

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:
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AVIANCA HOLDINGS S.A., <i>et al.</i> ,	:
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Debtors. <sup>1</sup>	:
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AVIANCA HOLDINGS S.A., <i>et al.</i> ,	:
	:
Plaintiffs.	:
	:
v.	:
	:
USAVFLOW LIMITED,	:
	:
Defendant.	:
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Chapter 11  
Case No. 20-11133 (MG)  
(Jointly Administered)  
  
Adv. Pro. No. 20-01189 (MG)

**ORDER APPROVING THE SETTLEMENT AGREEMENT BY AND AMONG THE  
DEBTORS, AVIANCA PERU, AND THE USAV PARTIES**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (the “Debtors”) for entry of an order, pursuant to section 105(a) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy

<sup>1</sup> The Debtors in these 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion, the Settlement Agreement (including the Term Sheet), or the Transaction Documents, as applicable.



Procedure (the “Bankruptcy Rules”), (i) approving the settlement (the “Settlement”) embodied in that certain settlement agreement and release annexed hereto as Exhibit 1 (the “Settlement Agreement”), by and among the Debtors, Avianca Peru, S.A. (En Liquidación) (f/k/a Trans American Airlines, S.A.) (“Avianca Peru” and, together with the Debtors, the “Avianca Parties”), USAVflow Limited (“USAV”), each of the lenders under the Loan Agreement (collectively, the “Lenders”), and Citibank, N.A., in its capacity as Administrative Agent and as Collateral Agent under the Transaction Documents and Citibank N.A., London Branch, in its capacity as Collateral Trustee under the Transaction Documents (collectively, “Citibank” and, together with the Lenders, the “Lender Parties,” and the Lender Parties together with USAV, the “USAV Parties”) (each of the foregoing parties, a “Settling Party” and, together, the “Settling Parties”), including the restructuring term sheet annexed as Exhibit A to the Settlement Agreement (the “Term Sheet”); (ii) authorizing the Debtors to enter into and perform their obligations under the Settlement Agreement, the A&R RSPA, the A&R Loan Agreement, the other A&R Transaction Documents, and any and all related Definitive Documentation, including, without limitation, any and all other documents required, necessary, or desirable to implement the transactions contemplated by the Settlement Agreement, the A&R RSPA, the A&R Loan Agreement, and the other A&R Transaction Documents, in each case as amended, restated, supplemented, or otherwise modified from time to time consistent with the terms thereof and the Order (collectively, the “Settlement Documents,” and the transactions contemplated thereby, the “Settlement Transactions”); and (iii) granting related relief; all as fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2);

and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates and creditors, and other parties in interest; and this Court having found that the notice of the Motion and opportunity to be heard were appropriate under the circumstances and that no other or further notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; now, therefore,

**IT IS HEREBY FOUND AND CONCLUDED THAT:**<sup>3</sup>

A. *Final Order.* This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Federal Rule of Civil Procedure 54(b), as made applicable by Bankruptcy Rule 7054, there is no just reason for delay in the implementation of this Order and entry of judgment is directed as set forth herein.

B. *Avianca Stipulations.* Effective as of the Settlement Effective Date, the Avianca Parties, on behalf of themselves, their estates, and any of their respective past, present, and future predecessors, successors in interest, and assigns, and any party acting or purporting to act on behalf of the foregoing, including the Avianca Successors, admit, stipulate, and agree that:

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<sup>3</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

(i) The Sale and Transfer of the Contract Rights and Receivables arising under the Card Processing Agreements (as defined in the Term Sheet) to USAV constitutes a final, definitive, and irrevocable “true sale” and transfer, enforceable against the Avianca Parties and all third parties, and not a lending transaction or any other economic arrangement other than a true sale, and confers upon USAV good and valid legal and equitable title to all of the Contract Rights and Receivables (and all Collections derived therefrom) arising under the Card Processing Agreements and vests USAV with the definitive and infeasible ownership thereof (whether or not such Contract Rights and Receivables are in existence as of Settlement Effective Date).

(ii) Except as permitted under the Transaction Documents (or, after the Settlement Effective Date, the A&R Transaction Documents), none of the Avianca Parties nor the Avianca Successors shall sell, transfer, or assign, or purport to sell, transfer, or assign, the Contract Rights or the Receivables (or any portion thereof) to any person other than USAV, or purport to create or suffer to exist a Lien on any Contract Rights, Receivables, or Collections, except in favor of USAV.

(iii) The Contract Rights and Receivables (and all Collections derived therefrom) arising under the Card Processing Agreements, the Collateral Accounts, the Cash Collateral, or any other Collateral (as defined in the Term Sheet) (together, the “Subject Property”) (or any interest therein) shall under no circumstances be considered the property of any Avianca Party or Avianca Successor, or the property of any of their estates within the meaning of section 541(a) of the Bankruptcy Code or otherwise in respect of the Chapter 11 Cases, any Chapter 7 case if the Chapter 11 Cases are converted, or any subsequent bankruptcy case or any other context for so long as any payment and/or performance obligations under the A&R Transaction Documents

remain outstanding; *provided* that the Debtors are entitled to the disbursement of funds held in the Collateral Accounts as provided in the Term Sheet.

(iv) The Lender Security Documents provide the Collateral Agent or the Collateral Trustee (as applicable, and in each case for the benefit of the Lenders and the other Secured Parties) with effective, valid, legally binding, enforceable, non-avoidable, and properly perfected first priority Liens on all of the Collateral, and were granted to, or for the benefit of, the Secured Parties for fair consideration and reasonably equivalent value.

(v) The Purchaser Security Documents provide USAV with effective, valid, legally binding, enforceable, non-avoidable, and properly perfected first priority Liens on all of the Collateral, and were granted to, or for the benefit of, USAV for fair consideration and reasonably equivalent value.

(vi) Subject to paragraphs 6 and 7 hereof, upon any Specified Default, and after the expiration of the applicable cure periods described in Section 11 of the Settlement Agreement, the Lender Parties or the Collateral Trustee may exercise any and all rights and remedies against USAV (including a right to accelerate the amounts due under the A&R Loan Agreement) and/or the Collateral as if, and having the same effect as, an automatic Event of Default and/or Trigger Event under the A&R Transaction Documents, or under applicable Law. For the avoidance of doubt, subject to paragraphs 6 and 7 hereof, in the event of a Specified Default that occurs during the pendency of these Chapter 11 Cases or any Chapter 7 case if the Chapter 11 Cases are converted, any such exercise of rights and remedies against USAV and/or the Collateral will not be enjoined by section 362 of the Bankruptcy Code or otherwise and will not require further order of the Court.

(vii) The Lender Parties hold or benefit from claims against USAV in the amount of the Net Obligations secured by first priority liens on the Collateral evidenced by the Lender Security Documents (including as amended, supplemented, amended and restated, and/or otherwise modified by the Definitive Documentation). The Lender Parties have allowed unsecured guarantee claims against the Debtor Guarantors in the amount of the Net Obligations and the Lender Parties shall not be required to file any proof of claim in respect of such amount.

(viii) USAV has allowed claims in respect of its rights under the A&R Transaction Documents in the amount of the Net Obligations secured by first priority liens on the Collateral evidenced by the Purchaser Security Documents (including as amended, supplemented, amended and restated, and/or otherwise modified by the Definitive Documentation) and USAV shall not be required to file any proof of claim in respect of such amount.

(ix) The terms and provisions of the Settlement Agreement, the other Settlement Documents, and this Order shall apply to any Card Processing Agreements and any extensions, amendments, supplements, or replacements thereof permitted under the A&R Transaction Documents.

C. *Additional Stipulations.* Effective as of the Settlement Effective Date, the Settling Parties, on behalf of themselves, their estates, and any of their respective past, present, and future predecessors, successors in interest, and assigns, and any party acting or purporting to act on behalf of the foregoing, admit, stipulate, and agree that the RSPA and the Undertaking Agreement have not been rejected pursuant to the Rejection Opinion.

D. *Findings Regarding the Settlement Documents.*

(i) The boards of directors of the Debtors and the liquidator of Avianca Peru will authorize or have authorized the execution and delivery of the Settlement Documents. The

Avianca Parties and their affiliates have (a) full corporate power and authority to execute and deliver the Settlement Documents and (b) all of the power and authority necessary to approve the Settlement Transactions. The Avianca Parties have taken or shall take all action necessary to authorize and approve the Settlement Documents and to consummate the Settlement Transactions, and no further consents or approvals are required for the Avianca Parties to consummate the Settlement Transactions except as otherwise set forth in the Settlement Documents.

(ii) The Settlement Documents were negotiated, proposed, and entered into by the Avianca Parties, the USAV Parties, and each of their respective members, officers, directors, employees, agents, attorneys, advisors, and representatives at arm's length, in good faith, and without collusion or fraud under the supervision of a court-appointed mediator. The terms and conditions set forth in the Settlement Documents are fair and reasonable under the circumstances and are not being entered into for the purpose of, nor do they have the effect of, hindering, delaying, or defrauding any of the Debtors or any of their creditors under any applicable laws.

(iii) The consideration to be paid or provided by each of the Settling Parties under the Settlement Documents was negotiated at arm's length, in good faith, and without collusion or fraud and constitutes (a) fair and reasonable consideration and (b) reasonably equivalent value and fair and adequate consideration under the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, the Uniform Voidable Transactions Act, and under the laws of the United States and each state, territory, and possession, and the District of Columbia.

(iv) The Settlement Documents and the Settlement Transactions contemplated thereby, including the Releases (as defined below) and the other provisions contained herein for the benefit of the Settling Parties and their affiliates and other related parties and representatives,

(a) meet the standards applied by bankruptcy courts for the approval of a compromise and settlement pursuant to Bankruptcy Rule 9019, (b) are reasonable under the circumstances, fair and equitable, and supported by adequate consideration, and (c) are in the best interests of the Debtors, their estates, their creditors, and all other parties in interest. Entry into the Settlement Documents and consummation of the Settlement Transactions represents the reasonable exercise of sound and prudent business judgment by the Debtors.

(v) The Settlement Transactions (subject to the conditions thereof) and the rights, interests, and obligations of each party to the Settlement Documents are mutually dependent and are all part of a single, integrated transaction which is not severable in any respect of circumstance.

(vi) Each of the Settlement Documents and the Settlement Transactions contemplated thereby is integral to the compromise and settlement of the Released Claims. The entry of this Order, including the Releases and the other provisions contained herein for the benefit of the USAV Parties and their affiliates and other related parties and representatives, is a condition precedent to the effectiveness of the Settlement Documents and the receipt by the Avianca Parties of the benefits conferred in the Settlement Documents.

E. *Findings Regarding the Released Claims.* The Released Claims are property of the Avianca Parties (including the Debtors and their estates) and are personal to the Avianca Parties, and the Avianca Parties have the sole and exclusive authority to commence and prosecute the Released Claims and any other matter arising out of the Released Claims, including without limitation any claims seeking to characterize the USAV Sale Transaction as anything other than a true sale. The Avianca Parties have the exclusive right and authority to negotiate, settle, and release the Released Claims, including without limitation any claims seeking to recharacterize the



USAV Sale Transaction as anything other than a true sale, and, upon the effectiveness of the Releases, neither the Avianca Parties nor any other person (including, for the avoidance of doubt, the Avianca Successors) shall have standing, direct or derivative, to commence or prosecute any Released Claim. All Parties acting or purporting to act on behalf of the Avianca Parties or their estates (including, for the avoidance of doubt, the Official Committee of Unsecured Creditors (the “UCC”) and the Avianca Successors) shall be bound by the Releases and the Avianca Parties’ other stipulations, admissions, and agreements contained in this Order and in the Settlement Documents upon their effectiveness and no such party shall assert any Released Claim, including, without limitation, any claims seeking to recharacterize the USAV Sale Transaction as anything other than a true sale.

F. *Relief is Warranted.* The legal and factual bases set forth in the Motion establish just and sufficient cause to grant the relief requested therein.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein. Any and all objections to the Motion not previously withdrawn, waived, settled, or resolved as set forth herein, and all reservations of rights included therein, are hereby overruled.

2. Pursuant to Bankruptcy Rule 9019 and section 105(a) of the Bankruptcy Code, the Settlement embodied in the Settlement Agreement and the Term Sheet is approved. The Debtors are authorized to enter into the Settlement Agreement and the other Settlement Documents, and the Settling Parties are directed to execute and deliver all documents and take all actions necessary to immediately and fully implement the Settlement Agreement and the other Settlement Documents in accordance with their terms.

**Settlement Agreement**

3. The settlements and compromises contained within the Settlement Agreement, including, without limitation, the releases set forth therein (the “Releases”), are approved in their entirety pursuant to Bankruptcy Rule 9019 and section 105(a) of the Bankruptcy Code. All of the terms of the Settlement Agreement, including, without limitation, the Releases, are incorporated herein by reference as if fully set forth herein (and the failure to specifically describe or include herein any particular term or provision of the Settlement Agreement shall not diminish or impair the effectiveness of any such term or provision).

4. The Debtors are authorized to indemnify and hold harmless each of the USAV Parties on the terms and conditions set forth in Section 7(c) of the Settlement Agreement, without notice, hearing, or further order of this Court as, when, and to the extent such obligation becomes due and payable under the terms of the Settlement Documents. Such indemnities shall not be discharged, modified, or otherwise affected by any Chapter 11 plan of the Debtors or related confirmation order, dismissal of these Chapter 11 Cases, or conversion of these Chapter 11 Cases to Chapter 7 cases, nor shall any of such amounts be required to be disgorged.

**Settlement Binding**

5. Effective as of the Settlement Effective Date, the Avianca Stipulations, admissions, agreements, and Releases contained in this Order and in the Settlement Documents, including, without limitation, in paragraphs B and C of this Order, shall be binding upon the Settling Parties and any and all other parties in interest, including, without limitation, the UCC and any other person or entity acting or seeking to act on behalf of the Debtors’ estates, including any Chapter 7 or Chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes.

6. The USAV Parties shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of their rights or remedies against USAV (including a right to accelerate the amounts due under the A&R Loan Agreement) and/or the Collateral under the Settlement Documents; *provided* that, notwithstanding anything to the contrary herein (except for paragraph 7 hereof) or in any of the Settlement Documents, during the pendency of the Chapter 11 Cases, the USAV Parties shall be required to provide five (5) business days' written notice to the Debtors and counsel to the UCC prior to the exercise of any remedies against or rights in respect of the Collateral (during which time the Debtors and the UCC may seek an expedited hearing before the Court solely for the purpose of determining the existence of any Specified Default (and no other issue may be raised at such hearing)) unless such remedies are exercised in respect of a Specified Default specified in Sections 11(a)(iv), (vi), (vii), or (x) of the Settlement Agreement (in which case no such written notice shall be required prior to the exercise of remedies against the Collateral). The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence; *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

7. Notwithstanding anything to the contrary herein, the automatic stay applicable under section 362 of the Bankruptcy Code shall not prohibit a Settling Party from (a) taking any action or delivering any notice necessary to effectuate the termination of the Settlement Agreement pursuant to and in accordance with the terms thereof at any time prior to the Settlement Effective Date or (b) delivering any notice pursuant to any of the Settlement Documents (including a notice declaring all amounts owing thereunder immediately due and payable).

8. The terms and provisions of the Settlement Agreement, the other Settlement Documents, and this Order shall be binding in all respects upon the Avianca Parties, their affiliates, their estates, all creditors of (whether known or unknown) and holders of equity interests in any Avianca Party and any other stakeholder of any Avianca Party, all counterparties to all Card Processing Agreements (and any extensions, amendments, supplements, or replacements thereof as permitted under the A&R Transaction Documents), the USAV Parties, all of their respective successors and assigns, including, but not limited to, any subsequent trustee(s), examiner(s), or receiver(s) appointed in any of the Chapter 11 Cases or upon conversion to Chapter 7 under the Bankruptcy Code, as to which trustee(s), examiner(s), or receiver(s) such terms and provisions likewise shall be binding, the Avianca Successors, and all other persons. The Settlement Documents shall not be subject to rejection or avoidance by the Avianca Parties (including the Debtors, their estates, their creditors, their shareholders, or any trustee(s), examiner(s), or receiver(s)) or the Avianca Successors. For the avoidance of doubt, the provisions and effect of this Order, and any actions taken pursuant to this Order or the Settlement Documents and the Settling Parties' respective rights, obligations, remedies, and protections provided for herein and in the Settlement Agreement shall survive the conversion, dismissal, or closing of the Chapter 11 Cases, appointment of a trustee therein, confirmation of a plan or plans of reorganization or liquidation, or the substantive consolidation of these Chapter 11 Cases with any other case or cases, and the terms and provisions of this Order and the Settlement Documents shall continue in full force and effect notwithstanding the entry of any such order; *provided* that notwithstanding anything in this paragraph, the Settlement Agreement, or in paragraph 16 hereof, the rights of all parties are fully reserved regarding any objections to confirmation of the Debtors' Chapter 11 plan,

subject in any event to each party's rights as such rights would otherwise exist under applicable law.

9. Each and every federal, state, and local governmental agency, department, or official is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Settlement Documents.

10. Furthermore, the Settling Parties are authorized to enter into mutually agreed upon amendments, modifications, or supplements, if any, to the Settlement Agreement or any of the other Settlement Documents without obtaining prior approval from this Court, provided that such amendments, modifications, or supplements do not, based on the Debtors' business judgment, have a material or adverse effect on the Debtors' estates or their creditors.

11. None of the Avianca Parties nor the Avianca Successors may reject, terminate, replace, or repudiate the RSPA, the Undertaking Agreement, or any Card Processing Agreement (except that the Avianca Parties or the Avianca Successors may terminate and/or replace a Card Processing Agreement in the manner permitted by the A&R Transaction Documents), unless otherwise agreed to by the Settling Parties, including as reasonably necessary to modify any of the foregoing to effect the liquidation of Avianca Peru (including that the Avianca Parties or the Avianca Successors may amend the AMEX Contract to remove Avianca Peru as a party thereto). For the avoidance of doubt, and notwithstanding anything to the contrary herein or in any of the Settlement Documents, from the Settlement Effective Date until all of the payment and performance obligations under the A&R Transaction Documents have been paid or otherwise performed in full, none of the Avianca Parties nor the Avianca Successors may enter into any card processing agreement in respect of "Specified Sales" (as defined in the RSPA) unless the Avianca Parties or Avianca Successors, as applicable, complete a Contract Rights and Receivables Addition

in respect of such agreement as required under the A&R Transaction Documents (and any attempted or purported agreement in violation of this paragraph 11 shall be null and void).

12. Notwithstanding anything to the contrary in the Mediation Order or the Supplemental Mediation Order, (a) the Settling Parties and the UCC shall continue to participate in the Mediation in order to negotiate and finalize the Settlement Documents (other than the Settlement Agreement and the Term Sheet) and (b) all matters ordered by the Court to be stayed and/or held in abeyance in the Mediation Order (including, without limitation, all USAV Litigation matters before the Court) shall remain stayed and/or held in abeyance, until the first to occur of (x) the Settlement Effective Date or (y) the Settlement Termination Date. In the event the Settling Parties reach a dispute concerning the Settlement Documents that cannot be mutually resolved, the Settling Parties shall present the dispute in writing to Judge Chapman within one (1) business day of determining the dispute cannot be resolved among the Settling Parties. The Mediation will otherwise continue to remain subject to the provisions of the Mediation Order and the Supplemental Mediation Order.

13. Notwithstanding anything to the contrary in the Bar Date Order or the Settling Parties Proofs of Claim Stipulation, in the event that the Settlement Agreement is terminated prior to the Settlement Effective Date, the USAV Parties shall be permitted to file proofs of claim for claims arising from or related to the USAV Sale Transaction or Transaction Documents so as to be actually filed no later than the date that is thirty (30) days after the Settlement Termination Date.

14. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

15. Notwithstanding Bankruptcy Rule 6004(h) or any other Bankruptcy Rule, this Order shall be immediately effective and enforceable upon its entry and the Settling Parties are

authorized to consummate the transactions contemplated in the Settlement Agreement and the other Settlement Documents immediately upon entry of this Order.

16. To the extent there is any conflict between the terms of this Order and the Settlement Documents, the terms of this Order shall control. Nothing contained in any plan of reorganization or liquidation hereinafter confirmed in these Chapter 11 Cases or any order confirming such plan, or any other order of the Court, shall conflict with the terms of the Settlement Documents or this Order.

17. The requirements set forth in Rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York are satisfied by the contents of the Motion.

18. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

19. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**IT IS SO ORDERED.**

Dated: March 17, 2021  
New York, New York

/s/ Martin Glenn  
MARTIN GLENN  
United States Bankruptcy Judge

**Exhibit 1**

**Settlement Agreement**



## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (hereinafter this “Agreement”) is made and entered into as of February 18, 2021 by and among Avianca Holdings S.A. and all affiliated and related debtors in possession (collectively, the “Debtors”) in Case No. 20-11133 (MG) pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), Avianca Peru, S.A. (En Liquidación) (f/k/a Trans American Airlines, S.A.) (“Avianca Peru” and, together with the Debtors, the “Avianca Parties”), USAVflow Limited (“USAV”), each of the lenders under the Loan Agreement (as defined below) listed in **Schedule 1** hereto (collectively, the “Lenders”), and Citibank, N.A., in its capacity as Administrative Agent and as Collateral Agent under the Transaction Documents (as defined below) (collectively, the “Agents”) and Citibank, N.A., London Branch, in its capacity as Collateral Trustee under the Transaction Documents (collectively, “Citibank” and, together with the Lenders, the “Lender Parties,” and the Lender Parties together with USAV, the “USAV Parties”) (each of the foregoing parties, a “Settling Party” and, together, the “Settling Parties”).

## **RECITALS**

WHEREAS, on December 12, 2017, Debtor Aerovías del Continente Americano S.A. Avianca (“Aerovías”), as Seller and Servicer, and USAV, as Purchaser, entered into the Contract Rights and Receivables Sale, Purchase and Servicing Agreement dated December 12, 2017 (as amended, supplemented, amended and restated or otherwise modified from time to time, the “RSPA”) pursuant to which Aerovías agreed to sell to USAV certain credit card Receivables and Contract Rights (referred to herein, collectively, as the “Credit Card Receivables”) arising under the Existing Card Processing Agreements (as defined in footnote 1, below) and the Additional Card Processing Agreements (as defined in the Term Sheet (as defined below)) on account of “Specified Sales” (as defined in the RSPA)<sup>4</sup> in exchange for an initial purchase price and continuing monthly installments of Additional Purchase Price (as defined in the RSPA) subject to certain conditions (collectively, the “USAV Sale Transaction”);

WHEREAS, on December 12, 2017, the Avianca Parties and the USAV Parties entered into a number of other agreements to effectuate the USAV Sale Transaction, including that certain Receivables Maintenance Agreement dated as of December 12, 2017 (the “Undertaking Agreement”) and the Cash Management Agreement dated as of December 12, 2017 (the “Cash Management Agreement”);

WHEREAS, on December 12, 2017, USAV entered into a Loan Agreement dated as of December 12, 2017 among USAV, as Borrower, the Lenders, Debtors Avianca Holdings S.A., Taca International Airlines S.A., and Avianca Costa Rica S.A., as Guarantors (collectively, the “Debtor Guarantors”), non-debtor Avianca Peru, as a Guarantor, and Citibank, as Administrative Agent and Collateral Agent (as amended, supplemented, amended and restated or otherwise modified from time to time, the “Loan Agreement,” and together with the RSPA and the other Credit Documents (as defined in the Loan Agreement) identified in **Schedule 2** hereto, the “Transaction Documents”);

WHEREAS, under the existing loan facility provided under the Loan Agreement, (the “Prepetition Loan Facility”), the Lenders advanced \$150 million to USAV to finance the initial purchase price for the Contract Rights and Receivables;

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<sup>4</sup> Specified Sales are currently processed by (i) American Express Travel Related Services Company, Inc. and American Express Payment Services Limited (together with their successors or assigns, “AMEX”), under the AMEX Contract, and (ii) BAC International Bank Inc. and its subsidiaries (“Credomatic”), under the Credomatic Contract (together with the AMEX Contract, and all extensions, amendments, supplements, or replacements of such agreements with AMEX and Credomatic, respectively, the “Existing Card Processing Agreements”).

WHEREAS, on May 10, 2020 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court, and, since then, the Debtors have been operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, on June 23, 2020, the Debtors (i) filed a motion [Bk.Dkt.306] (the “Rejection Motion”)<sup>5</sup> seeking authorization to reject certain of the Transaction Documents; and (ii) a complaint [Rech.Dkt.1] (the “Recharacterization Complaint”) against USAV seeking to recharacterize the USAV Sale Transaction as a disguised financing and seeking a declaration pursuant to section 552 of the Bankruptcy Code that USAV would have no security interest in the Contract Rights and Receivables, commencing an adversary proceeding that remains pending (Adv. Pro. No. 20-01189 (MG)) (the “Recharacterization Adversary Proceeding”);

WHEREAS, on September 4, 2020, following objections from USAV and the Lenders, the Bankruptcy Court issued a memorandum opinion [Bk.Dkt.850] (the “Rejection Opinion”) granting in part and denying in part the Rejection Motion, pursuant to which the Bankruptcy Court authorized the Debtors to reject the RSPA<sup>6</sup> and the Undertaking Agreement;

WHEREAS, on September 18, 2020, USAV and the Lenders each filed a notice of appeal [Bk.Dkts.959, 960] from certain of the Rejection Opinion’s findings and determinations to the United States District Court for the Southern District of New York (the “District Court”), which appeals remain pending (Civil Case Nos. 20-08364, 20-08008) (the “Rejection Appeals”);

WHEREAS, on October 16, 2020, certain of the Debtors and Avianca Peru filed a complaint [Stay.Dkt.1] (the “Automatic Stay Complaint”) against USAV and Citibank seeking declaratory and injunctive relief based on allegations that transfers of funds from USAV’s Collections Account and Debt Service Reserve Account and the application of those funds to repay obligations owing under the Transaction Documents post-petition violated section 362(a) of the Bankruptcy Code, commencing an adversary proceeding that remains pending (the “Automatic Stay Adversary Proceeding”);

WHEREAS, on October 28, 2020, the Bankruptcy Court entered an order [Bk.Dkt.1125] (the “Mediation Order”) (i) directing the Settling Parties and the Official Committee of Unsecured Creditors (the “UCC”) to participate in mediation under the supervision of the Honorable Shelley C. Chapman of the United States Bankruptcy Court for the Southern District of New York (the “Mediation”) in an effort to reach a consensual resolution of the disputes arising out of or related to the Rejection Opinion, the Rejection Appeals, the Recharacterization Complaint, and the Automatic Stay Complaint (collectively, the “USAV Litigation”) and (ii) staying all USAV Litigation matters before the Bankruptcy Court pending the outcome of the mediation;

WHEREAS, litigation of the claims and causes of action in the disputes among the Settling Parties to judgment will result in significant expenditures and allocation of resources by the Settling Parties and the UCC;

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<sup>5</sup> References to “Bk.Dkt. \_\_\_” are to docket entries from the main Chapter 11 Case No. 20-11133 (MG), references to “Rech.Dkt. \_\_\_” are to docket numbers in Adv. Proc. No. 20-01189 (MG), and references to “Stay.Dkt. \_\_\_” are to docket numbers in Adv. Proc. No. 20-01244 (MG).

<sup>6</sup> Capitalized terms not defined herein shall have the meanings given to them in the Term Sheet, the Transaction Documents, or section 101 of the Bankruptcy Code, as applicable.

WHEREAS, the Settling Parties and the UCC have engaged in arm's length, good faith negotiations with the objective of settling any and all claims and causes of action between or among the Settling Parties, including by engaging in multiple mediation sessions under the guidance of Judge Chapman; and

WHEREAS, to avoid any further expenditure of time, effort, and money and the uncertainty attendant to litigation, the Settling Parties desire fully and finally to compromise, settle, and resolve all claims asserted in the USAV Litigation or otherwise relating in any way to the subject matter of the USAV Litigation, and to restructure the Prepetition Loan Facility (the "Restructured Loan Facility") and the Transaction Documents, upon the terms and conditions set forth in this Agreement (the "Settlement"), subject to approval of this Agreement by the Bankruptcy Court and the other terms and conditions set forth herein.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Settling Parties covenant and agree as follows:

**Exhibits and Schedules Incorporated by Reference.** Each of the exhibits and schedules attached hereto (including the restructuring term sheet attached hereto as Exhibit A (the "Term Sheet")), and any exhibits and schedules to such exhibits and schedules is expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include the exhibits and schedules. In the event of any inconsistency between this Agreement (without reference to any such exhibits and schedules) and any such exhibits and schedules, this Agreement (without reference to any such exhibits and schedules) shall govern.

**Agreement Effective Date.** Except as otherwise provided herein (including the provisions conditioned upon the occurrence of the Settlement Effective Date (as defined in Section 5)), this Agreement shall become effective, and the obligations contained herein shall become binding upon the Settling Parties (subject to all applicable terms and conditions hereof), upon the first date (the "Agreement Effective Date") that (a) this Agreement has been executed and delivered by each of the Settling Parties hereto and (b) the Bankruptcy Court has entered an order, substantially in the form of the proposed order attached hereto as Exhibit B (the "Proposed Settlement Order") and to be attached to the motion filed with the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "9019 Motion") as Exhibit A thereto, that, among other things, approves the Settlement and this Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and authorizes and directs the Settling Parties to enter into and perform their obligations under this Agreement and the other Definitive Documentation (the "Settlement Order").

### **Definitive Documentation.**

(i) The definitive documents and the agreements governing the Settlement (each, a "Definitive Document" and, collectively, the "Definitive Documentation") shall include: (i) this Agreement, (ii) the A&R RSPA, (iii) the A&R Loan Agreement, which shall not include Avianca Peru as a Guarantor, (iv) the other A&R Transaction Documents, (v) the 9019 Motion, (vi) the Settlement Order, (vii) the Assumption Motion (as defined below), (viii) the Assumption Order (as defined below), (ix) any and all other writings, instruments, other documents required, necessary, or desirable to implement the Settlement, including any deliverables consistent with the original closing of the existing Transaction Documents, and (x) any other motions seeking to implement any of the foregoing clauses (i) through (ix) and any pleadings related thereto.

(ii) The Definitive Documentation (other than this Agreement), is subject to negotiation and shall, upon completion, contain terms, representations, warranties, and covenants consistent with the terms of this Agreement and shall be in form and substance reasonably satisfactory to the Settling Parties.

(iii) Each Settling Party agrees that it shall act in good faith and use and undertake all commercially reasonable efforts to negotiate and finalize the Definitive Documentation. In the event the Settling Parties reach a dispute concerning the Definitive Documentation that cannot be mutually resolved, the Settling Parties shall present the dispute in writing to Judge Chapman within one (1) business day of determining the dispute cannot be resolved among the Settling Parties.

**Commitments of the Settling Parties.**

(iv) Effective as of the Agreement Effective Date, each of the Settling Parties, severally and not jointly, hereby covenants and agrees to:

promptly take all actions necessary in order to stay and hold in abeyance all USAV Litigation matters (including by seeking for the Mediation to remain open and for the stay imposed by the Bankruptcy Court's Mediation Order to remain in place (which shall be set forth in the Settlement Order)), pending the first to occur of (A) the Settlement Effective Date (as defined in Section 5) or (B) the date on which this Agreement is terminated in accordance with Section 10 hereof (the "Settlement Termination Date");

negotiate in good faith regarding, and as soon as reasonably practicable following the Agreement Effective Date, execute and deliver, the Definitive Documentation;

support, take all steps necessary to consummate and implement, and facilitate the consummation and implementation of the Settlement; and

use commercially reasonable efforts to obtain any and all required regulatory and third-party approvals for the implementation of the Settlement.

(v) Effective as of the Agreement Effective Date, each of the Settling Parties hereby covenants and agrees that it shall not, directly or indirectly:

object to, delay, impede, or take any other action to interfere with or that is inconsistent with, or is intended or could reasonably be expected to interfere with, delay, or impede the approval, consummation, or implementation of the Settlement; or

file any motion, pleading, or other document with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is materially inconsistent with this Agreement.

(vi) In addition to each Avianca Party's other obligations hereunder, effective as of the Agreement Effective Date, each of the Debtors hereby covenant and agree to:

take all steps reasonably necessary to address any legal or structural impediment that could prevent, hinder, or delay the consummation and implementation of the Settlement;

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timely file a formal objection to any motion or other pleading filed with the Bankruptcy Court or in any other court by any person seeking relief that, as determined by the Avianca Parties in their sole discretion, (A) is inconsistent with this Agreement in any material respect or (B) would, or could reasonably be expected to, delay, impede, or interfere with the purposes of this Agreement;

if the Bankruptcy Court denies the 9019 Motion, timely appeal such denial;

if the Settlement Order is entered but subsequently is appealed by any party or any party files a motion for reconsideration of the Settlement Order, timely oppose such appeal or motion for reconsideration and, if the Settlement Order is reversed, stayed, modified, or amended as a result of any appeal or reconsideration, timely appeal such reversal, stay, modification, or amendment; and

take all necessary steps to implement the Settlement consistent with the following milestones (each, a “Milestone”); *provided* that the deadlines for achieving any Milestone may be extended by email consent from counsel for each of the Debtors and the Required Lenders (as defined in the Loan Agreement):

file with the Bankruptcy Court the 9019 Motion, together with the Proposed Settlement Order to be attached as Exhibit A to the 9019 Motion, on or before February 18, 2021. The 9019 Motion, Proposed Settlement Order, and this Agreement shall be public and will not be filed under seal;

take all actions reasonably necessary to obtain entry of the Settlement Order, substantially in the form of the Proposed Settlement Order, by the Bankruptcy Court on or before March 19, 2021, subject to the Bankruptcy Court’s schedule;

act in good faith and use commercially reasonable efforts to execute and deliver the other Definitive Documentation described in Section 3(a)(ii) through (iv) and Section 3(a)(ix) and cause the Settlement Effective Date to occur on or before April 5, 2021; and

file with the Bankruptcy Court a motion pursuant to section 365 of the Bankruptcy Code to assume the RSPA, the Undertaking Agreement, and each of the Existing Card Processing Agreements (in each case, as amended pursuant to this Agreement) *nunc pro tunc*, in the cases of the RSPA and the Undertaking Agreement, to the Settlement Effective Date and, in the cases of the Existing Card Processing Agreements, to the Petition Date (the “Assumption Motion”), in form and substance reasonably satisfactory to the Lender Parties, on or before the date that is ten (10) days following entry of the Settlement Order by the Bankruptcy Court.

(vii) In addition to each USAV Party’s other obligations hereunder, effective as of the Agreement Effective Date, each of the USAV Parties hereby covenants and agrees to take all necessary steps to implement the Settlement consistent with the following Milestone; *provided* that the deadlines for

achieving such Milestone may be extended by email consent from counsel for each of the Debtors and the Required Lenders:

act in good faith and use commercially reasonable efforts to execute and deliver the other Definitive Documentation described in Section 3(a)(ii) through (iv) and Section 3(a)(ix) and cause the Settlement Effective Date to occur on or before April 5, 2021.

(viii) In addition to each Lender's other obligations hereunder, effective as of the Agreement Effective Date, each of the Lenders, severally and not jointly, hereby covenants and agrees to pay within ten (10) business days after the Agreement Effective Date, its Pro Rata Share (as defined below) of the unpaid fees, costs, and expenses of their counsel that do not constitute Covered Expenses ("Non-Covered Expenses"); *provided* that this Section 4(e) shall not override the Condition Precedent to the Settlement Effective Date set forth in Section 5(g) hereof.<sup>7</sup>

(ix) Notwithstanding the foregoing, nothing in this Agreement shall prohibit any Settling Party from enforcing any right, remedy, condition, consent, or approval requirements under this Agreement or any other Definitive Document; *provided* that, in each case, any such action is not inconsistent with such Settling Party's obligations hereunder or in such other Definitive Document, as applicable.

**Settlement Effective Date.** The Settlement shall become effective, consummated, and binding upon the Settling Parties upon the first date (the "Settlement Effective Date") that the following conditions have been satisfied (each, a "Condition Precedent"):

(x) *Agreement Effective Date.* The Agreement Effective Date shall have occurred;

(xi) *Settlement Order.* The Settlement Order, substantially in the form of the Proposed Settlement Order, shall have become a final and non-appealable order not subject to any stay;

(xii) *Execution of the Definitive Documentation.* The Definitive Documentation described in Section 3(a)(ii) through (iv) and Section 3(a)(ix) shall have been executed and delivered by each of the parties thereto and become effective pursuant to their terms after the satisfaction of the conditions precedent set forth therein;<sup>8</sup>

(xiii) *Security Documents.* The USAV Parties shall have received evidence of the filing of Uniform Commercial Code financing statements and amendments and other local filings as reasonably requested by the USAV Parties to maintain perfected security interests in the Collateral (as defined in the Term Sheet);

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<sup>7</sup> For purposes of this Agreement, each Lender's *pro rata* share shall at any time be calculated by dividing (i) the aggregate principal amount of the Loans that will be held by such Lender on the Settlement Effective Date, by (ii) the aggregate principal amount of the Loans that will be held by the Lenders on the Settlement Effective Date collectively (i.e., the Net Obligations in the amount of \$66,962,332.85) (the "Pro Rata Share").

<sup>8</sup> The A&R Transaction Documents shall contain customary conditions precedent for transactions of this type, including (i) amended and restated fee letters for the Administrative Agent, the Collateral Agent, and the Collateral Trustee, (ii) appropriate lien searches, and (iii) officer certificates, corporate resolutions, legal opinions in form and scope, and in jurisdictions, to be agreed among the Settling Parties and be reasonably satisfactory to the Lender Parties, good standing certificates, and other deliverables consistent with the original closing of the existing Transaction Documents.

(xiv) *Approvals.* The Settling Parties shall have obtained all authorizations, consents, regulatory approvals, rulings, and documents that are necessary to implement and effectuate the Settlement;

(xv) *Know Your Customer.* The USAV Parties shall have received all documentation and other information about the Avianca Parties as has been reasonably requested; and

(xvi) *Non-Covered Expenses.* Each of the Lenders (or the Debtors on behalf of such Lenders, as provided below) shall have paid its Pro Rata Share of all Non-Covered Expenses due and payable hereunder, including the Non-Covered Expenses of all legal counsel to the Lenders that have been invoiced and delivered to the Lenders prior to the Settlement Effective Date. In the event any Lender has not paid its Pro Rata Share of Non-Covered Expenses due and payable hereunder, the Debtors may pay such amount on behalf of such Lender and thereafter recover such amount plus any collection costs from such Lender.

**(b) Dismissal of Litigation; Proofs of Claim.**

(i) Within five (5) days after the Settlement Effective Date, (i) the Avianca Parties shall withdraw all challenges and lawsuits to the USAV structure and all claims and lawsuits to claw back amounts swept from the existing structure and applied to repay obligations owing under the Transaction Documents post-petition to arrive at the Net Obligations, including by taking all actions necessary to irrevocably and unconditionally dismiss, with prejudice, all USAV Litigation matters currently pending before the Bankruptcy Court, including by filing a stipulation of dismissal, to be signed by all parties in each of the Recharacterization Adversary Proceeding and the Automatic Stay Adversary Proceeding, dismissing these adversary proceedings with prejudice; and (ii) the Lenders and USAV shall take all actions necessary to withdraw, with prejudice, the Rejection Appeals, including by filing notices of withdrawal in each of the Rejection Appeals, withdrawing these appeals with prejudice.

(ii) The Debtors acknowledge and agree that subject to the occurrence of the Settlement Effective Date, the USAV Parties shall have allowed claims in the amount of the Net Obligations and shall not be required to file any proof of claim for claims arising from or related to the USAV Sale Transaction or Transaction Documents; *provided* that in the event that this Agreement is terminated prior to the Settlement Effective Date, the USAV Parties shall be permitted to file proofs of claim for such claims so as to be actually filed no later than the date that is thirty (30) days after the Settlement Termination Date.

**Stipulations and Agreements.**

(iii) The Settlement Order shall include, among other things, the stipulations contained in paragraph B of the Proposed Settlement Order (collectively, the “Avianca Stipulations”) and the stipulations contained in paragraph C of the Proposed Settlement Order (it being acknowledged and agreed by each of the Settling Parties that satisfaction of the requirements of this Section 7(a) is a condition precedent to the Agreement Effective Date).

(iv) Effective as of the Settlement Effective Date, the Avianca Parties, on behalf of themselves, their estates, any of their respective past, present, and future predecessors, and any of the Avianca Successors (as defined below):

acknowledge the validity and effectiveness of (A) the debt incurred by the Avianca Parties and USAV under the Transaction Documents (including acknowledging the validity and accuracy of the Net Obligations and the amount of Post-Petition Interest to be paid on the Settlement Effective Date), as modified by the Definitive Documentation; (B) the terms,

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conditions, obligations, covenants, and agreements contained in the Transaction Documents, all of which will be ratified and affirmed and shall continue in full force and effect as modified by the Definitive Documentation except, that, on and after the Settlement Effective Date, each reference to a Transaction Document will, in each case, mean a reference to the applicable A&R Transaction Document; (C) the due and valid perfection of the first priority Liens on all of the Collateral created in favor of the Collateral Agent or the Collateral Trustee (as applicable, and in each case for the benefit of the Lenders and the other Secured Parties (as defined in the Loan Agreement)) under the Lender Security Documents (including as amended, supplemented, amended and restated, and/or otherwise modified by the Definitive Documentation); and (D) the due and valid perfection of the first priority Liens on all of the Collateral created in favor of USAV under the Purchaser Security Documents (including as amended, supplemented, amended and restated, and/or otherwise modified by the Definitive Documentation);

acknowledge and agree that the A&R Transaction Documents constitute legal, valid and binding obligations of the Avianca Parties, enforceable against them in accordance with their terms;

agree not to pursue, and irrevocably waive, any legal action, right, challenge, claim, injunction, provisional measures, or similar action against the USAV Parties in relation to the A&R Transaction Documents, in any jurisdiction, including Colombia, in each case to the extent in contravention of the agreements herein;

acknowledge and agree for all purposes that the Sale and Transfer of the Contract Rights and Receivables arising under all Card Processing Agreements to USAV constitutes a final, definitive, and irrevocable “true sale” and transfer, enforceable against the Avianca Parties and all third parties, and not a lending transaction or any other economic arrangement other than a true sale, and confers upon USAV good and valid title to all of the Contract Rights and Receivables (and all Collections derived therefrom) arising under all Card Processing Agreements and vests USAV with the definitive and indefeasible ownership thereof (whether or not such Contract Rights and Receivables are in existence as of Settlement Effective Date);

agree not to assert (and irrevocably waive the right to assert) (A) that the Sale and Transfer of the Contract Rights and Receivables arising under all Existing Card Processing Agreements and Additional Card Processing Agreements to USAV (and any extensions, amendments, supplements, or replacements thereof permitted under the A&R Transaction Documents) is not a true sale and/or is not valid and/or enforceable; (B) that the amounts held by USAV, including but not limited to, amounts held in the relevant accounts held by Citibank under the Cash Management Agreement and RSPA (the “Collateral Accounts”) on or prior to the Settlement Effective Date, and all amounts that are to be deposited in the Collateral Accounts pursuant to the A&R Transaction Documents after the Settlement Effective Date (together, the “Cash Collateral”), in each case are property of the Debtors’ estate; or (C) any right, claim or interest contrary or materially inconsistent with the terms of this Agreement, including any acknowledgement listed



herein; *provided that* the Debtors are entitled to the disbursement of funds held in the Collateral Accounts as provided in the Term Sheet;

acknowledge, and agree not to challenge or recharacterize, the validity and nature of (A) the USAV Sale Transaction, (B) USAV's legal and beneficial ownership of the Contract Rights and Receivables (and all Collections derived therefrom) arising under all Existing Card Processing Agreements and Additional Card Processing Agreements (and any extensions, amendments, supplements, or replacements thereof permitted under the A&R Transaction Documents), and/or (C) the USAV Parties' Collateral and their respective rights and remedies with respect thereto, whether now existing or hereafter created;

agree not to commence or continue any claim or cause of action, or otherwise take any position in any judicial proceeding, administrative proceeding, or other proceeding in the Bankruptcy Court or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere, in each case that is in any way materially inconsistent with the position that the USAV Sale Transaction is a true sale and/or is valid and/or enforceable, or that is in any other way materially inconsistent with the Settlement (such agreements, acknowledgements, and reaffirmations set forth in this Section 7(b), collectively, the "Avianca Agreements").

(a) Effective as of the Settlement Effective Date, the Debtors, on behalf of themselves, their estates, any of their respective past, present, and future predecessors, and any successors, confirm the indemnity provided in favor of Lenders and Agents in the Loan Agreement, and agree to reimburse the Lenders and Agents for any reasonable and documented expenses incurred in connection with the negotiation and implementation of the restructuring contemplated by this Agreement, subject to the Lender Restructuring Legal Fee Cap, and agree that any such reimbursements shall be paid upon demand out of the Collections Account.

(v) Effective as of the Settlement Effective Date, the USAV Parties:

acknowledge the validity and effectiveness of the terms, conditions, obligations, covenants, and agreements contained in the Transaction Documents, all of which will be ratified and affirmed and shall continue in full force and effect as modified by the Definitive Documentation except, that, on and after the Settlement Effective Date, each reference to a Transaction Document will, in each case, mean a reference to the applicable A&R Transaction Document;

acknowledge and agree that the A&R Transaction Documents constitute legal, valid and binding obligations of the USAV Parties, enforceable against them in accordance with their terms; and

acknowledge the validity and effectiveness of the Debtor Guarantors' option to purchase the Shares, as defined in that certain Option Agreement in Respect of the Issued Shares in USAVflow Limited, dated December 12, 2017 between MaplesFS Limited, the Debtor Guarantors, and Avianca Peru (the "Option Agreement"), upon the Loan Termination Date (as defined in the Option Agreement) and pursuant to the terms of the Option Agreement.

(vi) Effective as of the Agreement Effective Date, all of the Settling Parties agree that from and after the Agreement Effective Date, Avianca Peru shall be released as a Guarantor under the Loan Agreement. For the avoidance of doubt, the release of Avianca Peru as a Guarantor under the Loan Agreement does not release Avianca Peru from any obligations other than its obligations in connection with the Loan Agreement.

(vii) Effective as of the Settlement Effective Date, Citibank acknowledges and agrees that from and after the Settlement Effective Date, the Administrative Agent's Expense Account will no longer be required to maintain a minimum balance of \$100,000 on deposit.

(viii) Effective as of the Settlement Effective Date, the Settling Parties, on behalf of themselves, their estates, and any of their respective past, present, and future predecessors, successors in interest, and assigns, and any party acting or purporting to act on behalf of the foregoing, acknowledge and agree that (i) nothing in this Agreement or any of the other Definitive Documentation shall alter, modify, amend, waive, or in any way affect the limited recourse/nonpetition provisions contained in the existing Transaction Documents (including, without limitation, Section 8.22 (*Limited Recourse*) of the Loan Agreement and Sections 2.07 (*Nonpetition Covenant*) and 9.13 (*Limited Recourse*) of the RSPA) (together, the "Limited Recourse/Nonpetition Provisions"), all of which will be ratified and affirmed in all respects and shall continue in full force and effect; and (ii) any amendments and/or restatements to the terms of the existing Transaction Documents shall remain subject to the Limited Recourse/Nonpetition Provisions.

**Mutual Representations.** Each Settling Party represents, warrants, covenants, and agrees for the benefit of each of the other Settling Parties that:

(ix) it or its authorized representative has read and fully understands this Agreement;

(x) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization, and this Agreement is a legal, valid, and binding obligation of such Settling Party, enforceable against it in accordance with the terms of this Agreement, except as enforcement may be limited by applicable laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(xi) other than the approval of the Bankruptcy Court, no consent or approval is required by any other person or entity in order for it to effectuate the transactions contemplated by, and perform its obligations under, this Agreement, except in the case of the Lenders, consents to the Definitive Documentation by any applicable financial participants or insurers;

(xii) it has all requisite corporate, limited liability company, limited partnership or other power and authority to enter into, execute, and deliver, and perform its obligations under, and consummate the transactions contemplated by, this Agreement, and to bind any party or parties on whose behalf it has executed this Agreement, and the execution, delivery, and performance of this Agreement by it have been duly authorized by all necessary corporate and, to the extent applicable, shareholder, partner or member, actions;

(xiii) the execution, delivery, and performance by it of this Agreement does not, and shall not, require any registration or filing with, consent or approval of, or notice to, or other action to, with or by, any federal, state, or other governmental authority or regulatory body, other than any requirement for routine tax filings and, with respect to the Debtors, the approval of the Bankruptcy Court;

(xiv) the execution, delivery, and performance of this Agreement does not and shall not: (i) violate any provision of law, rules, or regulations applicable to it or any of its subsidiaries; (ii) violate

its certificate of incorporation, bylaws, or other organizational documents or those of any of its subsidiaries; or (iii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any court order, contract, commitment, agreement, understanding, arrangement, or restriction of any kind to which it or any of its subsidiaries may be bound or to which any of the properties or assets of it or any of its subsidiaries may be subject;

(xv) it has ownership and control of the claims, causes of action, and other matters being released sufficient to grant the releases of those claims, causes of action, or other matters contemplated by this Agreement; and

(xvi) it has not assigned the claims, issues, causes of action, or other matters alleged or released and discharged by this Agreement.

**Direction to the Agents.** The Lenders agree that, from the Agreement Effective Date until the Settlement Termination Date this Agreement shall be deemed a direction from the Lenders to the Agents and from the Administrative Agent to the Collateral Trustee to take all actions consistent with this Agreement to support consummation of the Settlement and the transactions contemplated herein or by the other Definitive Documentation.

**Termination; Effect of Termination.**

(xvii) At any time prior to the Settlement Effective Date, this Agreement and the obligations hereunder may be terminated as to all Settling Parties by mutual written agreement of the Debtors and the USAV Parties.

(xviii) At any time prior to the Settlement Effective Date, this Agreement and the obligations hereunder may be terminated as to all Settling Parties by the Required Lenders by delivery of a written notice by counsel to the Required Lenders to the other Settling Parties in accordance with Section 27 hereof (which notice shall be effective immediately) upon the occurrence and during the continuance of any of the following events (unless such occurrence is a result of a breach by any of the USAV Parties of their obligations under this Agreement):

the Bankruptcy Court denies the 9019 Motion and an appellate court affirms the Bankruptcy Court's denial of the 9019 Motion;

the Settlement Order is entered but subsequently reversed, stayed, modified, or amended as a result of any appeal or reconsideration of the Settlement Order;

any material breach by the Avianca Parties of any of their covenants, agreements, representations, or warranties contained in or made pursuant to this Agreement or the Settlement Order, including the Avianca Stipulations and the Avianca Agreements;

(A) the Chapter 11 Cases are dismissed or converted to cases under Chapter 7 of the Bankruptcy Code; (B) a trustee is appointed in any of the Chapter 11 Cases; or (C) an examiner is appointed with expanded powers beyond those set forth in section 1106(a)(3)-(4) of the Bankruptcy Code;

the entry by the Debtors (or agreement to enter) into any financing (whether or not a new debtor-in-possession financing facility pursuant to section 364 of the Bankruptcy Code), agreement, or stipulation that is, in each case,

materially inconsistent with the terms of this Agreement or the other Definitive Documentation. For the avoidance of doubt, the DIP Facilities (as defined in the DIP Order) shall at all times be considered consistent with such terms;

the exercise of any rights or remedies by any DIP Secured Party (as defined in the DIP Order) in respect of a DIP Credit Facility Event of Default or a DIP Notes Facility Event of Default following delivery of a Termination Notice and a Remedies Hearing (each as defined in the DIP Order);

the failure to complete any Milestone set forth in Section 4(c)(v) hereof within the required time set forth therein (as such time may be extended in accordance herewith);

any Avianca Party or any Avianca Successor enters into, amends, modifies, terminates, replaces, assumes, or rejects, in each case to the extent applicable, the RSPA, the Undertaking Agreement, or any Card Processing Agreement (or any extensions, amendments, supplements, or replacements thereof permitted under the A&R Transaction Documents) in any manner inconsistent with the A&R Transaction Documents, this Agreement, or the Settlement Order, unless otherwise agreed by the Settling Parties, including as reasonably necessary to modify any of the foregoing to effect the liquidation of Avianca Peru (including that the Avianca Parties or the Avianca Successors may amend the AMEX Contract to remove Avianca Peru as a party thereto);

any Avianca Party or any Avianca Successor seeks any order or findings from the Bankruptcy Court or any other court (or such court enters any such order or findings) that the Contract Rights and Receivables (and all Collections derived therefrom), the Collateral Accounts, the Cash Collateral, or any other Collateral (together, the "Subject Property") (or any interest therein) is property of any of their estates within the meaning of section 541(a) of the Bankruptcy Code or otherwise in respect of the Chapter 11 Cases, any Chapter 7 case if the Chapter 11 Cases are converted, or any subsequent bankruptcy case or any other context for so long as any payment and/or performance obligations under the A&R Transaction Documents remain outstanding; *provided that* the Debtors are entitled to the disbursement of funds held in the Collateral Accounts as provided in the Term Sheet;

the Debtors seek, or the Debtors or any other parties in interest obtain, confirmation of a POR (A) that fails to reinstate the USAV Parties' claims against the Debtors under the A&R Transaction Documents, including the Lender Parties' guarantee claims against the Debtor Guarantors under the Restructured Loan Facility, (B) that fails to expressly provide that this Agreement and the A&R Transaction Documents shall survive the consummation of the Debtors' POR; or (C) that is inconsistent with this Agreement in any material respect, *provided that* if the Required Lenders deliver a notice of termination of this Agreement pursuant to this subsection (C), such notice of termination shall not be effective immediately, but shall provide five (5) business days' notice to the other Settling Parties, during which time the Debtors and the UCC may seek an

expedited hearing before the Court solely for the purpose of determining the existence of a material inconsistency with this Agreement; or

the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any ruling, judgment, or order enjoining the consummation of or rendering illegal the Settlement, and such ruling, judgment, or order is final and non-appealable; *provided, however*, that the Settling Parties shall have ten (10) days after the issuance of such final ruling, judgment, or order to obtain relief that would allow consummation of the Settlement in accordance with this Agreement.

(xix) At any time prior to the Settlement Effective Date, this Agreement and the obligations hereunder may be terminated as to all Settling Parties by the Debtors by delivery of a written notice to the other Settling Parties in accordance with Section 27 hereof (which notice shall be effective immediately) upon the occurrence and during the continuance of any of the following events (unless such occurrence is a result of a breach by the Avianca Parties of their obligations under this Agreement):

the Bankruptcy Court denies the 9019 Motion and an appellate court affirms the Bankruptcy Court's denial of the 9019 Motion;

the Settlement Order is entered but subsequently reversed, stayed, modified, or amended as a result of any appeal or reconsideration of the Settlement Order;

any breach by the USAV Parties of any of their covenants, agreements, representations, or warranties contained in or made pursuant to this Agreement or the Settlement Order;

the failure to complete the Milestone set forth in Section 4(d) hereof within the required time set forth therein (as such time may be extended in accordance herewith); or

the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any ruling, judgment, or order enjoining the consummation of or rendering illegal the Settlement, and such ruling, judgment, or order is final and non-appealable; *provided, however*, that the Settling Parties shall have ten (10) days after the issuance of such final ruling, judgment, or order to obtain relief that would allow consummation of the Settlement in accordance with this Agreement.

(xx) This Agreement and the obligations hereunder shall automatically terminate as to all Settling Parties, without the need for any notice by the Settling Parties, if the Settlement Effective Date does not occur on or prior to May 3, 2021; *provided* that the deadline for the occurrence of the Settlement Effective Date may be extended by email consent from counsel for each of the Debtors and the Required Lenders.

(xxi) Upon termination of this Agreement in accordance with this Section 10, this Agreement and all other Definitive Documentation shall be void *ab initio* and shall have no further force and effect (including the release of Avianca Peru as a Guarantor under the Loan Agreement set forth in Section 7(e) hereof) and the *status quo ante* shall be restored for each of the Settling Parties; *provided*, that (i) in no event shall any such termination relieve a Settling Party from liability for its breach or nonperformance of its obligations under this Agreement prior to the date of such termination and (ii) Section 13 through Section 28 shall survive such termination.

(xxii) The automatic stay applicable under section 362 of the Bankruptcy Code shall not prohibit a Settling Party from taking any action or delivering any notice necessary to effectuate the termination of this Agreement pursuant to and in accordance with the terms of this Agreement.

**Specified Defaults.**

(xxiii) From and after the Settlement Effective Date, each of the following events or occurrences shall constitute a “Specified Default”:

the occurrence of any Event of Default pursuant to the A&R Loan Agreement, once any applicable cure period has expired and, solely to the extent required under the A&R Loan Agreement, after delivery of written notice to the Obligors declaring the Loans due and payable in accordance with the A&R Loan Agreement;

the occurrence of any Trigger Event pursuant to the A&R RSPA, once any applicable cure period has expired and, solely to the extent required under the A&R RSPA, after delivery of written notice to the parties thereto declaring the Liquidated Damages due and payable in accordance with the A&R RSPA;

any material breach by the Avianca Parties of any of their covenants, agreements, representations, or warranties contained in or made pursuant to this Agreement or the Settlement Order, including the Avianca Stipulations and the Avianca Agreements, if notice of such breach has been delivered in writing and the Avianca Parties have failed to cure such breach within seven (7) days of such written notice;

(A) the Chapter 11 Cases are dismissed or converted to cases under Chapter 7 of the Bankruptcy Code; (B) a trustee is appointed in any of the Chapter 11 Cases; or (C) an examiner is appointed with expanded powers beyond those set forth in section 1106(a)(3)-(4) of the Bankruptcy Code;

the entry by the Debtors (or agreement to enter) into any financing (whether or not a new debtor-in-possession financing facility pursuant to section 364 of the Bankruptcy Code), agreement, or stipulation that is, in each case, materially inconsistent with the terms of this Agreement or the other Definitive Documentation. For the avoidance of doubt, the DIP Facilities (as defined in the DIP Order) shall at all times be considered consistent with such terms;

the exercise of any rights or remedies by any DIP Secured Party (as defined in the DIP Order) in respect of a DIP Credit Facility Event of Default or a DIP Notes Facility Event of Default following delivery of a Termination Notice and a Remedies Hearing (each as defined in the DIP Order);

an order granting the Assumption Motion (the “Assumption Order”) has not been entered by the Bankruptcy Court on or before the date that is ninety (90) days after the Settlement Effective Date, but in no event later than the POR Effective Date; *provided* that the deadline for the entry of the Assumption Order may be extended by email consent from counsel for each of the Debtors and the Required Lenders;

the failure to complete any Milestone set forth in Section 4(c)(v) hereof within the required time set forth therein (as such time may be extended in accordance herewith), unless such failure is a result of a breach by Citibank or the Lenders of their obligations under this Agreement;

any Avianca Party or any Avianca Successor enters into, amends, modifies, terminates, replaces, assumes, or rejects, in each case to the extent applicable, the RSPA, the Undertaking Agreement, or any Card Processing Agreement (or any extensions, amendments, supplements, or replacements thereof permitted under the A&R Transaction Documents) in any manner materially inconsistent with the A&R Transaction Documents, this Agreement, or the Settlement Order, unless otherwise agreed to by the Settling Parties, including as reasonably necessary to modify any of the foregoing to effect the liquidation of Avianca Peru (including that the Avianca Parties or the Avianca Successors may amend the AMEX Contract to remove Avianca Peru as a party thereto);

any Avianca Party or any Avianca Successor seeks any order or findings from the Bankruptcy Court or any other court (or such court enters any such order or findings) that the Subject Property (or any interest therein) is property of any of their estates within the meaning of section 541(a) of the Bankruptcy Code or otherwise in respect of the Chapter 11 Cases, any Chapter 7 case if the Chapter 11 Cases are converted, or any subsequent bankruptcy case or any other context for so long as any payment and/or performance obligations under the A&R Transaction Documents remain outstanding; *provided that* the Debtors are entitled to the disbursement of funds held in the Collateral Accounts as provided in the Term Sheet; and

the Debtors seek, or the Debtors or any other parties in interest obtain, confirmation of a POR (A) that fails to reinstate the USAV Parties' claims against the Debtors under the A&R Transaction Documents, including the Lender Parties' guarantee claims against the Debtor Guarantors under the Restructured Loan Facility; (B) that fails to expressly provide that this Agreement and the A&R Transaction Documents shall survive the consummation of the Debtors' POR; or (C) that is inconsistent with this Agreement in any material respect.

(xxiv) Subject to the terms of the Settlement Order (which shall include the orders contained in paragraphs 6 and 7 of the Proposed Settlement Order), upon any Specified Default, and after the expiration of the applicable cure periods described in Section 11(a) hereto, the Lender Parties or the Collateral Trustee may exercise any and all rights and remedies against USAV (including a right to accelerate the amounts due under the A&R Loan Agreement) and/or the Collateral as if, and having the same effect as, an automatic Event of Default and/or Trigger Event under the A&R Transaction Documents, or under applicable Law. For the avoidance of doubt, subject to the terms of the Settlement Order (which shall include the orders contained in paragraphs 6 and 7 of the Proposed Settlement Order), in the event that a Specified Default occurs during the pendency of the Chapter 11 Cases or any Chapter 7 case if the Chapter 11 Cases are converted, any such exercise of rights and remedies against USAV and/or the Collateral will not be enjoined by the automatic stay applicable under section 362 of the Bankruptcy Code (which shall be set forth in the Settlement Order) and will not require further order of the Bankruptcy Court.

**Releases.**

(xxv) Effective as of the Settlement Effective Date to the fullest extent permissible under applicable law, each of the Avianca Release Parties,<sup>9</sup> on behalf of themselves, their respective successors, assigns, and representatives (including, for the avoidance of doubt, (i) each reorganized Debtor and any other successor of any Debtor existing on or after the date on which such Debtors' POR becomes effective, (ii) any reorganized Debtor in its capacity as a debtor or debtor-in-possession in a subsequent bankruptcy case or any other context, (iii) any trustee acting or seeking to act on behalf of the estates of any of the Debtors or any of their successors in this or any subsequent bankruptcy case or any other context, and/or (iv) any litigation or other trustee acting or seeking to act on behalf of any of the Debtors or any of their successors in this or any subsequent bankruptcy case or in any other context), and any and all other Persons who may assert or purport to assert any claim or cause of action, directly or derivatively, by, through, for, or because of any Avianca Release Party (collectively, the "Avianca Successors"), hereby conclusively, absolutely, unconditionally, irrevocably, and forever waives, releases, acquits, and discharges each of the USAV Release Parties<sup>10</sup> from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, in law, equity, or otherwise, including any derivative claims, asserted or assertable on behalf of any of the Avianca Parties or their estates, that such Person would be or would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the USAV Sale Transaction and any transactions related thereto, the Transaction Documents, this Agreement, the Settlement Order, the other Definitive Documentation (including the A&R Transaction Documents), the Settlement and any transactions related thereto, the Chapter 11 Cases and the filing thereof, any and all transfers of funds made to or received by any USAV Party in connection with the USAV Sale Transaction, on or before the Settlement Effective Date (collectively, the "Avianca Released Claims").

(xxvi) Effective as of the Settlement Effective Date, to the fullest extent permissible under applicable law, each of the USAV Release Parties, on behalf of themselves, their respective successors, assigns, and representatives (including, for the avoidance of doubt, and any and all other Persons who may assert or purport to assert any claim or cause of action, directly or derivatively, by, through, for, or because of any USAV Release Party, hereby conclusively, absolutely, unconditionally, irrevocably, and forever waives, releases, acquits, and discharges each of the Avianca Release Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, in law, equity, or otherwise, including any derivative claims,

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<sup>9</sup> "Avianca Release Parties" means, collectively, and in each case solely in its capacity as such, (i) the Avianca Parties, (ii) the Avianca Parties' estates, (iii) Estrategia Consultores S.A.C. as liquidator to Avianca Peru, (iv) any current and former Affiliates of the entities listed in clauses (i)-(iii) above, and (v) as to the entities listed in clauses (i)-(iv) above, their current and former Affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, Affiliates, managed accounts or funds, and each of their respective current and former equity holders, officers, directors, managers, principals, shareholders, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

<sup>10</sup> "USAV Release Parties" means, collectively, and in each case solely in its capacity as such, (i) the USAV Parties, (ii) any current and former Affiliates of the USAV Parties, and (iii) each of the USAV Parties' and their current and former Affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, Affiliates, managed accounts or funds, and each of their respective current and former equity holders, officers, directors, managers, principals, shareholders, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals. The Avianca Release Parties and the USAV Release Parties, in their capacities as parties providing releases, are together referred to as the "Releasing Parties" herein, and the Avianca Release Parties and the USAV Release Parties, in their capacities as parties receiving releases, are together referred to as the "Released Parties" herein.



asserted or assertable on behalf of any of the Avianca Parties or their estates, that such Person would be or would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the USAV Sale Transaction and any transactions related thereto, the Transaction Documents, this Agreement, the Settlement Order, the other Definitive Documentation (including the A&R Transaction Documents), the Settlement and any transactions related thereto, the Chapter 11 Cases and the filing thereof, any and all transfers of funds made to or received by any USAV Party in connection with the USAV Sale Transaction, on or before the Settlement Effective Date (collectively, the “USAV Released Claims” and, together with the Avianca Released Claims, the “Released Claims”).

(xxvii) The releases set forth herein are intended to release known and unknown claims as described herein. The Settling Parties know that presently unknown or unappreciated facts could materially affect the claims or defenses of the Settling Parties relating to the issues being settled in this Agreement and the desirability of entering into this Agreement. It is nevertheless the intent of the Settling Parties to give the full and complete releases provided in Section 12(a) and Section 12(b) hereof. To that end, the Settling Parties expressly waive and relinquish any and all provisions, rights, and benefits conferred by any law of the United States or of any state or territory of the United States or of any other relevant jurisdiction, or principle of common law, that is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The Settling Parties acknowledge that they have been advised by legal counsel and are familiar with the provisions of California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Settling Parties, being aware of California Civil Code Section 1542, hereby expressly, knowingly, and intentionally waive any rights they may have thereunder, as well as under any other statute or common law principles of similar effect. The Settling Parties acknowledge and agree that this waiver has been separately bargained for and is an essential and material term of this Agreement, without which the consideration relating hereto would not have been delivered.

(xxviii) Notwithstanding the foregoing Section 12(a) through (c) hereof, nothing in this Agreement is intended to release the Settling Parties’ rights and obligations under this Agreement or the other Definitive Documentation, nor bar the Settling Parties from seeking to enforce or effectuate this Agreement or any of the other Definitive Documentation.

#### **Governing Law; Submission to Jurisdiction.**

(xxix) This Agreement, and any disputes related thereto, shall be governed by and be construed in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of laws that would require the application of the law of any other jurisdiction.

(xxx) Each of the Settling Parties agrees that any legal action, suit, or proceeding against it with respect to any matter under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit, or proceeding, shall be brought in the Bankruptcy Court; *provided*, that this Agreement, and the releases provided in Section 12 herein, may be submitted in any court, arbitration, and/or other legal proceeding any Settling Party deems necessary to enforce the terms of the releases provided in Section 12 herein. The Settling Parties submit to the exclusive

jurisdiction of the Bankruptcy Court for any litigation arising out of or relating to this Agreement and agree not to commence any litigation relating to this Agreement except in the Bankruptcy Court.

(xxxi) In the event the Bankruptcy Court does not have or refuses to exercise jurisdiction with respect to this Agreement and any disputes arising therefrom, any legal action, suit, or proceeding against the Settling Parties with respect to any matter under or arising out of or in connection with this Agreement, or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, may be brought in the United States District Court for the Southern District of New York or courts of the State of New York located in the Borough of Manhattan, City of New York, and by execution and delivery of this Agreement, each Settling Party irrevocably accepts and submits itself to the exclusive jurisdiction of the Bankruptcy Court and those courts.

**Authority.** Subject to the entry of the Settlement Order, the undersigned signatories represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and the entities indicated below.

**Successors and Assigns.**

(xxxii) The rights and obligations of each of the Settling Parties under this Agreement shall be binding upon, and inure to the benefit of the Settling Parties hereto and their respective employees, agents, representatives, successors, and assigns, including any trustee appointed in the Chapter 11 Cases, any Chapter 7 bankruptcy trustee if the Chapter 11 Cases are converted, any litigation trust or other estate representative appointed under the POR, and/or any Avianca Successor.

(xxxiii) This Agreement, and the rights, interests, and obligations hereunder, may not be assigned by any Settling Party (by operation of law or otherwise) without the express written consent of the other Settling Parties. Any attempted or purported assignment in violation of this Section 15 will be deemed void *ab initio*.

**Complete Agreement.** This Agreement constitutes the complete agreement of the Settling Parties with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by the Settling Parties or anyone acting on their behalf other than as contained in this Agreement. Any prior agreements, promises, or representations not expressly set forth in this Agreement shall be of no force or effect. For the avoidance of doubt, this Agreement supersedes the Summary of Indicative Terms and Conditions previously agreed by the Settling Parties on December 31, 2020.

**Severability.** The substantive provisions of this Agreement are mutually dependent, integrated, essential, and not severable.

**Amendments or Waivers.** Except as otherwise provided herein, this Agreement may not be amended, modified, altered, or waived except by a separate agreement in writing signed by each of the Settling Parties. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provisions.

**Headings.** The headings of all sections of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit, or aid in the construction or interpretation of any term or provision hereof.

**No Admission.** Neither the negotiation, nor the performance, nor the terms and conditions of this Agreement shall be deemed or construed to be evidence of an admission or concession on the part of any

Settling Party of any claim or fault or liability or damages whatsoever. If the transactions contemplated by this Agreement are not consummated, or if this Agreement is terminated for any reason, the Settling Parties fully reserve any and all of their rights pursuant to Federal Rule of Evidence 408, the mediation and mediation privilege and any applicable state rules.

**Interpretation and Rules of Construction.**

(xxxiv) This Agreement is the product of negotiations among the Settling Parties, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Settling Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. The Settling Parties are sophisticated persons and were each represented by counsel during the negotiations, drafting, and execution of this Agreement.

(xxxv) The provisions of Section 1.2 (*Other Interpretive Provisions*) of the Loan Agreement apply to this Agreement as though they were set out in full in this Agreement, except that references to the Loan Agreement will be construed as references to this Agreement.

**Further Assurances.** Subject to the other terms of this Agreement, from and after the Agreement Effective Date, the Settling Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary from time to time, to effectuate and implement the terms of this Agreement (including the execution and delivery of all documents to reflect the removal of Avianca Peru as a Guarantor under the Loan Agreement, including the amendment of the Option Agreement to remove Avianca Peru as a party thereto).

**Conflict.** In the event of any conflict between the terms of this Agreement and the terms of the Settlement Order, the terms of the Settlement Order shall govern.

**Specific Performance.** It is understood and agreed by the Settling Parties that money damages would be an insufficient remedy for any breach of this Agreement and each non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, including an order of the Bankruptcy Court requiring any Settling Party to comply promptly with any of its obligations hereunder, in each case without any requirement of positing a bond or other undertaking. Such remedies, however, shall be cumulative and not exclusive and shall be in addition to any other remedies that the Settling Parties may have under this Agreement or otherwise.

**Automatic Stay.** Subject to the terms of the Settlement Order (which shall include the orders contained in paragraphs 6 and 7 of the Proposed Settlement Order), the Debtors acknowledge and agree that the exercise of any right or remedy provided by law under or pursuant to this Agreement or the other Definitive Documentation by any Settling Party during the pendency of the Chapter 11 Cases or any Chapter 7 case if the Chapter 11 Cases are converted shall not be a violation of the automatic stay under section 362 of the Bankruptcy Code and the Debtors shall not take any action or position inconsistent with such acknowledgement and agreement; *provided* that nothing herein shall prejudice any Settling Party's right to argue that the exercise of any right or remedy was not proper under the terms of this Agreement or the other Definitive Documentation.

**Counterparts.** This Agreement may be executed in any number of counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Emails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**Notices.** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given if delivered personally, sent by email, mailed by registered or certified mail (return receipt requested), or delivered by an express courier (with confirmation), in each case to the appropriate addresses and representatives (if applicable) set forth below (or such other addresses and representatives as a Settling Party may designate by like notice):

(xxxvi) If to the Avianca Parties, then to:

The Debtors in *In re Avianca Holdings, S.A.*, No. 20-11133 (mg) (jointly administered), at:

c/o Avianca Holdings S.A.  
Centro Administrativo  
Avenida Calle 26 No. 59-15  
Bogotá  
Colombia  
Attn: Richard Galindo  
email: [Richard.galindo@avianca.com](mailto:Richard.galindo@avianca.com)

The Seller and Servicer, at:

Aerovías del Continente Americano S.A. Avianca  
Centro Administrativo  
Avenida Calle 26 No. 59-15 Piso 10  
Bogotá, D.C.  
Colombia  
Attention: Vicepresidente Financiero  
Facsimile No.: (571) 413-9809  
Telephone No.: (571) 295-6765  
email: [Lucia.avila@avianca.com](mailto:Lucia.avila@avianca.com)

the Debtor Guarantors, at:

Avianca Holdings S.A.  
c/o Aerovías del Continente Americano S.A. Avianca  
Centro Administrativo  
Avenida Calle 26 No. 59-15 Piso 10  
Bogotá, D.C.  
Colombia  
Attention: Vicepresidente Financiero  
Facsimile No.: (571) 413-9809  
Telephone No.: (571) 295-6765  
email: [Lucia.avila@avianca.com](mailto:Lucia.avila@avianca.com)

the liquidator to Avianca Peru, at:

Estratega Consultores S.A.C.  
RUC 20514279986  
Calle Tarata 160 Piso 10  
Miraflores  
Lima-Perú  
Attention: Carlos Enrique Corbella Espinoza  
email: [corbella@estrategaconsultores.com.pe](mailto:corbella@estrategaconsultores.com.pe)

With a copy to:

Milbank LLP  
55 Hudson Yards  
New York, NY 10001  
Attn: Evan R. Fleck  
Telephone: (212) 530-5000  
Facsimile: (212) 530-5219  
email: [efleck@milbank.com](mailto:efleck@milbank.com)

-and-

Milbank LLP  
1850 K Street NW, Suite 1100  
Washington, D.C. 20006  
Attn: Aaron L. Renenger  
Telephone: (202) 835-7500  
Facsimile: (202) 263-7586  
email: [arenenger@milbank.com](mailto:arenenger@milbank.com)

-and-

Quinn Emanuel Urquhart & Sullivan  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
Attn: James C. Tecce  
Telephone: (212) 849-7000  
Facsimile: (212) 849-7100  
email: [jamestecce@quinnemanuel.com](mailto:jamestecce@quinnemanuel.com)

(xxxvii) If to the Lenders, then to:

The Administrative Agent, on behalf of the Lenders, to it as set forth below.

With a copy to:

White & Case LLP  
1221 Avenue of the Americas  
New York, NY 10020  
Attn: Sabrena Silver, Scott Greissman, Mark Franke, and Brandon Batzel  
Tel.: (212) 819-7056  
email: [sabrena.silver@whitecase.com](mailto:sabrena.silver@whitecase.com); [sgreissman@whitecase.com](mailto:sgreissman@whitecase.com);  
[mark.franke@whitecase.com](mailto:mark.franke@whitecase.com); [brandon.batzel@whitecase.com](mailto:brandon.batzel@whitecase.com)

(xxxviii) If to Citibank, then to:

The Administrative Agent, at:

Citibank, N.A.  
388 Greenwich Street  
New York, NY 10013  
Attn: Miriam Y. Molina  
Tel.: (212) 816-5576

email: [miriam.molina@citi.com](mailto:miriam.molina@citi.com)

With a copy to:

Citibank, N.A.  
1615 Brett Rd  
Building #3  
New Castle, DE 19720  
Attn: Bank Loans, Syndication Department  
Facsimile: +1(646) 274-5080

And with a copy to the Collateral Agent, to it as set forth below.

The Collateral Agent, at:

Citibank, N.A.  
388 Greenwich Street  
New York, NY 10013  
Attn: Karen Abarca  
Tel.: (212) 816-7759  
email: [karen.abarca@citi.com](mailto:karen.abarca@citi.com) / [cts.spag@citi.com](mailto:cts.spag@citi.com)

The Collateral Trustee, at:

Citibank, N.A., London Branch  
6th floor, CGC-1  
Citigroup Centre  
Canada Square  
Canary Wharf  
London E14 5LB  
United Kingdom  
E-mail: [issuexpfla@Citi.com](mailto:issuexpfla@Citi.com)  
Fax: +44 20 3060 4796

With a copy to:

Latham & Watkins LLP  
330 N. Wabash, Suite 2800  
Chicago, IL 60611  
Attn: Richard A. Levy  
Telephone: (312) 876-7700  
Facsimile: (312) 993-9767  
email: [richard.levy@lw.com](mailto:richard.levy@lw.com)

-and-

Hinckley, Allen & Snyder LLP  
28 State Street  
Boston, MA 02109  
Attn: Jennifer V. Doran and Jonathan R. Winnick  
Telephone: (617) 345-9000  
Facsimile: (617) 345-9020  
email: [jdoran@hinckleyallen.com](mailto:jdoran@hinckleyallen.com); [jwinnick@hinckleyallen.com](mailto:jwinnick@hinckleyallen.com)

(xxxix) If to USAV, then to:

USAVflow Limited  
c/o P.O. Box 1093  
Boundary Hall  
Cricket Square  
Grand Cayman  
KY1-1102  
Cayman Islands  
Attention: The Directors  
Facsimile No.: (345) 945-7100  
Telephone No.: (345) 945-7099  
email: [cayman@maples.com](mailto:cayman@maples.com)

With a copy to:

Kasowitz Benson Torres LLP  
1633 Broadway  
New York, NY 10019  
Attn: Sheron Korpus, David S. Rosner, and David J. Mark  
Telephone: (212) 506-1700  
Facsimile: (212) 506-1800  
email: [skorpus@kasowitz.com](mailto:skorpus@kasowitz.com); [drosner@kasowitz.com](mailto:drosner@kasowitz.com); [dmark@kasowitz.com](mailto:dmark@kasowitz.com)

**Credit Documents and Transaction Documents.**

(xl) This Agreement shall constitute a “Credit Document” under and as defined in the Loan Agreement.

(xli) This Agreement shall constitute a “Transaction Document” under and as defined in the RSPA.

Agreed to and Accepted this 18<sup>th</sup> day of February, 2021:

**The Debtors in *In re Avianca Holdings, S.A.*, No. 20-11133 (mg) (jointly administered)**

By: \_\_\_\_\_  
Richard Galindo Sanchez  
Secretary

**Avianca Peru, S.A. (En Liquidación)**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**USAVflow Limited, as Borrower and Purchaser**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**Deutsche Bank AG, London, as Lender**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Banco de Credito del Peru, as Lender**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**First Citizens Bank Limited, as Lender**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Bank United N.A., as Lender**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Metrobank S.A., as Lender**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Moneda Deuda Latinoamericana Fondo de Inversion, as Lender**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Moneda Latinoamerica Deuda Local Fondo de Inversion, as Lender**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Prival Bank S.A.**, as Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Citibank, N.A.**, as Administrative Agent and Collateral Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Citibank, N.A., London Branch**, as Collateral Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Schedule 1**

Deutsche Bank AG, London Branch

Banco de Credito del Peru

First Citizens Bank Limited

Bank United N.A.

Metrobank S.A.

Moneda Deuda Latinoamericana Fondo de Inversion

Moneda Latinoamerica Deuda Local Fondo de Inversion

Prival Bank S.A.

**Schedule 2**

**Transaction Documents**

1. Loan Agreement;
2. RSPA;
3. Cash Management Agreement, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), among the Receivables Seller, as seller and servicer, USAV, as purchaser and the Agents;
4. New York Security Agreement, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time) between USAV, as grantor and Citibank, N.A., as Collateral Agent;
5. Security Trust Deed, dated December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), between USAV, as company, and Citibank, N.A., London Branch, as Collateral Trustee;
6. Security Agreement, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), among USAV, as chargor, the Collateral Trustee and Citibank, N.A., as account bank;
7. Account Control Agreement, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), among USAV, as pledgor, the Collateral Agent, as secured party and Citibank, N.A., as bank;
8. Receivables Maintenance Agreement, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), between the Receivables Seller, as seller and servicer, and USAV, as purchaser;
9. Pledge over Contract Rights and Future Revenues, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), between the Receivables Seller, as grantor, and USAV, as secured party;
10. Costa Rican Back-Up Security Agreement, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), between the Receivables Seller, as grantor, and USAV, as secured party;
11. Administration Agreement, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), between USAV, as company, and MaplesFS Limited, as administrator;
12. Expenses Agreement, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), between USAV, as company, and the Receivables Seller, as obligor;

13. Notice and Consent, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), by and among American Express Travel Related Services Company, Inc., American Express Payment Services Limited, the Receivables Seller, Taca International Airlines S.A., Líneas Aéreas Costarricenses S.A., Trans American Airlines S.A. dba Taca Peru, Aviateca S.A., America Central Corporation, Lifemiles Corp, USAV, Avianca, Inc. and the Collateral Agent;
14. Credomatic Notice of Transfer, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), by the Receivables Seller, Taca International Airlines S.A., Avianca, Inc. and USAV, and acknowledged by the Collateral Agent;
15. Credomatic Consent and Agreement, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), by BAC International Bank, Inc., as Credomatic;
16. Mutual Assignment of Rights Agreement, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), among Taca International Airlines S.A., the Receivables Seller, Avianca, Inc. and BAC International Bank, Inc.;
17. Fee Letter, dated September 11, 2017 (as amended, restated, supplemented or otherwise modified from time to time), among the Agents, Citibank, N.A., as account bank and the Receivables Seller;
18. Fee Letter, dated as of December 12, 2017 (as amended, restated, supplemented or otherwise modified from time to time), among Deutsche Bank AG London Branch, as bookrunner and joint lead arranger, and USAV;
19. Fee Letter, dated as of November 10, 2017 (as amended, restated, supplemented or otherwise modified from time to time), among the Collateral Trustee and the Receivables Seller; and
20. All other documents and instruments executed and/or delivered in connection with any of the foregoing.

**Exhibit A**

**Term Sheet**

## **USAV Restructuring and Settlement Agreement Term Sheet**

*The terms set out in this Term Sheet ("Term Sheet") are not intended to describe or include all of the terms and conditions of the settlement and related transactions referred to herein or to set forth the definitive contractual language of any provisions summarized below and are exclusively for the purpose of describing the terms to be more fully set forth in amendments to, or amendments and restatements of, (i) the Loan Agreement dated as of December 12, 2017 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Loan Agreement"), among USAVflow Limited ("USAV"), as Borrower, the Lenders referred to therein, Avianca Holdings S.A., Taca International Airlines S.A., Avianca Costa Rica S.A., and Avianca Peru, S.A. (En Liquidación) (f/k/a Trans American Airlines, S.A.) ("Avianca Peru"), as Guarantors, and Citibank, N.A. ("Citibank"), as Administrative Agent and Collateral Agent (collectively, the "Agents," and together with the Lenders, the "Lender Parties"), (ii) the Contract Rights and Receivables Sale, Purchase and Servicing Agreement dated December 12, 2017 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "RSPA"), among Aerovías del Continente Americano S.A. Avianca ("Aerovías" or the "Receivables Seller"), as Seller and Servicer, and USAV, as Purchaser, and (iii) the other Credit Documents (as defined in the Loan Agreement) identified on Schedule 2 to the Settlement Agreement (as defined below) (together with the Loan Agreement and RSPA, the "Transaction Documents"). This Term Sheet is the "Term Sheet" referenced as Exhibit A in the Settlement Agreement and Release, dated as of February 18, 2021 (the "Settlement Agreement") and is part of and subject to the terms and conditions set forth therein.*

*On May 10, 2020 (the "Petition Date"), each of the Receivables Seller, the Debtor Guarantors (as defined below), and their debtor affiliates (collectively, the "Debtors") filed voluntary petitions with the United States Bankruptcy Court Southern District of New York (the "Bankruptcy Court") commencing cases (the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On June 23, 2020, the Debtors (i) filed a motion (the "Rejection Motion") seeking to reject certain of the Receivables Transfer Documents (as defined in the Transaction Documents) pursuant to Section 365 of the Bankruptcy Code, commencing a contested matter (the "Rejection Litigation"); and (ii) filed a complaint against USAV seeking to recharacterize the transaction contemplated by the RSPA as a disguised secured financing and seeking certain related relief, commencing Adversary Proceeding No. 20-01189 (MG) (the "Recharacterization Litigation"). On September 4, 2020, the Bankruptcy Court entered an order granting in part and denying in part the Rejection Motion (the "Rejection Order"). On September 18, 2020, each of USAV and the Lender Parties appealed the Rejection Order insofar as it granted the Rejection Motion and (or including) certain of its findings and determinations, which appeals remain pending. On October 16, 2020, certain Debtors and Avianca Peru filed a complaint against USAV and Citibank seeking declaratory and injunctive relief based on allegations that defendants' actions violate the automatic stay under Section 362 of the Bankruptcy Code, commencing Adversary Proceeding No. 20-01244 (MG) (the "Automatic Stay Litigation," and together with the Rejection Litigation and the Recharacterization Litigation, the "USAV Litigation"). On October 28, 2020, the Bankruptcy Court entered an order (i) directing the parties to the USAV Litigation to participate in a mediation process (the "Mediation") in an effort to reach a consensual resolution under the supervision of the Hon. Judge Shelley C. Chapman (the "Mediator"); and (ii) staying all USAV Litigation pending the outcome of the Mediation.*

*Terms used below, to the extent not defined herein, have the meanings assigned under the Transaction Documents. This Term Sheet is neither an express nor an implied commitment to do, or take, or to refrain from taking, any action. The consummation of the transactions described herein will have to comply with the provisions of applicable law, including but not limited to the Bankruptcy Code. The rights of all parties are subject in all respects to the completion of diligence satisfactory to the Lender Parties and the Debtors, and the agreement and execution of definitive documentation. Unless and until the execution of definitive documentation, the parties shall retain their respective rights and approval by the Bankruptcy Court and any negotiation of and/or agreement to this Term Sheet shall not be deemed a waiver of any rights of any party. If executed, the terms of such definitive documentation shall control. For the avoidance of doubt, the Settlement Agreement and this Term Sheet supersede the Summary of Indicative Terms and Conditions previously agreed by the parties on December 31, 2020.*

<b>Borrower and Guarantors</b>	Same as under existing Senior Secured Loan (as defined below) (guarantee obligations of the Debtor Guarantors to be reinstated under the POR (as defined below)), <u>except that</u> Avianca Peru shall be released as a Guarantor in accordance with the Settlement Agreement (subject to the terms and conditions thereof).
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<b>Existing Facility</b>	That certain existing loan facility provided by the Lenders under the Loan Agreement listed on Schedule 1 to the Settlement Agreement (the “ <u>Senior Secured Loan</u> ”).
<b>Lenders</b>	The Lenders under the Loan Agreement listed on Schedule 1 to the Settlement Agreement.
<b>Defined Terms</b>	<p>“<u>Administrative Agent’s Expense Account</u>” means the account maintained by the Administrative Agent post-petition for the purpose of covering Citibank’s fees and expenses with a required minimum balance of \$100,000 on deposit.</p> <p>“<u>Additional Card Processing Agreements</u>” shall have the meaning given it in the RSPA.</p> <p>“<u>A&amp;R Cash Management Agreement</u>” the Cash Management Agreement as amended, supplemented, amended and restated, and/or otherwise modified by the Definitive Documentation.</p> <p>“<u>A&amp;R Loan Agreement</u>” the Loan Agreement as amended, supplemented, amended and restated, and/or otherwise modified by the Definitive Documentation.</p> <p>“<u>A&amp;R RSPA</u>” the RSPA as amended, supplemented, amended and restated, and/or otherwise modified by the Definitive Documentation.</p> <p>“<u>A&amp;R Transaction Documents</u>” means the Transaction Documents, including, without limitation, the Loan Agreement, the RSPA, the Cash Management Agreement and any other relevant Credit Documents, as amended, supplemented, amended and restated, and/or otherwise modified by the Definitive Documentation.</p> <p>“<u>Card Processing Agreements</u>” means Existing Card Processing Agreements and any Additional Card Processing Agreements.</p> <p>“<u>Cash Collateral</u>” means amounts held in the Collateral Accounts on or prior to the Settlement Effective Date, and all amounts that are to be deposited in the Collateral Accounts after the Settlement Effective Date pursuant to the A&amp;R Transaction Documents.</p> <p>“<u>Collateral Account</u>” means any of the Debt Service Reserve Account, the Collections Account, and the New York Pass-Through Account (together, the “<u>Collateral Accounts</u>”).</p> <p>“<u>Debtor Guarantors</u>” means, collectively, Avianca Holdings S.A., Taca International Airlines S.A., and Avianca Costa Rica S.A.</p> <p>“<u>Definitive Documentation</u>” shall have the meaning given it in the Settlement Agreement.</p> <p>“<u>DIP Order</u>” shall mean the order entered at ECF 1031.</p> <p>“<u>Existing Card Processing Agreements</u>” means the AMEX Contract and the Credomatic Contract, and all extensions, amendments, supplements, or replacements of such agreements with AMEX and Credomatic, respectively in existence as of the Settlement Effective Date.</p>

	<p>“<u>Lender Security Documents</u>” means “Security Documents” as defined in the Loan Agreement (including as amended, supplemented, amended and restated, and/or otherwise modified by the Definitive Documentation).</p> <p>“<u>Permitted Liens</u>” has the meaning given it in the DIP Credit Agreement [ECF No. 1017].</p> <p>“<u>POR</u>” means a chapter 11 plan of reorganization filed or supported by the Debtors (including the Receivables Seller and the Debtor Guarantors).</p> <p>“<u>POR Effective Date</u>” means the effective date of the POR.</p> <p>“<u>Purchaser Security Documents</u>” means the Colombian Back-Up Security Agreement and the Costa Rican Back-Up Security Agreement (including as amended, supplemented, amended and restated, and/or otherwise modified by the Definitive Documentation).</p> <p>“<u>Settlement Effective Date</u>” shall have the meaning given it in the Settlement Agreement.</p> <p>“<u>Specified Default</u>” has the meaning given it in Section 11 of the Settlement Agreement.</p> <p>“<u>USAV Parties</u>” means, collectively, the Lender Parties and USAV.</p>
<b>Net Obligations</b>	<p>As of the Settlement Effective Date, the aggregate outstanding principal amount of the Loans shall be equal to US\$66,962,332.85 (the “<u>Net Obligations</u>”).</p> <p>The Net Obligations are calculated as follows: \$100,000,000 aggregate principal amount of the Loans as of the Petition Date <u>minus</u> \$30,751,434.25<sup>11</sup> applied to principal from the Petition Date through October 13, 2020, with further reductions of (x) \$1,820,083.20 (the amount that was previously paid to White &amp; Case post-petition in connection with or related to the ongoing or concluded lawsuits, contested matters, appeals, and mediation with the Debtors, including the USAV Litigation (the “<u>Litigation Matters</u>”)), to reflect that the Lenders shall be responsible for the amounts swept by Citibank post-petition that were applied to pay White &amp; Case for the Litigation Matters and (y) \$466,149.70, which amount should have been paid to the Lenders as principal but remains in the Administrative Agent’s Account (and the Debtors agree that such amount shall be released to the Lenders from the Administrative Agent’s Account as repayment of principal on the Settlement Effective Date).<sup>12</sup></p>
<b>Use of Post-Petition Sales and Release of Other Retained Funds</b>	<p>Other than as applied by Citibank to the obligations to arrive at the Net Obligations amount cited above, the post-petition sales that have accumulated in the accounts through to the Settlement Effective Date</p>

<sup>11</sup> The amounts swept by Citibank after the Petition Date were also applied to pay interest and other obligations, including certain fees and expenses of the USAV Parties, which payments the Debtors agree to allow except for the legal fees of White & Case related to the Litigation Matters. Principal and interest was paid to the Lenders from the Petition Date to but excluding October 13, 2020, the final date on which an interest payment was made to the Lenders (for interest due as of October 12, 2020).

<sup>12</sup> For the avoidance of doubt, the application of the \$466,149.70 is already reflected in the Net Obligations notwithstanding that the amount will not be released to the Lenders until the Settlement Effective Date.

<b>on Settlement Effective Date</b>	<p>(collectively, the “<u>Post-Petition Sales</u>”) shall be applied on the Settlement Effective Date (i) to pay Covered Expenses (as defined below) and (ii) to pay interest at one-month LIBOR + 1.0% (the “<u>Post-Petition Interest</u>”) on the Net Obligations from October 13, 2020 through to but excluding the Settlement Effective Date. All remaining Post-Petition Sales shall be paid to the Debtors, without deduction for any unpaid litigation expenses of White &amp; Case or other attorneys representing the Lenders incurred in connection with or related to the Litigation Matters; provided that any fees and expenses incurred by the Lenders to implement this restructuring after December 31, 2020 shall be payable up to the Lender Restructuring Legal Fee Cap as Covered Expenses as set forth below.</p> <p>On the Settlement Effective Date, Citibank shall release the \$466,149.70 balance remaining in the Administrative Agent’s Account to the Lenders as repayment of principal.</p>
<b>Secured Claims / Allowed Claims</b>	<p>The Lenders will hold a secured claim against USAV in the amount of the Net Obligations. The guarantee claims of the Lenders against the Debtors and the claims of Citibank and USAV against the Debtors shall be allowed claims in the amount of the Net Obligations and shall be reinstated under the POR.</p>
<b>Reconstituted Secured Loan</b>	<p>The Lenders’ secured claims against USAV shall be aggregated into the Senior Secured Loan facility with a Revised Amortization Schedule (as defined and set forth below).</p>
<b>Collateral</b>	<p>“<u>Collateral</u>” means the property, rights and accounts that, (i) in accordance with the Purchaser Security Documents, from time to time, are subject to any Lien in favor of the Purchaser, and, (ii) in accordance with the Lender Security Documents, from time to time, are subject to any Lien in favor of the Collateral Agent or the Collateral Trustee for the benefit of the Secured Parties.</p> <p>For the avoidance of doubt, the Collateral includes the Contract Rights and Receivables (and all Collections derived therefrom), the Collateral Accounts, and the Cash Collateral.</p>
<b>Release of Collateral</b>	<p>On or after January 1, 2023, if on any date of determination the average Collections Coverage Ratio for the immediately preceding 12 consecutive calculation dates exceeds 15.00:1.00, the Lenders shall agree to release one of the three types of credit card receivables (e.g., Amex, MasterCard or Visa), as selected by the Lenders in their sole discretion; <u>provided, however</u>, that (i) such release of Collateral shall only be effectuated if (A) on the applicable date on or after January 1, 2023, no Specified Default shall have occurred and be continuing and (B) the pro forma Collections Coverage Ratio after giving effect to the release of the receivables with respect to the credit card with the lowest value of receivables is reasonably projected to exceed 10.00:1.00, and (ii) receivables of only one type of credit card receivable will be released over the life of the A&amp;R Loan Agreement. Conforming changes will be made in the A&amp;R Transaction Documents to effect this release.</p> <p>In addition to the release by the Lender Parties of the applicable portion of</p>

	the Collateral, the Borrower shall be obligated to sell such released credit card receivables to the Receivables Seller pursuant to a stand-alone purchase and sale agreement to be executed and delivered by USAV and the Receivables Seller at the time of such sale, if any, and in a form to be agreed and attached to the A&R Loan Agreement. The consideration for such sale shall consist of a forgiveness by the Receivables Seller of any Additional Purchase Price payable with respect to such credit card receivables.
<b>Maturity</b>	Extended to December 31, 2025 (the “ <u>Maturity Date</u> ”).
<b>Interest Rate</b>	From and after the Settlement Effective Date until the Maturity Date, LIBOR + 1.00%, with increases of 25 basis points on each anniversary of the Settlement Effective Date (the “ <u>Interest Rate</u> ”), subject to default interest provisions as set forth in the A&R Loan Agreement.
<b>Interest Payments</b>	From and after the Settlement Effective Date, applicable interest under the A&R Loan Agreement will accrue at the Interest Rate and be paid to Lenders in cash on a monthly basis from the Collections Account on the last business day of each month until the Maturity Date and on the Maturity Date (each a “ <u>Payment Date</u> ”).
<b>New York Pass-Through Account and Collections Account</b>	Notwithstanding the Chapter 11 Cases, <p style="margin-left: 40px;">all Collections will continue to be deposited by AMEX and Credomatic and any other credit card processor to the extent provided in the relevant Card Processing Agreement, as instructed in the relevant Notice and Consent, into the New York Pass-Through Account; and</p> <p style="margin-left: 40px;">all Collections deposited in the New York Pass-Through Account shall be transferred by the Collateral Agent to the Collections Account in accordance with Section 2.3.2 of the Loan Agreement.</p>
<b>Principal Amortization Schedule</b>	<p>The amortization schedule shall be modified as of the Settlement Effective Date to reflect forty-eight (48) equal consecutive monthly principal amortization installments of US\$697,524.30, payable on each Payment Date commencing on January 31, 2022, with a one-time principal payment of \$33,481,166.43 on December 31, 2025 (such updated amortization schedule, the “<u>Revised Amortization Schedule</u>”).</p> <p>On each Payment Date, the Collateral Agent will make disbursements from the Collections Account in accordance with the Cash Management Agreement, including the following payments to the Lenders:</p> <ul style="list-style-type: none"> <li>- the amount of interest payment as provided above; <i>plus</i>,</li> <li>- any applicable amortization payment or other payment as set forth on the Revised Amortization Schedule.</li> </ul>

<b>Debt Service Reserve Account</b>	From and after the Settlement Effective Date, no payments shall be made to the Debt Service Reserve Account, the Debt Service Reserve Account shall no longer constitute a Collateral Account, and the Debt Service Reserve Account will be closed.
<b>Amendment and Waiver of Certain Covenants and EODs in the Loan Agreement</b>	<p>Provisions will be waived or amended in the A&amp;R Transaction Documents, including, without limitation, the following provisions of the Loan Agreement:</p> <p>Amendment to Section 1.1 of the Loan Agreement, in order to modify the “Permitted Lien” definition to include (i) the DIP Liens (as defined in the DIP Order), (ii) other Permitted Liens (as defined in the DIP Credit Agreement (as defined in the DIP Order)), and (iii) liens that do not directly affect the Collateral, in each case, not on the Collateral and solely with respect to Liens affecting assets of the Debtors.</p> <p>Waiver of any Defaults or Events of Default under the Loan Agreement that have occurred prior to the Settlement Effective Date.</p> <p>Amendment of Section 5.3 of the Loan Agreement to limit its applicability to delinquencies arising after the Petition Date and prior to the POR Effective Date.</p> <p>Amendment of Section 5.4 of the Loan Agreement (i) to be titled “Maintenance of Properties and Services,” and (ii) to add the following italicized language: “[e]ach Obligor shall cause all material properties . . . [to be] supplied with all necessary equipment <i>and services</i>.”</p> <p>Amendment of Section 5.11.2 of the Loan Agreement to permit Dispositions by the Guarantors of property (other than the Existing Card Processing Agreements or any Additional Card Processing Agreements) approved by the Bankruptcy Court (including pursuant to the DIP Order or a confirmed POR) and as shown in Annex A hereto, or as further agreed by the parties.</p> <p>Amendment(s) to the Loan Agreement to reflect that the Debtors may enter into a new debtor-in-possession financing facility pursuant to section 364 of the Bankruptcy Code that is materially consistent with the terms of the Settlement Agreement (including this Term Sheet).</p> <p>Amendment of Section 5.14 of the Loan Agreement to permit consolidation or merger, dissolution, liquidation, or conveyance, lease or transfer of all or substantially all of the assets of an Obligor (other than USAV), approved by the Bankruptcy Court, in each case so long as the surviving entity, or the person to whom such assets are transferred or conveyed or who otherwise holds such assets following the consummation of such transaction, is an Obligor or becomes an Obligor and provides guaranties in form and substance reasonably satisfactory to the Administrative Agent in connection with such transaction.</p> <p>Amendment of Section 5.20.1 of the Loan Agreement to make notices of amendments to Card Processing Agreements be due no later than 10 calendar days prior to the effectiveness of such amendment if such amendment could reasonably be expected to materially adversely affect</p>

	<p>USAV's or the Lender Parties' rights under such Card Processing Agreement.</p> <p>Amendment of Sections 6.1.6 and 6.1.7 of the Loan Agreement (solely as they relate to the Debtors) to limit such provisions to apply only to post-petition or unstayed obligations.</p> <p>Amendments to provide that the provisions of Sections 6.1.9 (solely as it relates to insolvency of the Debtors) and 6.1.10 of the Loan Agreement shall not apply prior to the POR Effective Date.</p> <p>Amendment of Section 6.1.12 of the Loan Agreement with the following clause to follow subsection (g):</p> <p><i>“provided that, in respect of the Obligors (other than the Borrower) and the Receivables Seller, events under subsections (a), (b), (e), (f), and (g) shall not include such actions during the Chapter 11 Cases, and subsection (d) shall include such actions under the Chapter 11 Cases only if taken without the consent of the Required Lenders at their sole discretion.”</i></p> <p>Amendments to provide that the provisions of Section 6.1.15 of the Loan Agreement shall not apply prior to the POR Effective Date.</p> <p>Amendment of Section 6.1.16 of the Loan Agreement, so that if a Change of Control (other than a Change of Control of USAV) occurs as a result of (1) the DIP Loans obtained during the Chapter 11 Cases or (2) effectuating any plan of reorganization, such event would not be considered as an Event of Default.</p> <p>Amendments to provide that the provisions of Section 6.1.23 of the Loan Agreement shall not apply prior to the POR Effective Date.</p> <p>Amendments to delete Section 6.1.24 of the Loan Agreement and to delete references to the Debt Service Reserve Account.</p> <p>Amendment to Section 6.1 of the Loan Agreement to add that any Specified Default under the Settlement Agreement (after giving effect to any grace period or notice period under the Settlement Agreement) shall result in an immediate Event of Default.</p> <p>Amendment to Section 6.1 of the Loan Agreement to provide that the exercise of any rights or remedies by any DIP Secured Party (as defined in the DIP Order) in respect of a DIP Credit Facility Event of Default or a DIP Notes Facility Event of Default (each as defined in the DIP Order) shall result in an Event of Default under the Loan Agreement.</p> <p>Amendment to Section 8.9.2 of the Loan Agreement to reflect that the Bankruptcy Court has jurisdiction over the enforcement of the Transaction Documents during the Chapter 11 Cases.</p> <p>Amendment(s) required to provide for customary LIBOR replacement provisions incorporating ARRC proposals, with such changes reasonably requested by the Lender Parties.</p>
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	<p>Amendment(s) to the Loan Agreement to reflect the removal of Avianca Peru as a Guarantor.</p> <p>Other amendments as agreed among the parties, including but not limited to as necessary to reflect the terms of the Settlement Agreement (including this Term Sheet).</p>
<b>Fees &amp; Expenses</b>	<p>The Debtors will agree to allow to be paid from the Post-Petition Sales, and after the Settlement Effective Date, from the Collections Account, the reasonable and documented fees and expenses of USAV and the Lender Parties required to be paid under the Transaction Documents; <u>provided</u> that (i) the \$100,000 balance deposited in the Administrative Agent's Expense Account shall first be applied to the fees and expenses of Citibank before any shortfalls are paid from the Post-Petition Sales and the Collections Account, (ii) the Lenders will bear the unpaid cost of their counsel incurred in connection with or related to the Litigation Matters through December 31, 2020 (the "<u>Specified Lender Litigation Fees</u>"), and (iii) the legal fees and expenses incurred by the Lenders for the implementation of the restructuring contemplated by the Settlement Agreement shall be subject to an aggregate cap of US\$750,000 ("<u>Lender Restructuring Legal Fee Cap</u>") (all such covered expenses, the "<u>Covered Expenses</u>"). USAV and the Lender Parties shall provide the Debtors and counsel to the Official Committee of Unsecured Creditors with support for the fees and expenses paid as Covered Expenses, which, for the avoidance of doubt, shall not include the Specified Lender Litigation Fees. The Debtors shall bear their legal fees and expenses.</p> <p>All payments made hereunder shall be free and clear of any taxes (other than franchise taxes and taxes on overall net income and other customarily excluded taxes), imposts, assessments, withholdings or other deductions whatsoever.</p>
<b>Payment of Post-Petition Sales to the Debtors</b>	<p>On the Settlement Effective Date, all remaining Post-Petition Sales after deducting (i) the Post-Petition Interest and (ii) Covered Expenses shall be paid to the Debtors.</p> <p>After the Settlement Effective Date, all Collections (as defined in the Transaction Documents) shall be treated and applied in accordance with the A&amp;R Transaction Documents.</p>
<b>Conditions Precedent to A&amp;R Transaction Documents</b>	<p>In addition to the Conditions Precedent set forth in Section 5 of the Settlement Agreement (other than clause (c) thereof), the A&amp;R Transaction Documents shall contain customary conditions precedent for transactions of this type, including (i) amended and restated fee letters for the Administrative Agent, the Collateral Agent, and the Collateral Trustee, (ii) appropriate lien searches, and (iii) officer certificates, corporate resolutions, legal opinions in form and scope, and in jurisdictions, to be agreed among the Settling Parties and be reasonably satisfactory to the Lender Parties, good standing certificates, and other deliverables consistent with the original closing of the existing Transaction Documents.</p>

<b>Amendment and Waiver of Certain Provisions under the RSPA, the Undertaking Agreement, the Cash Management Agreement and the other Transaction Documents and related agreements</b>	The provisions of the RSPA, the Undertaking Agreement, the Cash Management Agreement and the other Transaction Documents will be waived or amended in the A&R Transaction Documents to conform to the amendments and waivers set forth in the section “Amendment and Waiver of Certain Covenants and EODs under the Loan Agreement” above and, if necessary, to reflect any of the other provisions set forth in this Term Sheet, including (i) to clarify any provisions regarding the sale of, and security in, Additional Card Processing Agreements and related rights, (ii) to make any required conforming revisions to Retention Events, Adjustment Events, and Trigger Events, (iii) to clarify that the A&R RSPA takes precedence over the A&R Cash Management Agreement in case of a conflict and addressing similar conflicts in the other Transaction Documents, (iv) revising defined terms to reflect the defined terms herein, (v) to protect the treatment of the Transaction Documents as described in Section 7 of the Settlement Agreement, and (vi) amendment(s) to that certain Option Agreement in Respect of the Issued Shares in USAVflow Limited, dated December 12, 2017 between MaplesFS Limited, the Debtor Guarantors, and Avianca Peru, to remove Avianca Peru as an Option Holder.
<b>Local Law Amendments and Filings</b>	Non-U.S. law Transaction Documents shall be amended and/or amended and restated, and any filings or other similar actions shall be completed, to the extent deemed necessary or advisable by local counsel to the Lenders to reflect the provisions of the Settlement Agreement and this Term Sheet, and to maintain perfected security interests in the Collateral.
<b>Implementation</b>	The terms and conditions set forth in this Term Sheet shall be documented through the A&R Transaction Documents that shall survive the consummation of a POR of the Debtors. The Debtors shall not propose a POR with terms and conditions contrary to, or interfering with, those disclosed herein. The POR will include provisions which expressly provide that the Settlement Agreement (including this Term Sheet) and the A&R Transaction Documents will survive consummation of the POR and will include the releases identified in the Settlement Agreement.
<b>Reporting Information</b>	Until the end of the Chapter 11 Cases, the Debtors shall commit to deliver to the Lender Parties and their legal advisors all documents and information required to be delivered to the Administrative Agent and/or the DIP Lenders (each as defined in the DIP Credit Agreement) under the DIP Credit Agreement.
<b>Other</b>	Except as amended by the Definitive Documentation, all other terms and conditions in the existing Transaction Documents shall apply.  The Settlement Agreement (including this Term Sheet) shall constitute a “Credit Document” under and as defined in the A&R Loan Agreement.
<b>Covenants</b>	Similar to existing Transaction Documents except as otherwise set forth herein.



<b>Law</b>	Same as under existing Transaction Documents (New York, English, Colombian, and Costa Rican, as applicable).
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**Annex A**

## 1.1 Defined Terms

**“Core Assets”** means assets used or useful in the business of providing air transportation for passengers, owning, leasing, and maintaining facilities in order to conduct such business, or providing other services and selling merchandise related thereto, or any one of more of the foregoing activities; provided that, for the avoidance of doubt, Core Assets shall include LifeMiles Corp. and its subsidiaries.

**“Dispose”** means to, directly or indirectly, consummate any sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions), including any disposition by means of a merger, consolidation or similar transaction, of any property or assets. **“Disposition”** means any such sale, lease, transfer or other disposition (or series of related sales, leases, transfers or dispositions).

## 5.11 Limitation on Sales of Assets

5.11.1 The Borrower shall not directly or indirectly, consummate any sale, lease, transfer or other Disposition (or series of related sales, leases, transfers or dispositions), including any Disposition by means of a merger, consolidation or similar transaction, of any property or assets.

5.11.2 The Guarantors shall not, and shall ensure their Subsidiaries do not, Dispose of any of their property, whether now owned or hereafter acquired, or, other than with respect to Holdings, issue or sell any of Receivables Seller’s, such Guarantor’s or such Subsidiary’s equity interests to any Person, except:

- (a) Dispositions in the ordinary course of business, including (i) Dispositions of obsolete or worn-out property, aircraft and equipment, (ii) Dispositions of aircraft and other equipment that has been leased to a Guarantor or any of their Subsidiaries pursuant to sale and leaseback transactions, (iii) Dispositions of aircraft and other equipment replaced within 180 days of such Disposition by aircraft and other equipment of approximately the same or greater value or with approximately the same or greater passenger capacity in connection with the upgrading of the Guarantors’ or their Subsidiaries’ fleet of aircraft, or (iv) leases and sub-leases of aircraft and related equipment to Affiliates;
- (b) Dispositions from Holdings or its Subsidiaries to the other Guarantors;
- (c) Dispositions of assets not constituting Core Assets and not otherwise described in clauses (a) and (b); provided that no Disposition shall be made under this clause (c) either (i) involving assets or services essential to maintaining or operating the Core Assets unless the Guarantors ensure, in the Guarantors’ reasonable judgment, as certified by the Guarantors to the

Administrative Agent and the Lenders prior to giving effect to any such Disposition, that the Guarantors and the Receivables Seller will continue to have the benefit of such assets and services (through the purchaser of such Core Assets or another party) or (ii) if such disposition could reasonably be expected to have a Material Adverse Effect or adversely affect the Core Assets, the Contract Rights or the Collections with respect thereto;

- (d) Dispositions of assets that would not exceed on a cumulative basis (i) for the period beginning on the Effective Date and ending on the Payment Date of the last Monthly Settlement Amount, 15% of the aggregate value (in accordance with IFRS) of Holdings' consolidated assets (as such value is adjusted as of the end of each fiscal year of Receivables Seller, Holdings and each other Guarantor based on the inflation provision in IFRS), or (ii) in any single fiscal year of Holdings commencing after the Effective Date 5% of the aggregate value (in accordance with IFRS) of Receivables Seller's consolidated assets; provided that no Disposition shall be made under this clause (d) either (i) involving assets or services essential to maintaining or operating the Core Assets unless the Guarantors ensure, in the Guarantors' reasonable judgment, as certified by the Guarantors to the Administrative Agent and the Lenders prior to giving effect to any such Disposition, that the Guarantors and the Receivables Seller will continue to have the benefit of such assets and services (through the purchaser of such Core Assets or another party) or (ii) if such disposition could reasonably be expected to have a Material Adverse Effect or adversely affect the Core Assets, the Contract Rights or the Collections with respect thereto; and
- (e) Dispositions of Air Travel Receivables on which Liens are not prohibited by Section 5.12.2.

Notwithstanding the foregoing provisions of this Section 5.11.2, no Disposition, other than Dispositions pursuant to Section 5.11.2(a) shall be permitted if, at the time thereof, there shall exist and be continuing any Retention Event, Default, or Event of Default.

**Exhibit B**

**Proposed Settlement Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
In re: :  
: Chapter 11  
AVIANCA HOLDINGS S.A., *et al.*, :  
: Case No. 20-11133 (MG)  
Debtors.<sup>1</sup> :  
: (Jointly Administered)  
-----  
: AVIANCA HOLDINGS S.A., *et al.*, :  
: :  
Plaintiff. :  
: :  
v. : Adv. Proc. 20-01189 (MG)  
: :  
USAVFLOW LIMITED, :  
: :  
Defendant. :  
-----X

**[PROPOSED] ORDER APPROVING THE SETTLEMENT AGREEMENT BY AND  
AMONG THE DEBTORS, AVIANCA PERU, AND THE USAV PARTIES**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (the “Debtors”) for entry of an order, pursuant to section 105(a) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy

<sup>1</sup> The Debtors in these 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). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion, the Settlement Agreement (including the Term Sheet), or the Transaction Documents, as applicable.

Procedure (the “Bankruptcy Rules”), (i) approving the settlement (the “Settlement”) embodied in that certain settlement agreement and release annexed hereto as **Exhibit 1** (the “Settlement Agreement”), by and among the Debtors, Avianca Peru, S.A. (En Liquidación) (f/k/a Trans American Airlines, S.A.) (“Avianca Peru” and, together with the Debtors, the “Avianca Parties”), USAVflow Limited (“USAV”), each of the lenders under the Loan Agreement (collectively, the “Lenders”), and Citibank, N.A., in its capacity as Administrative Agent and as Collateral Agent under the Transaction Documents and Citibank N.A., London Branch, in its capacity as Collateral Trustee under the Transaction Documents (collectively, “Citibank” and, together with the Lenders, the “Lender Parties,” and the Lender Parties together with USAV, the “USAV Parties”) (each of the foregoing parties, a “Settling Party” and, together, the “Settling Parties”), including the restructuring term sheet annexed as Exhibit A to the Settlement Agreement (the “Term Sheet”); (ii) authorizing the Debtors to enter into and perform their obligations under the Settlement Agreement, the A&R RSPA, the A&R Loan Agreement, the other A&R Transaction Documents, and any and all related Definitive Documentation, including, without limitation, any and all other documents required, necessary, or desirable to implement the transactions contemplated by the Settlement Agreement, the A&R RSPA, the A&R Loan Agreement, and the other A&R Transaction Documents, in each case as amended, restated, supplemented, or otherwise modified from time to time consistent with the terms thereof and the Order (collectively, the “Settlement Documents,” and the transactions contemplated thereby, the “Settlement Transactions”); and (iii) granting related relief; all as fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2);

and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates and creditors, and other parties in interest; and this Court having found that the notice of the Motion and opportunity to be heard were appropriate under the circumstances and that no other or further notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; now, therefore,

**IT IS HEREBY FOUND AND CONCLUDED THAT:<sup>3</sup>**

G. *Final Order.* This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Federal Rule of Civil Procedure 54(b), as made applicable by Bankruptcy Rule 7054, there is no just reason for delay in the implementation of this Order and entry of judgment is directed as set forth herein.

H. *Avianca Stipulations.* Effective as of the Settlement Effective Date, the Avianca Parties, on behalf of themselves, their estates, and any of their respective past, present, and future predecessors, successors in interest, and assigns, and any party acting or purporting to act on behalf of the foregoing, including the Avianca Successors, admit, stipulate, and agree that:

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<sup>3</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.



(i) The Sale and Transfer of the Contract Rights and Receivables arising under the Card Processing Agreements (as defined in the Term Sheet) to USAV constitutes a final, definitive, and irrevocable “true sale” and transfer, enforceable against the Avianca Parties and all third parties, and not a lending transaction or any other economic arrangement other than a true sale, and confers upon USAV good and valid legal and equitable title to all of the Contract Rights and Receivables (and all Collections derived therefrom) arising under the Card Processing Agreements and vests USAV with the definitive and infeasible ownership thereof (whether or not such Contract Rights and Receivables are in existence as of Settlement Effective Date).

(ii) Except as permitted under the Transaction Documents (or, after the Settlement Effective Date, the A&R Transaction Documents), none of the Avianca Parties nor the Avianca Successors shall sell, transfer, or assign, or purport to sell, transfer, or assign, the Contract Rights or the Receivables (or any portion thereof) to any person other than USAV, or purport to create or suffer to exist a Lien on any Contract Rights, Receivables, or Collections, except in favor of USAV.

(iii) The Contract Rights and Receivables (and all Collections derived therefrom) arising under the Card Processing Agreements, the Collateral Accounts, the Cash Collateral, or any other Collateral (as defined in the Term Sheet) (together, the “Subject Property”) (or any interest therein) shall under no circumstances be considered the property of any Avianca Party or Avianca Successor, or the property of any of their estates within the meaning of section 541(a) of the Bankruptcy Code or otherwise in respect of the Chapter 11 Cases, any Chapter 7 case if the Chapter 11 Cases are converted, or any subsequent bankruptcy case or any other context for so long as any payment and/or performance obligations under the A&R Transaction Documents

remain outstanding; *provided* that the Debtors are entitled to the disbursement of funds held in the Collateral Accounts as provided in the Term Sheet.

(iv) The Lender Security Documents provide the Collateral Agent or the Collateral Trustee (as applicable, and in each case for the benefit of the Lenders and the other Secured Parties) with effective, valid, legally binding, enforceable, non-avoidable, and properly perfected first priority Liens on all of the Collateral, and were granted to, or for the benefit of, the Secured Parties for fair consideration and reasonably equivalent value.

(v) The Purchaser Security Documents provide USAV with effective, valid, legally binding, enforceable, non-avoidable, and properly perfected first priority Liens on all of the Collateral, and were granted to, or for the benefit of, USAV for fair consideration and reasonably equivalent value.

(vi) Subject to paragraphs 6 and 7 hereof, upon any Specified Default, and after the expiration of the applicable cure periods described in Section 11 of the Settlement Agreement, the Lender Parties or the Collateral Trustee may exercise any and all rights and remedies against USAV (including a right to accelerate the amounts due under the A&R Loan Agreement) and/or the Collateral as if, and having the same effect as, an automatic Event of Default and/or Trigger Event under the A&R Transaction Documents, or under applicable Law. For the avoidance of doubt, subject to paragraphs 6 and 7 hereof, in the event of a Specified Default that occurs during the pendency of these Chapter 11 Cases or any Chapter 7 case if the Chapter 11 Cases are converted, any such exercise of rights and remedies against USAV and/or the Collateral will not be enjoined by section 362 of the Bankruptcy Code or otherwise and will not require further order of the Court.

(vii) The Lender Parties hold or benefit from claims against USAV in the amount of the Net Obligations secured by first priority liens on the Collateral evidenced by the Lender Security Documents (including as amended, supplemented, amended and restated, and/or otherwise modified by the Definitive Documentation). The Lender Parties have allowed unsecured guarantee claims against the Debtor Guarantors in the amount of the Net Obligations and the Lender Parties shall not be required to file any proof of claim in respect of such amount.

(viii) USAV has allowed claims in respect of its rights under the A&R Transaction Documents in the amount of the Net Obligations secured by first priority liens on the Collateral evidenced by the Purchaser Security Documents (including as amended, supplemented, amended and restated, and/or otherwise modified by the Definitive Documentation) and USAV shall not be required to file any proof of claim in respect of such amount.

(ix) The terms and provisions of the Settlement Agreement, the other Settlement Documents, and this Order shall apply to any Card Processing Agreements and any extensions, amendments, supplements, or replacements thereof permitted under the A&R Transaction Documents.

I. *Additional Stipulations.* Effective as of the Settlement Effective Date, the Settling Parties, on behalf of themselves, their estates, and any of their respective past, present, and future predecessors, successors in interest, and assigns, and any party acting or purporting to act on behalf of the foregoing, admit, stipulate, and agree that the RSPA and the Undertaking Agreement have not been rejected pursuant to the Rejection Opinion.

J. *Findings Regarding the Settlement Documents.*

(i) The boards of directors of the Debtors and the liquidator of Avianca Peru will authorize or have authorized the execution and delivery of the Settlement Documents. The

Avianca Parties and their affiliates have (a) full corporate power and authority to execute and deliver the Settlement Documents and (b) all of the power and authority necessary to approve the Settlement Transactions. The Avianca Parties have taken or shall take all action necessary to authorize and approve the Settlement Documents and to consummate the Settlement Transactions, and no further consents or approvals are required for the Avianca Parties to consummate the Settlement Transactions except as otherwise set forth in the Settlement Documents.

(ii) The Settlement Documents were negotiated, proposed, and entered into by the Avianca Parties, the USAV Parties, and each of their respective members, officers, directors, employees, agents, attorneys, advisors, and representatives at arm's length, in good faith, and without collusion or fraud under the supervision of a court-appointed mediator. The terms and conditions set forth in the Settlement Documents are fair and reasonable under the circumstances and are not being entered into for the purpose of, nor do they have the effect of, hindering, delaying, or defrauding any of the Debtors or any of their creditors under any applicable laws.

(iii) The consideration to be paid or provided by each of the Settling Parties under the Settlement Documents was negotiated at arm's length, in good faith, and without collusion or fraud and constitutes (a) fair and reasonable consideration and (b) reasonably equivalent value and fair and adequate consideration under the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, the Uniform Voidable Transactions Act, and under the laws of the United States and each state, territory, and possession, and the District of Columbia.

(iv) The Settlement Documents and the Settlement Transactions contemplated thereby, including the Releases (as defined below) and the other provisions contained herein for the benefit of the Settling Parties and their affiliates and other related parties and representatives,

(a) meet the standards applied by bankruptcy courts for the approval of a compromise and settlement pursuant to Bankruptcy Rule 9019, (b) are reasonable under the circumstances, fair and equitable, and supported by adequate consideration, and (c) are in the best interests of the Debtors, their estates, their creditors, and all other parties in interest. Entry into the Settlement Documents and consummation of the Settlement Transactions represents the reasonable exercise of sound and prudent business judgment by the Debtors.

(v) The Settlement Transactions (subject to the conditions thereof) and the rights, interests, and obligations of each party to the Settlement Documents are mutually dependent and are all part of a single, integrated transaction which is not severable in any respect of circumstance.

(vi) Each of the Settlement Documents and the Settlement Transactions contemplated thereby is integral to the compromise and settlement of the Released Claims. The entry of this Order, including the Releases and the other provisions contained herein for the benefit of the USAV Parties and their affiliates and other related parties and representatives, is a condition precedent to the effectiveness of the Settlement Documents and the receipt by the Avianca Parties of the benefits conferred in the Settlement Documents.

K. *Findings Regarding the Released Claims.* The Released Claims are property of the Avianca Parties (including the Debtors and their estates) and are personal to the Avianca Parties, and the Avianca Parties have the sole and exclusive authority to commence and prosecute the Released Claims and any other matter arising out of the Released Claims, including without limitation any claims seeking to characterize the USAV Sale Transaction as anything other than a true sale. The Avianca Parties have the exclusive right and authority to negotiate, settle, and release the Released Claims, including without limitation any claims seeking to recharacterize the

USAV Sale Transaction as anything other than a true sale, and, upon the effectiveness of the Releases, neither the Avianca Parties nor any other person (including, for the avoidance of doubt, the Avianca Successors) shall have standing, direct or derivative, to commence or prosecute any Released Claim. All Parties acting or purporting to act on behalf of the Avianca Parties or their estates (including, for the avoidance of doubt, the Official Committee of Unsecured Creditors (the “UCC”) and the Avianca Successors) shall be bound by the Releases and the Avianca Parties’ other stipulations, admissions, and agreements contained in this Order and in the Settlement Documents upon their effectiveness and no such party shall assert any Released Claim, including, without limitation, any claims seeking to recharacterize the USAV Sale Transaction as anything other than a true sale.

L. *Relief is Warranted.* The legal and factual bases set forth in the Motion establish just and sufficient cause to grant the relief requested therein.

**IT IS HEREBY ORDERED THAT:**

20. The Motion is GRANTED as set forth herein. Any and all objections to the Motion not previously withdrawn, waived, settled, or resolved as set forth herein, and all reservations of rights included therein, are hereby overruled.

21. Pursuant to Bankruptcy Rule 9019 and section 105(a) of the Bankruptcy Code, the Settlement embodied in the Settlement Agreement and the Term Sheet is approved. The Debtors are authorized to enter into the Settlement Agreement and the other Settlement Documents, and the Settling Parties are directed to execute and deliver all documents and take all actions necessary to immediately and fully implement the Settlement Agreement and the other Settlement Documents in accordance with their terms.

**Settlement Agreement**

22. The settlements and compromises contained within the Settlement Agreement, including, without limitation, the releases set forth therein (the “Releases”), are approved in their entirety pursuant to Bankruptcy Rule 9019 and section 105(a) of the Bankruptcy Code. All of the terms of the Settlement Agreement, including, without limitation, the Releases, are incorporated herein by reference as if fully set forth herein (and the failure to specifically describe or include herein any particular term or provision of the Settlement Agreement shall not diminish or impair the effectiveness of any such term or provision).

23. The Debtors are authorized to indemnify and hold harmless each of the USAV Parties on the terms and conditions set forth in Section 7(c) of the Settlement Agreement, without notice, hearing, or further order of this Court as, when, and to the extent such obligation becomes due and payable under the terms of the Settlement Documents. Such indemnities shall not be discharged, modified, or otherwise affected by any Chapter 11 plan of the Debtors or related confirmation order, dismissal of these Chapter 11 Cases, or conversion of these Chapter 11 Cases to Chapter 7 cases, nor shall any of such amounts be required to be disgorged.

**Settlement Binding**

24. Effective as of the Settlement Effective Date, the Avianca Stipulations, admissions, agreements, and Releases contained in this Order and in the Settlement Documents, including, without limitation, in paragraphs B and C of this Order, shall be binding upon the Settling Parties and any and all other parties in interest, including, without limitation, the UCC and any other person or entity acting or seeking to act on behalf of the Debtors’ estates, including any Chapter 7 or Chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes.

25. The USAV Parties shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of their rights or remedies against USAV (including a right to accelerate the amounts due under the A&R Loan Agreement) and/or the Collateral under the Settlement Documents; *provided* that, notwithstanding anything to the contrary herein (except for paragraph 7 hereof) or in any of the Settlement Documents, during the pendency of the Chapter 11 Cases, the USAV Parties shall be required to provide five (5) business days' written notice to the Debtors and counsel to the UCC prior to the exercise of any remedies against or rights in respect of the Collateral (during which time the Debtors and the UCC may seek an expedited hearing before the Court solely for the purpose of determining the existence of any Specified Default (and no other issue may be raised at such hearing)) unless such remedies are exercised in respect of a Specified Default specified in Sections 11(a)(iv), (vi), (vii), or (x) of the Settlement Agreement (in which case no such written notice shall be required prior to the exercise of remedies against the Collateral). The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence; *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

26. Notwithstanding anything to the contrary herein, the automatic stay applicable under section 362 of the Bankruptcy Code shall not prohibit a Settling Party from (a) taking any action or delivering any notice necessary to effectuate the termination of the Settlement Agreement pursuant to and in accordance with the terms thereof at any time prior to the Settlement Effective Date or (b) delivering any notice pursuant to any of the Settlement Documents (including a notice declaring all amounts owing thereunder immediately due and payable).



27. The terms and provisions of the Settlement Agreement, the other Settlement Documents, and this Order shall be binding in all respects upon the Avianca Parties, their affiliates, their estates, all creditors of (whether known or unknown) and holders of equity interests in any Avianca Party and any other stakeholder of any Avianca Party, all counterparties to all Card Processing Agreements (and any extensions, amendments, supplements, or replacements thereof as permitted under the A&R Transaction Documents), the USAV Parties, all of their respective successors and assigns, including, but not limited to, any subsequent trustee(s), examiner(s), or receiver(s) appointed in any of the Chapter 11 Cases or upon conversion to Chapter 7 under the Bankruptcy Code, as to which trustee(s), examiner(s), or receiver(s) such terms and provisions likewise shall be binding, the Avianca Successors, and all other persons. The Settlement Documents shall not be subject to rejection or avoidance by the Avianca Parties (including the Debtors, their estates, their creditors, their shareholders, or any trustee(s), examiner(s), or receiver(s)) or the Avianca Successors. For the avoidance of doubt, the provisions and effect of this Order, and any actions taken pursuant to this Order or the Settlement Documents and the Settling Parties' respective rights, obligations, remedies, and protections provided for herein and in the Settlement Agreement shall survive the conversion, dismissal, or closing of the Chapter 11 Cases, appointment of a trustee therein, confirmation of a plan or plans of reorganization or liquidation, or the substantive consolidation of these Chapter 11 Cases with any other case or cases, and the terms and provisions of this Order and the Settlement Documents shall continue in full force and effect notwithstanding the entry of any such order; *provided* that notwithstanding anything in this paragraph, the Settlement Agreement, or in paragraph 16 hereof, the rights of all parties are fully reserved regarding any objections to confirmation of the Debtors' Chapter 11 plan,

subject in any event to each party's rights as such rights would otherwise exist under applicable law.

28. Each and every federal, state, and local governmental agency, department, or official is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Settlement Documents.

29. Furthermore, the Settling Parties are authorized to enter into mutually agreed upon amendments, modifications, or supplements, if any, to the Settlement Agreement or any of the other Settlement Documents without obtaining prior approval from this Court, provided that such amendments, modifications, or supplements do not, based on the Debtors' business judgment, have a material or adverse effect on the Debtors' estates or their creditors.

30. None of the Avianca Parties nor the Avianca Successors may reject, terminate, replace, or repudiate the RSPA, the Undertaking Agreement, or any Card Processing Agreement (except that the Avianca Parties or the Avianca Successors may terminate and/or replace a Card Processing Agreement in the manner permitted by the A&R Transaction Documents), unless otherwise agreed to by the Settling Parties, including as reasonably necessary to modify any of the foregoing to effect the liquidation of Avianca Peru (including that the Avianca Parties or the Avianca Successors may amend the AMEX Contract to remove Avianca Peru as a party thereto). For the avoidance of doubt, and notwithstanding anything to the contrary herein or in any of the Settlement Documents, from the Settlement Effective Date until all of the payment and performance obligations under the A&R Transaction Documents have been paid or otherwise performed in full, none of the Avianca Parties nor the Avianca Successors may enter into any card processing agreement in respect of "Specified Sales" (as defined in the RSPA) unless the Avianca Parties or Avianca Successors, as applicable, complete a Contract Rights and Receivables Addition

in respect of such agreement as required under the A&R Transaction Documents (and any attempted or purported agreement in violation of this paragraph 11 shall be null and void).

31. Notwithstanding anything to the contrary in the Mediation Order or the Supplemental Mediation Order, (a) the Settling Parties and the UCC shall continue to participate in the Mediation in order to negotiate and finalize the Settlement Documents (other than the Settlement Agreement and the Term Sheet) and (b) all matters ordered by the Court to be stayed and/or held in abeyance in the Mediation Order (including, without limitation, all USAV Litigation matters before the Court) shall remain stayed and/or held in abeyance, until the first to occur of (x) the Settlement Effective Date or (y) the Settlement Termination Date. In the event the Settling Parties reach a dispute concerning the Settlement Documents that cannot be mutually resolved, the Settling Parties shall present the dispute in writing to Judge Chapman within one (1) business day of determining the dispute cannot be resolved among the Settling Parties. The Mediation will otherwise continue to remain subject to the provisions of the Mediation Order and the Supplemental Mediation Order.

32. Notwithstanding anything to the contrary in the Bar Date Order or the Settling Parties Proofs of Claim Stipulation, in the event that the Settlement Agreement is terminated prior to the Settlement Effective Date, the USAV Parties shall be permitted to file proofs of claim for claims arising from or related to the USAV Sale Transaction or Transaction Documents so as to be actually filed no later than the date that is thirty (30) days after the Settlement Termination Date.

33. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

34. Notwithstanding Bankruptcy Rule 6004(h) or any other Bankruptcy Rule, this Order shall be immediately effective and enforceable upon its entry and the Settling Parties are

authorized to consummate the transactions contemplated in the Settlement Agreement and the other Settlement Documents immediately upon entry of this Order.

35. To the extent there is any conflict between the terms of this Order and the Settlement Documents, the terms of this Order shall control. Nothing contained in any plan of reorganization or liquidation hereinafter confirmed in these Chapter 11 Cases or any order confirming such plan, or any other order of the Court, shall conflict with the terms of the Settlement Documents or this Order.

36. The requirements set forth in Rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York are satisfied by the contents of the Motion.

37. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

38. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE