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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21- _____ (____)

**DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING (A) DEBTOR TO HONOR PREPETITION OBLIGATIONS TO
CUSTOMERS AND RELATED THIRD PARTIES AND TO OTHERWISE CONTINUE
CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS, (B) DEBTOR
TO HONOR COMMERCIAL AGREEMENTS AND TO OTHERWISE CONTINUE
COMMERCIAL CONTRACTS IN THE ORDINARY COURSE OF BUSINESS, AND (C)
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND
TRANSFERS RELATED TO THE RELIEF REQUESTED HEREIN**

Philippine Airlines, Inc., the above-captioned debtor and debtor in possession (the “**Debtor**” or “**PAL**,” and collectively with the Debtor’s non-debtor affiliates, the “**Airline**”), hereby moves (the “**Motion**”) for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “**Interim Order**” and the “**Final Order**,” respectively, and collectively, the “**Proposed Orders**”), granting the relief described below. In

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



support of the Motion, the Debtor relies upon and incorporates by reference the *Declaration of Nilo Thaddeus Rodriguez in Support of First Day Motions and Applications* (the “**First Day Declaration**”), which was filed with the Court on the Petition Date (as defined herein). In further support of the Motion, the Debtor, by and through its undersigned proposed counsel, respectfully represents:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has 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 January 31, 2012. The Debtor confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a), 363(b), 363(c), 1107(a), and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Bankruptcy Rules 6003 and 6004.

Background

4. On September 3, 2021 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is authorized to continue to operate its business and manage its properties as a debtor in possession pursuant to sections

1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner or statutory committee has been appointed in this chapter 11 case (the “**Chapter 11 Case**”).

5. The Debtor and its affiliates are the largest airline group in the Philippines, and the Debtor is the national flag carrier of the Philippines. Its principal activity is to provide air transportation for passengers and cargo within and outside the Philippines. The Debtor is among the oldest airlines in the Asia Pacific region, having been founded in February 1941. With approximately 4,500 employees and over \$3 billion in annual gross revenue prior to the COVID-19 pandemic, the Debtor is the leading airline in the Philippines airline market.

6. In 2020, the Debtor was confronted with an extraordinary set of circumstances and flight disruptions induced by the COVID-19 pandemic. The COVID-19 crisis has had a catastrophic impact upon the aviation industry, causing major airlines to effectively halt many business operations. For major airlines such as PAL, the dramatic reduction in worldwide air travel caused significant balance sheet losses and created intractable challenges to meeting existing payment obligations.

7. In response to these unprecedented circumstances, PAL undertook a number of cost cutting measures and began discussions with key stakeholders in the hopes of mapping out a healthy future for the Airline. Those discussions, which spanned many months and involved all major stakeholders and their retained professionals, culminated in several restructuring support agreements (the “**RSAs**”) with substantially all of its aircraft lessors and lenders outlining the material terms for a proposed chapter 11 plan of reorganization (the “**Proposed Plan**”). The RSAs and the Proposed Plan contemplate (a) the reduction of the Debtor’s aircraft related obligations by approximately \$2.1 billion, (b) a \$505 million infusion of working capital to fund the Debtor’s ongoing operations during the Chapter 11 Case and upon emergence from its

primary shareholder (the “**DIP Lender**”), (c) optimizing the Debtor’s fleet size, composition, and ownership costs as required by the new market, (d) maintaining and enhancing the Debtor’s key contracts and business partners to strengthen the Debtor’s viability during the pending COVID-19 pandemic and beyond, and (e) obtaining commitments for a \$150 million exit facility from new investors to ensure PAL has adequate liquidity and runway to complete its restructuring.

8. The Debtor likewise engaged in good faith negotiations with its other critical creditors, including its primary original equipment manufacturers (“**OEM**”) and maintenance, repair, and overhaul service providers (“**MRO**”), to ensure that the Debtor continues to obtain the benefit of such critical goods and services. In addition, the OEMs and MROs have agreed to support the Proposed Plan by entering into RSAs, thereby providing additional certainty and predictability to the Debtor’s restructuring and Chapter 11 Case.

9. Prior to the Debtor’s Chapter 11 Case, the Debtor also (a) engaged in numerous good faith negotiations with a large number of its ordinary course vendors and suppliers, resulting in agreements to extend payment terms to provide the Debtor with additional breathing room and runway to assist it through the COVID-19 pandemic and (b) undertook a resizing of its operations, including the reduction of its workforce by 32%, to meet expected post-COVID-19 operational needs.

10. Additional information regarding the events leading up to the Petition Date is set forth in the First Day Declaration and is incorporated herein by reference.

Relief Requested

11. Prior to the Petition Date and in the ordinary course of its business, the Debtor offered and engaged in a variety of customer and other programs and practices to develop and

sustain a positive reputation in the marketplace for its services and to engender customer loyalty (collectively, the “**Customer Programs**”), certain of which are described in greater detail below. The Customer Programs include, among others, the Mabuhay Miles loyalty program, advance ticket sales, promotional programs, ticket refunds, ticket vouchers, frequent flyer credit card programs, travel agency and tour operator programs, airport lounge programs, corporate incentive programs, charters, and cargo programs. The Customer Programs ensure customer satisfaction, generate goodwill, and address competitive pressures so that the Debtor can retain current customers, attract new customers, and ultimately enhance net revenue.

12. In addition to its Customer Programs, the Debtor is also a party to numerous Commercial Agreements (defined below) in the ordinary course of business. These agreements, which cover a wide range of partnerships and industry-specific arrangements, are essential to the smooth operation of the Debtor’s international business and its ability to provide key services to its customers. Each of the Commercial Agreements plays an important role in coordination with the Debtor’s numerous partners and counterparties, and collectively, together with the Customer Programs, operate to assure that the Debtor’s customers have access to the best possible flight experience that the Debtor can provide.

13. By this Motion, the Debtor seeks entry of the Proposed Orders, substantially in the forms attached hereto, authorizing, but not directing, the Debtor, in its business judgment, to (a) perform and honor its prepetition obligations related to the Customer Programs and Commercial Agreements as it deems appropriate and (b) continue, renew, replace, and/or terminate Customer Programs and Commercial Agreements as it deems appropriate, in each case in the ordinary course of business and without further application to the Court. Relatedly, the

Debtor seeks Court approval for financial institutions to honor and process checks and transfers in connection with such Customer Programs and Commercial Agreements.

14. By seeking the authorization requested herein, it should not be presumed that the Debtor has determined, as of this time, which of the Customer Programs and Commercial Agreements it will pay or honor, nor should any party rely on this Motion as to any specific claim or benefit.

15. The Debtor has experienced an unprecedented interruption in its business as a result of the COVID-19 pandemic, and it is critical that the Debtor be able to continue those Customer Programs and Commercial Agreements that are beneficial and cost-effective as it seeks to restart its business. Such relief is necessary to preserve critical business relationships and customer goodwill for the benefit of the Debtor's estate. An airline is a service focused business, and maintaining goodwill with customers is essential to success. Accordingly, to retain its loyal customer base, which is one of the Debtor's most valuable assets, and to avoid business disruptions, the Debtor must preserve its ability to honor the Customer Programs and Commercial Agreements. The Debtor's failure to obtain authorization to do so would be detrimental to its business operations and the pending restructuring.

16. Lastly, the Debtor notes that the revenue that is expected to be generated as a result of the Customer Programs and Commercial Agreements should exceed the operational and administrative cost to implement and maintain them, and for this and the other reasons set forth herein, it is in the best interests of the Debtor, its estate, and its creditors that the Debtor be permitted to honor its prepetition obligations in connection with the Customer Programs and Commercial Agreements and to continue the Customer Programs and Commercial Agreements in the ordinary course of its business.

The Debtor's Customer Programs

17. The airline industry is an extremely competitive industry, and there are multiple competitors that offer the same flights as the Debtor. This competition makes retaining loyal customers and attracting new customers critically important. Without winning and preserving the loyalty of its customers, the Debtor's business could not be maintained. It is essential, therefore, that the Debtor maintains its current customers and position itself to attract new customers, especially during this unprecedented, difficult period resulting from the COVID-19 pandemic. The Customer Programs accomplish this goal by generating valuable goodwill, repeat business, and net revenue increases. Notwithstanding the fact that the Debtor's passenger transport business has been significantly curtailed due to COVID-19, the Debtor must obtain immediate authority to honor customer programs during this Chapter 11 Case in order to avoid irreparable harm to its business.

18. Maintaining the loyalty and goodwill of the Debtor's customers is fundamental to the success of the restructuring contemplated by the RSAs and the Proposed Plan. The filing of this Chapter 11 Case, even with the RSAs, could negatively affect customers' attitudes and behavior toward the Debtor's services—already under severe strain because of the COVID-19 pandemic—unless, among other things, the Debtor is authorized to take the measures requested by this Motion. In particular, the Debtor's goodwill and ongoing business relationships may erode if its customers perceive that the Debtor is unable or unwilling to fulfill the prepetition promises it has made through the Customer Programs. The same would be true if customers perceived that the Debtor will no longer be offering the types of services or quality of services they have come to expect and upon which they likely relied when purchasing the Debtor's services in the first place. These risks are amplified since most of the Debtor's customers and

counterparties are foreign entities that likely are not as familiar with the U.S. bankruptcy process as domestic customers and counterparties are. Further, some of the Debtor's competitors that are also currently debtors in chapter 11 have sought and received similar relief. If the Debtor were not to receive the same relief, it would be at a severe competitive disadvantage.

19. The following are general descriptions and examples of some, but not all, of the Debtor's Customer Programs.

Ticketholder Claims

A. Prepetition Tickets

20. The Debtor seeks authority to honor all tickets, air waybills (AWBs), and other contracts for airline travel, whether for passenger or cargo, that were purchased or issued prepetition but have not yet been used (collectively, the "**Prepetition Tickets**") by providing the corresponding air transportation or a refund, as the case may be. As of August 31, 2021, the Debtor's refund obligations are approximately \$1.1 million.² The Prepetition Tickets include those (a) sold or issued in relation to tour packages or promotional programs, (b) issued as part of barter arrangements, (c) redeemed tickets under the frequent flyer program, (d) issued as incentive for travel agents, (e) issued as compensation for customers affected by flight disruptions, and (f) issued as part of goodwill settlements of customer complaints. Additionally, for the purposes of this Motion and the Proposed Orders, Prepetition Tickets also includes other airline documents such as the electronic miscellaneous document ("**EMD**") issued for ancillary

² To be clear, the Debtor does not anticipate paying the full amount during the Chapter 11 Case. Rather, it seeks the authority to honor the portion of these tickets that passengers seek to use on new flights or otherwise demand during the Chapter 11 Case, and upon emergence, the remainder of such claims will be deemed unimpaired under the Proposed Plan. Further, this amount represents only the prepetition refund obligations that are expected to be settled by the Debtor in cash directly to passengers. It does not cover refund obligations that are settled through automatic offsetting via the IATA Clearing House and those settled by credit card issuers through chargeback.

products purchased by passengers such as prepaid baggage, excess baggage, sport equipment fees, reservations of select seats, and other upgrades.

21. The inability to honor Prepetition Tickets presented by customers following the commencement of this Chapter 11 Case would be severely damaging to the reorganization efforts of the Debtor. If the Debtor were prevented from honoring Prepetition Tickets, customer confidence and goodwill in the Debtor will be severely undermined. Moreover, if the Prepetition Tickets are not honored, a majority of the Debtor's prepetition ticketholders will likely have priority claims under 11 U.S.C. § 507(a)(7) for the prepetition deposit of funds. Thus, to the extent individual claims do not exceed \$3,025, paying such claims only represents an acceleration of payment of amounts that would otherwise be required to be paid under the RSAs and the Proposed Plan, and would not be detrimental to the Debtor's other creditors.

B. Promotional Programs

22. The Debtor uses various sales tools, including credits for airline travel, vouchers, passes to airport lounges, coupons, travel certificates, upgrade award certificates, various authorizations for travel and other services, and other program awards (collectively, the "**Promotional Programs**"). These authorizations are, from time to time, issued by the Debtor for various reasons, including (a) as part of promotional programs, (b) as part of a tour packages described in greater detail below, or (c) in lieu of cash payments.

23. Within the leisure travel market, the Debtor has positioned itself as a high-quality, competitive-fare carrier. The Debtor offers air transportation bundled with travel vacation packages through its "Swingaround program," which is an in-house tour program that incorporates air and hotel components sold on both direct and indirect channels. The Debtor

implements its Swingaround program by coordinating with various hotel operators (the “**Hotel Operators**”).

24. The Debtor also has partnership agreements with travel management companies (the “**Travel Operators**”). These Travel Operators help the Debtor grow its market share in key markets, and they are able to offer many other ancillary services that they combine with air transportation, including hotel accommodations, ground transportation, and tours, among other services. The Debtor generated approximately 2% of its revenue during 2019 as a result of selling its services to customers through the Travel Operators.

25. The Debtor also has an arrangement with Guide to the Philippines (“**GTTP**”), a non-debtor affiliate that serves as an online travel platform that offers domestic Philippine tour packages. GTTP is a subsidiary of Air Philippines Corporations (d/b/a PAL Express) and is the official booking partner of the Philippines’ Department of Tourism. GTTP does not charge the Debtor for this partnership, but the Debtor charges GTTP for tickets issued for GTTP’s packages. Current tour packages consist solely of PAL domestic tickets; however, in the future, these tour packages may be expanded to include PAL international tickets. The Debtor hopes to launch these tour packages in the United States and United Kingdom once the current travel restrictions related to the global pandemic are lifted.

26. The cost to the Debtor to honor these obligations is minimal compared to the revenue generated by the sale of the Debtor’s services. For the foregoing reasons, the Debtor seeks authority to honor prepetition obligations related to the Hotel Operators and Travel Operators and to continue honoring its obligations related to the Customer Programs involving Hotel Operators and Travel Operators in the ordinary course of business.

27. If the Debtor were unable to honor the obligations incurred pursuant to the Promotional Programs, it would have a deleterious effect on the confidence in the Debtor's airline and the Debtor's ability to fulfill obligations to passengers. This would likely lead to a reduction in ticket purchases, which are already significantly lower than usual because of the COVID-19 pandemic, resulting in harm to the Debtor's estate. Moreover, while the exact cost of honoring the obligations relating to the Promotional Programs is hard to predict, the Debtor believes that it would be more than offset by the reciprocal benefit that the Debtor would receive.

C. Alternative Ticket Arrangements

28. To remain competitive and to retain the goodwill and confidence of its customers and travel agents, especially in light of the unprecedented impact of COVID-19, the Debtor is seeking to continue to be authorized to issue, in its discretion, alternative ticket arrangements or vouchers (collectively, the "**Alternative Ticket Arrangements**") for customers that did not fly as originally planned. In response to the COVID-19 pandemic, for any ticket booked between March 13, 2020 and the Petition Date, the Debtor has offered customers with qualifying tickets the option to receive a voucher that is valid until up to two years from the issuance of voucher. The inability to offer these Alternative Ticket Arrangements postpetition would have a negative effect on the Debtor's customer base and would also result in a significant increase of claims being filed and individual disputes with customers that would burden the Debtor and distract it from implementing the RSAs and the Proposed Plan.

D. Customer Recovery Program

29. The Debtor also requests authority to make payments on or issue goodwill tickets or travel vouchers to passengers that experienced delays or losses from irregular operations, such as canceled or delayed flights and lost, damaged, or delayed delivery of baggage, in accordance

with its existing policies (the “**Customer Recovery Program**”). The Customer Recovery Program is separate from the Alternative Tickets Arrangements that were implemented directly in response to the COVID-19 pandemic. Authorizing these payments will demonstrate to the Debtor’s customers that, although the Debtor is operating under the protection of the Bankruptcy Code, it is committed to offering reliable travel and cargo services and will honor all customer commitments. It is therefore crucial in order to maintain customer satisfaction and goodwill that the Debtor be authorized to honor the Customer Recovery Program.

30. Additionally, under relevant consumer protection regulations, airlines are at times required to provide passengers with certain accommodations in the event of flight disruptions. Thus, under its Customer Recovery Program, the Debtor makes payments for hotel stays, meals, and other services to passengers for certain travel disruptions, including overbooking, cancelations, and flight delays, and claims for lost, damaged, or delayed delivery of baggage. The Debtor submits that an overwhelming majority of tickets were purchased with the understanding that the passenger would be “made whole” if there were travel disruptions or deficiencies in service. Honoring any outstanding obligations under the Customer Recovery Program will maintain the Debtor’s goodwill, instill confidence in the continuity of the Debtor’s operations, and preserve the Debtor’s valuable customer base, all of which are necessary for the Debtor’s successful reorganization.

31. If the Debtor is unable to continue these Customer Programs, the Debtor risks alienating a large segment of its customers and encouraging them to select competing airlines, to the detriment of the Debtor, its creditors, and the Debtor’s estate. For the foregoing reasons, the Debtor seeks authority to honor prepetition obligations related to the Customer Programs, including Prepetition Tickets, Promotional Programs, Alternative Ticket Arrangements, and the

Customer Recovery Program (collectively, the “**Ticketholder Claims**”), and to continue honoring the Ticketholder Claims in the ordinary course of business.

Mabuhay Miles Frequent Flyer Program

32. The Debtor seeks authorization to provide air transportation to travelers who seek to redeem miles earned prepetition as part of the Debtor’s frequent flyer program, “**Mabuhay Miles.**” The Mabuhay Miles program is a loyalty program owned and operated by the Debtor. Total revenues from the Mabuhay Miles program in 2019 amounted to over \$21 million, or approximately 1% of total revenues.

33. The Mabuhay Miles loyalty program has approximately 4.9 million members as of May 2021. Through the Mabuhay Miles program, members have the opportunity to earn travel rewards through the accumulation of mileage credits earned on flights with the Debtor and partner airlines. Members can also earn miles through purchases and availing themselves of services from partner establishments including credit cards, banks, telecommunications, hotels and resorts, tour operators, cruise services, insurance, car rentals, and other merchandise companies. Mabuhay Miles has a website, www.mabuhaymiles.com, which provides members access to their account information and details on promotions and offers.

34. Mabuhay Miles Elite and Premier Elite members enjoy exclusive travel privileges including priority reservation waitlist, dedicated reservation telephone lines, priority check-in, additional free baggage allowance, priority luggage handling, priority airport standby, priority boarding, access to Mabuhay Lounges and participating VIP lounges (discussed in more detail below), and additional discounts and amenities from program partners. The Mabuhay Million Milers enjoy the Premier Elite privileges plus other exclusive benefits for life as a token of

appreciation to members who have flown one million cumulative flight miles. These different rewards categories are a critical component of obtaining loyal customers.

35. The Debtor maintains a partnership and a co-branding campaign with the Philippine National Bank, which facilitates the Debtor's branded credit card programs. The Debtor further seeks authority to continue to honor obligations to its credit card program partner.

36. Frequent flyer programs like Mabuhay Miles have been adopted by most major air carriers and are considered an important marketing tool for developing brand loyalty among travelers and accumulating demographic data pertaining to business flyers. The program is essential to building and maintaining a loyal customer base, among both business and leisure travelers. As of July 2021, the Debtor has approximately \$76.5 million in total obligations under the Mabuhay Miles program, and as of September 2020, the Debtor has nearly 18.3 billion unredeemed/available miles owed to Mabuhay Miles members.

37. The Debtor therefore seeks the authority to honor prepetition obligations arising under the Mabuhay Miles loyalty program. As frequent flyer programs are commonplace in the industry, the Debtor simply would not be able to compete successfully against other major airlines were it unable to maintain the integrity of Mabuhay Miles. In addition, the Debtor's business would be negatively impacted if the Debtor were unable to continue the Mabuhay Miles program, due to the loss of the revenues generated by loyal members who may elect to travel with other airlines that provide similar customer rewards.

VIP Lounges

38. The Debtor's and its partners' frequent fliers and the Debtor's customers flying in premier cabins have access to Mabuhay Lounges and participating VIP airport lounges worldwide (collectively, the "**VIP Lounges**"). Each Debtor-operated location provides a variety

of services and amenities to help customers make the most of their travel experience. The VIP Lounges represent an important part of the Debtor's customer experience and loyalty program. As frequent travelers resume flying and VIP Lounges reopen, these benefits will be crucial to maintaining the goodwill of the Debtor's most loyal customers and are a significant benefit of the Debtor's Mabuhay Miles reward program (including Mabuhay Miles Elite and Premier Elite members). If the Debtor is unable to continue to offer access to the VIP Lounges, it would risk losing the confidence and goodwill of its most valuable customers.

39. Further, if the Debtor was unable to allow reciprocal carriers' premium passengers to use the Debtor's private lounges, the Debtor's premium class passengers would similarly be denied access to the reciprocal carriers' private lounges.

40. Honoring prepetition memberships in the VIP Lounges would involve allowing prepetition members entry to and use of the lounge facilities. The Debtor also plans to continue operating the VIP Lounges in the ordinary course of business to the extent possible given the COVID-19 pandemic and to sell access passes to the lounges. Accordingly, the Debtor seeks authority to honor prepetition obligations related to the VIP Lounges and to continue operating the VIP Lounges in the ordinary course of business.

Travel Agent Incentive Programs

41. The Debtor offers incentive programs to travel agents and agencies that vary by region and target sales (the "**Travel Agent Incentive Programs**"). Travel agencies generate average monthly sales far in excess of the aggregate commissions they receive, and are instrumental in driving ticket sales to a broad audience of potential travelers. Approximately 65% of the Debtor's total sales revenues prior to the COVID-19 pandemic was generated by travel agents and agencies prior to the COVID-19 pandemic, equivalent to approximately \$1.85

billion, excluding EMDs. As of June 30, 2021, the total amount of unpaid travel agent and agency incentives system-wide is approximately \$3 million. The Debtor seeks authority to honor prepetition claims arising under the Travel Agent Incentive Programs and to continue paying incentive amounts due under the Travel Agent Incentive Programs in the ordinary course of business, as such payments are critical to the Debtor's ability to drive sales and generate revenue for the benefit of all stakeholders.

Barter Arrangements

42. The Debtor maintains barter arrangements with media companies and event servicing entities (including artists and directors), and in connection with event sponsorships and other marketing-related services (including billboards, advertising agencies, and marketing professionals), in return for advertisement or other services (collectively, the “**Barter Arrangements**”). Typically, these services are provided at no cash cost to the Debtor; in exchange, the Debtor provides tickets. Thus, the Debtor benefits from the Barter Arrangements by being able to market or advertise its products to its customers while preserving its cash. If the Debtor is unable to honor these Barter Agreements, these service providers will likely demand cash for all future transactions. For the foregoing reasons, the Debtor requests authority to honor its prepetition obligations related to the Customer Programs involving Barter Arrangements and to continue to honor the Barter Arrangements in the ordinary course of business.

Corporate Incentive Programs

43. The Debtor maintains corporate incentive programs (the “**Corporate Incentive Programs**”) with its largest corporate customers. The Corporate Incentive Programs are structured to provide participating corporate customers with discounted travel based on the volume and/or market share of tickets purchased. The Corporate Incentive Programs encourage

corporations to purchase more air travel from the Debtor to obtain greater incentives, which results in larger net revenue for the Debtor. The average discounts are 5-15% for economy flights, 10-20% for premium economy flights, and 15-25% for business flights. In 2019, the last full year prior to the pandemic, the revenue attributable to the Corporate Incentive Programs was approximately \$76.16 million. The Debtor seeks authority to honor prepetition obligations arising from the Corporate Incentive Programs by providing the agreed-upon incentives to participating corporate customers. The Debtor also seeks authority to continue to operate its Corporate Incentive Programs in the ordinary course of business.

44. Customer confidence and goodwill, as well as revenues, will be severely harmed if the Debtor is prevented from honoring prepetition obligations under the Corporate Incentive Programs. If the Court does not grant the relief requested, participating corporations will be unable to purchase the Debtor's tickets at the discounted prices they have come to expect by way of the Corporate Incentive Programs, likely resulting in these corporations refusing to purchase future tickets from the Debtor.

45. The Debtor believes that maintaining the Corporate Incentive Programs will enhance the public's confidence in the Debtor's continued reliability and operations, especially in the aftermath of COVID-19. Any prepetition obligations that the Debtor is allowed to honor in relation to the Corporate Incentive Programs is expected to be more than offset by the continued stream of ticket sale revenue derived from the Corporate Incentive Programs remaining in place.

46. If the Debtor is unable to continue the Corporate Incentive Programs, the Debtor risks alienating its core business customers and losing market share to competing airlines that have every incentive to capitalize on the Debtor's inability to honor these commitments, to the

detriment of the Debtor, its creditors, and the value of the Debtor's estate. To effectuate the rehabilitative purposes of chapter 11, the Debtor requests authorization to honor the prepetition obligations of the Corporate Incentive Programs and to continue the Corporate Incentive Programs in the ordinary course of business.

Flight Pass Program

47. The Debtor plans to launch a project shortly called Flight Pass, which aims to provide discounted airfare to passengers willing to bulk-purchase plane tickets for future locked-in dates. Flight Pass will allow passengers to customize their destinations, number of flights, number of persons traveling, and their travel period, to best suit their travel needs. The concept is "fly more, pay less," as travelers will be able to bulk-purchase at a substantial discount for future travel plans. Flight Pass will enable the Debtor to predictably fill seats in upcoming flights, generate additional cash-flow in the short-term, and reward the most dedicated customers of the Debtor with long-term cost-savings, which will incentivize these customers to plan out their future travel arrangements and book their airfare in advance.

48. The Debtor seeks authority to commence and implement the Flight Pass program. Such authorization will generate additional, predictable cash flow for the Debtor and will incentivize frequent customers to continue to fly with the Debtor in their future travels.

Cargo Programs

49. In addition to transporting passengers and related baggage, the Debtor also transports cargo, goods and packages (the "**Cargo Program**"). The Cargo Program accounted for approximately 6% of the Debtor's annual revenue in 2019. However, with the shift in demand of the Debtor's services caused by the COVID-19 pandemic, the Cargo Program accounted for nearly 31% of the Debtor's total revenues between April 2020 and May 2021. The

Debtor also has a loyalty program for its Cargo Program, in which cargo revenues of accredited cargo agents are converted into miles at \$10 per mile. The estimated liability to cargo sales agents under this incentive program is only 1-3% of net revenue production of qualified cargo agents. Confidence and goodwill among third parties, as well as revenues, will be severely harmed if the Debtor is prevented from honoring prepetition commissions, loyalty programs, and other awards earned under the Cargo Program. If the Court does not grant the relief requested herein, participating third parties in the Cargo Program would lose any revenue credit for their prepetition business, which would likely result in those third parties avoiding cargo transportation services from the Debtor in the future.

50. In addition, the Debtor launched its Rapid Handling of Urgent Shipments program (“**RHUSH**,” and together with the Cargo Program described above, the “**Cargo Programs**”) which is an airport-to-airport cargo service that provides the fastest way to ship cargo domestically or overseas. RHUSH offers high priority in cargo, guaranteed space, and quick acceptance and release times.

51. The Cargo Programs incentivize third parties to use the Debtor for freight shipments. This increases cargo services and results in increased revenue for the Debtor, which is even more critical during the COVID-19 pandemic. Providing various awards to freight forwarders and customers is customary within the industry. If the Debtor is not allowed to honor the awards that were earned prepetition, the Debtor would not stand on equal footing with its competitors. Therefore, the Debtor must maintain the Cargo Programs to operate in a highly competitive market and to entice freight forwarders and customers to use the Debtor for cargo services.

52. If the Debtor is unable to continue the Cargo Programs, its cargo customer base will erode to the detriment of the Debtor, its creditors, and the Debtor's estate. The Debtor requests authority to continue to operate the Cargo Programs in the ordinary course of business and to honor all related prepetition obligations.

Charter Sales Program

53. The Debtor also offers charter flights for passengers and the Cargo Programs (the "**Charter Sales Program**"). Prior to the COVID-19 pandemic, the Debtor's charter flights were requested by private companies and travel agents for group transportation either for leisure or work purposes. During the COVID-19 pandemic, the Debtor has been engaged by the Philippine government and manning or deployment agencies to assist with the repatriation of overseas Filipino workers and by foreign embassies for the transportation of foreign citizens. Charters for the Philippine government during the COVID-19 pandemic may also include transportation of essential medical supplies, PPE, and vaccines. The Debtor has made commitments and received deposits in advance for scheduled charter flights. If the Debtor fails to honor these sales or fails to continue to provide the administrative services for its charter customers, relationships with these customers would be irreparably damaged, and the Debtor will lose revenue. The Debtor requests authority to continue the Charter Sales Program in the ordinary course of business and to honor all related prepetition obligations.

The Debtor's Commercial Agreements

54. The Debtor has multiple commercial arrangements that are standard in the airline industry and enable it to provide services to its customers. These agreements include general sales agreements (cargo and passenger), domestic sales agency agreements, domestic ticketing program (postpaid and prepaid), online sales agency agreements, partnership agreements, credit

facility PO/LO agreements, interline agreements, codeshare agreements, prorate agreements, blockspace agreements, flight interruption agreements, and others of like nature (together, the **“Commercial Agreements”**). The Debtor requests authority to continue performing under the Commercial Agreements in the ordinary course of business and to honor all related prepetition obligations.

55. The following are general descriptions and examples of some of the Debtor’s Commercial Agreements:

A. General Sales Agreements.

56. In countries where the Debtor has no ticket office to exclusively represent the Debtor in the sale of passenger or cargo air tickets, the Debtor appoints General Sales Agents (the **“GSAs”**). The relationship between the Debtor and these GSAs is governed by an agreement entered into between the Debtor and the respective GSAs (collectively, the **“General Sales Agreements”**). The GSAs are authorized under the General Sales Agreements, among other things, to handle reservations, distribute marketing materials, provide manpower within the territory, select of sub-agents, and arrange cargo shipments within the territory. Under some of the Debtor’s General Sales Agreements, the GSAs commit to meet a performance target, otherwise the agreement may be terminated. In exchange, the Debtor pays the GSAs commissions based on the gross published fares (international and domestic) and overriding commissions based on the final agreed net fare on all sectors.

B. Domestic Sales Agreements.

57. In the Philippines, the Debtor operates its own ticket offices. However, in some provinces, instead of the Debtor’s own ticket office, the Debtor appoints a Domestic Sales Agent (the **“DSA”**) to exclusively represent the Debtor in such territory. The relationship between the

Debtor and these DSAs is governed by an agreement entered into between the Debtor and each respective DSA (collectively, the “**Domestic Sales Agreements**”). The DSA may sell domestic and international passenger tickets and ancillary products. The DSAs are authorized under the Domestic Sales Agreements, among other things, to maintain, at their own expense, a suitable city ticket office, the appearance and other technical specifications of which are required to meet certain standards. In exchange, the DSAs are given a commission on gross sales of international air transportation services and on domestic sales when such a sale is made in conjunction with or forming part of an international ticket. DSAs, however, do not receive any commission from selling purely domestic tickets. DSAs are permitted to charge service fees to create additional income, similar to other travel agents, but are not entitled to any overriding commission. As of the Petition Date, the Debtor does not believe there are any commissions or incentives due to the DSAs.

C. Domestic Ticketing Program

58. The Domestic Ticketing Program (“**DTP**”) is the accreditation program for Philippine-based travel agents through which agents can issue the Debtor’s tickets. DTP agents have access to the same fare levels as that of the Debtor’s direct channels (web, ticket office, and contact center). DTP agents can charge a service fee to their passengers, which will be the revenue of the agents. DTP agents fall into two categories, postpaid and prepaid, which are further described below.

- a. **Postpaid** – Postpaid DTP agents sell the Debtor’s domestic tickets and ancillaries. Some postpaid agents are allowed to issue international tickets, and they receive commission on these international tickets. Postpaid DTP agents are required to meet a minimum sales quota of PHP 2.5 million per annum and to be Sabre GDS subscribers. They prepare

weekly remittance reports and must remit to the Debtor based on an agreed billing cycle (generally, four times a month). Postpaid DTP agents are given travel incentives equal to a percentage of their net sales for a period of six months (January to June, and July to December).

- b. **Prepaid** - Prepaid DTP agents also only sell the Debtor's domestic tickets and ancillaries, but are subject to additional restrictions. Prepaid DTP agents are required to fund an "eWallet" and can only issue tickets and ancillaries based on the balance in their eWallet. Prepaid DTP agents use the AirCentre travel agency portal for their ticket and ancillary issuances.

59. Outstanding payables to DTP agents (postpaid and prepaid), whether for reimbursements of refunds made directly by agents to passengers, commissions, or incentives, are usually settled through offsets against sales remittances due from DTP agents; most of the amounts due to the DTP agents are refunds for direct payments to passengers. However, during to the COVID 19 pandemic, the majority of DTP agents have had negative sales. Accordingly, remittances from the DTP agents are unlikely to be available for offset against amounts that may be due from the Debtor. As of June 30, 2021, Debtor has approximately \$1.2 million in outstanding reimbursement obligations due to DTP agents.

D. Online Sales Agency Agreements.

60. In the ordinary course of business, the Debtor enters into Online Sales Agency Agreements (the "**Online Sales Agency Agreements**"). Under these agreements, the Debtor appoints online agents to sell the Debtor's tickets through their online platforms. Sample websites include Traveloka.com, Trip.com_eu, FarePortal.com, and Expedia.com. Under the Online Sales Agency Agreements, the Debtor's tickets are booked and issued through the agents'

online platforms, and the Debtor pays the agents commissions based on an agreed minimum ticket sale growth target.

E. Partnership Agreements.

61. The Debtor enters into agreements with partner travel management companies to help the Debtor grow its market share in both business class and economy class in many of its key markets, which results in increased revenues for the Debtor (the “**Partnership Agreements**”). Under its various Partnership Agreements, in exchange for the services received thereunder, the Debtor extends benefits to the travel management companies, including service fees (paid quarterly), variable bonuses based on year over year performance comparisons, and business class tickets to be used to support sales and for marketing initiatives.

F. Availability of Credit for Large Clients

62. In the ordinary course of business, the Debtor extends lines of credit to corporations and government agencies for use in purchasing the Debtor’s cargo and passenger tickets. With the exception of the largest 1,000 corporations, participating entities usually are required to post a performance guarantee to secure the credit line. For government agencies, the Debtor requires a certificate of availability of funds instead of a performance guarantee. Such requirements, however, may be waived by the Debtor in its discretion.

G. Codeshare Agreements.

63. The Debtor maintains certain codeshare agreements with other airlines where either the Debtor or the other airline markets the flights, and the other airline operates the flight (collectively, the “**Codeshare Agreements**”). Codeshare Agreements are a critical part of the Debtor’s ability to provide customers with the flights and services being requested. Under the Codeshare Agreements, the operating carrier uses the IATA designator code of the marketing

carrier. The Debtor and its codeshare partners (except for affiliate Air Philippines Corporation, discussed below) mutually settle their obligations under their respective Codeshare Agreement through Clearing House Agreements. The Debtor currently has Codeshare Agreements with All Nippon Airways, Malaysia Airlines, Cathay Pacific, West Jet, Turkish Airlines, China Airlines, Hawaiian Airlines, and Bangkok Airways.

64. The Debtor has a similar but unique Codeshare Agreement with its affiliate, Air Philippines Corporation d/b/a PAL Express. Under this agreement, the Debtor is the marketing carrier of domestic flights operated by PAL Express. As the marketing carrier, the Debtor sells all of PAL Express' flights. PAL Express operates all the flights and invoices the Debtor for related costs and expenses plus an additional fee for operating the flights. PAL Express represents approximately 12 % of the Debtor's revenue for 2020 and is a significant partner of the Debtor. The Debtor's outstanding payment obligation to PAL Express under its Codeshare Agreement is approximately \$28 million as of June 30, 2021.³

H. Blockspace Contracts.

65. The Debtor is party to one "blockspace" contract that permits the counterparty to purchase a specific number of seats on chartered flights (the "**Blockspace Contracts**"). As of the Petition Date, the Debtor's only obligation under this agreement is to honor the counterparty's tickets on the chartered flights.

I. Interline Agreements.

66. As of the Petition Date, the Debtor is party to approximately 83 multilateral or bilateral interline agreements, which are commercial agreements between airlines whenever a passenger travels on multiple airlines on one itinerary (collectively, the "**Interline**

³ For the avoidance of doubt, the Debtor does not anticipate paying the full prepetition amount due to PAL Express, but discloses this information for the sake of full disclosure.

Agreements”). The passenger holds only one ticket or other standard document despite traveling on multiple airlines. Among other benefits, these agreements allow passengers to check their luggage all the way to their final destination, as well as easy re-booking in case of flight delays and cancellations. Interline Agreements are standard IATA documents where passengers and cargo use a standard traffic document to travel on various modes of transport (usually across different airlines) in order to reach a final destination. Multilateral Interline Agreements are unique in that entering into such an agreement with another airline through IATA results in joining a partnership of a growing network of over 350 participating worldwide domestic and international airlines.

J. Prorate Agreements.

67. The Debtor has also entered into 47 contracts with partner airlines for interlining passengers and/or cargo across the respective airlines’ routes at specific rates (the “**Prorate Agreements**”), the goal being that the airlines’ common passengers and/or cargo be transported seamlessly across both airlines to a single destination. The Prorate Agreements complement the critical business arrangements entered into under the Interline Agreements. Because the customer only pays one of these airlines for the entire journey, the Prorate Agreements are needed to properly allocate and distribute payments between the two airlines, which collectively performed the services for the customer’s entire trip.

K. Clearing House Agreements

68. The Debtor is party to a membership agreement with and participates in the IATA Clearing House (the “**ICH**”) to net out and settle passenger, cargo, Universal Air Travel Plan, and non-transportation billings and other payment obligations owed to and by other airlines and airline-associated companies. To illustrate, the Debtor and other ICH-participating airlines use

the ICH clearing facility to settle their mutual payment obligations arising under Codeshare and Interline Agreements. Further, participating companies servicing airlines (e.g., ground handlers and technology service providers) may choose to bill the Debtor through ICH. The Debtor estimates that as of the Petition Date, it owes approximately \$2.8 million to companies on account of ICH transactions.

Basis for Relief

A. The Debtor Should Be Authorized to Honor Prepetition Obligations in Relation to Customer Programs and Commercial Agreements

69. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its business. Section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to section 1108 of the Bankruptcy Code to use property of the estate in the ordinary course of business without notice or a hearing. Therefore, continuing, renewing, replacing, initiating, and terminating Customer Programs and Commercial Agreements in the ordinary course of business is permitted by sections 363(c), 1107(a), and 1108 of the Bankruptcy Code, without further application to the Court. However, out of an abundance of caution, the Debtor requests the relief stated herein.

70. Section 105(a) and 363 of the Bankruptcy Code authorizes the Court to authorize the Debtor to pay and honor its obligations under the Customer Programs and Commercial Agreements that accrued prepetition. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

71. Pursuant to section 363(b), a court may authorize a debtor to pay certain prepetition obligations. *id.* To approve the use of a debtor's assets outside the ordinary course of business pursuant to section 363(b), a court must find that a "good business reason" exists for the use of such assets. *See, e.g., Official Comm. of Unsecured Creditors of Enron Corp. v. Enron Corp. (In re Enron Corp.)*, 335 B.R. 22, 27-28 (Bankr. S.D.N.Y. 2005) (quoting *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)). "Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Comm. Of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). The business judgment rule is satisfied where "the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Official Committee of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

72. It is well settled in this industry that

a Bankruptcy Court [may] authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor. This is commonly referred to as either the "doctrine of necessity" or the "necessity of payment" rule, which recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor."

In re Windstream Holdings, Inc., 614 B.R. 441, 456-57 (Bankr. S.D.N.Y. 2020) (citations omitted). The Debtor strongly believes that the uninterrupted provision of the Customer Programs and the Commercial Agreements and the continued support of its customers are critical to the ongoing operations and viability of the Debtor and satisfy this standard.

73. Furthermore, a debtor-in-possession operating a business has a fiduciary duty to protect and preserve the estate, including the going concern value of an operating business. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim.”); *Unofficial Comm. of Equity Holders of Penick Pharm., Inc. v. McManigle (In re Penick Pharm. Inc.)*, 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (“Specifically, in the case of an inanimate debtor in possession such as a corporation, the fiduciary duties born by a trustee for a debtor out of possession fall on the debtor’s directors, officers and managing employees . . . who have a duty to maximize the value of the estate . . . and who are burdened to ensure that the resources that flow through the debtor in possession’s hands are used to benefit the unsecured creditors and other parties in interest.” (citations omitted)).

74. As described above, the loyalty and continued patronage of the Debtor’s customers are critical to the Debtor’s financial health and reorganization. Where retaining loyalty and patronage of customers is critical to a successful reorganization, courts in this and other Districts have granted relief similar to that requested here, including in large chapter 11 cases involving airlines. *See, e.g., In re Aeromexico*, Case No. 20-11563 (SCC) (Bankr. S.D.N.Y. July 29, 2020) [ECF No. 205]; *In re Avianca Holdings S.A.*, Case No. 20-11133 (MG) (Bankr. S.D.N.Y. June 9, 2020) [ECF No. 252]; *In re LATAM Airlines Group S.A.*, Case No. 20-11254 (JLG) (Bankr. S.D.N.Y. June 30, 2020) [ECF No. 415]; *In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011) [ECF No. 426]; *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005) [ECF No. 152]; *In re Northwest Airlines Corp.*, Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Oct. 7, 2005) [ECF No. 72]; *In re US Airways Group, Inc.*, Case No. 04-13819 (SSM) (Bankr. E.D. Va. Sept. 12, 2004) [ECF No. 71];

In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. Dec. 9, 2002) [ECF No. 245]; *In re US Airways Group, Inc.*, Case No. 02-83984 (SSM) (Bankr. E.D. Va. Aug. 11, 2002) [ECF No. 66].⁴

75. The Debtor submits that the requested relief represents a sound exercise of the Debtor's business judgment and is justified under section 363(b), as well as under section 105(a) of the Bankruptcy Code. This is because if the Debtor is prohibited from honoring prepetition obligations and maintaining the Customer Programs and Commercial Agreements consistent with its past business practices, customers will likely lose confidence in the Debtor's ability to satisfy its obligations to customers and reorganize. There is no reason to think that the Debtor's loyal customers would stay loyal when they resume flying if the Debtor did not honor such obligations. Ultimately, the damage from refusing to honor these obligations far exceeds the cost associated with honoring prepetition obligations and continuing these practices. The relief requested herein will protect the Debtor's goodwill during this critical time and enhance the Debtor's ability to generate revenue. Consequently, all of the Debtor's creditors will benefit if the requested relief is granted.

76. Accordingly, the Debtor requests authorization, but not direction, in its business judgment, to (a) perform and honor its prepetition obligations under the Customer Programs and Commercial Agreements as the Debtor deems appropriate and (b) continue, renew, replace, implement new, and terminate the Customer Programs and Commercial Agreement as the Debtor deems appropriate, all in the ordinary course of business, without further application to the Court. Any delay in the relief sought indeed, even being forced to advise customers that further judicial relief is necessary, could result in the Debtor losing a substantial portion of its customer base and severely harm its reorganization.

⁴ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtor's proposed counsel.

77. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtor, a waiver of the Debtor's right to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order granting the Motion is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

78. As it is difficult, or impossible, to calculate the actual amount owed in respect of the Customer Programs as of the Petition Date, the Debtor seeks the authority to pay all prepetition obligations arising thereunder.

B. Cause Exists to Authorize the Debtor's Financial Institutions to Honor Checks and Electronic Fund Transfers

79. The Debtor has sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to postpetition financing. In addition, under the Debtor's existing cash management system, the Debtor can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtor believes that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtor respectfully requests that the Court authorize and direct all applicable financial institutions, when requested by the Debtor, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

The Debtor Has Satisfied Bankruptcy Rule 6003(b)

80. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” within 21 days of filing a petition. Irreparable harm “is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation.” *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (internal quotations omitted). The “harm must be shown to be actual and imminent, not remote or speculative.” *Id.*

81. As set forth above, the Debtor believes an immediate and orderly transition into chapter 11 is critical to the viability of its operations and that any delay in granting the relief requested could hinder the Debtor’s operations and cause irreparable harm. The failure to receive the requested relief during the first 21 days of this chapter 11 case could severely disrupt the Debtor’s operations at this critical juncture and imperil the Debtor’s restructuring as contemplated by the RSAs. Accordingly, the Debtor submits that the relief requested herein is necessary to avoid immediate and irreparable harm, and that Bankruptcy Rule 6003(b) is satisfied.

Reservation of Rights

82. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtor’s or any other party in interest’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any

particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtor's estate; (g) a waiver or limitation of the Debtor's, or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtor that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtor's or any other party in interest's rights to subsequently dispute such claim.

Compliance With Bankruptcy Rule 6004(a)
and Waiver of Stay Under Bankruptcy Rule 6004(h)

83. To implement successfully the relief sought herein, the Debtor requests that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtor also requests that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtor seeks in this Motion is necessary for the Debtor to operate its business without interruption and to preserve value for its

estate. Accordingly, the Debtor respectfully submits that ample cause exists to justify the finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

84. Notice of this Motion has been provided to the following parties, or, in lieu thereof, their counsel (the “**Notice Parties**”): (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the thirty largest unsecured claims against the Debtor; (c) the parties to the RSAs; (d) the DIP Lender; (e) the United States Attorney’s Office for the Southern District of New York; (f) the Internal Revenue Service; (g) the Securities and Exchange Commission; (h) the Federal Aviation Administration; and (i) any party that has requested service pursuant to Bankruptcy Rule 2002. A copy of this Motion and any order approving it will also be made available on the Debtor’s Case Information Website located at www.kccllc.net/PAL. In light of the nature of the relief requested in this Motion, the Debtor respectfully submits that no further notice is necessary.

No Prior Request

85. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

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WHEREFORE, the Debtor respectfully requests that this Court enter the Proposed Orders granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: September 3, 2021
New York, New York

DEBEVOISE & PLIMPTON LLP

By: /s/ Jasmine Ball

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*Proposed Counsel to the Debtor and Debtor
in Possession*

Exhibit A

Proposed Interim Order

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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21-____ (____)

**INTERIM ORDER AUTHORIZING (A) DEBTOR TO HONOR PREPETITION
OBLIGATIONS TO CUSTOMERS AND RELATED THIRD PARTIES AND TO
OTHERWISE CONTINUE CUSTOMER PROGRAMS IN THE ORDINARY COURSE
OF BUSINESS, (B) DEBTOR TO HONOR COMMERCIAL AGREEMENTS AND TO
OTHERWISE CONTINUE COMMERCIAL CONTRACTS IN THE ORDINARY
COURSE OF BUSINESS, AND (C) FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)² of Philippine Airlines, Inc., the above-captioned debtor and debtor in possession (the “**Debtor**” or “**PAL**,” and collectively with the Debtor’s non-debtor affiliates, the “**Airline**”) for entry of an interim order (this “**Order**”) and a final order (the “**Final Order**”) authorizing, but not directing, the Debtor to continue, renew, replace, implement, or terminate the Customer Programs and Commercial Agreements, all as set forth more fully in the Motion; and the 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 January 31, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and it appearing that no other or further

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

² Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Motion.

notice need be provided; and the Court having reviewed the Motion and held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the First Day Declaration and the record of the Hearing; and the 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; and the Court having determined that immediate relief is necessary to avoid irreparable harm to the Debtor and the Debtor’s estate as contemplated by Bankruptcy Rule 6003(b) and is in the best interests of the Debtor, the Debtor’s estate, its creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby GRANTED on an interim basis as set forth herein.
2. The Debtor is authorized, but not directed, in its sole discretion, to (a) fulfill and honor its obligations under the Customer Programs and Commercial Agreements as it deems appropriate and (b) continue, renew, replace, implement new and/or terminate any Customer Program or Commercial Agreement, in each case, in the ordinary course of business, without further application to the Court, including making all payments, satisfying all obligations, and permitting all setoffs in connection therewith, whether relating to the period prior to, on, or subsequent to the Petition Date.
3. The Debtor is authorized, but not directed, in its sole discretion, to (a) continue utilizing third parties in connection with administering and maintaining the Customer Programs as described in the Motion and to pay or caused to be paid such claims as and when such obligations are due and (b) pay prepetition amounts owing, in each case, in the ordinary course

of business to third parties in connection with administering and maintaining the Customer Programs.

4. The Debtor is authorized, but not directed, in its sole discretion, to (a) continue performing under the Commercial Agreements as described in the Motion and to pay or caused to be paid such claims as and when such obligations are due and (b) pay prepetition amounts owing in the ordinary course of business to third parties in connection with performing under the Commercial Agreements.

5. The Debtor shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, and recorded properly.

6. Notwithstanding anything to the contrary in this Order, the aggregate amount of prepetition claims paid on account of Customer Programs and Commercial Agreements shall not exceed \$1.8 million prior to the entry of a Final Order.

7. The stay imposed by section 362 of the Bankruptcy Code shall be modified at the election of the Debtor to permit the Debtor, in its sole discretion, to authorize the setoff of undisputed claims with its customers in accordance with the Customer Programs without further order of the Court.

8. The stay imposed by section 362 of the Bankruptcy Code shall be modified at the election of the Debtor to permit the Debtor, in its sole discretion, to authorize the setoff of undisputed claims with counterparties in accordance with the Commercial Agreements without further order of the Court.

9. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests, or automated clearinghouse transfers evidencing amounts paid by the Debtor under this Order

whether presented prior to, on or after the Petition Date to the extent the Debtor has good funds standing to its credit with banks or other financial institutions. Such banks and financial institutions are authorized to rely on the representations of the Debtor as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtor's instructions.

10. Nothing in this Order or any action taken by the Debtor in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtor's rights with respect to such matters are expressly reserved.

11. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

12. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtor to dispute or contest the amount of or basis for any claims against the Debtor in connection with or relating to the Customer Programs or Commercial Agreements.

13. Nothing in this Order nor the Debtor's payment of claims pursuant to this Order shall be construed as (a) an agreement or admission by the Debtor as to the validity or priority of any claim on any grounds, (b) a waiver or impairment of any of the Debtor's rights to dispute any claims on any grounds, (c) a promise by the Debtor to pay any claim, or (d) an implication or admission by the Debtor that such claim is payable pursuant to this Order.

14. The requirements of Bankruptcy Rule 6003 are satisfied by the contents of the Motion.

15. A final hearing to consider the relief requested in the Motion shall be held on _____, 2021, at _____ (Prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on the Notice Parties so as to be actually received on or prior to _____, 2021, at 4:00 p.m. (Prevailing Eastern Time). Any objections or responses to the entry of the Final Order shall be (a) filed with the Court and (b) served upon and actually received by (i) the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Susan A. Arbeit), (ii) proposed counsel to the Debtor, Debevoise & Plimpton LLP, 919 Third Avenue, New York, NY 10022 (Attn: Jasmine Ball, Nick Kaluk, and Elie Worenklein), (iii) counsel to the DIP Lender, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020 (Attn: Andrew Zatz) and (iv) counsel to any official committee then appointed in this chapter 11 case, so as to be received by 4:00 p.m. (Prevailing Eastern Time) seven days before the hearing to approve the relief requested in the Motion on a final basis (the “**Objection Deadline**”). A reply to an objection may be filed with the Court and served on or before 12:00 p.m. (Prevailing Eastern Time) on the day that is at least two business days before the date of the applicable hearing. If no objections or responses are filed and served, this Court may enter the Final Order without further notice or hearing.

16. If no objections are timely filed and served as set forth herein, the Debtor shall, on or after the Objection Deadline, submit to the Court a final order substantially in the form of this Order, which order shall be submitted and may be entered with no further notice or opportunity to be heard afforded any party, and the Motion shall be approved *nunc pro tunc* to the date of the commencement of the Chapter 11 Case.

17. The contents of the Motion and the notice procedures set forth therein are good and sufficient notice and satisfy the Bankruptcy Rules and the Local Bankruptcy Rules for the

Southern District of New York (the “**Local Rules**”), and no other or further notice of the Motion or the entry of this Order shall be required.

18. Any Bankruptcy Rule (including Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective immediately and enforceable upon its entry.

19. The Debtor is authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

20. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2021
New York, New York

THE HONORABLE [●]
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21-____ (____)

**FINAL ORDER AUTHORIZING (A) DEBTOR TO HONOR PREPETITION
OBLIGATIONS TO CUSTOMERS AND RELATED THIRD PARTIES AND TO
OTHERWISE CONTINUE CUSTOMER PROGRAMS IN THE ORDINARY COURSE
OF BUSINESS, (B) DEBTOR TO HONOR COMMERCIAL AGREEMENTS AND TO
OTHERWISE CONTINUE COMMERCIAL CONTRACTS IN THE ORDINARY
COURSE OF BUSINESS, AND (C) FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)² of Philippine Airlines, Inc., the above-captioned debtor and debtor in possession (the “**Debtor**” or “**PAL**,” and collectively with the Debtor’s non-debtor affiliates, the “**Airline**”) for entry of an interim order and a final order (the “**Order**”) authorizing, but not directing, the Debtor to continue, renew, replace, implement or terminate the Customer Programs and Commercial Agreements, all as set forth more fully in the Motion; and the 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 January 31, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the

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

² Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Motion.

Motion having been provided to the Notice Parties, and no other or further notice need be provided; and the Court having reviewed the Motion and held a hearing to consider the relief requested in the Motion on a final basis (the “**Final Hearing**”); and upon the First Day Declaration and the record of the Final Hearing; and the Court having determined that the legal and factual bases set forth in the Motion and at the Final Hearing establish just cause for the relief granted herein; and the Court having determined that the relief granted herein is in the best interests of the Debtor, the Debtor’s estate, creditors and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby GRANTED on a final basis as set forth herein.
2. The Debtor is authorized, but not directed, in its sole discretion, to (a) fulfill and honor its obligations under the Customer Programs and Commercial Agreements as it deems appropriate and (b) continue, renew, replace, implement new and/or terminate any Customer Program or Commercial Agreement, in each case, in the ordinary course of business, without further application to the Court, including making all payments, satisfying all obligations and permitting all setoffs in connection therewith, whether relating to the period prior to, on or subsequent to the Petition Date.
3. The Debtor is authorized, but not directed, in its sole discretion, to (a) continue utilizing third parties in connection with administering and maintaining the Customer Programs as described in the Motion and to pay or caused to be paid such claims as and when such obligations are due and (b) pay prepetition amounts owing, in each case, in the ordinary course

of business to third parties in connection with administering and maintaining the Customer Programs.

4. The Debtor is authorized, but not directed, in its sole discretion, to (a) continue performing under the Commercial Agreements as described in the Motion and to pay or caused to be paid such claims as and when such obligations are due and (b) pay prepetition amounts owing in the ordinary course of business to third parties in connection with performing under the Commercial Agreements.

5. The Debtor shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, and recorded properly.

6. The stay imposed by section 362 of the Bankruptcy Code shall be modified at the election of the Debtor to permit the Debtor, in its sole discretion, to authorize the setoff of undisputed claims with its customers in accordance with the Customer Programs without further order of the Court.

7. The stay imposed by section 362 of the Bankruptcy Code shall be modified at the election of the Debtor to permit the Debtor, in its sole discretion, to authorize the setoff of undisputed claims with counterparties in accordance with the Commercial Agreements without further order of the Court.

8. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests, or automated clearinghouse transfers evidencing amounts paid by the Debtor under this Order whether presented prior to, on or after the Petition Date to the extent the Debtor has good funds standing to its credit with banks or other financial institutions. Such banks and financial institutions are authorized to rely on the representations of the Debtor as to which checks are

issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtor's instructions.

9. Nothing in this Order or any action taken by the Debtor in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtor's rights with respect to such matters are expressly reserved.

10. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

11. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtor to dispute or contest the amount of or basis for any claims against the Debtor in connection with or relating to the Customer Programs or Commercial Agreements.

12. Nothing in this Order nor the Debtor's payment of claims pursuant to this Order shall be construed as (a) an agreement or admission by the Debtor as to the validity or priority of any claim on any grounds, (b) a waiver or impairment of any of the Debtor's rights to dispute any claims on any grounds, (c) a promise by the Debtor to pay any claim, or (d) an implication or admission by the Debtor that such claim is payable pursuant to this Order.

13. The contents of the Motion and the notice procedures set forth therein are good and sufficient notice and satisfy the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**"), and no other or further notice of the Motion or the entry of this Order shall be required.

14. Any Bankruptcy Rule (including Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective immediately and enforceable upon its entry.

15. The Debtor is authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

16. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2021
New York, New York

THE HONORABLE [●]
UNITED STATES BANKRUPTCY JUDGE