

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N°: 500-11-062600-230

DATE: July 21, 2023

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**THE HONOURABLE DAVID R. COLLIER, J.C.S., PRESIDING**

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, of:**

**GROUPE AIRMÉDIC INC.**

-and-

**12378744 CANADA INC.**

-and-

**9386149 CANADA INC.**

-and-

**CAPITAL AVIATION INC.**

-and-

**AIRMÉDIC INTERH INC.**

-and-

**AIRMÉDIC MÉDICAL INC.**

-and-

**AIRMÉDIC INC.**

Debtors

-and-

**THE LAURENTIAN BANK OF CANADA**

-and-

**FIERA PRIVATE DEBT FUND VI LP**

Applicants

-and-

**DELOITTE RESTRUCTURING INC.**

Proposed Monitor

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**AMENDED AND RESTATED INITIAL ORDER**

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- [1] **CONSIDERING** the *Requête pour l'émission d'une ordonnance initiale, d'une ordonnance initiale amendée et reformulée et pour mesures connexes* dated July 11, 2023 (the "**Application**") of The Laurentian Bank of Canada and Fiera Private Debt Fund VI LP (collectively, the "**Applicants**") in respect of Groupe Airmédic Inc., 12378744 Canada Inc., 9386149 Canada Inc., Capital Aviation Inc., Airmédic InterH Inc., Airmédic Médical Inc. and Airmédic Inc. (collectively, the "**Debtors**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**"), the affidavit, and the exhibits filed in support thereof;
- [2] **CONSIDERING** the Second Report of Deloitte Restructuring Inc., in its capacity as court-appointed monitor (the "**Monitor**"), dated July 20, 2023;
- [3] **CONSIDERING** the Initial Order rendered by this Court on July 13, 2023;
- [4] **CONSIDERING** the notification of the Application to the secured creditors who are likely affected by certain of the charges created herein;
- [5] **CONSIDERING** the representations of the lawyers present;
- [6] **CONSIDERING** the provisions of the CCAA;

**THE COURT:**

- [7] **GRANTS** the Application.
- [8] **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:

- Service
- Application of the CCAA
- Effective Time
- Administrative consolidation
- Plan of Arrangement
- Stay of Proceedings against the Debtors and the Property
- Stay of Proceedings against the Directors and Officers
- Possession of Property and Operations
- No Exercise of Rights or Remedies;
- No Interference with Rights
- Continuation of Services
- Interim Financing
- Non-Derogation of Rights
- KERP and KERP Charge
- Applicants' Access to Information
- Restructuring
- Sale and Investment Solicitation Process
- Powers of the Monitor
- Priorities and General Provisions Relating to CCAA Charges
- Hearing Scheduling and Details
- General

### **Service**

- [9] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.
- [10] **DECLARES** that sufficient prior notice of the presentation of this Application has been given by the Applicants to the interested parties, including the secured creditors which are likely to be affected by the charges created herein.

### **Application of the CCAA**

- [11] **DECLARES** that the Debtors are debtor companies to which the CCAA applies.

### **Effective Time**

- [12] **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montréal time, province of Québec, on July 12, 2023 (the “**Effective Time**”).

### **Administrative Consolidation**

- [13] **ORDERS** the consolidation of the CCAA proceedings of the Debtors under one single Court file, in file number 500-11-062600-230.

- [14] **ORDERS** that all proceedings, filings, and other matters in the CCAA proceedings be filed jointly and together by the Debtors under file number 500-11-062600-230.
- [15] **DECLARES** that the consolidation of these CCAA proceedings in respect of the Debtors shall be for administrative purposes only and shall not effect a consolidation of the assets and property or of the debts and obligations of each of the Debtors.

### **Plan of Arrangement**

- [16] **DECLARES** that the Monitor have the requisite authority to file with this Court and present to the creditors of the Debtors, or to certain creditors, one or more plans of compromise of arrangement, for and on behalf of the Debtors (a "**Plan**" or "**Plans**")

### **Stay of Proceedings against the Debtors and the Property**

- [17] **ORDERS** that, until and including August 22, 2023, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), including but not limited to seizures, right to distrain, executions, writs of seizure or execution, judicial or extrajudicial right of resolution or resiliation, right of set-off or compensation between mutual claims arising prior to the Effective Time or mutual claims arising respectively prior to and after the Effective Time, any and all actions, applications, arbitration proceedings and other lawsuits existing at the time of this Order in which any of the Debtors is a defendant, party or respondent (either individually or with other Persons (as defined below)), shall be commenced or continued against or in respect of the Debtors, or affecting the Debtors' business operations and activities (the "**Business**") or the Property (as defined herein below), including as provided in paragraph [27] herein except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to section 11.1 CCAA.
- [18] **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of a Province are suspended in accordance with the terms and conditions of section 11.09 CCAA.

### **Stay of Proceedings against the Directors and Officers**

- [19] **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Debtors nor against any person deemed to be a director or an officer of the Debtors under subsection 11.03(3) CCAA (each, a "**Director**", and collectively the "**Directors**") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Debtors where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

## Possession of Property and Operations

- [20] **ORDERS** that subject to the rights and powers granted to the Monitor pursuant to the present Order, the Debtors shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof and all bank accounts (collectively the "**Property**") notwithstanding any enforcement process, including but not limited to seizures, right to distrain, executions, writs of seizure or execution, the whole in accordance with the terms and conditions of this Order.
- [21] **ORDERS** that subject to the rights and powers granted to the Monitor pursuant to the present Order, each of the Debtors are authorized to complete outstanding transactions and engage in new transactions with other Debtors, and to continue, on and after the date of this Order, to buy and sell goods and services, and allocate, collect and pay costs, expenses and other amounts from and to the other Debtors, or any of them (collectively, the "**Intercompany Transactions**") in the ordinary course of business. All ordinary course Intercompany Transactions among the Debtors shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures as the Monitor may require, or subject to this Order or further Order of this Court.
- [22] **ORDERS** the Debtors to record details of all Intercompany Transactions during the CCAA Proceedings.
- [23] **ORDERS** that the Debtors shall have the right to continue to use the central cash management system currently in place or to replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any bank, present or future, providing the Cash Management System (i) shall have no obligation to verify the propriety, validity or legitimacy of any transfer, payment or collection or other action made or taken in connection with the Cash Management System or the use or application by the Debtors of funds transferred, paid or collected or otherwise processed using the Cash Management System; ii) is entitled to provide the Cash Management System without incurring any liability whatsoever in connection therewith to any Person (as hereinafter defined) other than the Debtors, pursuant to the documentation applicable to the Cash Management System, and is, in its capacity as provider of the Cash Management System, an unaffected creditor under the CCAA Proceedings and any Plan with respect to any claim or encumbrance it may suffer or incur in connection with the provision of the Cash Management System on or after the date of this Order.
- [24] **ORDERS** that the Monitor, for and on behalf on the Debtors, shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, bonuses, expenses, benefits and vacation pay payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any agent, advisor or counsel retained or employed by the Debtors in respect of these proceedings, at their standard rates and charges; and
- (c) the amounts due for goods and services rendered to any of the Debtors prior to the date of this Order by third party suppliers up to an aggregate amount of \$250 000 if, in the opinion of the Monitor, the supplier is essential to the ongoing operations of the Business or the Debtors during the CCAA Proceedings.

[25] **ORDERS** that the Monitor, for and on behalf on the Debtors, shall be entitled, but not required to pay all reasonable expenses incurred by the Debtors in the operation of the Business, in the ordinary course of business, after the date of this Order, and in carrying out the provisions of this Order, which expenses may include, but are not limited to :

- (a) all charges and capital expenditures reasonably necessary to preserve the Property or the Business, including, without limitation, payments for insurance, maintenance and security services; and
- (b) payment for products or services rendered to the Debtors after the date of this Order or payments to obtain the delivery of products or the rendering of services covered by a contract entered into prior to the date of this Order.

[26] **ORDERS** that the Monitor, for and on behalf on the Debtors and without liability thereof, shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension Plan, and (iv) income taxes; and
- (b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Debtors and in connection with the sale of goods and services by the Debtors, but only where such Sales Taxes are collected after the date of this Order.

### **No Exercise of Rights or Remedies**

- [27] **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Debtors is a party as a result of the insolvency of the Debtors and/or these CCAA proceedings, any events of default or non-performance by the Debtors or any admissions or evidence in these CCAA proceedings of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Debtors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.
- [28] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Debtors or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Debtors, or any of them, become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) is appointed in respect of the Debtors, the period between the date of this Order and the day on which the Stay Period ends shall not be calculated in respect of the Debtors in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

### **No Interference with Rights**

- [29] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to renew per the same terms and conditions, honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Monitor, or with leave of this Court.

### **Continuation of Services**

- [30] **ORDERS** that during the Stay Period and subject to paragraph [32] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Debtors, are hereby restrained until further order of this Court from discontinuing, failing to renew per the same terms and conditions, altering, interfering with, terminating the supply or, where the case may be, interrupting, delaying or stopping the transit of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use of their current premises, telephone numbers,

facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtors, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Debtors, as applicable, with the consent of the Monitor, or as may be ordered by this Court.

[31] **ORDERS** that, notwithstanding anything else contained in this Order and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Debtors on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to make further advance of money or otherwise extend any credit to the Debtors.

[32] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any of the Debtors with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by any of the Debtors and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into any account of the Debtors until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

### **Non-Derogation of Rights**

[33] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of any of the Debtors shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of this Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

### **Interim Financing**

[34] **ORDERS** that the Debtors are authorized to borrow and repay from the Applicants (in such capacity, the "**Interim Lenders**") such amounts from time to time as they may consider necessary or desirable, up to a maximum principal amount of \$1,500,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet, Exhibit P-7A (the "**Interim Financing Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of the Debtors and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as



defined hereinafter) (the “**Interim Facility**”).

- [35] **ORDERS** that the Monitor for and on behalf of the Debtors, is hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the “**Interim Financing Documents**”) as may be required by the Interim Lenders in connection with the Interim Facility and the Interim Financing Term Sheet, and the Monitor, for and on behalf of the Debtors, is authorized to perform all of their obligations under the Interim Financing Documents.
- [36] **ORDERS** that the Debtors shall pay to the Interim Lenders, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all reasonable fees and disbursements of the Interim Lenders’ counsel and all other reasonably required advisers to or agents of the Interim Lenders on a full indemnity basis (the “**Interim Lenders Expenses**”) under the Interim Financing Documents and shall perform all of its other obligations to the Interim Lenders pursuant to the Interim Financing Term Sheet, the Interim Financing Documents and this Order.
- [37] **DECLARES** that all of the Property of the Debtors is subject to a charge, hypothec and security for an aggregate amount of \$1,800,000 (the “**Interim Lenders Charge**”) in favour of the Interim Lenders as security for all obligations of the Debtors to the Interim Lenders with respect to all amounts owing (including principal, interest and the Interim Lenders Expenses) under or in connection n with the Interim Financing Term Sheet and the Interim Financing Documents. The Interim Lenders Charge shall have the priority established by paragraphs [67] to [68] of this Order.
- [38] **ORDERS** that the claims of the Interim Lenders pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lenders, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan.
- [39] **ORDERS** that the Interim Lenders may:
- (a) notwithstanding any other provision of this Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lenders Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
  - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Debtors if they fail to meet the provisions of the Interim Financing Term Sheet and the Interim Financing Documents.
- [40] **ORDERS** that the Interim Lenders shall not take any enforcement steps under the Interim Financing Documents or the Interim Lenders Charge without providing at least five (5) business days written notice (the “**Notice Period**”) of a default thereunder to the Debtors, the Monitor, the Applicants and their legal counsel, and

to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lenders shall be entitled to take any and all steps under the Interim Financing Documents and the Interim Lenders Charge and otherwise permitted at law, but without having to send any demands under Section 244 of the BIA and upon the Interim Lenders taking such steps, the Agent and the Secured Lenders shall be entitled to take any and all steps under the loan documents and otherwise permitted at law, but without having to send any demands under Section 244 of the BIA.

- [41] **ORDERS** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs [34] to [40] hereof unless either (a) notice of a motion for such order is served on the Interim Lenders by the moving party within seven (7) days after that party was served with the order or (b) the Interim Lenders applies for or consents to such order.

### **KERP and KERP Charge**

- [42] **ORDERS** that the terms and conditions of the Key Employee Bonus Agreement (the "**KERP**"), filed under seal as Exhibit P-8 to the Application, are hereby ratified and that the Monitor is authorized to perform their obligations thereunder, including making all payments required in accordance with the terms thereof and **DECLARES** that the KERP contains sensitive and confidential information and shall be sealed in the Court file in this proceedings and segregated from, and not form part of, the public record.
- [43] **ORDERS** that the employees eligible under the KERP shall be entitled to the benefit of and are hereby granted a Charge in the Property to the extent of the aggregate amount of \$200,000 (the "**KERP Charge**"), as security for the payment of the obligations of the Debtors provided thereunder. The KERP Charge shall have the priority established by paragraphs [67] and [68] of this Order.

### **Applicants Access to Information**

- [44] **PRAYS ACT** of the Debtors' undertaking to provide the Applicants with the following information in connection with the CCAA proceedings:
- (a) cash flow projections, the assumptions on which the projections are based, and comparisons with the Debtors' cash variations, as the case may be, with explanations for material variances, all on an unconsolidated basis on a weekly basis;
  - (b) any document related to the Sale Process; and
  - (c) any other information requested by the Applicants, acting reasonably.

## Restructuring

- [45] **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the “**Restructuring**”) but subject to such requirements as are imposed by the CCAA, the Monitor, in consultation with the Applicants and subject to a further order from this Court, to:
- (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate;
  - (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
  - (c) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Monitor, as applicable, and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Monitor may determine;
  - (d) disclaim or resiliate agreements, subject to the provisions of section 32 CCAA; and
  - (e) subject to section 11.3 CCAA, assign any rights and obligations of the Debtors.
- [46] **DECLARES** that, in order to facilitate the Restructuring, the Monitor may, subject to further order of the Court, settle claims of customers and suppliers that are in dispute.
- [47] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Debtors and the Monitor are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a “**Third Party**”), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Debtors binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Debtors or destroyed. In the event that a Third Party acquires

personal information as part of the Restructuring or the preparation or implementation of a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Debtors.

### **Sale and Investment Solicitation Process**

- [48] **AUTHORIZES** the Monitor, in consultation with the Applicants, as applicable, to carry on the already initiated general Sale Process (the “**Sale Process**”).
- [49] **ORDERS** the Monitor to provides copies of any documents with respect to the Sale Process, including, without limitation, copies of any letters of intent, bid and offers to representatives of secured creditors for consultation purposes, and shall consult with said Consultation Parties, but only to the extent that (a) the Monitor determines that said secured creditor has an economic interest in the outcome of a given transaction; (b) said secured creditor has subscribed to a satisfactory confidentiality undertaking to preserve the confidentiality of the information shared; and (c) said secured creditor is not itself participating in the Sale Process as a bidder (by way of a credit-bid or otherwise) (the “**Consultation Parties**”).
- [50] **ORDERS** and **DECLARES** that contractual rights and remedies of third parties specifically restricting the disposition of any of the Assets and/or any part of the Business, including but not limited to, provisions with respect to rights of first refusal, rights of first offer, rights to match an offer, options to purchase, or other restrictive covenants with respect to the sale of an interest in any of the Assets and/or any part of the Business (collectively, the “**Restrictive Sale Provisions**”) are stayed and unenforceable in the context of the Sale Process, may not be enforced against a potential bidder in the context of the Sale Process, and shall not limit or impair the Monitor’s ability to conduct the Sale Process and to implement any transaction thereunder.
- [51] **ORDERS** and **DECLARES** that the Monitor is authorized and permitted to market any of the Assets and/or any part of the Business without complying with the Restrictive Sale Provisions.
- [52] **ORDERS** that the Monitor is authorized and permitted under applicable law to disclose and transfer to potential bidders and to their advisors personal information in the custody or control of the Debtor relating to the operation of any part of the Business being sold pursuant to the Sale Process, including human resources and payroll information, records pertaining to the Debtor’s past and current employees, and information about any consumer, website visitor or other individual (collectively, “**Personal Information**”), but only to the extent necessary to negotiate, determine whether to proceed with, and attempt to complete a transaction in accordance with the Sale Process (a “**Transaction**”). Each potential bidder to whom any Personal Information is disclosed shall maintain and protect the Personal Information with security safeguards appropriate to the sensitivity of the Personal Information and as may otherwise be required by applicable federal or provincial privacy legislation and limit the use of such information to its evaluation of a Transaction, and if it does not complete a Transaction with the

Debtor, shall return all such information to the Debtor or the Monitor, as applicable, or in the alternative permanently destroy all such information.

- [53] **ORDERS** that the Monitor, the Applicants and each of their respective affiliates, partners, directors, employees, agents, controlling persons, lenders, legal counsel and advisors shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the conduct of the Sale Process or the performance of their duties under the Sale Process, except to the extent of such losses, claims, damages or liabilities resulting from gross negligence or willful misconduct of any such person or entity, as applicable, as determined by this Court.

### **Powers of the Monitor**

- [54] **ORDERS** that Deloitte Restructuring inc. is hereby appointed to monitor the business and financial affairs of the Debtors as an officer of this Court (the “**Monitor**”) and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:
- (a) shall, as soon as practicable, (i) publish once a week for two (2) consecutive weeks or as otherwise directed by the Court, in La Presse+ and (ii) within five (5) business days after the date of this Order (A) post on the Monitor’s website (the “**Website**”) a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Debtors of more than \$1,000, advising them that this Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;
  - (b) shall control the Debtors’ receipts and disbursements whether through copies of bank records or access to the electronic platform to visualize the activities in the accounts, wherever they may be;;
  - (c) shall assist the Debtors in dealing with their creditors and other interested Persons during the Stay Period;
  - (d) shall assist the Debtors with the preparation of their cash flow projections and any other projections or reports;
  - (e) shall advise and assist the Debtors to review the Debtors’ business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
  - (f) shall assist the Debtors with the Restructuring and in their negotiations with their creditors and other interested Persons;

- (g) shall report to the Court on the state of the business and financial affairs of the Debtors or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated reports for the Debtors;
- (h) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (i) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under this Order or under the CCAA;
- (j) may hold and administer funds in connection with arrangements made among the Debtors, any counterparties and the Monitor, or by Order of this Court; and
- (k) may perform such other duties as are required by this Order or the CCAA or by this Court from time to time.

[55] **ORDERS** that, in addition to the powers provided for in paragraph [54] of this Order, the Monitor shall also be authorized, but not required, to exercise the following powers for and on behalf of the Debtor:

- (a) conduct and control the financial affairs and operations of the Debtors and carry on the business of the Debtors;
- (b) negotiate any transaction for the sale, use or monetization of the Property or the Business;
- (c) if appropriate, develop and implement a Plan or Plans on behalf of the Debtors;
- (d) enter into any agreements for and on behalf of the Debtors with respect to the Business or the Property, including, for greater certainty, any offer received contemplating a transaction with respect to the Business or Property, subject to the approval of the Court;
- (e) incur obligations in the daily ordinary course of business;
- (f) retain or terminate employees or contractors;
- (g) administer and wind down all employee benefit plans of the Debtors and making and endorsing all filings related thereto (including, without limitation, financial statements, tax returns and tax filings);

- (h) cease to carry on all or part of the Business in consultation with the Applicants;
- (i) access, at all times, the places of business and the premises of the Debtors, the Property, and change the locks to such places of business and premises of the Debtors;
- (j) collect all accounts receivable and all other claims of the Debtors and transacting in respect of same, including proceeds payable pursuant to the sale of Property and signing any document for this purpose;
- (k) report to, meet with and discuss with the Debtors' representatives, as the Monitor deems appropriate, regarding all matters relating to the Property and these proceedings, and sharing information with them subject to such terms as to confidentiality as the Monitor deems advisable; and
- (l) market or soliciting one or several potential buyers of all or any part of the Property, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property;
- (m) execute and deliver the Interim Financing Documents, as provided for by this Order;
- (n) exercise all rights granted to the Debtors pursuant to this Order including, for greater certainty, the rights granted to the Debtors under paragraph [45] of this Order;
- (o) take steps for the preservation and protection of the Business or the Property;
- (p) exercise such shareholder or member rights, including voting rights, as may be available to the Debtors;
- (q) provide the Applicants with any information they may require with respect to the Business, the Property or the Debtors; and
- (r) give any consent or approval as may be contemplated by this Order or the CCAA;
- (s) negotiate and accept, subject to the authorization of the Court, any transaction for the sale, use or monetization of the Property or the Business in accordance with the Sale Process, as further described under paragraph [48] of this Order, including, without limitation:
  - (i) take whatever steps necessary or desirable to carry out the Sale Process;
  - (ii) execute such documents as may be necessary in connection with the Sale Process;

- (iii) negotiate and enter into agreements in the context of the Sale Process with regards to the Property and Business;
- (iv) incur any obligations necessary or incidental to the exercise of the aforesaid powers and for the implementation of the Sale Process; and
- (v) apply to the Court for any vesting order or any other order which may be necessary or appropriate in order to convey the Property or the Business to a purchaser or purchasers thereof.
- (t) continue to engage the services of the Debtors' employees on behalf of the Debtors, until the Monitor, acting for and on behalf of the Debtors, terminates the employment of such employees. The Monitor shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in section 11.8(1) of the CCAA, other than such amounts as the Monitor may specifically agree in writing to pay;
- (u) oversee and direct the preparation of cash flow statements and assist in the dissemination of financial or other information in these proceedings;
- (v) execute, assign, issue, endorse documents of whatever nature in respect of any of the Property, whether in the Monitor's name or in the name and on behalf of any of the Debtors (including without limitation, financial statements, tax returns and tax filings);
- (w) initiate, prosecute, make and respond to applications and motions in, and continue the prosecution of any and all proceedings on behalf of or involving one or more of the Debtors (including the within proceedings) and settle or compromise any proceedings or claims by and against one or more of the Debtors. The authority hereby conveyed shall extend to such appeals or application and motions for judicial review in respect of any order or judgment pronounced in any such proceedings;
- (x) exercise any rights which the Debtors may have;
- (y) make any distribution or payment required under any Order in these proceedings; and
- (z) perform such other duties or take any steps reasonably incidental to the exercise of such powers and obligations conferred upon the Monitor by this Order or any Order of this Court.

Unless expressly authorized to do so by this Court, the Monitor shall not take possession of the Property nor shall the Monitor be deemed to have done so.

[56] **DECLARES** that nothing provided for herein shall constitute an approval by this Court of any transaction or offer accepted by the Monitor pursuant to this Order and **DECLARES** that any such offer or transaction shall be subject to the approval of this Court pursuant to the provisions of the CCAA and further to a subsequent



application to be filed and presented to this Court, as the case may be.

[57] **DECLARES** that the Monitor shall be authorized, but not required to operate and control, on behalf of the Debtors, all existing accounts of the Debtors maintained at any financial institution (individually, an "**Account**" and collectively, the "**Accounts**") in such manner as the Monitor, in its sole discretion, deems necessary or appropriate, including, without limitation:

- (a) carrying out banking and other transactions on behalf of one of the Debtors and to sign documents or take any other action that is necessary or appropriate for the exercise of this power;
- (b) opening any required bank account, on the terms and conditions the Monitor may determine, with any chartered Canadian bank or any other financial institution, the whole, in order to cash any item payable to the Debtors, and issuing any payment which, in the opinion of the Monitor, is necessary or useful to the Debtors' operations;
- (c) exercising control over funds credited to or deposited in the Accounts;
- (d) make any disbursements on the Accounts authorized by this Order or any other order granted in these Procedures;
- (e) give directions from time to time with respect to the Accounts and the funds credited to or deposited therein, including transferring funds credited to or deposited in any other account as the Monitor may direct; and
- (f) add or remove persons having signing authority with respect to an Account or order the closure of an Account.

[58] **ORDERS** that the Debtors and their Directors, employees and agents, accountants, auditors and all other Persons having notice of this Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Debtors in connection with the Monitor's duties and responsibilities hereunder.

[59] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Debtors with information in response to requests made by them in writing addressed to the Monitor. In the case of information that the Monitor has been advised by the Debtors is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Debtors unless otherwise directed by this Court.

[60] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Debtors or continues the employment of the Debtors' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.

[61] **ORDERS** that neither the Monitor nor any employee or agent of the Monitor shall

be deemed (i) to be a director, officer or trustee of the Debtors, (ii) to assume any obligation incumbent upon the Debtors or (iii) to assume any fiduciary duty to the Debtors or any other Person, including any creditor or shareholder of the Debtors.

- [62] **ORDERS** and **DECLARES** that nothing herein shall impose upon the Monitor any obligation to take possession or assume control, care, charge or otherwise manage any of the Property (the "**Possession**"), including the Possession of any Property which may be polluted, which may constitute a pollutant or contaminant or which may cause the discharge, emission, the discharge or deposit of any substance contrary to any federal, provincial or other law relating to the protection, conservation, reclamation, restoration or rehabilitation of the environment or relating to the disposal of waste or any other form of contamination, including the *Canadian Environmental Protection Act*, 1999, CS 1999, c 33, the *Environment Quality Act*, RLRQ c Q-2, or the *Act respecting occupational health and safety*, RLRQ c S-2. 1, and their corresponding regulations (the "**Environmental Legislation**"). However, the provisions hereof in no way exempt the Monitor from any notification or disclosure obligations imposed by the applicable Environmental Legislation. The Monitor shall not, by virtue of this Order or by reason of any action taken as a result of the exercise of its powers and duties under this Order, be deemed to have Possession of any of the Property within the meaning of any Environmental Legislation, unless it is in actual possession thereof.
- [63] **DECLARES** that entities related to or belonging to the same group as the Monitor shall also be entitled to the safeguards, benefits and privileges conferred upon the Monitor under this Ordinance.
- [64] **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [65] **ORDERS** that the Debtors shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the legal counsel for the Debtors and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after this Order, and shall be authorized to provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
- [66] **DECLARES** that the Monitor as well as the Monitor's legal counsel (Norton Rose Fulbright LLP), the Debtors' legal Counsel (Osler, Hoskin & Harcourt LLP) and the Applicants' legal counsel (McCarthy Tétrault LLP), as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings and the Restructuring, be entitled to the benefit of and are hereby granted a charge, hypothec and security in the Property to the extent of the aggregate amount of \$250,000 (the "**Administration Charge**"), having the priority established by paragraphs [67] and [68] of this Order.

## Priorities and General Provisions Relating to CCAA Charges

- [67] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, trusts, priorities, charges, encumbrances or security of whatever nature or kind, including claims of His Majesty in right of Canada and His Majesty in right of a Province subject to a deemed trust (collectively, the “**Encumbrances**”) affecting the Property whether or not charged by such Encumbrance.
- [68] **DECLARES** that the priorities of the Administration Charge, the Interim Lenders’ Charge and the KERP Charge (collectively, the “**CCAA Charges**”) as between them with respect to any Property to which they apply, shall be as follows:
- (a) first, the Administration Charge;
  - (b) second, the Interim Lenders’ Charge; and
  - (c) the KERP Charge.
- [69] **ORDERS** that, except as otherwise expressly provided for herein, the Debtors shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Debtors obtains the prior written consent of the Monitor and the beneficiaries of the CCAA Charges, or the prior approval of the Court.
- [70] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Debtors, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
- [71] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such application(s) or any assignment(s) in bankruptcy made or deemed to be made in respect of any of the Debtors; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Debtors (a “**Third Party Agreement**”), and notwithstanding any provision to the contrary in any Third Party Agreement:
- (a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Debtors of any Third Party Agreement to which any of the Debtors is a party; and
  - (b) the beneficiaries of the CCAA Charges shall not have any liability to any Debtors whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

- [72] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such application(s) or any assignment(s) in bankruptcy made or deemed to be made in respect of any of the Debtors; and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any of the Debtors pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
- [73] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Debtors and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Debtors.
- [74] **RESERVES** the rights of Business Development Bank of Canada (“**BDC**”) and/or Nations Fund I, LLC (“**Nations**”) to contest the priority of the CCAA Charges over the Encumbrances granted in their favour on the aircraft collateral, but only in the event that: (i) no transaction is approved by the Court on or before August 22, 2023, being understood that, in such case, any party to these proceedings shall have the right to argue that the debate is premature or (ii) the proceeds of one or more transaction(s) to be approved by this Court or otherwise realized out of their aircraft collateral, as the case may be, do not provide for the full reimbursement of the secured indebtedness of the Debtors towards BDC and Nations, respectively.
- [75] **ORDERS** that, prior to the distribution of any net sale proceeds resulting from the sale or divestiture of any Business or Property (but excluding any payment made in respect of any amounts owing under the CCAA Charges, as the case may be, it being understood that any such payment shall be considered and allocated in the Proposed Allocation (as defined hereinafter)), the Monitor shall prepare and file with the Court a report (the “**Allocation Report**”) which shall set out the Monitor’s proposed allocation of the net amount to be distributed to each secured creditor whose indebtedness is secured by the assets which are the object of a transaction (the “**Proposed Allocation**”).
- [76] **ORDERS** the Monitor to serve a copy of the Allocation Report upon the service list in these proceedings following the service of the approval application, as soon as practicable prior to the hearing of the approval application and **RESERVES** the right of any interested party to make representations regarding the Proposed Allocation.
- [77] **DECLARES** that paragraphs [75] and [76] of this Order and their effects shall apply to any payment or distribution, as the case may be, even outside these CCAA Proceedings, including, without limitation, by a trustee in bankruptcy, receiver, receiver and manager, interim receiver or any other person appointed to make a payment or a distribution in respect of the Property or the Business, unless the Court orders otherwise.

## Hearing scheduling and details

- [78] **ORDERS** that, subject to further Order of this Court, all applications in these CCAA proceedings are to be brought on not less than five (5) days' notice to all Persons on the service list. Each application shall specify a date (the "**Initial Hearing Date**") and time (the "**Initial Hearing Time**") for the hearing.
- [79] **ORDERS** that any Person wishing to object to the relief sought on an application in these CCAA proceedings must serve a detailed written contestation stating the objection to the application and the grounds for such objection (a "**Contestation**") in writing to the moving party, the Debtors and the Monitor, with a copy to all Persons on the service list, no later than 5 p.m. Montréal Time on the date that is three (3) days prior to the Initial Hearing Date (the "**Objection Deadline**").
- [80] **ORDERS** that, if no Contestation is served by the Objection Deadline, the Judge having carriage of the application (the "**Presiding Judge**") may determine: (a) whether a hearing is necessary; (b) whether such hearing will be in person, by telephone or by written submissions only; and (c) the parties from whom submissions are required (collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.
- [81] **ORDERS** that, if no Contestation is served by the Objection Deadline, the Debtors shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Debtors shall thereafter advise the service list of the Hearing Details and the Debtors shall report upon its dissemination of the Hearing Details to the Court in a timely manner.
- [82] **ORDERS** that, if a Contestation is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Hearing Date at the Initial Hearing Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Hearing Date and at the Initial Hearing Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested application and such other matters, including interim relief, as the Court may direct.

## General

- [83] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisors of the Monitor in relation to the Business or Property of the Debtors, without first obtaining leave of this Court, upon ten (10) days' written notice to the Monitor's counsel, and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
- [84] **ORDERS** that Exhibits R-4, R-5, R-6, R-7, R-7A and R-8 filed in support of the Application, Schedule A of the Monitor's Pre-filing Report dated July 11, 2023, and Schedules A, B and C of the Monitor's Second Report dated July 20, 2023, shall be kept under seal until further order from this Court and **PRAYS ACT** of the

Applicants' undertaking to provide said Exhibits to parties, subject to a confidentiality agreement.

- [85] **DECLARES** that this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [86] **DECLARES** that, except as otherwise specified herein, the Monitor is at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Debtors and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
- [87] **DECLARES** that the Monitor and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing an electronic copy of such materials to counsels' email addresses.
- [88] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on counsel for the Monitor and has filed such notice with this Court, or appears on the service list prepared by counsel for the Monitor, save and except when an order is sought against a Person not previously involved in these proceedings.
- [89] **DECLARES** that the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.
- [90] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [91] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in Canada, the United States of America or elsewhere, to give effect to this Order and to assist the Debtors, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Debtors in any foreign proceeding, to assist the Debtors, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

[92] **ORDERS** the provisional execution of this Order notwithstanding any appeal.

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The Honourable David R. Collier, J.S.C.