms, and each holder of New Common Stock shall be bound thereby.

(c) Upon the Effective Date, (i) the New Common Stock shall not be registered under the Securities Act of 1933, and shall not be listed for public trading on any securities exchange, and (ii) the Reorganized Debtor shall not be a reporting company under the Exchange Act. Except as provided in the Plan or the Confirmation Order, the New Common Stock to be distributed under the Plan shall be issued in the names of such holders or their nominees in accordance with the Debtor's stock and transfer book-entry procedures.

## **8. Exemption from Registration**

(a) The offer, issuance, and distribution of the New Common Stock hereunder shall be exempt, pursuant to section 1145 of the Bankruptcy Code, if applicable, or other available exemptions without further act or action by any Entity, from registration under (i) the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder, and (ii) any state or local law requiring registration for the offer, issuance, or distribution of Securities.

(b) The New Common Stock shall be issued without registration under the Securities Act or any similar federal, state or local law in reliance on available

exemptions or section 1145(a) of the Bankruptcy Code and, if applicable, shall be freely tradable by the recipients thereof, subject to: (i) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act of 1933; (ii) compliance with any rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any future transfer of such securities or instruments; and (iii) any applicable regulatory approval.

(c) Notwithstanding anything to the contrary in the Plan, no entity shall be entitled to require a legal opinion regarding the validity of any transaction contemplated by the Plan, including, for the avoidance of doubt, whether the New Common Stock are exempt from registration and/or eligible to be issued using the Debtor's stock and transfer book-entry procedures.

## **9. Cancellation of Existing Securities and Agreements**

(a) Except for the purpose of evidencing a right to a Distribution under the Plan and except as otherwise set forth in the Plan, including with respect to executory contracts or unexpired leases that shall be assumed by the Debtor, on the Effective Date, all agreements, instruments, and other documents evidencing any Claims or any Interest (other than Intercompany Claims that are not modified by the Plan) and any rights of any holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect solely as against the Debtor and the obligations of the Debtor thereunder shall be deemed fully satisfied, released, and discharged.

(b) Notwithstanding the foregoing, any provision in any document, instrument, lease, or other agreement that causes or effectuates, or purports to cause or effectuate, a default, termination, waiver, or other forfeiture of, or by, the Debtor of its interests, as a result of the cancellations, terminations, satisfaction, releases, or discharges provided for in Section 5.9 of the Plan shall be deemed null and void and shall be of no force and effect. Nothing contained in the Plan shall be deemed to cancel, terminate, release, or discharge the obligation of the Debtor or any of its counterparties under any executory contract or unexpired lease to the extent such executory contract or unexpired lease has been assumed by the Debtor pursuant to a Final Order of the Bankruptcy Court or under the Plan.

## **10. Officers and Board of Directors**

(a) On the Effective Date, the New Board shall consist of at least five directors in total to be designated by the DIP Tranche B Lenders in a manner to be determined consistent with the Restructuring Term Sheet. To the extent then known and determined, the identities of the members of the board of directors or managers of the Reorganized Debtor, as applicable, and, to the extent applicable, the officers of the Reorganized Debtor, shall be disclosed at or prior to the Confirmation Hearing in accordance with section 1129(a)(5) of the Bankruptcy Code.

(b) Commencing on the Effective Date, each of the directors, managers, and officers of the Reorganized Debtor shall be elected and serve pursuant to the

terms of the applicable Amended Organizational Documents of the Reorganized Debtor and may be replaced or removed in accordance with such Amended Organizational Documents.

(c) Except to the extent that a director, manager, or officer of the Debtor continues to serve in such capacity on the Effective Date, the Persons and Entities acting as authorized persons, directors, managers, or officers of the Debtor prior to the Effective Date, as the case may be, shall have no further authority, duties, responsibilities, or obligations relating to or arising from operating the Debtor or the Chapter 11 Case, and shall be deemed to have resigned from all of their respective positions with the Debtor on the Effective Date without any further action required on the part of the Debtor or such Persons or Entities.

## **11. Restructuring Transactions**

(a) On or as soon as practicable after the Effective Date, the Reorganized Debtor shall take such actions as may be or become necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan (collectively, the “**Restructuring Transactions**”), including (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, financing, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable law and any other terms to which the applicable Entities may determine, (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms to which the applicable parties agree, (iii) the filing of appropriate certificates or articles of incorporation, formation, reincorporation, merger, consolidation, conversion, or dissolution, the Amended Organizational Documents, (iv) the issuance of the New Common Stock, all of which shall be authorized and approved in all respects in each case without further action being required under applicable law, regulation, order, or rule, (v) all other actions that the Reorganized Debtor determines to be necessary or appropriate, including (A) making filings or recordings that may be required by applicable law, subject, in each case, to the Amended Organizational Documents, and (B) such other transactions that may be required or necessary to effectuate any of the Restructuring Transactions in the most tax-efficient manner, including mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; (vi) the execution, delivery, and filing, if applicable, of the Exit Facility Documents, the Amended Organizational Documents, the New Stockholders’ Agreement; and (vii) all other actions that the Reorganized Debtor determines to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

(b) Each officer, member of the board, or manager of the Debtor is (and each officer, member of the board, or manager of the Reorganized Debtor shall be) authorized and directed to issue, execute, deliver, file, or record such contracts, securities, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and any Restructuring Transaction (including the New Common Stock) in the name of and on behalf of the Reorganized Debtor, all of which shall be authorized and

approved in all respects, in each case, without the need for any approvals, authorization, consents, or any further action required under applicable law, regulation, order, or rule (including any action by the shareholders or directors or managers of the Debtor or the Reorganized Debtor) except for those expressly required pursuant to the Plan.

(c) On the Effective Date, or as soon thereafter as is reasonably practicable, the Reorganized Debtor's certificate of incorporation, bylaws, and other formation and constituent documents shall be amended as may be required to be consistent with the provisions of the Plan, the New Stockholders' Agreement, and the Exit Facility Documents, as applicable, and the Bankruptcy Code. The Amended Organizational Documents shall, among other things: (i) authorize the issuance of the New Common Stock and the shares of New Common Stock; and (ii) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting equity securities. After the Effective Date, the Reorganized Debtor may amend and restate its certificate of incorporation and other formation and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of the Amended Organizational Documents and the New Stockholders' Agreement.

(d) All matters involving the corporate structure of the Debtor or the Reorganized Debtor, to the extent applicable, or any corporate or related action required by the Debtor or the Reorganized Debtor in connection herewith shall be deemed to have occurred and shall be in effect, without any requirement of further action by the shareholders, members, or directors or managers of the Debtor or the Reorganized Debtor, and with like effect as though such action had been taken unanimously by the shareholders, members, directors, managers, or officers, as applicable, of the Debtor or the Reorganized Debtor.

## **12. Cancellation of Liens**

Except as otherwise specifically provided in the Plan, the Exit Facility Documents (including in connection with any express written amendment of any mortgage, deed of trust, Lien, pledge, or other security interest under the Exit Facility Documents), or in any contract, instrument, release, or other agreement or document created pursuant to the Plan upon the indefeasible payment in full in Cash of an Other Secured Claim, any Lien securing an Other Secured Claim that is indefeasibly paid in full, in Cash, shall be deemed released and discharged, and the holder of such Other Secured Claim shall be authorized and directed to release any Collateral or other property of the Debtor (including any Cash collateral) held by such holder and to take such actions as may be requested by the Reorganized Debtor to evidence the release or discharge of such Lien, including the execution, delivery and filing or recording of such releases or discharges as may be requested by the Reorganized Debtor, and the Reorganized Debtor and its designees shall be authorized to file UCC-3 termination statements and other release or discharge documentation (to the extent applicable) with respect thereto. The filing of the Confirmation Order with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

### **13. Employee Matters**

Except as otherwise provided in the Plan Supplement, on the Effective Date, all employee compensation plans, Benefit Plans, employment agreements, severance agreements, offer letters, or award letters to which the Debtor is a party with respect to employees employed as of the Effective Date (collectively, the “**Employee Arrangements**”) shall be neither assumed nor rejected. Rather, the Employee Arrangements and the Debtor’s benefits and obligations thereunder shall be deemed to “ride through” the Chapter 11 Case unaffected by the Chapter 11 Case and shall remain as benefits and obligations of the Reorganized Debtor after the Effective Date. Notwithstanding anything contrary in the Employee Arrangements, the consummation of the Plan shall not be treated as a change in control or change of control or other similar transaction under the Employee Arrangements.

All other employment, confidentiality, training, non-competition agreements, vacation, holiday pay, retirement, supplemental retirement, indemnity, executive retirement, pension, deferred compensation, medical, dental, vision, life and disability insurance, flexible spending account, and other health and welfare benefit plans, programs, agreements and arrangements, and all other wage, compensation, employee expense reimbursement, and other benefit obligations to employees employed as of the Effective Date are deemed to be, and shall be treated as, Executory Contracts under the Plan and, on the Effective Date, shall be deemed assumed pursuant to sections 365 and 1123 of the Bankruptcy Code. From and after the Effective Date, the Reorganized Debtor shall be authorized to comply with all applicable laws regarding compensation obligations to employees employed as of the Effective Date.

### **14. Post-Emergence Exchange Offer**

The Reorganized Debtor shall launch a mandatory exchange process of converting the New Common Stock into Parent Interests, within 12 months of the Effective Date. The applicable conversion percentage ratio of equity shall be based on an independent third-party valuation by a valuation expert accredited by the Philippines Stock Exchange (PSE) and the Securities and Exchange Commission (SEC). Any such post-emergence conversion shall be subject to applicable approvals, including by the PSE, the SEC of the Philippines, the Bureau of Internal Revenue with respect to the certificate authorizing registration (CAR) of the New Common Stock to the Parent, the submission of a special auditor’s report on the two companies acceptable to the SEC and PSE, and applicable board and shareholder approvals. For the avoidance of doubt, nothing in the Plan is meant to impact or modify the Parent Interests, which shall remain outstanding and unchanged until the post-emergence exchange offer contemplated by Section 5.14 of the Plan.

### **15. Securitization Facilities**

On the Effective Date, the Debtor and/or Reorganized Debtor, as applicable, shall be deemed to have assumed the Securitization Documents to which it is a party to enable the transactions contemplated by the Securitization Documents to continue on terms currently contemplated in the Securitization Documents, in accordance with the Restructuring Support



Agreements. All Claims in connection with the Securitization Documents (including any related Intercompany Claims), if any, shall be Reinstated.

#### **16. Implementation of Amendment Agreements**

On the Effective Date, and in accordance with the Restructuring Support Agreements, the Amendment Agreements, including any schedules, annexes, and exhibits thereto, shall be assumed and binding on the Reorganized Debtor and the applicable Supporting Creditors.

#### **17. Release of Avoidance Actions**

On the Effective Date, the Debtor, on behalf of itself and its Estate, shall release any and all Avoidance Actions and the Debtor and the Reorganized Debtor, and any of their successors or assigns, and any Entity acting on behalf of the Debtor or the Reorganized Debtor, shall be deemed to have waived the right to pursue any and all Avoidance Actions, except for Avoidance Actions brought as counterclaims or defenses to claims asserted against the Debtor.

#### **18. Closing of Chapter 11 Case**

After the Estate has been fully administered, the Reorganized Debtor shall seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and Bankruptcy Rules.

#### **19. Notice of Effective Date**

On the Effective Date, the Debtor shall file a notice of the occurrence of the Effective Date with the Bankruptcy Court.

### **E. Distributions**

#### **1. Distributions Generally**

One or more Disbursing Agents shall make all Distributions under the Plan to the appropriate holders of Allowed Claims in accordance with the terms of the Plan.

#### **2. Distribution Record Date**

As of the close of business on the Effective Date, the various lists of holders of Claims or Interests in each Class, as maintained by the Debtor or its respective agents, shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Interests. The Debtor or the Reorganized Debtor shall have no obligation to recognize any transfer of the Claims or Interests occurring on or after the Effective Date. In addition, with respect to payment of any Cure Amounts or disputes over any Cure Amounts, neither the Debtor nor the Disbursing Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable executory contract or unexpired lease as of the Effective Date, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure Amount.

### **3. Date of Distributions**

Except as otherwise provided in the Plan, any Distributions and deliveries to be made under the Plan shall be made on the Effective Date or as otherwise determined in accordance with the Plan (including the treatment provisions of General Unsecured Trade Claims in Section 4.4 of the Plan); *provided* that the Reorganized Debtor may implement periodic Distribution dates to the extent it determines them to be appropriate.

### **4. Disbursing Agent**

All Distributions under the Plan shall be made by the Disbursing Agent, on behalf of the Debtor (unless otherwise provided in the Plan), on or after the Effective Date or as otherwise provided in the Plan. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties, and all reasonable and documented fees and expenses incurred by such Disbursing Agent directly related to Distributions hereunder shall be reimbursed by the Reorganized Debtor. The Reorganized Debtor shall use all commercially reasonable efforts to provide the Disbursing Agent (if other than the Reorganized Debtor) with the amounts of Claims and the identities and addresses of holders of Claims, in each case, as set forth in the Debtor's or the Reorganized Debtor's books and records. The Reorganized Debtor shall cooperate in good faith with the applicable Disbursing Agent (if other than the Reorganized Debtor) to comply with the reporting and withholding requirements outlined in Section 6.18 of the Plan. The DIP Agent will be considered the Servicer for DIP Claims other than DIP Reimbursement Claims.

### **5. Rights and Powers of Disbursing Agent**

(a) From and after the Effective Date, the Disbursing Agent, solely in its capacity as Disbursing Agent, shall not incur any liability whatsoever on account of any distributions under the Plan, except in the event of gross negligence or willful misconduct, as determined by a Final Order of a court of competent jurisdiction. No holder of a Claim or Interest or other party in interest shall have or pursue any claim or Cause of Action against the Disbursing Agent, solely in its capacity as Disbursing Agent, for making payments in accordance with the Plan or for implementing provisions of the Plan, except for actions or omissions to act arising out of the gross negligence or willful misconduct, fraud, malpractice, criminal conduct, or ultra vires acts of such Disbursing Agent.

(b) The Disbursing Agent shall be empowered to (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties hereunder, (ii) make all Distributions contemplated hereby, and (iii) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

## **6. Expenses of Disbursing Agent**

Except as otherwise ordered by the Bankruptcy Court, any reasonable and documented fees and expenses incurred by the Disbursing Agent acting in such capacity (including reasonable documented attorneys' fees and expenses) on or after the Effective Date shall be paid in Cash by the Reorganized Debtor in the ordinary course of business.

## **7. Postpetition Interest**

Except as otherwise specifically provided for in the Plan, the Confirmation Order, or another order of the Bankruptcy Court (including the DIP Order), interest shall not accrue or be paid on any Claims on or after the Petition Date; *provided* that, if interest is payable pursuant to Section 6.7 of the Plan, interest shall accrue at the federal judgment rate pursuant to 28 U.S.C. § 1961 on a non-compounded basis from the date the obligation underlying the Claim becomes due and is not timely paid through the date of payment.

## **8. Delivery of Distributions**

All Distributions to any holder of an Allowed Claim as and when required by the Plan shall be made by the Disbursing Agent. In the event that any Distribution to any holder is returned as undeliverable, no further Distributions shall be made to such holder unless and until the Disbursing Agent is notified in writing of such holder's then-current address, at which time all currently due, missed Distributions shall be made to such holder as soon as reasonably practicable thereafter without interest, *provided, however*, such distributions or payments shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of 180 days from the date of the attempted Distribution. Nothing in the Plan shall require the Disbursing Agent to attempt to locate holders of undeliverable Distributions and, if located, assist such holders in complying with Section 6.18 of the Plan.

## **9. Distributions after Effective Date**

Distributions made after the Effective Date to holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall be deemed to have been made on the Effective Date.

## **10. Unclaimed Property**

Undeliverable Distributions or unclaimed Distributions shall remain in the possession of the Reorganized Debtor until such time as a Distribution becomes deliverable or the holder accepts Distribution, or such Distribution reverts back to the Reorganized Debtor, and shall not be supplemented with any interest, dividends, or other accruals of any kind. Such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of 180 days from the date of the attempted Distribution. After such date, all unclaimed property or interest in property shall revert to the Reorganized Debtor, and the Claim of any other holder to such property or interest in property shall be discharged and forever barred. The Reorganized Debtor and the Disbursing Agent shall have no obligation to

attempt to locate any holder of an Allowed Claim other than by reviewing the Debtor's books and records and filings with the Bankruptcy Court.

#### **11. Time Bar to Cash Payments**

Checks issued by the Disbursing Agent in respect of Allowed Claims shall be null and void if not negotiated within 180 days after the date of issuance thereof. Thereafter, the amount represented by such voided check shall irrevocably revert to the Reorganized Debtor, and any Claim in respect of such voided check shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary. Requests for re-issuance of any check shall be made to the Disbursing Agent by the holder of the Allowed Claim to whom such check was originally issued.

#### **12. Manner of Payment under the Plan**

Except as otherwise specifically provided in the Plan, at the option of the Debtor or the Reorganized Debtor, as applicable, any Cash payment to be made under the Plan may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Debtor.

#### **13. Satisfaction of Claims**

Except as otherwise specifically provided in the Plan, any Distributions and deliveries to be made on account of Allowed Claims under the Plan shall be in complete and final satisfaction, settlement, and discharge of and exchange for such Allowed Claims.

#### **14. Fractional Stock**

If any Distributions of New Common Stock pursuant to the Plan would result in the issuance of a fractional share of New Common Stock, then the number of shares of New Common Stock to be issued in respect of such Distribution shall be calculated to one decimal place and rounded up or down to the closest whole share (with a half share or greater rounded up and less than a half share rounded down). The total number of shares of New Common Stock to be distributed in connection with the Plan shall be adjusted as necessary to account for the rounding provided for in Section 6.14 of the Plan. No consideration shall be provided in lieu of fractional shares that are rounded down. Neither the Reorganized Debtor nor the Disbursing Agent shall have any obligation to make a Distribution that is less than one (1) share of New Common Stock.

#### **15. Minimum Cash Distributions**

The Disbursing Agent shall not be required to make any Distribution of Cash less than Seventy-Five Dollars (\$75) to any holder of an Allowed Claim; *provided* that if any Distribution is not made pursuant to Section 6.15 of the Plan, such Distribution shall be added to any subsequent Distribution to be made on behalf of the holder's Allowed Claim.

## **16. Maximum Distributions and Rights of Reimbursement**

(a) In no event shall a holder of an Allowed Claim receive Distributions under the Plan in excess of the Allowed amount of such Claim, except to the extent postpetition interest is permitted by Section 6.7 of the Plan.

(b) Nothing contained in the Plan shall in any way affect, impair or modify the rights of a holder of a Claim against an Entity that is not the Debtor.

## **17. Setoffs**

Except as otherwise expressly provided for in the Plan, the Reorganized Debtor, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the holder of a Claim, may set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Allowed Claim (before any Distribution is made on account of such Allowed Claim), any claims, rights, and Causes of Action of any nature that the Debtor or Reorganized Debtor, as applicable, may hold against the holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action against such holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); *provided, however*, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by the Reorganized Debtor of any such Claims, rights, and Causes of Action that the Reorganized Debtor may possess against such holder. In no event shall any holder of Claims be entitled to set off any such Claim against any Claim, right, or Cause of Action of the Debtor or Reorganized Debtor (as applicable), unless such holder has filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date, and notwithstanding any indication in any proof of claim or otherwise that such holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise.

## **18. Withholding and Reporting Requirements**

(a) **Withholding Rights.** In connection with the Plan, any party issuing any instrument or making any Distribution described in the Plan shall comply with all applicable withholding and reporting requirements imposed by any Governmental Unit, and all Distributions pursuant to the Plan and all related agreements shall be subject to any such withholding or reporting requirements. In the case of a non-Cash Distribution that is subject to withholding, the distributing party may withhold an appropriate portion of such distributed property and either (i) sell such withheld property to generate Cash necessary to pay over the withholding tax (or reimburse the distributing party for any advanced payment of the withholding tax), or (ii) pay the withholding tax using its own funds and retain such withheld property. Any amounts withheld pursuant to the preceding sentence shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. Notwithstanding the foregoing, each holder of an Allowed Claim or any other Entity that receives a Distribution pursuant to the Plan shall have responsibility for any taxes imposed by any Governmental Unit, including income, withholding, and other taxes, on account of such

Distribution. Any party issuing any instrument or making any Distribution pursuant to the Plan has the right, but not the obligation, to not make a Distribution until such holder has made arrangements reasonably satisfactory to such issuing or disbursing party for payment of any such tax obligations. Any party issuing any instrument or making any Distribution pursuant to the Plan, shall, to the extent reasonably practicable, notify any recipient of a Distribution pursuant to the Plan and all related agreements if it is going to withhold taxes pursuant to Section 6.18 of the Plan and reasonably cooperate with the recipient to minimize or avoid such withholding.

**(b) Forms.** Any party entitled to receive any property as an issuance or Distribution under the Plan shall, upon request, deliver to the Disbursing Agent or such other Person designated by the Reorganized Debtor (which Person shall subsequently deliver to the Disbursing Agent any tax forms or documents received) any tax forms or documents (including an IRS Form W-9 or IRS Form W-8, as applicable) reasonably requested to reduce or eliminate any withholding required by any Governmental Unit.

## **19. Hart-Scott-Rodino Antitrust Improvements Act**

Any New Common Stock to be distributed under the Plan to an Entity required to file a premerger notification and report form under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, to the extent applicable, shall not be distributed until the notification and waiting periods applicable under such Act to such Entity have expired or been terminated.

## **20. Claims Paid or Payable by Third Parties**

### **(a) Claims Paid by Third Parties**

A Claim shall be correspondingly reduced, and the applicable portion of such Claim shall be disallowed without an objection to such Claim having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the holder of such Claim receives a payment on account of such Claim from a party that is not the Debtor or Reorganized Debtor; *provided* that the Debtor shall provide 21 days' notice to the holder prior to any disallowance of such Claim during which period the holder may object to such disallowance, and if the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court. Subject to the last sentence of this paragraph, to the extent a holder of a Claim receives a Distribution on account of such Claim and receives payment from a party that is not the Debtor or the Reorganized Debtor on account of such Claim, such holder shall, within 14 days of receipt thereof, repay or return the Distribution to the Reorganized Debtor to the extent the holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such Distribution under the Plan. The failure of such holder to timely repay or return such Distribution shall result in the holder owing the Reorganized Debtor annualized interest at the federal judgment rate on such amount owed for each Business Day after the 14 days grace period specified above until the amount is repaid.

**(b) Claims Payable by Insurance Carriers**

No Distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtor's insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtor's insurers agree to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court; *provided* that the Debtor shall provide 21 days' notice to the holder of such Claim prior to any disallowance of such Claim during which period the holder may object to such disallowance, and if the parties cannot reach an agreed resolution, the matter shall be decided by the Bankruptcy Court.

**(c) Applicability of Insurance Policies**

Except as otherwise provided in the Plan, Distributions to holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Notwithstanding anything to the contrary in the Plan, nothing contained in the Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any Cause of Action that the Debtor or any other Entity may hold against any other Entity, including insurers, under any policies of insurance or applicable indemnity, nor shall anything contained in the Plan constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**21. Allocation Between Principal and Accrued Interest**

The aggregate consideration paid to holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof) and, thereafter, to interest, if any, on such Allowed Claim accrued but unpaid through the Effective Date.

**F. Procedures for Disputed Claims**

**1. Disputed Claims Process**

Notwithstanding section 502(a) of the Bankruptcy Code, and in light of the Unimpaired status of all Claims other than Claims in Class 3 under the Plan, holders of Claims do not need to file proofs of Claim with the Bankruptcy Court, and the Debtor or the Reorganized Debtor, as applicable, and the holders of Claims shall determine, adjudicate, and resolve any disputes over the validity and amounts of such Claims in the ordinary course of business; provided, that (unless expressly waived pursuant to the Plan) the Allowed amount of such Claims shall be subject to and shall not exceed the limitations under or maximum amounts permitted by the Bankruptcy Code, including sections 502 or 503 of the Bankruptcy Code, to the extent applicable. If a holder of a Claim elects to file a proof of claim with the Bankruptcy Court, such holder shall be deemed to have consented to the jurisdiction of the Bankruptcy Court for

all purposes with respect to the Claim, and the Bankruptcy Court shall retain nonexclusive jurisdiction over all such Claims, which shall be resolved on a case-by-case basis through settlements, Claim objections (or, if necessary, through adversary proceedings), adjudication in a forum other than the Bankruptcy Court, or by withdrawal of the Claims by the holders of such Claims. From and after the Effective Date, the Reorganized Debtor may satisfy, dispute, settle, or otherwise compromise any Claim without approval of the Bankruptcy Court.

## **2. Objections to Claims**

Any objections to proofs of Claim shall be served and filed (a) on or before 180 days following the later of (i) the Effective Date and (ii) the date that a proof of Claim is filed or amended or a Claim is otherwise asserted or amended in writing by or on behalf of a holder of such Claim, or (b) by such later date as ordered by the Bankruptcy Court upon motion filed by the Debtor or the Reorganized Debtor. The expiration of such period shall not limit or affect the Reorganized Debtor's rights to dispute Claims asserted other than through a proof of Claim.

## **3. Estimation of Claims**

The Debtor or the Reorganized Debtor, as applicable, may at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtor or the Reorganized Debtor may pursue supplementary proceedings to object to the allowance of such Claim.

## **4. No Distributions Pending Allowance**

If an objection, motion to estimate, or other challenge to a Claim is filed, no payment or Distribution provided under the Plan shall be made on account of such Claim unless and until (and only to the extent that) such Claim becomes an Allowed Claim.

## **5. Distributions after Allowance**

To the extent that a Disputed Claim ultimately becomes, in whole or in part, an Allowed Claim, Distributions (if any) shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan, including the treatment provisions provided in Article IV of the Plan. Such Distributions shall be made as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing such Disputed Claim (or portion thereof) becomes a Final Order.



## **6. Claim Resolution Procedures Cumulative**

All of the objection, estimation, and resolution procedures in the Plan are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently settled, compromised, withdrawn, or resolved in accordance with the Plan without further notice or Bankruptcy Court approval.

## **7. Resolution of Disputed Claims**

On and after the Effective Date, the Reorganized Debtor shall have the authority to litigate, compromise, settle, otherwise resolve or withdraw any objections to all Claims against the Debtor and to compromise and settle any such Disputed Claims without notice to or approval by the Bankruptcy Court or any other party.

## **8. Disallowance of Claims**

All Claims and Interests of any Entity from which property is sought by the Debtor under sections 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtor or the Reorganized Debtor allege is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if: (a) the Entity, on the one hand, and the Debtor or the Reorganized Debtor, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned sections of the Bankruptcy Code; and (b) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

## **G. Executory Contracts and Unexpired Leases**

### **1. General Treatment**

(a) As of and subject to the occurrence of the Effective Date, all executory contracts and unexpired leases to which the Debtor is a party, and which have not expired or terminated by their own terms on or prior to the Effective Date shall be deemed rejected by the Debtor except for any executory contract or unexpired lease that (i) previously has been assumed, assumed and assigned, or rejected pursuant to a Final Order of the Bankruptcy Court, (ii) is specifically designated on the Schedule of Assumed Contracts and Leases filed and served prior to commencement of the Confirmation Hearing or is designated for assumption pursuant to Section 5.15 of the Plan, (iii) is the subject of a separate motion or notice filed by the Debtor on or before the Confirmation Date seeking to assume, assume and assign, or reject pursuant to the Plan, the Confirmation Order or section 365 of the Bankruptcy Code, or (iv) is the subject of a pending Assumption Dispute. The Debtor reserves the right to modify the treatment of any particular executory contract or unexpired lease pursuant to the Plan.

(b) Subject to satisfaction of the conditions set forth in Section 8.1(a) of the Plan, resolution of any Assumption Dispute in accordance with Section 8.2 of the Plan,

payment of any applicable Cure Amount, and the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of the assumptions or rejections provided for in the Plan pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Each executory contract and unexpired lease assumed or assumed and assigned pursuant to the Plan shall vest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as modified by the provisions of the Plan, any order of the Bankruptcy Court authorizing and providing for its assumption, or applicable law, *provided* that the assumption of executory contracts and unexpired leases hereunder may include the assignment of certain of such contracts to Affiliates.

(c) Except as otherwise provided in the Plan, in the Plan Supplement or otherwise agreed to by the Debtor and the applicable counterparty, each assumed executory contract or unexpired lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, without regard to whether such document is specifically listed in any notice of assumed contracts. Modifications, amendments, supplements, and restatements to prepetition executory contracts and unexpired leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the executory contract or unexpired lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

## **2. Determination of Assumption Disputes and Deemed Consent**

(a) The Debtor shall file, as part of the Plan Supplement, and serve a notice on parties to executory contracts and unexpired leases to be assumed or assumed and assigned reflecting the Debtor's intention to assume or assume and assign the executory contract or unexpired lease in connection with the Plan and indicating that the Cure Amount shall be asserted against the Debtor or the Reorganized Debtor, as applicable, in the ordinary course of business.

(b) Upon assumption, Cure Amounts shall be paid by the Debtor or the Reorganized Debtor, as applicable, in the ordinary course, subject to all defenses and disputes the Debtor or the Reorganized Debtor may have with respect to the underlying executory contracts or unexpired leases, which the Debtor or the Reorganized Debtor may assert in the ordinary course. If there is an Assumption Dispute pertaining to assumption of an executory contract or unexpired lease, such dispute shall be heard by the Bankruptcy Court prior to such assumption being effective, *provided, however*, that the Debtor may settle any dispute regarding Cure Amounts or the nature thereof without any further notice to any party or any action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, if the Debtor is unable to resolve an Assumption Dispute relating solely to the amount of a Cure Claim prior to the Confirmation Hearing, such Assumption Dispute may be scheduled to be heard by the Bankruptcy Court after the Confirmation Hearing. To the extent the Assumption Dispute relates solely to the Cure Amount, the Debtor may assume and/or assume and assign the applicable executory contract or unexpired lease prior to the resolution of the Assumption Dispute, *provided* that the Debtor reserves Cash in an amount sufficient to pay the full amount reasonably asserted as the required cure payment by the non-Debtor counterparty to such

contract or lease (or such lesser amount as may be fixed or estimated by the Bankruptcy Court or otherwise agreed to by such non-Debtor counterparty and the Debtor or the Reorganized Debtor). To the extent the Assumption Dispute is resolved or determined unfavorably to the Debtor or the Reorganized Debtor, as applicable, the Debtor or Reorganized Debtor, as applicable, may reject the applicable executory contract or unexpired lease after such determination.

(c) Any non-Debtor counterparty to an executory contract or unexpired lease that fails to object timely to the notice of the proposed assumption, assumption and assignment or sublease of such executory contract or unexpired lease shall be deemed to have assented to assumption, assumption and assignment or sublease of the applicable executory contract or unexpired lease notwithstanding any provision thereof that purports to (i) prohibit, restrict, restrain, or condition the transfer, assignment or sublease of such executory contract or unexpired lease (including provisions related to rights of first refusal, rights of first offer, tag rights, drag rights, or change of control fees or other like limitations), (ii) terminate or modify, or permit the termination or modification of, an executory contract or unexpired lease as a result of any direct or indirect transfer or assignment of the rights of the Debtor under such contract or lease or a change, if any, in the ownership or control as contemplated by the Plan, (iii) increase, accelerate, or otherwise alter any obligations or liabilities of the Debtor or the Reorganized Debtor under such executory contract or unexpired lease, or (iv) create or impose a Lien upon any property or asset of the Debtor or the Reorganized Debtor, as applicable. Each such provision shall be deemed to not apply to the assumption, assumption and assignment or sublease of such executory contract or unexpired lease pursuant to the Plan, and non-Debtor counterparties thereto that fail to object to the proposed assumption, assumption and assignment or sublease in accordance with the terms set forth in Section 8.2(c) of the Plan shall forever be barred and enjoined from objecting to the proposed assumption, assumption and assignment, or sublease, or to the validity of such assumption, assumption and assignment (including the provision of adequate assurance of future performance), or sublease, or taking actions prohibited by the foregoing on account of transactions contemplated by the Plan.

### **3. Rejection**

The Plan provides that in the event that the rejection of an executory contract or unexpired lease results in damages to the other party or parties to such contract or lease, any Claim for such damages, if not heretofore evidenced by a timely filed proof of Claim, shall be forever barred and shall not be enforceable against the Debtor or the Reorganized Debtor, or its Estate, properties or interests in property, unless a proof of Claim is filed with the Bankruptcy Court and served upon the Debtor or the Reorganized Debtor, as applicable, no later than 30 days after the Effective Date. The Confirmation Order shall constitute the Bankruptcy Court's approval of the rejection of all the Debtor's unexpired leases and executory contracts not otherwise explicitly assumed.

### **4. Payment of Cure Amounts**

Subject to resolution of any Assumption Dispute, all Cure Amounts relating to an executory contract or unexpired lease that is to be assumed by the Debtor or the Reorganized

Debtor shall be satisfied by the Debtor or the Reorganized Debtor, as applicable, following assumption or assumption and assignment of the underlying executory contract or unexpired lease. Such Cure Amounts shall, in the discretion of the Debtor or the Reorganized Debtor, as applicable, be paid on the later of (i) the Effective Date and (ii) without acceleration in the ordinary course of business and according to the terms of the executory contract or unexpired lease. Assumption or assumption and assignment of any executory contract or unexpired lease pursuant to the Plan, or otherwise, shall, subject to satisfaction of the Cure Amount, result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assumed and assigned executory contract or unexpired lease at any time before the effective date of the assumption or assumption and assignment.

#### **5. Survival of the Debtor's Indemnification Obligations and Guarantees**

Any obligations of the Debtor pursuant to its corporate charters, bylaws, or other organizational documents to indemnify current and former officers, directors, agents, and/or employees with respect to all present and future actions, suits, and proceedings against the Debtor or such directors, officers, agents, and/or employees, based upon any act or omission for or on behalf of the Debtor, shall not be discharged or impaired by confirmation of the Plan; *provided, however*, that the Reorganized Debtor shall not indemnify directors of the Debtor for any Claims or Causes of Action arising out of or relating to any act or omission that constitutes intentional fraud, gross negligence, or willful misconduct. Except as otherwise provided in the Plan Supplement, such obligations shall be deemed and treated as executory contracts to be assumed by the Debtor under the Plan and shall continue as obligations of the Reorganized Debtor. Any claim based on such obligations shall not be a Disputed Claim or subject to any objection in either case by reason of section 502(e)(1)(B) of the Bankruptcy Code.

#### **6. Insurance Policies**

Except as otherwise provided in the Plan Supplement, all insurance policies (including all directors' and officers' insurance policies and tail coverage liability insurance) pursuant to which the Debtor has any obligations in effect as of the date of the Confirmation Order shall be deemed and treated as executory contracts pursuant to the Plan and shall be assumed by the Debtor and the Reorganized Debtor and shall continue in full force and effect thereafter in accordance with their respective terms. All other insurance policies shall vest in the Reorganized Debtor.

#### **7. Intellectual Property Licenses and Agreements**

Except as otherwise provided in the Plan Supplement, all intellectual property contracts, licenses, royalties, or other similar agreements to which the Debtor have any rights or obligations in effect as of the date of the Confirmation Order shall be deemed and treated as executory contracts pursuant to the Plan and shall be assumed by the Debtor and shall continue in full force and effect unless any such intellectual property contract, license, royalty, or other

similar agreement otherwise is specifically rejected pursuant to a separate order of the Bankruptcy Court or is the subject of a separate rejection motion filed by the Debtor in accordance with Section 8.1 of the Plan. Unless otherwise noted hereunder, all other intellectual property contracts, licenses, royalties, or other similar agreements shall vest in the Reorganized Debtor and the Reorganized Debtor may take all actions as may be necessary or appropriate to ensure such vesting as contemplated in the Plan.

## **8. Reservation of Rights**

(a) Neither the exclusion nor inclusion of any contract or lease by the Debtor on any exhibit, schedule, or other annex to the Plan or in the Plan Supplement, nor anything contained in the Plan, will constitute an admission by the Debtor that any such contract or lease is or is not in fact an executory contract or unexpired lease or that the Debtor or the Reorganized Debtor or their respective affiliates have any liability thereunder.

(b) Except as otherwise provided in the Plan, nothing in the Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor and the Reorganized Debtor under any executory or non-executory contract or any unexpired or expired lease.

(c) Nothing in the Plan shall increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor or the Reorganized Debtor under any executory or non-executory contract or any unexpired or expired lease.

(d) If there is an Assumption Dispute or a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection under the Plan, the Debtor or the Reorganized Debtor, as applicable, shall have 60 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease by filing a notice indicating such altered treatment.

## **H. Conditions Precedent to Confirmation of Plan and Effective Date**

### **1. Conditions Precedent to Confirmation of Plan**

The following are conditions precedent to confirmation of the Plan:

(a) the Bankruptcy Court shall have entered the Confirmation Order;

(b) the Plan Supplement and all of the schedules, documents, and exhibits contained therein shall be in form and substance consistent in all material respects with the Restructuring Support Agreements and shall have satisfied the RSA Definitive Document Requirements to the extent applicable under the Restructuring Support Agreements; and

(c) none of the Restructuring Support Agreements shall have been terminated and no termination notice shall have been given that with the passage of time would cause or permit a termination of any Restructuring Support Agreement.

## **2. Conditions Precedent to Effective Date**

The following are conditions precedent to the Effective Date of the Plan:

(a) the Bankruptcy Court shall have entered the Confirmation Order and no stay thereof shall be in effect;

(b) none of the Restructuring Support Agreements shall have been terminated and no termination notice shall have been given that with the passage of time would cause or permit a termination of any Restructuring Support Agreement;

(c) the Debtor shall not be in default under the DIP Credit Facility or the DIP Order (or, to the extent that the Debtor is in default on the proposed Effective Date, such default shall have been waived by the applicable DIP Lenders or cured by the Debtor in a manner consistent with the DIP Credit Facility or the applicable DIP Order);

(d) the Unsecured Exit Facility Documents and to the extent the Debtor determines to enter into the Secured Exit Facility, the Secured Exit Facility Documents shall have been executed and delivered by all of the Entities that are parties thereto, and all conditions precedent (other than any conditions related to the occurrence of the Effective Date) to the consummation of the applicable Exit Facility Documents shall have been waived or satisfied in accordance with the terms thereof, and the closing of the applicable Exit Facility Documents shall be deemed to occur concurrently with the occurrence of the Effective Date;

(e) (i) the Definitive Documents shall (x) have satisfied the RSA Definitive Document Requirements (to the extent applicable) and be acceptable to the Tranche B DIP Lenders, (y) have been executed and delivered, and any conditions precedent contained to effectiveness therein have been satisfied or waived in accordance therewith (other than any conditions precedent related to the occurrence of the Effective Date), and (z) be in full force and effect and binding upon the relevant parties; and (ii) to the extent the Debtor determines to enter into the Secured Exit Facility, the Exit Facility Documents governing the Secured Exit Facility also shall be in form and substance reasonably satisfactory to the Secured Exit Facility Agent and the Tranche B DIP Lenders;

(f) all conditions precedent (other than any conditions related to the occurrence of the Effective Date) to the consummation of the New Stockholders' Agreement shall have been waived or satisfied in accordance with the terms thereof, and the closing of the New Stockholders' Agreement shall be deemed to occur concurrently with the occurrence of the Effective Date;

(g) all conditions precedent to the issuance of the New Common Stock, other than any conditions related to the occurrence of the Effective Date, shall have occurred;

(h) the payment in Cash in full of all DIP Reimbursement Claims;

(i) to the extent required under applicable non-bankruptcy law, the Amended Organizational Documents shall have been filed with the appropriate governmental authorities;

(j) all actions, documents (including the Definitive Documents), and agreements necessary to implement and consummate the Plan shall have been effected or executed and binding on all parties thereto;

(k) all governmental and third-party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions contemplated by the Plan shall have been obtained, not be subject to unfulfilled conditions, and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions;

(l) the Confirmation Order has been recognized and granted full force and effect by the Philippine court pursuant to the Philippine Recognition Proceeding; and

(m) all unpaid Restructuring Expenses and all amounts payable by the Debtor pursuant to the DIP Order shall have been paid in Cash, to the extent invoiced at least four Business Days prior to the Effective Date.

### **3. Waiver of Conditions Precedent**

(a) Except as otherwise provided in the Plan, all actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously and no such action shall be deemed to have occurred prior to the taking of any other such action. Each of the conditions precedent in Section 9.1 and Section 9.2 of the Plan (except for Section 9.1(a)) may be waived in writing by the Debtor with the consent of the Tranche B DIP Lenders without leave of or order of the Bankruptcy Court, *provided, however*, that the condition in Section 9.2(e) of the Plan may be waived with respect to a particular Definitive Document only to the extent that every party that maintains a consent right over the subject Definitive Document as set forth in the Restructuring Support Agreements agrees to waive such condition with respect to the subject Definitive Document, *provided, further*, that waiver of the conditions in Sections 9.2(c), (h) and (m) of the Plan shall require the consent of the DIP Agent at the direction of the Required Lenders under the DIP Credit Facility Documents.

(b) The stay of the Confirmation Order pursuant to Bankruptcy Rule 3020(e) shall be deemed waived by and upon the entry of the Confirmation Order, and the Confirmation Order shall take effect immediately upon its entry.

### **4. Effect of Failure of a Condition**

If the conditions listed in Section 9.2 of the Plan are not satisfied or waived in accordance with Section 9.3 of the Plan on or before the first Business Day that is more than

60 days after the date on which the Confirmation Order is entered or by such later date as set forth by the Debtor in a notice filed with the Bankruptcy Court prior to the expiration of such period, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall (a) constitute a waiver or release of any Claims against or any Interests in the Debtor or claims by the Debtor, (b) prejudice in any manner the rights of any Entity, or (c) constitute an admission, acknowledgement, offer, or undertaking by the Debtor, any of the Supporting Creditors, or any other Entity.

## **I. Effect of Confirmation of Plan**

### **1. Vesting of Assets**

Except as otherwise provided in the Plan, or in any agreement, instrument, or other document incorporated in the Plan (including the Restructuring Transactions), on the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all assets and property of the Estate shall vest in the Reorganized Debtor, free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided pursuant to the Plan, the Confirmation Order, or the Exit Facility Documents. On and after the Effective Date, the Reorganized Debtor may take any action, including the operation of its business; the use, acquisition, sale, lease and disposition of property; and the entry into transactions, agreements, understandings, or arrangements, whether in or other than in the ordinary course of business, and execute, deliver, implement, and fully perform any and all obligations, instruments, documents, and papers or otherwise in connection with any of the foregoing, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code, except as expressly provided in the Plan. Without limiting the foregoing, the Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for professional fees, disbursements, expenses, or related support services without application to the Bankruptcy Court.

### **2. Binding Effect**

As of the Effective Date, the Plan shall bind all holders of Claims against and Interests in the Debtor and its respective successors and assigns, notwithstanding whether any such holders were (a) Impaired or Unimpaired under the Plan, (b) deemed to accept or reject the Plan, (c) failed to vote to accept or reject the Plan, or (d) voted to reject the Plan.

### **3. Discharge of Claims and Termination of Interests**

Upon the Effective Date and in consideration of the Distributions to be made under the Plan, except as otherwise expressly provided in the Plan, each holder (as well as any representatives, trustees, or agents on behalf of each holder) of a Claim or Interest and any affiliate of such holder shall be deemed to have forever waived, released, and discharged the Debtor, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Interests, rights, and liabilities that arose prior to the Effective Date. Upon the Effective Date, all such Entities shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in the Debtor against the Debtor, the Reorganized Debtor, or any of



their assets or property, whether or not such holder has filed a proof of Claim and whether or not the facts or legal bases therefor were known or existed prior to the Effective Date.

#### **4. Term of Injunctions or Stays**

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

#### **5. Injunction**

(a) Upon entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan in relation to any Claim or Interest extinguished, discharged or released pursuant to the Plan.

(b) Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court or as agreed to by the Debtor and a holder of a Claim against or Interest in the Debtor, all Entities who have held, hold, or may hold Claims against or Interests in the Debtor (whether proof of such Claims or Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates are permanently enjoined, on and after the Effective Date, solely with respect to any Claims, Interests, and Causes of Action that will be or are extinguished, discharged, or released pursuant to the Plan from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) on account of or in connection with or with respect to any such Claims or Interests or against or affecting the Released Parties or the property of any of the Released Parties, (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Released Parties or the property of any of the Released Parties, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Released Parties or the property of any of the Released Parties, (iv) asserting any right of setoff, directly or indirectly, against any obligation due the Released Parties or the property of any of the Released Parties, except as contemplated or allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

(c) By accepting Distributions pursuant to the Plan, each holder of an Allowed Claim or Interest extinguished, discharged, or released pursuant to the Plan shall be deemed to have affirmatively and specifically consented to be bound by the Plan, including, without limitation, the injunctions set forth in Section 10.5 of the Plan.

(d) The injunctions in Section 10.5 of the Plan shall extend to any successors of the Debtor and the Reorganized Debtor and their respective property and interests in property.

## **6. Releases**

### **(a) Releases by Debtor**

Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, on and after the Effective Date, except for the right to enforce the Plan or any right or obligation arising under the Definitive Documents that remains in effect after the Effective Date, effective as of the Effective Date and to the fullest extent permitted by applicable law, for good and valuable consideration provided by each of the Released Parties, the adequacy of which is confirmed by the Plan, the Released Parties shall be deemed released and discharged by the Debtor, the Reorganized Debtor, and the Estate, and any person seeking to exercise the rights of the Estate, including any successors to the Debtor or any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code, from any and all Claims, obligations, rights, suits, judgments, damages, demands, debts, rights, Causes of Action, remedies, losses, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtor, the Reorganized Debtor, or the Estate, whether known or unknown, asserted or unasserted, foreseen or unforeseen, liquidated or unliquidated, matured or unmatured, contingent or fixed, existing or hereinafter arising, in law, equity or otherwise, that the Debtor, the Reorganized Debtor, the Estate, or their affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Estate, the conduct of the Debtor's business, the Chapter 11 Case, the purchase, sale or rescission of the purchase or sale of any security of the Debtor or the Reorganized Debtor, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the Debtor's restructuring, the restructuring of any Claim or Interest before or during the Chapter 11 Case, the DIP Credit Facility Documents, the DIP Order, the Bridge Loan Documents, the Disclosure Statement, the Restructuring Support Agreements, any Restructuring Transactions and the Plan and related agreements, instruments, and other documents (including the Definitive Documents), and the negotiation, formulation, or preparation thereof, the solicitation of votes with respect to the Plan, or any other act or omission, in all cases based upon any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, including, without limitation, all Avoidance Actions; *provided* that nothing in Section 10.6(a) of the Plan

shall be construed to release the Released Parties from gross negligence, willful misconduct or intentional fraud as determined by a Final Order.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the foregoing release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that such release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims released thereby; (3) in the best interests of the Debtor and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to the Debtor, the Reorganized Debtor, or the Estate asserting any Claim or Cause of Action released pursuant to such release.

**(b) Releases by Holders of Claims or Interests**

Notwithstanding anything contained in the Plan to the contrary, on and after the Effective Date, except for the right to enforce the Plan or any right or obligation arising under the Definitive Documents that remains in effect after the Effective Date, effective as of the Effective Date and to the fullest extent permitted by applicable law, for good and valuable consideration provided by each of the Released Parties, the adequacy of which is confirmed by the Plan, the Releasing Parties are deemed to have fully, conclusively, absolutely and irrevocably released and discharged the Released Parties from any and all Claims, obligations, rights, suits, judgments, damages, demands, debts, rights, Causes of Action, remedies, losses, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtor, the Reorganized Debtor, or the Estate, whether known or unknown, asserted or unasserted, foreseen or unforeseen, liquidated or unliquidated, matured or unmatured, contingent or fixed, existing or hereinafter arising, in law, equity or otherwise, that any such Releasing Party would have been legally entitled to assert (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Estate, the conduct of the Debtor's business, the Chapter 11 Case, the purchase, sale or rescission of the purchase or sale of any security of the Debtor or the Reorganized Debtor, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the Debtor's restructuring, the restructuring of any Claim or Interest before or during the Chapter 11 Case, DIP Credit Facility Documents, the DIP Order, the Bridge Loan Documents, the Disclosure Statement, the Restructuring Support Agreements, any Restructuring Transactions and the Plan and related agreements, instruments, and other documents (including the Definitive Documents), and the negotiation, formulation, or preparation thereof, the solicitation of votes with respect to the Plan, or any other act or omission, in all cases based upon any act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, including, without limitation, all Avoidance Actions; *provided* that nothing in

**Section 10.6(b) of the Plan shall be construed to release the Released Parties from gross negligence, willful misconduct, or intentional fraud as determined by a Final Order.**

**Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the foregoing release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that such release is: (1) consensual; (2) essential to the confirmation of the Plan; (3) given in exchange for the good and valuable consideration provided by the Released Parties; (4) a good faith settlement and compromise of the Claims released thereby; (5) in the best interests of the Debtor and all holders of Claims and Interests; (6) fair, equitable, and reasonable; (7) given and made after due notice and opportunity for hearing; and (8) a bar to the Debtor, the Reorganized Debtor, or the Estate asserting any Claim or Cause of Action released pursuant to such release.**

## **7. Exculpation**

**To the extent permitted under 1125(e) of the Bankruptcy Code and New York Rules of Professional Conduct, notwithstanding anything herein to the contrary, and to the maximum extent permitted by other applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, remedy, loss, and liability for any claim in connection with or arising out of the administration of the Chapter 11 Case, the negotiation, formulation, preparation, and pursuit of the Disclosure Statement, the Restructuring Support Agreements, the DIP Credit Facility Documents, the DIP Order, the Bridge Loan Documents, the transactions relating to the Debtor's restructuring, the Plan, or the solicitation of votes for, or confirmation of, the Plan, the funding or consummation of the Plan (including the Plan Supplement), the Definitive Documents, the Restructuring Transactions, or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Distribution of any Securities issued or to be issued pursuant to the Plan, whether or not such Distribution occurs following the Effective Date, the occurrence of the Effective Date, negotiations regarding or concerning any of the foregoing, or the administration of the Plan or property to be distributed under the Plan, except for actions determined by Final Order to constitute gross negligence, willful misconduct, or intentional fraud. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting such Exculpated Parties from liability. Nothing in the Plan shall be deemed to be a release or waiver of the Reorganized Debtor's obligations under the Exit Facility Documents.**

## **8. Retention of Causes of Action/Reservation of Rights**

**Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, including pursuant to Section 10.6(a) of the Plan, the DIP Order, or a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtor shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date,**

including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtor's rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtor or the Reorganized Debtor will not pursue any and all available Causes of Action against them. The Debtor and the Reorganized Debtor expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, including pursuant to Section 10.6(a) of the Plan, the DIP Order, or a Bankruptcy Court order, the Reorganized Debtor expressly reserves all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the confirmation or consummation of the Plan. For the avoidance of doubt, in no instance will any Cause of Action preserved pursuant to Section 10.8 of the Plan include any claim or Cause of Action with respect to, or against, a Released Party.

In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action preserved pursuant to the first paragraph of Section 10.8 of the Plan that the Debtor may hold against any Entity shall vest in the Reorganized Debtor. The Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court. For the avoidance of doubt, the Debtor and the Reorganized Debtor shall not retain any Claims or Causes of Action released pursuant to the Plan against the Released Parties or arising under chapter 5 of the Bankruptcy Code (except that such Claims or Causes of Action may be asserted as a defense to a Claim in connection with the claims reconciliation and objection procedures pursuant to section 502(d) of the Bankruptcy Code or otherwise).

## **9. Solicitation of Plan**

As of and subject to the occurrence of the Confirmation Date: (a) the Debtor shall be deemed to have solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including sections 1125(a) and (e) of the Bankruptcy Code, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation, and (b) the Debtor and its respective directors, officers, employees, affiliates, agents, financial advisors, investment bankers, professionals, accountants, and attorneys shall be deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer and issuance of any Securities under the Plan, and therefore are not, and on account of such offer, issuance, and solicitation will not be, liable at any time for any violation of any applicable law,

rule, or regulation governing the solicitation of acceptances or rejections of the Plan or the offer and issuance of any Securities under the Plan.

Notwithstanding anything in the Plan to the contrary, as of the Effective Date, pursuant to section 1125(e) of the Bankruptcy Code, the Debtor and each of its affiliates, agents, representatives, members, principals, equityholders (regardless of whether such interests are held directly or indirectly), officers, directors, managers, employees, advisors and attorneys shall be deemed to have solicited acceptance of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, and to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code, in the offer, issuance, sale, or purchase of a security offered or sold under the Plan, and shall not be liable to any Person on account of such solicitation or participation.

#### **10. Reimbursement or Contribution**

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (a) such Claim has been adjudicated as noncontingent, or (b) the relevant holder of a Claim has filed a noncontingent proof of claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

#### **11. Recoupment**

In no event shall any holder of a Claim be entitled to recoup such Claim against any Claim, right, or Cause of Action of the Debtor or the Reorganized Debtor, as applicable, unless such holder actually has performed such recoupment and provided notice thereof in writing to the Debtor on or before the Confirmation Date, notwithstanding any indication in any proof of claim or otherwise that such holder asserts, has, or intends to preserve any right of recoupment.

#### **12. Subordination Rights**

Any Distributions to holders of Claims or Interests shall be received and retained free from any obligations to hold or transfer the same to any other holder and shall not be subject to levy, garnishment, attachment, or other legal process by any holder by reason of claimed contractual subordination rights. On the Effective Date, any such subordination rights shall be deemed waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan; *provided* that any such subordination rights shall be preserved in the event the Confirmation Order is vacated, the Effective Date does not occur in accordance with the terms of the Plan or the Plan is revoked or withdrawn.

**J. Retention of Jurisdiction**

**1. Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain non-exclusive jurisdiction over all matters arising under, or arising in, or relating to the Chapter 11 Case or the Plan to the fullest extent legally permissible by 28 U.S.C. § 1334 to hear, and by 28 U.S.C. § 157 to determine, all proceedings in respect thereof, including for the following purposes:

(a) to hear and determine motions and/or applications for the assumption or rejection of executory contracts or unexpired leases, including Assumption Disputes, and the allowance, classification, priority, compromise, estimation, or payment of Claims resulting therefrom;

(b) to determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the Confirmation Date, including, any proceeding with respect to a Cause of Action;

(c) to ensure that Distributions to holders of Allowed Claims are accomplished as provided for in the Plan and the Confirmation Order and to adjudicate any and all disputes arising from or relating to Distributions under the Plan;

(d) to consider the allowance, classification, priority, compromise, estimation, or payment of any Claim or Interest, including any Administrative Expense Claims;

(e) to enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(f) to issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Entity with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

(g) to hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(h) to hear and determine all Professional Fee Claims and any disputes related to Restructuring Expenses;

(i) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Restructuring Support Agreements, the Usage Stipulations (as defined in the Restructuring Support Agreements), the Rejection

Stipulations (as defined in the Restructuring Support Agreements), the Soft Landing Stipulations (as defined in the Restructuring Support Agreements), the Super-Soft Landing Stipulations (as defined in the Restructuring Support Agreements), the Plan, the Plan Supplement, the Confirmation Order, any transactions or payments contemplated herein, or any agreement, instrument, or other document governing or relating to any of the foregoing;

(j) to take any action and issue such orders as may be necessary to construe, interpret, enforce, implement, execute, and consummate the Plan;

(k) to determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(l) to hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including any requests for expedited determinations under section 505(b) of the Bankruptcy Code);

(m) to hear, adjudicate, decide, or resolve any and all matters related to Article X of the Plan, including the releases, discharge, exculpations, and injunctions issued thereunder;

(n) to enforce all orders previously entered by the Bankruptcy Court;

(o) to resolve disputes concerning Disputed Claims or the administration thereof;

(p) to hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code, including in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order, the Plan Supplement, or any document related to the foregoing;

(q) to enter a final decree closing the Chapter 11 Case;

(r) to recover all assets of the Debtor and property of the Estate, wherever located;

(s) to hear and determine any rights, Claims, or Causes of Action held by or accruing to the Debtor pursuant to the Bankruptcy Code or pursuant to any federal statute or legal theory; and

(t) to hear and resolve any dispute over the application to any Claim of any limit on the allowance of such Claim set forth in sections 502 or 503 of the Bankruptcy Code, other than defenses or limits that are asserted under non-bankruptcy law pursuant to section 502(b)(1) of the Bankruptcy Code; *provided* that, on and after the Effective Date and after the consummation of the following agreements or documents, the Bankruptcy Court shall not retain jurisdiction over matters arising out of or related to each of the Exit Facility Documents, the Amended Organizational Documents, and the New Stockholders' Agreement, and the Exit Facility Documents, the Amended Organizational Documents, and the New Stockholders' Agreement shall be governed by the respective jurisdictional provisions therein.



## **2. Courts of Competent Jurisdiction**

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of the Plan, such abstention, refusal, or failure of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

## **K. Miscellaneous Provisions**

### **1. Payment of Statutory Fees**

On the Effective Date and thereafter as may be required, the Reorganized Debtor shall (i) pay all fees incurred pursuant to section 1930 of chapter 123 of title 28 of the United States Code, together with interest, if any, pursuant to § 3717 of title 31 of the United States Code for the Debtor's case, and (ii) continue to file, or cause to be filed, with the Bankruptcy Court quarterly reports in accordance with the *Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees for Region 2*, until such time as a final decree is entered closing the Debtor's case, a Final Order converting the Debtor's case to a case under chapter 7 of the Bankruptcy Code is entered, or a Final Order dismissing the Debtor's case is entered.

### **2. Substantial Consummation of the Plan**

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

### **3. Expedited Determination of Taxes**

The Reorganized Debtor shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods of the Debtor through the Effective Date.

### **4. Exemption from Certain Transfer Taxes**

Pursuant to section 1146 of the Bankruptcy Code, (a) the issuance, transfer or exchange of any Securities or instruments, (b) the creation, filing or recording of any Lien, mortgage, deed of trust, or other security interest, (c) the making, assignment, filing or recording of any lease or sublease or the making or delivery of any deed, bill of sale, or other instrument of transfer under, pursuant to, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan or the reinvesting, transfer, or sale of any real or personal property of the Debtor pursuant to, in implementation of or as contemplated in the Plan (whether to the Reorganized Debtor or otherwise), (d) the grant of Collateral under the Exit Facility Documents, and (e) the issuance, renewal, modification, or securing of indebtedness in furtherance of, or in connection with, the Plan, including the Confirmation Order, shall not constitute a "transfer under a plan" within the purview of section 1146 of the Bankruptcy Code and shall not be subject to or taxed under any law imposing any document

recording tax, stamp tax, conveyance fee, or other similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, sales tax, use tax, or other similar tax or governmental assessment. Consistent with the foregoing, each recorder of deeds or similar official for any county, city, or Governmental Unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument without requiring the payment of any filing fees, documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax, or similar tax.

## **5. Amendments**

**(a) Plan Modifications.** Subject to the terms of the Restructuring Support Agreements and with the consent of the Tranche B DIP Lenders, (i) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend, modify or supplement the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code and (ii) after entry of the Confirmation Order, the Debtor may, upon order of the Bankruptcy Court, amend, modify, or supplement the Plan in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, in each case without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as the Bankruptcy Code may otherwise direct.

**(b) Other Amendments.** Subject to the Restructuring Support Agreements and with the consent of the Tranche B DIP Lenders, after the Confirmation Date, so long as such action does not materially adversely affect the treatment of holders of Claims or Interests hereunder, the Debtor may remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order with respect to such matters as may be necessary to carry out the purposes and effects of the Plan, and any holder of a Claim or Interest that has accepted the Plan shall be deemed to have accepted the Plan as amended, modified, or supplemented. Before the Effective Date, the Debtor may make appropriate technical adjustments and modifications to the Plan and the documents contained in the Plan Supplement without further order or approval of the Bankruptcy Court; *provided*, that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Interests and that any such technical adjustment or modification is consistent with the Restructuring Support Agreements, and *provided further* that the Debtor may not modify or seek to modify the treatment of the DIP Claims without the prior written consent of the Required Lenders (as defined in the DIP Credit Agreement).

## **6. Effectuating Documents and Further Transactions**

Each of the officers of the Reorganized Debtor is authorized, in accordance with his or her authority under the resolutions of the applicable board of directors or managers, to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

On or before the Effective Date, the Debtor may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further

evidence the terms and conditions of the Plan. The Debtor or the Reorganized Debtor, as applicable, and all holders of Claims receiving Distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

## **7. Revocation or Withdrawal of Plan**

Subject to the terms of the Restructuring Support Agreements, the Debtor reserves the right to revoke or withdraw the Plan prior to the Effective Date as to the Debtor. If the Plan has been revoked or withdrawn prior to the Effective Date, or if confirmation or the occurrence of the Effective Date as to the Debtor does not occur on the Effective Date, then, with respect to the Debtor: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing of or limiting an amount of any Claim or Interest or Class of Claims or Interests), assumption of executory contracts or unexpired leases affected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claim by or against, or any Interest in, the Debtor or any other Entity, (ii) prejudice in any manner the rights of the Debtor or any other Entity, or (iii) constitute an admission of any sort by the Debtor, any Supporting Creditor, any DIP Lender, the DIP Agent or any other Entity. This provision shall have no impact on the rights of the Supporting Creditors or the Debtor, as set forth in the Restructuring Support Agreements, or the DIP Lenders, DIP Agent or the Debtor, as set forth in the DIP Credit Facility Documents, in each case in respect of any such revocation or withdrawal.

## **8. Severability of Plan Provisions**

If, before the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, in each case at the election and the request of the Debtor, shall have the power (subject to the Restructuring Support Agreements) to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (a) valid and enforceable pursuant to its terms, (b) integral to the Plan and may not be deleted or modified without the consent of the Debtor or the Reorganized Debtor (as the case may be), and (c) nonseverable and mutually dependent.

## **9. Governing Law**

Except to the extent that the Bankruptcy Code or other U.S. federal law is applicable, or to the extent an exhibit or schedule hereto, or a schedule in the Plan Supplement or a Definitive Document provides otherwise, the rights, duties, and obligations arising under the

Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflict of laws thereof; *provided* that corporate or entity governance matters relating to the Debtor or the Reorganized Debtor shall be governed by the laws of the state or country of incorporation or organization of the Debtor or the Reorganized Debtor.

#### **10. Time**

In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth in the Plan or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

#### **11. Dates of Actions to Implement the Plan**

In the event that any payment or act under the Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

#### **12. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtor, the holders of Claims and Interests, the Released Parties, and each of their respective successors and assigns, including the Reorganized Debtor.

#### **13. Deemed Acts**

Subject to and conditioned on the occurrence of the Effective Date, whenever an act or event is expressed under the Plan to have been deemed done or to have occurred, it shall be deemed to have been done or to have occurred without any further act by any party, by virtue of the Plan and the Confirmation Order.

#### **14. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or permitted assign, if any, of each Entity.

#### **15. Entire Agreement**

On the Effective Date, the Plan, the Plan Supplement, and the Confirmation Order shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

**16. Exhibits to Plan**

All exhibits, schedules, supplements, and appendices to the Plan (including the Plan Supplement) are incorporated into and are a part of the Plan as if set forth in full therein.

**17. Reservation of Rights**

The Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

**18. Plan Supplement**

After any of such documents included in the Plan Supplement are filed, copies of such documents shall be made available upon written request to the Debtor's counsel at the address above or by downloading such exhibits and documents from the Voting Agent's website at [www.kccllc.net/PAL](http://www.kccllc.net/PAL) or the Bankruptcy Court's website at <https://www.pacer.gov/>.

**19. Waiver or Estoppel**

Each holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured or not subordinated by virtue of an agreement made with the Debtor or its counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, the Restructuring Support Agreements, or papers filed with the Bankruptcy Court prior to the Confirmation Date.

**20. Notices**

To be effective, all notices, requests, and demands to or upon the Debtor, or the DIP Agent, as applicable, shall be in writing (including by electronic or facsimile transmission) and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Philippine Airlines, Inc.  
PNB Financial Center  
President Diosdado Macapagal Avenue  
CCP Complex, Pasay City 1300  
Metro Manila, Philippines  
Attn: Nilo Thaddeus Rodriguez.  
Email: [nilo\\_rodriguez@pal.com.ph](mailto:nilo_rodriguez@pal.com.ph)

-and-

Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022  
Attn: Jasmine Ball, Esq.  
Nick S. Kaluk, III, Esq.  
Elie J. Worenklein, Esq.  
Email: jball@debevoise.com  
nskaluk@debevoise.com  
eworenklein@debevoise.com

If to the DIP Agent:

Buona Sorte Holdings, Inc.  
19F BDO Plaza 8737 Paseo de Roxas, Makati City,  
Metro Manila, Philippines

with a copy to:

White & Case LLP  
1221 Avenue of the Americas  
New York, New York 10020  
Attention: Todd Wolynski, Esq.  
Richard Kebrdle, Esq.  
Andrew Zatz, Esq.  
Email: todd.wolynski@whitecase.com  
rkebrdle@whitecase.com  
azatz@whitecase.com

After the occurrence of the Effective Date, the Reorganized Debtor has authority to send a notice to Entities that in order to continue to receive documents pursuant to Bankruptcy Rule 2002, such Entities must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the occurrence of the Effective Date, the Reorganized Debtor is authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities that have filed such renewed requests.

## **ARTICLE VI.**

### **TRANSFER RESTRICTIONS AND CONSEQUENCES UNDER FEDERAL SECURITIES LAWS**

The issuance of and the distribution under the Plan of the New Common Stock to holders of Allowed Class 3 Claims shall be exempt from registration under the Securities Act and any other applicable securities laws pursuant to section 1145 of the Bankruptcy Code.

Section 1145 of the Bankruptcy Code generally exempts from registration under the Securities Act the offer or sale under a chapter 11 plan of a security of the debtor, of an affiliate participating in a joint plan with the debtor, or of a successor to the debtor under a plan, if such securities are offered or sold in exchange for a claim against, or an interest in, the debtor or such affiliate, or principally in such exchange and partly for cash. Section 1145 of the Bankruptcy Code also exempts from registration the offer of a security through any right to subscribe sold in the manner provided in the prior sentence, and the sale of a security upon the exercise of such right. In reliance upon this exemption, the New Common Stock issued to holders of Allowed Class 3 Claims generally will be exempt from the registration requirements of the Securities Act, and state and local securities laws. These securities may be resold without registration under the Securities Act or other federal or state securities laws pursuant to the exemption provided by section 4(a)(1) of the Securities Act, unless the holder is an “underwriter” with respect to such securities, as that term is defined in section 1145(b) of the Bankruptcy Code. Thus, holders of securities issued pursuant to the Plan who are deemed to be “underwriters” as defined in section 1145(b) of the Bankruptcy Code may be limited in who they could transfer such securities. In addition, such section 1145 exempt securities generally may be resold without registration under state securities laws pursuant to various exemptions provided by the respective laws of the several states.

Section 1145(b) of the Bankruptcy Code defines “underwriter” for purposes of the Securities Act as one who, except with respect to ordinary trading transactions, (i) purchases a claim with a view to distribution of any security to be received in exchange for the claim, (ii) offers to sell securities issued under a plan for the holders of such securities, (iii) offers to buy securities issued under a plan from persons receiving such securities, if the offer to buy is made with a view to distribution, or (iv) is an issuer, as used in section 2(a)(11) of the Securities Act, with respect to such securities, which includes control persons of the issuer.

Notwithstanding the foregoing, control person underwriters may be able to sell securities without registration pursuant to the resale limitations of Rule 144 of the Securities Act which, in effect, permit the resale of securities received by such underwriters pursuant to a chapter 11 plan, subject to applicable volume limitations, notice and manner of sale requirements, and certain other conditions. Parties who believe they may be statutory underwriters as defined in section 1145 of the Bankruptcy Code are advised to consult with their own legal advisers as to the availability of the exemption provided by Rule 144.

In any case, recipients of new securities issued under the Plan are advised to consult with their own legal advisers as to the availability of any such exemption from registration under state law in any given instance and as to any applicable requirements or conditions to such availability.

The Debtor notes, however, that the stock issued under the Plan will not be listed on any exchange. There can be no assurance that an active trading market for the New Common Stock will develop. Accordingly, no assurance can be given that a holder of New Common Stock will be able to sell such securities in the future or as to the price at which any such sale may occur. If such markets were to exist, such securities could trade at prices higher or lower than the value ascribed to such securities in the Plan depending upon many factors, including

the prevailing interest rates, markets for similar securities, general economic and industry conditions, and the performance of, and investor expectations for, the Reorganized Debtor.

## **ARTICLE VII.**

### **CERTAIN TAX CONSEQUENCES OF PLAN**

#### **A. Introduction**

The following is a discussion of certain U.S. federal income tax consequences arising from the consummation of the Plan to certain U.S. Holders (as defined below) of Claims. This discussion is not a complete analysis of all potential U.S. federal income tax consequences arising from the consummation of the Plan and does not address any U.S. state or local or non-U.S. tax consequences or any U.S. federal estate, gift, alternative minimum or other tax consequences other than income tax consequences. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended (the “Code”), U.S. Treasury Regulations promulgated or proposed thereunder (the “Treasury Regulations”) and administrative and judicial interpretations thereof, all as in effect on the date hereof, and all of which are subject to change, possibly with retroactive effect, or to different interpretation. No ruling has been or will be sought from the Internal Revenue Service (the “IRS”), and no legal opinion of counsel will be rendered, with respect to any of the U.S. federal income tax consequences discussed below, and no assurance can be given that the IRS will not take a position contrary to any discussion below or that any such contrary position would not be sustained by a court.

This discussion does not address all of the U.S. federal income tax consequences that may be relevant to specific U.S. Holders in light of their particular circumstances or to such holders subject to special treatment under U.S. federal income tax law (such as banks, insurance companies, dealers in securities or other holders that generally mark their securities to market for U.S. federal income tax purposes, tax-exempt entities, retirement plans, regulated investment companies, real estate investment trusts, certain former citizens or residents of the United States, holders that hold their Claims as part of a straddle, hedge, conversion or other integrated transaction, holders that have a “functional currency” other than the U.S. dollar or holders that may own or may be deemed to own following the consummation of the Plan 10% or more (by vote or value) of New Common Stock).

As used in this discussion, the term “U.S. Holder” means a beneficial owner of a Claim that is entitled to vote on the Plan, which beneficial owner for U.S. federal income tax purposes is (i) an individual who is a citizen or resident of the United States, (ii) a corporation created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (iii) an estate the income of which is subject to U.S. federal income tax regardless of its source or (iv) a trust (x) with respect to which a court within the United States is able to exercise primary supervision over its administration and one or more United States persons have the authority to control all of its substantial decisions or (y) that has in effect a valid election under applicable Treasury Regulations to be treated as a United States person.



If an entity treated as a partnership (or other pass-through entity) for U.S. federal income tax purposes holds a Claim, the U.S. federal income tax consequences arising from the consummation of the Plan will depend in part upon the status and activities of such entity and the particular partner. Any such entity should consult its own tax advisor regarding the U.S. federal income tax consequences arising from the consummation of the Plan applicable to it and its partners.

The following discussion assumes that each instrument denominated as debt described herein will be treated as such for U.S. federal income tax purposes. In the event that an instrument denominated as debt were treated as equity for U.S. federal income tax purposes, the tax consequences described herein could be materially different.

The following discussion assumes that the Allowed Class 3 Claims held by U.S. Holders are denominated in U.S. dollars. In the event that a U.S. Holder holds an Allowed Class 3 Claim denominated in a currency other than U.S. dollars, the tax consequences to such U.S. Holder could be materially different from those described herein. Any such U.S. Holder should consult its own tax advisor regarding the tax consequences arising from the consummation of the Plan applicable to it.

The following discussion does not address the tax consequences of the receipt by a U.S. Holder or any other Person of any consideration other than as described in Article V above or any transaction undertaken by a U.S. Holder other than in its capacity as such holder.

THE FOLLOWING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED ON THE PARTICULAR CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. EACH HOLDER OF A CLAIM IS URGED TO CONSULT ITS OWN TAX ADVISORS AS TO THE U.S. FEDERAL INCOME TAX CONSEQUENCES, AS WELL AS OTHER TAX CONSEQUENCES, INCLUDING UNDER ANY APPLICABLE U.S. STATE OR LOCAL AND NON-U.S. LAW, OF THE CONSUMMATION OF THE PLAN TO SUCH HOLDER.

**B. Certain U.S. Federal Income Tax Consequences to the Debtor**

Generally, the Plan is not expected to have any material U.S. federal income tax consequences to the Debtor. Accordingly, this discussion does not address any U.S. federal income tax consequences relevant to the implementation of the Plan to the Debtor.

**C. Consequences of the Plan to U.S. Holders of Allowed Class 3 Claims**

**(a) General**

Pursuant to the Plan, each U.S. Holder of an Allowed Class 3 Claim will receive, in satisfaction of such Claim, its Pro Rata share of Unsecured New Equity Allocation, which consists of 20.5% of the New Common Stock.

**(b) Treatment of Exchange of Allowed Class 3 Claims for New Common Stock**

The U.S. federal income tax consequences of the Plan to U.S. Holders of Allowed Class 3 Claims will depend on whether the exchange of Allowed Class 3 Claims for New Common Stock pursuant to the Plan constitutes a taxable transaction or a tax-deferred transaction, such as recapitalization under section 368 of the Code.

If Allowed Class 3 Claims constitute “securities” for U.S. federal income tax purposes, the exchange of Allowed Class 3 Claims for New Common Stock may qualify as a recapitalization for U.S. federal income tax purposes. Whether a debt instrument is considered a security for such purposes is determined based on all of the facts and circumstances, but most authorities have held that the length of the term of a debt instrument is an important factor in determining whether such instrument is a security. Under the relevant authorities, a debt instrument with a term of less than five years generally would not be considered a security, while a debt instrument with a term of ten years or more generally would be considered a security for such purposes (unless other factors support non-security treatment). The treatment of a debt instrument with an initial term of five to ten years is uncertain. There are a number of other factors that could be taken into account in determining whether a debt instrument is a security. A U.S. Holder of an Allowed Class 3 Claim should consult its own tax advisor regarding the characterization of an Allowed Class 3 Claim as a security for U.S. federal income tax purposes.

If the exchange of Allowed Class 3 Claims for New Common Stock constitutes a recapitalization, U.S. Holders of Allowed Class 3 Claims that constitute securities generally would not recognize any gain or loss upon the exchange (other than potentially with respect to any New Common Stock treated as received in satisfaction of accrued but unpaid interest). In such case, a U.S. Holder’s tax basis in the New Common Stock received (other than any New Common Stock treated as received in satisfaction of accrued but unpaid interest) should be equal to the tax basis in the Allowed Class 3 Claims exchanged therefor, and the holding period for such New Common Stock should include the holding period for the exchanged Allowed Class 3 Claims. The remainder of this discussion assumes that the exchange of Allowed Class 3 Claims for New Common Stock does not constitute a recapitalization. However, each U.S. Holder of Allowed Class 3 Claims should consult its own tax advisor about the consequences to them that may apply in the event that the exchange of Allowed Class 3 Claims for New Common Stock pursuant to the Plan constitutes a recapitalization.

If the exchange of Allowed Class 3 Claims for New Common Stock does not constitute a recapitalization, a U.S. Holder of an Allowed Class 3 Claim generally will recognize gain or loss in an amount equal to the difference between (i) the fair market value of the New Common Stock received in the exchange (other than any New Common Stock treated as received in satisfaction of accrued but unpaid interest) and (ii) the U.S. Holder’s adjusted tax basis, if any, in such Allowed Class 3 Claim. Such gain or loss should be capital in nature so long as the Allowed Class 3 Claim is held as a capital asset (subject to the “market discount” rules discussed below under “—Market Discount”) and should be long-term capital gain or loss to the extent that the U.S. Holder has a holding period in such Allowed Class 3 Claim of more than one year. The deductibility of capital losses is subject to limitations. U.S. Holders of Allowed Class 3 Claims should consult their own tax advisors regarding the treatment of any capital losses. The U.S. Holder’s tax basis in the New Common Stock received should equal

the fair market value of the New Common Stock on the date received. The U.S. Holder's holding period in the New Common Stock received should begin on the day following the Effective Date. See the discussion below under "—Accrued but Unpaid Interest" regarding the U.S. federal income tax consequences relating to the receipt of New Common Stock attributable to accrued but unpaid interest.

### **Accrued but Unpaid Interest**

To the extent that any amount received by a U.S. Holder of an Allowed Class 3 Claim is attributable to accrued but unpaid interest, the receipt of such amount should be taxable to the U.S. Holder as ordinary interest income (to the extent that such accrued but unpaid interest has not previously been included in such U.S. Holder's income). A U.S. Holder may be entitled to recognize a loss to the extent any accrued interest previously included in its income is not paid in full. Such loss may be ordinary, but the tax law is unclear on this point.

If the fair market value of the New Common Stock received by a U.S. Holder is not sufficient to fully satisfy all principal and interest on such U.S. Holder's Allowed Class 3 Claims, the extent to which such New Common Stock will be attributable to accrued interest is unclear. Under the Plan, the aggregate consideration received in respect of Allowed Class 3 Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid interest, if any, that accrued on such Claims through the Effective Date. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan of reorganization is binding for U.S. federal income tax purposes, while certain Treasury Regulations treat payments as allocated first to any accrued but unpaid interest. Accordingly, the IRS could take the position that the consideration received by a U.S. Holder should be allocated in some way other than as provided in the Plan. U.S. Holders of Allowed Class 3 Claims should consult their own tax advisors regarding the proper allocation of the consideration received by them under the Plan.

### **Market Discount**

Under the "market discount" provisions of Sections 1276 through 1278 of the Code, some or all of the gain realized by a U.S. Holder on the exchange of an Allowed Class 3 Claim for New Common Stock may be treated as ordinary income (instead of capital gain), to the extent of the amount of accrued "market discount" on such Allowed Class 3 Claim.

Generally, a U.S. Holder has market discount on an Allowed Class 3 Claim to the extent that the "stated redemption price at maturity" of such Claim exceeds the U.S. Holder's initial tax basis in such Claim by more than a *de minimis* amount. Under the market discount rules, the U.S. Holder generally will be required to treat as ordinary income any gain on the taxable disposition of such Claim to the extent of any accrued market discount on such Claim. For this purpose, market discount generally will accrue ratably during the period from the date of acquisition of such Claim to the maturity date of such Claim, unless the U.S. Holder elects to accrue the market discount on such Claim under the constant yield method, which election, once made, is irrevocable.

### **Medicare Taxes**

In addition to regular U.S. federal income tax, certain U.S. Holders that are individuals, estates or trusts are subject to a 3.8% tax on all or a portion of their “net investment income,” which may include net gain recognized on the exchange of Allowed Class 3 Claims for New Common Stock pursuant to the Plan. U.S. Holders that are individuals, estates or trusts should consult their own tax advisors regarding the applicability of this tax to the exchange.

**(c) Consequences of the Plan to a U.S. Holder of the Ownership and Disposition of New Common Stock**

**Distributions**

A U.S. Holder that receives a distribution of cash or other property (other than certain distributions of the Debtor’s stock or rights to acquire the Debtor’s stock) with respect to New Common Stock generally will be required to include the amount of such distribution in gross income as a dividend (without reduction for any non-U.S. tax withheld from such distribution) to the extent of the Debtor’s current or accumulated earnings and profits (as determined for U.S. federal income tax purposes). To the extent the amount of such distribution exceeds the Debtor’s current and accumulated earnings and profits, it generally will be treated first as a non-taxable return of capital to the extent of such U.S. Holder’s adjusted tax basis in such New Common Stock and then as gain (which will be treated in the manner described below under “—Sale, Exchange or Other Disposition of New Common Stock”). The Debtor has not maintained and does not currently expect to maintain calculations of earnings and profits for U.S. federal income tax purposes. As a result, a U.S. Holder may need to include the entire amount of any such distribution in income as a dividend.

The amount of any distribution to a U.S. Holder on New Common Stock made in a currency other than U.S. dollars is the U.S. dollar value of the amount distributed translated at the spot rate of exchange on the date such distribution is received by such U.S. Holder. Such U.S. Holder generally will have a basis in such other currency equal to the U.S. dollar value of such currency on the date of such receipt. Any gain or loss on a conversion or other disposition of such other currency by such U.S. Holder generally will be treated as ordinary income or loss from sources within the United States.

A distribution on New Common Stock that is treated as a dividend generally will constitute income from sources outside the United States and generally will be categorized for U.S. foreign tax credit purposes as “passive category income” or, in the case of some U.S. Holders, as “general category income”. Such dividend will not be eligible for the “dividends received” deduction generally allowed to corporate shareholders with respect to dividends received from U.S. corporations. A U.S. Holder may be eligible to elect to claim a U.S. foreign tax credit against its U.S. federal income tax liability, subject to applicable limitations and holding period requirements, for any non-U.S. tax withheld from distributions received in respect of its New Common Stock. A U.S. Holder that does not elect to claim a U.S. foreign tax credit for non-U.S. income tax withheld may instead claim a deduction for such withheld tax, but only for a taxable year in which the U.S. Holder elects to do so with respect to all non-U.S. income taxes paid or accrued by such U.S. Holder in such taxable year. The rules

relating to U.S. foreign tax credits are very complex, and each U.S. Holder should consult its own tax advisor regarding the application of such rules.

A distribution on New Common Stock treated as a dividend that is received by an individual (or certain other non-corporate U.S. Holders) from a “qualified foreign corporation” generally qualifies for preferential rates of tax so long as (i) the distributing company is not a passive foreign investment company (as described below under “—Passive Foreign Investment Company Considerations”) during the taxable year in which the distribution is made or the preceding taxable year and (ii) certain holding period and other requirements are met. Dividends paid on New Common Stock should qualify for the preferential rates of tax if the Debtor is treated as a qualified foreign corporation and the conditions in clauses (i) and (ii) above are met. A non-U.S. corporation generally will be considered to be a qualified foreign corporation if it is eligible for the benefits of a comprehensive income tax treaty with the United States that the U.S. Treasury determines is satisfactory for purposes of this provision and that includes an exchange of information program. The tax treaty between the United States and the Philippines as currently in effect meets these requirements. The Debtor believes that it is currently eligible for the benefits of such tax treaty, but no assurance can be given that it will be so eligible at all times. Moreover, the IRS may disagree with the Debtor’s conclusion. Therefore, no assurance can be given that the Debtor will be treated as a qualified foreign corporation for these purposes and that such preferential rates of tax will apply to dividends paid on New Common Stock held by a U.S. Holder. Special rules apply with respect to dividends qualifying for the preferential rates for purposes of determining the recipient’s investment income (which may limit deductions for investment interest) and foreign income (which may affect the amount of U.S. foreign tax credit) and to certain extraordinary dividends. Each U.S. Holder that is a non-corporate taxpayer should consult its own tax advisor regarding the possible applicability of the preferential rates of tax and the related restrictions and special rules.

### **Sale, Exchange or Other Disposition of New Common Stock**

A U.S. Holder generally will recognize gain or loss for U.S. federal income tax purposes upon the sale, exchange or other disposition of New Common Stock in an amount equal to the difference, if any, between the amount realized on the sale, exchange or other disposition and such U.S. Holder’s adjusted tax basis in such New Common Stock. Any gain or loss so recognized generally will be capital gain or loss and will be long-term capital gain or loss if such U.S. Holder has held such New Common Stock for more than one year at the time of such sale, exchange or other disposition. Net long-term capital gain of certain non-corporate U.S. Holders generally is subject to preferential rates of tax. The deductibility of capital losses is subject to limitations. Such gain or loss generally will be from sources within the United States.

A U.S. Holder that receives currency other than U.S. dollars from the sale, exchange or other disposition of New Common Stock generally will realize an amount equal to the U.S. dollar value of such other currency translated at the spot rate of exchange on the settlement date of such sale, exchange or other disposition if (i) such U.S. Holder is a cash basis or electing accrual basis taxpayer and the New Common Stock is treated as being “traded on an

established securities market” or (ii) such settlement date is also the date of such sale, exchange or other disposition. Such U.S. Holder generally will have a basis in such other currency equal to the U.S. dollar value of such currency on the settlement date. Any gain or loss on a conversion or other disposition of such currency by such U.S. Holder generally will be treated as ordinary income or loss from sources within the United States. Each U.S. Holder should consult its own tax advisor regarding the U.S. federal income tax consequences of receiving currency other than U.S. dollars from the sale, exchange or other disposition of New Common Stock.

### **Passive Foreign Investment Company Considerations**

In general, a corporation organized outside the United States will be treated as a passive foreign investment company (“PFIC”) in any taxable year in which either (i) at least 75% of its gross income is “passive income” or (ii) on average at least 50% of the value of its assets is attributable to assets that produce passive income or are held for the production of passive income. Passive income for this purpose generally includes, among other things, dividends, interest, royalties, rents, and net gains from commodities transactions and from the sale or exchange of property that gives rise to passive income. In determining whether a non-U.S. corporation is a PFIC, a proportionate share of the income and assets of each corporation in which it owns, directly or indirectly, at least a 25% interest (by value) generally is taken into account.

The Debtor believes that it was not in 2020, and it does not currently expect to become, a PFIC for U.S. federal income tax purposes. However, because this determination is made annually at the end of each taxable year and is dependent upon a number of factors, some of which are beyond the Debtor’s control, such as the value of its assets (including goodwill) and the amount and type of its income, there can be no assurance that the Debtor will not be a PFIC in any taxable year or that the IRS will agree with the Debtor’s conclusion regarding its PFIC status in any taxable year. If the Debtor is a PFIC in any taxable year, U.S. Holders could suffer adverse consequences as discussed below.

If the Debtor is a PFIC in any taxable year during which a U.S. Holder owns New Common Stock, such U.S. Holder could be liable for additional taxes and interest charges upon certain distributions by the Debtor or upon a sale, exchange or other disposition of the New Common Stock at a gain, whether or not the Debtor continues to be a PFIC. The tax would be determined by allocating such distributions or gain ratably to each day of such U.S. Holder’s holding period. The amount allocated to the current taxable year and any holding period of such U.S. Holder prior to the first taxable year in which the Debtor is a PFIC would be taxed as ordinary income (rather than capital gain) earned in the current taxable year. The amount allocated to other taxable years would be taxed at the highest marginal rates applicable to ordinary income for each such taxable year, and an interest charge would also be imposed on the amount of taxes so derived for each such taxable year. In addition, a person who acquires New Common Stock from a deceased U.S. Holder who held such New Common Stock in a taxable year in which the Debtor was a PFIC generally would be denied the step-up of the tax basis in such New Common Stock for U.S. federal income tax purposes to the fair market value of such New Common Stock at the date of such deceased U.S. Holder’s death.

Instead, such person would have a tax basis in such New Common Stock equal to the lower of such fair market value or such deceased U.S. Holder's tax basis in such New Common Stock.

Certain elections may be available that would result in alternative treatments (such as mark-to-market treatment or "qualified electing fund" treatment) of New Common Stock. In order for a U.S. Holder to be able to make a "qualified electing fund" election, however, the Debtor would be required to provide such U.S. Holder with certain information. As the Debtor does not expect to provide U.S. Holders with the required information, prospective investors should assume that a "qualified electing fund" election would not be available.

If the Debtor is a PFIC in any taxable year during which a U.S. Holder owns New Common Stock, such U.S. Holder (i) may also suffer adverse tax consequences under the PFIC rules described above with respect to any other PFIC in which the Debtor has a direct or indirect equity interest and (ii) generally will be required to file annually a statement setting forth certain information with its U.S. federal income tax returns.

Each U.S. Holder should consult its own tax advisors regarding the U.S. federal income tax consequences of holding shares in a PFIC, including the potential extension of the period of limitations on assessment and collection of U.S. federal income taxes arising from a failure to file the statement described in the preceding paragraph.

### **Medicare Taxes**

In addition to regular U.S. federal income tax, certain U.S. Holders that are individuals, estates or trusts are subject to a 3.8% tax on all or a portion of their "net investment income," which may include all or a portion of their income arising from a distribution with respect to New Common Stock and net gain from the sale, exchange or other disposition of New Common Stock.

### **Information Reporting and Backup Withholding**

Under certain circumstances, information reporting and/or backup withholding may apply to U.S. Holders with respect to payments received pursuant to the Plan or in respect of New Common Stock, or proceeds from the sale, exchange or other disposition of New Common Stock, unless an applicable exemption is satisfied. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or a credit against a U.S. Holder's U.S. federal income tax liability if the required information is furnished by the U.S. Holder on a timely basis to the IRS.

### **Reportable Transactions**

A U.S. Holder that participates in any “reportable transaction” (as defined in U.S. Treasury regulations) must attach to its U.S. federal income tax return a disclosure statement on IRS Form 8886. U.S. Holders should consult their own tax advisors as to the possible obligation to file IRS Form 8886 with respect to the sale, exchange or other disposition of any currency other than U.S. dollars received as a distribution on New Common Stock or as proceeds from the sale, exchange or other disposition of New Common Stock.

**(d) Disclosure Requirements for Specified Foreign Financial Assets**

Individual U.S. Holders (and certain U.S. entities specified in U.S. Treasury regulations) who, during any taxable year, hold any interest in any “specified foreign financial asset” generally will be required to file with their U.S. federal income tax returns certain information on IRS Form 8938 if the aggregate value of all such assets exceeds certain specified amounts. “Specified foreign financial asset” generally includes any financial account maintained with a non-U.S. financial institution and may also include New Common Stock if it is not held in an account maintained with a financial institution. Substantial penalties may be imposed, and the period of limitations on assessment and collection of U.S. federal income taxes may be extended, in the event of a failure to comply. U.S. Holders should consult their own tax advisors as to the possible application to them of this filing requirement.

**(e) Consequences to a U.S. Holder of the Exchange of New Common Stock for Parent Interests**

The Debtor anticipates launching a mandatory exchange process of converting the New Common Stock into Parent Interests, within 12 months of the Effective Date (any such transaction, the “**Post-Emergence Conversion**”). The Post-Emergence Conversion will be subject to applicable regulatory approvals, including by the PSE, the Securities and Exchange Commission (SEC) of the Philippines, the Bureau of Internal Revenue’s certificate authorizing registration (CAR), and the satisfaction of certain other conditions.

This discussion assumes that, in light of the required regulatory approvals and certain other conditions precedent, the Post-Emergence Conversion will be treated for U.S. federal income tax purposes as a separate transaction from the exchange of Allowed Class 3 Claims for New Common Stock pursuant to the Plan. However, given the mandatory nature of the exchange process, this position is not free from doubt and no assurance can be given that the IRS will not take a position contrary, in which case the tax consequences to U.S. Holders of Allowed Class 3 Claims could be different from those described herein.

The U.S. federal income tax consequences of the exchange of New Common Stock for Parent Interests pursuant to the Post-Emergence Conversion will depend on whether such exchange constitutes a taxable transaction or a tax-deferred transaction, such as a contribution to capital under section 351 of the Code or a reorganization under section 368 of the Code. Assuming that the exchange of New Common Stock for Parent Interests pursuant to the Post-Emergence Conversion is treated as a taxable transaction, and subject to the discussion above under “—Passive Foreign Investment Company Considerations”, a U.S. Holder generally will



recognize gain or loss on the exchange in an amount equal to the difference between (i) the fair market value of the Parent Interests received in the exchange and (ii) the U.S. Holder's adjusted tax basis, if any, in the New Common Stock exchanged therefor. Such gain or loss should be capital in nature so long as the New Common Stock is held as a capital asset. The deductibility of capital losses is subject to limitations. The U.S. Holder's tax basis in the Parent Interests received should equal the fair market value of the Parent Interests on the date received, and the U.S. Holder's holding period in the Parent Interests received should begin on the following day.

The tax consequences to a U.S. Holder of the ownership and disposition of Parent Interests would be similar to those described above under “—Consequences of the Plan to a U.S. Holder of the Ownership and Disposition of New Common Stock” with respect to the New Common Stock.

Each U.S. Holder should consult its own tax advisor regarding the tax consequences of the Post-Emergence Conversion.

#### **D. Certain Philippine Tax Consequences to the Debtor**

The Debtor, as a corporation duly organized and existing under Philippine laws, is subject to Philippine taxes.

In the execution of a debt instrument, a documentary stamp tax (“DST”) is due at the rate of 0.75% on the issue price of such instrument. Philippine law broadly defines debts instruments. This term includes debentures, certificates of indebtedness, due bills, bonds, and loan agreements, including those signed abroad wherein the object of the contract is located or used in the Philippines. The party signing, issuing, accepting, or transferring the document, instrument or loan agreement wherever executed when the obligation or right arises from Philippine sources shall be liable to pay the DST. For the Plan, DST is due in the Philippines. The obligation arises from Philippine sources. The Debtor, as issuer of a debt instrument, is domiciled in the Philippines. Either one of the parties can be held liable for the DST. Whenever one of the parties is exempt from paying DST, the other party who is not exempt shall be liable for the tax.

For the original issuance of shares by the Debtor, the DST is one percent (1%) based on the par value of the shares of stock issued.

For purposes of the conversion of debt into equity, the valuation of the debt and the equity to be issued in exchange of the debt must be properly determined. If the debt will be revalued and/or impaired, effectively, the impaired value is not a taxable gain of the Debtor.

Under the regulations, the cancellation and forgiveness of indebtedness may amount to a payment of income, to a gift, or to a capital transaction. The tax treatment depends on whether the debtor performs services for a creditor, or the creditor merely desires to provide a gift to the debtor, or the cancellation is effectively a distribution of dividend by the creditor in favor of its shareholder debtor.

Under the Financial Rehabilitation and Insolvency Act of 2010 (“FRIA”), the “amounts of any indebtedness or obligations reduced or forgiven in connection with a Plan’s approval shall not be subject to any tax.” Although the Plan is not pursuant to FRIA, such tax treatment may apply where the creditor is compelled to reduce the indebtedness by way of compromise to implement the rehabilitation of the Debtor.

Further, the impairment of loan shall only result into a taxable income if there is an increase in the Debtor’s assets. This is in accordance with the basic and generally accepted principle of taxation. Taxable income is created from the inflow of wealth. In a ruling issued by the Bureau of Internal Revenue (“BIR”), it was explained that the cancellation of indebtedness will not give rise to taxable income where the debtor will remain in a capital deficiency position after the condonation. A transaction does not give rise to or create taxable income if the taxpayer (i.e., Debtor) does not receive anything of exchangeable value. There must be a gain or profit to be subject to income tax. If a debt is impaired due to the inability to pay by the Debtor, the impairment of debt will not be subject to income tax, provided the Debtor is in a capital deficit position after the impairment of debt.

#### **E. Certain Philippine Tax Consequences of the Plan to the Holders of Allowed Claims**

In cases of assignment or transfer or the renewal or continuance of any agreement, contract, charter, or any evidence of obligation or indebtedness, no DST shall be due if there is no change in the maturity date or remaining period of coverage from that of the original instrument.

On the part of each holder of an Allowed Claim, any impairment of its loan to the Debtor will have no donor’s tax consequence. As a rule, transfers for less than adequate and full consideration shall be deemed as a gift subject to six percent (6%) donor’s tax. Exchanges done in the ordinary course of business will not be considered as a donation, provided there is a bona fide transaction and the exchange is made at arm’s length without donative intent.

In the Plan, the parties are compelled to compromise considering the Debtor’s financial circumstances. Debt reduction or forgiveness is not a privilege, which the law considers to be the object of the tax. Further, the reduced debt may qualify for DST exemption not just under Section 19 of the FRIA but also under Section 199 of the Philippine Tax Code, being a “continuance of any agreement, contract, charter, or any evidence of obligation or indebtedness, if there is no change in the maturity date or remaining period of coverage from that of the original instrument.” Finally, there is no donative intent.

For purposes of the conversion of the debt into equity, 1% DST is due on the par value of the issued shares of stock.

After conversion and issuance of the New Common Stock, the sale of shares in an unlisted company by the creditors (now stockholders) is subject to capital gains tax and DST. For sale of shares listed and traded through a local stock exchange, there is 0.6% stock transaction tax based on gross selling price.

If the exchange will be through share swap, the tax treatment will be the same unless qualified for tax free exchange under Section 40(C)(2) of the Tax Code. The value of the subject shares shall be properly determined. The prima facie fair market value of the unlisted shares shall be its book value based on the latest available audited financial statements. For listed shares sold, transferred, or exchanged outside of the local stock exchange, their fair market value for tax purposes shall be the closing price on the day when the shares are sold, transferred, or exchanged. When no sale is made in the local stock exchange on the day when the listed shares are sold, transferred, or exchanged, the closing price on the day nearest to the date of sale, transfer or exchange of the shares shall be the fair market value.

The series of transactions under the Plan must be viewed as a whole for tax purposes. In case of audit, the BIR may consider the substance and entirety of the Plan. “The incidence of taxation depends upon the substance of a transaction. xxx To permit the true nature of the transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress.”

a. Individual Creditors

For Philippine citizen and/or resident creditors, the impairment of the loan to the Debtor can be claimed as tax deductible loss or expense. Section 34(E) of the Tax Code provides that:

“(1) In General. - Debts due to the taxpayer actually ascertained to be worthless and charged off within the taxable year except those not connected with profession, trade or business and those sustained in a transaction entered into between parties mentioned under Section 36 (B) of this Code: Provided, That recovery of bad debts previously allowed as deduction in the preceding years shall be included as part of the gross income in the year of recovery to the extent of the income tax benefit of said deduction.

(2) Securities Becoming Worthless. - If securities, as defined in Section 22 (T), are ascertained to be worthless and charged off within the taxable year and are capital assets, the loss resulting therefrom shall, in the case of a taxpayer other than a bank or trust company incorporated under the laws of the Philippines a substantial part of whose business is the receipt of deposits, for the purpose of this Title, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.”

Pursuant to Section 36(B) of the Tax Code, losses incurred between related parties are not allowed as tax deduction.

The Tax Code requires that the debt or loan must be actually worthless or impaired. Under the Plan, the loss due to impairment of a loan is realized and can be considered as tax deductible when such loan is converted into shares of stock, which have a value lower than the balance of the loan prior to the impairment or conversion into equity.

As to the conversion of a loan into equity, it is a capital investment. It does not qualify as a taxable income, as mentioned earlier. Hence, it is not subject to income tax. The

conversion is likewise not subject to donor's tax. There is no donative intent. The issuance of shares is subject to one percent (1%) DST on the par value of the shares issued.

After conversion of the debt, the creditors will be stockholders of the Debtor entitled to receive dividends. Cash and/or property dividends received by individual Filipino citizens and/or residents are subject to ten percent (10%) final withholding tax.

For subsequent sale of shares, fifteen percent (15%) capital gains tax shall be due on the net gain and 0.75% DST shall be due on the par value of the shares sold.

For non-resident foreign individual creditors who are engaged in trade or business in the Philippines, there shall be similar tax consequences except for their dividends. Cash and/or property dividends, if any, will be subject to twenty percent (20%) final withholding tax.

For non-resident foreign individual creditors who are not engaged in trade or business in the Philippines, there shall be similar tax consequences except they may not claim loss as deduction. 25% final withholding tax shall be due on their entire income from sources within the Philippines (including receipt of cash and/or property dividends from the Debtor). Preferential tax rate may apply depending on applicable Tax Treaty, if any. A person may avail of preferential treatment under a tax treaty, subject to compliance with the requirements provided under Revenue Memorandum Order No. 14-2021.

b. Domestic and/or Resident Corporations

The tax consequences are similar to the income tax consequences for Philippine individual citizens and/or residents. The loss on the actual reduction of claim shall be allowed as a tax deduction.

Inter-corporate cash and/or property dividends are subject to 0% tax.

The sale of shares is subject to fifteen percent (15%) capital gains tax based on the net gain, and to 0.75% DST on the par value of the shares.

c. Non-resident Foreign Corporations

The tax consequences are similar to the income tax consequences for domestic corporations and resident corporations, except the loss cannot be claimed as tax deduction. They may not claim tax deductible losses in determining taxable income. Twenty-five percent (25%) final withholding tax shall be due on the gross income received by the said creditors from all sources within the Philippines (including receipt of cash and/or property dividends from the Debtor).

A final withholding tax of fifteen percent (15%) will be imposed on cash and/or property dividends received, provided that the country in which the non-resident foreign corporation is domiciled shall allow a credit against the tax due from the said corporation's taxes deemed to have been paid in the Philippines. The deemed tax paid shall at least be equivalent to 15%, which represents the difference between the regular income tax and the 15% tax on dividends. Preferential tax rate may apply depending on applicable Tax Treaty, if

any. A non-resident foreign corporation may avail of preferential treatment under a tax treaty, subject to compliance with the requirements provided under Revenue Memorandum Order No. 14-2021.

#### **F. Information Reporting and Backup Withholding**

Information reporting generally will apply to payments to a U.S. Holder and Non-U.S. Holders pursuant to the Plan, unless such holder is an entity that is exempt from information reporting and, when required, demonstrates this fact. Any such payment to a U.S. Holder or a Non-U.S. Holder that is subject to information reporting generally will also be subject to backup withholding, unless such holder provides the appropriate documentation (generally, IRS Form W-9 or an appropriate IRS Form W-8) to the applicable withholding agent certifying, in the case of a U.S. Holder, that, among other things, its taxpayer identification number is correct, or otherwise establishes an exemption. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or a credit against a holder's U.S. federal income tax liability if the required information is furnished by such holder on a timely basis to the IRS.

Treasury Regulations generally require disclosure by a taxpayer of its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of certain thresholds. U.S. Holders are urged to consult their own tax advisors regarding these regulations and whether the contemplated transactions under the Plan would be subject to these regulations and require disclosure on U.S. Holders' tax returns.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A CLAIM IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS SHOULD CONSULT WITH THEIR OWN TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY U.S. STATE OR LOCAL OR NON-U.S. TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

### **ARTICLE VIII.**

#### **CERTAIN RISK FACTORS TO BE CONSIDERED**

Prior to voting to accept or reject the Plan, holders of Claims and Interests should read and carefully consider the risk factors set forth below, in addition to the information set forth in this Disclosure Statement together with any attachments, exhibits, or documents incorporated by reference hereto. The factors below should not be regarded as the only risks associated with the Plan or its implementation.

## **A. Certain Bankruptcy Law Considerations**

### **1. General**

Although the Debtor believes that the Chapter 11 Case will be of short duration and will not be materially disruptive to its business, the Debtor cannot be certain that this will be the case. Although the Plan is designed to minimize the length of the Chapter 11 Case, it is impossible to predict with certainty the amount of time that the Debtor may spend in bankruptcy or to assure parties in interest that the Plan will be confirmed. Even if confirmed on a timely basis, bankruptcy proceedings to confirm the Plan could have an adverse effect on the Debtor's business. Among other things, it is possible that bankruptcy proceedings could adversely affect the Debtor's relationships with its key vendors, customers, and employees. The proceedings will also involve additional expense and may divert some of the attention of the Debtor's management away from business operations.

### **2. Risk of Non-Confirmation of Plan**

Although the Debtor believes that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that modifications to the Plan will not be required for confirmation or that such modifications would not necessitate re-solicitation of votes. Moreover, the Debtor can make no assurances that it will receive the requisite acceptances to confirm the Plan, and even if the Class entitled to vote on the Plan (the "**Voting Class**") votes in favor of the Plan or the requirements for "cramdown" are met with respect to any Class that rejects the Plan, the Bankruptcy Court, which may exercise substantial discretion as a court of equity, may choose not to confirm the Plan. If the Plan is not confirmed, it is unclear what distributions (if any) holders of Claims or Interests ultimately would receive with respect to their Claims or Interests in a subsequent plan of reorganization.

### **3. Risk of Failing to Satisfy the Vote Requirement**

In the event that the Debtor is unable to get sufficient votes from the Voting Class, the Debtor may seek to accomplish an alternative chapter 11 plan or seek to cram down the Plan on the non-accepting class. There can be no assurance that the terms of any such alternative chapter 11 plan would be similar or as favorable to holders of Allowed Claims and Interests as those proposed in the Plan.

### **4. Risk of Non-Consensual Confirmation**

In the event that all impaired Classes do not accept or are deemed not to accept the Plan, the Bankruptcy Court may nevertheless confirm such Plan if at least one impaired Class has accepted the Plan (with such acceptance being determined without including the vote of any "insider" in such class), and as to each impaired class that has not accepted the Plan, the Bankruptcy Court determines that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes. Should any Class vote to reject the

Plan, then these requirements must be satisfied with respect to such rejecting Classes. The Debtor believes that the Plan satisfies these requirements.

**5. Risk of Non-Occurrence of Effective Date**

Although the Debtor believes that the Effective Date will occur soon after the Confirmation Date, there can be no assurance as to the timing of the Effective Date. In particular, there is no certainty regarding the timing to obtain the necessary approvals to issue the New Common Stock from the Philippine Securities Exchange Commission. If the conditions precedent to the Effective Date set forth in the Plan have not occurred or have not been waived as set forth in Article IX of the Plan, then the Confirmation Order may be vacated, in which event no distributions would be made under the Plan, the Debtor and all holders of Claims or Interests would be restored to the status quo as of the day immediately preceding the Confirmation Date, and the Debtor's obligations with respect to Claims and Interests would remain unchanged.

**6. Risk of Termination of Restructuring Support Agreements**

The Restructuring Support Agreements contain certain provisions that give the parties thereto the ability to terminate the applicable Restructuring Support Agreement if certain events occur. As noted above, termination of the Restructuring Support Agreements could result in a protracted Chapter 11 Case, which could significantly and detrimentally impact the Debtor's relationships with vendors, suppliers, employees, and customers.

**7. Risk Related to Parties in Interest Objecting to the Debtor's Classification of Claims and Interests**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtor believes that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, there can be no assurance that a party in interest will not object or that the Bankruptcy Court will approve the classifications.

**8. Risk Related to Possible Objections to the Plan**

There is a risk that certain parties could oppose and object to either the entirety of the Plan or specific provisions of the Plan. Although the Debtor believes that the Plan complies with all relevant Bankruptcy Code provisions, there can be no guarantee that a party in interest will not file an objection to the Plan or that the Bankruptcy Court will not sustain such an objection, which may have a material negative impact on the value of the Reorganized Debtor.

**9. Conversion to Chapter 7 Case**

If no plan of reorganization can be confirmed, or if the Bankruptcy Court otherwise finds that it would be in the best interest of holders of Claims and Interests, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a

trustee would be appointed to liquidate the Debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. See Article XI hereof, as well as the Liquidation Analysis attached hereto as **Exhibit C**, for a discussion of the effects that a chapter 7 liquidation would have on the recoveries of holders of Claims and Interests.

**10. Plan Releases, Injunctions, and Exculpations May Not be Approved**

There can be no assurances that the Plan releases, injunctions, and exculpations as provided for in Article X of the Plan, will be granted. Failure of the Bankruptcy Court to grant such relief may result in a plan of reorganization that differs from the Plan or the Plan not being confirmed.

**11. The Ability to Enforce U.S. Judgments and Court Orders Outside of the United States May be Limited**

The Debtor is a Philippine company with most of its assets, directors and officers located in the Philippines. While the Debtor believes that sufficient legal grounds exist to enforce any U.S. court judgment in the Philippines, a third party may nevertheless attempt to argue that such U.S. court judgments are unenforceable in the Philippines or that a separate order from a Philippine Court would be required, and in such situation, it is possible that a Philippine court would find a U.S. court judgment to be unenforceable against persons or assets in the Philippines. Accordingly, the ability to pursue remedies in the Philippines may be limited as compared to the ability to pursue remedies against a U.S. company and its assets, directors and officers. Similarly, the Debtor may also have difficulty enforcing a U.S. court judgment in any other non-U.S. court, as it is also possible that such non-U.S. court would find a U.S. court judgment to be unenforceable against persons or assets in such non-U.S. jurisdictions.

**12. Risk the Philippine Court will not Recognize the Chapter 11 Case and the Confirmation Order**

Although the Debtor believes that the Philippine Court will grant the Debtor's petition for recognition of the Chapter 11 Case and the Confirmation Order, there can be no assurance that the Philippine Court will reach the same conclusion. Recognition of the Chapter 11 Case and the Confirmation Order are requirements for the Plan to go effective under the Plan. Accordingly, failure for the Philippine Court to grant recognition could have an impact on the ability to consummate the Plan.

**B. Additional Factors Affecting Value of Reorganized Debtor**

**1. Claims Could Be More than Projected**

There can be no assurance that the estimated Allowed amount of Claims in certain Classes will not be significantly more than projected, which, in turn, could cause the value of distributions to be reduced substantially. Inevitably, some assumptions will not materialize, and unanticipated events and circumstances may affect the ultimate results. Therefore, the actual



amount of Allowed Claims may vary from the Debtor's projections and feasibility analysis, and the variation may be material.

## **2. Projections and Other Forward-Looking Statements Are Not Assured, and Actual Results May Vary**

Certain of the information contained in this Disclosure Statement is, by nature, forward-looking, and contains (i) estimates and assumptions which might ultimately prove to be incorrect, and (ii) projections which may be materially different from actual future experiences. There are uncertainties associated with any projections and estimates, and they should not be considered assurances or guarantees of the amount of funds or the amount of Claims in the various Classes that might be Allowed.

### **C. Risks Relating to Debtor's Business and Financial Condition**

#### **1. Liquidity Needs**

The Debtor has substantial liquidity needs in the operation of its business and faces significant liquidity challenges. Accordingly, the Debtor believes that its cash and cash equivalents will remain under pressure during 2021 and thereafter.

A number of other factors, including the Debtor's financial results in the recent year due to the COVID-19 pandemic, its indebtedness, and the difficult travel environment the company faces adversely affect the availability and terms of funding that might be available to the Debtor upon emergence from the Chapter 11 Case. As a result of these and other factors, there can be no assurances that the Debtor will be able to source capital at acceptable rates and on acceptable terms, if at all, to fund future operations. An inability to obtain necessary additional funding on acceptable terms would have a material adverse impact on the Debtor and on its ability to sustain its operations upon emergence from chapter 11.

#### **2. Continued Disruptions Caused by the COVID-19 Pandemic**

Global financial markets have experienced significant volatility and losses as a result of the ongoing COVID-19 pandemic. This pandemic, and the actions taken by federal, state and local governments in response thereto, have significantly affected virtually all facets of the global economy. Restrictions on, and public concern regarding, travel and public interaction have materially curtailed air passenger travel. The COVID-19 pandemic resulted in the temporary grounding of the Debtor's passenger fleet and may result in extended groundings in the future. With specific reference to the Debtor's hub in the Philippines, quota restrictions on international arriving passengers have been imposed and continue to be imposed effectively limiting the ability of the Debtor to ramp up its inbound international arrivals.

Quarantines and other measures imposed in response to the COVID-19 outbreak, as well as ongoing concern regarding the virus' potential impact, have had and will likely continue to have a negative effect on economies and financial markets, including supply chain issues and other business disruptions. The timely delivery of goods to the Debtor by its suppliers could be adversely affected by supply chain disruptions. The Debtor expects that the COVID-19

pandemic will materially affect results in the current and potentially future operating periods; however, the duration and extent of potential disruptions is highly uncertain and will depend on future developments with respect to, among other things, the pace of ongoing worldwide vaccination efforts, the formation of new variants of the virus, the efficacy of vaccines with respect to new variants of the virus, and the spread and severity of the virus. An extended period of further economic deterioration could exacerbate the other risks described herein. Additional effects of the recent conditions in the global economy include higher rates of unemployment, consumer hesitancy, and limited availability of credit, each of which may constrict the Debtor's business operations.

These have had a material effect on the Debtor's revenue growth and incoming payments, and the impact may continue. If these or other conditions limit the Debtor's ability to grow revenue or cause the Debtor's revenue to decline and the Debtor cannot reduce costs on a timely basis or at all, the Debtor's operating results may be materially and adversely affected.

### **3. Competition in the airline industry**

The airline industry is highly competitive, including in the markets in which the Debtor operates. The restructuring contemplated by the Plan includes steps to optimize the Debtor's fleet, network redesign, and financial restructuring. Given the industry and economic environment, however, it is possible that major competitors will implement their own restructuring initiatives. The effects of other airlines' restructuring actions on the Debtor's competitive cost position cannot yet be determined. Because the airline industry is highly competitive, there can be no assurance that the Reorganized Debtor will be able to preserve their current market positions.

In addition, the Debtor's major foreign airline competitors received direct financial aid or guarantee and loan facilities from their respective governments ensuring their liquidity during the pandemic. Such benefits place these competitors in a better competitive position than the Debtor.

### **4. Codeshare Agreements**

Codeshare Agreements will be critical to Debtor's revenue generation as it optimizes its network. Any material modification to, or termination of, the Debtor's codeshare agreements with any of its codeshare partners could have a material, adverse impact upon the Debtor's financial and operating performance and cash flows. In particular, a material modification or termination of the Debtor's ability to continue its codeshare agreement with Air Philippines Corp. d/b/a PAL Express, could have a material, adverse impact upon the Debtor's financial and operating performance and cash flows. In addition, in the event these codeshare agreements are terminated or otherwise materially modified, the Debtor is unable to assure that it would be able to enter into substitute codeshare arrangements, or that any such substitute arrangements would be as favorable to the Debtor as the current codeshare agreements.

## **5. Changes to the Debtor's Business Model**

The Debtor devotes significant attention and resources to restructuring its current business. However, if it is unable to simplify its current operations in a manner that allows the Debtor to maintain cost synergies, or if such simplification takes longer or costs more than expected, this could reduce the Debtor's earnings or adversely affect its business and financial results. A prolonged simplification process could also result in the loss of key employees, diversion of management's attention, disruption, or interruption of, or the loss of momentum in the Debtor's business or inconsistencies in standards, controls, procedures, and policies, any of which could adversely affect the Debtor's ability to maintain relationships with customers and employees.

## **6. Substantial Aircraft Indebtedness**

Even after the implementation of the restructuring contemplated by the Plan, the Debtor's substantial aircraft indebtedness may limit its financial and operating activities, and may require the Debtor to dedicate a substantial portion of cash flow from operations to the payment of principal and interest on indebtedness and thereby reduce the funds available for operations and future business opportunities, make it more difficult for the Debtor to satisfy its payment and other obligations under its indebtedness, limit the Debtor's ability to borrow additional money for working capital, capital expenditures, acquisitions, or other purposes, if needed, and increase the cost of any of these borrowings, and reduce the Debtor's flexibility in planning for or responding to changing business and economic conditions.

The Debtor has historically needed substantial liquidity to fund the growth of its business, and its indebtedness may adversely affect its ability to incur additional debt to fund future needs.

## **7. Dependency on Original Equipment Manufacturers**

The Debtor relies heavily on certain original equipment manufacturers ("OEMs") who supply critical aircraft parts. The Debtor's operations could be materially adversely affected by the failure or inability of an OEM to provide sufficient parts or related support services on a timely basis or by an interruption of fleet service as a result of unscheduled or unanticipated maintenance requirements for its aircraft.

## **8. Attrition and Loss of Key Personnel**

Negative events or publicity associated with the Chapter 11 Case could adversely affect the Debtor's relationships with its employees and lead to higher turnover. In addition, such negative events or publicity could adversely affect the Debtor's ability to attract qualified personnel. This could continue to have adverse effects on the Debtor's results of operations and financial condition if the company is not able to fulfill its contractual obligations under the capacity purchase agreements with the Debtor's Partners

Moreover, the Debtor's business depends upon the efforts of its Chief Executive Officer, Lucio Tan, and its other key management and operating personnel. It may have difficulty replacing management or other key personnel who leave and, therefore, the loss of the services of any of these individuals could harm its business.

#### **9. Increases in Labor Costs**

Labor costs constitute a significant percentage of the Debtor's fixed operating costs, and the Debtor has experienced pressure to increase wages and benefits for its employees. A significant increase in the Debtor's labor could result in a material reduction of the Debtor's earnings and cash flows.

The Debtor has collective bargaining agreements with its flight attendants (42.7%) and ground personnel (14.0%), which make up approximately 56.7% of the Debtor's workforce. The Debtor cannot assure that future agreements with its employees' unions will be on terms in line with the Debtor's expectations or comparable to agreements entered into by the Debtor's competitors, and any future agreements may increase the Debtor's labor costs and reduce its income and competitiveness for future business opportunities.

#### **10. Accident Risk**

In light of the Debtor's business, it is possible that one or more of its aircraft may crash or be involved in an accident in the future, causing death or serious injury to individual air travelers and its employees and destroying the aircraft and the property of third parties. If one of its aircraft were to crash or be involved in an accident, the Debtor would be exposed to significant tort liability. Such liability could include liability arising from the claims of passengers or their estates seeking to recover damages for death or injury. There can be no assurance that the insurance the Debtor carries to cover such damages will be adequate. Accidents could also result in unforeseen mechanical and maintenance costs. Any accident involving an aircraft that the Debtor operates could create a public perception that its aircraft are not safe, which could result in air travelers being reluctant to fly on its aircraft and a decrease in revenues. Such a decrease could materially adversely affect the Debtor's financial condition, results of operations and the price of its common stock.

#### **11. Technology Costs and Risks**

The Debtor has become increasingly dependent on technology initiatives to reduce costs, attract the best human capital, and compete in the current business environment. The performance and reliability of its technology are critical to its ability to compete effectively. Technology initiatives will continue to require significant capital investments in order to deliver these expected benefits. If the Debtor is unable to make these investments or the expected benefit does not materialize, its business and operations could be negatively affected.

In addition, any internal technological error or failure or large scale external interruption in the technology infrastructure the Debtor depends on, such as power, telecommunications or the internet, may disrupt its internal network. Any individual, sustained or repeated failure of

technology could impact its customer service and result in increased costs. Like most companies, the Debtor's technology systems and related data may be vulnerable to a variety of sources of interruption due to events beyond its control, including natural disasters, terrorist attacks, telecommunications failures, computer viruses, hackers and other security issues. Although the Debtor has in place, and continues to invest in, technology security initiatives and disaster recovery plans, these measures may not be adequate or implemented properly to prevent a business disruption and mitigate the resulting adverse financial consequences.

## **D. Certain Risks Associated with the Airline Industry**

### **1. Factors Beyond Airline's Control**

Generally, revenues for airlines depend on the number of passengers carried, the fare paid by each passenger, and service factors, such as the timeliness of departure and arrival. Demand for air travel could weaken in response to the COVID-19 pandemic and it is not possible to predict how the travel industry in general, and the airline industry in particular, will respond to the prolong impacts of the pandemic. Economic weakness in the United States and international economies could have a significant negative impact on the Debtor's results of operations. In addition, during periods of fog, ice, low temperatures, storms, or other adverse weather conditions, flights may be canceled or significantly delayed. Further, the cost of certain expenses, particularly the cost of jet fuel, could have a significant impact on the profitability of the Debtor's operations.

### **2. Strikes**

The airline industry has been negatively impacted by a number of labor strikes. Any new collective bargaining agreement entered into by other carriers may result in higher industry wages and increase pressure on the Debtor to increase the wages and benefits of its employees. Furthermore, since each of the Debtor's codeshare partners represents a significant source of its operating revenues, any labor disruption or labor strike by the employees of any one of its codeshare partners could have a material adverse effect on the Debtor's financial condition, results of operations, and the price of its common stock.

### **3. Regulations**

Airlines are subject to extensive regulatory and legal compliance requirements, both domestically and internationally, that involve significant costs. In the last several years, the FAA has issued a number of directives and other regulations relating to the maintenance and operation of aircraft that have required the Debtor to make significant expenditures. FAA requirements cover, among other things, retirement of older aircraft, security measures, collision avoidance systems, airborne wind shear avoidance systems, noise abatement, commuter aircraft safety, and increased inspection and maintenance procedures to be conducted on older aircraft.

The Debtor incurs substantial costs in maintaining its current certifications and otherwise complying with the laws, rules and regulations to which it is subject. It cannot predict whether it will be able to comply with all present and future laws, rules, regulations and

certification requirements or that the cost of continued compliance will not significantly increase its costs of doing business.

The FAA has the authority to issue mandatory orders relating to, among other things, pilot rest rules, the grounding of aircraft, inspection of aircraft, installation of new safety-related items and removal, replacement or modification of aircraft parts that have failed or may fail in the future. A decision by the FAA to ground, or require time consuming inspections of or maintenance on, all or any of the Debtor's aircraft, for any reason, could negatively impact the Debtor's results of operations.

In addition to state and federal regulations, airports and municipalities enact rules and regulations that affect the Debtor's operations. Additional laws, regulations, taxes, and airport rates and charges have been proposed from time to time that could significantly increase the cost of airline operations or reduce revenues.

#### **4. Government Security Concerns**

Historically, the Debtor's operations were adversely affected by previous safety concerns imposed on the Philippine aviation industry such as the downgrading of the Philippines by the FAA in 2008 from Category 1 to Category 2. This prevented Philippine carriers, including the Debtor, from expanding its Transpacific routes. Following the decision of the FAA, the EU thereafter placed all Philippine carriers on the EU aviation blacklist on March 30, 2010. This prevented the Debtor from expanding its network to the EU.

In 2017 to 2018, a series of security concerns were issued against the Philippines by Australia, Canada, Japan, South Korea, U.K. and the U.S. affecting passenger demand. This culminated to security requirements on passenger screening for flights emanating from the Philippines to Australia, U.S. and U.K., which increased the operating costs of the Debtor to these routes.

The imposition of similar security concerns in the future will certainly have an impact on the ability of the Debtor to expand its operations.

#### **5. Bilateral Relations**

Air traffic rights between states are primarily governed by bilateral air transport agreements. In the case of the Debtor, its international air traffic rights depend on the terms of the air services agreements between the Philippines and other states and their actual implementation. There may be instances when contracting states change or even violate the terms of their air services agreement to protect their domestic airlines or further their own national interest. Although air services agreements contain dispute settlement mechanisms, the procedure is usually lengthy and requires extensive commitment and support from the government. As such, resolution of disputes mainly depends on the cooperation and common agreement between contracting states. In the event of any dispute between the Philippines and other states regarding the implementation of air services agreements, the Debtor's air traffic rights may become limited which in turn may affect its capability to operate certain international routes or enter into commercial agreements with other airlines.

## **6. Competition**

Within the airline industry, the Debtor not only competes with other international airlines, some of which are owned by or operated as partners of major airlines, but it also faces competition from low-fare airlines and major airlines on many of its routes, including carriers that fly point to point instead of to or through a hub.

In addition, some of the Debtor's competitors are larger and have significantly greater financial and other resources than the Debtor. Moreover, federal deregulation of the industry allows competitors to rapidly enter the Debtor's markets and to quickly discount and restructure fares. The airline industry is particularly susceptible to price discounting because airlines incur only nominal costs to provide service to passengers occupying otherwise unsold seats.

In addition to traditional competition among airlines, the industry faces competition from video teleconferencing and other methods of electronic communication. New advances in technology may add a new dimension of competition to the industry as business travelers seek lower-cost substitutes for air travel.

## **7. Certain Risks that Cannot be Covered by Insurance**

There are certain business risks that cannot be insured or that, in line with industry practice, the Debtor may leave uninsured, including business interruption, loss of profit or revenue, maintenance and consequential losses arising from mechanical breakdowns or losses related to the non-performance of suppliers or repair shops. To the extent actual losses incurred by the Debtor arise from these uninsured risks, the Debtor may have to bear substantial losses, which may have a material adverse effect on the Debtor's business, financial condition and operating results.

In the future, certain insurance coverage could become more expensive, unavailable or available only for reduced amounts or in respect of limited events that are not sufficient to comply with the levels required by, among others, the Debtor's aircraft lessors, financiers or applicable government regulations. Any inability to obtain insurance on commercially acceptable terms could adversely affect the Debtor's business, financial condition and operating results and potentially cause the Debtor to ground its aircraft and/or to lose possession of leased or securitized aircraft in favor of the lenders.

Furthermore, the Debtor cannot assure that its existing coverage will be sufficient to protect against all potential losses, that the Debtor will be able to maintain its existing coverage in the future or that the premiums will not increase substantially, any of which could have a material adverse effect on the Debtor's business, operating results or financial condition.

**E. Factors Relating to Securities to be Issued Under Plan Generally**

**1. No Current Public Market for Securities**

There is currently no market for the New Common Stock, and there can be no assurance as to the development or liquidity of any market for any such securities. The Reorganized Debtor is under no obligation to list any securities on any national securities exchange. Therefore, there can be no assurance that any of the foregoing securities will be tradable or liquid at any time after the Effective Date. If a trading market does not develop or is not maintained, holders of the foregoing securities may experience difficulty in reselling such securities or may be unable to sell them at all. Even if such a market were to exist, such securities could trade at prices higher or lower than the estimated value set forth in this Disclosure Statement depending upon many factors including, without limitation, prevailing interest rates, markets for similar securities, industry conditions, and the performance of, and investor expectations for, the Reorganized Debtor. Accordingly, holders of these securities may bear certain risks associated with holding securities for an indefinite period of time.

**2. Potential Dilution**

The ownership percentage represented by the New Common Stock distributed on the Effective Date under the Plan may be subject to dilution from the conversion of any options, convertible securities, exercisable securities, or other securities that may be issued post-emergence.

In the future, similar to all companies, additional equity financings or other share issuances by any of the Reorganized Debtor could adversely affect the value of the New Common Stock issuable upon such conversion. The amount and dilutive effect of the foregoing could be material.

**F. Risks Related to Investment in New Common Stock**

**1. Significant Holders**

The Tranche B Dip Lenders are expected to acquire 79.5% of the New Common Stock pursuant to the Plan. If such holders were to act as a group, such holders would be in a position to control the outcome of all actions requiring stockholder approval, including the election of directors, without the approval of other stockholders. This concentration of ownership could also facilitate or hinder a negotiated change of control of the Reorganized Debtor and, consequently, have an impact upon the value of the New Common Stock.

**2. Interests Subordinated to Reorganized Debtor's Indebtedness**

In any subsequent liquidation, dissolution, or winding up of the Reorganized Debtor, the New Common Stock will rank below all debt claims against the Reorganized Debtor. As a result, holders of the New Common Stock will not be entitled to receive any payment or other distribution of assets upon the liquidation, dissolution, or winding up of the Reorganized



Debtor until after all the Reorganized Debtor's obligations to its debt holders have been satisfied.

### **3. Implied Valuation of New Common Stock Not Intended to Represent Trading Value of New Common Stock**

The valuation of the Reorganized Debtor may not represent the trading value of the New Common Stock in public or private markets and is subject to additional uncertainties and contingencies, all of which are difficult to predict. Actual market prices of such securities at issuance will depend upon, among other things: (a) prevailing interest rates; (b) conditions in the financial markets; (c) the anticipated initial securities holdings of prepetition creditors, some of whom may prefer to liquidate their investment rather than hold it on a long-term basis; and (d) other factors that generally influence the prices of securities. The actual market price of the New Common Stock is likely to be volatile. Many factors, including factors unrelated to the Reorganized Debtor's actual operating performance and other factors not possible to predict, could cause the market price of the New Common Stock to rise and fall. Accordingly, the implied value, stated herein and in the Plan, of the securities to be issued does not necessarily reflect, and should not be construed as reflecting, values that will be attained for the New Common Stock in the public or private markets, as applicable.

### **4. No Intention to Pay Dividends**

The Reorganized Debtor does not anticipate paying any dividends on the New Common Stock as it expects to retain any future cash flows for debt reduction and to support its operations. As a result, the success of an investment in the New Common Stock will depend entirely upon any future appreciation in the value of the New Common Stock. There is, however, no guarantee that the New Common Stock will appreciate in value or even maintain its initial value.

### **5. The New Common Stock May be Subject to Further Dilution**

In the future, the Reorganized Debtor may issue equity securities in connection with future investments, acquisitions, or capital raising transactions. Such issuances or grants could constitute a significant portion of the then-outstanding common stock, which may result in a dilution in ownership of common stock, including shares of New Common Stock issued pursuant to the Plan.

### **6. Post-Emergence Conversion**

The Plan contemplates that within 12 months of the Effective Date, the Debtor will convert the New Common Stock into Parent Interests, which are publicly traded. There are no assurances that the necessary conditions and approvals for the contemplated exchange will be satisfied. Accordingly, holders of these securities may bear certain risks associated with holding the New Common Stock for an extended period of time if the conversion is not consummated.

**G. Additional Factors**

**1. Litigation Risk**

In the future, the Reorganized Debtor may become a party to litigation. In general litigation can be expensive and time consuming to bring or defend against. Such litigation could result in settlements or damages that could significantly affect the Debtor's financial results and projections. It is also possible that despite discharge or injunction, parties outside of the United States may nevertheless choose to proceed with claims against the Reorganized Debtor. It is not possible to predict the potential litigation that the Reorganized Debtor may become party to, nor the final resolution of such litigation. The impact of any such litigation on the Reorganized Debtor's business and financial stability, however, could be material.

**2. Debtor Could Withdraw Plan**

Subject to the terms of, and without prejudice to, the rights of any party to the Restructuring Support Agreements, the Plan may be revoked or withdrawn prior to the Confirmation Date by the Debtor.

**3. Debtor Has No Duty to Update**

The statements contained in this Disclosure Statement are made by the Debtor as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Debtor has no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

**4. No Representations Outside Disclosure Statement Are Authorized**

No representations concerning or related to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than those contained in, or included with, this Disclosure Statement should not be relied upon in making the decision to accept or reject the Plan.

**5. No Legal or Tax Advice Is Provided by Disclosure Statement**

The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each Claim or Interest holder should consult their own legal counsel and accountant as to legal, tax, and other matters concerning their Claim or Interest.

This Disclosure Statement is not legal advice to you. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

## **6. No Admission Made**

Nothing contained herein or in the Plan will constitute an admission of, or will be deemed evidence of, the tax or other legal effects of the Plan on the Debtor or holders of Claims or Interests.

## **7. Certain Tax Consequences**

For a discussion of certain tax considerations to the Debtor and certain holders of Claims in connection with the implementation of the Plan, see Article VII hereof.

# **ARTICLE IX.**

## **VOTING PROCEDURES AND REQUIREMENTS**

### **A. Voting Instructions and Voting Deadline**

Only holders of Class 3 Claims (General Unsecured Claims) are entitled to vote to accept or reject the Plan. The Debtor is providing copies of this Disclosure Statement (including all exhibits and appendices) and related materials and a ballot (collectively, a **“Solicitation Package”**) to record holders of Class 3 Claims.

Each ballot contains detailed voting instructions. Each ballot also sets forth in detail, among other things, the deadlines, procedures, and instructions for voting to accept or reject the Plan, the Voting Record Date for voting purposes, and the applicable standards for tabulating ballots. The Voting Record Date for determining which holders are entitled to vote on the Plan is November 12, 2021, the date of the Disclosure Statement hearing.

Please complete the information requested on the ballot, sign, date, and indicate your vote on the ballot, and return the completed ballot in accordance with the instructions set forth on the ballot.

**FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE ACTUALLY RECEIVED BY THE VOTING AGENT NO LATER THAN 4:00 P.M. PREVAILING EASTERN TIME ON DECEMBER 10, 2021 (THE “VOTING DEADLINE”).**

**AN OTHERWISE PROPERLY COMPLETED, EXECUTED, AND TIMELY RETURNED BALLOT FAILING TO INDICATE EITHER ACCEPTANCE OR REJECTION OF THE PLAN OR INDICATING BOTH ACCEPTANCE AND REJECTION OF THE PLAN WILL NOT BE COUNTED IN DETERMINING THE ACCEPTANCE OR REJECTION OF THE PLAN.**

If you are a holder of a Claim that is entitled to vote on the Plan and you did not receive a ballot, received a damaged ballot, or lost your ballot, or if you have any questions concerning the procedures for voting on the Plan, please contact Kurtzman Carson Consultants LLC (the **“Voting Agent”**) at (i) calling (866) 967-0671 (U.S./Canada) or +1 (310) 751-2671 (international); or (ii) by emailing [PALInfo@kccllc.com](mailto:PALInfo@kccllc.com). Copies of the Plan and the Disclosure

Statement may be obtained free of charge by visiting the website maintained by the Debtor's Voting Agent at [www.kccllc.net/PAL](http://www.kccllc.net/PAL).

THE PLAN PROVIDES THAT THE FOLLOWING HOLDERS ARE DEEMED TO HAVE GRANTED THE RELEASES THEREIN: (I) THE HOLDERS OF IMPAIRED CLAIMS OR INTERESTS WHO ABSTAIN FROM VOTING ON THE PLAN, OR VOTE TO REJECT THE PLAN, AND DO NOT OPT OUT OF THESE RELEASES ON THE BALLOTS; (II) THE HOLDERS OF UNIMPAIRED CLAIMS OR INTERESTS WHO DO NOT OPT OUT OF GRANTING THE RELEASES; (III) THE HOLDERS OF IMPAIRED CLAIMS OR INTERESTS WHO VOTE TO ACCEPT THE PLAN; (IV) THE SUPPORTING CREDITORS; AND (V) THE OTHER RELEASING PARTIES.

#### **B. Parties Entitled to Vote**

Pursuant to the provisions of the Bankruptcy Code, only holders of allowed claims or equity interests in classes of claims or equity interests that are impaired and that are not deemed to have rejected a chapter 11 plan are entitled to vote to accept or reject such plan. Classes of claims or equity interests in which the holders of claims or equity interests are unimpaired under a chapter 11 plan are deemed to have accepted such plan and are not entitled to vote to accept or reject such plan. For a detailed description of the treatment of Claims and Interests under the Plan, *see* Article V hereof.

The Debtor will request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code over the deemed rejection of the Plan by Existing Equity Interests. Section 1129(b) of the Bankruptcy Code permits the confirmation of a chapter 11 plan notwithstanding the rejection of such plan by one or more impaired classes of claims or equity interests. Under section 1129(b), a plan may be confirmed by a bankruptcy court if it does not "discriminate unfairly" and is "fair and equitable" with respect to each rejecting class. For a more detailed description of the requirements for confirmation of a nonconsensual plan, *see* Article XI(C)(ii) hereof.

Claims in Class 3 (General Unsecured Claims) of the Plan are impaired are entitled to vote to accept or reject the Plan. Claims in all other Classes are either (i) unimpaired and presumed to accept or (ii) impaired and deemed to reject the Plan and are not entitled to vote.

#### **C. Agreements Upon Furnishing Ballots**

The delivery of an accepting ballot pursuant to one of the procedures set forth above will constitute the agreement of the Claim holder with respect to such ballot to accept (i) all of the terms of, and conditions to, the Solicitation; and (ii) the terms of the Plan including the injunction, releases, and exculpations set forth in Sections 10.5, 10.6 and 10.7 therein. All parties in interest retain their right to object to confirmation of the Plan, subject to any applicable terms of the Restructuring Support Agreements.

**D. Change of Vote**

Except as provided in the Restructuring Support Agreements, any party that has previously submitted to the Voting Agent prior to the Voting Deadline a properly completed ballot may revoke such ballot and change its vote by submitting to the Voting Agent prior to the Voting Deadline a subsequent, properly completed ballot for acceptance or rejection of the Plan.

**E. Waivers of Defects, Irregularities, etc.**

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawals of ballots will be determined by the Voting Agent and/or the Debtor, as applicable, in their sole discretion, which determination will be final and binding. The Debtor reserves the right to reject any and all ballots submitted by any of its respective Claim or Interest holders not in proper form, the acceptance of which would, in the opinion of the Debtor or their counsel, as applicable, be unlawful. The Debtor further reserves its rights to waive any defects or irregularities or conditions of delivery as to any particular ballot by any of its creditors. The interpretation (including the ballot and the respective instructions thereto) by the Debtor, unless otherwise directed by the Bankruptcy Court, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with deliveries of ballots must be cured within such time as the Debtor (or the Bankruptcy Court) determine. Neither the Debtor nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of ballots nor will any of them incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will be invalidated.

**F. Miscellaneous**

Unless otherwise ordered by the Bankruptcy Court, ballots that are signed, dated, and timely received, but on which a vote to accept or reject the Plan has not been indicated, will not be counted. The Debtor, in its sole discretion, may request that the Voting Agent attempt to contact such voters to cure any such defects in the ballots. If you return more than one ballot voting different Claims, the ballots are not voted in the same manner, and you do not correct this before the Voting Deadline, those ballots will not be counted. An otherwise properly executed ballot that attempts to partially accept and partially reject the Plan will not be counted as an acceptance of the Plan.

The ballots provided to eligible holders will reflect the principal amount of such eligible holder's Claim; however, when tabulating votes, the Voting Agent may adjust the amount of such holder's Claim by multiplying the principal amount by a factor that reflects all amounts accrued between the Voting Record Date and the Petition Date including, without limitation, interest.

Under the Bankruptcy Code, for purposes of determining whether the requisite acceptances have been received, only holders of the Class 3 Claims that actually vote will be counted. The failure of a holder to deliver a duly executed ballot to the Voting Agent will be deemed to constitute an abstention by such holder with respect to voting on the Plan and such abstention will not be counted as a vote for or against the Plan.

Except as provided below, unless the ballot is timely submitted to the Voting Agent before the Voting Deadline together with any other documents required by such ballot, the Debtor may, in their sole discretion, reject such ballot as invalid, and therefore decline to utilize it in connection with seeking confirmation of the Plan.

## **ARTICLE X.**

### **CONFIRMATION OF PLAN**

#### **A. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court to hold a confirmation hearing upon appropriate notice to all required parties. On, or as promptly as practicable after, the Petition Date, the Debtor will request that the Bankruptcy Court schedule the Confirmation Hearing. Notice of the Confirmation Hearing will be provided to all known creditors and equity holders or their representatives. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjourned date made at the Confirmation Hearing, at any subsequent adjourned Confirmation Hearing, or pursuant to a notice filed on the docket of the Chapter 11 Case.

#### **B. Objections to Confirmation**

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to the confirmation of a plan. Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules and applicable local rules, must set forth the name of the objector, the nature and amount of Claims or Interests held or asserted by the objector against the Debtor's estate or property, the basis for the objection and the specific grounds thereof, and must be filed with the Bankruptcy Court by no later than December 10, 2021 at 4:00 p.m. (the "**Plan Objection Deadline**") with a copy to the chambers of the United States Bankruptcy Judge appointed to the Chapter 11 Case, together with proof of service thereof, and served upon the following parties, including such other parties as the Bankruptcy Court may order:

##### **1. The Debtor at:**

Philippine Airlines, Inc.  
PNB Financial Center, President Diosdado Macapagal Avenue, CCP  
Complex, Pasay City 1300

Metro Manila, Philippines  
Attn: Nilo Thaddeus Rodriguez

**2. Office of the U.S. Trustee at:**

Office of the United States Trustee for the Southern District of New  
York  
201 Varick Street, Room 1006  
New York, NY 10014  
Attn: Susan A. Arbeit, Esq.

**3. Counsel to the Debtor at:**

Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 1022  
Attn: Jasmine Ball, Esq., Nick S. Kaluk III, Esq., and Elie J.  
Worenklein, Esq.

-and-

Norton Rose Fulbright US LLP  
1301 Avenue of the Americas  
New York, NY 10019  
Attn: David Rosenzweig, Esq. and Francisco Vazquez, Esq.

**4. Counsel to the DIP Lenders at:**

White & Case LLP  
1221 Avenue of the Americas  
New York, NY 10020  
Attn: Todd Wolynski, Esq., Richard Kebrdle, Esq., and Andrew Zatz,  
Esq.

<p><b>UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.</b></p>
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**C. Requirements for Confirmation of Plan**

**1. Requirements of Section 1129(a) of the Bankruptcy Code**

**(a) General Requirements**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the confirmation requirements specified in section 1129(a) of the Bankruptcy Code have been satisfied including, without limitation, whether:

(i) the Plan complies with the applicable provisions of the Bankruptcy Code;

(ii) the Debtor has complied with the applicable provisions of the Bankruptcy Code;

(iii) the Plan has been proposed in good faith and not by any means forbidden by law;

(iv) any payment made or promised by the Debtor or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment made before confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable;

(v) the Debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director or officer of the Reorganized Debtor, an affiliate of the Debtor participating in a Plan with the Debtor, or a successor to the Debtor under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of the holders of Claims and Interests and with public policy, and the Debtor has disclosed the identity of any insider who will be employed or retained by the Reorganized Debtor, and the nature of any compensation for such insider;

(vi) with respect to each Class of Claims or Interests, each holder of an impaired Claim or impaired Interest has either accepted the Plan or will receive or retain under the Plan, on account of such holder's Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtor was liquidated on the Effective Date under chapter 7 of the Bankruptcy Code;

(vii) except to the extent the Plan meets the requirements of section 1129(b) of the Bankruptcy Code (as discussed further below), each Class of Claims either accepted the Plan or is not impaired under the Plan;

(viii) except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that administrative expenses and priority Claims, other than Priority Tax Claims, will be paid in full on the Effective Date, and that Priority Tax



Claims will receive either payment in full on the Effective Date or deferred cash payments over a period not exceeding five years after the Petition Date, of a value, as of the Effective Date of the Plan, equal to the Allowed amount of such Claims;

(ix) at least one Class of impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in such Class;

(x) confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan; and

(xi) all fees payable under section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of all such fees on the Effective Date.

**(b) Best Interests Test**

As noted above, with respect to each impaired class of claims and equity interests, confirmation of a plan requires that each such holder either (i) accept the plan, or (ii) receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the value such holder would receive or retain if the debtor was liquidated under chapter 7 of the Bankruptcy Code. This requirement is referred to as the “best interests test.”

This test requires a Bankruptcy Court to determine what the holders of allowed claims and allowed equity interests in each impaired class would receive from a liquidation of the debtor’s assets and properties in the context of a liquidation under chapter 7 of the Bankruptcy Code. To determine if a plan is in the best interests of each impaired class, the value of the distributions from the proceeds of the liquidation of the debtor’s assets and properties (after subtracting the amounts attributable to the aforesaid claims) is then compared with the value offered to such classes of claims and equity interests under the plan.

The Debtor believes that under the Plan all holders of impaired Claims and Interests will receive property with a value not less than the value such holders would receive in a liquidation under chapter 7 of the Bankruptcy Code. The Debtor’s belief is based primarily on (i) consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to holders of impaired Claims and Interests, and (ii) the Liquidation Analysis attached hereto as Exhibit C.

The Debtor believes that any liquidation analysis is speculative, as it is necessarily premised on assumptions and estimates, which are inherently subject to significant uncertainties and contingencies, many of which would be beyond the control of the Debtor. The Liquidation Analysis provided in Exhibit C is solely for the purpose of disclosing to holders of Claims and Interests the effects of a hypothetical chapter 7 liquidation of the Debtor, subject to the assumptions set forth therein. There can be no assurance as to values that would actually be

realized in a chapter 7 liquidation nor can there be any assurance that a bankruptcy court will accept the Debtor's conclusions or concur with such assumptions in making its determinations under section 1129(a)(7) of the Bankruptcy Code.

**(c) Feasibility**

Also as noted above, section 1129(a)(11) of the Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization. For purposes of determining whether the Plan meets this requirement, the Debtor has analyzed their ability to meet their obligations under the Plan. As part of this analysis, the Debtor has prepared the Financial Projections provided in Exhibit D. Based upon such Financial Projections, the Debtor believes it will have sufficient resources to make all payments required pursuant to the Plan and that confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization. Moreover, Article VIII hereof sets forth certain risk factors that could impact the feasibility of the Plan.

**(d) Equitable Distribution of Voting Power**

On or before the Effective Date, pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, the organizational documents for the Debtor will be amended as necessary to satisfy the provisions of the Bankruptcy Code and will include, among other things, pursuant to section 1123(a)(6) of the Bankruptcy Code, (i) a provision prohibiting the issuance of non-voting equity securities, and (ii) a provision setting forth an appropriate distribution of voting power among classes of equity securities possessing voting power.

**2. Additional Requirements for Non-Consensual Confirmation**

In the event that any impaired Class of Claims or Interests does not accept or is deemed to reject the Plan, the Bankruptcy Court may still confirm the Plan at the request of the Debtor if, as to each impaired Class of Claims or Interests that has not accepted the Plan, the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to such Classes of Claims or Interests, pursuant to section 1129(b) of the Bankruptcy Code. Both of these requirements are in addition to other requirements established by case law interpreting the statutory requirements.

Pursuant to the Plan, holders of Interests in Class 8 (Existing Equity Interests) will not receive a distribution and are thereby deemed to reject the Plan. However, the Debtor submits that they satisfy the "unfair discrimination" and "fair and equitable" tests, as discussed in further detail below. The Debtor further notes that the overwhelming majority of Existing Equity Interests are held either directly or indirectly by the DIP Lenders.

**(a) Unfair Discrimination Test**

The "unfair discrimination" test applies to Classes of Claims or Interests that are of equal priority and are receiving different treatment under the Plan. A chapter 11 plan does not discriminate unfairly, within the meaning of the Bankruptcy Code, if the legal rights of a dissenting Class are treated in a manner consistent with the treatment of other Classes whose

legal rights are substantially similar to those of the dissenting Class and if no Class of Claims or Interests receives more than it legally is entitled to receive for its Claims or Interests. This test does not require that the treatment be the same or equivalent, but that such treatment be “fair.”

The Debtor believes the Plan satisfies the “unfair discrimination” test. Claims of equal priority are receiving comparable treatment and such treatment is fair under the circumstances.

**(b) Fair and Equitable Test**

The “fair and equitable” test applies to classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the allowed amount of the claims in such class. As to dissenting classes, the test sets different standards depending on the type of claims in such class. The Debtor believes that the Plan satisfies the “fair and equitable” test with respect to any dissenting Classes, as further explained below.

**(i) Secured Creditors**

The Bankruptcy Code requires that each holder of an impaired secured claim either (a) retain its liens on the property to the extent of the allowed amount of its secured claim and receive deferred cash payments having a value, as of the effective date of the plan, of at least the allowed amount of such claim, or (b) have the right to credit bid the amount of its claim if its property is sold and retain its liens on the proceeds of the sale (or if sold, on the proceeds thereof), or (c) receive the “indubitable equivalent” of its allowed secured claim. The Plan provides that each holder of an impaired secured Claim in Class 2 shall receive, on account of its allowed Claim, (i) Cash in an amount equal to the Allowed amount of such Claim, (ii) Reinstatement of such holder’s Allowed Other Secured Claim, or (iii) such other treatment sufficient to render such holder’s Allowed Other Secured Claim Unimpaired.

**(ii) Unsecured Creditors**

The Bankruptcy Code requires that either (a) each holder of an impaired unsecured claim receive or retain under the plan property of a value equal to the amount of its allowed claim or (b) the holders of claims and equity interests that are junior to the claims of the dissenting class not receive any property under the plan. The Plan provides that each holder of an impaired unsecured Claim in Class 3 shall receive, on account of its Allowed Claim, its Pro Rata share of 20.5% of the New Common Stock.

**(iii) Equity Interests**

The Bankruptcy Code requires that either (a) each holder of an equity interest receive or retain under the plan property of a value equal to the greater of (i) the fixed liquidation preference or redemption price, if any, of such stock and (ii) the value of the stock, or (b) the holders of equity interests that are junior to any dissenting class of equity interests not receive any property under the plan. Pursuant to the Plan, all Intercompany Claims shall be Reinstated, and all Existing Equity Interest Claims shall not receive a distribution.

## **ARTICLE XI.**

### **ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF PLAN**

The Debtor has evaluated several alternatives to the Plan. After studying these alternatives, the Debtor has concluded that the Plan is the best alternative and will maximize recoveries to parties in interest, assuming confirmation and consummation of the Plan. If the Plan is not confirmed and consummated, the alternatives to the Plan are (i) the preparation and presentation of an alternative plan of reorganization, (ii) a sale of some or all of the Debtor's assets pursuant to section 363 of the Bankruptcy Code, or (iii) a liquidation under chapter 7 of the Bankruptcy Code.

#### **A. Alternative Plan of Reorganization**

If the Plan is not confirmed, the Debtor (or if the Debtor's exclusive period during which to file a plan of reorganization has expired, any other party in interest) could attempt to formulate a different plan. Such a plan might involve either a reorganization or continuation of the Debtor's business or an orderly liquidation of the Debtor's assets. The Debtor, however, submits that the Plan, as described herein, enables its creditors and interest holders to realize the most value under the circumstances.

#### **B. Sale Under Section 363 of Bankruptcy Code**

If the Plan is not confirmed, the Debtor could seek from the Bankruptcy Court, after notice and a hearing, authorization to sell their assets under section 363 of the Bankruptcy Code. The DIP Lenders and other secured creditors would likely be entitled to credit bid on any property to which their security interests are attached to the extent of the value of their security interests, and to offset their Claims against the purchase price of the property. Upon analysis and consideration of this alternative, the Debtor does not believe a sale of its assets under section 363 of the Bankruptcy Code would yield a higher recovery for holders of Claims and Interests than the Plan.

#### **C. Liquidation Under Chapter 7 or Applicable Non-Bankruptcy Law**

If no plan can be confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code in which a trustee would be appointed to liquidate the assets of the Debtor for distribution to the Debtor's creditors in accordance with the priorities established by the Bankruptcy Code. The effect a chapter 7 liquidation would have on the recovery of holders of Allowed Claims and Interests is set forth in the Liquidation Analysis attached hereto as Exhibit C.

As noted in the Liquidation Analysis, attached hereto as Exhibit C, the Debtor believes that liquidation under chapter 7 would result in smaller distributions to creditors and interest holders than those provided for in the Plan because of the delay resulting from the conversion of the case and the additional administrative expenses associated with the appointment of a trustee and the trustee's retention of professionals that would be required to become familiar

with the many legal and factual issues in the Chapter 11 Case.

**ARTICLE XII.**

**CONCLUSION AND RECOMMENDATION**

The Debtor believes the Plan is in the best interests of all stakeholders and urges the holders of Claims in Class 3 to vote in favor thereof.

Dated: November 9, 2021

Respectfully submitted,

**PHILIPPINE AIRLINES, INC.**

By: /s/ Nilo Thaddeus Rodriguez  
Name: Nilo Thaddeus Rodriguez  
Title: Chief Financial Officer

**EXHIBIT A**

**Plan**

**EXHIBIT B**

**Disclosure Statement Order**



**EXHIBIT C**

**Liquidation Analysis**

## **LIQUIDATION ANALYSIS**

### **Introduction**

Under the “best interests of creditors” test set forth in section 1129(a)(7) of the Bankruptcy Code, the Bankruptcy Court may not confirm a plan of reorganization unless the plan provides each holder of an allowed claim or interest that does not otherwise vote in favor of the plan with property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

To demonstrate that the Plan satisfies the best interests of creditors test, the Debtor, with the assistance of its restructuring advisors, has prepared the hypothetical liquidation analysis (the “Liquidation Analysis”), which is based upon certain assumptions discussed in the Disclosure Statement and accompanying notes to the Liquidation Analysis.

The Liquidation Analysis sets forth an estimated recovery for Claims and Interests upon disposition of assets pursuant to a hypothetical chapter 7 liquidation. As illustrated by the Liquidation Analysis, holders of Claims in certain Unimpaired Classes that would receive a full recovery under the Plan would receive less than a full recovery in a hypothetical liquidation. Additionally, holders of Claims or Interests in Impaired Classes would receive a lower recovery in a hypothetical liquidation than they would under the Plan. Further, no holder of a Claim or Interest would receive or retain property under the Plan of a value that is less than such holder would receive in a chapter 7 liquidation. Accordingly, and as set forth in greater detail below, the Debtor believes that the Plan satisfies the “best interests of creditors” test set forth in section 1129(a)(7) of the Bankruptcy Code.

### **Statement of Limitations**

The preparation of a liquidation analysis is an uncertain process involving the use of estimates and assumptions that, although considered reasonable by the Debtor based upon its business judgment and input from its advisors, are inherently subject to significant business, economic, and competitive risks, uncertainties, and contingencies, most of which are difficult to predict and many of which are beyond the control of the Debtor, its management, and its advisors. Inevitably, some assumptions in the Liquidation Analysis would not materialize in an actual chapter 7 liquidation, and unanticipated events and circumstances could materially affect the ultimate results in an actual chapter 7 liquidation. The Liquidation Analysis was prepared for the sole purpose of generating a reasonable, good faith estimate of the proceeds that would be generated, and the recoveries that would result, if the Debtor’s assets were liquidated in accordance with chapter 7 of the Bankruptcy Code. The Liquidation Analysis is not intended and should not be used for any other purpose. The underlying financial information in the Liquidation Analysis and values stated herein have not been subject to any review, compilation, or audit by any independent accounting firm. In addition, various liquidation decisions upon which certain assumptions are based are subject to change. As a result, the actual amount of claims against the Debtor’s estate could vary significantly from the estimates stated herein, depending on the nature and amount of claims asserted during the pendency of the chapter 7

case. Similarly, the value of the Debtor's assets in a liquidation scenario is uncertain and could vary significantly from the values set forth in the Liquidation Analysis.

The Liquidation Analysis does not include estimates for: (i) the tax consequences, either foreign or domestic, that may be triggered upon the liquidation and sale of assets, (ii) recoveries resulting from any potential preference, fraudulent transfer, or other litigation or avoidance actions, or (iii) certain claims that may be entitled to priority under the Bankruptcy Code, including administrative priority claims under sections 503(b) and 507(b) of the Bankruptcy Code. More specific assumptions are detailed in the notes below. ACCORDINGLY, NEITHER THE DEBTOR NOR ITS ADVISORS MAKE ANY REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS OF A LIQUIDATION OF THE DEBTOR WOULD OR WOULD NOT, IN WHOLE OR IN PART, APPROXIMATE THE ESTIMATES AND ASSUMPTIONS REPRESENTED HEREIN. THE ACTUAL LIQUIDATION VALUE OF THE DEBTOR IS SPECULATIVE AND RESULTS COULD VARY MATERIALLY FROM ESTIMATES PROVIDED HEREIN.

In preparing the Liquidation Analysis, the Debtor estimated Allowed Claims based upon a review of the Debtor's financial statements to account for other known liabilities, as necessary. In addition, the Liquidation Analysis includes estimates for Claims not currently asserted in the Chapter 11 Case, but which could be asserted and allowed in a chapter 7 liquidation, including unpaid chapter 11 Administrative Claims and chapter 7 administrative claims such as wind-down costs and trustee fees. To date, the Bankruptcy Court has not estimated or otherwise fixed the total amount of Allowed Claims used for purposes of preparing this Liquidation Analysis. Therefore, the Debtor's estimate of Allowed Claims set forth in the Liquidation Analysis should not be relied on for any other purpose, including determining the value of any distribution to be made on account of Allowed Claims and Interests under the Plan. NOTHING CONTAINED IN THE LIQUIDATION ANALYSIS IS INTENDED TO BE OR CONSTITUTES A CONCESSION OR ADMISSION OF THE DEBTOR. THE ACTUAL AMOUNT OF ALLOWED CLAIMS IN THE CHAPTER 11 CASE COULD MATERIALLY DIFFER FROM THE ESTIMATED AMOUNTS SET FORTH IN THE LIQUIDATION ANALYSIS.

### **Basis of Presentation**

The Liquidation Analysis has been prepared assuming that the Debtor converted its Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code on or about September 30, 2021 (the "Liquidation Date"). It is assumed that, on the Liquidation Date, the Bankruptcy Court would appoint a chapter 7 trustee (the "Trustee") to oversee the liquidation of the Debtor's estate, during which time all of the assets of the Debtor (the "Liquidating Entity") would be sold and the cash proceeds, net of liquidation-related costs, would then be distributed to creditors in accordance with applicable law. Any remaining net cash would be distributed to creditors holding unsecured Claims, including deficiency Claims that arise to the extent of the unsecured portion of the Allowed secured claims.

The Liquidation Analysis has been prepared assuming that the Debtor's current Chapter 11 Case converts to chapter 7 on the Liquidation Date. The Liquidation Analysis utilizes the book values of the Debtor's assets and liabilities as of September 3, 2021 as a starting point,

or more recent values where available. The Debtor's management team believes that the September 3, 2021 book value of assets and certain liabilities are a reasonable proxy for such book values as of the Liquidation Date. This Liquidation Analysis assumes operations of the Liquidating Entity will cease and the related individual assets will be sold in a rapid sale under the direction of the Trustee, utilizing the Debtor's resources and third-party advisors, to allow for the wind down of the Debtor's estate. There can be no assurance that the liquidation would be completed in a limited time frame, nor is there any assurance that the recoveries assigned to the assets would in fact be realized. Under section 704 of the Bankruptcy Code, a trustee must, among other duties, collect and convert the property of the estate as expeditiously as possible (generally at distressed prices), consistent with the best interests of parties-in-interest. The Liquidation Analysis is also based on the assumption that accounting, treasury, IT, and other management services needed to wind down the estate continue.

### **Conclusion**

The Debtor has determined, as summarized in the following analysis, that confirmation of the Plan will provide creditors with a recovery that is not less than what they would otherwise receive in connection with a liquidation of the Debtor under chapter 7 of the Bankruptcy Code. In particular, general unsecured creditors are estimated to receive no recovery on their claims in a liquidation but generally are unimpaired under the Plan (other than those in Class 3, which Class is expected to vote to accept the Plan in accordance with the Restructuring Support Agreements).

	Notes	Net BV (09.03.2021)	Liquidation Value	
			Est. Value	% of BV
Cash and Cash Equivalents	[A]	406,708,000	406,708,000	100%
Accounts Receivable	[B]	492,614,000	149,562,090	30%
Expendable Parts, Materials, and Supplies	[C]	53,869,292	8,080,394	15%
Prepaid Expenses and Other Current Assets	[D]	62,656,960	8,764,194	14%
Buildings and Improvements		37,683,093	30,146,474	80%
Other Property and Equipment	[E]	13,754,295	2,063,144	15%
Flight Equipment		328,576,027	115,001,609	35%
Advances on Aircraft Purchase		62,765,343	-	0%
Properties under Capital Lease		1,252,402,352	682,996,000	55%
Construction in Progress		66,270,532	-	0%
Assets Held for Sale	[F]	900,000	720,000	80%
Right-of-Use Assets	[G]	1,311,259,000	-	0%
Securitization Sinking Fund		22,291,626	22,291,626	100%
Other Noncurrent Assets	[H]	362,554,973	10,876,649	3%
<b>Total Assets/Proceeds Available for Liquidation</b>		<b>4,474,305,492</b>	<b>1,437,210,181</b>	
<b>Assumed Liquidation Costs</b>	[I]		<b>25,000,000</b>	
<b>Amounts available for creditors</b>			<b>1,412,210,181</b>	
		Allowed Claim	Recovery Amount	% of Satisfaction
DIP Financing Claims	[J]	350,000,000	350,000,000	100%
<b>Amounts available to other creditors following satisfaction of DIP Financing Claims</b>			<b>1,062,210,181</b>	
Secured Claims	[K]	1,745,760,218	695,926,083	40%
<b>Amounts available to other creditors following satisfaction of DIP Financing Claims and Secured Claims</b>			<b>366,284,097</b>	
Administrative Expense Claims	[L]	113,723,715	113,723,715	100%
<b>Amounts available to other creditors following satisfaction of DIP Financing Claims, Secured Claims, and Administrative Expense Claims</b>			<b>252,560,382</b>	
Priority Claims	[M]	252,933,750	252,933,750	
Employee Claims (Priority)		61,083,750	61,083,750	100%
Ticket Refunds		191,850,000	191,850,000	100%
<b>Amounts available to General Unsecured Creditors</b>			<b>(373,367.82)</b>	99.85%
<b>General Unsecured Claims</b>	[N]	<b>4,987,343,156</b>	-	
Unsecured Creditors		4,781,190,271	-	0%
Employee Claims (non-Priority)		206,152,885	-	0%

### **Specific Notes to the Liquidation Analysis**

Asset book values and claims shown above are as of September 3, 2021 unless otherwise noted.

[A] Cash and Cash Equivalents: Cash and cash equivalents are estimated as the sum of (a) cash on hand as of September 3, 2021, (b) net DIP financing proceeds as of the Liquidation Date, and (c) forecasted September 2021 receipts.

[B] Accounts Receivable: A 30% blended recovery has been estimated for accounts receivable, assuming that receivables outstanding for more than 1 year as of the Liquidation Date are uncollectable.

[C] Expendable Parts, Materials, and Supplies: A 15% recovery has been estimated for expendable parts, materials, and supplies, including fuel, commissary supplies, and certain medical supplies.

[D] Prepaid Expenses and Other Current Assets: These assets consist of prepaid and other items that will likely be largely unrecoverable in the event of a chapter 7 liquidation, including prepaid rent, insurance, taxes, and other expenses that are amortized over the applicable license, rental, or other period. These items have been examined individually, with accounting-related or likely unrecoverable assets assigned recoveries of 0%. On a blended basis, a 14% recovery has been estimated for these assets.

[E] Other Property and Equipment: These assets primarily consist of certain ground property and improvements, computer and office equipment, and motor vehicles. A 15% blended recovery has been estimated for these assets.

[F] Assets Held for Sale: Assets held for sale primarily consist of aircraft and engines not currently being used in the Debtor's ordinary course of business. No recovery value has been assigned to the accounting-based assets; an 80% recovery has been estimated for the remaining assets.

[G] Right-of-Use Assets: No value has been assigned to the value of the Debtor's rights to occupy, operate, or hold a leased asset in a liquidation.

[H] Other Noncurrent Assets: Other noncurrent assets primarily include certain lease receivables, investment properties, security deposits, and unapplied tax and other credits. The Liquidation Analysis assumes that the Company as a whole will liquidate in the event that the Debtor liquidates. Given the Debtor's central role in the Company's overall structure and operations, the Debtor has assumed that no material value will be recovered from investments in affiliates in a liquidation after payment of claims at the affiliate level. Accordingly, the Debtor has estimated a 0% recovery for such assets. A 3% blended recovery has been estimated for Other Noncurrent Assets overall.

[I] Assumed Liquidation Costs: Liquidation expenses consist of trustee, employee, professional, tax, and other wind-down expenses. Liquidation costs are estimated to be \$25 million.

[J] DIP Financing Claims: Represents the estimated outstanding principal of DIP Loans as of the Liquidation Date. The Debtor estimates a 100% recovery on these claims.

[K] Secured Claims: Represents the estimate of non-DIP secured claims as of the Liquidation Date. The Debtor estimates a 40% recovery on these claims, with any estimated deficiency amounts included in general unsecured claims.

[L] Administrative Expense Claims: Represents the estimate of non-DIP administrative claims as of the Liquidation Date as contemplated by the DIP budget. The Debtor estimates a 100% recovery on these claims.

[M] Priority Claims: Represents the estimate of priority unsecured employee and ticket refund Claims as of the Liquidation Date. The Debtor estimates a 99.85% recovery on these claims.

[N] General Unsecured Claims: Represents the estimate of general unsecured claims as of the Liquidation Date, including General Unsecured Claims, General Unsecured Trade Claims, and non-priority Employee Claims under the Plan. The general unsecured claims amount includes an estimate of operating lease rejection claims. The Debtor estimates a 0% recovery on these claims.

**EXHIBIT D**

**Financial Information and Projections**



## **FINANCIAL INFORMATION AND PROJECTIONS**

The Debtor believes that the Plan is feasible as required by section 1129(a)(11) of the Bankruptcy Code, because Confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor. In connection with the preparation and development of the Plan and for purposes of determining whether the Plan will satisfy this feasibility standard, the Debtor has analyzed its ability to satisfy its financial obligations while maintaining sufficient liquidity and capital resources.

In connection with the Disclosure Statement, the Debtor's senior management team ("**Management**") prepared financial projections (the "**Financial Projections**") for fiscal years 2022 through 2024 (the "**Projection Period**"). The Financial Projections are based on a number of assumptions made by Management with respect to the future performance of the Reorganized Debtor's operations.

THESE FINANCIAL PROJECTIONS WERE NOT PREPARED WITH A VIEW TOWARD COMPLIANCE WITH THE GUIDELINES FOR PROSPECTIVE FINANCIAL STATEMENTS PUBLISHED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OR THE INTERNATIONAL ACCOUNTING STANDARDS BOARD OR THE RULES AND REGULATIONS OF THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ALTHOUGH MANAGEMENT HAS PREPARED THE FINANCIAL PROJECTIONS IN GOOD FAITH AND BELIEVES THE ASSUMPTIONS TO BE REASONABLE, THE DEBTOR AND THE REORGANIZED DEBTOR CAN PROVIDE NO ASSURANCE THAT SUCH ASSUMPTIONS WILL BE REALIZED. AS DESCRIBED IN DETAIL IN THE DISCLOSURE STATEMENT, A VARIETY OF RISK FACTORS COULD AFFECT THE REORGANIZED DEBTOR'S FINANCIAL RESULTS AND MUST BE CONSIDERED. ACCORDINGLY, ANY REVIEW OF THE FINANCIAL PROJECTIONS SHOULD TAKE INTO ACCOUNT THE RISK FACTORS SET FORTH IN THE DISCLOSURE STATEMENT AND THE ASSUMPTIONS DESCRIBED HEREIN, INCLUDING ALL RELEVANT QUALIFICATIONS AND FOOTNOTES.

THE DEBTOR'S INDEPENDENT ACCOUNTANTS HAVE NEITHER EXAMINED NOR COMPILED THE ACCOMPANYING FINANCIAL PROJECTIONS AND ACCORDINGLY DO NOT EXPRESS AN OPINION OR ANY OTHER FORM OF ASSURANCE WITH RESPECT TO THE FINANCIAL PROJECTIONS, ASSUME NO RESPONSIBILITY FOR THE FINANCIAL PROJECTIONS AND DISCLAIM ANY ASSOCIATION WITH THE FINANCIAL PROJECTIONS.

### **A. General Assumptions:**

#### **1. Methodology**

Management developed a business plan for the Projection Period based on forecasted revenue estimates based on management's views on customer demand and macro trends. The

business plan reflects management's views regarding estimated demand for the Debtor's services and estimated future operating costs and capital expenditures.

## **2. Emergence Date**

Emergence from the Chapter 11 Case for the purposes of the Financial Projections is assumed to occur in the week ending December 31, 2021 (the "**Assumed Effective Date**").

## **3. Operations**

These Financial Projections incorporate the Debtor's estimates regarding sales and planned cost reduction initiatives reflected in their forecasted plan for the Projection Period. The sales estimates are based on Management's best efforts to forecast the demand of customers for the Company's flight and cargo services during the Projection Period, while taking into account the prolonged impact of the COVID-19 pandemic. The actual demand of customers for the Company's services could vary considerably from the assumptions used to prepare the production forecast contained herein. The Company's ability to achieve projected cost reductions may also vary considerably from the assumptions.

### **B. Financial Projection Assumptions:**

#### **1. Revenue**

Revenue is derived from sales to customers of the Debtor's flight and cargo services. References to passenger revenue is composed of the base fare (including any fuel cost recapture) plus all passenger related ancillary revenues (baggage fees, change fees, gift cards, vacation packages, insurance etc.). The revenue forecast is based on management's views of historical trends, the anticipated impact of the Debtor's capital expenditure plans, the anticipated impact of future competition in the Debtor's existing markets, forecasted trends in the aviation industry in light of the COVID-19 pandemic, and the anticipated impact of the Company's revised business plan.

#### **2. Expenses**

The Financial Projections incorporate certain assumptions about the Debtor's primary expenses that are out of the Debtor's control. For example, aviation fuel is one of the most significant expenses for an airline. Its price is directly influenced by the price of crude oil, which, in turn, is influenced by a wide variety of macroeconomic and geopolitical events beyond the control of the Reorganized Debtor. Accordingly, the costs related projections are based on management's view of its relationships with its suppliers, anticipated impact of future commodity prices, anticipated impact of future competition, and the anticipated composition of the Debtor's future service offerings. To the extent the future price of aviation fuel is higher than the prices assumed in this Disclosure Statement's projections, the financial performance of the Reorganized Debtor could be materially and adversely impacted.

### **3. Cash Taxes**

Cash taxes include federal, state, and local taxes, and the amounts are calculated based on the Debtor's effective tax rate applied against management's projections of taxable income.

### **4. Capital Expenditures**

Capital expenditures incorporate spending on the Debtor's fleet and various leased properties at various airports and other upkeep costs. Capital expenditures are expected to range between \$65 million and \$112 million during the Projection Period.

### **5. Working Capital**

Management determined projected working capital by evaluating historical accounts and balances, and projecting forward. The projections assume a rebound in cash collection in 2022 due to a benefit from changes to vendor payment terms and the expected increase in demand for air travel.

### **6. Adjusted Earnings Before Interest, Taxes, Depreciation and Amortization ("Adjusted EBITDA" or "EBITDA")**

Adjusted EBITDA is anticipated to steadily increase throughout the Projection Period beginning at \$481 million in 2022 and ending at \$726 million in 2024. This increase is projected based upon management's views on an improving macroeconomic environment, cost cutting initiatives, and increased investment in certain routes and destinations.

### **7. Capital Structure and Liquidity**

(a) The Financial Projections assume upon emergence (a) a commitment for a new Secured Exit Facility in the amount of \$150 million, with a rate of 9.5%; and (b) an unsecured Exit Facility in the amount of \$250 million with a rate of 9.5%.

(b) Management expects to have approximately \$300 million of balance sheet cash on the Assumed Effective Date.

### Reorganized Debtor's Financial Projections

<i>in \$ millions</i>	2022	2023	2024
<b>STATEMENTS OF COMPREHENSIVE INCOME</b>			
Passenger	1,883	2,237	2,361
Cargo	166	164	169
Ancillary and Others	51	59	62
<b>Total Revenues</b>	<b>2,101</b>	<b>2,461</b>	<b>2,591</b>
Revenue Related Expenses	35	40	42
<b>Net Revenues</b>	<b>2,066</b>	<b>2,421</b>	<b>2,550</b>
Variable Selling Costs	82	98	101
<b>Net Revenues After Selling Costs</b>	<b>1,984</b>	<b>2,324</b>	<b>2,448</b>
Passenger/Cargo Related Costs	61	71	74
Flight Related Costs	969	1,137	1,166
<b>Variable Costs</b>	<b>1,030</b>	<b>1,209</b>	<b>1,240</b>
<b>*Contribution</b>	<b>954</b>	<b>1,115</b>	<b>1,208</b>
<i>Contribution Margin</i>	<i>45%</i>	<i>45%</i>	<i>47%</i>
Fleet Costs	278	287	294
Fixed Operating Costs	245	254	250
<b>Fixed Operating Costs</b>	<b>523</b>	<b>541</b>	<b>543</b>
<b>Contribution Before Fleet</b>	<b>709</b>	<b>861</b>	<b>958</b>
<b>Contribution After Fleet and Operating Costs</b>	<b>430</b>	<b>574</b>	<b>665</b>
Marketing Expenses	9	11	11
Overhead Costs	203	211	221
<b>Income/(Loss) From Operations</b>	<b>218</b>	<b>352</b>	<b>433</b>
Other Income/(Charges)	(71)	(36)	(47)
<b>Income/(Loss) Before Tax</b>	<b>147</b>	<b>316</b>	<b>387</b>
Income Tax Expense / (Benefit)	1	4	7
<b>Income/(Loss) After Tax</b>	<b>145</b>	<b>312</b>	<b>379</b>
Other Comprehensive Income / (Loss)	0	0	0
<b>Total Comprehensive Income / (Loss)</b>	<b>145</b>	<b>312</b>	<b>379</b>
<b>EBITDA</b>	<b>481</b>	<b>633</b>	<b>726</b>
	<i>23%</i>	<i>26%</i>	<i>28%</i>
<b>EBITDAR</b>	<b>508</b>	<b>651</b>	<b>739</b>
	<i>24%</i>	<i>26%</i>	<i>29%</i>

\*Contribution equals Net Revenues After Selling Costs minus Fuel, Passenger/Cargo-Related Costs, Power-by-the-Hour Maintenance, Ground Handling Charges, and Landing and Takeoff Fees

<i>in \$ millions</i>	2022	2023	2024
<b>STATEMENTS OF FINANCIAL POSITION</b>			
<b>Assets</b>			
Cash and Cash Equivalents	334	366	433
Asset held for sale	1	1	1
Receivables - net	440	420	439
Expendable parts, materials and supplies - net	56	57	58
Other Current Assets	68	63	64
<b>Total Current Assets</b>	<b>899</b>	<b>908</b>	<b>995</b>
Right-of-use Asset - net	274	278	319
Property and Equipment - net	1,710	1,597	1,486
Other Assets	389	415	472
<b>Total Non-Current Assets</b>	<b>2,373</b>	<b>2,290</b>	<b>2,277</b>
<b>Total Assets</b>	<b>3,273</b>	<b>3,198</b>	<b>3,272</b>
<b>Liabilities and Stockholder's Equity</b>			
Accounts payable and accrued expenses	536	554	475
Accrued maintenance repair cost	291	303	333
Unearned Transportation Revenue	230	206	215
Long-term liabilities current portion	338	340	295
Right-of-use lease liability current portion	131	160	165
Preferred issuances to convertible debt	141	103	150
<b>Total Current Liabilities</b>	<b>1,667</b>	<b>1,666</b>	<b>1,633</b>
Long-term Liabilities	1,249	903	602
Right-of-use lease liability net of current portion	439	366	360
Reserves and Other Liabilities	388	421	455
<b>Total Non-Current Liabilities</b>	<b>2,076</b>	<b>1,690</b>	<b>1,418</b>
<b>Total Liabilities</b>	<b>3,743</b>	<b>3,356</b>	<b>3,050</b>
<b>Total Stockholders' Equity</b>	<b>(470)</b>	<b>(158)</b>	<b>221</b>
<b>Total Liabilities and Stockholder's Equity</b>	<b>3,273</b>	<b>3,198</b>	<b>3,272</b>

<i>in \$ millions</i>	2022	2023	2024
<b>STATEMENTS OF CASHFLOWS</b>			
<b>Net income (loss) before tax</b>	<b>147</b>	<b>316</b>	<b>387</b>
Changes in Working Capital	128	47	(52)
Net adjustments to Net Income	272	267	314
<b>Net cash flow from operating activities</b>	<b>547</b>	<b>630</b>	<b>649</b>
Payments to other property and equipment	(111)	(101)	(65)
Proceeds from return of predelivery payments/ sale of aircraft	-	60	-
Other Assets	(8)	(27)	(54)
<b>Net cash flow from investing activities</b>	<b>(119)</b>	<b>(67)</b>	<b>(119)</b>
Payments			
Claims	-	(6)	(6)
Long-term Payable	(265)	(267)	(269)
Liquidity Facility	-	(71)	(71)
Lease charges of ROU assets	(120)	(149)	(164)
Availments			
Convertible debt/Exit Facility	(9)	(38)	47
<b>Net cash flow from financing activities</b>	<b>(394)</b>	<b>(531)</b>	<b>(463)</b>
<b>Net Inc / (Dec) in cash and cash equivalents</b>	<b>34</b>	<b>32</b>	<b>66</b>
Cash and cash equivalents at beginning	300	335	367
<b>Cash and cash equivalents at end</b>	<b>335</b>	<b>367</b>	<b>433</b>

**EXHIBIT E**

**Valuation Analysis**

## **VALUATION ANALYSIS**

THE VALUATIONS SET FORTH HEREIN REPRESENT ESTIMATED DISTRIBUTABLE VALUE FOR THE DEBTOR AND DO NOT NECESSARILY REFLECT VALUES THAT COULD BE ATTAINABLE IN THE PUBLIC OR PRIVATE MARKETS. THE VALUE OF THE NEW COMMON STOCK DOES NOT PURPORT TO BE AN ESTIMATE OF THE POST-REORGANIZATION MARKET VALUE OF THE REORGANIZED DEBTOR.

### **A. Introduction**

In connection with developing the Plan, the Debtor directed Seabury to estimate the going-concern value of the Reorganized Debtor. This analysis has been prepared for the Debtor's sole use and is based on information provided to Seabury by the Debtor. This valuation was performed for the purposes of (i) evaluating the range of potential recoveries for holders of general unsecured claims; (ii) providing a basis for the allocation of value of the Reorganized Debtor; and (iii) establishing an estimate of the initial stockholders' equity value for fresh-start accounting. This valuation has also been undertaken for the purpose of evaluating whether the Plan meets the so-called "best interests test" under section 1129(a)(7) of the Bankruptcy Code.

Based on the Financial Projections for 2022 set forth in Exhibit D, and subject to the disclaimers and the descriptions of Seabury's methodology set forth herein, and solely for purposes of the Plan, Seabury estimates the total enterprise value of the Reorganized Debtor to be approximately \$2,619,353,000.00 as of an Assumed Effective Date of December 31, 2021. The total equity value, which takes into account the total enterprise value less the estimated net debt outstanding as of the Assumed Effective Date, was estimated by Seabury to be approximately \$32,618,000.00. The implied total enterprise value should be considered as a whole, and the underlying analyses should not be considered indicative of the values of any individual operation of the Reorganized Debtor.

In preparing the estimated total enterprise value for the Reorganized Debtor, Seabury: (1) reviewed certain historical financial information of the Debtor for recent years and interim periods; (2) met with certain members of the Debtor's senior management to discuss the Debtor's operations and future prospects; (3) reviewed publicly available financial data and considered the market values of public companies deemed generally comparable to the operating business of the Debtor; (4) considered certain economic and industry information relevant to the Debtor's operating business; and (5) conducted such other studies, analyses, inquiries and investigations as deemed appropriate by Seabury.

Although Seabury conducted a review and analysis of the Debtor's business, operating assets and liabilities, and business plans, Seabury relied on the accuracy and completeness of all financial and other information furnished to it by the Debtor and by other firms retained by the Debtor and on certain publicly available information as to which Seabury does not have independent knowledge.

Seabury has relied on the Debtor's representation and warranty that the Financial Projections provided by the Debtor to Seabury (1) have been prepared in good faith, (2) are based on fully disclosed assumptions which, in light of the circumstances under which they were made, are reasonable, (3) reflect the Debtor's best currently available estimates, and (4) reflect the good faith judgments of the Debtor. Seabury does not offer an opinion as to the attainability of the Financial Projections. The future results of the Reorganized Debtor are dependent upon various factors, many of which are beyond the control or knowledge of the Debtor or Seabury, and consequently are inherently difficult to project. Some of these variables are described in Exhibit D, which discusses certain inherent uncertainties in the Financial Projections. The Reorganized Debtor's actual future results may differ materially (positively or negatively) from the Financial Projections, and as a result, the actual total enterprise value of the Reorganized Debtor may be significantly higher or lower than the estimated range herein.

No independent evaluations or appraisals of the Debtor's assets were sought or obtained in connection with Seabury's valuation. Seabury did not conduct an independent investigation into any of the legal, tax, pension, or accounting matters affecting the Debtor, and therefore Seabury makes no representations as to their impact on the Debtor's Financial Projections.

## **B. Valuation Methodology**

The following is a brief summary of certain financial analyses performed by Seabury to arrive at the estimated total enterprise value for the Reorganized Debtor. The following summary does not purport to be a complete description of all of the analyses undertaken to support Seabury's conclusions. The preparation of a valuation is a complex process involving various determinations as to the most appropriate analyses and factors to consider, and the application of those analyses and factors under the particular circumstances. As a result, the process involved in preparing a valuation is not readily summarized.

In performing its analyses, Seabury applied a comparable company trading multiples methodology. Seabury believes that, given the unique market distortions caused by the COVID-19 pandemic, a comparable company trading multiples methodology is the most reliable valuation methodology currently available for the Debtor and is commonly used and accepted in the industry. Seabury's application of the comparable company trading multiples methodology involved identifying a group of companies whose businesses and operating characteristics are generally similar to the Reorganized Debtor's operations. A comparable company analysis estimates enterprise value based on a comparison of the subject company's actual and projected financial statistics with those actual and projected financial statistics for similar publicly-traded companies. Criteria for selecting comparable peer companies for this valuation include, among other relevant characteristics, similar lines of businesses, business risks, growth prospects, maturity of businesses, market presence, size, and scale of operations. From a review of the trading multiples for this group of selected comparables, Seabury then developed a valuation multiple to apply to the Financial Projections to derive an implied enterprise value for the Reorganized Debtor's operations.



In arriving at its valuation estimate, Seabury did not consider any one factor to the exclusion of any other factors, but instead used reasonable judgment as to the relative relevance of such factor. Accordingly, Seabury believes that its analyses and views must be considered as a whole and that selecting portions of its analyses and factors could create a misleading or incomplete view of the processes underlying the preparation of this valuation.

### **C. Valuation Considerations**

This valuation is based upon information available to, and analyses undertaken by, Seabury as of October 2021, and reflects, among other factors discussed below, the current financial market conditions and the inherent uncertainty today as to the achievement of the Financial Projections. The value of an operating business is subject to uncertainties and contingencies that are difficult to predict and will fluctuate with changes in factors affecting the financial conditions and prospects of such a business. For purposes of this valuation, Seabury has assumed that no material changes that would affect value will occur between the date of this Disclosure Statement and the Assumed Effective Date. Events and conditions subsequent to the date of this Disclosure Statement, including but not limited to updated projections, as well as other factors, could have a substantial impact upon the Reorganized Debtor's value. Neither Seabury nor the Debtor has any obligation to update, revise, or reaffirm this valuation.

This valuation also reflects a number of assumptions, including a successful reorganization of the Debtor's business and finances in a timely manner consistent with the Plan and the Restructuring Term Sheet, achieving the forecasts reflected in the Financial Projections, maintaining a minimum amount of cash required to operate the Debtor's business, certain market conditions, and the Plan becoming effective in accordance with its terms on a basis consistent with the estimates and other assumptions discussed herein. Among other things, failure to consummate the Plan in a timely manner may have a materially negative impact on the enterprise value of the Reorganized Debtor.

Further, the valuation of newly issued securities is subject to additional uncertainties and contingencies, all of which are difficult to predict. Actual market prices of such securities at issuance will depend upon, among other things, prevailing interest rates; conditions in the financial markets; the anticipated initial securities holdings of prepetition creditors, some of which may prefer to liquidate their investment rather than hold it on a long-term basis; and other factors that generally influence the prices of securities. Actual market prices of such securities also may be affected by the Chapter 11 Case or by other factors not possible to predict. Accordingly, the total enterprise value ascribed in this analysis does not purport to be an estimate of the post-reorganization market trading value of the Reorganized Debtor or its securities. Such trading value may be materially different from the total enterprise value associated with Seabury's valuation analysis. As further described in the Disclosure Statement, the Reorganized Debtor is expected not to be obligated to file public reports or disclosures. There can be no assurance that any trading market will develop for the New Common Stock. The estimates of value for the Reorganized Debtor do not necessarily reflect the values that may be attainable in public or private markets. Furthermore, in the event that the actual distributions in the Chapter 11 Case differ from those the Debtor assumed in its recovery

analysis, the actual recovery of Holders of Claims in Impaired Classes could be significantly higher or lower than estimated by the Debtor.

**EXHIBIT F**

**Organizational Chart**

