Dennis F. Dunne Evan R. Fleck Benjamin Schak MILBANK LLP 55 Hudson Yards New York, New York 10001 Telephone: (212) 530-5000 Facsimile: (212) 530-5219 Gregory A. Bray MILBANK LLP 2029 Century Park East, 33rd Floor Los Angeles, CA 90067 Telephone: (424) 386-4000 Facsimile: (213) 629-5063

Counsel for Debtors and Debtors-In-Possession

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

In re:

AVIANCA HOLDINGS S.A., et al.,1

Debtors.

Chapter 11

Case No. 20-11133 (MG)

(Jointly Administered)

-----X

NOTICE OF PROPOSED ADDITIONAL SERVICES TO BE PERFORMED FOR DEBTORS BY OLIVER WYMAN, INC. AND OLIVER WYMAN SERVICES LIMITED AS STRATEGIC ADVISOR

PLEASE TAKE NOTICE that, pursuant to the Order Authorizing Debtors to Employ and

:

:

Retain Oliver Wyman, Inc. and Oliver Wyman Services Limited as Strategic Advisor (the

"Retention Order") [Docket No. 1258], the above-captioned debtors and debtors in possession

The Debtors in these chapter 11 cases, and each Debtor's federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int'l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A); AV Loyalty Bermuda Ltd. (N/A); Aviacorp Enterprises S.A. (N/A). The Debtors' principal offices are located at Avenida Calle 26 # 59 - 15 Bogotá, Colombia.



(collectively, the "<u>Debtors</u>") have requested that Oliver Wyman, Inc. and Oliver Wyman Services Limited (collectively, "<u>OW</u>") perform certain additional services not otherwise specifically provided for in the Engagement Letter [Docket No. 370, Exhibit D], and the addendum to the Engagement Letter, dated August 15, 2020 [Docket No. 1204] (collectively, the "<u>Engagement</u> <u>Letters</u>").

Specifically, the Debtors have requested that OW perform additional tasks important to the transformation of the Debtors' business including, but not limited to, reviewing and redefining contact center policies, procedures, and technology to increase efficiencies. Additionally, the Debtors have requested that OW provide design, deploy and host an online management tool, the Hub, to provide tracking, reporting, and oversight of the Debtors' restructuring plan and cost savings initiatives. The Debtors also hold an option to acquire the source code of the Hub and install it on its own servers (collectively, the "Proposed Additional Services"). In consideration for the Proposed Additional Services, the Debtors and OW entered into addendums, effective as of January 15, 2021 and January 25, 2021 (collectively, the "Addendum No. 2"), attached hereto as **Exhibit A**. Pursuant to the Addendum No. 2, the Debtors propose to pay OW the following fees:

Service Date	Payment Amount
January 1, 2021 – January 31, 2021	\$726,000
February 1, 2021 – February 28, 2021	\$726,000
March 1, 2021 – March 31, 2021	\$726,000
Total	\$2,178,000

Additionally, the Addendum No. 2 provides for the following fees:

• \$85,000 for the software design and development;

- \$13,500 per month for usage, maintenance, support services and hosting services; and
- in the event the Debtors decide to opt in to license the source code, the Debtors will pay OW a server environment diagnostic fee of \$15,000 and a license fee in the amount of \$360,000.

PLEASE TAKE FURTHER NOTICE that any objections or responses to the Proposed Additional Services shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedures, the Local Bankruptcy Rules for the Southern District of New York, all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York, and the Order Implementing Certain Notice and Case Management Procedures [Docket No. 47] (the "Case Management Order"); (c) be filed electronically with this Court on the docket of In re Avianca Holdings S.A., Case 20-11133 (MG) by registered users of this Court's electronic filing system and in accordance with the General Order M-399 (which is available on this Court's website at http://www.nysb.uscourts.gov) before March 5, 2021 (the "Objection Deadline"); and (d) be promptly served on the following parties: (i) the Chambers of the Honorable Martin Glenn, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004; (ii) the Debtors, c/o Richard Galindo (richard.galindo@avianca.com); (iii) Milbank LLP (Attn: Evan R. Fleck, Esq., Gregory A. Bray, Esq., and Benjamin Schak, Esq. (efleck@milbank.com, gbray@milbank.com, and bschak@milbank.com)), counsel for the Debtors; (iv) Morrison & Foerster LLP (Attn: Brett H. Miller, Esq. and Todd M. Goren, Esq. (brettmiller@mofo.com and tgoren@mofo.com)), counsel to the Committee; (v) William K. Harrington, U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Brian Masumoto, Esq. and Greg Zipes, Esq.); (vi) the Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549; (vii) the Federal Aviation Administration, 800 Independence Avenue, S.W.,

Washington, DC 20591 (Attn: Office of the Chief Counsel); and (viii) the attorneys for any other official committee(s) that may be appointed in these Chapter 11 Cases.

PLEASE TAKE FURTHER NOTICE that, if no objections are received by the Objection Deadline, the Proposed Additional Services will be deemed approved without further notice or order of the Court.

Dated: New York, New York February 23, 2021

/s/ Evan R. Fleck Dennis F. Dunne Evan R. Fleck Benjamin Schak MILBANK LLP 55 Hudson Yards New York, New York 10001 Telephone: (212) 530-5000 Facsimile: (212) 530-5219 - and –

Gregory A. Bray MILBANK LLP 2029 Century Park East, 33rd Floor Los Angeles, CA 90067 Telephone: (424) 386-4000 Facsimile: (213) 629-5063

Counsel for Debtors and Debtors-in-Possession

Exhibit A

Addendum No. 2 to Engagement Letter

CLIVER WYMAN

Tim Hoyland 1717 Main St., Suite 4400 Dallas TX 75230 USA +1-214-215-1466 Timothy.Hoyland@oliverwyman.com

January 15, 2021

Anko van der Werff CEO Avianca Holdings, S.A. Bogotá, Colombia

Subject: Additional Avianca Restructuring Implementation Support

Dear Anko,

Oliver Wyman is pleased to present this proposal to add specific work scope to its engagement with Avianca Holdings, S.A. and its affiliated entities (collectively, "Avianca") to support the implementation of its restructuring plan. When executed by all parties hereto, this letter agreement (this "Addendum No. 2") shall serve as a second addendum to the agreement entitled "Avianca Business Strategy and Operational Model" dated June 5, 2020 and signed on June 24, 2020 (the "Engagement Letter"), among Avianca, on the one hand, and Oliver Wyman, Inc. and Oliver Wyman Services Limited, on the other hand (collectively, "Oliver Wyman"). Capitalized terms not defined herein shall have the meanings ascribed to them in the Engagement Letter.

Project Objectives

Oliver Wyman has been providing restructuring implementation support to Avianca pursuant to the Addendum to the Engagement Letter between the parties dated August 15, 2020 ("Addendum No. 1"). Avianca now desires to engage Oliver Wyman pursuant to this Addendum No. 2 to perform the additional Services described herein (the "Phase 3a Services"), which shall be considered additional Phase 3 services under the Engagement Letter:

Scope of Services

Pursuant to this Addendum No. 2, Oliver Wyman shall provide Avianca with assistance in implementation of the following:

- Revenue management: Develop low cost revenue management process that enables forecasting and optimization mechanisms, utilizing the most cost-effective tools and technology, and ensuring organization is rightsized and lean
- Contact center redesign: Define, align and support implementation of urgent and longerterm solutions to alleviate contact center congestion by improving self-management (incl. voucher redemption), simplifying processes, and improving customer communications and information
- Engine and component repair contract cost reduction: Continue support of negotiations with vendors to reduce costs while maintaining quality metrics

Subject: Additional Avianca Restructuring Implementation Support

- Business model alignment and CASK target: Align stakeholders on future business model incorporating latest network plans; define CASK target and additional cost reduction opportunities for Avianca to ensure the airline will be cost-competitive relative to peers in a post COVID environment
- Executory Contracts diagnostic (2-week effort): Work with Avianca's Procurement department to determine largest opportunities to reduce costs related to Executory Contracts (focus on non-technical contracts)

Team Structure

The project team will be led by Tim Hoyland, supported by Tom Stalnaker, Scot Hornick, and Kostas Varsos, all of whom have 20+ years of experience and expertise in the airline industry. The project manager will be Steve Walsh, who has 20 years of airline project leadership experience, as both a consultant to airlines and working directly for airlines and aviation companies. The project execution team will consist of Implementation project leaders and analysts, with additional SMEs brought in as needed.

<u>Timing</u>

The Services described in this Addendum No. 2 will begin on January 1st, 2021 and continue through March 31st 2021.

Fees and Expenses

Avianca shall pay to Oliver Wyman the following professional fees in consideration for the Phase 3a Services described in this Addendum No. 2 (the "Phase 3a Fees"):

Service Date	Payment Amount
January 1-31, 2021	\$726,000
February 1-28, 2021	\$726,000
March 1-31, 2021	\$726,000
Total	\$2,178,000

To align with the payment schedule set forth in Addendum No. 1, the Phase 3a Fees shall be paid pursuant to the following payment schedule:

Payment Date	Payment Amount
February 15, 2021	\$1,089,000
March 15, 2021	\$726,000
March 31, 2021	\$363,000
Total	\$2,178,000

Subject: Additional Avianca Restructuring Implementation Support

For the avoidance of doubt, and subject to the terms of the Engagement Letter, this Addendum No. 2 and all applicable Orders entered in the Bankruptcy Court (as defined below), the Phase 3a Fees shall be payable pursuant to the foregoing payment schedule regardless of the date upon which the Services contemplated in this Addendum No. 2 are completed or, if applicable, the date this Addendum No. 2 is terminated. The Phase 3a Fees are in addition to all fees set forth in Addendum No. 1.

In addition to professional fees, Oliver Wyman will bill for expenses incurred during the course of project execution. As is our standard practice, expenses will include those expenses for non-professional services that can be easily traced to an individual client assignment such as travel to and from a client's locations, meals, and other sundry expenditures incurred during project execution. Oliver Wyman will bill expenses as incurred, and if and when travel is required, will travel on Avianca Airlines (subject to direct flight availability) whenever possible. These expenses also include (1) fees and expenses for third party independent contractors retained by Oliver Wyman to assist in the performance of the services, which shall be charged at cost, and (2) the outside attorneys' fees and expenses Oliver Wyman incurs in connection with seeking court approval of Oliver Wyman's retention and compensation in Avianca's chapter 11 bankruptcy cases, pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

Terms and Conditions

The Services described in this Addendum No. 2 are governed by the Terms and Conditions of Business attached as Appendix A to the Engagement Letter (the "Terms and Conditions"). This Addendum No. 2 and the Terms and Conditions contain the entire understanding of the parties with respect to the Phase 3a Services, superseding all prior agreements, understandings and negotiations with respect to such Services.

Accepted and Agreed:

AVIANCA HOLDINGS, S.A.

By:

/ Name: Richard Galindo Title: Secretary Date:

OLIVER WYMAN SERVICES LIMITED

By:

Name:Jeremy BadmanTitle:DirectorDate:2/19/2021

OLIVER WYMAN, INC.

By:

Name: Tim Hoyland Title: Partner Date:

🔀 OLIVER WYMAN

Tim Hoyland 1717 Main St., Suite 4400 Dallas TX 75230 USA +1-214-215-1466 Timothy.Hoyland@oliverwyman.com

January 25, 2021

Mr. Anko van der Werff CEO **Avianca Holdings** Edificio PH ARIFA, Pisos 9 y 10 Boulevard Oeste, Santa Maria Business District Panama City Republic of Panama

Subject: Design and Deployment of a Corporate Plan reporting tool

Dear Anko:

Thank you for the opportunity to support Avianca Holdings, S.A. and its affiliated entities (collectively, "Avianca", "you" or the "Client") through the deployment of an instance of Oliver Wyman's The Hub software to help you manage your efficiency goals. Based on our conversations on the subject, we have outlined the following scope of work to be performed by Oliver Wyman, Inc. and Oliver Wyman Services Limited (collectively, "Oliver Wyman", "we", or the "Company").

This letter describes Oliver Wyman's approach to achieving an in production version of the software, customized to Avianca's specific needs, as well as the associated workscope, usage, hosting, maintenance, licensing and commercial terms. This proposal is presented in six sections:

- 1. Overview and objectives
- Scope of work
 Team and timeline
- 4. Data and timing
- 5. Commercial terms
- 6. Terms and Conditions

1. Overview and Objectives

Avianca has developed a plan to achieve ongoing efficiencies and further enhance the airline. This plan entails a large number of initiatives from across the company and realizing the plan depends upon the delivery of each of these initiatives and the confirmation that expected value from each initiative has been created.

CLIVER WYMAN

January 25, 2021 Page 2

With such a broad set of initiatives underway simultaneously, it will be critical for Avianca to have the capability to

- (i) Closely monitor progress against the plan at both the plan and individual initiative level,
- (ii) Track and mitigate risks and
- (iii) Quickly resolve any issues that may affect the smooth execution of the plan. and
- (iv) Account for the savings and value created through the completion of initiatives

There is an opportunity to get better visibility, accountability, efficiency, and outcomes with a digital tool that centralizes and aggregates all the required information, and offers:

- 1. Key project planning functionalities, including hierarchical, multi-level project plans, capture of quantitative and qualitative information, designation of task owners, definition of roll-up rules, etc.
- 2. Strong automated reporting and dashboard functionalities, including the ability to define dashboards at different organizational levels, the possibility to easily apply filters to perform different segmentations of the data, and the option to dive into specific sections of the dashboard to review the underlying data. With this regard, the tool is designed to be able to easily connect to a customized version of Power BI business intelligence suite that is being developed already

With 2021 initiatives already under way, time is of the essence to introduce a high-caliber tool that can appropriately automate tracking and reporting without being administratively intensive.

2. Scope of Work

Oliver Wyman will design, deploy and host an online management tool, The Hub, to provide tracking, reporting, and oversight of Avianca's restructuring plan and cost savings initiatives. To ensure a robust deployment, we will implement The Hub tool through a short design phase, followed by an initial build phase, then an optimize phase, and concluded with a training and handover phase. Ongoing usage and hosting will be managed from a secure server with access for up to 200 Avianca users. Avianca will hold an option to acquire the source code for the Avianca instance of the Hub and install it on its own servers.

Part 1

Tool Development: Prior to deploying the Hub for Avianca, Oliver Wyman will undertake a development project to customize the Hub, it's features and functionality for Avianca's specific use.

A. Design phase

The Design phase will have two main objectives:

- 1. Complete a technical diagnostic:
 - i. Determine configuration of the Hub to meet Avianca's specifications, including the integration of existing PMO dashboards and reporting templates
 - ii. Specify data collection and user update methods, processes, cadence and timelines
 - iii. Outline the anticipated process cadence for primary tool functionality, such as key users and user stories, periodical processes to be conducted and reporting needs
- iv. Determine multifactor authentication access parameters

January 25, 2021 Page 3

2. Review plan governance and management practices through answering five main questions:

- i. What is the current governance structure for managing initiatives and how should teams be organized within The Hub?
- ii. What is the current work breakdown structure and how do high level ideas translate into tangible actions? What are the current work/process/approval flows?
- iii. What KPIs and Metrics are important? How does the program measure progress? What dashboard/reports are important?
- iv. What work has been done to date? What are the current dashboards and input methods? What are the current program plans?
- v. Who will be using the Hub and what are their user stories and use cases?

B. Build phase

The Build phase will have one main objective:

- 1. Develop the following features and specifications to fit Avianca's technical and business needs, in accordance with the terms in Schedule 1:
 - i. Customized web interface tailored to Avianca's brand identity
 - ii. Data entry pages for program initiatives and work streams
 - iii. Micro and macro dashboards
- iv. Document library
- v. Workflows to manage change control processes
- vi. Automated alerts/reminders for data entry updates
- vii. Export functionality to MS Excel
- viii. Single entry version history and restoration
- ix. Client customizable permissions groups

As part of this phase, an Avianca Hub "champion" or "superuser" will also be identified and work with Oliver Wyman to develop the tool and assist with end user adoption and buy in during Phase 2.

Deliverable:

• An initial instance of the "The Hub", with basic program features and aspects required by Avianca

C. Optimize and Test phase

The Refine and Test phase will have two main objectives:

- 1. Conduct working sessions to solicit feedback from Avianca on the Hub and continue to tailor the tool to the Program's needs
- 2. Test the features and functionality of the tool to ensure it is working as intended

Deliverable:

• A bespoke, tested, instance of the "The Hub", tailored to the specific needs and program features of Avianca, deployable at the first Go Live Date (see Schedule 1)

CLIVER WYMAN

January 25, 2021 Page 4

Part 2

Deployment, training, and handover

Objective: Successfully complete each Go Live with the Hub for Avianca end users

To enable Deployment of the tool at Avianca, Oliver Wyman will perform the following tasks:

- Complete the Go Live schedule as outlined in Schedule 1
- Provide access credentials for up to 200 users identified by Avianca
- Conduct online training for up to 5 Avianca Superusers
- Enable access to training materials for all users and admins of the tool

Deliverables:

- Launched tool with access for all Avianca users, customized to Avianca's requirements
- Credentials emailed to up to 200 users
- Training for up to 5 Super Users
- Training materials prepared for all users

Part 3

Hosting and Access

Objective: Provide ongoing hosting, usage, maintenance and support

Oliver Wyman will:

- Host the tool on servers behind the Consultant's firewall in accordance with Schedule 3 of the License Agreement
- Provide Usage, Maintenance and Support in accordance with Schedule 2 of the License Agreement
- Maintain service levels in accordance with Schedule 2, Annex A of the License Agreement

Part 4

Option for Source Code Licensing

At Avianca's option, Oliver Wyman will license the source code for The Hub to Avianca. Avianca can exercise this option by providing written notice to Oliver Wyman during the period between the tenth and the thirty-sixth months after the first Go Live Date. If the option is exercised, Oliver Wyman and Avianca will agree on a Licensing Go-Live Date in accordance with Schedule 1. This option is referred to herein as the "Source Code Licensing Option".

Objective: Configure an instance of the Hub on Avianca's servers

Consultant will:

- Conduct a diagnostic of Avianca's server environment
- Determine if the Hub source code will be able to operate in Avianca's environment
- Transfer and build the code on Avianca's servers, through direct access to the servers

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- Modify the code where necessary and possible to enable all features and functionality previously developed
- Configure associated systems or, at Avianca's preference, provide a list of configuration requirements to be performed on associated systems
- License the Hub source code to Avianca in accordance with Schedule 3
- Avianca will make available resources within the IT department to support questions and problem solving
- Avianca will enable members of the Hub development team the temporary access necessary to configure the source code on Avianca's network

3. Team and timeline

Team Structure

The Hub tool is led by Andrew Medland, a partner in our Solutions practice, focused on PMO tooling. He will take responsibility for the delivery of the work. The development and launch of the Hub for Avianca will be led by Joe Grimm, a Principal in our Solutions practice, and supported by members of our Hub development team. The team will work remotely for the duration of the project.

The team will require a level of engagement from Avianca.

- Avianca will appoint one or more managers to participate in each Phase of the work to participate with the team in daily delivery of the scope. It is expected this role will be a non-negligible time commitment.

Timeline

The work development will start on December 22, 2020. The planned launch date for the initial version of the Hub tool is February 2, 2021.

4. Data and Timing

The Consultant team will continue to rely on Avianca and its staff for access to internal information and necessary perspectives. Avianca agrees to use reasonable skill, care and attention to ensure that all information Consultant may reasonably require is provided on a timely basis and is accurate, complete and relevant for the purpose for which it is required. Avianca shall also notify Oliver Wyman if Avianca subsequently learns that the information provided is incorrect or inaccurate or otherwise should not be relied upon. Oliver Wyman shall ensure that strict confidentiality is maintained, except in those cases where Avianca agrees to share information with other parties. Oliver Wyman shall execute confidentiality agreements as required and as reasonably requested by Avianca. The Oliver Wyman will transfer data to servers and systems within the Oliver Wyman's own firewall.

CLIVER WYMAN

January 25, 2021 Page 6

All timelines and schedules described herein assume that Avianca data is accurate and delivered in a timely manner and that Avianca meets the timelines in terms of attending meetings, making decisions and supporting Oliver Wyman as outlined above. Any delays or extension in the project timeline due to Avianca's actions or lack of actions, decisions or lack of decisions will be communicated in a timely manner. Avianca agrees that it will adjust timeline and professional fees for any delays or extensions for which it is solely responsible. Avianca agrees to take all reasonable measures to make resources available to the project teams in order to facilitate the timely and accurate completion of this work.

5. Commercial Terms

Fees

Part 1: The Design and Development fee for the software (the "development fee") will be \$85,000.

Part 2 &3: The fee for Usage, Maintenance & Support Services and Hosting Services (the "support fees") shall be US\$13,500 per month. The support fees for the first three months shall be payable in advance (February 2, 2021 – April 30, 2021). Thereafter, support fees shall be payable quarterly in advance, at the beginning of each three month period.

Part 4: If Avianca opts to license the source code:

- The server environment diagnostic fee shall be \$15,000
- The License Fees ("the License Fees") for perpetual licenses shall be \$360,000, payable in advance

Expenses

In addition to such fees, Oliver Wyman will also bill for direct expenses, which include those expenses that can be easily traced to the specific assignment, such as travel, hotels, meals, parcel delivery and report production. These expenses also include (1) fees and expenses for third party independent contractors retained by Oliver Wyman to assist in the performance of the services, which shall be charged at cost, and (2) the outside attorneys' fees and expenses Oliver Wyman incurs in connection with seeking court approval of Oliver Wyman's retention and compensation in Avianca's chapter 11 bankruptcy cases, pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). Reimbursement of any individual expenses mentioned in this paragraph above \$100 (other than fees and expenses referred to in item (2), above) will be subject to Avianca's written approval (email to suffice).

Invoicing

An invoice for the development fee and the first three months of support fees will be submitted on February 15, 2021. Invoices for subsequent support fees will be invoiced quarterly in advance, at the beginning of each three-month period. Invoices for subsequent or additional fees and any expenses related to this scope of work will be

CLIVER WYMAN

January 25, 2021 Page 7

submitted on a monthly basis. An invoice for the server diagnostic fee and the License Fee will be submitted upon Avianca's confirmation to Oliver Wyman that it opts to license the source code. Payment of all fees and expenses incurred through the effective date (the "Plan Effective Date") of any plan of reorganization confirmed by the Bankruptcy Court in Avianca's chapter 11 bankruptcy cases are subject to all applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and orders entered in the Bankruptcy Court. Payment of all fees and expenses incurred after the Plan Effective Date shall be paid within 30 days after the date of Oliver Wyman's invoice(s). In the event Avianca disputes any of the items set forth in an invoice issued pursuant to this Agreement, Avianca will notify Oliver Wyman promptly, describing the disputed items and the reason for such dispute. The parties will then engage in good faith discussions regarding the disputed items. In the event that there is an amount in dispute, Avianca is still obligated to pay all undisputed amounts on all invoices.

6. Terms and Conditions

The terms of this engagement are subject to the approval of the Bankruptcy Court. Further, the licensing of The Hub software and the related services described in this letter are governed by the terms and conditions of the Software Development, Implementation, License and Related Services Agreement which is attached hereto as Appendix A (the "License Agreement") and the Schedules attached thereto. Please indicate your agreement to the terms of this letter by signing in the space provided in the signature page below and returning the signed document to Oliver Wyman.

We appreciate the opportunity to assist Avianca in this important effort.

Sincerely,

Nortan

Tim Hoyland Partner Oliver Wyman

[Signature Page Follows]

January 25, 2021 Page 8

By:

Accepted and Agreed:

AVIANCA HOLDINGS, S.A.

luht

Name: Richard Galindo Title: Secretary Date: OLIVER WYMAN, INC.

By:

Name: Tim Hoyland Title: Partner Date: 18 February 2021

OLIVER WYMAN SERVICES LIMITED

Un un By:

Name: Jeremy Badman Title: Director Date: February 18, 2021

[Signature Page]

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APPENDIX A

This **SOFTWARE DEVELOPMENT, IMPLEMENTATION, LICENSE AND RELATED SERVICES AGREEMENT**, dated January 25, 2021, and the Schedules attached hereto set forth the terms and conditions on which Oliver Wyman, Inc. and Oliver Wyman Services Limited (together, the "Company"), license software and provide related services for Avianca Holdings, S.A. and its affiliated entities (the "Client") pursuant to or in connection with the attached document titled **Design and Deployment of a Corporate Plan Reporting Tool** dated **January 25, 2021** (the "Statement of Work"). This agreement together with the Schedules attached hereto and the Statement of Work shall be referred to herein as the "Agreement".

IT IS AGREED as follows:

1. DEFINITIONS

1.1 In this Agreement:

"Additional Services" means any additional services related to the Software to be provided by the Company from time to time as agreed to by the parties and where applicable, as referenced in Schedule 2 (*Usage, Maintenance & Support Services*), or Schedule 3 (*Hosting Services*). To the extent any "Additional Services" are to be performed prior to the Plan Effective Date (as defined in the Statement of Work), such services shall be subject to approval of the Bankruptcy Court;

"Business Day" means Monday to Friday excluding public holidays in the country from which the Company is primarily providing the Services (which, unless otherwise stated in this Agreement, shall be the United States);

"Client Data" means any data, owned or controlled by the Client, which is inputted to the Software and the Output;

"Client IT System" means the information technology systems and applications used by the Client from time to time in connection with the Services and/or Software;

"Client Materials" means all items of property (including equipment and Intellectual Property Rights) belonging to or licensed to the Client (other than by the Company) and, in either case, provided or made available to the Company by the Client for the purpose of carrying out the Services (including the Client IT System and the Client Data);

"Commencement Date" means February 2, 2021;

"**Company Parties**" means the Company and its affiliates and each of their employees, contractors, representatives, and agents involved in the performance of the Company's obligations under this Agreement and "**Company Party**" means any one of them, as the context requires;

"**Confidential Information**" means any confidential information, technical and business information, and intellectual property, of any nature that is provided by one party to the other party, whether written, oral or otherwise, and (in the case of the Company) including the Documentation, the Source Code, and the Software;

"**Data Protection Law**" means the applicable laws about the processing of personal data and privacy of the countries from which the Services and/or the Software are provided under this Agreement;

"**Documentation**" means any instruction manuals, technical literature and all other related materials in humanreadable and/or machine-readable forms supplied by the Company and relating to the Services and/or the Software as may be amended by the Company from time to time;

"Fees" means all fees payable by the Client to the Company under this Agreement, including License Fees and fees payable for the Services;

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"Good Industry Practice" means exercise of that degree of skill, care, diligence, prudence and foresight which would ordinarily be expected from a reasonably skilled person carrying out obligations similar to the obligations of the Company under this Agreement;

"Intellectual Property Rights" means any and all intellectual property rights (whether registered or unregistered) including patents, trade marks, trade names, service marks, design rights, copyright, rights in databases, domain names, topography rights, know-how, look and feel, logos, get-up, inventions, rights in Confidential Information and all similar rights together with the right to apply for registration of and/or register such rights;

"Open Source Software" means open-source software, public source software, shareware or freeware, or any modification or derivative thereof, including any version of any computer software licensed pursuant to any open source or general public license;

"**Output**" means any and all analysis and other output generated by the Software as a result of the Client's and any Authorised User's (as defined in Schedule 4 (*License Terms*)) use thereof;

"**Personal Data**" means information or data that relates to a living individual who can be identified from that information or data and/or is subject to the Data Protection Laws, and (if any) such other information or data that is within the definition of 'Personal Data' (or any equivalent term) under such laws;

"Schedule" means a schedule mutually agreed in writing between the parties and appended to this Agreement;

"**Services**" means each of the services identified in a Schedule or otherwise agreed in writing as Additional Services to be delivered by or on behalf of the Company under this Agreement;

"**Software**" means the software as set out in Schedule 1 (*Development & Implementation Services*), including any error corrections and Software Updates (excluding Third Party Software);

"**Software License**" means the license of the Software by the Company to the Client set out in Schedule 4 *(License Terms)*;

"**Software Updates**" means any enhancements to the Software, including, without limitation, upgrades, modifications, new functionality and Documentation updates;

"**Source Code**" means a human readable form of the computer program underlying the Software, showing the computer language and the instructions comprising the program from which the object code can be produced, and in which the program logic may be decoded by a human being and from which a printed listing can be made by processing it with a computer;

"**Specification**" means (i) the Company-issued specification of the Software as may be updated by the Company from time to time, or (ii) any other Software specification as may be mutually agreed in writing between the parties, as developed pursuant to Schedule 1 (*Development & Implementation Services*) or otherwise referenced in this Agreement, as may be updated from time to time;

"**Term**" means the period starting on the Commencement Date and continuing until the expiry or earlier termination pursuant to Clause 9 (*Termination*) of this Agreement; and

"Third Party Software" means Open Source Software and other software programs proprietary to third parties that are licensed to, and used by, the Company or Client in connection with the Services or Software, including software identified as such in this Agreement or in other documentation as may be agreed in writing from time to time between the parties or in the Specification.

1.2 In addition to the above, defined terms specific to the interpretation of each Schedule are set out in that Schedule.

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2. TERM

- 2.1 This Agreement shall take effect on the Commencement Date and shall remain in effect for the Term.
- 2.2 The duration of the Software License and each of the Services shall be as set out in the applicable Schedule, or as separately agreed for Additional Services.

3. SERVICES, LICENSING AND PAYMENT

- 3.1 The Company shall provide the Services in accordance with this Agreement and Good Industry Practice.
- 3.2 The terms and conditions for the Services and Software License are set out in the applicable Schedule.
- 3.3 In providing the Services, the Company shall comply with its own established IT security procedures, as updated from time to time.
- 3.4 In consideration of the Services and Software License, the Client shall pay to the Company the Fees and expenses in accordance with the terms of the Statement of Work, this Clause 3.4 and the relevant Schedule. Payment of each invoice from the Company shall be made by the Client to Oliver Wyman, Inc., billing and collecting for itself, and acting as billing and collection agent for Oliver Wyman Services Limited, within 30 days after the date thereof, without any set-off, deduction or withholding. The Fees and expenses described in this Agreement are: non-cancellable and non-refundable; and, stated exclusive of any applicable taxes, which shall be added to the amounts invoiced.
- 3.5 The Company reserves the right to suspend the provision of Services and Software License in the event of a breach of Clause 3.4 by the Client.
- 3.6 The scope of Services and Fees do not contemplate the Company being involved in any legal or regulatory proceedings or investigations or subject to third-party claims. Accordingly, the Client agrees to pay the Company's standard rates for professional time spent (including, without limitation, for preparing, defending or giving testimony or furnishing documents) and reimburse the Company for liabilities, losses, damages, costs and expenses as incurred (including, without limitation, reasonable legal fees and costs), in connection with any actual or threatened actions, proceedings or investigations, whether or not the Company is a party (collectively "**Costs**"), relating to or arising out of the Services. However, the Client will not be liable to the Company under this Clause 3.6 to the extent any Costs sustained by the Company are finally determined to have resulted primarily from the intentional misconduct or bad faith of the Company.

4. INTELLECTUAL PROPERTY

Company Materials

- 4.1 The Company (or, as applicable, its or any third party licensors) shall retain ownership of all rights, titles and interests in and to the Software, Documentation and all related Intellectual Property Rights. The Software, including, the Source Code and the Software's algorithms, subroutines, routines and modules, their arrangement, organisation, and methods of interaction, and all related Documentation, data formats, output formats, and other aspects thereof and their modifications and enhancements, is confidential and trade secret information that is proprietary to and solely owned by the Company (or relevant third party licensors), together with all related Intellectual Property Rights.
- 4.2 On each copy of the Software and Documentation reproduced by the Client in accordance with this Agreement, the Client will reproduce or cause to be reproduced all copyright, trademark, and other notices, shown on the original.

Third Party Software

4.3 The Client acknowledges and agrees that the Software may be dependent upon Third Party Software, and that any license of any Third Party Software is not provided under or in connection with this Agreement. A list of Third Party Software needed for full functionality of the Software is set forth in Schedule 4. If the Client does not maintain licenses for such Third Party Software, the Software's functionality associated with such Third Party Software may not work properly. It is the Client's sole responsibility to obtain licenses to such Third Party Software.

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Client Materials

- 4.4 The Company acknowledges and agrees that all Intellectual Property Rights in and to the Client Materials are owned by the Client or its licensors and shall (as between the parties), remain vested in the Client or its licensors.
- 4.5 The Client hereby grants to the Company, or shall procure the grant to the Company of, a non-exclusive, non-transferable, royalty free license to use the Client Materials for the purpose of fulfilling the Company's obligations and receiving the benefit of its rights under this Agreement.

5. CLIENTS OBLIGATIONS

- 5.1 The Client shall:
 - 5.1.1 in a timely and efficient manner, provide the Company with: (i) reasonable co-operation in relation to this Agreement; and (ii) all reasonable access to such information, systems and personnel as are necessary for the performance of the Services;
 - 5.1.2 comply with all applicable laws with respect to its activities under or in relation to this Agreement;
 - 5.1.3 comply with the relevant Third Party Software license terms; and
 - 5.1.4 obtain and maintain all licenses, consents, and permissions related to access and use of each of the Client IT System, Client Materials, and Client Data, (and other relevant Client facilities or materials) that may be required by the Company to enable it to perform its obligations and exercise its rights under this Agreement.
- 5.2 The Client shall not:
 - 5.2.1 remove any copyright notice or other designation of ownership applied to the Software, Documentation, or any other materials related to the Services; or
 - 5.2.2 publicly attribute the Output, decisions, or any other matter, related to the Services or Software, to any Company Party.

6. LIABILITY

- 6.1 This Clause 6 sets out the entire financial liability of the Company (including any liability for the acts or omissions of each Company Party) to the Client and (as applicable) as between the Company and the Client arising under or in connection with this Agreement.
- 6.2 Nothing in this Agreement shall limit or exclude either party's liability for:
 - 6.2.1 fraud or fraudulent misrepresentation; or
 - 6.2.2 any other liability which cannot be limited or excluded by applicable laws.
- 6.3 The Company Parties shall have no liability for:
 - 6.3.1 Third Party Software (except to the extent that the Software causes such Third Party Software to malfunction);
 - 6.3.2 the consequence of any failure by the Client to comply with its obligations under this Agreement, including, without limitation, any liability that may arise as a result of delay or the Client's failure to install any Software Updates, upgrades, modifications, bug fixes, enhancements or versions supplied or advised by the Company;
 - 6.3.3 a modification or alteration of the Software by anyone other than the Company;
 - 6.3.4 the Client's use of the Software or Services in a manner other than as permitted pursuant to this Agreement;
 - 6.3.5 the Software or Services incorporating or being based on the Client's requirements, Client Materials, or other information provided by or on behalf of the Client; or

- 6.3.6 any failure of the Client's network and/or the Client IT System to comply with any requirements notified to the Client by the Company from time to time or to procure and maintain its network connections and telecommunications links from the Client IT System to the Company's data centres and the Software, and all problems, conditions, delays, delivery failures and all other losses or damages arising from or relating to the Client's network and/or Client IT System functionality impairments or failures, network connections and/or telecommunications links.
- 6.4 The Client acknowledges and agrees that:
 - 6.4.1 the Client is wholly responsible (and the Company assumes no liability) for: (i) the use, legality, reliability, integrity, accuracy, provision, and quality of the Client Data; and, (ii) all results and conclusions drawn from, and decisions based upon, the use of the Services and the Software and the Client Data (including the Output); and
 - 6.4.2 the utility of the Services, the Software, and the Client Data, is dependent upon the Client's provision and proper input related to the same, and the Client is responsible (and the Company assumes no liability) for any failure of the Client to supply such input.
- 6.5 Neither party shall have any liability to the other party (and no Company Party shall have liability to the Client), whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise for any special or indirect or consequential loss, or any loss of profits or revenue, loss or corruption of data or information, (in each case) however arising under or in connection with this Agreement.
- 6.6 Subject to Clause 6.2, the total liability of the Company (including the other Company Parties) to the Client or its affiliates, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement:
 - 6.6.1 in connection with the Development & Implementation Services as set out in Schedule 1 (*Development & Implementation Services*), shall be limited to 100% of the total Fees payable for such Services; or
 - 6.6.2 in connection with each of the (a) Maintenance & Support Services as set out in Schedule 2 (Maintenance & Support Services); (b) Hosting Services; as set out in Schedule 3 (Hosting Services); or (c) Additional Services, shall be limited to 100% of the Fees paid for the applicable individual Service in the 12 month period immediately preceding the date of the event giving rise to the claim,

but, in any event, shall not exceed US\$500,000 in aggregate.

6.7 Each party shall minimise and mitigate any amount for which it is entitled to bring a claim against the other party under or in connection with this Agreement (including under any indemnity or other action).

7. CONFIDENTIALITY

- 7.1 Each party shall keep confidential and not disclose any Confidential Information of the other party without the prior written consent of the other party. Subject to the remainder of this Clause 7, neither party may disclose Confidential Information of the other party outside of its organisation (which, in the case of the Company, shall include its subcontractors and affiliates), and Confidential Information of the other party may only be disclosed internally to those who are bound by confidentiality restrictions consistent with those set forth herein.
- 7.2 The provisions of this Clause 7 shall not apply to any Confidential Information that the receiving party can show:
 - 7.2.1 is or at any time becomes publicly available other than as a result of the breach by the receiving party of its obligations under this Agreement or any other obligations of confidentiality;
 - 7.2.2 is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto;
 - 7.2.3 is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required);

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- 7.2.4 is approved for disclosure in writing by the disclosing party; or
- 7.2.5 was developed independently of and without reference to Confidential Information disclosed by the other party.
- 7.3 If either party is requested or required by any legal requirement or investigative process to disclose any of the other's Confidential Information, that party shall, to the extent legally permissible, provide the other party with prompt notice of each such request and the Confidential Information requested so that such other party may seek to prevent disclosure or the entry of a protective order. If disclosure is required and a protective order is not obtained, the party from whom disclosure is required shall disclose only such Confidential Information that it is advised by its legal counsel is legally required to be disclosed.

8. CLIENT DATA AND DATA PROTECTION

Client Data

- 8.1 The Client shall:
 - 8.1.1 own all right, title and interest, including where relevant all Intellectual Property Rights, in and to all of the Client Data; or
 - 8.1.2 have or, as applicable, obtain all the required permission, authorisation and or consent to provide the Client Data to the Company and enable the Company to perform this Agreement in compliance with all applicable laws; and
 - 8.1.3 have sole responsibility for the format, legality, reliability, integrity, accuracy, completeness and quality of the Client Data.

Data Protection

- 8.2 Without prejudice to Clauses 8.1.2 and 8.3, each party is entitled to assume that the other has complied and will continue to comply with its obligations arising from Data Protection Law to the extent that those obligations are relevant to this Agreement.
- 8.3 Unless otherwise agreed in writing, the Client shall not share any Personal Data with the Company other than the contact details of those of its employees, contractors, representatives, agents, and Authorised Users (as defined in Schedule 4 *(License Terms)*) who may interact with the Company pursuant to this Agreement.

9. TERMINATION

- 9.1 Subject to earlier termination under this Clause, this Agreement shall expire upon the later of completion of the Services and the end of the Software License. Without affecting any other right or remedy available to it under this Agreement, at law or in equity:
 - 9.1.1 either party may terminate this Agreement with immediate effect by giving written notice to the other if the other commits a material breach of any term of this Agreement which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days (or such longer period as may be specified in the written notice) after being notified in writing to do so; or
 - 9.1.2 the Company shall be entitled to terminate this Agreement immediately on notice to the Client if the Client either: (i) subject to the terms of payment set forth in the Statement of Work, fails to pay invoiced amounts within 30 days after first becoming due to the Company; (ii) violates the terms of Schedule 4 (*License Terms*); (iii) a chapter 11 trustee is appointed in one or more of Avianca's chapter 11 bankruptcy cases (the "Bankruptcy Cases"); (iv) the Agreement is rejected by Avianca during the Bankruptcy Cases; or (v) one or more of the Bankruptcy Cases is dismissed or converted to a case under chapter 7 of the United States Bankruptcy Code.
- 9.2 Neither party shall have the right to terminate this Agreement for convenience, with individual Services being terminable only as provided for in the applicable Schedule or as otherwise agreed in writing between the parties. If the Client requires assistance from the Company in relation to the termination of any Services, ceasing use of the Software, or pre- or post-termination transition services with respect to

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the Software or migration to any replacement for the Software, then such assistance shall be treated as an Additional Service.

9.3 Upon expiration or termination of this Agreement or the Software License for any reason: (i) the Client and all Authorised Users (as such term is defined in Schedule 4 (*License Terms*)) shall cease all use of the Software, and (ii) the Client shall destroy or return to the Company all copies of the Software and the Documentation in the Client's possession (if any) and upon request certify to the Company in writing that the Client has done so.

10. DISPUTE RESOLUTION

If any dispute between the parties arises out of any matter governed by this Agreement, each party will first attempt in good faith to reach a settlement through negotiation by its appointed representative.

11. AMENDMENT, WAIVER AND ASSIGNMENT

This Agreement may not be amended, modified or waived except by a signed written agreement. Neither party shall have the right to assign or transfer this Agreement or any rights hereunder to any third party without the prior written consent of the other party.

12. FORCE MAJEURE

Neither party shall have any liability for any failure or delay in performance of its obligations under this Agreement because of circumstances beyond its reasonable control, including (in the case of the Company and Client) cloud service provider outage or limitations, pandemics, acts of God, fires, floods, earthquakes, acts of war or terrorism, civil disturbances, sabotage, accidents, unusually severe weather, governmental actions, power failures, computer/network viruses that are not preventable through generally available retail products, catastrophic hardware failures or attacks on its servers.

13. GENERAL

- 13.1 This Agreement contains the entire understanding of the parties with respect to the subject matter contained herein, superseding all prior agreements, understandings and negotiations with respect to such matters. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors. There are no third party beneficiaries with respect to this Agreement. This Agreement may be executed on separate counterparts, each of which shall constitute an original, but both of which when taken together shall constitute a single contract. Delivery of an executed signature page of this Agreement by email or other electronic transmission shall be effective as delivery of a manually executed counterpart.
- 13.2 The obligations of the parties under this Agreement that by their nature continue beyond the termination of this Agreement shall survive any termination of this Agreement.
- 13.3 The Schedules form part of this Agreement. In the event of conflict between the terms and conditions of this Agreement and a Schedule, the terms and conditions of this Agreement shall govern and control to the extent of such conflict.
- 13.4 Any notice given by a party under this Agreement shall be sent to the following senior representative of the recipient party in writing: for Company: Tim Hoyland; and for Client: Jose Ciro Montoya. Notices may be given, and are deemed received on the earlier of confirmation of receipt by the recipient or if sent: (a) by hand, on delivery; (b) by post, on the second Business Day after posting; or, (c) by correctly addressed email, on the Business Day after sending provided that no failed delivery notification has been received. This Clause does not apply to notices given in legal proceedings.

14. GOVERNING LAW

This Agreement and all matters arising out of or relating to this Agreement, including its enforcement, shall be governed and construed in accordance with the law of the State of New York. Each party submits to the exclusive jurisdiction of the courts located in the State of New York.

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15. SEVERABILITY

It is the intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Agreement or any word, phrase, clause or sentence herein is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified or deleted in such manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent.

16. NON-SOLICITATION

During the term of this Agreement and for one year following the last date on which the Company provides Services hereunder, neither party will solicit for employment, employ or otherwise engage the service of any employee who is employed by the other party and was involved with the Services provided hereunder. For purposes of this Clause 16, general employment advertising carried on in good faith by a party that is not, directly or indirectly, targeted to any employee of the other party (and any hiring resulting from such advertising) shall not be deemed to be direct or indirect solicitation (or hiring) in violation of this Clause 16.

SCHEDULE 1

DEVELOPMENT & IMPLEMENTATION SERVICES

This Schedule defines and controls the Development & Implementation Services to the exclusion of any other part of the Agreement. Further to this, if there is a conflict between this Schedule and any other part of the Agreement in relation to its subject matter then this Schedule shall take precedence.

1. **DEFINITIONS**

In this Schedule and in the rest of this Agreement:

"Accepted" means that the Software, or any part thereof (as applicable), has met the Test Criteria, and "Acceptance" shall be construed accordingly;

"Defect" means a material non-conformance between the Software when used in accordance with this Agreement and the description thereof contained in the Specification, which non-conformance is notified in writing to the Company and replicable;

"Deliverable" means a Feature, Documentation or any other item delivered or to be delivered by the Software, in each case as agreed in relation to the Software;

"**Delivery Plan**" means the plan (or collection of plans) agreed between the parties to develop and Test the Software during the Development & Implementation Period as set out in Paragraph 5 of this Schedule 1 (Development & Implementation Services);

"Development & Implementation Period" has the meaning set out in Paragraph 3.1 of this Schedule 1 (*Development & Implementation Services*);

"Development & Implementation Services" means the Software development and related Services to be carried out by the Company in respect of the initial build and configuration of the Software, as set out in this Schedule 1 (*Development & Implementation Services*);

"Feature" means features of the Software that fulfil one or more of the Client's requirements, including user stories and use cases;

"**Go-Live Date**" means the date that a Release is first made available to the Client to use in a live environment (whether or not it is put into live use). Where the Software is a single Release there shall be one Go-Live Date. Where the Software is released in parts, there shall be a Go-Live Date for each Release;

"Iteration" means a fixed period set in line with the Company's development principles during which one or more Features are developed and Tested (or, in respect of the final such period for each Release, agreed Defects are worked upon) as part of the Development & Implementation Services;

"Release(s)" means a series of linked Features which in aggregate comprise Software capable of use in a live environment, and which is developed through the Development & Implementation Services and as may be more fully described in the Delivery Plan or Specification;

"Test", "Tested" or "Testing" means tests to be carried out on the Software by the Client in accordance with this Schedule 1 (*Development & Implementation Services*) and may include user testing and technical testing;

"**Test Criteria**" means the criteria provided by the Company to the Client in accordance with this Schedule 1 (*Development & Implementation Services*), and as may be subsequently developed by the mutual, written agreement of the parties, which will determine the standard in order to pass Testing; and

"Warranty" and "Warranty Period" have the meanings given to them in Paragraph 8 of this Schedule 1 (*Development & Implementation Services*).

2. SOFTWARE

- 2.1 The Software to be developed under this Agreement is set out below or, if this Paragraph 2.1 is not completed, as set out in the latest version of the Statement of Work:
 - Name: The Hub
 - Description: Online project management and reporting tooling, aggregating information for Avianca's corporate planning efficiency initiatives and providing tracking and reporting outputs with an easy-to-use user interface
 - Format for Delivery: Software as a Service
 - User Documentation: Site documentation and instructional guides in PDF format
 - Statement of Work: Design and Deployment of a Corporate Plan reporting tool, dated January 25, 2021

3. DEVELOPMENT AND IMPLEMENTATION PERIOD

3.1 The Development & Implementation Services shall commence on the date of the Agreement and continue until the final (if relevant) Go-Live Date for all Releases (the "Development & Implementation Period").

4. DEVELOPMENT AND IMPLEMENTATION

- 4.1 The parties agree that the Development & Implementation Services will be carried out through Iterations in accordance with agile development principles. The parties will agree a Delivery Plan for Development & Implementation Services in accordance with this Schedule.
- 4.2 The parties shall develop the Specification for all additional or configured parts of the Software as part of the Development & Implementation Services, as each Deliverable is built or configured. The Specification shall be delivered by the Company to the Client in accordance with the Delivery Plan.
- 4.3 If either party becomes aware that it will not, or is unlikely to, meet any delivery date, it shall notify the other of any delay that is reasonably likely to occur and shall prepare a remediation plan to mitigate the effects of the delay. Once the remediation plan is agreed, the parties shall update the Delivery Plan, accordingly.

5. TESTING

5.1 The Software will be Tested in accordance with this Paragraph 5. Paragraphs 5.2 to 5.4 do not apply to the final Iteration for a Release.

Interim Iterations

- 5.2 The Deliverable representing each Feature developed in an Iteration will be Tested following completion of the development stage of that Iteration. The Client shall use this Testing process to confirm that each Feature produced in that Iteration materially meets the applicable Test Criteria.
- 5.3 The Client may confirm Acceptance within the Testing period (as set forth in Paragraph 5.4). Alternatively, if a Test identifies that any Feature developed in that Iteration has failed to meet its applicable Test Criteria in any material respect, and that is notified in accordance with Paragraph 5.4 within the Testing period of that Iteration, then the parties shall place the relevant Feature(s) in the scope of work for the next Iteration. No other consequences are applicable for a failure to meet the Test Criteria, subject to the Client's ability to escalate concerns within the Company, or terminate the Agreement, under Clauses 9 (*Termination*) and 10 (*Dispute Resolution*).
- 5.4 The Testing period within each Iteration will be 3 Business Days from the Company informing the Client of completion of the development stage of that Iteration. Acceptance will be deemed for each Feature unless, in respect of that specific Feature, the Client validly notifies the Company in writing within the Testing period that such Feature does not meet the applicable Test Criteria and the Client provides supporting evidence and documentation to identify such failure with such notice.

Final Iteration

- 5.5 Through the stage of Testing which precedes the final Iteration for each Release, the parties shall work together to identify and agree any residual Defects so that they may be addressed in such final Iteration. The parties agree that such final Iteration will be limited in scope to residual agreed Defects and shall not include any new Features, or alteration of Features or variations.
- 5.6 The Company shall notify the Client once it has completed development of the final Iteration.
- 5.7 Following the completion of development of the final Iteration for each Release the Software shall be treated as Accepted by the Client, unless: (i) a Defect that was to be addressed in the final Iteration remains unresolved and it materially restricts the ability of the Client to use the Software; and (ii) the Client validly notifies the Company in writing of such Defect and the Client provides supporting evidence and documentation to identify such Defect with such notice within 2 Business Days following the Company's notification under Paragraph 5.6.
- 5.8 The parties agree that any Defects that do not materially restrict the ability of the Client to use the Software will not delay the Release.

Planning for Testing

- 5.9 The Testing component of the Delivery Plan shall include:
 - 5.9.1 The Design Document that will outline the requirements and features the software will include, prior to Go Live, during the agile process;
 - 5.9.2 An outline of test criteria and business processes for users to perform User Acceptance Testing; and,

5.9.3 Testing Iterations to occur in advance of the first Go Live Release and up to the final Go Live release

6. GO-LIVE DATE

6.1 The Releases and their estimated Go-Live Dates are set out below:

Estimated Go-Live Date	Release	Description
February 2, 2021	1	Initial release (to FP&A team)
February 19, 2021	2	Second release (to business users) (the " Release 2 Go-Live Date ")
March 5, 2021	3	Final release and client acceptance
TBD	4	<i>Optional</i> - the " Licensing Go-Live Date ". To be established if Avianca exercises its option to license the source code.

7. FEES AND INVOICING

- 7.1 The Fees for the Development & Implementation Services are set forth in the Statement of Work.
- 7.2 The Company may increase the Fees for the Development & Implementation Services immediately upon agreement with the Client where the Client requests a change in the nature or scope of the Development & Implementation Services, or there is a change to the Delivery Plan.

8. LIMITED WARRANTY

- 8.1 The Company warrants that the Software provided through the Development & Implementation Services shall materially conform to the applicable Specification when used in accordance with this Agreement (this being the "**Warranty**") for 60 days from the Release 2 Go-Live Date as set out in this Schedule (the "**Warranty Period**").
- 8.2 The Company shall, at its own cost, in respect of a valid breach of the Warranty that represents a Defect and which is first identified and reported to the Company (with sufficient supporting evidence and documentation, and system access, to identify such Defect and enable remediation) during the Warranty Period, use its reasonable endeavours to promptly remedy the relevant Defect. The Warranty: shall not apply to: (a) the addition of new Features or changes to Features out of the Scope of Work set forth in this Agreement; (b) Defects that were known or reasonably identifiable prior to the Warranty Period (including where they would have been identified but for incomplete, or non-participation in, Testing by the Client); (c) Defects that are caused by changes that are made following the start of the Warranty Period (such as changes made by the Client to the Deliverable or related systems) or matters outside of the Company's control (such as errors / instability in or

changes to Client Data (excluding Output), Third Party Software or the Client IT Systems); or (d) use of the Deliverable in a manner not permitted or envisaged by this Agreement. This sets out the Client's sole and exclusive remedy (howsoever arising, whether in contract, tort, negligence or otherwise) for any breach of the Warranty or for any other error or Defect in, defective performance or inability to use, the Deliverables (including the Software) or any part of them.

- 8.3 As its sole exclusive remedy for the failure of the Company to either comply with Paragraph 8.2, or successfully remedy a relevant Defect in accordance with Paragraph 8.2, following a reasonable number of attempts (being no less than three), the Client shall be entitled to (within 30 days of the end of the Warranty Period) return and cease all future use of (including by deleting all copies of) the non-conforming Deliverable in exchange for a refund of any Fees paid solely in relation to such non-conforming Deliverable.
- 8.4 The Client agrees that, except as provided in Paragraph 8, the Software is provided on an "as is" basis without any other warranty whatsoever, express or implied, related to this Agreement or the transaction it reflects, particularly no representation or warranty as to accuracy, suitability, merchantability or fitness for a particular purpose. The Company does not warrant that the Software will be error-free nor that the Client's use of the Software will be uninterrupted or error-free.
- 8.5 The Warranty Period shall not be subject to extension. If the Client wishes the Company to provide further warranty support, then this shall be subject to agreeing relevant Additional Services.

SCHEDULE 2

USAGE, MAINTENANCE & SUPPORT SERVICES

This Schedule defines and controls the Usage, Maintenance and Support Services to the exclusion of any other part of the Agreement. Further to this, if there is a conflict between this Schedule and any other part of the Agreement in relation to its subject matter then this Schedule shall take precedence.

1. **DEFINITIONS**

In this Schedule:

"Authorised Users" has the meaning given to it in Schedule 4 (License Terms);

"Client's Support Function" means a Client help desk acting as an interface between Authorised Users of the Software and the Company;

"Defect" has the meaning given to it in Schedule 1 (Development & Implementation Services);

"Feature" has the meaning given to it in Schedule 1 (Development & Implementation Services);

"Go-Live Date" has the meaning given to it in Schedule 1 (Development & Implementation Services);

"Incident" means any event which is not part of standard operation of the Software and which causes, or would reasonably be expected to cause, an interruption in, or a decrease in the quality of, the functioning of the Software as a result of a Defect, and which is not attributable to a delay or failure by the Client to install any Software Updates, upgrades, modifications, bug fixes, enhancements or versions supplied or advised by the Company or matters outside of the Company's control (such as changes to Third Party Software or the Client IT Systems);

"Incident Reporting Mechanism" has the meaning given to it in Paragraph 4.8 of this Schedule 2 (*Maintenance and Support Services*);

"Usage, Maintenance & Support Services" means the usage, maintenance and support Services for the Software to be provided by the Company to the Client in accordance with this Schedule 2 (*Maintenance and Support Services*);

"Normal Business Hours" means 9am to 5pm local time, each Business Day;

"Release(s)" has the meaning given to it in Schedule 1 (Development & Implementation Services);

"Service Level Failure" means a failure by the Company to deliver any part of Usage, Maintenance & Support Services in line with the applicable Service Level; and

"Service Levels" means, for the Usage, Maintenance & Support Services, the service levels set out in Schedule 2, Annex A (Service Levels).

2. DURATION AND TERMINATION

2.1 The Usage, Maintenance & Support Services shall commence on the first Go-Live Date and shall continue for a period of 12 months (the **"Usage and Maintenance Initial Period**") and thereafter shall renew automatically for successive monthly periods unless terminated in accordance with this Schedule (the **"Usage and Maintenance Renewal Period**"), together the **"Usage, Maintenance & Support Services Period**".

2.2 The Usage, Maintenance & Support Services can be terminated for convenience by either party on no less than 30 days' notice to the other party with effect from the end of the current Usage, Maintenance Initial Period or Usage and Maintenance Renewal Period (as applicable). Extension of the Usage, Maintenance & Support Services Period beyond the Usage and Maintenance Renewal Period shall be subject to the written agreement of the parties.

3. MAINTENANCE AND SUPPORT SERVICES

The Company shall, during the Usage, Maintenance & Support Services Period, use reasonable endeavours to make the Maintenance & Support Services available during Normal Business Hours.

4. AUTHORISED USER SERVICES

Client provided 1st line support

4.1 The Client is responsible for answering questions from Authorised Users relating to the use of the Software, the Output, and also educating Authorised Users on Software functionality. For purposes of clarification, end-user support is not provided by the Company under this Agreement. Requests for the same are outside of the scope of the Maintenance & Support Services and shall (if provided) be chargeable as Additional Services.

Company provided 2nd line support

4.2 The Company may provide 2nd line support under this Agreement upon request. The performance of such Service shall be chargeable as Additional Services.

Authorised User management

- 4.3 The Company is responsible for managing the creation of Authorised Users' accounts with respect to accessing the Software (creation/deletion).
- 4.4 The Client shall ensure that all Authorised Users shall use multifactor authentication when accessing the Software. The Client agrees that the Company shall not be responsible for any claims, liabilities, losses or damages incurred by the Client, or any other party, connected with a failure to implement or operate the multifactor authentication offered by the Company.
 - 4.4.1 The Client shall submit new user requests to the Company via email. The Company will begin the new user credential process by the end of business the next business day following the date of the request.
- 4.5 The Company shall provide an email address to Authorised Users to request a reset to their account password.
 - 4.5.1 Account passwords will be reset by end of business of the next business day following the date of the request.

Incident Handling Process

4.6 Pursuant to Paragraph 4.1, the Client's Support Function (or Hub "super user" or Client Hub POC) is responsible for performing an initial investigation of all Incidents reported by Authorised Users and using reasonable endeavours to remedy such Incidents. This shall include: closing those that are not valid Incidents (such as those related to 'how-do-l' questions and user training needs); and, providing a resolution to known problems and using reasonable endeavours to investigate whether

Incidents are caused by errors in Client Data and/or the Client IT System, resolving them without referral to the Company.

- 4.7 Incidents not resolved after initial investigation and using reasonable endeavours to remedy such Incidents by the Client may be notified to the Company by the Client's Support Function in accordance with the defined mechanism for Incident reporting as notified to the Client from time to time by the Company (the **"Incident Reporting Mechanism**"). Authorised Users are not permitted to report Incidents direct to the Company.
- 4.8 In the event that the Client's Support Function notifies the Company of any Incident in accordance with the Incident Reporting Mechanism, the Client's Support Function shall report its initial classification of the severity of the Incident, per the table at Schedule 2, Annex A (*Service Levels*). The Company shall start working on such Incident based on the initial classification. The Company aims to qualify as soon as possible whether the Incident is in fact related to a Defect or a Service Level Failure. The Company may reclassify the Incident, notifying the Client thereof, if it disagrees with the Client's initial classification based on the investigation and will manage the Incident based on such reclassification.

Business Relationship Management

- 4.9 The Company will assign a Business Relationship Manager ("BRM") to partner with the Client to continue the short and long term management of the software.
- 4.10 The BRM will conduct Quarterly Service Reviews with the Client to discuss the prior quarter's performance, covering items such as:
 - (a) SLAs
 - (b) Application Utilization and Authorised User Feedback
 - (c) Feature Backlog and Roadmap Management

Software Maintenance Updates

- 4.11 The Company's discretionary on-going maintenance of the Software may result in Software Updates.
- 4.12 The Company may notify the Client of and, subject to Paragraph 4.12, may make available to the Client, Software Updates when the Company makes them generally available to all its other relevant customers. The content of such Software Updates and the general availability thereof are at the sole discretion of the Company.

From time to time, implementation of Software Updates will require Additional Services from the Company, including without limitation, integration services, configuration services and/or modifications to the Software to fit the Client IT System and/or requirements. This is especially the case when such Software Updates include new functionality. The Client is aware that the Additional Services related to Software Updates will carry additional Fees and will be agreed with the Client on a case by case basis. Additionally, the use of new functionality may be restricted subject to the payment of additional Fees or agreement to additional license terms determined by the Company. If the Client does not implement Software Updates that are made available, the Company reserves the right to treat Services provided in respect of Incidents that arise as a consequence (or that would have been avoided by use of the Software Update) as Additional Services.

SCHEDULE 2

ANNEX A

SERVICE LEVELS FOR MAINTENANCE & SUPPORT SERVICES

1. Incident handling

1.1 Incidents are classified according to the following (the "Severity Levels"):

Severity Level 1	An Incident is classified as Severity Level 1 if the problem has very serious consequences for normal business use and urgent, business critical work cannot be performed.
Severity Level 2	An Incident is classified Severity Level 2 if normal business use is seriously affected and necessary tasks cannot be performed.
Severity Level 3	An Incident is classified Severity Level 3 if normal business use is affected but urgent necessary tasks can still be performed
Severity Level 4	An Incident is classified Severity Level 4 if normal business use is not affected by the Incident.

1.2 Incidents may be reclassified if conditions of the Incident are changed due to partial fixes or work arounds. The following response times (acknowledge receipt of an Incident report) and Target Resolution time shall apply to Incidents according to the above Severity Level assigned in accordance with Paragraph 1.1 **"Target Resolution"** time is the total elapsed time from the point where the Incident is responded to by the Company as set out below to the point where the Usage, Maintenance & Support Services is able to resume standard operations, either through a workaround or a fix for the relevant Defect (or determining that there is no such Defect). The timelines do not include time that may be required to resolve errors in Output as a consequence of the Incident. The parties agree that the 'Target Resolution' time set out below are targets only and are subject to Paragraph 1.3. The Company will provide periodic updates on the status of the Incident to the Client following the initial response to the Incident.

Response Times	Target Resolution time
2 hours during Normal Business Hours	Within 8 Business Hours
4 hours during Normal Business Hours	With 16 Business Hours
1 Business Day	Within 5 Business Days
No Service Level	No Service Level
-	4 hours during Normal Business Hours 1 Business Day

1.3 The Company will use reasonable endeavours to resolve Incidents in the Target Resolution period set out above but shall not be liable if unable to do so in that timeframe or in any longer period. The Company will typically notify the Client in the event Incidents cannot be resolved within such timeframes and such notification being provided along with an estimate of the resolution time.

- 1.4 A failure of the Software to function properly due to the failure of the Client IT System or a failure of the Client to comply with the procedures or computer environment specified in the Documentation, shall not constitute an Incident.
- 1.5 If the Client desires to have matters addressed which are not valid Incidents, then it shall be classified and chargeable as Additional Services.

SCHEDULE 3

HOSTING SERVICES

This Schedule defines and controls the Hosting Services to the exclusion of any other part of the Agreement. Further to this, if there is a conflict between this Schedule and any other part of the Agreement in relation to its subject matter then this Schedule shall take precedence.

2. **DEFINITIONS**

In this Schedule:

"Authorised Users" has the meaning given to it in Schedule 4 (License Terms);

"Availability Service Level" has the meaning given to it in Paragraph 4 of this Schedule 3 (Hosting Services);

"Go-Live Date" has the meaning given to it in Schedule 1 (Development & Implementation Services);

"**Hosting Services**" means the Services for hosting the Software described in Paragraph 3 of this Schedule 3 (*Hosting Services*);

"Normal Business Hours" has the meaning given to it in Schedule 2 (Maintenance & Support Services); and

"Service Hours" means Normal Business Hours, excluding scheduled downtime, and excluding any other agreed downtime.

3. DURATION AND TERMINATION

- 3.1 The Hosting Services shall commence on the first Go-Live Date and shall continue for a period of 12 months (the "Hosting Initial Period") and thereafter shall renew automatically for 12 month successive period unless terminated in accordance with this Schedule (the "Hosting Renewal Period"), together the "Hosting Services Period".
- 3.2 The Hosting Services can be terminated for convenience: (i) by either party on no less than 30 days' notice to the other party with effect from the end of the current Hosting Initial Period or Hosting Renewal Period (as applicable); or (ii) by the Company at any time after the Hosting Initial Period on 30 days' notice to the Client. Extension of the Hosting Services Period beyond the Hosting Renewal Period shall be subject to the written agreement of the parties.

4. SERVICES

Hosting Services

- 4.1 The Hosting Services shall comprise making the Software available in a Company managed hosting environment during the Hosting Service Hours, subject to the Availability Service Level.
- 4.2 From time to time during the Hosting Services Period, the Software may be unavailable due to upgrades, enhancements and routine maintenance activities. Scheduled downtimes shall typically occur the second Friday of each month, between 20:00 and 02:00 CST the next day. The Company shall provide prior notice to the Client of any changes to this scheduled downtime.

Hosting environment

- 4.3 The Hosting Services includes day-to-day operations to keep the hosting environment healthy, available and secure (in accordance with the Company's IT security procedures), including the creation of Software code backup and associated measures to assist a recovery in the event of a Software failure.
- 4.4 The hosting environment shall be within Oliver Wyman's Dallas Data Centres. The hosted environment has completed a full application security assessment.

Application level remote access

4.5 The Company shall make the Software available to the Client through an internet-based portal, through which up to 200 named Authorised Users can gain access to the Software.

Database level access

4.6 At its discretion, the Company may provide access to the Software at database level to enable adhoc and detailed reporting and querying of the Client Data and Output potentially outside the scope of the Software.

Data extraction, transfer and loading

- 4.7 The Client is responsible for performing extraction from the Client IT System for any Client Data which is to be held within Hosting Service, subject to Clause 8.3.
- 4.8 Subject to Clause 8.3 of the Agreement, the Client is responsible for transferring extracted Client Data to the Company in a form acceptable to the Company.
- 4.9 The Company shall load correctly provided data on the database and process the data for use in the Software. The Client Data shall comply with the agreed data specification.

Input data resolution

- 4.10 The Company may (but is not obliged to) operate data checks on Client Data that is provided. When issues with the Client Data are detected through such data checks the Company may report this to a Client-appointed contact person.
- 4.11 The Company will use reasonable endeavours to correct minor isolated issues in the Client Data that it detects if possible; and work with the Client to incorporate new, corrected Client Data when and if provided by the Client. Where the issues are not minor or isolated or cannot be fixed by the Company without input from others, or require a material level of effort to address, then this shall be treated as an Additional Service.
- 4.12 The Client is aware that input data issue resolution may require a high degree of involvement and collaboration, or leadership, from the Client's representatives and that the quality of the Client Data ultimately resides with the Client. This Company shall not be responsible for issues that it does not detect or is unable to detect or resolve.
- 4.13 The Client acknowledges and agrees that input data issue resolution Services may be classified and chargeable as Additional Services.

Client obligations

- 4.14 The Client shall:
 - 4.14.1 ensure the security of access to the Hosting Service, notably (but without limitation) by complying with requirements notified by the Company to the Client from time to time;
 - 4.14.2 not permit others to use the Hosting Services and use all reasonable endeavours to prevent any other unauthorised access to, or use of, the Hosting Service. In the event of any unauthorised access or use of the same, the Client shall promptly notify the Company;
 - 4.14.3 refrain from introducing any virus (or similar) into the hosting environment whether by using the Software or otherwise. If viruses are identified, the Company reserves the right to immediately suspend the Hosting Service and/or hosting environment for the duration necessary for the deletion of the virus and resolution of any other security or service continuity threats. In such a case, the Company shall inform the Client without any delay of the suspension, and of the subsequent cessation of the same;
 - 4.14.4 refrain from accessing, storing, distributing or transmitting any material during the course of its use of the Hosting Service that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 4.14.5 be responsible for the operating back-up procedures for the Client Data to a standard no less than that of a reasonable and prudent customer;
 - 4.14.6 ensure that it does not change the Client IT Systems in a manner which impacts the Hosting Services without the advance agreement of the Company; and
 - 4.14.7 refrain from performing, or disclosing the results of, any performance or security tests on the Hosting Services.

5. APPLICATION AVAILABILITY

The Company shall use reasonable endeavours to provide a service level of 99% availability of accessibility to the Hosting Services during Service Hours as measured by an external third party availability monitor provided by the Company (the "Availability Service Level"). The Availability Service Level is calculated as the ratio of Service Hours during which the Hosting Services are available in a given calendar month to the total number of Service Hours in such calendar month.

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SCHEDULE 4

LICENSE TERMS

1. DEFINITIONS

In this Schedule:

"Authorised Users" means Avianca employees granted permission by Avianca to access the software.

"Go-Live Date" has the meaning given to it in Schedule 1 (Development & Implementation Services);

"License Fees" has the meaning assigned to such term in the Statement of Work;

"Perimeter of Use" means the group companies owned by Avianca Holdings, S.A.; and

"Purpose" means the project management, monitoring and reporting of corporate initiatives.

2. LICENSE GRANT AND COMPLIANCE

- 2.1 Subject to the Client's continued compliance with this Agreement, the Company hereby grants to the Client:
 - 2.1.1 a non-exclusive, non-transferable, non-sub-licensable right to permit the Authorised Users to use the Software in a non-production environment prior to the Licensing Go-Live Date for the purposes of supporting the Development & Implementation Services and conducting Testing in accordance with and as defined in Schedule 1 (Development & Implementation Services);
 - 2.1.2 if the Client exercises the Source Code Licensing Option, a non-exclusive, nontransferable, non-sub-licensable perpetual license, from the Licensing Go-Live Date to permit the Authorised Users to use the Software solely for the Purpose within the Perimeter of Use; and
 - 2.1.3 a non-exclusive, non-transferable license to reproduce and distribute Documentation to Authorised Users in a manner reasonably required, but only for internal use and only in conjunction with the Client's training on use, or use of, the Software (in each case) in accordance with this Agreement.
- 2.2 The Client undertakes that:
 - 2.2.1 it shall permit the Company to audit the Client in order to establish the name and password of each Authorised User and compliance with the terms of this Agreement. Such audit may be conducted no more than once per quarter unless there is evidence of non-compliance and with reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business. If any audit reveals any non-compliance with this Agreement, the Company's cost of such audit shall be borne by the Client and promptly reimbursed to the Company. The Company reserves all other rights, including to terminate the Agreement in accordance with its terms or to recover any losses or under-paid License Fees revealed by the audit; and
 - 2.2.2 if any of the audits referred to in Paragraph 2.2.1 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Company's other rights, the Client shall promptly disable such passwords and the Company shall not issue any new passwords to any such individual.

- 2.3 Unless otherwise agreed by the Company, the rights provided under this Paragraph 2 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client.
- 2.4 Except for the licenses expressly set forth in Paragraph 2.1, the Company grants to the Client no other license or right with respect to the use of the Software and/or the Documentation.
- 2.5 Without prejudice to Paragraph 8 of Schedule 1 (*Development & Implementation Services*), the Software is provided on an "as is" basis without any other warranty whatsoever, express or implied, related to this Agreement or the transaction it reflects, particularly no representation or warranty as to accuracy, suitability, merchantability or fitness for a particular purpose. The Company does not warrant that the Software will be error-free nor that the Client's use of the Software will be uninterrupted or error-free.

3. CLIENT OBLIGATIONS

- 3.1 The Client shall:
 - 3.1.1 ensure the security of access to the Software, notably (but without limitation) by keeping secure and confidential passwords for the use by any Authorised Users of the Software;
 - 3.1.2 ensure that each Authorised User shall keep a secure password for his use of the Software and the Documentation, that such password shall be changed as frequently as the Company may specify from time to time and that each Authorised User shall keep his password confidential;
 - 3.1.3 maintain a written, up to date list of current Authorised Users and provide such list to the Company within 5 Business Days of the Company's written request at any time or times;
 - 3.1.4 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and/or the Documentation. In the event of any unauthorised access or use of the same, the Client shall promptly notify the Company;
 - 3.1.5 refrain from introducing any viruses, malware or other malicious code into the Software or do anything that could damage, disable, overburden, or impair the Software or related systems. If viruses, malware or other malicious code are identified, the Company reserves the right to immediately suspend the Software License and the related Services for the duration necessary for the deletion of the virus. In such a case, the Company shall inform the Client without any delay of the suspension, and of the restoration of the same;
 - 3.1.6 refrain from attempting to copy (except as required for the Purpose), or use any unlicensed versions or copies of, the Software,
 - 3.1.7 refrain from attempting to modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media by any means, unless otherwise in accordance with this Schedule;

- 3.1.8 refrain from attempting to reverse compile, disassemble, reverse engineer or otherwise reduce to Source Code all or any part of the Software unless required to be permitted by law for interoperability;
- 3.1.9 refrain from using or accessing all or any part of the Software in order to build a product or service which competes with the Software or (unless otherwise in accordance with this Agreement) provide services to third parties; and
- 3.1.10 refrain from licensing, selling, renting, leasing, transferring, assigning, distributing, displaying, disclosing, or otherwise commercially exploiting, or otherwise making the Software available to any third party, unless otherwise in accordance with this Schedule.

4. THIRD PARTY SOFTWARE

- 4.1 Without limitation, the following constitutes Third Party Software as referred to in the Agreement:
 - Microsoft Power BI
 - Microsoft SharePoint
 - Microsoft Excel
 - Microsoft Project
 - Microsoft PowerPoint
 - Microsoft SQL Server
 - Microsoft InfoPath

5. IPR INFRINGEMENT WARRANTY

Subject to Clause 6 of the Agreement, the Company warrants to the Client that as at delivery of the Software (or relevant part thereof) by the Company to the Client: the Company has the right to grant the license under Paragraph 2; and, such grant does not violate or infringe any unconnected third-party's copyright, database right or registered trade mark, or registered patent, in the United States.