

**HAWAIIAN AIRLINES  
FLIGHT ATTENDANT AGREEMENT**

**SECTION 1: RECOGNITION, SCOPE AND JOB SECURITY**

**A. Recognition**

1. In accordance with the certification made by the National Mediation Board (File No. C-4445) on November 16, 1977, the Company hereby recognizes the ASSOCIATION OF FLIGHT ATTENDANTS-CWA as the duly designated and authorized representative of the Flight Attendants in the employ of the Company for the purposes of the Railway Labor Act, as amended.
2. The Company recognizes the right of Flight Attendants on the Flight Attendant System Seniority List to perform the Company's flying on the Company's aircraft as specified in this Agreement.

**B. Scope**

1. This Agreement covers all revenue flying performed by or for the Company or any Affiliate.
2. As used herein, the term "all revenue flying performed by or for the Company or any Affiliate" shall include, but not be limited to, all flying over the Company's or any Affiliate's present or future routes and extensions thereof, and any contract (government, military or commercial) flying, charter flying and flying subcontracted for or by the Company or any Affiliate and/or subcontracted out by the Company or any Affiliate, any "wet-lease" flying, and any flying under the Company's or an Affiliate's control.
3. Except as provided in paragraph B.6 of this Section, all revenue flying by or for the Company or any Affiliate covered by this Agreement shall be performed by Flight Attendants whose names appear on the Hawaiian Airlines, Inc. Flight Attendant System Seniority Lists under the terms and conditions of the Agreement.
4. No revenue flying covered by this Agreement shall be performed by the Company or an Affiliate until the Company and the Association have signed an agreement covering the rates of pay, rules and working conditions applicable to such flying.

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5. In the event that the Company or an Affiliate determines to perform revenue flying which is not already covered by this Agreement, the following procedures will be followed:
  - a. The Company will send written notification to the President of the Hawaiian Airlines Flight Attendants' Master Executive Council of its intent to commence such revenue flying. At the same time, a copy of such notification will be sent to the President of the Association and to the Association of Flight Attendants' Legal Department, One O'Hare Center, 6250 North River Road, Suite 4020, Rosemont, IL 60018-4210.
  - b. Within two (2) consecutive calendar days of such notification, the parties will commence conferences in the Company's general offices in Honolulu, Hawaii or at some other mutually agreeable location. Such conferences shall be for the purpose of negotiating the rates of pay, rules and working conditions applicable to such revenue flying. Direct conferences between the parties shall continue for not more than ten (10) consecutive calendar days or until an agreement is reached, whichever occurs first, unless the parties mutually extend such ten (10) day period.
  - c. If no agreement has been reached at the end of such ten (10) day period or any extension thereof, then the open unresolved issues will be submitted promptly for determination by an arbitrator to be mutually agreed upon by the parties. The arbitrator shall have the authority and responsibility to hear and determine all of the open unresolved issues.
  - d. The hearing before the arbitrator will commence as soon as possible after the ten (10) day period of direct negotiation or any extension thereof. Within ten (10) consecutive calendar days after the close of the hearing, the arbitrator shall furnish each of the parties with a copy of her/his written decision concerning the open unresolved items and such decision shall be final and binding upon the parties hereto.

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- e. The entire period from notification specified in Subparagraph (a) above until the arbitrator issues her/his written decision shall include not more than thirty (30) consecutive calendar days, unless mutually extended by the parties hereto.
6. Paragraph B.3 of this Section shall prohibit the Company or an Affiliate of the Company from (1) entering into marketing and related arrangements that permit another air carrier (“Feeder Carrier”) to utilize the Company’s designator code, name, logo or marks in commercial flight operations (any such agreement, a “Code Sharing Agreement”), or (2) partly or wholly acquiring, establishing, or operating another carrier that does not operate under this Agreement, unless the Company ensures that the following applicable requirements are satisfied with respect to any such Feeder Carrier:
- a. The term “Feeder Carrier” refers to an air carrier that operates under a Code Sharing Agreement using its own operating certificate in lawfully operable commercial flight operations under the following conditions, or an air carrier that the Company or an Affiliate has partly or wholly acquired or established and operates using such carrier’s operating certificate, under the following conditions. A Feeder Carrier acquired, established or operated by the Company, or the portion of a Feeder Carrier operated under a Code Sharing Agreement with the Company, may operate only (i) within the Hawaiian Islands (hereinafter, an “Inter-Island Feeder Carrier”) or (ii) in markets (city pairs) that provide passenger feed to or from the Company’s B-767/A-330/A-350 or equivalent operations on the West Coast of the continental United States (hereinafter “West Coast Feeder Carrier”).
  - b. A Feeder Carrier acquired, established or operated by the Company, and the portion of a Feeder Carrier operated under a Code Sharing Agreement with the Company, may operate only turboprop aircraft, and such aircraft must be lawfully operable in commercial flight operations with a maximum certificated seating capacity of sixty-nine (69) seats and a maximum certificated gross

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takeoff weight of no more than 69,000 pounds in passenger operations.

- c. With respect to Inter-Island Feeder Carriers
  - (1) An Inter-Island Feeder Carrier will conduct no commercial passenger flight operations of any kind on the following city pairs: HNL-LIH, HNL-ITO, HNL-KOA, and HNL-OGG.
  - (2) The Company will neither furlough any Hawaiian Flight Attendants nor reduce the number of block hours the Company operates in 717 or equivalent jet operations within the Hawaiian Islands as a result of initiation or expansion of flying by an Inter-Island Feeder Carrier. The existence of an Inter-Island Feeder Carrier will not by itself be sufficient to demonstrate causation.
  - (3) During any consecutive twelve-month period of Inter-Island Feeder Carrier operation under this Agreement, the Company will not operate fewer than twenty-nine thousand (29,000) hours of Inter-Island turbojet block hours measured over the same period.
- d. With respect to West Coast Feeder Carriers, the Company will not furlough any Hawaiian Flight Attendant as a result of any Code Sharing Agreement or any commercial flight operations by such carrier, and the Company must demonstrate that no Code Sharing Agreement or operation of such carrier will result in the displacement of any Flight Attendant.
- e. The Company shall not be required to apply this Agreement to Flight Attendants employed by a Feeder Carrier, and the Association shall make no argument to or in any forum that application of this Agreement to the Feeder Carrier is required by contract or law.
- f. If the Company establishes a Feeder Carrier, or if it acquires a Feeder Carrier whose Flight Attendants are not represented by a union, the Company agrees to recognize, or cause the Feeder Carrier to recognize, the

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Association as the representative of such Flight Attendants upon a lawful demonstration of majority support and will take a neutral position with respect to the Association's efforts to secure and provide that lawful demonstration.

- g. The Company will make commercially reasonable efforts to obtain the same jumpseat and pass privileges on the aircraft operated by the Feeder Carrier as Hawaiian Flight Attendants have on Hawaiian aircraft.
  - h. If the Company chooses to acquire and operate turboprop aircraft on Hawaiian's certificate, then the Parties shall meet to negotiate the rates of pay, rules and working conditions for such aircraft pursuant to Section 27.C.
  - i. The Company will require Feeder Carriers that it wholly owns and operates to provide a right of first interview and hire to furloughed Hawaiian Flight Attendants and will use its commercially reasonable best efforts to secure such rights from Feeder Carriers that it partly owns or which operate under a Code Sharing Agreement.
7. Except as expressly permitted in paragraph B.6 of this Section 1, or below, the Company shall not permit any other carrier to utilize the Company's designator code, name, trade name, brand, logo, trademarks, service marks, aircraft livery or aircraft paint scheme without the express written consent of the Association in commercial flight operations (a) within the Hawaiian Islands, (b) between the Hawaiian Islands and any other point in continental United States or Canada, or (c) between the Hawaiian Islands and any point in the South Pacific currently or in the future served by the Company. In considering requests by the Company for consent to engage in such arrangements, the Association will give due regard to the Company's need to establish partnerships with other carriers that are mutually beneficial to both the Company and the Flight Attendant group.

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- a. In the geographic areas not listed above, the Company may engage in Code Share Agreements under the framework outlined below:
- b. At the conclusion of the first six (6) month period of operation of a Code Sharing Agreement, the Company and the Association shall meet on a quarterly basis, at the Association's request, to review the financial and operating results of the Code Sharing Agreement. The Company shall provide the Association and the Association's economic and legal advisors, under a commercially standard confidentiality agreement, its best available financial and operating information concerning the Code Sharing Agreement.
- c. During these quarterly meetings, the Parties will discuss whether it would be profitable for the Company to fly a Code Share Route with its own aircraft. If it can be predicted with reasonable certainty that the Company can begin flying a Code Share Route with its own aircraft and, taking into account the revenues earned from passengers connecting to the Company's network, (i) operate the Code Share Route profitably on an annual basis for the fourth year of Company operation based on the Company's standard flight profitability measurement including standard allocations of corporate overhead expenses and invested capital and (ii) recover its cumulative investment including start-up losses on the Code Sharing Route within a period of seventy (70) months, there will be a presumption that the Company should fly the Code Share Route with its own aircraft.
- d. If a dispute arises as to where this presumption has been reached, that dispute shall be subject to final and binding, expedited arbitration before the AFA-Hawaiian System Board of Adjustment sitting with a neutral member jointly selected by the Parties.
- e. Once it has been agreed or determined by arbitration that the presumption has been reached, the Parties shall meet within ninety (90) days to discuss the following options: (i) that the Code Sharing Agreement be

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extended without Company operation on the Code Share Route; (ii) that the Company should begin flying the Code Share Route with its own aircraft; or, (iii) that the Code Sharing Agreement for the Code Share Route be discontinued.

- f. If there is no agreement on option e.(i) above, then the Company must either: (i) at the next regularly scheduled meeting of the Board of Directors, seek and obtain Board approval to commence flying the Code Share Route with the Company's own aircraft within a six (6) month period of time; or (ii) discontinue the Code Sharing Agreement for the Code Share Route or in its entirety.
8. The Company and the Association shall establish a Scope Review Committee comprised of the Vice-President of Customer Services, the Vice-President of Marketing and another Company representative and three (3) Flight Attendants designated by the Association's Hawaiian Master Executive Council. The Scope Review Committee shall meet periodically, but no less than quarterly, to review the financial and operating results of any of the Company's code sharing agreements with other carriers and to ensure that the Company is in compliance with Section 1.B. of this Agreement. The Company shall provide the Scope Review committee and the Association's economic and legal advisors, under a commercially standard confidentiality agreement, if necessary, its best available financial and operating information concerning the Company's code sharing practices with other carriers.
- C. Parent, Subsidiary, Affiliate or Successor Company(s)**
1. The provisions of this Agreement shall be binding upon any Parent, Affiliate or Successor.
2. The Company and its Affiliates shall require any successor, assign, assignee, transferee, administrator, executor and/or trustee of the Company or of a Parent ("Successor") resulting from the transfer (in a single transaction or in multi-step transactions) to the Successor of the ownership and/or control of all or substantially all of the equity securities and/or

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assets of the Company (a "Successorship Transaction") to employ the Flight Attendants on the Hawaiian Airlines System Seniority List in accordance with the provisions of the Agreement and to assume and be bound by the Agreement.

3. The Company and its Affiliates agree to give written notice of the terms of this Agreement to a proposed Successor, before concluding any Successorship Transaction. The Company and its Affiliates agree that no agreement or other legally binding commitment involving a Successorship Transaction will be signed or otherwise entered into, unless it is agreed in writing as a material and irrevocable condition of entering into, concluding and implementing the transaction, that this Agreement and recognition of the Association is assumed by the Successor(s), and that the Flight Attendants on the Hawaiian Airlines Flight Attendants' System Seniority List will be employed in accordance with the provisions of this Agreement. The Company will provide the Association with the details of, and material agreements related to, any such transaction in a timely manner.
4. The Company will not enter into, maintain, or permit any transaction, agreement or arrangement which provides for, permits, facilitates, creates, maintains or results in the establishment of a Parent or an Affiliate unless the Parent or Affiliate agrees in writing, as an irrevocable condition of such transaction, agreement or arrangement, to be bound by the Agreement in the same manner as the Company as if every reference to the "Company" in this Agreement also referred to and bound the Parent or Affiliate.

**D. Labor Protective Provisions**

1. The Flight Attendants will be provided with the same labor protective provisions specified by the Civil Aeronautics Board in Sections 2., 3., and 13. only of the Allegheny-Mohawk merger conditions as amended (herein "LPP") as a material and irrevocable written condition of any future merger or acquisition, as defined by Section 2.a. of said LPP, involving the Company. The written condition to provide the Flight Attendants with said LPP shall be embodied in a signed



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agreement between/among the parties to the transaction, which shall specifically:

- a. Bind all parties to the transaction, including the Company and any successor of the Company, to assume and carry out the obligation to provide the Flight Attendants with said LPP as a material and irrevocable condition of entering into, concluding and implementing this transaction.
  - b. Provide that the Association and affected Flight Attendants shall have all necessary and required rights and standing to invoke said LPP, and to take such action as is necessary to enforce the application of said LPP, against all parties to the transaction, including the Company and any successor of the Company; provided that, with respect to the integration of seniority lists between/among two or more groups represented by the Association, the Association merger policy shall be applied according to its terms before Section 13. of the said LPP may be invoked as to any dispute or controversy over integration of seniority lists, and that Section 13. may be invoked on behalf of the Flight Attendants only by the Association as bargaining representative.
  - c. Provide that the Association and the affected Flight Attendants shall be entitled to a remedy of specific performance, including injunctive relief, against all parties to the transaction, including the Company and any successor of the Company, to enforce the application of said LPP.
2. The signed agreement required by paragraph 1. above shall be provided to the Association within seventy-two (72) hours of signing any agreement or other legally binding merger or acquisition commitment.

**E. Job Security**

1. If, within any twelve (12) month period, the Company or an Affiliate sells, transfers or disposes in a single transaction or a series of transactions assets, net of asset purchases or

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acquisitions during the same twelve (12) month period, (i) which constitute twenty percent (20%) or more of the value of the assets (including the Company's aircraft, whether owned or leased) of the Company, or (ii) which sale directly or indirectly results in a reduction of the Company's monthly block hours or available seat miles by twenty percent (20%) or more (any such transaction or series of transactions referred to herein as a "Triggering Event"), then:

- a. In the event (i) another air carrier or (ii) an Entity that intends to operate, own or Control an air carrier following its acquisition of the Company's assets (any such Entity, a "Transferee") purchases or acquires any aircraft, international route or international route authority of the Company or an Affiliate as part of any transaction or series of transactions that constitutes a Triggering Event, Flight Attendants from the Hawaiian Airlines Flight Attendants' System Seniority List (the "Transferring Flight Attendants") shall be offered the opportunity to transfer to the Transferee. The number of transferring Flight Attendants shall be determined by calculating the average Flight Attendant staffing on a monthly basis, rounded to the nearest whole number, over the prior twelve (12) months attributable to (i) the international route or international route authority transferred to the Transferee in connection with the Triggering Event; or (ii) the aircraft or aircraft interest transferred to the Transferee in connection with the Triggering Event; and
- b. The Transferring Flight Attendants shall be selected on the basis of seniority on the Hawaiian Airlines Flight Attendant System Seniority List from those Flight Attendants who are qualified on the aircraft transferred to the Transferee; provided that a Flight Attendant shall be deemed "qualified" to transfer if she/he is qualified (other than recurrent or substantially equivalent training, proficiency check, or training necessary to qualify Flight Attendants on the specific operations procedures of the Transferee) on the aircraft transferred to the Transferee in the case of an aircraft transfer or the aircraft the Transferee intends to operate on the acquired

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- international route in the case of an international route or international route authority transfer; and
- c. The Company and its Affiliates shall require the Transferee(s), and the Transferee(s) shall agree: (i) to employ the Transferring Flight Attendants under rates of pay, rules and working conditions no less favorable than those [applicable to] the Transferee's Flight Attendants; and (ii) to integrate the Transferring Flight Attendants into the Transferee's Flight Attendant seniority list pursuant to Association Merger Policy if the Transferee's Flight Attendants are represented by the Association and otherwise pursuant to Sections 3 and 13 of the Allegheny-Mohawk Labor Protective Provisions. There shall be no requirement that the seniority integration of the Transferring Flight Attendants be completed simultaneous with the transfer of the international route, international route authority or aircraft and it is expressly agreed that such seniority integration may be completed after such transfer; and
  - d. Any Flight Attendant who transfers to the Transferee shall be required to resign from Hawaiian Airlines as a condition of the transfer.
2. The provisions of paragraph E. of this Section shall not apply to: (i) aircraft sale-leaseback for financing purposes; (ii) the transfer of international route(s), international route authority or aircraft caused by circumstances over which the Company has no control. The phrase "circumstances over which the Company has no control" means: (i) an act of nature; (ii) labor dispute within the Company; (iii) grounding of a substantial number of the Company's aircraft by government agency; (iv) reduction in flying operations because of a decrease in available fuel supply or other critical materials for the Company's operations; (v) war emergency; and (vi) involuntary revocation of the Company's operating certificate(s).
  3. The rights and protections provided the Association and the Hawaiian Flight Attendants under paragraph E. of this Section are in addition to any other rights and protections

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contained in any other agreement involving the Association and the Hawaiian Flight Attendants.

4. The Company and its Affiliates shall not conclude or enter into any agreement for any international route, international route authority or aircraft transfer unless the Transferee(s) agrees in writing to be bound by the applicable terms of paragraph E. of this Section.
5. The Company and its Affiliates agree, and shall require the Transferee(s) to agree, to resolve all disputes concerning the interpretation or application of paragraph E. of this Section through final and binding arbitration on an expedited basis directly before the AFA-Hawaiian System Board of Adjustment sitting with a neutral arbitrator pursuant to Section 1 and Section 24 of this Agreement, except that the arbitrator shall be selected from a panel of neutral referees provided by the National Mediation Board upon the request of any party. If the Association submits a grievance alleging a violation of paragraph E. of this Section, the challenged transaction will be held in abeyance pending the arbitrator's disposition of the Association's grievance.

**F. Change in Control**

1. In the event a "Change of Control" occurs and within two (2) years of the Change of Control the person(s) exercising such control (i) replaces a majority of the directors of the Company or of Hawaiian Holdings, Inc. ("Holdings"), excluding replacements as the result of death, disability or reaching of retirement age, or (ii) through making shareholder proposals or initiating proxy solicitations, directs Holdings' board and/or influences the operations of the Company (a "Change of Control Event"), then: (a) the Association shall have the right in its sole discretion to extend the duration of the Agreement for up to two (2) years from the date of the Change of Control Event; and (b) Holdings and the Company shall at Holdings' option either (i) issue to flight attendants common shares of Holdings having an aggregate market value of \$1,500,000 at the time of the Change of Control Event, or (ii) pay \$1,500,000 in cash. If Holdings elects to issue common stock it shall be issued within five (5) business days after the date

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of the Change of Control Event, and the number of shares to be issued shall be \$1,500,000 divided by the average closing price for the five (5) business days preceding the third business day after the date of Change of Control Event. If Holdings elects to issue cash, it shall do so no later than eight (8) business days following the date of the Change of Control Event. The stock or cash shall be allocated based on W-2 wages for the tax year immediately pre-ceding the issuance of the stock. A "Change of Control" occurs when a purchaser or a group of purchasers acting in concert (as defined in Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder), through a single transaction or a series of related transactions, (i) acquires more than 40% of the capital stock of Holdings or the Company on a fully diluted basis, or (ii) obtains the right to elect the majority of Holdings' directors.

2. An "Adverse Transaction" shall mean: (a) any changes made in operations within two (2) years after either the Effective Date of the Joint Plan or a Change of Control, that reduce the total number of block hours flown by the Company during any 12 month period by 15% or more compared to the prior 12 month period or that reduce the number of the Company's aircraft to fewer than twenty (20) (an "Operational Reduction"); (b) a sale of all or substantially all of the equity securities or assets of the Company (a "Sale"); or (c) a merger of the Company with or into another entity, regardless of which entity is the surviving entity and which merger is used to implement an acquisition of the Company by another airline (a "Merger"). In the event that an "Adverse Transaction" occurs then, in addition to all other rights and remedies specified in the Agreement or otherwise available at law, the Association shall have the right in its sole discretion to (A) extend the duration of the Agreement for up to two (2) years past the Change of Control date, in the event of an Operational Reduction, or two (2) years past the Adverse Transaction date in the event of a Sale or Merger; and (B) obtain an agreement from the Company pursuant to which no active flight attendants (less the number of flight

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attendants on leave) who are on the seniority list on the date of the Adverse Transaction shall be furloughed from the date of the Adverse Transaction through the amendable date, as it may be extended hereunder, except for furloughs that occur in the ordinary course for reasons such as but not limited to seasonality and aircraft placed out of service except as a result of the Adverse Transaction. In addition, Holdings and the Company shall at Holdings' option either (i) issue to flight attendants common shares of Holdings having an aggregate market value of \$1,500,000 at the time of the Adverse Transaction, or (ii) pay \$1,500,000 in cash. If Holding elects to issue common stock it shall be issued within five (5) business days after the effective date of the Adverse Transaction, and the number of shares to be issued shall be \$1,500,000 divided by the average closing price for the five (5) business days preceding the third business day after the date the Adverse Transaction is publicly announced. If Holdings elects to issue cash, it shall do so no later than eight (8) business days following the effective date of the Adverse Transaction. The stock or cash shall be allocated based on W-2 wages for the tax year immediately preceding the issuance of the stock. In the event of a Merger, the furlough protection provided in (B) herein shall only be required of the Company until such time as the seniority lists and collective bargaining agreements of the merged companies are combined, and the Company hereby agrees to make such operational integration of the two carriers a condition of such Merger. The Company agrees that it shall provide the Association with sufficiently detailed information regarding a prospective Adverse Transaction on which to make the determination described herein, on or before the later of (x) 30 days prior to the effective date of the proposed Adverse Transaction, or (y) as soon as legally practicable based on advice of counsel to Holdings.

3. For purposes of this Section 1.F., any reference to the Company or Holdings shall be deemed to include any successor or parent entity of either the Company or Holdings; provided, however, in no event shall a single transfer or disposition of assets or equity securities of the Company,

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Holdings or any successor or predecessor of either the Company or Holdings trigger both a Change of Control Event and an Adverse Transaction for purposes of this Section 1.F., whether or not coupled with a replacement of a majority of the directors of the Company or Holdings in connection with a Sale or Merger, as both are defined above.

**G. Bankruptcy**

In the event a petition under Chapters 7 or 11 of the Bankruptcy Code concerning the Company is filed, then the Company and its Affiliates shall not file any application seeking rejection or modification of any agreement between the Company and the Association pursuant to 11 U.S.C. §1113, including a request to implement interim changes in the Agreement pursuant to 11 U.S.C. §1113(e) before February 27, 2000.

**H. Release of Information**

The Company will make available to the Association, on a confidential basis and subject to applicable legal requirements of law, the following information:

1. Statement of Operations/Monthly Income or P&L Statement, by Market and Combined Operations:

Quarterly and Year-to-Date: actuals on an accrual basis.

2. Statement of Cash Flows:

Quarterly and Year-to-Date actuals.

3. Balance Sheet:

Quarterly and Year-to-Date actuals.

4. Operating Statistics:

Quarterly and Year-to-Date actuals, forecast (with any revisions or updates), including the following:

Passengers, Average Fares, Revenue, RPMs, ASMs, Load Factor and Flights by both route and aircraft type for: Transpac, Southpac, Inter-Island, Charters and all other flights by Market and by Aircraft Type.

5. All audited Financial Statements and SEC Filings.

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**I. Expedited Arbitration**

Any and all disputes concerning alleged violation of this Section shall be resolved by final and binding arbitration. The Company and its Affiliates specifically agree to arbitrate any grievance permitted under the Railway Labor Act filed by the Association alleging violation of this Section on an expedited basis directly before the Flight Attendants System Board of Adjustment sitting with a neutral member. The Arbitrator shall be bound by all provisions of the Railway Labor Act. The dispute shall be heard expeditiously no later than thirty (30) days following the submission to the System Board and decided expeditiously no later than sixty (60) days after submission, unless the parties agree otherwise in writing. The parties agree to abide by any lawful arbitration award which is issued. The parties further expressly agree that any violation of this Section shall constitute irreparable injury for which no adequate remedy at law exists.

**J. Definitions**

The following definitions shall apply to the capitalized terms in this Section 1 of the Agreement:

1. Agreement. The term "Agreement" means and includes this collective bargaining agreement between the Association and the Company and any and all other agreements between the Association and the Company or among the Association, the Company and its Affiliates.
2. Entity. The term "Entity" shall mean any business form of any kind, including without limitation any natural person, corporation, Company, unincorporated association, division, partnership, trustee, trust, receivership, joint venture, administrator, or executor.
3. Control. Entity A shall be deemed to "Control" Entity B if entity A, whether directly or indirectly, (a) maintains the power, right, or authority to manage or direct the management of Entity B's operations, or (b) maintains the power, right or authority to appoint a majority of Entity B's Board of Directors or similar governing body, or (c) maintains the power, right or authority to appoint a minority of B's Board of Directors or similar governing body, if such minority maintains the power, right or



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authority to appoint or remove any of B's executive officers, to approve a substantial part of B's business or operating plans or to approve a substantial part of B's debt or equity offerings, or (d) owns securities that constitute, are exercisable for or are exchangeable into forty percent (40%) or more of Entity B's outstanding common stock or otherwise owns forty percent (40%) or more of Entity B.

4. Common Control. A shall be deemed to be under "Common Control" with B if any third person or entity Controls both A and B whether directly or indirectly through the Control of other persons or entities that Control A and B.
5. Parent. As used in this Agreement, the term "Parent" refers to any Entity that Controls the Company, whether directly or indirectly through the Control of other Entities that Control the Company.
6. Affiliate. As used in this Agreement, the term "Affiliate" refers to (i) any Parent, (ii) any Entity that Controls or manages the Company or any Entity that the Company Controls or manages, or (iii) any Entity under Common Control with the Company, or (iv) any other corporate subsidiary, parent or division of the Company, a Parent or any other Affiliate.

(INTENTIONALLY BLANK)